ESTTA Tracking number: **ESTTA319115**
Filing date: **11/25/2009**

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

Proceeding	91187908
Party	Plaintiff Oklahoma State University
Correspondence Address	Alicia Grahn Jones Kilpatrick Stockton LLP 1100 Peachtree Street Suite 2800 Atlanta, GA 30309 UNITED STATES tmadmin@kilpatrickstockton.com, aljones@kilpatrickstockton.com, lkemp@kilpatrickstockton.com
Submission	Other Motions/Papers
Filer's Name	/Lauren Sullins Ralls/
Filer's e-mail	ascott@kilstock.com, lralls@kilstock.com, kteilhaber@kilstock.com, chenn@kilstock.com
Signature	/Lauren Sullins Ralls/
Date	11/25/2009
Attachments	Consented Request to Correct Inaccuracies in Electronic Docket and Attachments.pdf (152 pages)(3477434 bytes)

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

CONSENTED REQUEST TO CORRECT
INACCURACIES IN ELECTRONIC DOCKET

Opposer Oklahoma State University ("Opposer"), filed the following with the Trademark Trial an Appeal Board by U.S. mail on October 9, 2009.

(1) Opposer's Motion for Summary Judgment;
(2) Opposer's Redacted Brief in Support of Motion for Summary Judgment;
(3) Opposer's Confidential Brief in Support of Motion for Summary Judgment Filed Under Seal;
(4) Declaration of Michael Drucker with Exhibit A;
(5) Exhibits A – F to the Declaration of Lauren Sullins Ralls;
(6) Redacted Exhibit G to the Declaration of Lauren Sullins Ralls;
(7) Confidential Exhibit G to the Declaration of Lauren Sullins Ralls Filed Under Seal;
(8) Exhibits H – I to the Declaration of Lauren Sullins Ralls;
(9) Declaration of Kurtis Mason with Exhibits A - M.

True and correct copies of the above-listed documents were served on counsel for Super Bakery, Inc. ("Applicant") on October 9, 2009 via first class mail to John W. McIlvaine at The Webb Law Firm, 436 Seventh Avenue, 700 Koopers Building, Pittsburgh, Pennsylvania 15219.

Upon review of the Board's electronic docket for the referenced proceeding, Opposer notes that the following documents which were filed and served on October 9, 2009 do not appear on the electronic docket.

(1) Opposer's Confidential Brief in Support of Motion for Summary Judgment Filed Under Seal;
(2) Exhibits A – F to the Declaration of Lauren Sullins Ralls;
(3) Redacted Exhibit G to the Declaration of Lauren Sullins Ralls; and
(4) Confidential Exhibit G to the Declaration of Lauren Sullins Ralls Filed Under Seal.

It appears that Exhibits A – F to the Declaration of Lauren Sullins Ralls in Support of Opposer's Motion for Summary Judgment inadvertently have been included in the electronic docket for Opposition No. 91187907, a related proceeding involving a different application filed by Applicant.

Opposer therefore encloses the following documents and resubmits them for uploading to the Board's electronic docket.

(1) Opposer's Confidential Brief in Support of Motion for Summary Judgment Filed Under Seal;
(2) Exhibits A – F to the Declaration of Lauren Sullins Ralls;
(3) Redacted Exhibit G to the Declaration of Lauren Sullins Ralls; and
(4) Confidential Exhibit G to the Declaration of Lauren Sullins Ralls Filed Under Seal.

Opposer respectfully requests that these documents be added as docket entries to the electronic docket for this proceeding. Opposer also respectfully requests that Docket No. 5, labeled as "DECLARATION OF LAUREN SULLINS RALLS (EXHIBIT H)," be renamed as "DECLARATION OF LAUREN SULLINS RALLS (EXHIBITS H & I)," in order to reflect more accurately the contents of the docket entry.

Counsel for Opposer has conferred with counsel for Applicant, and Applicant has consented to the filing of this correspondence to correct the above-referenced inaccuracies of the

electronic docket for this proceeding.

Respectfully submitted,

Dated: November 25, 2009

By: _____

R. Charles Henn Jr.
Alicia Grahn Jones
Lauren Sullins Ralls
Allison M. Scott
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

Attorneys for Opposer,
Oklahoma State University

Dated: November 25, 2009

By: _____

John W. McIlvaine
J. Matthew Pritchard
Steven M. Johnston
THE WEBB LAW FIRM
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
T: (412) 471-8815
F: (412) 471-4094

Attorneys for Applicant,
Super Bakery, Incorporated

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing CONSENTED REQUEST TO CORRECT INACCURACIES IN ELECTRONIC DOCKET was served on counsel for Applicant on November 25, 2009 via first class mail to:

John W. McIlvaine
The Webb Law Firm
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219

Counsel for Opposer

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing CONSENTED REQUEST TO CORRECT INACCURACIES IN ELECTRONIC DOCKET is being filed electronically with the TTAB via ESTTA on this day, November 25, 2009.

Counsel for Opposer

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

EXHIBIT A TO THE DECLARATION OF LAUREN SULLINS RALLS

Trademark Applications Owned by Applicant

Trademark	Application Number	Goods
BADGERADE	77-382271	"sports drinks" in International Class 32
BRONCOADE	77-382281	"sports drinks" in International Class 32
BULLDOGADE	77-382118	"non-caffeinated hydrating sports drinks" in International Class 32
CATADE	77-382985	"sports drinks" in International Class 32
COUGARADE	77-382996	"sports drinks" in International Class 32
FALCONADE	77-384233	"sports drinks and performance drinks" in International Class 32
HURRICANEADE	77-382960	"sports drinks" in International Class 32
HUSKIEADE	77-384238	"sports drinks and performance drinks" in International Class 32
IRISHADE	77-382991	"sports drinks" in International Class 32
JAYHAWKADE	77-383006	"sports drinks" in International Class 32
WOLVERINEADE	77-384032	"sports drinks and performance drinks" in International Class 32
KNIGHTADE	77-383021	"sports drinks" in International Class 32
PANTHERADE	77-383064	"sports drinks" in International Class 32
MOUNTAINEERADE	77-383048	"sports drinks" in International Class 32
SOONERADE	77-383960	"sports drinks" in International Class 32
VOLUNTEERADE	77-384000	"sports drinks" in International Class 32
CORNHUSKERADE	77-384196	"sports drinks and performance drinks" in International Class 32
LONGHORNADE	77-383038	"sports drinks, namely, lemonade and limeade" in International Class 32

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
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	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

EXHIBIT B TO THE DECLARATION OF LAUREN SULLINS RALLS

Trademark/Service Mark Application, Principal Register

Serial Number: 77383001
Filing Date: 01/29/2008

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77383001
MARK INFORMATION	
*MARK	COWBOYADE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	COWBOYADE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Super Bakery, Incorporated
*STREET	5700 Corporate Drive
INTERNAL ADDRESS	Suite 455
*CITY	Pittsburgh
*STATE (Required for U.S. applicants)	Pennsylvania
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	15237
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Pennsylvania

GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	032
*IDENTIFICATION	Sports drinks and performance drinks
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	John W. McIlvaine
ATTORNEY DOCKET NUMBER	4927-080341
FIRM NAME	The Webb Law Firm
STREET	436 Seventh Avenue
INTERNAL ADDRESS	700 Koppers Building
CITY	Pittsburgh
STATE	Pennsylvania
COUNTRY	United States
ZIP/POSTAL CODE	15219
PHONE	412-471-8815
FAX	412-471-4094
EMAIL ADDRESS	webblaw@webblaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	William H. Logsdon, Registration No. 22,132; Russell D. Orkin, Registration No. 25,363; David C. Hanson, Registration No. 23,024; Richard L. Byrne, Registration No. 28,498; Kent E. Baldauf, Registration No. 25,826; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Kent E. Baldauf, Jr., Registration No. 36,082; Kirk M. Miles, Registration No. 37,891; Randall A. Notzen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Christian E. Schuster, Registration No. 43,908; Ann M. Cannoni, Registration No. 35,972; Nathan J. Prepelka, Registration No. 43,016; J. Matthew Pritchard,

	Registration No. 46,228; Darrell E. Williams, Registration No. 45,222; Patricia A. Olosky, Registration No. 53,411; Alexander Detschelt, Registration No. 50,261; Lara A. Northrop, Registration No. 55,502; James J. Bosco, Jr., Registration No. 51,489; Thomas C. Wolski, Registration No. 55,739; Taressa J. Fenus, Registration No. 60,792; Emily A. Danchuk; John W. Zerr, Registration No. 56,009; and Bryan P. Clark, Registration No. 60,465.
CORRESPONDENCE INFORMATION	
NAME	John W. McIlvaine
FIRM NAME	The Webb Law Firm
STREET	436 Seventh Avenue
INTERNAL ADDRESS	700 Koppers Building
CITY	Pittsburgh
STATE	Pennsylvania
COUNTRY	United States
ZIP/POSTAL CODE	15219
PHONE	412-471-8815
FAX	412-471-4094
EMAIL ADDRESS	webblaw@webblaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
***TOTAL FEE DUE**	325
***TOTAL FEE PAID**	325
SIGNATURE INFORMATION	
SIGNATURE	/JWMc/
SIGNATORY'S NAME	John W. McIlvaine, Reg. No. 34,219
SIGNATORY'S POSITION	Attorney of record

DATE SIGNED	01/29/2008

Trademark/Service Mark Application, Principal Register

Serial Number: 77383001
Filing Date: 01/29/2008

To the Commissioner for Trademarks:

MARK: COWBOYADE (Standard Characters, see mark)
The literal element of the mark consists of COWBOYADE.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Super Bakery, Incorporated, a corporation of Pennsylvania, having an address of
Suite 455,
5700 Corporate Drive
Pittsburgh, Pennsylvania 15237
United States
requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 032: Sports drinks and performance drinks
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant hereby appoints John W. McIlvaine and William H. Logsdon, Registration No. 22,132; Russell D. Orkin, Registration No. 25,363; David C. Hanson, Registration No. 23,024; Richard L. Byrne, Registration No. 28,498; Kent E. Baldauf, Registration No. 25,826; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Kent E. Baldauf, Jr., Registration No. 36,082; Kirk M. Miles, Registration No. 37,891; Randall A. Notzen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Christian E. Schuster, Registration No. 43,908; Ann M. Cannoni, Registration No. 35,972; Nathan J. Prepelka, Registration No. 43,016; J. Matthew Pritchard, Registration No. 46,228; Darrell E. Williams, Registration No. 45,222; Patricia A. Olosky, Registration No. 53,411; Alexander Detschelt, Registration No. 50,261; Lara A. Northrop, Registration No. 55,502; James J. Bosco, Jr., Registration No. 51,489; Thomas C. Wolski, Registration No. 55,739; Taressa J. Fenus, Registration No. 60,792; Emily A. Danchuk; John W. Zerr, Registration No. 56,009; and Bryan P. Clark, Registration No. 60,465. of The

Webb Law Firm
700 Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
United States
to submit this application on behalf of the applicant. The attorney docket/reference number is 4927-080341.

Correspondence Information: John W. McIlvaine
700 Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
412-471-8815(phone)
412-471-4094(fax)
webblaw@webblaw.com (authorized)

A fee payment in the amount of $325 has been submitted with the application, representing payment for 1 class(es).

Declaration

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

Signature: /JWMc/ Date Signed: 01/29/2008
Signatory's Name: John W. McIlvaine, Reg. No. 34,219
Signatory's Position: Attorney of record

RAM Sale Number: 7934
RAM Accounting Date: 01/29/2008

Serial Number: 77383001
Internet Transmission Date: Tue Jan 29 12:46:54 EST 2008
TEAS Stamp: USPTO/BAS-74.94.192.131-2008012912465433
8513-77383001-4008364b48f0acdba6f8c4f298
a762ade-CC-7934-20080129124457893353

COWBOYADE

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

EXHIBIT C TO THE DECLARATION OF LAUREN SULLINS RALLS

To:	Super Bakery, Incorporated (webblaw@webblaw.com)
Subject:	TRADEMARK APPLICATION NO. 77383001 - COWBOYADE - 4927-080341
Sent:	5/6/2008 6:35:53 PM
Sent As:	ECOM107@USPTO.GOV
Attachments:	

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/383001

MARK: COWBOYADE

77383001

CORRESPONDENT ADDRESS:
JOHN W. MCILVAINE
THE WEBB LAW FIRM
436 SEVENTH AVENUE
700 KOPPERS BUILDING
PITTSBURGH, PA 15219

GENERAL TRADEMARK INFORMATION:
http://www.uspto.gov/main/trademarks.htm

APPLICANT: Super Bakery, Incorporated

CORRESPONDENT'S REFERENCE/DOCKET NO: 4927-080341

CORRESPONDENT E-MAIL ADDRESS:
webblaw@webblaw.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 5/6/2008

OFFICE SEARCH: The examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

AMENDMENT: In accordance with the authorization granted by Lara A. Northrop on May 6, 2008, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods and/or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

IDENTIFICATION OF GOODS

The identification of goods is amended to read as follows: "sports drinks." TMEP §1402.01(e).

/Midge F. Butler/
Trademark Attorney
Law Office 107
571-272-9137
fax (571) 273-9107

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at http://tarr.uspto.gov. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

To:	Super Bakery, Incorporated (webblaw@webblaw.com)
Subject:	TRADEMARK APPLICATION NO. 77383001 - COWBOYADE - 4927-080341
Sent:	5/6/2008 6:35:57 PM
Sent As:	ECOM107@USPTO.GOV
Attachments:	

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 5/6/2008 FOR APPLICATION SERIAL NO. 77383001

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link **http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77383001&doc_type=EXA&** (or copy and paste this URL into the address field of your browser), or visit **http://tmportal.uspto.gov/external/portal/tow** and enter the application serial number to **access** the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from **5/6/2008**.

