ESTTA Tracking number: **ESTTA390764**

Filing date: **01/28/2011**

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-3.pdf (3 pages)(206433 bytes) ExhibitC1-2.pdf (54 pages)(6070575 bytes) ExhibitC3-4.pdf (60 pages)(4515793 bytes) ExhibitC5-6.pdf (70 pages)(4709668 bytes) ExhibitC7-8.pdf (64 pages)(3887304 bytes) ExhibitC9.pdf (44 pages)(3070274 bytes) ExhibitC10-11.pdf (59 pages)(3102193 bytes) ExhibitC12-13.pdf (58 pages)(6988231 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.	)	

Opposer's Third Notice of Reliance

Pursuant Rule 2.122(e) of the Trademark Rules of Practice, to 37 C.F.R. § 2.122(e), Opposer WHATABURGER PARTNERSHIP, hereby gives notice of its reliance upon the attached notices of opposition and petitions for cancellation, as well as the Board orders terminating such proceedings, from various oppositions and cancellations brought by Opposer against the registration of confusingly similar WHATA formative marks on the Principal Register. These official records are considered self-authenticating, and as such, require no extrinsic evidence of authenticity as a condition to admissibility.

These materials are relevant to this opposition because, among other things, they demonstrate that Opposer conducts a vigorous, successful enforcement program to prevent or limit registration of conflicting WHATA formative marks (such as WHATA____; WHATTA____; and WHAT A _____) and the potential dilution of its own WHATA formative marks, including its famous mark WHATABURGER. The successful policing of its marks has added to their strength because it prevents weakening of the marks' distinctiveness in the relevant market.

The following notices of opposition, petitions for cancellation and the relevant terminating orders from the Board (where appropriate) are attached as Exhibits C-1 through C-13 hereto:

Exhibit C-1: *Whataburger Partnership v. What A Pizza What A Price Franchising, LLC*, Opp. No. 92052943 (WHAT A PIZZA WHAT A PRICE);

Exhibit C-2: *Whataburger Partnership v. Gielow Pickles, Inc*., Opp. No. 92050093 (WHAT A PICKLE!);

Exhibit C-3: *Whataburger Partnership v. Agroamerica Corporation*, Can. No. 92050094 (WATTA);

Exhibit C-4: *Whataburger Partnership v. Mahaney*, Opp. No. 91186046 (WHATADOG);

Exhibit C-5: *Whataburger Partnership v. TBS Investments Inc.*, Opp. No. 91183490 (WHATTACAKE);

Exhibit C-6: *Whataburger Partnership v. Agroamerica Corporation*, Opp. No. 91179671 (WATTAFRUIT & Design);

Exhibit C-7: *Whatapartnership, L.P. v. Com-Pac International, Inc.*, Opp. No. 91175612 (WHATABAG);

Exhibit C-8: *Whatapartnership, L.P. v. Suite One Staffing Group, Inc.*, Can. No. 92044859 (WHAT-A-RACK);

Exhibit C-9: *Whatapartnership, L.P. v. Halbro, LLC*, Opp. No. 91166232 (THE "WOW!...WHAT A SUB!!" BOYZ SUBS & STEAKS);

Exhibit C-10: *Whatapartnership, L.P. v. SCJ Enterprises, Inc.*, Opp. No. 91161459 (WHATTA JERK X-TREME BEEF JERKY);

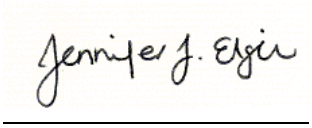
Exhibit C-11: *Whatapartnership, L.P. v. SCJ Enterprises, Inc.*, Opp. No. 91161455 (WHATTA JERK X-TREME BEEF JERKY);

Exhibit C-12: *Whatapartnership, L.P. v. Noret*, Opp. No. 91163686 (CHIHUAHUA "WHAT A SANDWICH"); and

Exhibit C-13: *Whatapartnership, L.P. v. W.A.B. Bakery Franchising Ltd.*, Opp. No. 91161129 (WHAT A BAGEL!).

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 C

EXHIBIT C-1

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

ESTTA Tracking number: **ESTTA364081**

Filing date: **08/19/2010**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership		
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson, Hugh Dobson, Lynne Dobson		
Address	300 Concord Plaza Drive San Antonio, TX 78216 UNITED STATES		

Attorney information	Jennifer L. Elgin Wiley Rein LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES jelgin@wileyrein.com, bcarlton@wileyrein.com, bdavis@wileyrein.com Phone:202--719-7000

Registration Subject to Cancellation

Registration No	3797426	Registration date	06/01/2010
Registrant	WHAT A PIZZA WHAT A PRICE FRANCHISING, LLC P.O. BOX 540 VANCEBURG, KY 41179 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2007/01/31 First Use In Commerce: 2007/01/31 All goods and services in the class are cancelled, namely: PIZZA
Class 035. First Use: 2010/03/19 First Use In Commerce: 2010/03/19 All goods and services in the class are cancelled, namely: FRANCHISING SERVICES, NAMELY, OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND/OR OPERATION OF COMMISSARIES, AND IN SUPPLYING PIZZA, PIZZA DOUGH, PIZZA SAUCE, SPICES AND KITS FOR PREPARING PIZZA AT SUPERMARKETS

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	WHATABURGER (Reg. No. 652,137)
Goods/Services	hamburger sandwich

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WHATABURGER (Reg. No. 891,082)		
Goods/Services	restaurant services and drive in restaurant services		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises		

U.S. Registration	2160285	Application Date	03/24/1997

No.			
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich		

U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	WHATAKIDS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		

Design Mark	WHATAGUY
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	WHATAKIDS		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services		

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark	WHATACOMIX		
Description of	NONE		

Mark	
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark	WHATAPLACE! WHATATASTE!		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		

U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDER		
Design Mark	WHATABLENDER		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration	3185230	Application Date	01/07/2005

No.			
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		
Design Mark	WHATASIZE		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		

U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		
Design Mark	WHATABURGER FIELD		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts

Attachments	72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75654525#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes) 76332382#TMSN.gif (1 page)(bytes) 76473190#TMSN.jpeg (1 page)(bytes) 76627124#TMSN.gif (1 page)(bytes) 78598999#TMSN.jpeg (1 page)(bytes) 78599894#TMSN.jpeg (1 page)(bytes) Petition_to_cancel_WHAT_A_PIZZA_WHAT_A_PRICE-WRFMAIN-#13175552-v1.pdf (28 pages)(987614 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer L. Elgin/
Name	Jennifer L. Elgin
Date	08/19/2010

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

WHATABURGER PARTNERSHIP	)	
	)	
Petitioner,	)	Cancellation No.: _____
	)	
v.	)	Mark: WHAT A PIZZA WHAT A PRICE & Design
	)	
WHAT A PIZZA WHAT A PRICE FRANCHISING, LLC	)	Reg. No.: 3,797,426
	)	
	)	
Respondent.	)	

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at 300 Concord Plaza Drive, San Antonio, TX 78216, hereby petitions to cancel Registration No. 3,797,426 for WHAT A PIZZA WHAT A PRICE & Design ("Respondent's Mark), filed on July 6, 2009 and registered on the Principal Register on June 1, 2010, for "pizza" in International Class 030 and "franchising services , namely offering technical assistance in the establishment and/or operation of a commissaries, and in supplying pizza, pizza dough, pizza sauce, spices and kits for preparing pizza at supermarkets" in International Class 035, by What a Pizza What a Price Franchising, LLC ("Respondent"). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,797,426 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees and franchisees are collectively referred to as "Petitioner").

2. Petitioner operates or franchises over 700 restaurants under the WHATABURGER name.

3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurant services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify its restaurant and franchising services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Petitioner has developed a family of WHATA marks to identify its food products and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(i) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(j) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(k) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(l) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(m) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(o) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(p) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(q) Registration No. 3,185,230 – **WHATASIZE** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(r) Registration No. 3,188,132 – **WHATABURGER FIELD** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(s) Registration No. 3,188,136 – **WHATABURGER FIELD & Design** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Many of Petitioner's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner's ownership thereof, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. On information and belief, Respondent has adopted and used Respondent's Mark in connection with pizza and franchising services.

11. Respondent is the owner of record of the Reg. No. 3,797,426 for Respondent's Mark, which claims a date of first use in commerce of January 31, 2007 for the goods, "pizza", in International Class 030, and March 19, 2010 for the services, "franchising services, namely, offering technical assistance in the establishment and/or operation of commissaries, and in

supplying pizza, pizza dough, pizza sauce, spices and kits for preparing pizza at supermarkets" in International Class 035.

12. The constructive and actual dates of first use of many of Petitioner's WHATABURGER and WHATA marks precede the filing date of the opposed Registration No. 3,797,426; the issuance date of Registration No. 3,797,426; and the dates of first use identified in the challenged registration.

13. The products and services identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks; the products in the challenged registration are not restricted as to types of customers and channels of trade; and the designation WHAT A PIZZA WHAT A PRICE so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's products and services, to cause confusion and mistake and to deceive.

14. The designation WHAT A PIZZA WHAT A PRICE is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

15. Any defect, objection or fault found with any food product sold or service provided under the designation WHAT A PIZZA WHAT A PRICE would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.

16. Petitioner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This cancellation is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: Jennifer J. Elgin

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: August 19, 2010

13175552.1

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 652,137

Registered Sep. 24, 1957

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082

Registered May 12, 1970

Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,927

Registered May 27, 1975

TRADEMARK
SERVICE MARK
Principal Register

WHATABURGER

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).

For: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, POTATO CHIPS, CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).

For: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, in CLASS 100 (INT. CL. 42).

First use July 18, 1972; in commerce July 28, 1972.
The drawing is lined for the colors orange and brown.

Ser. No. 442,464, filed Nov. 29, 1972.

M. MERCHANT, Examiner

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-28-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,465, FILED 11-29-1972.

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

Amended

Reg. No. 1,011,928
Registered May 27, 1975
OG Date Sep. 12, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY CHANGE OF NAME, ASSIGNMENT AND MERGER FROM WHATABURGER INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS,] CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Sep. 12, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,082 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73 037,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,116,918

Registered Apr. 24, 1979

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

Registered Dec. 18, 2001

United States Patent and Trademark Office

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109
Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P.. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,185,230

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES , IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,132

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-598,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,136

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to TBMP 2.101(a), on this date I served the foregoing PETITION FOR CANCELLATION upon Registrant and its counsel of record by causing a copy thereof to be deposited in the United States Mail, postage prepaid and addressed as follows:

What A Pizza What A Price Franchising, LLC
P.O. Box 540
Vanceburg, KY 41179

Jeffrey B. Sladkus, Esq.
The Sladkus Law Group
1827 Powers Ferry Road
Building 6, Suite 200
Atlanta, GA 30339

The 19th day of August, 2010.

Jennifer L. Elgin

EXHIBIT C-2

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

ESTTA Tracking number: **ESTTA244171**

Filing date: **10/22/2008**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership LP		
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson Hugh Dobson Lynne Dobson		
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES		

Attorney information	Christopher Kelly WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com Phone:202-719-7000

Registration Subject to Cancellation

Registration No	3155106	Registration date	10/10/2006
Registrant	Gielow Pickles, Inc 5260 Main St Lexington, MI 48450 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2005/01/26 First Use In Commerce: 2006/02/01 All goods and services in the class are cancelled, namely: Pickles

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		

Design Mark	WHATABURGER
Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 HAMBURGER SANDWICH

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28		

	HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority	NONE

		Date	
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises		

U.S. Registration No.	2160285	Application Date	03/24/1997
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich		

U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	WHATAKIDS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		
Design Mark	WHATAGUY		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services		

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		

Design Mark	WHATAKIDS
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark	WHATACOMIX		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books		

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark	WHATAPLACE! WHATATASTE!		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	2757109	Application Date	10/31/2001

Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		

U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS		
Design Mark	WHATABLENDERS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration No.	3185230	Application Date	01/07/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		
Design Mark	WHATASIZE		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		

U.S. Registration No.	3188132	Application Date	03/31/2005

Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		
Design Mark	WHATABURGER FIELD		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		
Design Mark	WHATABURGER CORPUS Field CHRISTI		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

Attachments	71667794#TMSN.gif (1 page)(bytes) 72291496#TMSN.gif (1 page)(bytes) 72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75654525#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes)

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/
Name	Christopher Kelly
Date	10/22/2008

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

WHATABURGER PARTNERSHIP L.P.	)	
	)	
Petitioner,	)	
	)	Cancellation No.: _____
v.	)	Mark: WHAT A PICKLE
	)	Reg. No.: 3,155,106
GIELOW PICKLES, INC.	)	
	)	
Respondent.	)	

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby petitions to cancel Registration No. 3,155,106 – WHAT A PICKLE for "pickles," in International Class 29, registered on the Principal Register October 10, 2006, by Gielow Pickles, Inc. ("Registrant"). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,155,106 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Petitioner").

2. Petitioner operates over 700 restaurants under the WHATABURGER name.

3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Petitioner has developed a family of WHATA marks to identify its food products and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(i) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(j) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(k) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(l) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(m) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(o) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(p) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(q) Registration No. 3,185,230 – **WHATASIZE** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(r) Registration No. 3,188,132 – **WHATABURGER FIELD** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(s) Registration No. 3,188,136 – **WHATABURGER FIELD & Design** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Many of Petitioner's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner's ownership thereof, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. The constructive and actual dates of first use of many of Petitioner's WHATABURGER and WHATA marks precede the filing date of the underlying application to Registration No. 3,155,106; the issuance date of Registration No. 3,155,106; and the dates of first use identified in the challenged registration.

11. On information and belief, Respondent has adopted and uses the designation WHAT A PICKLE in connection with food products consisting of "pickles."

12. The food products identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks;

the products in the challenged registration are not restricted as to types of customers and channels of trade; and the designation WHAT A PICKLE so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's food products, to cause confusion and mistake and to deceive.

13. The designation WHAT A PICKLE is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

14. Any defect, objection or fault found with any food product sold under the designation WHAT A PICKLE would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.

15. Petitoner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP, L.P.

By: _____

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

Attorneys for Whataburger Partnership, L.P.

