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

Proceeding	91189023
Party	Plaintiff Whataburger Partnership
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Date	01/28/2011
Attachments	Notice_of_Reliance--4.pdf ( 4 pages )(155108 bytes ) ExhibitD1 - FINAL.pdf ( 89 pages )(9518414 bytes ) ExhibitD2 - FINAL.pdf ( 21 pages )(6302434 bytes ) ExhibitD3 - FINAL.pdf ( 22 pages )(2706061 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: <b>WHATTA WING!</b>
SARKIS AVAKIAN,	)	
	)	
Applicant.	)	

**Opposer’s Fourth Notice of Reliance**

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, 37 C.F.R. § 2.120(j), Opposer WHATABURGER PARTNERSHIP, hereby gives notice of its reliance upon excerpts of the discovery deposition of the Applicant, Sarkis Avakian, and related exhibits, taken under oath on Friday, June 25, 2010, attached as Exhibit D.

The excerpts and exhibits in the attached Exhibit D (redacted) and their relevance to this proceeding are discussed below:

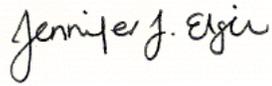
Deposition Page:Line Nos.; Exhibits	Relevance
5:2-3, 7:15-8:2	Swearing of witness; identification of witness
60:10-61:14; 62:3-13	Description of restaurant services that are the subject of the opposed application, including description of restaurant services as “fast casual” - shows identity and relatedness of services between Applicant’s and Opposer’s mark
63:19-64:1, 64:17-66:7; Deposition Exhibit 7	Identification and authentication of photographs of Applicant’s restaurant - shows identity and relatedness of services between Applicant’s and Opposer’s mark
66:8-17	Description of restaurant services that are the subject of the opposed application - shows identity and relatedness of services between Applicant’s and Opposer’s mark
99:4-12; 99:20-101:16; Deposition Exhibit 10	Description of colors used by Applicant for mark, including red and a “darker shade of yellow” - shows similarity of Applicant’s and Opposer’s marks

<b>Deposition Page:Line Nos.; Exhibits</b>	<b>Relevance</b>
103:3-17; Deposition Exhibit 11	Comparison of Applicant’s mark and Opposer’s mark as used in commerce, including similar colors and fonts (Exhibit 11 is authenticated in the testimony deposition of Richard Scheffler, to be submitted) - shows similarity of Applicant’s and Opposer’s marks
106:8-19; Deposition Exhibit 12	Advertisements used by Opposer showing prominent use of yellow for WHATA formative marks (Exhibit 12 is authenticated in the testimony deposition of Richard Scheffler, to be submitted) - shows similarity of Applicant’s and Opposer’s marks
107:4-9; 108:2-18	Meaning and connotation of Applicant’s mark: “Whatta” as used in Applicant’s mark means something nice, and an abbreviation for “what a”; and “wing” is descriptive of chicken wings – shows identical connotation of WHATTA in Applicant’s and Opposer’s marks, and descriptive nature of “wing” as used in Applicant’s mark
118:20-119:8; Deposition Exhibit 14	Identification and authentication of menu used in Applicant’s WHATTA WING! restaurant
121:13-122:8	Identification of McDonald’s restaurants as in the same general channels of trade as Applicant’s restaurant services – shows identity and relatedness of channels of trade between Applicant’s and Opposer’s mark
126:22-127:17	Discussion of Applicant’s restaurant menu; admission that Applicant sells meal combinations under names WHATTA SPECIAL and WHATTA DEAL – shows identity and relatedness of services between Applicant’s and Opposer’s mark, and Applicant’s expanded use of WHATTA as a source identifier
127:18-130:16; Deposition Exhibit 15	Admission that food items sold in Applicant’s WHATTA WING restaurant are also sold in Opposer’s WHATABURGER restaurants (Exhibit 12 is authenticated in the testimony deposition of Richard Scheffler, to be submitted) – shows identity and relatedness of services between Applicant’s and Opposer’s mark
130:17-132:13; Deposition Exhibit 16	Identification and authentication of Applicant’s “Facebook” page showing that Applicant prominently promotes hamburgers as a menu item on Facebook page and restaurant window – shows identity and relatedness of services between Applicant’s and Opposer’s mark