Do NOT hit "Reply"to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at http://www.uspto.gov/teas/eTEASpageD.htm.

HELP: For *technical* assistance in accessing the Office action, please e-mail **TDR@uspto.gov**. Please contact the assigned examining attorney with questions about the Office action.

WARNING

1. The USPTO will NOT send a separate e-mail with the Office action attached.

2. Failure to file any required response by the applicable deadline will result in

the ABANDONMENT of your application.

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

EXHIBIT D TO THE DECLARATION OF LAUREN SULLINS RALLS

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Opposer Oklahoma State University (the "Opposer" or "University"), through counsel and pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, hereby requests that Applicant Super Bakery, Inc. ("Applicant") produce for inspection and copying, at the offices of Kilpatrick Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia, 30309-4530, or at a location to which the parties mutually agree, within thirty (30) days after service hereof, the documents identified below.

DEFINITIONS

Opposer hereby incorporates by reference, as if fully set forth herein, the Definitions set forth in Opposer's First Set of Interrogatories, served contemporaneously herewith.

INSTRUCTIONS

A. Documents should be produced as they are kept in the usual course of business or organized and labeled to correspond with the numbered categories in these Requests.

B. With respect to any document withheld from production upon a claim of privilege, state for each such document: (i) the type of document; (ii) the date of the document;

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(iii) the name, address, and job title of the author of the document; (iv) the name, address, and job title of each recipient of the document; (v) a brief summary of the subject matter of the document; and (vi) the present whereabouts of the document and name, address, and title of the custodian thereof.

C. These Requests shall be deemed to be continuing. Applicant is under a duty to supplement, correct, or amend Applicant's responses to any of these Requests if Applicant learns that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing. If, after producing documents, Applicant becomes aware of documents responsive to these Requests, such documents shall be produced whether such documents were newly discovered, newly created, or otherwise.

DOCUMENT REQUESTS

1. Documents concerning the application filed by Applicant with the USPTO to register Applicant's Mark.

2. Documents concerning any modifications or variations in Applicant's Mark since Applicant first adopted it.

3. Documents concerning the decision by Applicant to apply for a trademark registration covering Applicant's Mark in the United States.

4. Documents sufficient to identify Applicant's corporate structure (such as an organizational chart).

5. Documents concerning the selection, adoption, or clearance of Applicant's ____ADE Marks.

6. Documents concerning the selection, adoption, or clearance of Applicant's Mark.

7. Documents concerning any alternative marks or logos that were considered at the time of Applicant's selection of Applicant's Mark.

8. Documents concerning Applicant's first sale of goods under Applicant's Mark.

9. Representative sample of each good sold or to be sold under Applicant's Mark.

10. Representative sample of each good sold or to be sold under Applicant's LIONADE Mark.

11. Representative sample of each good sold or to be sold under Applicant's ____ADE Marks.

12. Documents sufficient to identify all officers of Applicant.

13. Documents sufficient to identify all employees of Applicant.

14. Documents sufficient to identify the geographic areas in which Applicant has sold, is selling, or intends to sell any goods under Applicant's Mark.

15. Documents sufficient to identify the geographic areas in which Applicant has sold, is selling, or intends to sell any goods under Applicant's ____ADE Marks.

16. Documents sufficient to identify the geographic areas in which Applicant has sold, is selling, or intends to sell any goods under Applicant's LIONADE Mark.

17. Documents sufficient to identify the date on which Applicant commenced use or intends to commence use of Applicant's Mark.

18. Documents concerning Applicant's current or former website, including any web pages currently or previously accessible therefrom.

19. Documents sufficient to identify Applicant's typical or target customers of goods sold or to be sold under Applicant's Mark.

20. Documents sufficient to identify all marketing, promotional, advertising efforts or

activities that Applicant has undertaken with respect to any goods sold under Applicant's Mark.

21. Documents sufficient to identify the dollar amount spent by Applicant on marketing, promotional, advertising efforts or activities that Applicant has undertaken with respect to any goods sold or to be sold under Applicant's Mark.

22. Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning the goods sold under Applicant's Mark.

23. Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning Applicant's customers.

24. Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning Applicant's Mark, including but not limited to any market research to determine whether there is a likelihood of confusion between Applicant's Mark and any of Opposer's Marks.

25. Representative sample of each marketing, advertising, promotional use, or proposed use of Applicant's Mark, including but not limited to use on advertisements and press releases, invitations, letterhead, envelopes, labels, stationery, and other office supplies, buildings, vehicles or other equipment, product packaging, menus, catalogs, web pages, signs, and brochures. (With respect to any use of Applicant's Mark on buildings, signage, or equipment, please provide a photograph thereof.)

26. Representative sample of each different newspaper, magazine, Internet, or other media article concerning Applicant.

27. Representative sample of each different newspaper, magazine, Internet, or other

media article concerning any of Applicant's ___ADE Marks.

28. Representative sample of each different newspaper, magazine, Internet, or other media article concerning Applicant's Mark.

29. Documents sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's Mark.

30. Documents sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's ____ADE Marks.

31. Documents concerning any trademark search that has been done in connection with or relating to Applicant's ___ADE Marks.

32. Documents concerning any opinion that Applicant received regarding Applicant's right to adopt, use, or register Applicant's ___ADE Marks.

33. Documents sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's LIONADE Mark.

34. Documents concerning any trademark search that has been done in connection with or relating to Applicant's Mark.

35. Documents concerning any opinion that Applicant received regarding Applicant's right to adopt, use, or register Applicant's Mark.

36. Documents concerning any expert witness who may testify on behalf of Applicant in this matter, including drafts of the same, communications with such expert, and documents relied on by the expert for the opinions, whether or not such expert will actually testify in this

matter.

37. Documents concerning Opposer's Cowboy Mascot.

38. Documents concerning Opposer.

39. Documents concerning any of Opposer's trademarks.

40. Documents concerning correspondence, conversations, or meetings at which Opposer or Opposer's trademarks were mentioned or discussed.

41. Documents concerning correspondence, conversations, or meetings at which any of Applicant's ___ADE Marks was mentioned or discussed.

42. Minutes of all meetings at which Opposer or Opposer's Marks were mentioned or discussed.

43. Minutes or notes from any meetings at which Applicant's Mark was mentioned or discussed.

44. All communications between Applicant and Opposer.

45. All communications between Applicant, or any persons acting on its behalf or in concert with Applicant, and Opposer or its representatives or personnel, relating to Applicant's Mark, Opposer's Mark, trademark rights, or the products sold or to be sold under Applicant's Mark.

46. Documents sufficient to identify all customers of Applicant's goods sold or offered for sale under Applicant's Mark or Applicant's ___ADE Marks.

47. Documents concerning any question, inquiry, statement, or belief by any person of a possible relationship, affiliation, connection, or sponsorship between:

(a) the respective goods sold or to be sold under Applicant's Mark and any of Opposer's Marks;

(b) Opposer and Applicant; or

(c) any of Opposer's Marks and Applicant's Mark.

48. Documents concerning any communications between Applicant and any third party concerning Opposer or Opposer's Marks.

49. Documents concerning any license agreement, assignment, or any other agreement concerning Applicant's Mark.

50. Documents concerning GATORADE.

51. Documents concerning Applicant's use of Opposer's Mark.

52. Documents concerning the use by any third party of Opposer's Mark.

53. Documents concerning communications between Applicant and Applicant's customers or the public, including promotions, complaints, inquiries, and correspondence, regarding any goods sold or to be sold under Applicant's Mark.

54. Documents concerning communications between Applicant and Applicant's customers or the public, including promotions, complaints, inquiries, and correspondence, regarding any association or connection between Applicant and Opposer, or the goods sold or to be sold under Applicant's Mark and those sold by Opposer or its licensees.

55. Documents concerning any actual or threatened litigation or administrative proceedings involving allegations of trademark infringement, unfair competition, or dilution, to which Applicant or any of its officers is or was a party, including but not limited to any cease and desist letters or other correspondence.

56. Documents sufficient to show the actual unit and dollar sales of each category of goods sold under Applicant's Mark in Oklahoma.

57. Documents sufficient to identify the actual unit and dollar sales of each category

of goods sold under Applicant's Mark.

58. Documents referred to or relied on by Applicant in responding to the Interrogatories served by Opposer.

Dated: March 3, 2009

R. Charles Henn Jr.
Alicia Grahn Jones
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500
Attorneys for Opposer

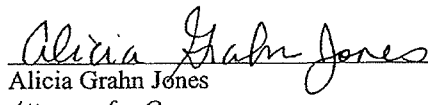
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS has been served on Applicant by mailing a copy on March 3, 2009, via first Class Mail, postage pre-paid, and addressed as follows:

John W. McIlvaine
The Webb Law Firm
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219



Alicia Grahn Jones
Attorney for Opposer

US2008 586893.1

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

OKLAHOMA STATE UNIVERSITY,	)	Opposition No. 91187908
	)	
Opposer,	)	Application No. 77/383,001
	)	
v.	)	Mark: COWBOYADE
	)	
SUPER BAKERY, INCORPORATED,	)	
	)	
Applicant.	)	

APPLICANT'S ANSWERS TO OPPOSER'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Applicant by and through its counsel, hereby responds, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, to Opposer's First Request for Production of Documents.

GENERAL OBJECTIONS

The following objections apply to each Document Request propounded by Opposer:

1. Applicant objects to these requests to the extent that they assume facts not in evidence, are vague and ambiguous, overly broad, unduly burdensome and oppressive. Applicant also objects on the basis that these requests seek disclosure of documents which are protected by the attorney-client and work product privileges.

2. Applicant objects to Opposer's Definitions and Instructions on the grounds that they are vague, ambiguous, burdensome, oppressive, and unreasonable under the circumstances and impose requirements outside the scope and requirements of the Federal Rules of Civil Procedure.

3. Discovery and Applicant's investigation and trial preparation are continuing. Applicant reserves the right to supplement any of the following responses, as necessary.

4. Applicant's responses and production of documents and things in response to these Requests for Documents and Things shall not be deemed as a waiver of the General Objections or any specific objections, or an admission that the documents and things are relevant to this case, or admissible into evidence in this case under the Federal Rules of Evidence. Inadvertent disclosure of privileged information or documents shall not constitute a waiver of any applicable privilege.

Each of Applicant's responses to specific document requests is deemed to incorporate the foregoing General Objections.

DOCUMENT REQUESTS

REQUEST NO. 1

Documents concerning the application filed by Applicant with the USPTO to register Applicant's Mark.

ANSWER:

All non-privileged documents, in the care, custody, or control of Applicant, have already been produced.

REQUEST NO. 2

Documents concerning any modifications or variations in Applicant's Mark since Applicant first adopted it.

ANSWER:

There are no responsive documents

REQUEST NO. 3

Documents concerning the decision by Applicant to apply for a trademark registration covering Applicant's Mark in the United States.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine. Certain non-privileged documents have been produced and any others will be made available for inspection.

REQUEST NO. 4

Documents sufficient to identify Applicant's corporate structure (such as an organizational chart).

ANSWER:

Applicant objects to the request as being overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Applicant also objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to these objections, responsive documents will be made available for inspection. Applicant does not maintain an organizational chart.

REQUEST NO. 5

Documents concerning the selection, adoption, or clearance of Applicant's _____ ADE Marks.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine. Certain non-privileged documents have already been produced and any others will be made available for inspection.

REQUEST NO. 6

Documents concerning the selection, adoption, or clearance of Applicant's Mark.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine. Certain non-privileged documents have already been produced and any others will be made available for inspection.

REQUEST NO. 7

Documents concerning any alternative marks or logos that were considered at the time of Applicant's selection of Applicant's Mark.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine. Any non-privileged documents, still in the possession, custody, or control of Applicant, will be made available for inspection.

REQUEST NO. 8

Documents concerning Applicant's first sale of goods under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 9

Representative sample of each good sold or to be sold under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 10

Representative sample of each good sold or to be sold under Applicant's LIONADE Mark.

ANSWER:

Applicant has already provided this information to Opposer.

REQUEST NO. 11

Representative sample of each good sold or to be sold under Applicant's _____ADE Marks.

ANSWER:

There are no responsive documents except for the information previously provided concerning the Applicant's use of LIONADE.

REQUEST NO. 12

Documents sufficient to identify all officers of Applicant.

ANSWER:

Applicant objects to the request as being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection, responsive documents have been produced and at least one additional document will be made available for inspection.

REQUEST NO. 13

Documents sufficient to identify all employees of Applicant.

ANSWER:

Applicant objects to the request as being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 14

Documents sufficient to identify the geographic areas in which Applicant has sold, is selling, or intends to sell any goods under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 15

Documents sufficient to identify the geographic areas in which Applicant has sold, is selling, or intends to sell any goods under Applicant's__ADE Marks.

ANSWER:

These documents relate only to the sale of Applicant's LIONADE product. Applicant is in the process of reviewing its records to provide representative information concerning sales of that product to Opposer, and such documents will be made available for inspection.

REQUEST NO. 16

Documents sufficient to identify the geographic areas in which Applicant has sold, is selling, or intends to sell any goods under Applicant's LIONADE Mark.

ANSWER:

See Answer to Request No. 15.

REQUEST NO. 17

Documents sufficient to identify the date on which Applicant commenced use or intends to commence use of Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 18

Documents concerning Applicant's current or former website, including any web pages currently or previously accessible therefrom.

ANSWER:

Applicant does not nor has it maintained any active websites. Accordingly, there are no responsive documents.

REQUEST NO. 19

Documents sufficient to identify Applicant's typical or target customers of goods sold or to be sold under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 20

Documents sufficient to identify all marketing, promotional, advertising efforts or activities that Applicant has undertaken with respect to any goods sold under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 21

Documents sufficient to identify the dollar amount spent by Applicant on marketing, promotional, advertising efforts or activities that Applicant has undertaken with respect to any goods sold or to be sold under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 22

Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning the goods sold under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 23

Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning Applicant's customers.