Dated: October 21, 2008

12916058.1

WH00000843

EXHIBIT C-3

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov
ESTTA Tracking number: **ESTTA244223**
Filing date: **10/22/2008**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership L.P.		
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson Hugh Dobson Lynne Dobson		
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES		

Attorney information	Christopher Kelly WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com Phone:202-719-7000

Registration Subject to Cancellation

Registration No	3389431	Registration date	02/26/2008
Registrant	Agroamerica Corporation Avenida Las Americas 22-83 Zona 14 Ciudad Guatemala, GUATEMALA		

Goods/Services Subject to Cancellation

Class 031. First Use: 2006/12/03 First Use In Commerce: 2006/12/03
All goods and services in the class are cancelled, namely: Fresh fruits; Fresh vegetables

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		

Design Mark	WHATABURGER
Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 HAMBURGER SANDWICH

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises

U.S. Registration No.	2160285	Application Date	03/24/1997
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich		

U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		
Design Mark	WHATAGUY		

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	WHATAKIDS		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services		

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark	WHATACOMIX		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books		

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		

Design Mark	WHATABURGER
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services

U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS		
Design Mark	WHATABLENDERS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration No.	3185230	Application Date	01/07/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		
Design Mark	WHATASIZE		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		

U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		

Design Mark	WHATABURGER FIELD
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	WHATABURGER		
Description of Mark	NONE		

Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		

Design Mark	**WHATAKIDS**
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark	**WHATAPLACE! WHATATASTE!**		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

Attachments	71667794#TMSN.gif (1 page)(bytes) 72291496#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 76332382#TMSN.gif (1 page)(bytes) 76473190#TMSN.gif (1 page)(bytes) 76627124#TMSN.gif (1 page)(bytes) 78598999#TMSN.jpeg (1 page)(bytes) 78599894#TMSN.jpeg (1 page)(bytes) 72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes)

	75654525#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes) WATTA.PDF (6 pages)(301963 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/
Name	Christopher Kelly
Date	10/22/2008

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

WHATABURGER PARTNERSHIP L.P.	)	
	)	
Petitioner,	)	
	)	Cancellation No.: _____
v.	)	Mark: WATTA
	)	Reg. No.: 3,389,431
AGROAMERICA CORPORATION	)	
	)	
Respondent.	)	

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby petitions to cancel Registration No. 3,389,431 – WATTA for "fresh fruits; fresh vegetables," in International Class 31, registered on the Principal Register February 26, 2008, by Agroamerica Corporation ("Registrant"). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,389,431 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Petitioner").

2. Petitioner operates over 700 restaurants under the WHATABURGER name.

3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Petitioner has developed a family of WHATA marks to identify its food products, and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – WHATABURGER JR. for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

WH00000814

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(i) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(j) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(k) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(l) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(m) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(o) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(p) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(q) Registration No. 3,185,230 – **WHATASIZE** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(r) Registration No. 3,188,132 – **WHATABURGER FIELD** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(s) Registration No. 3,188,136 – **WHATABURGER FIELD & Design** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Many of Petitioner's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner's ownership thereof, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. The constructive and actual dates of first use of Petitioner's WHATABURGER and WHATA marks precede the filing date of the underlying application to Registration No. 3,389,431; the issuance date of Registration No. 3,389,431; and the dates of first use identified in the challenged registration..

11. On information and belief, Respondent has adopted and uses the designation WATTA in connection with food products consisting of "fresh fruits" and "fresh vegetables."

12. The food products identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks.

The products in the challenged registration are not restricted as to types of customers and channels of trade.

13. The designation WATTA so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's food products, to cause confusion and mistake and to deceive.

14. The designation WATTA is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

15. Any defect, objection or fault found with any food product sold under the designation WATTA would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.

16. Petitoner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

WH00000817

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP, L.P.

By: _____

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

Attorneys for Whataburger Partnership, L.P.

Dated: October 22, 2008

12905237.1

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

ESTTA Tracking number: **ESTTA314934**

Filing date: **11/03/2009**

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

Proceeding	92050094
Party	Plaintiff Whataburger Partnership L.P.
Correspondence Address	Christopher Kelly WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Other Motions/Papers
Filer's Name	Christopher Kelly
Filer's e-mail	ckelly@wileyrein.com
Signature	/ck/
Date	11/03/2009
Attachments	DOC110.PDF (2 pages)(75383 bytes)

EXHIBIT B

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

WHATABURGER PARTNERSHIP	)	
	)	
Petitioner,	)	
	)	**Cancellation No. 92/050,094**
v.	)	**Reg. No.: 3,389,431**
	)	**Mark: WATTA**
AGROAMERICA CORPORATION	)	
	)	
Respondent.	)	

STIPULATED MOTION REQUESTING AMENDMENT WITH CONSENT AND CONTINGENT DISMISSAL OF CANCELLATION PROCEEDING

Comes now Respondent, Agroamerica Corporation ("Respondent"), pursuant to 37 C.F.R. § 2.133, with the consent of Petitioner, Whataburger Partnership ("Petitioner"), and hereby requests amendment of the identification of goods in Reg. No. 3,389,431 – WATTA such that the identification is narrowed to read "fresh fruits and vegetables and not sold through restaurants, including quick and full-service restaurants."

Contingent upon the Board's acceptance of Respondent's request for amendment set forth above, Petitioner requests that the Board dismiss Cancellation No. 92/050,094.

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: _____
Christopher Kelly
Jennifer Elgin
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for Petitioner

Dated: 11/3/09

AGROAMERICA CORPORATION

By: _____
Albert Bordas, Esq.
Albert Bordas, P.A.
Patent, Trademark, and Copyright Law
5975 Sunset Drive, Suite 607
Miami, Florida 33143
Attorneys for Respondent

Dated: Oct. 29, 2009

12983933.1

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2009 I served the foregoing **STIPULATED MOTION REQUESTING AMENDMENT WITH CONSENT AND CONTINGENT DISMISSAL OF CANCELLATION PROCEEDING** by causing a copy thereof to be deposited in the United States mail, postage prepaid and addressed as follows:

Albert Bordas, Esq.
Albert Bordas, P.A.
Patent, Trademark and Copyright Law
5975 Sunset Drive, Suite 607
Miami, Florida 33143

Christopher Kelly

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

mc

Mailed: November 10, 2009

Cancellation No. 92050094

Whataburger Partnership L.P.

v.

Agroamerica Corporation

On November 3, 2009, the parties filed registrant's proposed amendment to its Registration No. 3389431, with petitioner's consent, and petitioner's withdrawal of the petition to cancel, contingent upon entry of the amendment.

By the proposed amendment registrant seeks to change the identification of goods from "Fresh fruits; Fresh vegetables" to "fresh fruits and vegetables not sold through restaurants, including quick and full-service restaurants."

Inasmuch as the amendment complies with all of the procedural requirements of Trademark Rule 2.173, it is clearly limiting in nature, and petitioner consents thereto, it is approved. See Trademark Rule 2.133(a).

The amendment will be forwarded to the Post Registration Branch of this Office for appropriate action in accordance with Section 7(e) of the Trademark Act.

The contingency in petitioner's withdrawal having now been met, the petition to cancel is dismissed in accordance with the agreement between the parties.

By the Trademark Trial and Appeal Board

EXHIBIT C-4

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

ESTTA Tracking number: **ESTTA233169**

Filing date: **08/27/2008**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Whataburger Partnership
Granted to Date of previous extension	11/05/2008
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES

Attorney information	Christopher Kelly Wiley Rein LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com Phone:202-719-7000

Applicant Information

Application No	77403811	Publication date	07/08/2008
Opposition Filing Date	08/27/2008	Opposition Period Ends	11/05/2008
Applicant	Mahaney, Christine J. 11815 Cedar Road Plainwell, MI 49080 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2007/04/03 First Use In Commerce: 2007/04/03
All goods and services in the class are opposed, namely: Dog training

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 HAMBURGER SANDWICH

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND		

	SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises		

U.S. Registration No.	2160285	Application Date	03/24/1997
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich

U.S. Registration No.	2336590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services		

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services		

U.S. Registration	2519854	Application Date	01/02/2001

No.			
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books		

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		

U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration No.	3185230	Application Date	01/07/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises

U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

Related Proceedings	None

Attachments	71667794#TMSN.gif (1 page)(bytes) 72291496#TMSN.gif (1 page)(bytes) 72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75654525#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes) 76332382#TMSN.gif (1 page)(bytes) 76473190#TMSN.gif (1 page)(bytes) 76627124#TMSN.gif (1 page)(bytes) 78598999#TMSN.jpeg (1 page)(bytes) 78599894#TMSN.jpeg (1 page)(bytes) WHATADOG.PDF (28 pages)(798642 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/
Name	Christopher Kelly
Date	08/27/2008

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

WHATABURGER PARTNERSHIP	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	Mark: WHATADOG
	)	Ser. No.: 77/403,811
CHRISTINE J. MAHANEY	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby opposes registration of application Ser. No. 77/403,811 – WHATADOG for "dog training" in International Class 41, filed February 22, 2008, by Christine J. Mahaney ("Applicant"), and published for purposes of opposition in the Official Gazette dated July 8, 2008. Whataburger Partnership will be damaged should the opposed application mature to registration. Whataburger Partnership puts forth the following grounds for opposition:

1. Whataburger Partnership is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Opposer").

2. Opposer operates over 600 restaurants under the WHATABURGER name.

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Opposer has developed a family of WHATA formative marks to identify its food products, and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA formative marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA formative marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(i) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(j) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(k) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(l) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(m) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(o) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(p) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(q) Registration No. 3,185,230 – **WHATASIZE** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(r) Registration No. 3,188,132 – **WHATABURGER FIELD** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(s) Registration No. 3,188,136 – **WHATABURGER FIELD & Design** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Many of Opposer's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Opposer has continuing common law rights in its trademark WHATADOG for frankfurter sandwiches, which Opposer used beginning in 1962 and has not abandoned.

10. Opposer has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA formative marks. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA formative marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA formative marks as being used by Opposer and to associate and identify the WHATABURGER and WHATA formative marks with Opposer. Opposer has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA formative marks.

11. Opposer's WHATABURGER and WHATA formative marks are entitled to a broad scope of protection against similar marks.

12. The constructive and actual dates of first use of Opposer's WHATABURGER and WHATA formative marks precede the filing date of, and dates of first use alleged in, the opposed application.

13. On information and belief, Applicant has adopted and commence use of the designation WHATADOG in connection with dog training services. The services recited in the opposed application are not restricted as to types of customers and channels of trade.

14. The designation WHATADOG so resembles Opposer's WHATABURGER and WHATA formative marks, including but not limited to Opposer's mark WHATADOG, in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's services, to cause confusion and mistake and to deceive.

15. The designation WHATADOG is confusingly similar to Opposer's WHATABURGER and WHATA formative marks so that registration of the designation would be inconsistent with and damaging to Opposer's exclusive and prior rights in its registered and common law marks in connection with the products and services with which they are used.

16. Any defect, objection or fault found with any service sold under the designation WHATADOG would injure the valuable reputation and goodwill Opposer has established for its products and services sold under its WHATABURGER and WHATA formative marks.

17. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that the opposed mark be denied registration.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: _____

J. Timothy Hobbs
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: August 27, 2008

12885603.1

WH00000778

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to TBMP 2.101(a), on this date I served the foregoing NOTICE OF OPPOSITION upon Applicant's counsel of record by causing a copy thereof to be deposited in the United States Mail, postage prepaid and addressed as follows:

R. Scott Keller, Esq.
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon St NW
Grand Rapids, MI 49503

The 27th day of August, 2008.

Christopher Kelly

WH00000779

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 652,137

Registered Sep. 24, 1957

Renewal Term Begins Sep. 24, 1997

TRADEMARK
:PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082
Registered May 12, 1970
Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,139.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,927

Registered May 27, 1975

TRADEMARK
SERVICE MARK
Principal Register

WHATABURGER

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).

For: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, POTATO CHIPS, CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).

For: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, in CLASS 100 (INT. CL. 42).

First use July 18, 1972; in commerce July 28, 1972.
The drawing is lined for the colors orange and brown.

Ser. No. 442,464, filed Nov. 29, 1972.

M. MERCHANT, Examiner

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

Amended

Reg. No. 1,011,925
Registered May 27, 1975
OG Date Sep. 12, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY CHANGE OF NAME, ASSIGNMENT AND MERGER FROM WHATABURGER INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS,] CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Sep. 12, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-28-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,465, FILED 11-29-1972.

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,882 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-28-1973.

SER. NO. 73-808,283, FILED 11-28-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,116,918

United States Patent and Trademark Office

Registered Apr. 24, 1979

30 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK

PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 632,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,372,372

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-837,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,185,230

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES , IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,132
Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-598,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,136

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

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

ESTTA Tracking number: **ESTTA269676**

Filing date: **03/03/2009**

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

Proceeding	91186046
Party	Defendant Mahaney, Christine J.
Correspondence Address	R. SCOTT KELLER WARNER NORCROSS & JUDD LLP 900 FIFTH THIRD CENTER 111 LYON ST NW GRAND RAPIDS, MI 49503 UNITED STATES trademarks@wnj.com
Submission	Withdrawal Of Application
Filer's Name	R. Scott Keller
Filer's e-mail	trademarks@wnj.com,skeller@wnj.com,jelgin@wileyrein.com
Signature	/rsk/
Date	03/03/2009
Attachments	WHATADOG withdrawal.pdf (1 page)(27438 bytes)

Exhibit A

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

WHATABURGER PARTNERSHIP Opposer, v. CHRISTINE J. MAHANEY Applicant.	)	Opposition No.: 91/186,046 Mark: WHATADOG Ser. No.: 77/403,811

ABANDONMENT WITH PREJUDICE OF
TRADEMARK APPLICATION SERIAL NO. 77/403,811

Applicant, Christine J. Mahaney, by and through undersigned counsel, hereby expressly abandons the above-identified application with prejudice.

Date: ~~November __, 2008~~ March 3, 2009

Respectfully submitted,

CHRISTINE J. MAHANEY

By: R Scott Keller

R. Scott Keller
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, MI 49503-2487
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

CV

Mailed: March 3, 2009

Opposition No. 91186046

Whataburger Partnership

v.

Mahaney, Christine J.