<b>Deposition Page:Line Nos.; Exhibits</b>	<b>Relevance</b>
132:21-134:1; 134:5-135:6; 135:18-19; 136:4-9, 15-16; 137:7-9; 137:13-22; Deposition Exhibit 1	Admission that products and services listed in Opposer’s WHATA formative trademark registrations are also provided by Applicant under the opposed WHATTA WING! Mark (Exhibit 1 is the Notice of Opposition, already of record in this proceeding) – shows identity and relatedness of services between Applicant’s and Opposer’s marks
140:5-8; 141:17-143:21; Deposition Exhibit 17	Identification and authentication of file wrapper for opposed application (already of record in this proceeding); admission that Applicant’s application is for “restaurant services” and Applicant offers “restaurant services” under the opposed mark – shows identity and relatedness of services between Applicant’s and Opposer’s marks
143:22-144:2	Admission that mark first used by Applicant no earlier than November 14, 2007 – shows priority of Opposer’s marks
146:5-14; 147:9-151:1; 151:9-152:22; 153:9-160:14; 162:9-14; 164:20-165:2	Description of limited advertising and promotional activities (costing no more than \$3500) as limited to East Arlington, Mass.; Description of unsolicited media coverage as limited to Boston metropolitan or maybe parts of New England; admission that most customers are “local”– shows limited possibility for actual confusion between Applicant’s and Opposer’s marks
160:15-161:6; Deposition Exhibit 18	Identification and authentication of Applicant’s website at <whattawing.com>
161:20-162:1	Admission that Applicant’s website at <whattawing.com> is accessible in entire country – shows likelihood that consumers looking for information about Whataburger may be diverted to Applicant’s website
197:18-22	Admission that Opposer’s WHATABURGER mark has been in use in commerce longer than Applicant’s mark WHATTA WING has been in use in commerce – shows priority of mark
198:11-199:4; 201:5-7	Admission that Applicant’s opposed application and Opposer’s registrations for “restaurant services” are for the same services – shows identity of services between Applicant’s and Opposer’s marks
214:2-9	Admission that Applicant does not track search engine results or hits – shows that it is not possible to determine whether consumers actually are being diverted from Whataburger to Applicant’s website

Respectfully submitted,

WHATABURGER PARTNERSHIP

By:   
\_\_\_\_\_  
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Attorneys for Whataburger Partnership

Dated: January 28, 2011

# **EXHIBIT D**

Capital Reporting Company  
Avakian, Sarkis 06-25-2010

1

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

\* \* \* \* \*

WHATABURGER PARTNERSHIP,

Opposition No. 91189023

Opposer,

vs.

Serial No. 77/494179

Mark: Whatta Wing!

SARKIS AVAKIAN,

Applicant.

\* \* \* \* \*

DEPOSITION OF SARKIS AVAKIAN, called for examination by counsel for the Opposer, at the offices of Sherin & Lodgen LLP, 101 Federal Street, Boston, Massachusetts, before Judith A. Twomey, RPR, of Capital Reporting Company, a Notary Public within and for the Commonwealth of Massachusetts, beginning at 9:25 a.m. on Friday, June 25, 2010, when were present on behalf of the respective parties:



Capital Reporting Company  
Avakian, Sarkis 06-25-2010

1 I N D E X

2	DEPONENT	PAGE
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4	Examination by Ms. Elgin:	5

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10 E X H I B I T S

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16

17

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19

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21

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(\*Exhibits attached to transcript.)

1 P R O C E E D I N G S

2 SARKIS AVAKIAN, having been duly sworn,

3 was examined and testified as follows:

● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● ● [REDACTED]

[REDACTED]

15 Q. Why don't you give us your full legal name  
16 for the record.

17 A. First name Sarkis, S-a-r-k-i-s; last name  
18 Avakian, A-v-a-k-i-a-n.

19 Q. Your residence address?

20 A. 151 Coolidge Ave, Apartment 701,  
21 Watertown, Mass.

22 Q. And your business address?



● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

10 Q. Okay. Can you describe your restaurant  
11 for me? If I'm standing on the street, what am I  
12 looking at?

13 A. A small clean -- it's not fast food, and  
14 it's not a restaurant.

15 Q. What is it?

16 A. I guess the proper term is fast casual.

17 Q. When you say it's not a restaurant --  
18 we've been referring to it as a restaurant -- why do  
19 you say it's not a restaurant?