ANSWER:

Applicant objects to this request as overly broad, burdensome, not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Applicant states there are no responsive documents.

REQUEST NO. 24

Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning Applicant's Mark, including but not limited to any market research to determine whether there is a likelihood of confusion between Applicant's Mark and any of Opposer's Marks.

ANSWER:

There are no responsive documents.

REQUEST NO. 25

Representative sample of each marketing, advertising, promotional use, or proposed use of Applicant's Mark, including but not limited to use on advertisements and press releases, invitations, letterhead, envelopes, labels, stationery, and other office supplies, buildings, vehicles

or other equipment, product packaging, menus, catalogs, web pages, signs, and brochures. (With respect to any use of Applicant's Mark on buildings, signage, or equipment, please provide a photograph thereof.)

ANSWER:

There are no responsive documents.

REQUEST NO. 26

Representative sample of each different newspaper, magazine, Internet, or other media article concerning Applicant.

ANSWER:

Applicant objects to the request as being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 27

Representative sample of each different newspaper, magazine, Internet, or other media article concerning any of Applicant's _ADE Marks.

ANSWER:

There are no responsive documents.

REQUEST NO. 28

Representative sample of each different newspaper, magazine, Internet, or other media article concerning Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 29

Documents sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 30

Documents sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's _____ ADE Marks.

ANSWER:

See Answer to Request No. 15.

REQUEST NO. 31

Documents concerning any trademark search that has been done in connection with or relating to Applicant's _ADE Marks.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine.

Any non-privileged documents, still in the possession, custody, or control of Applicant, will be made available for inspection, to the extent they have not already been produced.

REQUEST NO. 32

Documents concerning any opinion that Applicant received regarding Applicant's right to adopt, use, or register Applicant's _ADE Marks.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine.

REQUEST NO. 33

Documents sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's LIONADE Mark.

ANSWER:

See Answer to Request No. 15.

REQUEST NO. 34

Documents concerning any trademark search that has been done in connection with or relating to Applicant's Mark.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine.

Any non-privileged documents, still in the possession, custody, or control of Applicant, will be made available for inspection, to the extent they have not already been produced.

REQUEST NO. 35

Documents concerning any opinion that Applicant received regarding Applicant's right to adopt, use, or register Applicant's Mark.

ANSWER:

Applicant objects to this request on the basis that it seeks production of information and documents protected by the attorney-client privilege and the attorney work product doctrine.

REQUEST NO. 36

Documents concerning any expert witness who may testify on behalf of Applicant in this matter, including drafts of the same, communications with such expert, and documents relied on by the expert for the opinions, whether or not such expert will actually testify in this matter.

ANSWER:

There are no responsive documents.

REQUEST NO. 37

Documents concerning Opposer's Cowboy Mascot.

ANSWER:

There are no responsive documents.

REQUEST NO. 38

Documents concerning Opposer.

ANSWER:

There are no responsive documents.

REQUEST NO. 39

Documents concerning any of Opposer's trademarks.

ANSWER:

There are no responsive documents.

REQUEST NO. 40

Documents concerning correspondence, conversations, or meetings at which Opposer or Opposer's trademarks were mentioned or discussed.

ANSWER:

There are no responsive documents.

REQUEST NO. 41

Documents concerning correspondence, conversations, or meetings at which any of Applicant's __ADE Marks was mentioned or discussed.

ANSWER:

Applicant objects to this Request as vague, overly broad, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and furthermore calling for communications protected by the attorney-client and work product privileges.

REQUEST NO. 42

Minutes of all meetings at which Opposer or Opposer's Marks were mentioned or discussed.

ANSWER:

There are no responsive documents.

REQUEST NO. 43

Minutes or notes from any meetings at which Applicant's Mark was mentioned or discussed.

ANSWER:

There are no responsive documents.

REQUEST NO. 44

All communications between Applicant and Opposer.

ANSWER:

Opposer is already in equal possession of any such communications, and this request is therefore unduly burdensome.

REQUEST NO. 45

All communications between Applicant, or any persons acting on its behalf or in concert with Applicant, and Opposer or its representatives or personnel, relating to Applicant's Mark, Opposer's Mark, trademark rights, or the products sold or to be sold under Applicant's Mark.

ANSWER:

Opposer is already in equal possession of any such communications, and this request is therefore unduly burdensome.

REQUEST NO. 46

Documents sufficient to identify all customers of Applicant's goods sold or offered for sale under Applicant's Mark or Applicant's _ADE Marks.

ANSWER:

See Answer to Request No. 15.

REQUEST NO. 47

Documents concerning any question, inquiry, statement, or belief by any person of a possible relationship, affiliation, connection, or sponsorship between:

(a) the respective goods sold or to be sold under Applicant's Mark and any of Opposer's Marks.

(b) Opposer and Applicant; or

(c) any of Opposer's Marks and Applicant's Mark

ANSWER:

There are no responsive documents.

REQUEST NO. 48

Documents concerning any communications between Applicant and any third party concerning Opposer or Opposer's Marks.

ANSWER:

Any responsive documents will be made available for inspection.

REQUEST NO. 49

Documents concerning any license agreement, assignment, or any other agreement concerning Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 50

Documents concerning GATORADE.

ANSWER:

Applicant objects to this request as vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. This request also seeks information protected by the attorney-client and work product privileges.

REQUEST NO. 51

Documents concerning Applicant's use of Opposer's Mark.

ANSWER:

Applicant objects to this request as vague, overly broad, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Applicant has never used Opposer's Mark.

REQUEST NO. 52

Documents concerning the use by any third party of Opposer's Mark.

ANSWER:

Applicant has already provided any such documents and will supplement such production as discovery in this proceeding progress.

REQUEST NO. 53

Documents concerning communications between Applicant and Applicant's customers or the public, including promotions, complaints, inquiries, and correspondence, regarding any goods sold or to be sold under Applicant's Mark.

ANSWER:

There are no responsive documents.

REQUEST NO. 54

Documents concerning communications between Applicant and Applicant's customers or the public, including promotions, complaints, inquiries, and correspondence, regarding any association or connection between Applicant and Opposer, or the good.s sold or to be sold under Applicant's Mark and those sold by Opposer or its licensees.

ANSWER:

There are no responsive documents.

REQUEST NO. 55

Documents concerning any actual or threatened litigation or administrative proceedings involving allegations of trademark infringement, unfair competition, or dilution, to which Applicant or any of its officers is or was a party, including but not limited to any cease and desist letters or other correspondence.

ANSWER:

Applicant objects to this Request as grossly overly broad, unduly burdensome, calculated to harass and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 56

Documents sufficient to show the actual unit and dollar sales of each category of goods sold under Applicant's Mark in Oklahoma.

ANSWER:

There are no responsive documents.

REQUEST NO. 57

Documents sufficient to identify the actual unit and dollar sales of each category

ANSWER:

There are no responsive documents.

REQUEST NO. 58

Documents referred to or relied on by Applicant in responding to the Interrogatories served by Opposer.

ANSWER:

Any non-privileged documents, which haven't already been produced, will be made available for inspection.

Respectfully submitted,

Dated: April 28, 2009

By _____

John W. McIlvaine, Registration No. 34,219
J. Matthew Pritchard, Registration No. 46,228

THE WEBB LAW FIRM
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWERS TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was served via First Class Mail, postage prepaid, on this 28th day of April, 2009 upon the following:

Alicia Grahn Jones, Esq.
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

Attorney for Applicant

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

EXHIBIT E TO THE DECLARATION OF LAUREN SULLINS RALLS

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

OPPOSER'S FIRST SET OF INTERROGATORIES

Opposer Oklahoma State University, through counsel and pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, hereby requests that Applicant Super Bakery, Inc., answer the following Interrogatories, under oath and in writing, within thirty (30) days after service hereof.

DEFINITIONS

A. "Opposer" or "University" shall mean Oklahoma State University, its affiliated corporations and entities, and its officers, directors, employees, agents, attorneys, subsidiaries, predecessors in interest and any other person or entity acting on its behalf or subject to its control, with respect to Opposer's Marks.

B. "Board" shall mean the Trademark Trial and Appeal Board.

C. "Applicant" shall mean, collectively, Super Bakery, Inc., its predecessors or successors in interest with respect to Applicant's Mark, any agent, officer or employee of Super Bakery, Inc., including President Franco Harris, and any other person or entity acting on behalf of Super Bakery, Inc. or subject to the control of Super Bakery, Inc. with respect to

US2008 586894.1

Applicant's Mark.

D. "Applicant's Mark" shall mean the COWBOYADE mark that is the subject of United States Trademark Application Serial No. 77/383,001, published in the June 10, 2008 Official Gazette, for use in connection with "sports drinks" in International Class 32.

E. "Opposer's Marks" shall mean all registered and unregistered trademarks owned by Opposer for the designations COWBOYS, OSU & Cowboy Design, including but not limited to those described in Paragraphs 5-10 of the Notice of Opposition.

F. "Applicant's ___ADE Marks" shall mean all marks incorporating the suffix "ADE" and used or sought to be registered by Applicant, including those identified in Exhibit 1 to the Notice of Opposition.

G. "Applicant's LIONADE Mark" shall mean the mark LIONADE, and includes Registration No. 2,917,075, owned by Applicant for "nutritionally fortified drink, namely protein recovery shake."

H. "University's Cowboy Mascot" shall mean Oklahoma State University's cowboy mascot, including whether depicted in word form (COWBOY), design form, or as a live or plush character.

I. "Documents" shall mean writings, drawings, graphs, charts, photographs, phone records, stored and retained electronic communications (including but not limited to electronic mail and instant messaging communications) and other data compilations from which information can be obtained and translated (if necessary) through detection devices into reasonably usable form, including but not limited to correspondence, memoranda (including internal memoranda), handwritten notes, rough drafts, business records, summaries, calendars, appointment books, expense vouchers, receipts, telephone records, message slips, logs, diaries,

time sheets, time records, computer printouts, computer lists, computer diskettes and computer indices that are in Applicant's possession, custody or control.

J. "Identify" with respect to a person shall mean to provide the following information to the extent known: the name, job title, current or last known home address and home telephone number, last known place of employment, and the address and telephone number of such place of employment.

K. "Identify" with respect to a business entity shall mean to provide the name of such business entity, its last known address and telephone number, the jurisdiction under whose laws it is organized and the jurisdiction in which it maintains its principal place of business.

L. "Identify" with respect to a document shall mean to provide, to the extent known, the following information: the title and date of the document, if any, its author, addressees and recipients, and a description of its contents.

M. "Person" shall mean any natural person, group of natural persons, corporation, company, unincorporated association, partnership, joint venture, or other business, legal or governmental entity or association.

N. The conjunctive form "and" and the disjunctive form "or" shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

O. The terms "any" and "all" shall be mutually interchangeable, and the use of words either in the singular or plural shall be mutually interchangeable, and the use of words either in the singular or plural in the following Interrogatories shall not be construed to limit any Interrogatory.

P. "Concerning" shall mean connected with, dealing with, in reference to, referring to, regarding, relating to, relative to, respecting, touching, touching on, discussing, or

referencing.

Q. "Officers" shall mean all current or former officers of Super Bakery, Inc.

R. "Employees" shall mean all current or former employees of Super Bakery, Inc.

INSTRUCTIONS

A. If Applicant refuses to answer any Interrogatory in whole or in part based on a claim that any privilege applies to the information sought, state the privilege and describe the factual basis for Applicant's claim of privilege with such specificity as will permit the Board to determine the legal sufficiency of the claim of privilege.

B. Each paragraph and subparagraph hereof and the definitions herein are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein if such construction would limit the scope of any particular Interrogatory or the subject matter thereof.

C. If any of these Interrogatories cannot be answered in full, answer to the fullest extent possible, specifying the reason for Applicant's inability to answer the remainder, and stating what information, knowledge or belief Applicant has concerning the unanswered portion.

D. These Interrogatories shall be deemed to be continuing. Applicant is under a duty to supplement, correct or amend Applicant's response to any of these Interrogatories if Applicant learns that any response that is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing.

INTERROGATORIES

1. List all goods sold or to be sold under Applicant's Mark.

2. For each category of goods sold or to be sold under Applicant's Mark, identify

and describe the channels of trade currently employed, or reasonably likely to be employed, in such sale.

3. Identify the specific geographic regions where Applicant has sold, offered for sale, or intends to offer for sale goods under Applicant's Mark.

4. Describe the process through which Applicant selected Applicant's Mark, identifying each person involved in such process.

5. Describe the process through which Applicant selected each of Applicant's ___ADE Marks.

6. Identify the person who coined Applicant's Mark.

7. Identify all steps taken by Applicant to determine whether Applicant's Mark infringed or infringes the rights of Opposer or any other party, including but not limited to any investigation or search that has been conducted.

8. Identify (by title, name of publication or entity, and type of media) each medium through which any goods have been marketed, advertised, or promoted under Applicant's Mark and, for each category of goods, state the dates on which such marketing, advertising, or promotion occurred or is scheduled to occur.

9. Describe the target or typical customers of goods sold or to be sold under Applicant's Mark.

10. Identify each customer who purchased goods offered for sale under Applicant's Mark.

11. Identify all domain names owned by Applicant.

12. Identify each person to whom communications from customers, potential customers, distributors, retailers, or members of the public regarding goods sold under

Applicant's Mark is now or would be routed by Applicant.

13. Identify each person that has suggested in any way a belief that any goods sold or to be sold under Applicant's Mark originated from, are sponsored, licensed, or otherwise affiliated with Opposer or goods or services offered under any of Opposer's Marks.