On March 3, 2009, applicant filed an abandonment of its application Serial No. 77403811 with prejudice.[1]

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

By the Trademark Trial and Appeal Board

[1] Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

EXHIBIT C-5

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

ESTTA Tracking number: **ESTTA204250**

Filing date: **04/11/2008**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Whataburger Partnership
Granted to Date of previous extension	07/09/2008
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES

Correspondence information	Christopher Kelly Partner Wiley Rein LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com Phone:202-719-7000

Applicant Information

Application No	77286324	Publication date	03/11/2008
Opposition Filing Date	04/11/2008	Opposition Period Ends	07/09/2008
Applicant	TBC Investments Inc. #412 22287 Mulholland Hwy. Calabasas, CA 91302 UNITED STATES		

Goods/Services Affected by Opposition

Class 030.
All goods and services in the class are opposed, namely: Bakery desserts; Bakery goods; Bakery products; Ice cream sandwiches; Cakes; Ice cream

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 HAMBURGER SANDWICH

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28		

	HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises		

U.S. Registration No.	2160285	Application Date	03/24/1997
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich

U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services		

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01		

	restaurant services

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books		

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		

U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration No.	3185230	Application Date	01/07/2005
Registration Date	12/19/2006	Foreign Priority	NONE

		Date	
Word Mark	WHATASIZE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		

U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

Attachments	71667794#TMSN.gif (1 page)(bytes) 72291496#TMSN.gif (1 page)(bytes) 72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75654525#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes) 76332362#TMSN.gif (1 page)(bytes) 76473190#TMSN.gif (1 page)(bytes) 76627124#TMSN.gif (1 page)(bytes) 78598999#TMSN.jpeg (1 page)(bytes) 78599894#TMSN.jpeg (1 page)(bytes) DOC244.PDF (26 pages)(760778 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ck/
Name	Christopher Kelly
Date	04/11/2008

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

WHATABURGER PARTNERSHIP Opposer, v. TBC INVESTMENTS INC. Applicant.	)	Opposition No.: _____ Mark: WHATTACAKE & Design Ser. No.: 77/286,324

NOTICE OF OPPOSITION

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby opposes registration of application Ser. No. 77/286,324 – WHATTACAKE & Design ("WHATTACAKE") for "bakery desserts; bakery goods; bakery products; ice cream sandwiches; cakes; ice cream," in International Class 30, filed September 21, 2007, by TBC Investments Inc. ("Applicant"), and published for purposes of opposition in the Official Gazette dated March 11, 2008. Whataburger Partnership will be damaged should the opposed application mature to registration. Whataburger Partnership puts forth the following grounds for opposition:

1. Whataburger Partnership is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Opposer").

2. Opposer operates over 600 restaurants under the WHATABURGER name.

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Opposer has developed a family of WHATA marks to identify its food products, and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – WHATABURGER for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – WHATABURGER & W Design for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – WHATABURGER JR. for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – WHATAMEAL for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – WHATACATCH for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,160,285 – WHATACHICK'N for "chicken sandwich," registered on the Principal Register May 26, 1998.

(i) Registration No. 2,335,590 – WHATABURGER for "restaurant services," registered on the Principal Register March 28, 2000.

(j) Registration No. 2,372,372 – WHATAKIDS for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(k) Registration No. 2,418,380 – WHATAGUY for "restaurant services," registered on the Principal Register January 2, 2000.

(l) Registration No. 2,432,191 – WHATAKIDS for "restaurant services," registered on the Principal Register February 27, 2001.

(m) Registration No. 2,519,854 – WHATACOMIX for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(n) Registration No. 2,534,527 – WHATAPLACE! WHATATASTE! for "restaurant services," registered on the Principal Register January 29, 2002.

(o) Registration No. 2,757,109 – WHATABURGER for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(p) Registration No. 2,846,139 – WHATABLENDERS for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(q) Registration No. 3,185,230 – **WHATASIZE** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(r) Registration No. 3,188,132 – **WHATABURGER FIELD** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(s) Registration No. 3,188,136 – **WHATABURGER FIELD & Design** for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Many of Opposer's pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Opposer has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Opposer and to associate and identify the WHATABURGER and WHATA marks with Opposer. Opposer has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. The constructive and actual dates of first use of Opposer's WHATABURGER and WHATA marks precede the filing date of the opposed application.

11. On information and belief, Applicant intends to adopt and commence use of the designation WHATTACAKE in connection with food products consisting of bakery desserts; bakery goods; bakery products; ice cream sandwiches; cakes; ice cream.

12. Opposer's food products include various bakery type goods and products such as biscuits, rolls, pies and cookies.

13. The food products identified in the opposed application are closely related, if not identical, to the products and services offered by Opposer under its WHATABURGER and WHATA marks. The products in the opposed application are not restricted as to types of customers and channels of trade.

14. The designation WHATTACAKE so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's food products, to cause confusion and mistake and to deceive.

15. The designation WHATTACAKE is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of the designation would be inconsistent with and damaging to Opposer's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

16. Any defect, objection or fault found with any food product sold under the designation WHATTACAKE would injure the valuable reputation and goodwill Opposer has established for its products and services sold under its WHATABURGER and WHATA marks.

17. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that the opposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: _____

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

Attorneys for Whataburger Partnership

Dated: April 10, 2008
12825260.1

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 652,137

Registered Sep. 24, 1957

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082
Registered May 12, 1970
Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950, IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,927

Registered May 27, 1975

TRADEMARK
SERVICE MARK
Principal Register

WHATABURGER

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).

For: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, POTATO CHIPS, CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).

For: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, in CLASS 100 (INT. CL. 42).

First use July 18, 1972; in commerce July 28, 1972.
The drawing is lined for the colors orange and brown.

Ser. No. 442,464, filed Nov. 29, 1972.

M. MERCHANT, Examiner

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

Amended

Reg. No. 1,011,928
Registered May 27, 1975
OG Date Sep. 12, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY CHANGE OF NAME, ASSIGNMENT AND MERGER FROM WHATABURGER INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS,] CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Sep. 12, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-28-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,465, FILED 11-29-1972.

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,396

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,083 AND 963,831.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1972; IN COMMERCE 8-29-1973.

SER. NO. 73-397,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,116,918

United States Patent and Trademark Office

Registered Apr. 24, 1979

10 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,372,372

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

4

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,534,527

United States Patent and Trademark Office Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109
Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,185,230

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES , IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,132

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-598,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

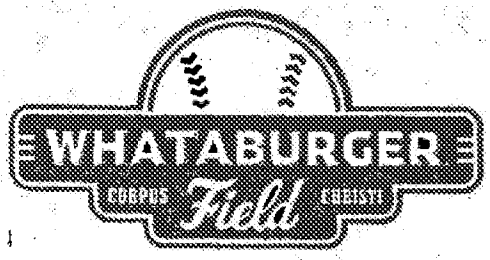
United States Patent and Trademark Office

Reg. No. 3,188,136

Registered Dec. 19, 2006

SERVICE MARK

PRINCIPAL REGISTER



WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

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

Mailed: June 5, 2008

Opposition No. **91183490**

Whataburger Partnership

v.

TBC Investments Inc.

Rochelle Ricks, Paralegal Specialist:

Answer was due in this case on *May 21, 2008*. Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint

of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmt.htm

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

RR

Mailed: July 21, 2008

Opposition No. **91183490**

Whataburger Partnership

v.

TBC Investments Inc.

On *June 5, 2008*, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

By the Trademark Trial and Appeal Board

EXHIBIT C-6

TTAB

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

WHATABURGER PARTNERSHIP	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
AGROAMERICA CORPORATION	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby opposes registration of application Ser. No. 77/057,347 – WATTAFRUIT & Design ("WATTAFRUIT") for "fresh fruits; fresh vegetables," in International Class 31, filed December 5, 2006, by Agroamerica Corporation ("Applicant"), and published for purposes of opposition in the Official Gazette dated May 15, 2007. Whataburger Partnership will be damaged should the opposed application mature to registration. Whataburger Partnership puts forth the following grounds for opposition:

1. Whataburger Partnership, successor in interest to WhataPartnership, L.P., is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Opposer").

2. Opposer operates over 500 restaurants under the WHATABURGER name in the United States and Mexico.

[redacted]
08-17-2007

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #34

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABUGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Opposer has developed a family of WHATA marks to identify its food products, and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake

WH00000693

beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – **WHATASIZE IT!** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(m) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(n) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(o) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(p) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(q) Registration No. 2,846,139 – WHATABLENDERS for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(r) Registration No. 3,185,230 – WHATASIZE for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(s) Registration No. 3,188,132 – WHATABURGER FIELD for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(t) Registration No. 3,188,136 – WHATABURGER FIELD & Design for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Opposer's Reg. Nos. 652,137; 891,082: 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; 2,160,285 and 2,335,590 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. The constructive and actual dates of first use of Opposer's WHATABURGER and WHATA marks precede the filing date of the opposed application.

11. On information and belief, Applicant intends to adopt and commence use of the designation WATTAFRUIT in connection with food products consisting of fresh fruits and fresh vegetables.

12. The food products identified in the opposed application are closely related to the products and services offered by Opposer under its WHATABURGER and WHATA marks.

The products in the opposed application is not restricted as to types of customers and channels of trade.

13. The designation WATTAFRUIT so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's food products, to cause confusion and mistake and to deceive.

14. The designation WATTAFRUIT is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of the designation would be inconsistent with and damaging to Opposer's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

15. Any defect, objection or fault found with any food product sold under the designation WATTAFRUIT would injure the valuable reputation and goodwill Opposer has established for products and services sold under its WHATABURGER and WHATA marks.

16. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that the opposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein, Account No. 501129.

WH00000696

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: _____

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

Attorneys for Whataburger Partnership

Dated: September 12, 2007
12707949.1

WH00000697

CERTIFICATE OF MAILING

I hereby certify that the Notice of Opposition is being deposited with the United States Postal Service on this 12th day of September, 2007, to the following:

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

Betty Davis

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 652,137

United States Patent and Trademark Office

Registered Sep. 24, 1957

10 Year Renewal

Renewal Term Begins Sep. 24, 1997

TRADEMARK
:PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082

Registered May 12, 1970

Renewal Approved Feb. 28, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-3-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,927

Registered May 27, 1975

TRADEMARK
SERVICE MARK
Principal Register

WHATABURGER

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).

For: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, POTATO CHIPS, CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).

For: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, in CLASS 100 (INT. CL. 42).

First use July 18, 1972; in commerce July 28, 1972.
The drawing is lined for the colors orange and brown.

Ser. No. 442,464, filed Nov. 29, 1972.

M. MERCHANT, Examiner

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,928

Registered May 27, 1975

TRADEMARK
SERVICE MARK
Principal Register

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).
First use at least as early as July 18, 1972; in commerce on or about July 28, 1972.

For: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, POTATO CHIPS, CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).
First use at least as early as July 18, 1972; in commerce on or about July 28, 1972.

For: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, in CLASS 100 (INT. CL. 42).
First use at least as early as July 28, 1972; in commerce on or about July 28, 1972.

The drawing is lined for the colors orange and brown.

Ser. No. 442,465, filed Nov. 29, 1972.

M. MERCHANT, Examiner

WH00000703

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 1,014,196

United States Patent and Trademark Office

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 897,082 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73 017,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,116,938

United States Patent and Trademark Office

Registered Apr. 24, 1979

10 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,150,703

United States Patent and Trademark Office

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,160,285

United States Patent and Trademark Office

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 3-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-684,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,534,527

United States Patent and Trademark Office

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-637,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,185,230

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES , IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,132

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-398,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,136

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

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

ESTTA Tracking number: **ESTTA314933**

Filing date: **11/03/2009**

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

Proceeding	91179671
Party	Plaintiff Whataburger Partnership
Correspondence Address	Christopher Kelly Wiley Rein LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Other Motions/Papers
Filer's Name	Christopher Kelly
Filer's e-mail	ckelly@wileyrein.com
Signature	/CK/
Date	11/03/2009
Attachments	DOC111.PDF (2 pages)(73973 bytes)

EXHIBIT A

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

WHATABURGER PARTNERSHIP	)	
	)	
Opposer,	)	
	)	Opposition No.: **91179671**
v.	)	Serial No.: **77/057,347**
	)	Mark: **WATTAFRUIT & Design**
	)	
AGROAMERICA CORPORATION	)	
	)	
Applicant.	)	

STIPULATED MOTION REQUESTING AMENDMENT WITH
CONSENT AND CONTINGENT DISMISSAL OF OPPOSITION PROCEEDING

Comes now Applicant, Agroamerica Corporation ("Applicant"), pursuant to 37 C.F.R. § 2.133, with the consent of Opposer, Whataburger Partnership ("Opposer"), and hereby requests amendment of the identification of goods in opposed application Ser. No. 77/057,347 – WATTAFRUIT & Design such that the identification is narrowed to read "fresh fruits and vegetables not sold through restaurants, including quick and full-service restaurants."

Contingent upon the Board's acceptance of Applicant's request for amendment set forth above, Opposer requests that the Board dismiss Opposition No. 91/182,997.

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: _____
Christopher Kelly
Jennifer Elgin
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for Opposer

Dated: 11/2/09

AGROAMERICA CORPORATION

By: _____
Albert Bordas, Esq.
Albert Bordas, P.A.
Patent, Trademark, and Copyright Law
5975 Sunset Drive, Suite 607
Miami, Florida 33143
Attorneys for Applicant

Dated: Oct. 29, 2009

12893061.1

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2009 I served the foregoing **STIPULATED MOTION REQUESTING AMENDMENT WITH CONSENT AND CONTINGENT DISMISSAL OF OPPOSITION PROCEEDING** by causing a copy thereof to be deposited in the United States mail, postage prepaid and addressed as follows:

Albert Bordas, Esq.
Albert Bordas, P.A.
Patent, Trademark and Copyright Law
5975 Sunset Drive, Suite 607
Miami, Florida 33143

Christopher Kelly

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

nmt/coggins

Mailed: November 9, 2009

Opposition No. 91179671

Whataburger Partnership

v.

Agroamerica Corporation

On November 3, 2009, the parties filed applicant's proposed amendment to application Serial No. 77057347, with opposer's written consent; and opposer's withdrawal of the opposition, contingent upon entry of the amendment, with applicant's written consent.