20 A. It's not a restaurant because my theory of  
21 a restaurant is something larger with table service.

22 Q. Okay. So, in your definition, does that



● [REDACTED]

● [REDACTED]

3 Q. Okay. So somebody would come in, pick up  
4 a menu, look through it?

5 A. Mm hmm.

6 Q. And then what do they do?

7 A. Order.

8 Q. At the counter?

9 A. Yes.

10 Q. And they pay at the counter also?

11 A. Correct.

12 Q. And then what do they do?

13 A. Sit until their food gets cooked.

● [REDACTED]



1 7. Just take a minute and look through that.

● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]

17 Q. Okay, have you had a minute to look  
18 through Exhibit Number 7?

19 A. I have. Looks familiar, yeah.

20 Q. Are these accurate pictures of your  
21 restaurant?

22 A. Except the flower pots in front have been

1 fixed.

2 Q. Flower pots in front?

3 A. First page, in front of the window. There  
4 you go.

5 Q. These are flower pots?

6 A. They've been fixed. Those were broken.

7 Q. So there are flower pots there now?

8 A. Yes.

9 Q. Anything else that looks out of place or  
10 different?

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. So, on the second page, is this the front  
15 of your restaurant?

16 A. Yes, it is.

17 Q. How did you decide what to put on the  
18 front?

19 A. Where on the front?

20 Q. In the window.

21 A. Pretty cut and dry, no? Business name and  
22 then phone number.

1 Q. And you have some other stuff on there,  
2 too. It says: "Subs, burgers, wraps, salads, free  
3 delivery."

4 A. Right.

5 Q. How did you decide what to put on there?

6 A. One describes what we have, and the other  
7 is a phone number for delivery.

8 Q. You mentioned that people come up to the  
9 counter and order and then go sit down, and you call  
10 them up when the order is done. How long, usually,  
11 from order to service?

12 A. We tell everybody it takes ten minutes.

13 Q. And what is it normally?

14 A. Five to ten minutes, because everything is  
15 cooked to order.

16 Q. Do you do takeout?

17 A. Yes, we do.

● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]

● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]

4 Q. Do you always use your "Whatta Wing!" in  
5 yellow, "Whatta Wing!" name in yellow?

6 A. Yes.

7 Q. Looking at your sauce menu, you use it in  
8 red here, correct?

9 A. Yes.

10 Q. So that's an exception to the rule?

11 A. Because yellow, you wouldn't be able to  
12 read.

● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]

20 MS. ELGIN: [REDACTED] Can you mark  
21 that as an exhibit.

22 (Exhibit 10 marked for identification.)

Capital Reporting Company  
Avakian, Sarkis 06-25-2010

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1 Q. What is that, Mr. Avakian?

2 A. My napkins.

3 Q. What color is that?

4 A. A shade of yellow.

5 Q. What shade of yellow?

6 A. I don't know specifically; it's a shade of  
7 yellow.

8 Q. Orangy yellow?

9 A. No, yellow.

10 Q. The sticker that's on there, what color is  
11 that?

12 A. It's a shade of yellow.

13 Q. An orangy yellow?

14 A. The sticker?

15 Q. Yeah.

16 MS. GARKO: Objection.

17 A. I'm not a paint brander, so I don't know.

18 Q. Do you know what the color is that you  
19 ordered on your napkins?

20 A. A shade of yellow. I have the sticker,  
21 the code number.

22 Q. You have the code number. Do you have the

1 pan tone number on it?

2 A. The what number?

3 Q. The color number, like if it's got a  
4 number that's attached to that?

5 A. Probably, yeah.

6 Q. Okay.

7 A. We just couldn't do exact -- we couldn't  
8 do bright yellow because it wouldn't show on the  
9 napkin.

10 Q. So it's a darker --

11 A. A different shade of yellow, right.

12 Q. Why is there a circle R on that napkin?

13 A. I had to order 300,000 napkins when I  
14 filed the application, and they had said that it  
15 didn't exist. I guess I jumped the gun because I  
16 needed to order the napkins, so.