14. State whether any customers or potential customers have asked whether any goods sold or to be sold under Applicant's Mark are licensed, approved, sponsored, or otherwise authorized by Opposer, and, if so, provide the nature of the conversation, correspondence, communication, and the date(s) of occurrence.

15. Identify each person who has been involved in the advertising, marketing, or promotion of goods sold or to be sold under Applicant's Mark.

16. Identify each advertising agency that Applicant has retained to advertise or promote the sale of goods sold or to be sold in connection with Applicant's Mark, and for each such agency, identify the person responsible for such advertising and promotion and describe their role.

17. Identify each person Applicant may call as an expert witness in this proceeding and, with respect to each such expert, describe with particularity the subject matter about which the expert is expected to testify.

18. Identify all employees of Applicant, including dates of employment with Applicant, all positions held during employment, the dates each position was held, and the city and state where each employee resides.

19. Identify all officers of Applicant, including dates of employment with Applicant, all positions held during employment, the dates each position was held, and the city and state where each officer resides.

20. Identify the dates on which each of Applicant's officers first became aware of the existence of Opposer and each of Opposer's Marks.

21. Identify each person (other than counsel) who participated in any way in the preparation of responses to these Interrogatories.

Dated: March 3, 2009

R. Charles Henn Jr.
Alicia Grahn Jones
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500
Attorneys for Opposer

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

OKLAHOMA STATE UNIVERSITY,	)	
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	)	
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Opposer,	)	
v.	)	In the matter of Application
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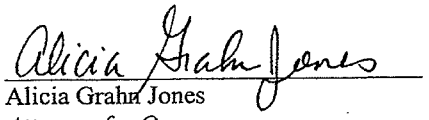
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES has been served on Applicant by mailing a copy on March 3, 2009, via first Class Mail, postage pre-paid, and addressed as follows:

John W. McIlvaine
The Webb Law Firm
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219



Alicia Grahn Jones
Attorney for Opposer

US2008 586894.1

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

OKLAHOMA STATE UNIVERSITY,	)	Opposition No. 91187908
	)	
Opposer,	)	Application No. 77/383,001
	)	
v.	)	Mark: COWBOYADE
	)	
SUPER BAKERY, INCORPORATED,	)	
	)	
Applicant.	)	

APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES

Applicant by and through its counsel, hereby responds, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, to Opposer's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Applicant generally objects to Opposer's instructions and definitions to the extent they exceed the requirements of the Federal Rule of Civil Procedure.

2. Applicant objects to each interrogatory to the extent that a full answer thereto would require disclosure of confidential communications that are protected by the attorney-client privilege.

3. Applicant objects to each of these interrogatories to the extent that a full answer would require disclosure of information that comprises work product, including (a) material prepared in anticipation of litigation or in the course of litigation by Oklahoma State University or its representatives, or (b) mental impressions, conclusions, opinions or legal theories of its attorneys or other representatives.

4. Applicant's responses to these interrogatories should not be deemed as an admission that the information or documents are relevant to this case or admissible into evidence in this case under the Federal Rules of Evidence.

5. Applicant's investigation and preparation is ongoing. Applicant reserves the right to supplement any of the following responses as necessary.

6. All responses herein are made without waiving or intending to waive any objections as to relevance, privilege, or admissibility of any documents provided in response to any request and/or any information provided in response to interrogatories in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any request or interrogatory below, which has been objected to hereinabove, is not intended to be a waiver of the objection.

Each of Applicant's responses to specific interrogatories and requests are deemed to incorporate the foregoing General Objections.

INTERROGATORIES

INTERROGATORY NO. 1

List all goods sold or to be sold under Applicant's Mark.

ANSWER:

Applicant intends to sell sports drinks under the COWBOYADE mark.

INTERROGATORY NO. 2

For each category of goods sold or to be sold under Applicant's Mark, identify and describe the channels of trade currently employed, or reasonably likely to be employed, in such sale.

ANSWER:

Applicant has not made specific plans to sell products bearing the Mark. Therefore, it cannot describe the channels of trade reasonably likely to be employed in the sale of such goods, except that the goods are reasonably likely to be sold to distributors and/or consumers of sports drinks.

INTERROGATORY NO. 3

Identify the specific geographic regions where Applicant has sold, offered for sale, or intends to offer for sale goods under Applicant's Mark.

ANSWER:

Applicant has not made specific plans to make use of its Mark. Therefore, the specific geographic regions in which Applicant intends to offer for sale goods under its Mark has not yet been established.

INTERROGATORY NO. 4

Describe the process through which Applicant selected Applicant's Mark, identifying each person involved in such process.

ANSWER:

Applicant selected common, iconic mascot names and coupled them together with the "ade" suffix to form the marks. Franco Harris was involved in the process.

INTERROGATORY NO. 5

Describe the process through which Applicant selected each of Applicant's ADEMarks.

ANSWER:

See Answer to Interrogatory No. 4.

INTERROGATORY NO. 6

Identify the person who coined Applicant's Mark.

ANSWER:

Franco Harris.

INTERROGATORY NO. 7

Identify all steps taken by Applicant to determine whether Applicant's Mark infringed or infringes the rights of Opposer or any other party, including but not limited to any investigation or search that has been conducted.

ANSWER:

Applicant objects to this interrogatory to the extent it seeks description of communications which are protected by the attorney-client privilege and the attorney work product doctrine. Applicant also objects to the interrogatory on the basis that it is overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Generally speaking, in answer to this interrogatory, Applicant consulted with counsel.

INTERROGATORY NO. 8

Identify (by title, name of publication or entity, and type of media) each medium through which any goods have been marketed, advertised, or promoted under Applicant's Mark and, for each category of goods, state the dates on which such marketing, advertising, or promotion occurred or is scheduled to occur.

ANSWER:

Applicant has not yet advertised or sold goods under its Mark nor are there any scheduled advertisements involving the Mark.

INTERROGATORY NO. 9

Describe the target or typical customers of goods sold or to be sold under Applicant's Mark.

ANSWER:

Applicant's plans for marketing goods to be sold under the Mark have not yet been finalized. Generally speaking, at this time Applicant plans to sell the goods to distributors and/or consumers of sports drinks.

INTERROGATORY NO. 10

Identify each customer who purchased goods offered for sale under Applicant's Mark.

ANSWER:

Applicant has not offered any products bearing the Mark for sale. Therefore, it has no customers who have purchased such goods.

INTERROGATORY NO. 11

Identify all domain names owned by Applicant.

ANSWER:

Applicant objects to this interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the admissible evidence. Applicant does not actively operate any top-level domain websites.

INTERROGATORY NO. 12

Identify each person to whom communications from customers, potential customers, distributors, retailers, or members of the public regarding goods sold under Applicant's Mark is now or would be routed by Applicant.

ANSWER:

No goods have been sold under Applicant's Mark, and plans for marketing are still too nebulous to identify any person to whom such communications "would be" routed.

INTERROGATORY NO. 13

Identify each person that has suggested in any way a belief that any goods sold or to be sold under Applicant's Mark originated from, are sponsored, licensed, or otherwise affiliated with Opposer or goods or services offered under any of Opposer's Marks.

ANSWER:

None.

INTERROGATORY NO. 14

State whether any customers or potential customers have asked whether any goods sold or to be sold under Applicant's Mark are licensed, approved, sponsored, or otherwise authorized by Opposer, and, if so, provide the nature of the conversation, correspondence, communication, and the date(s) of occurrence.

ANSWER:

None.

INTERROGATORY NO. 15

Identify each person who has been involved in the advertising, marketing, or promotion of goods sold or to be sold under Applicant's Mark.

ANSWER:

Applicant has not yet advertised or sold goods under its Mark nor are there any scheduled advertisements involving the Mark.

INTERROGATORY NO. 16

Identify each advertising agency that Applicant has retained to advertise or promote the sale of goods sold or to be sold in connection with Applicant's Mark, and for each such agency, identify the person responsible for such advertising and promotion and describe their role.

ANSWER:

The applicant has not retained any advertising agencies to advertise or promote the sale of goods sold or to be sold in connection with Applicant's Mark.

INTERROGATORY NO. 17

Identify each person Applicant may call as an expert witness in this proceeding and, with respect to each such expert, describe with particularity the subject matter about which the expert is expected to testify.

ANSWER:

Applicant has not yet identified any expert witnesses for the purpose of this proceeding.

INTERROGATORY NO. 18

Identify all employees of Applicant, including dates of employment with Applicant, all positions held during employment, the dates each position was held, and the city and state where each employee resides.

ANSWER:

Applicant objects to this interrogatory as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Applicant has approximately 27 employees in 4 regular and 5 sales/field offices. Applicant's headquarters are in Pittsburgh, Pennsylvania and a principal field office is in Tyrone, Pennsylvania.

INTERROGATORY NO. 19

Identify all officers of Applicant, including dates of employment with Applicant, all positions held during employment, the dates each position was held, and the city and state where each officer resides.

ANSWER:

Ronald Rossi is the Vice President of Marketing of the Applicant, resides in Tyrone, Pennsylvania, and has been employed with Super Bakery since at least 1990. Franco Harris is the President and Treasurer of Super Bakery Incorporated and has been employed by the Applicant since the founding of the corporation. Mr. Harris resides in Pittsburgh, Pennsylvania.

INTERROGATORY NO. 20

Identify the dates on which each of Applicant's officers first became aware of the existence of Opposer and each of Opposer's Marks.

ANSWER:

Applicant's officers would be engaging in pure speculation in attempting to answer this interrogatory, and the interrogatory is therefore objectionable.

INTERROGATORY NO. 21

Identify each person (other than counsel) who participated in any way in the preparation of responses to these Interrogatories.

ANSWER:

Franco Harris.

Respectfully submitted,

Dated: April 28, 2009

By _____

John W. McIlvaine, Registration No. 34,219
J. Matthew Pritchard, Registration No. 46,228

THE WEBB LAW FIRM
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES** was served via First Class Mail, postage prepaid, on this 28th day of April, 2009 upon the following:

Alicia Grahn Jones, Esq.
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

Attorney for Applicant

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

EXHIBIT F TO THE DECLARATION OF LAUREN SULLINS RALLS

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

OPPOSER'S FIRST REQUESTS FOR ADMISSION

Opposer Oklahoma State University (the "Opposer" or "University"), through counsel and pursuant to Rule 2.116 and 2.120 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure, hereby requests that Applicant Super Bakery, Inc. ("Applicant") admit the truth of the matters designated below within thirty (30) days after service hereof, the specific requests identified below.

DEFINITIONS

Opposer hereby incorporates by reference, as if fully set forth herein, the Definitions set forth in Opposer's First Set of Interrogatories, served contemporaneously herewith.

SPECIFIC REQUESTS

1. Admit that Applicant's Mark incorporates the term "COWBOY."

2. Admit that Applicant's Mark incorporates Opposer's COWBOY mark.

3. Admit that the term "COWBOY" in Applicant's Mark refers to Opposer.

4. Admit that the term "COWBOY" in Applicant's Mark refers to Opposer's athletic teams.

US2008 576203.2

5. Admit that the term "COWBOY" in Applicant's Mark refers to Opposer's Cowboy Mascot.

6. Admit that Applicant intends to sell goods under Applicant's Mark to alumni of the University.

7. Admit that Applicant intends to sell goods under Applicant's Mark to students of the University.

8. Admit that Applicant intends to sell goods under Applicant's Mark to fans of the University.

9. Admit that Applicant intends to sell goods under Applicant's Mark to educational institutions, including universities.

10. Admit that Opposer owns Opposer's Marks.

11. Admit that Applicant was aware of Opposer's Marks prior to the filing date of Application Serial No. 77/383,001.

12. Admit that Applicant is familiar with the University's Cowboy Mascot.

13. Admit that Applicant was familiar with the University's Cowboy Mascot prior to filing Application Serial No. 77/383,001.

14. Admit that Applicant is familiar with the University and its athletic teams and organizations.

15. Admit that Applicant was familiar with the University and its athletic teams and organizations prior to filing Application Serial No. 77/383,001.

16. Admit that Applicant owns pending Application Serial No. 77/383,960 for the mark SOONERADE for "sports drinks."

17. Admit that the University of Oklahoma's nickname is the Sooners.

18. Admit that Applicant owns pending Application Serial No. 77/383,001 for the mark COWBOYADE for "sports drinks."

19. Admit that the University of Wyoming's mascot is a Cowboy.

20. Admit that Applicant owns pending Application Serial No. 77/382,960 for the mark HURRICANEADE for "sports drinks."

21. Admit that the University of Miami's nickname is the Hurricanes.

22. Admit that Applicant owns pending Application Serial No. 77/382,985 for the mark CATADE for "sports drinks."

23. Admit that Kansas State University's mascot is a Wildcat.

24. Admit that Applicant owns pending Application Serial No. 77/384,032 for the mark WOLVERINEADE for "sports drinks and performance drinks."

25. Admit that the University of Michigan's nickname is the Wolverines.

26. Admit that Applicant owns pending Application Serial No. 77/384,000 for the mark VOLUNTEERADE for "sports drinks."

27. Admit that the University of Tennessee's nickname is the Volunteers.

28. Admit that Applicant owns pending Application Serial No. 77/382,996 for the mark COUGARADE for "sports drinks."

29. Admit that Washington State University's mascot is a Cougar.

30. Admit that Brigham Young University's mascot is a Cougar.

31. Admit that Applicant owns pending Application Serial No. 77/382,281 for the mark BRONCOADE for "sports drinks."

32. Admit that Boise State University's mascot is a Bronco.

33. Admit that Applicant owns the abandoned Application Serial No. 77/384,238 for

the mark HUSKIEADE for "sports drinks and performance drinks."

34. Admit that the University of Washington's mascot is a Husky.

35. Admit that Applicant owns pending Application Serial No. 77/384,233 for the mark FALCONADE for "sports drinks and performance drinks."