By the proposed amendment applicant seeks to change the identification of goods in International Class 31 from "Fresh fruits; Fresh vegetables" to "Fresh fruits and vegetables not sold through restaurants, including quick and full-service restaurants." Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. *See* Trademark Rule 2.133(a). The contingency in opposer's withdrawal having now been met, the opposition is dismissed without prejudice.

By the Trademark Trial and Appeal Board

EXHIBIT C-7

OIPE
FEB 07 2007
PATENT & TRADEMARK OFFICE

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78679691

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

WHATABURGER PARTNERSHIP	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
COM-PAC INTERNATIONAL, INC.	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi Way, Corpus Christi, Texas 78411, hereby opposes registration of application Ser. No. 78/679,691 – **WHATABAG** for "plastic bags for packaging," in International Class 16, filed July 27, 2005, by COM-PAC International, Inc. ("Applicant"), and published for purposes of opposition in the Official Gazette dated October 10, 2006. Whataburger Partnership will be damaged should the opposed application mature to registration. Whataburger Partnership puts forth the following grounds for opposition:

1. Whataburger Partnership, successor in interest to WhataPartnership, L.P., is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as "Opposer").

2. Opposer operates over 500 restaurants under the WHATABURGER name in the United States and Mexico.

02-07-2007
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #2

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABUGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Opposer has developed a family of WHATA marks to identify its food products, and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies, prepared by the Patent and Trademark Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – WHATABURGER for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – WHATABURGER for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – WHATASIZE IT! for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – WHATACHICK'N for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – WHATABURGER for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – WHATAKIDS for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – **WHATACHILL** for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(o) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(q) Registration No. 2,757,109 – WHATABURGER for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(r) Registration No. 2,846,139 – WHATABLENDERS for "milk shake drinks, bases for milk shake drinks and candy flavored toppings," registered on the Principal Register May 25, 2004.

(s) Registration No. 3,185,230 – WHATASIZE for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register December 19, 2006.

(t) Registration No. 3,188,132 – WHATABURGER FIELD for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

(u) Registration No. 3,188,136 – WHATABURGER FIELD & Design for "providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts," registered on the Principal Register December 19, 2006.

8. Opposer's Reg. Nos. 652,137; 891,082: 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; 2,160,285 and 2,335,590 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Applicant has adopted and uses the designation WHATABAG in connection with plastic bags for packaging.

11. The product identified in the opposed application is closely related to the products and services offered by Opposer under its WHATABURGER and WHATA marks. The product in the opposed application is not restricted as to types of customers and channels of trade.

12. The designation WHATABAG so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's goods, to cause confusion and mistake and to deceive.

13. The designation WHATABAG is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of the designation would be inconsistent with and damaging to Opposer's exclusive rights in its registered marks in connection with the products and services with which they are used.

14. Any defect, objection or fault found with any product or service sold under the designation WHATABAG would injure the valuable reputation and goodwill Opposer has established for products and services sold under its WHATABURGER and WHATA marks.

15. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that the opposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: _____

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

Attorneys for Whataburger Partnership

Dated: February 7, 2007
12557716.1

WH0000065

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 652,137

Registered Sep. 24, 1957

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082
Registered May 12, 1970
Renewal Approved Feb. 28, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,337.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950, IN COMMERCE 2-10-1953.

SER. NO. 72-281,496, FILED 3-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on May 22, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

Reg. No. 1,011,327

Registered May 27, 1975

18 Year Renewal

Renewal Term Begins May 27, 1993

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

Reg. No. 1,011,938

Registered May 27, 1975

10 Year Renewal

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK-

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,396

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4400 FARRDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,177, 891,282 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 9-29-1973.

SER. NO. 73-807,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,116,918

United States Patent and Trademark Office

Registered Apr. 24, 1979

10 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,150,703

United States Patent and Trademark Office

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,409,945

United States Patent and Trademark Office

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-232,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,938, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,185,230

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES , IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,132

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-598,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

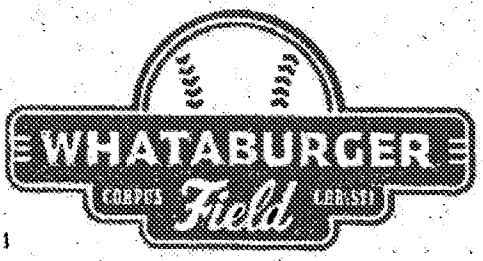
Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,136
Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER



WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

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

ESTTA Tracking number: **ESTTA173376**

Filing date: **11/07/2007**

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

Proceeding	91175612
Party	Defendant Com-Pac International, Inc.
Correspondence Address	ROBERT S. BEISER VEDDER PRICE KAUFMAN & KAMMHOLZ 222 N LASALLE ST STE 2600 CHICAGO, IL 60601-1100 UNITED STATES rzachar@vedderprice.com
Submission	Motion to Amend Application
Filer's Name	Robert S. Beiser
Filer's e-mail	rbeiser@vedderprice.com, rzachar@vedderprice.com, avilleneuve@vedderprice.com
Signature	/Robert S. Beiser/
Date	11/07/2007
Attachments	Consent Motion to Amend.pdf (2 pages)(36952 bytes)

TRADEMARK
21276.00.0011

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

WHATAPARTNERSHIP, L.P. Opposer, v. COM-PAC INTERNATIONAL, INC. Applicant.	Opposition No. 91175612 Serial No. 78/679,691

CONSENT MOTION TO AMEND APPLICATION

The parties have reached settlement of this matter by the terms of which Com-Pac International, Inc. is to amend its recitiation of goods as follows:

"Plastic bags sold empty at wholesale to commercial entities, excluding sales to the retail food service industry."

A consent motion to suspend proceedings is being filed concurrently herewith.

Dated: November 7, 2007

COM-PAC INTERNATIONAL, INC.

By: Robert S. Beiser

Robert S. Beiser
Richard A. Zachar
Vedder, Price, Kaufman & Kammholz, P.C.
222 North LaSalle Street
Chicago, Illinois 60601-1003
(312) 609-7500

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Motion to Amend Application was served on the attorney for Opposer by first class mail, postage prepaid, addressed to:

Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street N.W.
Washington, DC 20006

this 7th day of November, 2007.

Robert S. Beiser

Robert S. Beiser

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

lg

Mailed: November 16, 2007

Opposition No. 91175612

WhataPartnership, L.P.

v.

Com-Pac International, Inc.

Cheryl Goodman, Interlocutory Attorney:

On November 7, 2007, applicant filed a proposed amendment to its application Serial No. 78679691, with opposer's consent.

By the proposed amendment applicant seeks to change the identification of goods **from:**

International Class 16

"Plastic bags for packaging"

to the following

"Plastic bags sold empty at wholesale to commercial entities, excluding sales to the retail food service industry"

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(b), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

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

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm

TTAB

OFFICE
DEC 04 2007
PATENT & TRADEMARK

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

WHATAPARTNERSHIP, L.P.

Opposer,

v.

COM-PAC INTERNATIONAL, INC.,

Applicant

78679691

Opposition No. 91175612

STIPULATED WITHDRAWAL OF OPPOSITION

NOW COMES Opposer, WhataPartnership, L.P., by and through undersigned counsel and with Applicant's consent, and hereby withdraws its Notice of Opposition in the above captioned matter.

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____
Christopher Kelly
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

Attorneys for Opposer

Dated: 12/04/07

COM-PAC INTERNATIONAL, INC.

By: _____
Richard A. Zachar
Vedder, Price, Kaufman & Kammholz, P.C.
222 North LaSalle Street, Ste. 2600
Chicago, IL 60601-1003

Attorneys for Applicant

Dated: 12/04/07

12744462.1

12-04-2007
U.S. Patent & Trademark Mail Rept Dt #5

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December 2007, I served the foregoing **STIPULATED WITHDRAWAL OF OPPOSITION** by causing a copy thereof to be deposited in the United States mail, postage prepaid and addressed as follows:

Richard A. Zacher
Vedder, Price, Kaufman & Kammholz, P.C.
222 North LaSalle Street, Suite 2600
Chicago, IL 60601-1003

Betty Davis

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

lg

Mailed: December 6, 2007

Opposition No. 91175612

WhataPartnership, L.P.

v.

Com-Pac International, Inc.

On November 16, 2007, the Board approved the amendment to applicant's identification of goods in application Serial No. 78679691, and allowed opposer time in which to file a withdrawal of the opposition.

On December 4, 2007, opposer filed a withdrawal of the opposition. In view thereof, the opposition is dismissed.

By the Trademark Trial and Appeal Board

EXHIBIT C-8

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

WHATAPARTNERSHIP, L.P., Petitioner v. SUITE ONE STAFFING GROUP, INC. Respondent.	Cancellation No. _____

2005 AUG 18 A 10:30
US PATENT & TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATION

PETITION TO CANCEL

WhataPartnership, L.P., a limited partnership organized under the laws of Delaware, with offices located at 300 Delaware Avenue, Suite 900, Wilmington, DE 19801, hereby petitions the Trademark Trial and Appeal Board to cancel Registration No. 2,480,278 – WHAT-A-RACK ("Respondent's mark") for "restaurant services," registered in the Patent and Trademark Office, Principal Register, on August 21, 2001, by Suite One Staffing Group, Inc. ("Respondent"). In support of this Petition, WhataPartnership, L.P. states that it is and will continue to be damaged by the registration of Respondent's mark and petitions to cancel the subject registration on the following grounds:

A. Likelihood of Confusion between Respondent's mark and Petitioner's WHATABURGER and family of WHATA marks identified more fully below.

B. Respondent's abandonment of use of Respondent's mark and Respondent's corresponding Registration No. 2,480,278.

A. LIKELIHOOD OF CONFUSION

1. WhataPartnership, L.P. is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Petition to Cancel and licenses to Whataburger,

08-18-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #39

Inc., a Texas corporation with principal offices at 4600 Parkdale Drive, Corpus Christi, Texas 74811-9230, the right to operate and to authorize franchisees to operate restaurants using the pleaded trademarks and service marks. (WhataPartnership, L.P. and Whataburger, Inc. are hereinafter collectively referred to as "Petitioner.")

2. Petitioner, either directly or through its franchisees, operates over 500 restaurants in the United States and Mexico under the WHATABURGER name.

3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify restaurant services, but also as a trademark to identify a diverse array of food products.

5. Petitioner, prior to Respondent's adoption, use and registration of Respondent's mark, developed a family of WHATA marks to its identify food products as well as collateral goods such as printed materials and clothing.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Petitioner will submit current status and title copies, prepared by the Patent and Trademark

Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – WHATABURGER for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – WHATABURGER for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – WHATAMEAL for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – **WHATASIZE IT!** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – WHATACHICK'N for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – WHATABURGER for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – WHATAKIDS for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – WHATACHILL for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(o) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(q) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(r) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor, registered on the Principal Register May 25, 2004.

8. Petitioner's Reg. Nos. 652,137; 891,082: 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; and 2,160,285 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner's ownership of the marks, and of Petitioner's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Petitioner has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Respondent provides restaurant services under Respondent's mark.

11. Respondent's services are identical and/or otherwise closely related to Petitioner's goods and services offered under Petitioner's WHATABURGER and WHATA marks.

WH00000433

12. Respondent's mark so resembles Petitioner's WHATABURGER and WHATA marks as to be likely, when applied to Respondent's services, to cause confusion, mistake and to deceive.

13. Respondent's mark is confusingly similar to Petitioner's WHATABURGER and WHATA marks, so that continued registration of Respondent's mark would be inconsistent with and damaging to Petitioner's prior and exclusive rights in and to its WHATABURGER and WHATA marks in connection with the goods and services with which they are used.

14. Petitioner will continue to be damaged by the registration of Respondent's mark.

B. ABANDONMENT

15. Petitioner realleges and incorporates by reference Paragraphs 1 through 14 of this Petition to Cancel.

16. On information and belief, Respondent has made no commercial use of Respondent's mark in connection with restaurant services for at least three years.

17. On information and belief, Respondent's non-use and/or discontinuance of use of Respondent's mark in connection with restaurant services has been without the intention to resume use of Respondent's mark in connection with the stated services.

18. On information and belief, Respondent has abandoned use of Respondent's mark and Respondent's corresponding Registration No. 2,480,278.

WHEREFORE, Petitioner prays that its Petition be sustained and that Registration No. 2,480,278 be cancelled.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Petitioner's counsel, Wiley, Rein & Fielding, Account No. 501129.

This Petition to Cancel is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____

J. Timothy Hobbs
Christopher Kelly
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Petitioner

Dated: August 18, 2005

WRFMAIN 12365987.1

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 652,137

United States Patent and Trademark Office

Registered Sep. 24, 1957

10 Year Renewal

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082
Registered May 12, 1970
Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411. ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,927

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).
FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).
FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).
FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

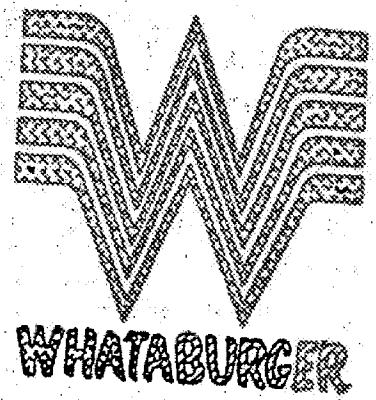
10 Year Renewal

Reg. No. 1,011,928

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 48 (INT. CL. 32).

FIRST USE 9-18-1972; IN COMMERCE 9-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANC-

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,092 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73-419,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,116,918

Registered Apr. 24, 1979

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,150,703

United States Patent and Trademark Office

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-8-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,409,945

United States Patent and Trademark Office

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411298

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,534,527

United States Patent and Trademark Office

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109
Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

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

Mailed: December 28, 2005

Cancellation No. 92044859

Registration No. 2480278

WHATAPARTNERSHIP, L.P.

v.

Suite One Staffing Group, Inc.

No appearance having been entered in response to service effected by publication in the Official Gazette, the petition to cancel is granted, and the above-identified registration will be cancelled in due course.

By the Trademark Trial and Appeal Board

Matelski/dab

U. S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Whatapartnership, L.P.

v.

Suite One Staffing Group, Inc.

Cancellation No. 92044859

Christopher Kelly of Wiley, Rein & Fielding for Whatapartnership, L.P.