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

3 (Exhibit 11 marked for identification.)

4 Q. You've been handed what's been marked as  
5 deposition Exhibit Number 11. Have you ever seen  
6 this before?

7 A. No, I haven't.

8 Q. I'll represent that this is a picture of  
9 one of my client's franchise restaurants.

10 A. Mm hmm.

11 Q. Were you aware that Whataburger also uses  
12 its mark in yellow?

13 A. I was not.

14 Q. Were you also aware that they use a very  
15 similar font to yours?

16 MS. GARKO: Objection.

17 A. No.

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

8 Q. I've handed you what's been marked --  
9 about to hand you what's been marked as Exhibit 12.  
10 And this is an advertisement, two advertisements,  
11 actually, for two of my client's products. One is a  
12 Buffalo Whatachick'n sandwich, and the other is a  
13 Honey Mustard Whatachick'n sandwich. Have you ever  
14 seen these before?

15 A. No, I haven't.

16 Q. Were you aware that my client also uses  
17 yellow pretty prominently in its advertising?

18 MS. GARKO: Objection.

19 A. Yellow is pretty standard in food.

● ● [REDACTED]

● ● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED]

4 Q. So when did you choose "Whatta Wing!"?

5 A. Somewhere in '07.

6 Q. Why?

7 A. Whatta, the way it's written, is a Boston  
8 slang for something that's, I guess, pretty good, is  
9 our slang for it.

● [REDACTED] ● [REDACTED]

● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED] ● [REDACTED]

● [REDACTED]

2 Q. So what is "whatta" slang for?

3 A. Something that's -- something that's -- I  
4 don't know how to describe it. It's like a car,  
5 whatta car, if you see a nice car or a nice -- I  
6 don't know. How do you describe a slang?

7 Q. Does it stand for something else?

8 A. Other than being a slang?

9 Q. It's not like a trick question here or  
10 anything.

11 A. I don't know how to answer.

12 Q. Does it mean like what a, is that what it  
13 means?

14 A. In a Boston slang, yeah.

15 Q. Well, Bostonians say --

16 A. Whatta.

17 Q. "Whatta" instead of "what a"?

18 A. We abbreviate, yeah.

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

[REDACTED]

20 Q. I'm going to hand you what's been marked  
21 as Exhibit 14. Take a minute to look through that.  
22 A. Looks familiar.

1 Q. What is it?

2 A. My menu.

3 Q. Is this the same menu that you've had  
4 since the inception of the business?

5 A. Revised.

6 Q. How has it been revised?

7 A. The store hours, couple of menu items, and  
8 the fresh chicken not frozen.

[REDACTED]

[REDACTED]

13 Q. Well, if somebody wants a burger, they can  
14 go into McDonald's or come into your place, right?

15 A. Where do you think they're going to go?

16 Q. You tell me.

17 A. My guess is McDonald's.

18 Q. Why is that?

19 A. They have 30,000 locations.

20 Q. Is your pricing similar to McDonald's?

21 A. This is for what, for a burger?

22 Q. Yeah, say for a burger.



[REDACTED]

22

Q. Actually, let's look at the specials, and

1 I see you have a number of combos. And two of the  
2 combos you have plays on your name. You have Whatta  
3 Special and Whatta Deal. How did you choose those?

4 A. Whatta is the name, and one is a special,  
5 one is a deal.

6 Q. So what do they have in common?

7 A. One just gives you more.

8 Q. What do the Whatta Special and Whatta Deal  
9 names have in common?

10 MS. GARKO: Objection.

11 Q. Is it the Whatta formative?

12 A. I suppose, yeah.

13 Q. And so customers recognize Whatta Special  
14 and Whatta Deal is something that comes from "Whatta  
15 Wing!", is that right?

16 MS. GARKO: Objection.

17 A. I suppose, yeah.

18 Q. So let's take a look at --

19 (Exhibit 15 marked for identification.)