36. Admit that the U.S. Air Force Academy's mascot is a Falcon.

37. Admit that Applicant owns pending Application Serial No. 77/382,991 for the mark IRISHADE for "sports drinks."

38. Admit that the University of Notre Dame's nickname is the Fighting Irish.

39. Admit that Applicant owns pending Application Serial No. 77/382,118 for the mark BULLDOGADE for "non-caffeinated hydrating sports drinks."

40. Admit that the University of Georgia's mascot is a Bulldog.

41. Admit that Gonzaga University's mascot is a Bulldog.

42. Admit that Applicant owns pending Application Serial No. 77/383,021 for the mark KNIGHTADE for "sports drinks."

43. Admit that the University of Central Florida's mascot is a Knight.

44. Admit that Applicant owns pending Application Serial No. 77/383,006 for the mark JAYHAWKADE for "sports drinks."

45. Admit that the University of Kansas's mascot is a Jayhawk.

46. Admit that Applicant owns pending Application Serial No. 77/383,064 for the mark PANTHERADE for "sports drinks."

47. Admit that the University of Pittsburgh's mascot is a Panther.

48. Admit that Applicant owns pending Application Serial No. 77/383,048 for the mark MOUNTAINEERADE for "sports drinks."

49. Admit that the West Virginia University's mascot is a Mountaineer

50. Admit that Applicant owns pending Application Serial No. 77/382,271 for the mark BADGERADE for "sports drinks."

51. Admit that the University of Wisconsin at Madison's mascot is a Badger.

52. Admit that Applicant owns pending Application Serial No. 77/383,891 for the mark SPARTANADE for "hydrating sports drinks."

53. Admit that San Jose State's mascot is a Spartan.

54. Admit that the University of North Carolina at Greensboro's mascot is a Spartan.

55. Admit that Applicant owns pending Application Serial No. 77/383,860 for the mark REBELADE for "non-caffeinated hydrating sports drinks."

56. Admit that the University of Mississippi's nickname is the Rebels.

57. Admit that Applicant owns pending Application Serial No. 77/384,196 for the mark CORNHUSKERADE for "sports drinks and performance drinks."

58. Admit that the University of Nebraska's nickname is the Cornhuskers.

59. Admit that Applicant owns pending Application Serial No. 77/383,038 for the mark LONGHORNADE for "sports drinks, namely, lemonade and limeade."

60. Admit that the University of Texas's mascot is a Longhorn.

61. Admit that Applicant owns at least twenty pending applications to register marks that incorporate collegiate mascot trademarks with the suffix "ADE."

62. Admit that Applicant attended Penn State University.

63. Admit that Applicant owns United States Federal Trademark Registration No. 2,917,075 for the mark LIONADE.

64. Admit that Penn State University's mascot is a Nittany Lion.

65. Admit that Applicant's LIONADE Mark refers to Penn State University, its Nittany Lion Mascot, and its athletic teams.

66. Admit that Applicant's use of the term "LION" in Applicant's LIONADE Mark refers to Penn State University's Nittany Lion Mascot.

67. Admit that Applicant sells goods under Applicant's LIONADE Mark to alumni of Penn State University.

68. Admit that Applicant sells goods under Applicant's LIONADE Mark to students of Penn State University.

69. Admit that Applicant sells goods under Applicant's LIONADE Mark to fans of Penn State University.

Dated: March 3, 2009

R. Charles Henn Jr.
Alicia Grahn Jones
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500
Attorneys for Opposer

US2008 576203.2

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST REQUESTS FOR ADMISSION has been served on Applicant by mailing a copy on March 3, 2009, via first Class Mail, postage pre-paid, and addressed as follows:

John W. McIlvaine
The Webb Law Firm
436 Seventh Avenue
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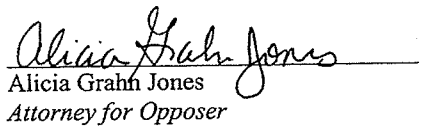
Pittsburgh, PA 15219



Alicia Grahn Jones
Attorney for Opposer

US2008 576203.2

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

OKLAHOMA STATE UNIVERSITY,	)	Opposition No. 91187908
	)	
Opposer,	)	Application No. 77/380,001
	)	
v.	)	Mark: COWBOYADE
	)	
SUPER BAKERY, INCORPORATED,	)	
	)	
Applicant.	)	

APPLICANT'S ANSWERS TO OPPOSER'S FIRST REQUESTS FOR ADMISSIONS

Applicant by and through its counsel, hereby responds, pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, to Opposer's First Set of Requests for Admissions.

ADMISSION NO. 1

Admit that Applicant's Mark incorporates the term "COWBOY."

ANSWER:

Admit.

ADMISSION NO. 2

Admit that Applicant's Mark incorporates Opposer's COWBOY mark.

ANSWER:

Denied.

ADMISSION NO. 3

Admit that the term "COWBOY" in Applicant's Mark refers to Opposer.

ANSWER:

Denied.

ADMISSION NO. 4

Admit that the term "COWBOY" in Applicant's Mark refers to Opposer's athletic teams.

ANSWER:

Denied.

ADMISSION NO. 5

Admit that the term "COWBOY" in Applicant's Mark refers to Opposer's Cowboy Mascot.

ANSWER:

Denied.

ADMISSION NO. 6

Admit that Applicant intends to sell goods under Applicant's Mark to alumni of the University.

ANSWER:

Applicant admits that it intends to sell goods under Applicant's Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 7

Admit that Applicant intends to sell goods under Applicant's Mark to students of the University.

ANSWER:

Applicant admits that it intends to sell goods under Applicant's Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 8

Admit that Applicant intends to sell goods under Applicant's Mark to fans of the University.

ANSWER:

Applicant admits that it intends to sell goods under Applicant's Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 9

Admit that Applicant intends to sell goods under Applicant's Mark to educational institutions, including universities.

ANSWER:

Applicant admits that it intends to sell goods under Applicant's Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 10

Admit that Opposer owns Opposer's Marks.

ANSWER:

Applicant is without sufficient information or belief to confirm the allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 11

Admit that Applicant was aware of Opposer's Marks prior to the filing date of Application Serial No. 77/383,001.

ANSWER:

Denied.

ADMISSION NO. 12

Admit that Applicant is familiar with the University's Cowboy Mascot.

ANSWER:

Applicant objects to this request as vague and indefinite. What is meant by "familiar with the University's Cowboy Mascot"? To the extent this is understood, the admission is denied.

ADMISSION NO. 13

Admit that Applicant was familiar with the University's Cowboy Mascot prior to filing Application Serial No. 77/383,001.

ANSWER:

Applicant objects to this request as vague and indefinite. What is meant by "familiar with the University's Cowboy Mascot"? To the extent this is understood, the admission is denied.

ADMISSION NO. 14

Admit that Applicant is familiar with the University and its athletic teams and organizations.

ANSWER:

Applicant objects to this request as vague and indefinite. What is meant by "familiar with the University and its athletic teams and organizations"? To the extent this is understood, the admission is denied.

ADMISSION NO. 15

Admit that Applicant was familiar with the University and its athletic teams and organizations prior to filing Application Serial No. 77/383,001.

ANSWER:

Applicant objects to this request as vague and indefinite. What is meant by "familiar with the University and its athletic teams and organizations"? To the extent this is understood, the admission is denied.

ADMISSION NO. 16

Admit that Applicant owns pending Application Serial No. 77/383,960 for the mark SOONERADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 17

Admit that the University of Oklahoma's nickname is the Sooners.

ANSWER:

Admit.

ADMISSION NO. 18

Admit that Applicant owns pending Application Serial No. 77/383,001 for the mark COWBOYADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 19

Admit that the University of Wyoming's mascot is a Cowboy.

ANSWER:

Admit.

ADMISSION NO. 20

Admit that Applicant owns pending Application Serial No. 77/382,960 for the mark HURRICANEADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 21

Admit that the University of Miami's nickname is the Hurricanes.

ANSWER:

Admit.

ADMISSION NO. 22

Admit that Applicant owns pending Application Serial No. 77/382,985 for the mark CATADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 23

Admit that Kansas State University's mascot is a Wildcat.

ANSWER:

Admit.

ADMISSION NO. 24

Admit that Applicant owns pending Application Serial No. 77/384,032 for the mark WOLVERINEADE for "sports drinks and performance drinks."

ANSWER:

Admit.

ADMISSION NO. 25

Admit that the University of Michigan's nickname is the Wolverines.

ANSWER:

Admit.

ADMISSION NO. 26

Admit that Applicant owns pending Application Serial No. 77/384,000 for the mark VOLUNTEERADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 27

Admit that the University of Tennessee's nickname is the Volunteers.

ANSWER:

Admit.

ADMISSION NO. 28.

Admit that Applicant owns pending Application Serial No. 77/382,996 for the mark COUGARADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 29

Admit that Washington State University's mascot is a Cougar.

ANSWER:

Admit.

ADMISSION NO. 30

Admit that Brigham Young University's mascot is a Cougar.

ANSWER:

Admit.

ADMISSION NO. 31

Admit that Applicant owns pending Application Serial No. 77/382,281 for the mark BRONCOADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 32

Admit that Boise State University's mascot is a Bronco.

ANSWER:

Admit.

ADMISSION NO. 33

Admit that Applicant owns the abandoned Application Serial No. 77/384,238 for the mark HUSKIEADE for "sports drinks and performance drinks."

ANSWER:

Applicant admits it filed Application Serial No. 77/384,238 for the mark HUSKIEADE.

ADMISSION NO. 34

Admit that the University of Washington's mascot is a Husky.

ANSWER:

Admit.

ADMISSION NO. 35

Admit that Applicant owns pending Application Serial No. 77/384,233 for the mark FALCONADE for "sports drinks and performance drinks."

ANSWER:

Admit.

ADMISSION NO. 36

Admit that the U.S. Air Force Academy's mascot is a Falcon.

ANSWER:

Admit.

ADMISSION NO. 37

Admit that Applicant owns pending Application Serial No. 77/382,991 for the mark IRISHADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 38

Admit that the University of Notre Dame's nickname is the Fighting Irish.

ANSWER:

Admit.

ADMISSION NO. 39

Admit that Applicant owns pending Application Serial No. 77/382,118 for the mark BULLDŌGADE for "non-caffeinated hydrating sports drinks."

ANSWER:

Admit.

ADMISSION NO. 40

Admit that the University of Georgia's mascot is a Bulldog.

ANSWER:

Admit.

ADMISSION NO. 41

Admit that Gonzaga University's mascot is a Bulldog.

ANSWER:

Admit.

ADMISSION NO. 42

Admit that Applicant owns pending Application Serial No. 77/383,021 for the mark KNIGHTADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 43

Admit that the University of Central Florida's mascot is a Knight.

ANSWER:

Admit.

ADMISSION NO. 44

Admit that Applicant owns pending Application Serial No. 77/383,006 for the mark JAYHAWKADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 45

Admit that the University of Kansas's mascot is a Jayhawk.

ANSWER:

Admit.

ADMISSION NO. 46.

Admit that Applicant owns pending Application Serial No. 77/383,064 for the mark PANTHERADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 47

Admit that the University of Pittsburgh's mascot is a Panther.

ANSWER:

Admit.

ADMISSION NO. 48

Admit that Applicant owns pending Application Serial No. 77/383,048 for the mark MOUNTAINEERADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 49

Admit that the West Virginia University's mascot is a Mountaineer

ANSWER:

Admit.

ADMISSION NO. 50

Admit that Applicant owns pending Application Serial No. 77/382,271 for the mark BADGERADE for "sports drinks."

ANSWER:

Admit.

ADMISSION NO. 51

Admit that the University of Wisconsin at Madison's mascot is a Badger.

ANSWER:

Admit.

ADMISSION NO. 52

Admit that Applicant owns pending Application Serial No. 77/383,891 for the mark SPARTANADE for "hydrating sports drinks."

ANSWER:

Admit.

ADMISSION NO. 53

Admit that San Jose State's mascot is a Spartan.

ANSWER:

Admit.

ADMISSION NO. 54

Admit that the University of North Carolina at Greensboro's mascot is a Spartan.

ANSWER:

Admit.

ADMISSION NO. 55

Admit that Applicant owns pending Application Serial No. 77/383,860 for the mark REBELADE for "non-caffeinated hydrating sports drinks."

ANSWER:

Admit.

ADMISSION NO. 56

Admit that the University of Mississippi's nickname is the Rebels.

ANSWER:

Admit.

ADMISSION NO. 57

Admit that Applicant owns pending Application Serial No. 77/384,196 for the mark CORNHUSKERADE for "sports drinks and performance drinks."

ANSWER:

Applicant admits that it filed Application Serial No. 77/384,196 for the mark CORNHUSKERADE.

ADMISSION NO. 58

Admit that the University of Nebraska's nickname is the Cornhuskers.

ANSWER:

Admit.

ADMISSION NO. 59

Admit that Applicant owns pending Application Serial No. 77/383,038 for the mark LONGHORNADE for "sports drinks, namely, lemonade and limeade."

ANSWER:

Admit.

ADMISSION NO. 60

Admit that the University of Texas's mascot is a Longhorn.

ANSWER:

Admit.

ADMISSION NO. 61

Admit that Applicant owns at least twenty pending applications to register marks that incorporate collegiate mascot trademarks with the suffix "ADE."

ANSWER:

Denied.

ADMISSION NO. 62

Admit that Applicant attended Penn State University.

ANSWER:

Denied. Application is a corporation formed under the laws of the Commonwealth of Pennsylvania and therefore could not have attended Penn State University.

ADMISSION NO. 63

Admit that Applicant owns United States Federal Trademark Registration No. 2,917,075 for the mark LIONADE.