Suite One Staffing Group, Inc., pro se.

The petition of Whatapartnership, L.P. having been granted on December 28, 2005, Registration No. 2480278 is hereby cancelled.

JAN 11 2006

Lynne G. Beresford
Commissioner for Trademarks

EXHIBIT C-9

TTAB

TM

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

WHATAPARTNERSHIP, L.P.,

Opposer,

v.

HALBRO, LLC

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

WhataPartnership, L.P., a limited partnership organized under the laws of Delaware, with offices located at 300 Delaware Avenue, Suite 900, Wilmington, Delaware 19801 (hereinafter "Opposer"), hereby opposes registration of Service Mark Application Serial No. 76/579,951 – **THE "WOW!...WHAT A SUB!!" BOYZ SUBS & STEAKS & Design** covering "restaurant and take-out food services" in International Class 43, filed on March 8, 2004 by Halbro, LLC, a New Jersey limited liability company with offices at Springdale & Greentree Roads, Cherry Hill, New Jersey 08003 (hereinafter "Applicant"), and published for purposes of opposition in the *Official Gazette of the U.S Patent and Trademark Office* dated June 28, 2005 at page 1292. Opposer will be damaged should the opposed application mature to registration and puts forth the following grounds for opposition:

1. Opposer is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses to Whataburger, Inc., a Texas corporation with principal offices at 4600 Parkdale Drive, Corpus Christi, Texas 74811-9230, the right to operate and to authorize franchisees to operate restaurants using the pleaded marks and service marks.

08/12/2005 SWILSON1 00000013 501129 76579951
01 FC:6402 300.00 DA

08-05-2006
U.S. Patent & TMO/TM Mail Rcpt Dt. #72

WRFMAIN 12361673.1

sound, connotation and commercial impression as to be likely, when applied to the food services identified in the opposed application, to cause confusion and mistake and to deceive.

13. Applicant's proposed mark is confusingly similar to Opposer's WHATABURGER and family of WHATA marks so that registration of Applicant's mark would be inconsistent with and damaging to Opposer's exclusive rights in and to its registered marks in connection with the products and services with which they are used.

14. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's proposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited to the deposit account of Wiley Rein & Fielding, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for WhataPartnership, L.P.

Dated: August 5, 2005

2. Opposer, either directly or through its franchisees, operates over 500 restaurants in the United States and Mexico under the WHATABURGER name.

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify restaurant services, but also as a trademark to identify a diverse array of food products.

5. Opposer has developed a family of WHATA marks to its identify food products, and collateral goods such as printed materials and clothing.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies, prepared by the Patent and Trademark Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – **WHATASIZE IT!** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – **WHATACHILL** for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(o) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(q) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(r) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor, registered on the Principal Register May 25, 2004.

8. Opposer's Reg. Nos. 652,137; 891,082: 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; and 2,160,285 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Applicant has adopted and is using the designation THE "WOW!...WHAT A SUB!!" BOYZ SUBS & STEAKS & Design in connection with restaurant and take-out food services, the services identified in the opposed application.

11. Some of Applicant's services as identified in its opposed application are identical to the services offered to the public by Opposer under its WHATABURGER and various WHATA marks and other products and services of the parties are closely related in law.

12. Applicant's mark THE "WOW!...WHAT A SUB!!" BOYZ SUBS & STEAKS & Design so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance,

WH00000482

sound, connotation and commercial impression as to be likely, when applied to the food services identified in the opposed application, to cause confusion and mistake and to deceive.

13. Applicant's proposed mark is confusingly similar to Opposer's WHATABURGER and family of WHATA marks so that registration of Applicant's mark would be inconsistent with and damaging to Opposer's exclusive rights in and to its registered marks in connection with the products and services with which they are used.

14. Opposer will be damaged by registration of Applicant's proposed designation.

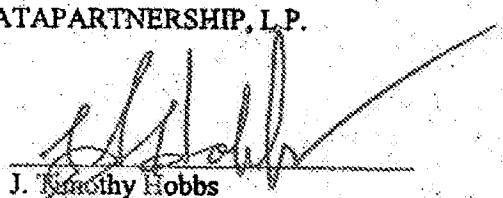
WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's proposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited to the deposit account of Wiley Rein & Fielding, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: 

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for WhataPartnership, L.P.

Dated: August 5, 2004

WH00000483

EXHBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 652,137

United States Patent and Trademark Office

Registered Sep. 24, 1957

10 Year Renewal

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082
Registered May 12, 1970
Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 653,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,927

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

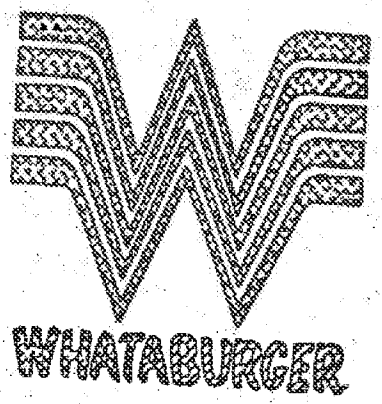
10 Year Renewal

Reg. No. 1,011,928

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 49 (INT. CL. 32).

FIRST USE 7-16-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,062 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73-107,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,116,918

United States Patent and Trademark Office

Registered Apr. 24, 1979

10 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,150,703

United States Patent and Trademark Office

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK

PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,409,945

United States Patent and Trademark Office

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900.
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

TTAB

LAW OFFICES OF
SUZANNE C. CUMMINGS
& ASSOCIATES, P.C.

FRANCHISE LAW & BUSINESS ADVISORS

TWO MAIN STREET, SUITE 300
STONEHAM, MASSACHUSETTS 02180
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Telephone: 781. 481. 9090
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Facsimile: 781. 481. 9191

SUZANNE C. CUMMINGS
Of Counsel:
CHERI L. CROW
ANGELA L. SAINDON
LINDSEY M. STRAUS

September 28, 2007

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Opposition No. 91166232
Serial No. 76/579,951

Dear Sir or Madam:

Enclosed please find the following:

1. Assented-To Motion To Amend Application and Suspend Proceedings; and
2. Applicant's Memorandum In Support of Motion To Amend Application.

If you have any questions or concerns, please contact me at (508) 896-8008 or via e-mail at lstraus@scummingslaw.com.

Thank you for your attention to this matter.

Sincerely,

Lindsey M. Straus, Esq.

cc: Suzanne C. Cummings, Esq.
Mr. Mark Halpin

[redacted]
10-10-07

U.S. Patent & TMOfc/TM Mail Rcpt Dt #34

3

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

WHATAPARTNERSHIP, L.P.
Opposer

V.

HALBRO, LLC
Applicant

OPPOSITION NO. 91166232
SERIAL NO. 76/579,951

ASSENTED-TO MOTION TO AMEND
APPLICATION AND SUSPEND PROCEEDINGS

Halbro, LLC ("Applicant") moves, pursuant to TBMP §§ 514.01 and 514.02, and 37 C.F.R. §2.133(a), with the consent of the Opposer, Whatapartnership, L.P. ("Opposer"), to amend its application for registration of a composite mark under Serial No. 76/579,951 by deleting the word "What" after the ellipsis and substituting the contraction "That's" with the remainder of the original mark unchanged. The proposed amended mark and a specimen of the amended mark as used in commerce are attached as **Exhibits A** and **B** respectively. In addition, Applicant requests, pursuant to TBMP §510.03(a), that the TTAB suspend proceedings under the Opposition while it considers Applicant's motion, which, if granted, will be dispositive of this proceeding. The grounds for the proposed amendment are set forth in the attached Memorandum of Law.

WHEREFORE, Applicant respectfully requests that the TTAB grant its motion to amend its application under Serial No. 76/579,951 and suspend this proceeding while such motion is under consideration by the Board.

WH00000464

HALBRO, LLC
By its attorney,

Lindsey Marie Straus, Esquire
Law Office of Suzanne C. Cummings & Associates, P.C.
114 Harwich Road
Brewster, MA 02631
(508) 896-8008

Dated: Sept 28, 2007

ASSENTED TO:

WHATAPARTNERSHIP, L.P.
By its attorney,

Christopher Kelly, Esquire CMS
Wiley Rein LLP
1776 K Street NW
Washington, DC 2006
(202) 719-7115

Dated: September 28, 2007

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

WHATAPARTNERSHIP, L.P.
Opposer

V.

HALBRO, LLC
Applicant

OPPOSITION NO. 91166232
SERIAL NO. 76/579,951

APPLICANT'S MEMORANDUM IN SUPPORT
OF MOTION TO AMEND APPLICATION

I. NATURE AND STATUS OF PROCEEDINGS

Applicant, Halbro, LLC ("Applicant"), has applied for registration of a composite mark (Serial No. 76, 579,951) for restaurant and take-out food services in International Class 43, with the mark consisting of the words "The 'Wow! ... What a Sub!!' Boyz Subs and Steaks" and design ("original mark"). The original mark was published for purposes of opposition in the Official Gazette of the U.S. Patent and Trademark Office dated June 28, 2005.

On August 5, 2005, WhataPartnership, L.P. ("Opposer"), filed a Notice of Opposition in which it opposed registration on the grounds that the original mark for which Applicant sought registration was, because of the inclusion of the phrase "What A," confusingly similar to Opposer's WHATABURGER and family of WHATA registered marks.

Since that time, Applicant and Opposer have conducted discovery, and more recently, have engaged in settlement discussions pursuant to which Applicant, with the consent of the Opposer, has elected to move this Board for permission to amend its application to seek registration of a mark consisting of the words "The 'Wow! ... That's a Sub!!' Boyz Subs and

WH00000466

Steaks," in order to eliminate the likelihood of confusion with Opposer's mark, and, in support of this motion, has submitted a new drawing (**Exhibit A** to Applicant's motion) and a new in-use specimen (**Exhibit B** to Applicant's motion).

For the reasons stated below, Applicant contends that the amended mark qualifies for registration under 37 C.F.R. §2.72(a) and the amendment should be approved by this Board.

II. ARGUMENT

A. AMENDMENT IS PERMITTED UNDER 37 C.F.R. §2.133

1. Applicant has obtained the consent of Opposer.

TBMP §514.01 provides in pertinent part that, "[t]he amendment of any application ... which is the subject of an inter parties proceeding before the Board is governed by 37 C.F.R. §2.133.

37 C.F.R. §2.133 provides in pertinent part that:

> (a) An application subject to an opposition may not be amended in substance ... with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board ....

As shown on the motion, the Applicant has obtained the consent of the Opposer to the amendment.

2. Amendment of the original drawing of the mark is permitted under 37 C.F.R. §2.72(a) because it does not materially alter the mark.

In addition to obtaining the Opposer's consent, TBMP §514.01 provides that "[a] proposed amendment to any application ... which is the subject of an inter parties proceeding must also comply with all applicable rules and statutory provisions ... includ[ing] 37 C.F.R. §§2.71-2.75 in the case of a proposed amendment to an application. ..."

WH00000467

37 C.F.R. §2.72(a) provides in pertinent part as follows:

> (a) In an application based on use in commerce under section 1(a) of the Act, the applicant may amend the description or drawing of the mark only if:
>
> * * *
>
> (2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

As stated by this Board most recently in In re Who? Vision Systems, Inc., 57 USPQ2d 1211 (TTAB 2000):

> the test for determining whether an amendment is a material alteration [for purposes of §2.72(a)] was articulated in Visa Int'l Serv. Ass'n v. Life-Code Systems, Inc., 220 USPQ 740 (TTAB 1983):'The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark.' 220 USPQ at 743. 'That is, the new and old forms of the mark must create essentially the same commercial impression.' Id. at 1218, quoting In re Nationwide Indus. Inc., 6 USPQ 1882, 1885 (TTAB 1988).

The requirements for amendment under §2.72(a)(2) are met in this case because the amendment proposed by Applicant does not materially alter the mark:

The *only* difference between the two marks is that the contraction "That's" has replaced the word "What." Indeed, the two marks appear identical, and it would only be by close comparison of the two that the word substitution would even be apparent. A side-by-side comparison of the old and new mark reveals instantly that the overall design of the mark has not changed. Compare In re Dillard Department Stores, Inc., 33 USPQ2d 1052 (Comm'r Pats. 1993) (if a design is integrated into a mark and is a distinctive feature necessary for recognition of the mark, then a change in design would materially alter the mark; proposed deletion of highly

WH00000468

stylized display features of mark "IN.VEST.MENTS" held to be a material alteration); Ex parte Kadane-Brown, Inc., 79 USPQ 307 (Comm'r Pats. 1948)(proposed amendment of "Blue Bonnet" mark to delete a star design and to change the picture of the girl held a material alteration).

The commercial impression created by the original mark is that a customer will be so impressed when she bites into one of the Applicant's subs that she will exclaim "Wow! ... What a Sub!!" The exclamatory language is clearly meant to give the impression that The Boyz's subs are the best anyone has ever eaten and are so far superior to other subs that, when one is consumed for the first time, it is as if a sub is being tasted for the very first time.

The commercial impression of the new mark is exactly the same: that subs made by The Boyz will prompt a customer to be so impressed upon eating one that she will exclaim, "Wow! ... That's a Sub!!" The substitution of "That's" for "What" does nothing to alter the commercial impression of the mark. Compare In re Who?, 57 USPQ2d at 1218 (amendment rejected where words "Tactilesense" and "Tacilesense" have "distinctly different commercial impressions"). Any difference from using the word "That" instead of "What," when referring to the word "Sub," is negligible. See In re Finlay Fine Jewelry Corp., 41 USPQ2d 1152 (TTAB 1996)("NEW YORK JEWELRY OUTLET" not a material alteration of "NY JEWELRY OUTLET"); In re Larios, S.A., 35 USPQ2d 1214 (TTAB 1995) ("VINO DE MALAGA LARIOS" and design not a material alteration of "GRAN VINO MALAGA LARIOS" with similar design). Because the old and new mark's meaning or connotation are identical, the new mark does not materially alter the old mark. See In re Finlay Fine Jewelry, 41 USPQ2d at 1154 ("NEW YORK" and "NY" interchangeable and create the same commercial impression despite being visually and phonetically different); compare In re Who?, 57 USPQ2d at 1217 ("The phonetic dissimilarities between the two terms, as well as their obviously dissimilar meanings or

WH00000469

connotations, preclude any finding that the two terms create essentially the same commercial impression.").