20 Q. I'm going to hand you what's been marked  
21 as Exhibit 15, if you can take a minute and look  
22 through that.

1           A.     (Witness complied.)

2           Q.     Okay?

3           A.     Mm hmm.

4           Q.     Do you recognize this?

5           A.     Looks like your menu.

6           Q.     The menu of my client, correct?

7           A.     Sorry.

8           Q.     I wish I owned this company.

9           A.     I wish you did, too; we wouldn't be here.

10          Q.     Don't be so sure of that. All right, so,

11     you're correct, this is the menu from my client's

12     website, which you said you had gone through the

13     website previously, right, after you got the cease

14     and desist letter?

15          A.     After, yeah.

16          Q.     Had you looked at the menu at that time?

17          A.     Probably.

18          Q.     And so you're somewhat familiar with it?

19          A.     Somewhat.

20          Q.     So I'm looking at your menu and my

21     client's menu.

22          A.     Okay.

1 Q. And I see -- is it correct to say that you  
2 both sell burgers?

3 A. Yes.

4 Q. Is it correct to say you both sell chicken  
5 sandwiches?

6 A. Yes.

7 Q. Chicken strips?

8 A. Chicken tenders.

9 Q. Which is basically a strip?

10 MS. GARKO: Objection.

11 A. I don't know. When I order them, they  
12 come as chicken tenders. So I don't know what a  
13 strip is.

14 Q. Okay. What's a tender?

15 A. It's a tender portion of the chicken.

16 Q. Just a white strip of meat?

17 A. A tender.

18 Q. Okay. Does it have a bone in it?

19 A. No, it's boneless.

20 Q. Is it fried?

21 A. Or grilled.

22 Q. Do you serve both?

1 A. I do.

2 Q. You both sell french fries?

3 A. We do.

4 Q. You both sell onion rings?

5 A. We do.

6 Q. You both sell salads?

7 A. We do.

8 Q. You both have a buffalo chicken sandwich?

9 A. We do.

10 Q. You also have a honey mustard tender,

11 correct?

12 A. We have a honey mustard sauce.

13 Q. Do you have a honey mustard or honey

14 barbecue tender?

15 A. Honey barbecue sauce.

16 Q. Okay.

17 MS. ELGIN: Let's mark this.

18 (Exhibit 16 marked for identification.)

19 Q. Handing you what's been marked Exhibit 16,

20 do you recognize Exhibit 16?

21 A. Looks like a facebook page.

22 Q. Is it your facebook page?

1 A. Seems to be.

2 Q. Did you set up a facebook page for "Whatta  
3 Wing!"?

4 A. I did.

5 Q. And is this it?

6 A. Looks it.

7 Q. How did you decide what to put on there?

8 A. What do you mean?

9 Q. Well, you have certain products on there.  
10 You say, wings, tenders, wraps, burgers, subs, and  
11 salads, is that correct?

12 A. Wings, tenders, wraps, burgers, subs, and  
13 salads, yeah.

14 Q. Is that an accurate description of what it  
15 is "Whatta Wing!" sells?

16 A. That's exactly what my menu says.

17 Q. So it would be an accurate description?

18 A. Yeah.

19 Q. So burgers is one of the things that you  
20 actually promote?

21 A. What's the first line item?

22 Q. But burgers is something that you promote?



1 are all of the registrations that my client cited in  
2 this opposition --

3 A. Mm hmm.

4 Q. -- against your application for "Whatta  
5 Wing!".

6 A. Okay.

7 Q. So I want to go through and check and see  
8 which of these you have, okay? So is it correct to  
9 say you have a hamburger sandwich? And I'm looking  
10 -- do you see where it says "goods and services"?

11 A. Goods and services, yeah.

12 Q. The first one says "Whataburger," and it  
13 says "hamburger sandwich."

14 A. Mm hmm.

15 Q. You have that on your menu?

16 A. I do.

17 Q. Going down to the next one, do you have  
18 restaurant services; do you provide restaurant  
19 services?

20 MS. GARKO: Objection.

21 A. That's a pretty general statement, no?

22 Q. Do you provide restaurant services?

1 A. It's pretty broad, yeah.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. Do you provide soft drinks?

6 A. It's bottled soda from Pepsi.

7 Q. Is that a soft drink?

8 A. I suppose.

9 Q. We've already gone through, if you flip  
10 over, the same thing, restaurant and drive-in; you've  
11 already said yes and no, right?

