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

Proceeding	91189023
Party	Plaintiff Whataburger Partnership
Correspondence Address	Christopher Kelly Wiley Rein LLP 1776 K St NW Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jennifer L. Elgin
Filer's e-mail	jelgin@wileyrein.com, bcarlton@wileyrein.com
Signature	/JLE/
Date	01/28/2011
Attachments	Notice_of_Reliance--6.pdf (11 pages)(508423 bytes)

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

WHATABURGER PARTNERSHIP	)	
	)	
Opposer,	)	
	)	Opp. No.: 91/189,023
v.	)	Ser. No.: 77/494,179
	)	Mark: **WHATTA WING!**
SARKIS AVAKIAN,	)	
	)	
Applicant.	)	

<u>Opposer's Sixth Notice of Reliance</u>

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, 37 C.F.R. § 2.120(j), Opposer WHATABURGER PARTNERSHIP, hereby gives notice of its reliance upon "Applicant's Objections and Responses to Opposer's First Set of Interrogatories to Applicant," responses to Interrogatories Nos. 1 (to show origin and meaning of opposed mark), 4 (to show priority of Opposer's mark over opposed mark; the channels of trade of the opposed mark; and the classes of potential purchasers of opposed mark), and 5 (to show amount, types and geographic scope of advertising and promotion for opposed mark).

These responses (redacted) are attached as Exhibit F hereto.

Respectfully submitted,

WHATABURGER PARTNERSHIP

By:

Christopher Kelly
Jennifer L. Elgin
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Whataburger Partnership

Dated: January 28, 2011

EXHIBIT G

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

WHATABURGER PARTNERSHIP Opposer, *v.* SARKIS AVAKIAN, Applicant.	)	Opposition No. 91189023 Serial No. 77/494179 Mark: Whatta Wing!

APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Applicant Sarkis Avakian d/b/a Whatta Wing! ("Applicant" or "Whatta Wing!") hereby responds to the First Set of Requests for Admission served by Whataburger Partnership ("Opposer" or "Whataburger").

GENERAL OBJECTIONS

The following General Objections apply to and are incorporated by reference in each and every response to Opposer's Requests For Admission.

1. Applicant objects to the Opposer's Requests and "Definitions" and "Instructions" to the extent they attempt to impose any obligations different from or in addition to those obligations imposed by the Federal Rules of Civil Procedure or the Rules of the Trademark Trial and Appeal Board.

2. Applicant objects to each Request to the extent it is premature in that fact discovery is ongoing, and expert discovery has not yet commenced.

REQUEST NO. 6 Admit that Applicant's Mark and Opposer's Marks contain the phonetically identical WHATA/WHATTA formative.

RESPONSE: Admitted.

REQUEST NO. 12 Admit that Applicant's menu items sold under Applicant's mark include hamburgers and cheeseburgers.

RESPONSE: Admitted.

REQUEST NO. 17 Admit that Applicant has disclaimed the term "wing" apart from the mark as shown in U.S. Applicant Ser. No. 77/494,179.

RESPONSE: Admitted.

REQUEST NO. 18 Admit that Applicant sells chicken wings, chicken tenders and chicken sandwiches in its restaurant under Applicant's Mark.

RESPONSE: Admitted.

REQUEST NO. 25 Admit that the recitation of services in opposed application Ser. No. 77/494,179 contains no limitations regarding the manner of or channels of trade through which Applicant's services are sold.

RESPONSE: Applicant objects on the grounds that the referenced document speaks for itself. Subject to the foregoing objections, the request is admitted.

REQUEST NO. 31 Admit that Applicant operates a single restaurant under Applicant's Mark.

RESPONSE: Admitted.

REQUEST NO. 37 Admit that Applicant intends to expand its restaurant concept through new owner-owned stores or franchised stores.

RESPONSE: Admitted.

REQUEST NO. 38 Admit that Applicant advertises its restaurant services on the internet.

RESPONSE: Admitted.

REQUEST NO. 39 Admit that Opposer advertises its restaurant services through the internet.

RESPONSE: Admitted.

Respectfully submitted,

SARKIS AVAKIAN

By his Attorneys,

Dated: August 28, 2009

/s/ Sheryl Koval Garko
Mark S. Puzella
Robert M. O'Connell, Jr.
Chelsea Teachout
Sheryl Koval Garko
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
Tel: 617/570-1000
Fax: 617/523-1231

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION upon Opposer's counsel of record by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on August 28, 2009, addressed as follows:

Christopher Kelly
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

/s/ Sheryl Koval Garko
Sheryl Koval Garko