Because the two marks are virtually identical, and because the words "What" and "That" are generic, republication of the amended mark will not be necessary to give fair notice to third parties. See In re Vienna Sausage Mfg. Co., 16 USPQ2d 2044, 2047 (TTAB 1990)("The question of whether a new search is necessitated by the amendment is a factor to be considered but is not the determining element of whether or not to accept the amendment.").

This case is virtually on all fours with In re Larios. Like the amendment allowed by the Board in that case, "given the manner in which [the words "What" and "That"] are used in the overall design schemes of the respective marks, including the identity in both their relative size and their arrangement immediately [after] ...the word [Wow! and before the words "a Sub!"], ... substituting [That's] for [What] changes nothing of trademark significant. The *modified* mark [The "Wow! ... That's a Sub!!" Boyz Subs and Steaks] and design still contains the essence of the mark [The "Wow! What a Sub!!" Boyz Subs and Steaks] and design, and creates the impression of being essentially the same mark." 35 USPQ2d at 1218.

III. CONCLUSION

For the reasons stated above, Applicant Halbro, Inc., respectfully requests this Board grant its assented-to motion to amend its application under Serial No. 76/579,951 to replace the original drawing and specimen with the amended drawing and new specimen attached as **Exhibits A** and **B** to its motion.

WH00000470

HALBRO, LLC
By its attorney,

Lindsey Marie Straus, Esquire
Law Office of Suzanne C. Cummings
114 Harwich Road
Brewster, MA 02631
(508) 896-8008

Dated: September 28, 2007

CERTIFICATE OF SERVICE

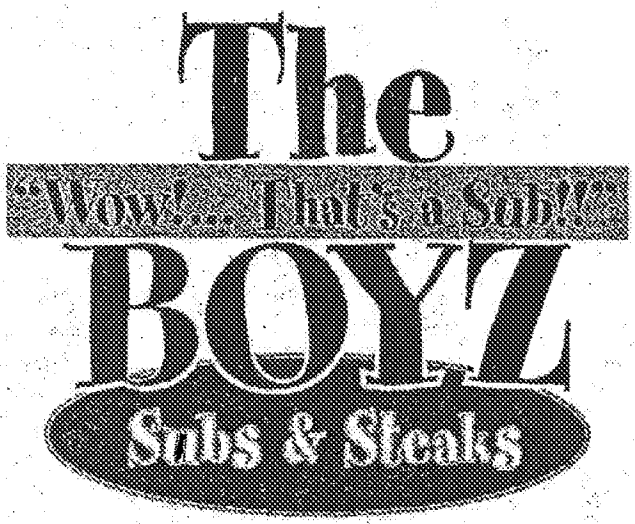
I, Lindsey M. Straus, hereby certify that on this date I served the above-captioned Answer by mailing a copy, postage pre-paid, via First Class Mail to Christopher Kelly, Wiley Rein LLP, 1176 K Street, N.W., Washington, D.C. 20006.

Dated: September 28, 2007

Lindsey Marie Straus, Esq.

WH00000471

Exhibit A



Beverages

Small 1.19 Large 1.79

SNAPPLE ICED TEA $1.37

Coffee 75¢
Hot Tea 65¢

Salad

"All Salads Served on top of Fresh Lettuce, Tomato & Onions"

Veggie Salad (plain Omelet) $4.55
Seafood/Shrimp Salad $5.65
Tuna Salad (Homemade) $5.85
Chicken Salad $5.85
Egg Salad $5.05

All Salads available as Subs or on Fresh Pita Bread

Try Our "SUB-IN-A TUB"
The Contents of any Cold Sub Without the Bread
*Same Price as the Sub

Whole Pickle ..... $.75

Fried Items

Chicken Wings

7 ..... $4.90 14 ..... $9.80
Optional ..... Blue Cheese Dressing, Hot Sauce, BBQ, Honeymustard

Chicken Breast Tenders

5 ..... $5.35 10 ..... $10.70
Optional ..... Honeymustard, BBQ Sauce, Hot Sauce

French Fries ordered with wings or tenders ..... Add $1.25

MOZZARELLA STIX

3 pc. ..... $2.80 8 pc. $5.35

FRIES

French Fries ... $1.75 Cheese Fries ... $2.35
Pizza Fries ... $2.95

"Homemade" Soup

Soup Of The Day

Small 12 oz. $2.50
Large 16 oz. $2.85

Salads

Potato - Macaroni - Cole Slaw

Mini 3 oz. 35¢
Small 10 oz. 95¢
Large 20 oz. $1.85

Party Subs & Trays!!

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The "Wow!... That's a Sub!!" BOYZ

Subs & Steaks

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(Springdale & Greentree Roads) Cherry Hill NJ 08003

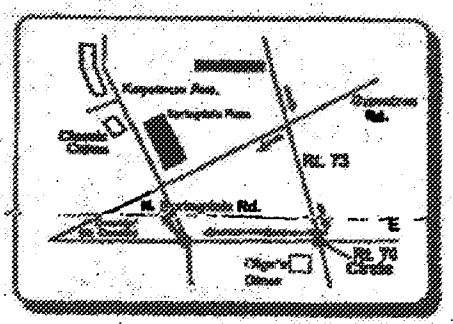
(856) 751-3434
"Fax us your order" 751-3456

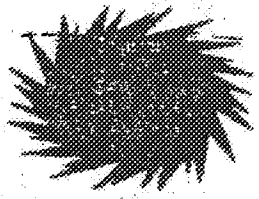
"Wow!... That's a Sub!!"

Franchises Available www.wowsubboyz.com

Monday - Friday
10:00 AM- 4:00 PM

Saturday
Sunday
Closed





WH00000473

TTAB

LAW OFFICES OF
SUZANNE C. CUMMINGS
& ASSOCIATES, P.C.

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Facsimile: 781. 481. 9191

SUZANNE C. CUMMINGS
Of Counsel:
CHERI L. CROW
ANGELA L. SAINDON
LINDSEY M. STRAUS

November 7, 2007

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Opposition No. 91166232
Serial No. 76/579,951

Dear Sir or Madam:

Enclosed please find Applicant's Second Assented-To Motion To Amend Application and Suspend Proceedings.

If you have any questions or concerns, please contact me at (508) 896-8008 or via e-mail at lstraus@scummingslaw.com.

Thank you for your attention to this matter.

Sincerely,

Lindsey M. Straus, Esq.

cc: Suzanne C. Cummings, Esq.
Mr. Mark Halpin
Christopher Kelly, Esq.

[redacted]
11-09-2007

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #

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

WHATAPARTNERSHIP, L.P.
Opposer

V.

HALBRO, LLC
Applicant

OPPOSITION NO. 91166232
SERIAL NO. 76/579,951

SECOND ASSENTED-TO MOTION TO AMEND APPLICATION AND SUSPEND PROCEEDINGS

Halbro, LLC ("Applicant") moves, pursuant to TBMP §§ 514.01 and 514.02, TMEP §806.03(c), and 37 C.F.R. §2.133(a), and with the consent of the Opposer, Whatapartnership, L.P., to further amend its application for registration of a composite mark under Serial No. 76/579,951 to substitute §1(b) as the basis for registration. For its grounds, Applicant states that such amendment is appropriate under the circumstances because Applicant's original basis under §1(a) for registration of the amended mark (as submitted with Applicant's original Assented-To-Motion to Amend Application and Suspend Proceedings) fails because the amended mark was not in use in commerce when the application was filed.

In accordance with the requirements of 15 U.S.C. §1051(b)(3)(B) and 37 C.F.R. §§ 2.20 and 2.34(a)(2), Applicant attaches as **Exhibit A** the Declaration of Lindsey M. Straus stating that the Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods/services since the application filing date.

WH00000460

WHEREFORE, Applicant respectfully requests that the TTAB grant its motion to further amend its application under Serial No. 76/579,951 and suspend this proceeding while such motion is under consideration by the Board.

HALBRO, LLC
By its attorney,

Lindsey Marie Straus, Esquire
Law Office of Suzanne C. Cummings & Associates, P.C.
114 Harwich Road
Brewster, MA 02631
(508) 896-8008

Dated: November 7, 2007

ASSENTED TO:

WHATAPARTNERSHIP, L.P.
By its attorney,

Christopher Kelly, Esquire LMS
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7115

Dated: November 7, 2007

TTAB

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

WHATAPARTNERSHIP, L.P., Opposer, v. HALDRO, LLC, Applicant.	Opposition No.	91166232
	Serial No.:	76/579,951
	Mark:	THE "WOW! THAT'S A SUB!" BOYZ SUBS & STEAKS & Design (as amended)

STIPULATED WITHDRAWAL OF OPPOSITION

NOW COMES Opposer, Whatapartnership, L.P., by and through undersigned counsel and with Applicant's consent, and hereby withdraws its Notice of Opposition in the above-captioned matter.

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____
J. Timothy Hobbs
Christopher Kelly
Jennifer Elgin
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for Opposer

Dated: 3/21/08

HALDRO, LLC

By: _____
Lindsey M. Dykas
Law Offices of Suzanne C. Cummings & Associates
Two Main Street, Suite 300
Stoneham, MA 02180
Attorneys for Applicant

Dated: March 20, 2008

03-24-2008

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

CERTIFICATE OF MAILING

I hereby certify that the Stipulated Withdrawal of Opposition is being deposited with the United States Postal Service on this 21st day of March, 2008 to the following:

Commissioner for Trademarks

P.O. Box 1451
Alexandria, VA 22313-1451

Barbara N. Carlton

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

tdc

Mailed: March 27, 2008

Opposition No. 91166232

WhataPartnership, L.P.

v.

Halbro, LLC

In view of the stipulation filed March 24, 2008, the opposition is dismissed.

By the Trademark Trial and Appeal Board

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address: http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm

EXHIBIT C-10

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

WHATAPARTNERSHIP, L.P.,	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
SCJ ENTERPRISES, INC.	)	
	)	
Applicant.	)	TTAB

OIPE JC25 JUL 21 2004 PATENT & TRADEMARK OFFICE

NOTICE OF OPPOSITION

WhataPartnership, L.P., a limited partnership organized under the laws of Delaware, with offices located at 300 Delaware Avenue, Suite 900, Wilmington, DE 19801, hereby opposes registration of application Ser. No. 76/511,370 – **WHATTA JERK X-TREME BEEF JERKY & Design** for "meats and processed foods, namely, beef jerky," in International Class 29, filed on May 2, 2003 by SCJ Enterprises, Inc. (hereinafter "Applicant"), and published for purposes of opposition in the Official Gazette dated March 23, 2004. WhataPartnership, L.P. will be damaged should the opposed application mature to registration. WhataPartnership, L.P. puts forth the following grounds for opposition:

1. WhataPartnership, L.P. is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses to Whataburger, Inc., a Texas corporation with principal offices at 4600 Parkdale Drive, Corpus Christi, Texas 74811-9230, the right to operate and to authorize franchisees to operate restaurants using the pleaded trademarks and service marks. (WhataPartnership, L.P. and Whataburger, Inc. are hereinafter collectively referred to as "Opposer.")

2. Opposer, either directly or through its franchisees, operates over 500 restaurants in the United States and Mexico under the WHATABURGER name.

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01 FC:6402 300.00 BA

07-21-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABUGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants.

5. Opposer has developed a family of WHATA marks to its identify food products, and collateral goods such as printed materials and clothing.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies, prepared by the Patent and Trademark Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake

beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – **WHATASIZE IT!** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – **WHATACHILL** for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(o) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

WH00000603

(q) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(r) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor, registered on the Principal Register May 25, 2004.

8. Opposer's Reg. Nos. 652,137; 891,082; 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; and 2,160,285 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Applicant intends to adopt and commence use of WHATTA JERK X-TREME BEEF JERKY & Design in connection with the food product identified in the opposed application.

11. The product identified in the opposed application is substantially identical to many of the products offered by Opposer under its WHATABURGER and WHATA marks and otherwise closely related to Opposer's remaining products and restaurant services.

12. The proposed designation WHATTA JERK X-TREME BEEF JERKY & Design so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to the food product identified in the opposed application, to cause confusion and mistake and to deceive.

13. Applicant's proposed designation is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of Applicant's proposed designation

would be inconsistent with and damaging to Opposer's exclusive rights in and to its registered marks in connection with the products and services with which they are used.

14. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's proposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein & Fielding, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for WhataPartnership, L.P.

Dated: July 21, 2004
WRFMAIN 12214202.1

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

7

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

United States Patent and Trademark Office

Reg. No. 2,519,854
Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,432,191

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,418,380

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 2,409,945

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,372,372

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411298I

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,335,590

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411298I

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,150,703

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,116,918

Registered Apr. 24, 1979

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,082 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73 087,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

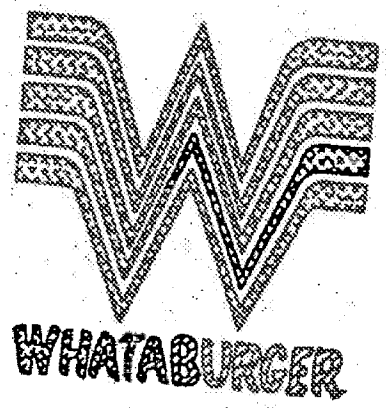
10 Year Renewal

Reg. No. 1,011,928

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK-

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,927

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4408 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).
FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, (POTATO CHIPS, CORN CHIPS,) FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).
FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).
FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,083
Registered May 12, 1970
Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411. ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN) DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 73-291,498, FILED 2-28-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 652,137

Registered Sep. 24, 1957

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

USPTO JC174
APR 05 2005
TRADEMARK OFFICE

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

TTAB

WHATAPARTNERSHIP, L.P.

Opposer,

v.

SCJ ENTERPRISES, INC.

Applicant.

Opposition No. 91161,459
Serial No. 76/511,370

NOTICE OF ABANDONMENT OF OPPOSED APPLICATION

Attached please find the document titled "Request for Express Abandonment" relating to opposed application Ser. No. 76/511,370, the subject of the captioned proceeding now pending before the Board. The attached document was filed electronically on March 14, 2005, and appears to have been directed to the law office responsible for examination of the application and not to the Board. On the chance that the attached document may not come to the Board's attention, Opposer respectfully submits the Request for Express Abandonment herewith for action by the Board under Trademark Rule 2.135.