12 A. Well, not necessarily yes, but, yeah.  
13 Restaurant is pretty -- it's a pretty broad  
14 statement. I mean, everybody is a restaurant.

15 Q. And "Whatta Wing!" is a restaurant?

16 A. I suppose.

17 Q. And going down, let's go down to the next  
18 one for the -- we call that the Flying W Whataburger  
19 mark.

20 A. Very nice.

21 Q. Soft drinks, we've already gone through.  
22 Hamburgers?

1 A. We said, yes.

2 Q. Cheeseburgers?

3 A. Yes.

4 Q. French fried potatoes?

5 A. French fries?

6 Q. Right.

[REDACTED]

[REDACTED]

18 Q. Onion rings?

19 A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

4 Q. Going down, we've already gone through  
5 hamburgers. You do a prepared meal of hamburgers,  
6 french fries, and a beverage?

7 A. What do you mean by prepared, like a value  
8 meal type of thing?

9 Q. Yes.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 Q. Chicken sandwiches?

16 A. Yes.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. Do any charitable fundraising services  
8 down at the bottom?

9 A. Sometimes.

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. What size is fries and a soft drink?

14 MS. GARKO: Objection, vague.

15 Q. So a meal again?

16 A. A meal consisting of what?

17 Q. Of a -- as long as it's something with  
18 fries and a soft drink.

19 MS. GARKO: Objection.

20 A. Yeah, it's on the menu.

21 Q. A combo meal?

22 A. Yeah.





1 that a Bates label. And there's a 9. Do you  
2 recognize the document that is 9 and 10, WW9 and 10?

3 A. Yeah.

4 Q. What is that?

5 A. Not sure. It looks like an application.

6 Q. Is it a copy of your application for  
7 "Whatta Wing!"?

8 A. Looks like a legal application, yeah.

9 Q. So this is a copy of the application that  
10 you filed with the Trademark Office, correct?

11 A. I did not, no.

12 Q. A copy that was filed on your behalf?

13 A. Correct.

14 Q. And I think you mentioned Mr. Pandiscio  
15 previously. Is he your attorney?

16 A. He was at that time.

17 Q. He's not any longer?

18 A. No.

19 Q. Did Mr. Pandiscio have your authority to  
20 file this application on your behalf?

21 A. He did.

22 Q. And I notice he actually was the one who

1 signed the declaration on page WW10. Did you give  
2 him that authority?

3 A. I did.

4 Q. Did you review the application before it  
5 was submitted?

6 A. I'm sure I did.

7 Q. And is everything in here true and correct  
8 as far as the use in commerce and the description, et  
9 cetera? For example, do you provide restaurant  
10 services under this mark?

11 A. I don't know what the term "restaurant  
12 services" mean. I guess I do, because I've seen it  
13 in other places.

14 Q. You understand that you've applied for a  
15 mark that covers restaurant services, correct?

16 A. Yes.

17 Q. Okay. And that's what you provide under  
18 the "Whatta Wing!" designation, is that right?

19 A. As restaurant services?

20 Q. Yes.

21 A. Yes.

22 Q. And is it true that the mark was first



● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● [REDACTED]

5 Q. If we can, can we go back to Exhibit  
6 Number 4, which is the Objections and Responses to  
7 Whataburger's Interrogatories. Okay, are you with  
8 me?

9 A. Mm hmm.

10 Q. And I'm going to direct your attention to  
11 interrogatory number 4, which is on page 4, and your  
12 response, which runs over from pages 5 to 6. You  
13 want to take a minute and look at that?

14 A. (Witness complied.) Okay.

● [REDACTED]  
● [REDACTED]

[REDACTED]

9 Q. And the second, on sub (b), talks about  
10 the channels of trade through which the services have  
11 been marketed in connection with "Whatta Wing!". And  
12 your answer to that is on sub (b) on page 5.

13 So my first question to you is is this a  
14 complete listing of all of the ways that you have  
15 advertised your services, your restaurant services?

16 A. What do you mean by all of the ways?

17 Q. Are there any others that are not included  
18 in your response to (b)? And I'm including, because  
19 these were served back in August of 2009, perhaps, is  
20 there anything that you would like to update that you  
21 have done since August 2009?