ANSWER:

Admit.

ADMISSION NO. 64

Admit that Penn State University's mascot is a Nittany Lion.

ANSWER:

Admit.

ADMISSION NO. 65

Admit that Applicant's LIONADE Mark refers to Penn State University, its Nittany Lion Mascot, and its athletic teams.

ANSWER:

Denied.

ADMISSION NO. 66

Admit that Applicant's use of the term "LION" in Applicant's LIONADE Mark refers to Penn State University's Nittany Lion Mascot.

ANSWER:

Denied.

ADMISSION NO. 67

Admit that Applicant sells goods under Applicant's LIONADE Mark to alumni of Penn State University.

ANSWER:

Applicant admits that it sells goods under the LIONADE Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 68

Admit that Applicant sells goods under Applicant's LIONADE Mark to students of Penn State University.

ANSWER:

Applicant admits that it sells goods under the LIONADE Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

ADMISSION NO. 69

Admit that Applicant sells goods under Applicant's LIONADE Mark to fans of Penn State University.

ANSWER:

Applicant admits that it sells goods under the LIONADE Mark. Applicant is without sufficient information or belief to confirm the remaining allegation set forth in this Admission, and therefore denies same.

Respectfully submitted,

Dated: April 21, 2009

By _____

John W. McIlvaine, Registration No. 34,219
J. Matthew Pritchard, Registration No. 46,228

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWERS TO OPPOSER'S FIRST REQUESTS FOR ADMISSIONS** was served via First Class Mail, postage prepaid, on this 21st day of April, 2009 upon the following:

Alicia Grahn Jones, Esq.
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

Attorney for Applicant

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

[REDACTED] EXHIBIT G TO THE DECLARATION
OF LAUREN SULLINS RALLS

[redacted]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AIR FORCE ACADEMY ATHLETIC ASSOCIATION, BOISE STATE UNIVERSITY, CORPORATION OF GONZAGA UNIVERSITY d/b/a GONZAGA UNIVERSITY, KANSAS STATE UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, OKLAHOMA STATE UNIVERSITY, UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC., THE UNIVERSITY OF KANSAS, UNIVERSITY OF MIAMI, THE REGENTS OF THE UNIVERSITY OF MICHIGAN, BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, UNIVERSITY OF WYOMING	Opposition Nos. 91187921 91187905 91187792 91187927 91187917 91187908 91187796 91187930 91187924 91187907 91187920 91187906
Opposers,	
vs.	[redacted]
SUPER BAKERY, INC.,	[redacted]
Applicant.	

DEPOSITION OF FRANCO HARRIS

THURSDAY JUNE 4, 2009

* * * * *

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1 Q. What was that case about?
2 A. I can't remember.
3 Q. It was a long time ago?
4 A. Long ago, you know.
5 Q. Just the once?
6 A. I can't remember.
7 Q. You attended Penn State University, is that
8 correct?
9 A. Yes.
10 Q. Did you graduate?
11 A. Yes.
12 Q. When?
13 A. 1972.
14 Q. Have you had any post-graduate education?
15 A. No, I have not.
16 Q. After you left Penn State, how were you
17 employed?
18 A. I was a professional football player.
19 Q. You played for the Pittsburgh Steelers?
20 A. Yes.
21 Q. How long were you with the Steelers?
22 A. Until '83.
23 Q. You played for the Seahawks?
24 A. Seahawks, one year in '84.
25 Q. Then you retired?

1 A. Geared up Super Bakery.
2 Q. At the time Super Bakery started, what was the
3 business?
4 A. Nutritional bakery products, mainly donuts and
5 cinnamon buns. And our main market at that time were
6 the school systems.
7 Q. Does Super Bakery still sell those products?
8 A. Yes.
9 Q. Does it still primarily sell to school
10 systems?
11 A. Like, that would still be our biggest market,
12 yes.
13 Q. What other markets are you in?
14 A. Military, you know, we do some -- well, we do
15 health care. Some college, universities. Super
16 Bakery would be -- we do a little bit in restaurants
17 with our breads and stuff like that.
18 Q. Do you sell in all 50 states?
19 A. Yes.
20 Q. Are you actively involved in the business?
21 A. Uh-huh.
22 Q. This is a minor thing, but you have to say yes
23 or no.
24 A. I'm sorry. Yes.
25 Q. It is hard to read.

1 Q. Did he mention the name Lionade to you during
2 the initial meeting?
3 A. No, he didn't.
4 Q. The point you were testing the product on the
5 football players, was it known as Lionade at that
6 point?
7 A. Yes.
8 Q. Who came up with the Lionade name?
9 A. I did.
10 Q. How did you come up with that name?
11 A. It sounded good.
12 Q. I take it the Lion part is because you were at
13 Penn State, they are the Nittany Lions, is that fair?
14 A. Like, that might have something to do with it.
15 Q. Is there anything else that it has to do with,
16 other than the Nittany Lions?
17 A. Well, you know, when you think about it, you
18 know, there's a lot of opportunity there in a lot of
19 other ways.
20 Q. What other ways?
21 A. I mean, could it be a national brand where you
22 can think about it. As other people have done. So
23 you have to look at it is it national, or are there
24 enough users out there for the name in other ways.
25 Q. Help me understand. When you say could it be

1 a national brand, what do you mean by that?
2 A. Could Lionade be a national brand. Could that
3 be a brand that I could take and be national.
4 Q. As opposed to just being sold in and around
5 Penn State?
6 A. Right.
7 Q. You said that could it be national as some
8 others have done. Are you referring to Gatorade?
9 A. Uh-huh.
10 Q. Yes?
11 A. Like Powerade, Gatorade.
12 Q. I take it the ade part of the Lionade name is
13 because it is a common ending for drinks?
14 A. It has been used.
15 Q. Was there some other reason you chose to end
16 it with ade, A-D-E, other than a common ending for
17 drinks?
18 A. I guess people associate it with drinks.
19 Q. You mentioned that some people at Penn State
20 wanted to buy the product, so you sold some of the
21 Lionade product to Penn State. Who at the school did
22 you sell it to?
23 A. The football team.
24 Q. Approximately how much did you sell to them?
25 A. I do not know.

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12 Q. You mentioned that some of your current
13 customers include colleges and universities and you
14 sold Lionade to Penn State. Is the plan to offer
15 these drink products to colleges and universities as
16 well?
17 A. That is not a market for us.
18 Q. Why not?
19 A. Because we wouldn't be able to get the
20 business. All the colleges and universities have
21 contracts with -- whether it be Coke, Pepsi or some
22 other company. Like, I know that is not a viable
23 market.
24 Q. So, when you are talking about contracts with
25 Coke or Pepsi, you're saying for schools that have an

1 exclusive supplier relationship with Coke or Pepsi --
2 A. Or Reebok or whatever. So, I know we can't
3 compete with that.

12 Q. Lionade, when you developed it, I think was
13 sold with in blue packaging, is that correct?
14 A. Pardon me?
15 Q. Was the Lionade sold in blue packaging?
16 A. No. Like, when we were selling, that is what
17 we were going to do. When we sold it, we printed a
18 white label with Lionade on it. Then when the
19 negotiations started, you know, we saw no sense to go
20 to the color labels.
21 MR. HENN: Let me mark as Exhibit 1 a
22 document that was provided to us in the case,
23 which is a picture of a blue Lionade label.
24 (HARRIS Deposition Exhibit No. 1 was
25 marked for identification.)

1 A. This is some of the first boxes we used.
2 Q. For Lionade?
3 A. For Lionade, and then we went to a bottle.
4 Q. Just a plastic bottle like the water bottle
5 your counsel has there?
6 A. Not like that.
7 Q. Clear?
8 A. No.
9 Q. It was white?
10 A. Yes.
11 Q. The box that we have marked as Exhibit 3 that
12 is blue, was that sold to Penn State?
13 A. I believe it was. I can't remember the
14 sequence.
15 Q. Was the original plan to use blue, because
16 that is Penn State's colors?
17 A. With the blue, you know what, I cannot say if
18 that was really the reason, you know, for the blue.
19 Q. What was the reason?
20 A. As I said, I can't say if there was a reason
21 let's go blue because it is Penn State. I'm thinking
22 that we gave it to a designer, that is what they came
23 back with. I'm trying to think if I told them blue
24 and white, and I don't think I did.
25 Q. They figured it out from the name?

1 A. They probably did, yeah.
2 Q. Do you know who the designer was that you
3 used?
4 A. Oh, yeah, yeah.
5 Q. Who was it?
6 A. Greg Runco.
7 Q. Is he here in town?
8 A. Yeah.
9 Q. Does he have his own design firm?
10 A. Yes.
11 Q. Do you know what the name of it is?
12 A. Runco Design. I can't remember the official
13 name, something like Runco Design.
14 Q. He was the one that came up with the label
15 marked as Exhibit 1 and the label marked as Exhibit 2?
16 A. I know he came up with this one, I can't
17 remember this one (indicating).
18 Q. He came up with Exhibit 1, you can't remember
19 who came up with Exhibit 2?
20 A. Right, right, right.
21 Q. You mentioned the reason you didn't go with
22 the blue box was because -- blue label was because
23 your negotiations had begun with the national company?
24 A. With this, yes.
25 Q. Did they have a problem with you using the

1 A. Uh-huh.
2 Q. Is that yes?
3 A. Yes.
4 Q. Was there a time you did have an agent that
5 was responsible for entering into contracts on your
6 behalf for the use of your likeness?
7 A. For the use of my likeness?
8 Q. Or your name.
9 A. No, I never really -- I mean, I have had
10 lawyers. I have never really had an agency group do
11 that.
12 Q. You have had lawyers that negotiated
13 agreements for you if somebody wanted to put your name
14 on a product?
15 A. Oh, sure, absolutely. Absolutely.
16 Q. Are you familiar with how Gatorade was
17 developed?
18 A. I hear stories.
19 Q. Have you seen the TV ad that has Frank
20 Jackson?
21 A. Right, right, right.
22 Q. So, it was developed at the University of
23 Florida and used by the football team, is that your
24 understanding?
25 A. That is what the ad says. That is what I

1 understand, right.
2 Q. Is that essentially the same idea you were
3 going at with the Lionade product?
4 A. With Lionade, I was looking at it as a --
5 wanted to see how far it would go.
6 Q. Just in terms of the concept, was the concept
7 similar to the Gatorade idea, work with Penn State to
8 develop this drink, test it on the football players,
9 see if it helps them recover? Sounds very much like
10 Gatorade to me. Was that the idea?
11 A. It just happened, you know. The circumstances
12 are quite similar.
13 Q. Did you ever have any discussions with Penn
14 State about the name Lionade?
15 A. Nope.
16 Q. I am not going to mark this.
17 I am going to show you your response to
18 interrogatories. I am not going to mark this, it is
19 already in the case record, Interrogatory No. 1 in the
20 case. I only have one copy.
21 Says, "Describe the process through which
22 applicant, Super Bakery, selected the ade marks,
23 identifying each person involved in such process."
24 Says, "Applicant selected iconic mascot names
25 and coupled with Franco Harris was involved in the

1 Pittsburghade?
2 A. City name, nationalities, Irishade. I didn't
3 go for Italianade. I'm thinking about it.
4 Q. The idea in adopting those was to select icons
5 or mascots that people associated with because of
6 where they lived or went to school?
7 A. Pardon me?
8 Q. You selected those mascots or iconic locations
9 so that they would appeal to people who either went to
10 those schools or lived in those areas?
11 A. In those areas, yes.
12 Q. Or went to the schools?
13 A. Or if they are in that particular school,
14 yeah.
15 Q. If you don't go to the school but your kid
16 goes to the school, you might also be a consumer?
17 A. Like, also, as I said, geographical area.
18 Q. Setting aside geographical areas, with regard
19 to the ones that use a mascot, the purpose is to
20 appeal to students or alumni of that school? Is that
21 fair?
22 MR. McILVAINE: Objection. What school
23 are we talking about?
24 Q. Do you understand my question? So I don't
25 have to go through every single one individually, I am

1 trying to ask general questions.
2 In the marks where you adopted a mascot, we
3 have the example of Badgerade earlier, am I correct
4 that the purpose in selecting badger as one of the
5 mascots was so that students or alumni of schools that
6 have badger as their mascot would want to drink the
7 stuff?
8 A. That is one of the markets.
9 (HARRIS Deposition Exhibit No. 4 was
10 marked for identification.)
11 BY MR. HENN:
21 Q. Sales to Penn State occurred in '03, '04 and
22 '05?
23 A. Yes.
24 Q. That is when you stopped?
25 A. That is when we stopped, yes.

1 wanted to go with.
2 Q. You are aware that Wisconsin's mascot is a
3 badger, right? They are the badgers?
4 A. I mean, I am aware of that, yes.
5 Q. Was it because Wisconsin is the badgers, is
6 that one of the reasons you selected Badgerade?
7 A. As I said, my first, you know, market entry
8 will be K to 12. We will see what makes sense. In
9 the end. Just like any business, some will fall and
10 some will make it. We have to see.
11 Q. In terms of your selection of badger as one of
12 the mascots, was the fact that that is Wisconsin's
13 mascot one of the reasons you selected the Badgerade
14 mark?
15 A. As I said, mascots I looked at -- I look at
16 everything. I look at high schools, we look at
17 there's colleges, universities. There's clubs using
18 stuff. I look at geographical areas, you know, states
19 use certain things. A lot of things that encompass
20 it. Most of the time there's not just one.
21 Q. I understand that generally, but my question
22 is with regard to the Badgerade mark, was one of the
23 reasons that it was selected because Wisconsin's
24 mascot is the badgers?
25 A. Well, that would, say, be one of the reasons.