Respectfully submitted

WHATAPARTNERSHIP, L.P.

By: _____

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street NW
Washington DC 20006
202.719.7000

Attorneys for Opposer

04-05-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

CERTIFICATE OF SERVICE

I, Christopher Kelly, hereby certify that on this 5th day of April, 2005, I caused a copy of the foregoing Abandonment to be mailed via first-class postage prepaid mail to the following:

Einat Ronen
Resch Polster Alpert & Berger
1039 Santa Monica Blvd., 4th Fl.
Los Angeles, CA 90025-5058

Christopher Kelly

WRFMAIN 12314988.1

WH00000597

Davis, Betty

From: teas@uspto.gov
Sent: Monday, March 14, 2005 7:29 PM
To: Einat Ronen
Subject: Received Your Request for Express Abandonment (Withdrawal) of Application Form

We have received your Request for Express Abandonment form below.
Please amend application serial number(s) 76511370 as follows:

PTO Form 2202 (Rev 09/04)
OMB Control #0651-0009 (Exp. 08/30/2005)

Request for Express Abandonment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76511370
LAW OFFICE ASSIGNED	LAW OFFICE 116
PUBLISH FOR OPPOSITION DATE	03/23/2004
MARK SECTION	
MARK	WHATTA JERK X-TREME BEEF JERKY (stylized and/or with design)
REQUEST FOR EXPRESS ABANDONMENT SECTION	
STATEMENT	The applicant hereby expressly abandons the application for trademark registration made under the serial number identified above.
SIGNATURE SECTION	
SIGNATURE	/Einat Ronen/
SIGNATORY NAME	Einat Ronen
SIGNATORY DATE	03/14/2005
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Mar 14 19:28:59 EST 2005
TEAS STAMP	USPTO/REA-69.226.83.121-20050314192859179751-76511370-250569f6619b1942dd97b213c5f0a27825-N/A-N/A-20050314192716555033

3/29/2005

TEAS XML SUBMISSION

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proceeding), the fact that an application has been expressly abandoned shall not, in any proceeding in the United State Patent and Trademark Office, affect any right that the applicant may have in the mark which is the subject of the abandoned application.</boilerplate-text>
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<filing-description>Request for Express Abandonment</filing-description>
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Thank you,

The TEAS support team
Mon Mar 14 19:28:59 EST 2005
STAMP: USPTO/REA-69.226.83.121-20050314192859179751-76511370-250569f6619b1942dd97b213c5f0a27825-N/A-N/A-20050314192716555033

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

Ricks

Mailed: April 14, 2005

Opposition No. 91161459

WHATAPARTNERSHIP L.P.

v.

SCJ Enterprises, Inc.

On April 5, 2005, applicant filed an abandonment of its application Serial No. 76511370.

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

By the Trademark Trial and Appeal Board

EXHIBIT C-11

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

WHATAPARTNERSHIP, L.P.,	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
SCJ ENTERPRISES, INC.	)	
	)	
Applicant.	)	TTAB

NOTICE OF OPPOSITION

WhataPartnership, L.P., a limited partnership organized under the laws of Delaware, with offices located at 300 Delaware Avenue, Suite 900, Wilmington, DE 19801, hereby opposes registration of application Ser. No. 76/511,369 – **WHATTA JERK X-TREME BEEF JERKY** for "meats and processed foods, namely, beef jerky," in International Class 29, filed on May 2, 2003 by SCJ Enterprises, Inc. (hereinafter "Applicant"), and published for purposes of opposition in the Official Gazette dated March 23, 2004. WhataPartnership, L.P. will be damaged should the opposed application mature to registration. WhataPartnership, L.P. puts forth the following grounds for opposition:

1. WhataPartnership, L.P. is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses to Whataburger, Inc., a Texas corporation with principal offices at 4600 Parkdale Drive, Corpus Christi, Texas 74811-9230, the right to operate and to authorize franchisees to operate restaurants using the pleaded trademarks and service marks. (WhataPartnership, L.P. and Whataburger, Inc. are hereinafter collectively referred to as "Opposer.")

2. Opposer, either directly or through its franchisees, operates over 500 restaurants in the United States and Mexico under the WHATABURGER name.

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07-21-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABUGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants.

5. Opposer has developed a family of WHATA marks to its identify food products, and collateral goods such as printed materials and clothing.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies, prepared by the Patent and Trademark Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake

WH00000561

beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – **WHATASIZE IT!** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – **WHATACHILL** for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(o) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

WH00000562

(q) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(r) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor, registered on the Principal Register May 25, 2004.

8. Opposer's Reg. Nos. 652,137; 891,082; 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; and 2,160,285 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Applicant intends to adopt and commence use of WHATTA JERK X-TREME BEEF JERKY in connection with the food product identified in the opposed application.

11. The product identified in the opposed application is substantially identical to many of the products offered by Opposer under its WHATABURGER and WHATA marks and otherwise closely related to Opposer's remaining products and restaurant services.

12. The proposed designation WHATTA JERK X-TREME BEEF JERKY so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to the food product identified in the opposed application, to cause confusion and mistake and to deceive.

13. Applicant's proposed designation is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of Applicant's proposed designation

would be inconsistent with and damaging to Opposer's exclusive rights in and to its registered marks in connection with the products and services with which they are used.

14. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's proposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein & Fielding, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for WhataPartnership, L.P.

Dated: July 21, 2004
WRFMAIN 12215005.1

WH00000564

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,846,139

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411298!

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

United States Patent and Trademark Office

Reg. No. 2,519,854

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,432,191

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,418,380

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 2,409,945

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,372,372

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,335,590

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK

PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,150,703

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,116,918

Registered Apr. 24, 1979

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,082 AND 943,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73 [illegible],283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

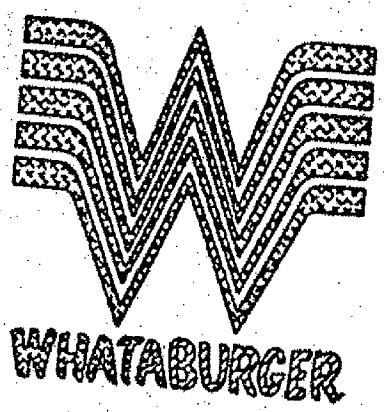
10 Year Renewal

Reg. No. 1,011,928

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-18-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,927

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, (POTATO CHIPS, CORN CHIPS,) FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082

Registered May 12, 1970

Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 652,137

Registered Sep. 24, 1957

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Q11614555
3/14/05

PTO Form 2202 (Rev 09/04)

OMB Control #0651-0009 (Exp. 08/30/2005)

Request for Express Abandonment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76511369
LAW OFFICE ASSIGNED	LAW OFFICE 116
PUBLISH FOR OPPOSITION DATE	03/23/2004
MARK SECTION	
MARK	WHATTA JERK X-TREME BEEF JERKY
REQUEST FOR EXPRESS ABANDONMENT SECTION	
STATEMENT	The applicant hereby expressly abandons the application for trademark registration made under the serial number identified above.
SIGNATURE SECTION	
SIGNATURE	/Einat Ronen/
SIGNATORY NAME	Einat Ronen
SIGNATORY DATE	03/14/2005
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Mar 14 19:24:40 EST 2005
TEAS STAMP	USPTO/REA-69.226.83.121-20050314192440582199-76511369-25050a2c7fa246a61d6fefa3fa4049f34e-N/A-N/A-20050314192340121032

PTO Form 2202 (Rev 09/04)

OMB Control #0651-0009 (Exp. 06/30/2005)

Request for Express Abandonment

To the Commissioner for Trademarks:

MARK: WHATTA JERK X-TREME BEEF JERKY
SERIAL NUMBER: 76511369

By submission this request, the applicant hereby expressly abandons the application for trademark registration made under the serial number identified above. Except as provided in 37 C.F.R Section 2.135 (concerning the commencement of an opposition, concurrent use, or interference proceeding), the fact that an application has been expressly abandoned shall not, in any proceeding in the United State Patent and Trademark Office, affect any right that the applicant may have in the mark which is the subject of the abandoned application.

Signature: /Einat Ronen/ Date: 03/14/2005
Signatory's Name: Einat Ronen

Serial Number: 76511369
Internet Transmission Date: Mon Mar 14 19:24:40 EST 2005
TEAS Stamp: USPTO/REA-69.226.83.121-2005031419244058
2199-76511369-25050a2c7fa246a61d6fefa3fa
4049f34e-N/A-N/A-20050314192340121032

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.	)	

EXHIBIT C
File 7 of 7

EXHIBIT C-12

OIPE JC99
DEC 23 2004
PATENT & TRADEMARK OFFICE

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

WHATAPARTNERSHIP, L.P.,	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
R. A. "SKEET" NORET	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

WhataPartnership, L.P., a limited partnership organized under the laws of Delaware, with offices located at 300 Delaware Avenue, Suite 900, Wilmington, DE 19801, hereby opposes registration of application Ser. No. 78/340,067 – **CHIHUAHUA WHAT A SANDWICH & Design** for "chili sandwich sold for consumption at a movie theatre" in International Class 30, filed on December 12, 2003 by R.A. "Skeet" Noret (hereinafter "Applicant"), and published for purposes of opposition in the Official Gazette dated September 28, 2004. WhataPartnership, L.P. will be damaged should the opposed application mature to registration. WhataPartnership, L.P. puts forth the following grounds for opposition:

1. WhataPartnership, L.P. is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses to Whataburger, Inc., a Texas corporation with principal offices at 4600 Parkdale Drive, Corpus Christi, Texas 74811-9230, the right to operate and to authorize franchisees to operate restaurants using the pleaded trademarks and service marks. (WhataPartnership, L.P. and Whataburger, Inc. are hereinafter collectively referred to as "Opposer.")

2. Opposer, either directly or through its franchisees, operates over 500 restaurants in the United States and Mexico under the WHATABURGER name.

01/04/2005 KGIBBONS 00000038 501129 78340067
01 FC:6402 300.00 DA

12-23-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #96

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABUGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify restaurant services, but also as a trademark to identify a diverse array of food products.

5. Opposer has developed a family of WHATA marks to its identify food products, and collateral goods such as printed materials and clothing.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies, prepared by the Patent and Trademark Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

(c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – **WHATAMEAL** for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – **WHATACATCH** for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – **WHATASIZE IT!** for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – **WHATACHICK'N** for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – **WHATABURGER** for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – **WHATAKIDS** for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – **WHATACHILL** for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – **WHATAGUY** for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – **WHATAKIDS** for "restaurant services," registered on the Principal Register February 27, 2001.

(o) Registration No. 2,519,854 – **WHATACOMIX** for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for "restaurant services," registered on the Principal Register January 29, 2002.

(q) Registration No. 2,757,109 – **WHATABURGER** for "charitable fundraising services," registered on the Principal Register August 26, 2003.

(r) Registration No. 2,846,139 – **WHATABLENDERS** for "milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor, registered on the Principal Register May 25, 2004.

8. Opposer's Reg. Nos. 652,137; 891,082: 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; and 2,160,285 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Applicant has adopted and is using the designation CHIHUAHUA WHAT A SANDWICH & Design in connection with the food product identified in the opposed application.

11. The product identified in the opposed application is substantially identical to many of the products offered by Opposer under its WHATABURGER and WHATA marks and closely related to Opposer's remaining products and restaurant services.

12. The proposed designation CHIHUAHUA WHAT A SANDWICH & Design so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to the food product identified in the opposed application, to cause confusion and mistake and to deceive.

WH00000509

13. Applicant's proposed designation is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of Applicant's proposed designation would be inconsistent with and damaging to Opposer's exclusive rights in and to its registered marks in connection with the products and services with which they are used.

14. Opposer will be damaged by registration of Applicant's proposed designation.

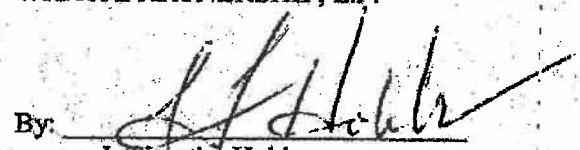
WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's proposed mark be denied registration.

Opposer hereby authorizes the filing fee of THREE HUNDRED DOLLARS ($300.00) and any additional charges necessary to institute this proceeding to be debited to the deposit account of Wiley Rein & Fielding, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: 

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for WhataPartnership, L.P.

Dated: December 22, 2004
WRFMAIN 12273932.1

WH00000510

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 652,137

United States Patent and Trademark Office

Registered Sep. 24, 1957

10 Year Renewal

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT. CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082
Registered May 12, 1970
Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 652,137.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,927

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1972.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,928

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK-

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,014,196

Registered June 24, 1975

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ, GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137, 891,082 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE 8-29-1973.

SER. NO. 73 107,283, FILED 11-26-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 8, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,116,918

Registered Apr. 24, 1979

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,150,703

United States Patent and Trademark Office

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,409,945

United States Patent and Trademark Office

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109
Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: MILK SHAKE DRINKS, BASES FOR MILK SHAKE DRINKS AND CANDY FLAVORED TOPPINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945, AND OTHERS.

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

ESTTA Tracking number: **ESTTA29820**

Filing date: **04/05/2005**

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

Proceeding	91163686
Party	Defendant Noret, R.A. "Skeet" Noret, R.A. "Skeet" P.O. Box 1303 Lamesa, TX 79331
Correspondence Address	R.A. "Skeet" Noret P.O. Box 1303 Lamesa, TX 79331 shnsch@aol.com
Submission	Withdrawal Of Appplication
Filer's Name	Shelly Schedler
Filer's e-mail	shnsch@aol.com
Signature	/R.A./Skeet/Noret
Date	04/05/2005
Attachments	Stewart.pdf (1 page)

April 5, 2005

United States Patent and Trademark Office
Trademark Trial and Appeal Board
Pauline Stewart, Legal Assistant
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Opposition No. 91163686
Serial No. 78340067

Dear Ms. Pauline Stewart:

I am hereby filing our express abandonment of the above-referenced mark.
I can be reached at (972) 334-3480 should you have any questions or concerns.