22 A. No, nothing that I've paid for, no.

1 Q. Nothing that you've paid for?

2 A. Well, in the form of advertising.

3 Q. Well, any way that you've promoted your  
4 service.

5 A. Passing out menus.

6 Q. Where do you pass out menus?

7 A. Locally.

8 Q. What does "locally" mean?

9 A. Arlington.

10 Q. To me, locally could be Boston, so I need  
11 to understand what locally means. In Arlington?

12 A. Mm hmm.

13 Q. How do you pass out menus; where do you  
14 pass out menus?

15 A. Houses, businesses.

16 Q. Door to door?

17 A. Sometimes door to door, sometimes just  
18 business, yeah.

19 Q. Okay, stand on the street corner and just  
20 hand out menus?

21 A. Sometimes.

22 Q. Anything else?

1 A. Not that I'm aware of.

2 Q. Okay. The first thing that you mentioned  
3 was SuperCoups, a local by-mail coupon service. Can  
4 you tell me about that service and how it's been used  
5 to promote your restaurant?

6 A. It's a mail service.

7 Q. And where does it -- what's the reach of  
8 it?

9 A. It was, again, I think, either East  
10 Arlington or all of Arlington, but I think it might  
11 have been East Arlington.

12 Q. How big is Arlington?

13 A. Size wise or population wise? I don't  
14 know either, but.

15 Q. Is it a large city?

16 A. No. It's a suburb and town. It's  
17 probably 35,000, 30,000 people.

18 Q. And I understand that's an approximation?

19 A. It's a big approximation.

20 MS. GARKO: If you don't know, you don't  
21 know. We don't want you to guess.

22 Q. And when you say East Arlington, how large

1 would you say East Arlington is?

2 A. I don't know.

3 Q. Is it blocks or is it by --

4 A. I don't know.

5 Q. -- miles? Do you know how many zip codes  
6 would be in East Arlington?

7 A. It's the same zip codes; it's just East  
8 Arlington and Arlington Heights; it's all the same  
9 zip code, I think.

10 Q. So Arlington Heights and East Arlington  
11 are all part of the same zip code?

12 A. I just know I'm in East Arlington.

13 Q. Is that an address -- you said East  
14 Arlington, Mass, or would it just say Arlington,  
15 Mass?

16 A. Arlington, Mass.

17 Q. And you would just colloquially call it  
18 East Arlington?

19 A. Yes.

20 Q. And when you did SuperCoups, your  
21 recollection is you only did in the East Arlington  
22 sub zip code?

1 A. I think so.

● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]

9 Q. And your recollection, though, is it was  
10 some subset of Arlington, Mass?

11 A. "Subset" meaning?

12 Q. Not the entire city but just a portion of  
13 it.

14 A. I think so.

15 Q. How many times did you do that?

16 A. I believe it went out twice.

17 Q. Do you recall when?

18 A. No. I think we have dates for it, though.

19 Q. I haven't seen any.

20 A. Yeah, coupons, April 16 and June 15.

21 Q. You're right. So you haven't done it  
22 since June 15, 2009?

1 A. No.

2 Q. Was it the same area of distribution both  
3 times?

4 A. Mm hmm, yes.

5 Q. You then talk about -- I'm going to skip  
6 over your signage and menus because we've talked  
7 about that already. And you mentioned two newspaper  
8 articles. How did your restaurant come to appear in  
9 those newspaper articles?

10 A. They contacted me.

11 Q. Do you recall what the newspapers were?

12 A. The Boston Globe and the Boston Herald.

13 Q. And what was the distribution of those  
14 articles?

15 A. Boston Globe and Boston Herald.

16 Q. Do they have different editions for  
17 different suburbs?

18 A. I don't know.

19 Q. In Washington we do, so.

20 A. I don't know.

21 Q. Was it in the main part of the paper?

22 A. I don't know.

[REDACTED]

9 Q. And then you mentioned -- we'll go back  
10 through these -- I want to go through the  
11 interrogatory -- the television segments of Phantom  
12 Gourmet and Chronicle?