1 include students, alumni and fans of schools that have
2 badger as a mascot?
3 A. That would probably be a market.
4 Q. I want to go to Broncoade. How did you come
5 up with Broncoade?
6 A. Once again, it was a good sports mascot.
7 Q. Are you aware that Boise State are the
8 Broncos?
9 A. I am not aware of all the broncos out there, I
10 know there are a lot of them out there.
11 Q. Are you aware of the Denver Broncos?
12 A. Yes.
13 Q. Have some familiarity with them?
14 A. Yes.
15 Q. I take it the reason that you adopted the
16 Bronco portion of the Broncoade mark is similar to
17 what we discussed with Lionade and Badgerade, it was
18 an iconic sports team mascot, is that fair?
19 A. It is a sports team, yeah. I mean, many
20 different sports.
21 Q. Other than Boise State and Denver, are you
22 aware of any other teams that use broncos as their
23 mascot?
24 A. I can get you the list.
25 Q. You don't know as you sit here today off the

1 against Broncoade has been suspended pending some
2 settlement discussions. Have you resolved this
3 dispute with the NFL yet?
4 A. We are in discussions, yes.
5 Q. What is your understanding of the reason why
6 the NFL opposed the Broncoade mark?
7 MR. McILVAINE: Objection, calls for
8 speculation.
9 A. I would not answer that legally.
10 Q. I am not asking legally. Do you have an
11 understanding why they had an issue with Broncoade?
12 A. Because of the Denver Broncos. I can guess
13 that is the right answer.
14 MR. McILVAINE: It is just a guess.
15 Q. Let me ask you about Bulldogade. When you
16 selected the name Bulldogade, did the University of
17 Georgia or Gonzaga University's bulldog mascot play
18 any role in that selection?
19 A. Once again, it is a widely used mascot.
20 Q. Was, for example, the University of Georgia
21 bulldog mascot one of the reasons, one of many?
22 A. One of many.
23 Q. I was going to ask this with regard to each
24 one, I will ask once from here on out.
25 Have you spoken with any of the colleges who

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8 Q. Turning to Catade, at the time that you
9 developed Catade, I take it you selected that because
10 a number of institutions, schools and teams use the
11 name cats or wildcats?
12 A. Yes.
13 Q. At the time were you aware that Kent State and
14 Kansas State were the Wildcats?
15 A. I guess I will put it this way: I am not
16 familiar with every college, but I know that there's a
17 lot of cats, wildcats out there.
18 Q. In your selection of the name Catade, am I
19 correct that part of that decision was because schools
20 like Kansas State and others use wildcat as their
21 mascot, it would appeal to their students and fans?
22 A. Well, I mean, you asked me a question, would
23 it appeal to them.
24 Q. In terms of your design and plans for the
25 mark, the reason you selected Catade was because

1 schools like Kansas State and others have wildcats or
2 cats as their mascots, is that fair?
3 A. Will it appeal to them? I hope so.
4 Q. The target customers for the Catade would
5 include those fans and students at Kansas state and
6 other institutions that have cats or wildcats as their
7 mascots, right?
8 A. I hope so.
9 Q. Turning to Cowboyade. At the time you
10 selected Cowboyade, were you aware that colleges such
11 as the University of Wyoming, Oklahoma State were the
12 Cowboys?
13 A. I'm guessing, you know, I know they are the
14 Cowboys, right, yes.
15 Q. There's also in the NFL the Dallas Cowboys,
16 correct?
17 A. Yes.
18 Q. Was the reason for selecting Cowboyade as a
19 trademark because schools like Oklahoma State, teams
20 like Dallas Cowboys, teams like Wyoming have their
21 mascot as the Cowboys?
22 A. And there's a big cowboy population in the
23 country. I don't mean teams.
24 Q. You mean there are cowboys out there?
25 A. Yes.

1 Q. Part of your decision was because there are
2 people that are still in the profession of being
3 cowboys, is that fair?
4 A. I'm saying there's this, you know, some of
5 them expand, meaning you look at your market in a
6 bigger way.
7 Q. Part of the market would be to individuals who
8 are cowboys as their job?
9 A. I hope so.
10 Q. Then the other part of the market would be to
11 sell this Cowboyade sports drink to fans or students
12 at schools, universities or fans of professional teams
13 that have cowboy as their mascot?
14 A. I hope they would buy it.
15 Q. The NFL has also opposed the Cowboyade mark.
16 Is it your understanding that is because of the Dallas
17 Cowboys trademark?
18 A. I would presume that.
19 Q. Moving on to Falconade. At the time you
20 adopted the Falconade trademark, were you aware that
21 the Air Force Academy teams are called Falcons?
22 A. Yes.
23 Q. In the selection for the Falconade mark, am I
24 correct that part of your decision was because schools
25 like the Air Force Academy have mascots like --

1 MR. McILVANE: Objection, what is "like"?
2 Q. Was part of your decision because the Air
3 Force Academy has Falcons as its mascot?
4 A. I would hope that they would be one of my
5 customers.
6 Q. Was part of the reason because the Atlanta
7 Falcons fans also might be potential customers of
8 Falconade?
9 A. I hope they would be customers.
10 Q. The NFL has opposed the Falconade mark as
11 well, is that correct?
12 A. Yes.
13 Q. Turning to Hurricaneade. At the time you
14 adopted the Hurricaneade trademark, you knew the
15 University of Miami is called the Hurricanes, right?
16 A. Yes.
17 Q. Was the fact that Miami is the Hurricanes one
18 of the reasons you selected Hurricaneade as a mark?
19 A. I am hoping that they would be customers.
20 Q. Turning to Irishade, at the time you adopted
21 Irishade, you were aware that the University of Notre
22 Dame goes by the Fighting Irish or the Irish?
23 A. Yes.
24 Q. Was part of the reason for adopting Irishade
25 because Notre Dame are the Fighting Irish and you

1 thought they might be potential customers?
2 A. I would hope that they would be.
3 Q. Turning to Jayhawkade. At the time you
4 adopted that, you knew that the University of Kansas
5 were the Jayhawks, right?
6 A. Yes.
7 Q. Was part of the reason you selected Jayhawkade
8 because the University of Kansas mascot is the
9 Jayhawks?
10 A. I am hoping that they would be customers, yes.
11 Q. Do you know any schools other than the
12 University of Kansas that have a mascot that is the
13 jayhawks?
14 A. Do you?
15 Q. Do you?
16 A. Do you?
17 Q. You are not aware of any?
18 A. No. As I told you before, I am -- not off the
19 top of my head.
20 Q. Finally, Wolverineade. At the time you
21 adopted the Wolverineade mark, you were aware that the
22 University of Michigan were the wolverines?
23 A. Yes.
24 Q. Part of the reason you selected the
25 Wolverineade mark is because the University of

1 Michigan's mascot is the Wolverines, right?
2 A. I would hope that they are customers, this
3 would appeal to them.
4 Q. You also applied to register Huskyade, then
5 you abandoned it. Why did you abandon Huskyade?
6 A. That was already taken.
7 Q. By whom?
8 A. University of Washington.
9 Q. Did someone at the University of Washington
10 contact you and ask you to abandon the application?
11 A. Yes.
12 Q. Who contacted you?
13 A. I can't remember.
14 Q. Was it someone in the athletic department?
15 A. I can't remember.
16 Q. Just so I understand it, you had applied for
17 Huskyade in part because Washington and perhaps UConn
18 are the huskies and someone at the University of
19 Washington called you and asked you to abandon it
20 because they already owned the husky mark, is that
21 correct? Am I understanding your testimony correctly?
22 A. Right, they notified us. Yes. And we agreed
23 with them.
24 Q. Why did you agree with the Huskyade -- with
25 the University of Washington but not the other

EXHIBIT
3
08/14/09

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

OKLAHOMA STATE UNIVERSITY,	)	
	)	
	)	
	)	
Opposer,	)	
v.	)	In the matter of Application
	)	Serial No. 77/383,001
	)	for the mark COWBOYADE
	)	Opposition No. 91187908
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

[REDACTED] EXHIBIT G TO THE DECLARATION
OF LAUREN SULLINS RALLS

[redacted]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AIR FORCE ACADEMY ATHLETIC ASSOCIATION, BOISE STATE UNIVERSITY, CORPORATION OF GONZAGA UNIVERSITY d/b/a GONZAGA UNIVERSITY, KANSAS STATE UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, OKLAHOMA STATE UNIVERSITY, UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC., THE UNIVERSITY OF KANSAS, UNIVERSITY OF MIAMI, THE REGENTS OF THE UNIVERSITY OF MICHIGAN, BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, UNIVERSITY OF WYOMING	Opposition Nos. 91187921 91187905 91187792 91187927 91187917 91187908 91187796 91187930 91187924 91187907 91187920 91187906
Opposers,	
vs.	[redacted]
SUPER BAKERY, INC.,	[redacted]
Applicant.	

DEPOSITION OF FRANCO HARRIS

THURSDAY JUNE 4, 2009

* * * * *

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1 Q. What was that case about?
2 A. I can't remember.
3 Q. It was a long time ago?
4 A. Long ago, you know.
5 Q. Just the once?
6 A. I can't remember.
7 Q. You attended Penn State University, is that
8 correct?
9 A. Yes.
10 Q. Did you graduate?
11 A. Yes.
12 Q. When?
13 A. 1972.
14 Q. Have you had any post-graduate education?
15 A. No, I have not.
16 Q. After you left Penn State, how were you
17 employed?
18 A. I was a professional football player.
19 Q. You played for the Pittsburgh Steelers?
20 A. Yes.
21 Q. How long were you with the Steelers?
22 A. Until '83.
23 Q. You played for the Seahawks?
24 A. Seahawks, one year in '84.
25 Q. Then you retired?

1 A. Geared up Super Bakery.
2 Q. At the time Super Bakery started, what was the
3 business?
4 A. Nutritional bakery products, mainly donuts and
5 cinnamon buns. And our main market at that time were
6 the school systems.
7 Q. Does Super Bakery still sell those products?
8 A. Yes.
9 Q. Does it still primarily sell to school
10 systems?
11 A. Like, that would still be our biggest market,
12 yes.
13 Q. What other markets are you in?
14 A. Military, you know, we do some -- well, we do
15 health care. Some college, universities. Super
16 Bakery would be -- we do a little bit in restaurants
17 with our breads and stuff like that.
18 Q. Do you sell in all 50 states?
19 A. Yes.
20 Q. Are you actively involved in the business?
21 A. Uh-huh.
22 Q. This is a minor thing, but you have to say yes
23 or no.
24 A. I'm sorry. Yes.
25 Q. It is hard to read.

1 Q. Did he mention the name Lionade to you during
2 the initial meeting?
3 A. No, he didn't.
4 Q. The point you were testing the product on the
5 football players, was it known as Lionade at that
6 point?
7 A. Yes.
8 Q. Who came up with the Lionade name?
9 A. I did.
10 Q. How did you come up with that name?
11 A. It sounded good.
12 Q. I take it the Lion part is because you were at
13 Penn State, they are the Nittany Lions, is that fair?
14 A. Like, that might have something to do with it.
15 Q. Is there anything else that it has to do with,
16 other than the Nittany Lions?
17 A. Well, you know, when you think about it, you
18 know, there's a lot of opportunity there in a lot of
19 other ways.
20 Q. What other ways?
21 A. I mean, could it be a national brand where you
22 can think about it. As other people have done. So
23 you have to look at it is it national, or are there
24 enough users out there for the name in other ways.
25 Q. Help me understand. When you say could it be

1 a national brand, what do you mean by that?
2 A. Could Lionade be a national brand. Could that
3 be a brand that I could take and be national.
4 Q. As opposed to just being sold in and around
5 Penn State?
6 A. Right.
7 Q. You said that could it be national as some
8 others have done. Are you referring to Gatorade?
9 A. Uh-huh.
10 Q. Yes?
11 A. Like Powerade, Gatorade.
12 Q. I take it the ade part of the Lionade name is
13 because it is a common ending for drinks?
14 A. It has been used.
15 Q. Was there some other reason you chose to end
16 it with ade, A-D-E, other than a common ending for
17 drinks?
18 A. I guess people associate it with drinks.
19 Q. You mentioned that some people at Penn State
20 wanted to buy the product, so you sold some of the
21 Lionade product to Penn State. Who at the school did
22 you sell it to?
23 A. The football team.
24 Q. Approximately how much did you sell to them?
25 A. I do not know.

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12 Q. You mentioned that some of your current
13 customers include colleges and universities and you
14 sold Lionade to Penn State. Is the plan to offer
15 these drink products to colleges and universities as
16 well?
17 A. That is not a market for us.
18 Q. Why not?
19 A. Because we wouldn't be able to get the
20 business. All the colleges and universities have
21 contracts with -- whether it be Coke, Pepsi or some
22 other company. Like, I know that is not a viable
23 market.
24 Q. So, when you are talking about contracts with
25 Coke or Pepsi, you're saying for schools that have an

1 exclusive supplier relationship with Coke or Pepsi --
2 A. Or Reebok or whatever. So, I know we can't
3 compete with that.

12 Q. Lionade, when you developed it, I think was
13 sold with in blue packaging, is that correct?
14 A. Pardon me?
15 Q. Was the Lionade sold in blue packaging?
16 A. No. Like, when we were selling, that is what
17 we were going to do. When we sold it, we printed a
18 white label with Lionade on it. Then when the
19 negotiations started, you know, we saw no sense to go
20 to the color labels.
21 MR. HENN: Let me mark as Exhibit 1 a
22 document that was provided to us in the case,
23 which is a picture of a blue Lionade label.
24 (HARRIS Deposition Exhibit No. 1 was
25 marked for identification.)