Sincerely,

Shelly Noret Schedler

Cc: R.A. Noret
Attorneys for WHATAPARTNERSHIP, L.P.

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

Ricks

Mailed: April 7, 2005

Opposition No. 91163686

WhataPartnership L.P.

v.

Noret, R.A. "Skeet"

On April 5, 2005, applicant filed an abandonment of its application Serial No. 78/340,067.[1]

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

By the Trademark Trial and Appeal Board

---

[1] Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

EXHIBIT C-13

Serial/Reg. No.: _____ Docket No. _____

Mark: _____

Applicant/Registrant: _____

The following papers received in the U.S. PTO Mail Room on the date stamped hereon:

1. ___ Filing form for new application in I.C. (s) ____
   Basis (circle applicable):
   Intent to Use / Use / Priority under Sec. 44d
   ___ Statement and Declaration
   ___ Executed Power of Attorney
   ___ Drawing of Proposed Mark
   ___ Specimens of Mark as Used
2. ___ Response to Office Action
   ____ Certified copy of Foreign registration
   ____ Amendment to the application
3. ___ Communication
   ____ Statement of Use
   ____ Amendment to Allege Use
4. ___ Request Charge to Firm Deposit Account (501129)
   Amount: $ _____
5. ___ Request for Conversion
   ___ Of Filing Receipt
   ___ Of Certificate of Registration
6. ___ Status Inquiry
7. ___ Declaration under Section 8
8. ___ Declaration under Section 9
9. ___ Declaration under Section 15
10. ___ Assignment of Interest in Trademark
11. ___ Petition for Extension of Time
    ___ To File Notice of Opposition - ___ days
    ___ To File Statement of Use
12. ___ Other Extension of Time:
13. ___ Notice of Opposition
14. ___ Notice of Appeal
15. ___ Petition for Cancellation
16. ___ Check # _____ $ _____
17. ___ Other: _____

OIPE
MAY 14 2004
PATENT & TRADEMARK OFFICE 2176

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

WHATAPARTNERSHIP, L.P.,	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
W.A.B. BAKERY FRANCHISING LTD.	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

WhataPartnership, L.P., a limited partnership organized under the laws of Delaware, with offices located at 300 Delaware Avenue, Suite 900, Wilmington, DE 19801, hereby opposes registration of application Ser. No. 78/200,218 – **WHAT A BAGEL & Design** for the following goods and services:

> Bagels, breads, donuts, pastries, and beverages, namely, coffee, including specialty coffees, tea and hot chocolate, in International Class 30;
>
> Restaurant services, namely, operating bakeries, bakery shops, bagel shops, donut shops and pastry/patisserie takeout restaurants, in International Class 43,

filed on January 6, 2003 by W.A.B. Bakery Franchising Ltd. (hereinafter "Applicant"), and published for purposes of opposition in the Official Gazette dated March 16, 2004. WhataPartnership, L.P. will be damaged should the opposed application mature to registration. WhataPartnership, L.P. puts forth the following grounds for opposition:

1. WhataPartnership, L.P. is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Notice of Opposition and licenses to Whataburger, Inc., a Texas corporation with principal offices at 4600 Parkdale Drive, Corpus Christi, Texas 74811-9230, the right to operate and to authorize franchisees to operate restaurants using the

pleaded trademarks and service marks. (WhataPartnership, L.P. and Whataburger, Inc. are hereinafter collectively referred to as "Opposer.")

2. Opposer, either directly or through its franchisees, operates over 500 restaurants in the United States and Mexico under the WHATABURGER name.

3. Opposer, through its predecessors in interest, adopted and commenced use of the WHATABUGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants.

5. Opposer has developed a family of WHATA marks to its identify food products, and collateral goods such as printed materials and clothing.

6. Based on Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Opposer's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Opposer is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law. Opposer will submit current status and title copies, prepared by the Patent and Trademark Office, of its pleaded registrations at the appropriate time in this proceeding. Photocopies are attached hereto as Exhibit A.

(a) Registration No. 652,137 – WHATABURGER for "hamburger sandwich," registered on the Principal Register September 24, 1957.

(b) Registration No. 891,082 – WHATABURGER for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.

PAGE 4/25 * RCVD AT 6/30/2004 3:38:45 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/4 * DNIS:7457083 * CSID:Wiley Rein Fielding * DURATION (mm-ss):06-08

WH00000627

(c) Registration No. 1,011,927 – WHATABURGER for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(d) Registration No. 1,011,928 – WHATABURGER & W Design for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.

(e) Registration No. 1,014,196 – WHATABURGER JR. for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

(f) Registration No. 1,116,918 – WHATAMEAL for "prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises," registered on the Principal Register April 24, 1979.

(g) Registration No. 1,206,344 – WHATACATCH for "breaded fish fillets suitable for fish sandwiches" and "prepared fish sandwich for consumption on or off the premises," registered on the Principal Register August 24, 1982.

(h) Registration No. 2,150,703 – WHATASIZE IT! for "restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises," registered on the Principal Register April 14, 1998.

(i) Registration No. 2,160,285 – WHATACHICK'N for "chicken sandwich," registered on the Principal Register May 26, 1998.

(j) Registration No. 2,335,590 – WHATABURGER for "restaurant services," registered on the Principal Register March 28, 2000.

(k) Registration No. 2,372,372 – WHATAKIDS for "clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats," registered on the Principal Register August 1, 2000.

(l) Registration No. 2,409,945 – WHATACHILL for "frozen flavored fruit drinks offered for sale exclusively through applicant's restaurants," registered on the Principal Register December 5, 2000.

(m) Registration No. 2,418,380 – WHATAGUY for "restaurant services," registered on the Principal Register January 2, 2000.

(n) Registration No. 2,432,191 – WHATAKIDS for "restaurant services," registered on the Principal Register February 27, 2001.

PAGE 5/25 * RCVD AT 6/30/2004 3:36:45 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/4 * DNIS:7487093 * CSID:Wiley Rein Fielding * DURATION (mm-ss):06-08

(o) Registration No. 2,519,854 – WHATACOMIX for "comic books and children's activity books," registered on the Principal Register December 18, 2001.

(p) Registration No. 2,534,527 – WHATAPLACE! WHATATASTE! for "restaurant services," registered on the Principal Register January 29, 2002.

(q) Registration No. 2,757,109 – WHATABURGER for "charitable fundraising services," registered on the Principal Register August 26, 2003.

8. Opposer's Reg. Nos. 652,137; 891,082: 1,011,927; 1,011,928; 1,014,196; 1,116,918; 1,206,344; 2,150,703; and 2,160,285 are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Opposer's ownership thereof, and of Opposer's exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. By reason of Opposer's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, Opposer has become known and recognized as the owner of the aforesaid marks.

10. On information and belief, Applicant intends to adopt and commence use of the designation WHAT A BAGEL & Design in connection with the products and services identified in the opposed application.

11. The products and services identified in the opposed application are substantially identical to the products and services offered by Opposer under its WHATABURGER and WHATA marks.

12. The proposed designation WHAT A BAGEL & Design so resembles Opposer's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to the products and services identified in the opposed application, to cause confusion and mistake and to deceive.

13. Applicant's proposed designation is confusingly similar to Opposer's WHATABURGER and WHATA marks so that registration of Applicant's proposed designation would be inconsistent with and damaging to Opposer's exclusive rights in and to its registered marks in connection with the products and services with which they are used.

14. Opposer will be damaged by registration of Applicant's proposed designation.

WHEREFORE, Opposer prays that its opposition be sustained and that Applicant's proposed mark be denied registration.

Opposer hereby authorizes the filing fee of SIX HUNDRED DOLLARS ($600.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein & Fielding, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

WHATAPARTNERSHIP, L.P.

By: _____

J. Timothy Hobbs
Christopher Kelly
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for WhataPartnership, L.P.

Dated: May 13, 2004
WRFMAIN 12203568.1

PAGE 7/25 * RCVD AT 6/30/2004 3:36:45 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/4 * DNIS:7457093 * CSID:Wiley Rein Fielding * DURATION (mm-ss):05-08

EXHIBIT A

Int. Cl.: 30
Prior U.S. Cl.: 46
United States Patent and Trademark Office
10 Year Renewal

Reg. No. 652,137
Registered Sep. 24, 1957
Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY ASSIGNMENT: CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 971,082

Registered May 22, 1973

Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4400 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE BY ASSIGNMENT, MERGER AND CHANGES OF NAME FROM DOBSON, GRACE W. (UNITED STATES CITIZEN), DOING BUSINESS AS WHATABURGER DRIVE INNS, CORPUS CHRISTI, TX

OWNER OF U.S. REG. NO. 632,171.

FOR: RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950; IN COMMERCE 1-10-1950.

SER. NO. 72-251,694, FILED 2-20-1948.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 27, 1990

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 1,011,917

Registered May 27, 1975

Renewal Term Begins May 27, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH WHATABURGER, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 49 (INT. CL. 32).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46 (INT. CLS. 29 AND 30).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

FOR: RESTAURANT AND DRIVE-IN RESTAURANT SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 7-18-1972; IN COMMERCE 7-28-1972.

SER. NO. 72-442,464, FILED 11-29-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 2, 1996.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cls: 29, 30, 32 and 42

Prior U.S. Cls: 45, 46 and 100

United States Patent and Trademark Office

Reg. No. 1,011,938

Registered May 27, 1975

19 Year Renewal

Renewal Term Begins May 27, 1994

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411 BY CHANGE OF NAME, ASSIGNMENT AND MERGER WITH LUTZ, GRACE DOBSON (UNITED STATES CITIZEN), AKA GRACE W. DOBSON, CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 46 (INT. CL. 32).

FIRST USE 7-28-1972; IN COMMERCE 7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANK-

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 5, 1994.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4400 FARRDALE DRIVE
CORPUS CHRISTI, TX 78411, BY CHANGE OF NAME AND ASSIGNMENT FROM LUTZ GRACE DOBSON (UNITED STATES CITIZEN) CORPUS CHRISTI, TX

OWNER OF U.S. REG. NOS. 452,337, 991,082 AND 963,811.

FOR: PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-1-1972; IN COMMERCE 6-29-1972.

SER. NO. 73-001,253, FILED 11-28-1973.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Aug. 2, 1995.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30
Prior U.S. Cl.: 46
United States Patent and Trademark Office
10 Year Renewal

Reg. No. 1,116,918
Registered Apr. 24, 1979
Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981, BY MERGER WITH WHATABURGER SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).
FIRST USE 7-1-1975; IN COMMERCE 7-1-1975.

SER. NO. 73-135,977, FILED 1-20-1978.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 30, 1999.

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,206,344
Registered Aug. 24, 1982

TRADEMARK
Principal Register

WHATACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES, in CLASS 30 (U.S. Cl. 46).

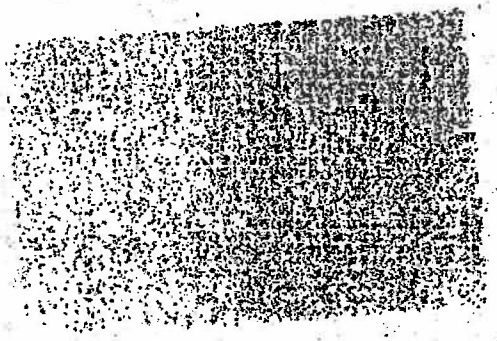
First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner



Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,150,703

United States Patent and Trademark Office

Registered Apr. 14, 1998

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE IT!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-4-1994; IN COMMERCE 7-4-1994.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,843, FILED 3-24-1997.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: CHICKEN SANDWICH, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NOS. 652,137, 1,116,918 AND OTHERS.

SER. NO. 75-261,144, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285 AND OTHERS.

SER. NO. 75-674,147, FILED 4-5-1999.

DAVID ETTINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,372,372

United States Patent and Trademark Office

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: CLOTHING FOR CHILDREN, NAMELY, SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVERALLS, ONESIES, BASEBALL CAPS AND HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,409,945

United States Patent and Trademark Office

Registered Dec. 5, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATACHILL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411298I

FOR: FROZEN FLAVORED FRUIT DRINKS OFFERED FOR SALE EXCLUSIVELY THROUGH APPLICANT'S RESTAURANTS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-0-1997; IN COMMERCE 10-0-1997.

SER. NO. 75-621,986, FILED 1-15-1999.

MITCHELL FRONT, EXAMINING ATTORNEY.

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

SERVICE MARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

TRADEMARK
PRINCIPAL REGISTER

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: COMIC BOOKS AND CHILDREN'S ACTIVITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

EDWARD TIMBERLAKE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411-2981

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-857,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109

Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FOR: CHARITABLE FUNDRAISING SERVICES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

RUSS HERMAN, EXAMINING ATTORNEY

Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006

PHONE 202.719.7000
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Facsimile

TO: JEAN BROWN	FAX NUMBER: 703-746-7093	PHONE NUMBER:
FROM		PHONE NUMBER
DATE	6/30/2004 3:38:10 PM	TOTAL PAGE COUNT 25
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MESSAGE

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91161129

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant:	W.A.B. Bakery Franchising Ltd.
Mark:	What A Bagel!
Ser. No.:	78200218
Filing Date:	January 6, 2003

Box Responses - No Fee
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
Attn: Katherine Stoides, Examining Attorney
Law Office 110
United States Patent and Trademark Office
(571) 272-9230

LETTER OF EXPRESS ABANDONMENT

Pursuant to 37 C.F.R. § 2.68, Applicant hereby expressly abandons the above identified Application.

Respectfully Submitted,

By: _____

Scott R. Austin
Florida Bar No. 0434140
ARNSTEIN & LEHR LLP
2424 North Fed. Highway, Suite 462
Boca Raton, Florida 33431
Telephone (561) 322-6900

Dated: April 1, 2005
Our Ref: 20681.0007
Express Mail Number: ED 723059405

28763_1

[redacted]

04-04-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #64

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

em

Mailed: May 26, 2005

Opposition No. 91161129

WhataPartnership, L.P.

v.

W.A.B. Bakery Franchising Ltd.

On April 4, 2005, applicant filed an abandonment of its application Serial No. 78200218 under Trademark Rule 2.68.[1]

However, the applicable rule is Trademark Rule 2.135, which provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and

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[1] Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

registration to applicant is refused.

By the Trademark Trial and Appeal Board