1 A. This is some of the first boxes we used.
2 Q. For Lionade?
3 A. For Lionade, and then we went to a bottle.
4 Q. Just a plastic bottle like the water bottle
5 your counsel has there?
6 A. Not like that.
7 Q. Clear?
8 A. No.
9 Q. It was white?
10 A. Yes.
11 Q. The box that we have marked as Exhibit 3 that
12 is blue, was that sold to Penn State?
13 A. I believe it was. I can't remember the
14 sequence.
15 Q. Was the original plan to use blue, because
16 that is Penn State's colors?
17 A. With the blue, you know what, I cannot say if
18 that was really the reason, you know, for the blue.
19 Q. What was the reason?
20 A. As I said, I can't say if there was a reason
21 let's go blue because it is Penn State. I'm thinking
22 that we gave it to a designer, that is what they came
23 back with. I'm trying to think if I told them blue
24 and white, and I don't think I did.
25 Q. They figured it out from the name?

1 A. They probably did, yeah.
2 Q. Do you know who the designer was that you
3 used?
4 A. Oh, yeah, yeah.
5 Q. Who was it?
6 A. Greg Runco.
7 Q. Is he here in town?
8 A. Yeah.
9 Q. Does he have his own design firm?
10 A. Yes.
11 Q. Do you know what the name of it is?
12 A. Runco Design. I can't remember the official
13 name, something like Runco Design.
14 Q. He was the one that came up with the label
15 marked as Exhibit 1 and the label marked as Exhibit 2?
16 A. I know he came up with this one, I can't
17 remember this one (indicating).
18 Q. He came up with Exhibit 1, you can't remember
19 who came up with Exhibit 2?
20 A. Right, right, right.
21 Q. You mentioned the reason you didn't go with
22 the blue box was because -- blue label was because
23 your negotiations had begun with the national company?
24 A. With this, yes.
25 Q. Did they have a problem with you using the

1 A. Uh-huh.
2 Q. Is that yes?
3 A. Yes.
4 Q. Was there a time you did have an agent that
5 was responsible for entering into contracts on your
6 behalf for the use of your likeness?
7 A. For the use of my likeness?
8 Q. Or your name.
9 A. No, I never really -- I mean, I have had
10 lawyers. I have never really had an agency group do
11 that.
12 Q. You have had lawyers that negotiated
13 agreements for you if somebody wanted to put your name
14 on a product?
15 A. Oh, sure, absolutely. Absolutely.
16 Q. Are you familiar with how Gatorade was
17 developed?
18 A. I hear stories.
19 Q. Have you seen the TV ad that has Frank
20 Jackson?
21 A. Right, right, right.
22 Q. So, it was developed at the University of
23 Florida and used by the football team, is that your
24 understanding?
25 A. That is what the ad says. That is what I

1 understand, right.
2 Q. Is that essentially the same idea you were
3 going at with the Lionade product?
4 A. With Lionade, I was looking at it as a --
5 wanted to see how far it would go.
6 Q. Just in terms of the concept, was the concept
7 similar to the Gatorade idea, work with Penn State to
8 develop this drink, test it on the football players,
9 see if it helps them recover? Sounds very much like
10 Gatorade to me. Was that the idea?
11 A. It just happened, you know. The circumstances
12 are quite similar.
13 Q. Did you ever have any discussions with Penn
14 State about the name Lionade?
15 A. Nope.
16 Q. I am not going to mark this.
17 I am going to show you your response to
18 interrogatories. I am not going to mark this, it is
19 already in the case record, Interrogatory No. 1 in the
20 case. I only have one copy.
21 Says, "Describe the process through which
22 applicant, Super Bakery, selected the ade marks,
23 identifying each person involved in such process."
24 Says, "Applicant selected iconic mascot names
25 and coupled with Franco Harris was involved in the

1 Pittsburghade?
2 A. City name, nationalities, Irishade. I didn't
3 go for Italianade. I'm thinking about it.
4 Q. The idea in adopting those was to select icons
5 or mascots that people associated with because of
6 where they lived or went to school?
7 A. Pardon me?
8 Q. You selected those mascots or iconic locations
9 so that they would appeal to people who either went to
10 those schools or lived in those areas?
11 A. In those areas, yes.
12 Q. Or went to the schools?
13 A. Or if they are in that particular school,
14 yeah.
15 Q. If you don't go to the school but your kid
16 goes to the school, you might also be a consumer?
17 A. Like, also, as I said, geographical area.
18 Q. Setting aside geographical areas, with regard
19 to the ones that use a mascot, the purpose is to
20 appeal to students or alumni of that school? Is that
21 fair?
22 MR. McILVAINE: Objection. What school
23 are we talking about?
24 Q. Do you understand my question? So I don't
25 have to go through every single one individually, I am

1 trying to ask general questions.
2 In the marks where you adopted a mascot, we
3 have the example of Badgerade earlier, am I correct
4 that the purpose in selecting badger as one of the
5 mascots was so that students or alumni of schools that
6 have badger as their mascot would want to drink the
7 stuff?
8 A. That is one of the markets.
9 (HARRIS Deposition Exhibit No. 4 was
10 marked for identification.)
11 BY MR. HENN:
21 Q. Sales to Penn State occurred in '03, '04 and
22 '05?
23 A. Yes.
24 Q. That is when you stopped?
25 A. That is when we stopped, yes.

1 wanted to go with.
2 Q. You are aware that Wisconsin's mascot is a
3 badger, right? They are the badgers?
4 A. I mean, I am aware of that, yes.
5 Q. Was it because Wisconsin is the badgers, is
6 that one of the reasons you selected Badgerade?
7 A. As I said, my first, you know, market entry
8 will be K to 12. We will see what makes sense. In
9 the end. Just like any business, some will fall and
10 some will make it. We have to see.
11 Q. In terms of your selection of badger as one of
12 the mascots, was the fact that that is Wisconsin's
13 mascot one of the reasons you selected the Badgerade
14 mark?
15 A. As I said, mascots I looked at -- I look at
16 everything. I look at high schools, we look at
17 there's colleges, universities. There's clubs using
18 stuff. I look at geographical areas, you know, states
19 use certain things. A lot of things that encompass
20 it. Most of the time there's not just one.
21 Q. I understand that generally, but my question
22 is with regard to the Badgerade mark, was one of the
23 reasons that it was selected because Wisconsin's
24 mascot is the badgers?
25 A. Well, that would, say, be one of the reasons.

1 include students, alumni and fans of schools that have
2 badger as a mascot?
3 A. That would probably be a market.
4 Q. I want to go to Broncoade. How did you come
5 up with Broncoade?
6 A. Once again, it was a good sports mascot.
7 Q. Are you aware that Boise State are the
8 Broncos?
9 A. I am not aware of all the broncos out there, I
10 know there are a lot of them out there.
11 Q. Are you aware of the Denver Broncos?
12 A. Yes.
13 Q. Have some familiarity with them?
14 A. Yes.
15 Q. I take it the reason that you adopted the
16 Bronco portion of the Broncoade mark is similar to
17 what we discussed with Lionade and Badgerade, it was
18 an iconic sports team mascot, is that fair?
19 A. It is a sports team, yeah. I mean, many
20 different sports.
21 Q. Other than Boise State and Denver, are you
22 aware of any other teams that use broncos as their
23 mascot?
24 A. I can get you the list.
25 Q. You don't know as you sit here today off the

1 against Broncoade has been suspended pending some
2 settlement discussions. Have you resolved this
3 dispute with the NFL yet?
4 A. We are in discussions, yes.
5 Q. What is your understanding of the reason why
6 the NFL opposed the Broncoade mark?
7 MR. McILVAINE: Objection, calls for
8 speculation.
9 A. I would not answer that legally.
10 Q. I am not asking legally. Do you have an
11 understanding why they had an issue with Broncoade?
12 A. Because of the Denver Broncos. I can guess
13 that is the right answer.
14 MR. McILVAINE: It is just a guess.
15 Q. Let me ask you about Bulldogade. When you
16 selected the name Bulldogade, did the University of
17 Georgia or Gonzaga University's bulldog mascot play
18 any role in that selection?
19 A. Once again, it is a widely used mascot.
20 Q. Was, for example, the University of Georgia
21 bulldog mascot one of the reasons, one of many?
22 A. One of many.
23 Q. I was going to ask this with regard to each
24 one, I will ask once from here on out.
25 Have you spoken with any of the colleges who

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8 Q. Turning to Catade, at the time that you
9 developed Catade, I take it you selected that because
10 a number of institutions, schools and teams use the
11 name cats or wildcats?
12 A. Yes.
13 Q. At the time were you aware that Kent State and
14 Kansas State were the Wildcats?
15 A. I guess I will put it this way: I am not
16 familiar with every college, but I know that there's a
17 lot of cats, wildcats out there.
18 Q. In your selection of the name Catade, am I
19 correct that part of that decision was because schools
20 like Kansas State and others use wildcat as their
21 mascot, it would appeal to their students and fans?
22 A. Well, I mean, you asked me a question, would
23 it appeal to them.
24 Q. In terms of your design and plans for the
25 mark, the reason you selected Catade was because

1 schools like Kansas State and others have wildcats or
2 cats as their mascots, is that fair?
3 A. Will it appeal to them? I hope so.
4 Q. The target customers for the Catade would
5 include those fans and students at Kansas state and
6 other institutions that have cats or wildcats as their
7 mascots, right?
8 A. I hope so.
9 Q. Turning to Cowboyade. At the time you
10 selected Cowboyade, were you aware that colleges such
11 as the University of Wyoming, Oklahoma State were the
12 Cowboys?
13 A. I'm guessing, you know, I know they are the
14 Cowboys, right, yes.
15 Q. There's also in the NFL the Dallas Cowboys,
16 correct?
17 A. Yes.
18 Q. Was the reason for selecting Cowboyade as a
19 trademark because schools like Oklahoma State, teams
20 like Dallas Cowboys, teams like Wyoming have their
21 mascot as the Cowboys?
22 A. And there's a big cowboy population in the
23 country. I don't mean teams.
24 Q. You mean there are cowboys out there?
25 A. Yes.

1 Q. Part of your decision was because there are
2 people that are still in the profession of being
3 cowboys, is that fair?
4 A. I'm saying there's this, you know, some of
5 them expand, meaning you look at your market in a
6 bigger way.
7 Q. Part of the market would be to individuals who
8 are cowboys as their job?
9 A. I hope so.
10 Q. Then the other part of the market would be to
11 sell this Cowboyade sports drink to fans or students
12 at schools, universities or fans of professional teams
13 that have cowboy as their mascot?
14 A. I hope they would buy it.
15 Q. The NFL has also opposed the Cowboyade mark.
16 Is it your understanding that is because of the Dallas
17 Cowboys trademark?
18 A. I would presume that.
19 Q. Moving on to Falconade. At the time you
20 adopted the Falconade trademark, were you aware that
21 the Air Force Academy teams are called Falcons?
22 A. Yes.
23 Q. In the selection for the Falconade mark, am I
24 correct that part of your decision was because schools
25 like the Air Force Academy have mascots like --

1 MR. McILVANE: Objection, what is "like"?
2 Q. Was part of your decision because the Air
3 Force Academy has Falcons as its mascot?
4 A. I would hope that they would be one of my
5 customers.
6 Q. Was part of the reason because the Atlanta
7 Falcons fans also might be potential customers of
8 Falconade?
9 A. I hope they would be customers.
10 Q. The NFL has opposed the Falconade mark as
11 well, is that correct?
12 A. Yes.
13 Q. Turning to Hurricaneade. At the time you
14 adopted the Hurricaneade trademark, you knew the
15 University of Miami is called the Hurricanes, right?
16 A. Yes.
17 Q. Was the fact that Miami is the Hurricanes one
18 of the reasons you selected Hurricaneade as a mark?
19 A. I am hoping that they would be customers.
20 Q. Turning to Irishade, at the time you adopted
21 Irishade, you were aware that the University of Notre
22 Dame goes by the Fighting Irish or the Irish?
23 A. Yes.
24 Q. Was part of the reason for adopting Irishade
25 because Notre Dame are the Fighting Irish and you

1 thought they might be potential customers?
2 A. I would hope that they would be.
3 Q. Turning to Jayhawkade. At the time you
4 adopted that, you knew that the University of Kansas
5 were the Jayhawks, right?
6 A. Yes.
7 Q. Was part of the reason you selected Jayhawkade
8 because the University of Kansas mascot is the
9 Jayhawks?
10 A. I am hoping that they would be customers, yes.
11 Q. Do you know any schools other than the
12 University of Kansas that have a mascot that is the
13 jayhawks?
14 A. Do you?
15 Q. Do you?
16 A. Do you?
17 Q. You are not aware of any?
18 A. No. As I told you before, I am -- not off the
19 top of my head.
20 Q. Finally, Wolverineade. At the time you
21 adopted the Wolverineade mark, you were aware that the
22 University of Michigan were the wolverines?
23 A. Yes.
24 Q. Part of the reason you selected the
25 Wolverineade mark is because the University of

1 Michigan's mascot is the Wolverines, right?
2 A. I would hope that they are customers, this
3 would appeal to them.
4 Q. You also applied to register Huskyade, then
5 you abandoned it. Why did you abandon Huskyade?
6 A. That was already taken.
7 Q. By whom?
8 A. University of Washington.
9 Q. Did someone at the University of Washington
10 contact you and ask you to abandon the application?
11 A. Yes.
12 Q. Who contacted you?
13 A. I can't remember.
14 Q. Was it someone in the athletic department?
15 A. I can't remember.
16 Q. Just so I understand it, you had applied for
17 Huskyade in part because Washington and perhaps UConn
18 are the huskies and someone at the University of
19 Washington called you and asked you to abandon it
20 because they already owned the husky mark, is that
21 correct? Am I understanding your testimony correctly?
22 A. Right, they notified us. Yes. And we agreed
23 with them.
24 Q. Why did you agree with the Huskyade -- with
25 the University of Washington but not the other

EXHIBIT
3
08/14/09