13 A. Correct.

14 Q. What is Phantom Gourmet?

15 A. A restaurant review.

16 Q. And you say it's on New England Cable News  
17 Network?

18 A. It's -- I don't know what Channel 38 is;  
19 it's a local station.

20 Q. Do you know what the reach of that station  
21 is?

22 A. I don't know.

Capital Reporting Company  
Avakian, Sarkis 06-25-2010

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1 Q. When you say local, what are you referring  
2 to?

3 A. Not nationwide.

4 Q. Boston area?

5 A. Maybe Massachusetts and New Hampshire, I  
6 think.

7 Q. You're not sure?

8 A. I'm not sure.

9 Q. And the Chronicle, that is another news  
10 magazine, TV news magazine?

11 A. Yeah, I guess you could call it a news  
12 magazine, TV news magazine.

13 Q. I'm just using your words.

14 A. Yeah.

15 Q. Okay.

16 A. They highlight a bunch of different  
17 things. I'm not sure what they are.

18 Q. Is that on cable?

19 A. That's on Channel 5, something. I don't  
20 know what Channel 5 is, WSBK or something.

21 Q. Is it a network affiliate, Boston network  
22 affiliate?

1           A.     Channel 5 is; I just don't know their  
2 letters.

3           Q.     So it's either CBS, NBC, ABC, one of  
4 those?

5           A.     It's ABC.

6           Q.     But that would be the local Boston  
7 affiliate?

8           A.     Boston affiliate of ABC, right.

9           Q.     And you also mentioned it's been featured  
10 on the radio station WBCN Steals and Deals. Where is  
11 WBCN located?

12          A.     Nowhere now.

13          Q.     It's gone out of business?

14          A.     Yeah.

15          Q.     Where was it located?

16          A.     Boston.

17          Q.     And do you know what the geographic reach  
18 of that station was?

19          A.     I do not.

20          Q.     So it was a Boston station as opposed to  
21 an Arlington station?

22          A.     I mean, I don't know how radio

1 transmission works, but it's Massachusetts based,  
2 anyway.

3 Q. And how was it featured in the Steals and  
4 Deals segment?

5 A. They promoted the restaurant, I think,  
6 several times a day for a week. I don't know. I'm  
7 not sure exactly what the format was. But it was a  
8 couple of times, two, three times, five times a day.

9 Q. So did you pay for that? Was it  
10 advertising that you paid for?

11 A. It was a trade.

12 Q. And what did you give them in return?

13 A. Gifts certificates.

14 Q. How about the Phantom Gourmet, was that  
15 advertising that you paid for?

16 A. I did not.

17 Q. What about Chronicle?

18 A. I did not.

19 Q. And what about the news articles?

20 A. I did not.

21 Q. So the only one out of -- you paid for the  
22 SuperCoups, and you paid for the WBCN?

1 A. I didn't pay for the BCN; I did a trade.

2 Q. You did a trade?

3 A. A swap, yeah.

4 Q. Provided some sort of compensation, would  
5 that be correct?

6 A. Some sort, yeah, because I gave them the  
7 gift certificates, and then they sold it on their  
8 website.

9 Q. I actually know how that works, believe it  
10 or not. I had a whole case on that. You learn weird  
11 things when you're a lawyer. Then you say in  
12 response to sub (c), you say -- we asked you to  
13 describe the classes of potential purchasers to whom  
14 you market your services in connection with the  
15 "Whatta Wing!" mark, and your response was you market  
16 on a regional basis to consumers in the New England  
17 area in connection with your mark. Well, that tells  
18 me where, but who is it that you're trying to target?

19 A. I'm not sure I understand.

20 Q. Is it everybody in New England?

21 A. I'd like to.

22 Q. So are you targeting people up in Maine?

1           A.     If they come to see my menu or come to eat  
2 my food, yeah.

3           Q.     How many people from Maine come to your  
4 restaurant?

5           A.     I have no idea.

6           Q.     How about from New Hampshire?

7           A.     No idea.

8           Q.     Connecticut?

9           A.     No idea.

10          Q.     How do you reach people in Maine?

11          A.     I was hoping through Phantom Gourmet and  
12 Chronicle.

13          Q.     Any other way?

14          A.     No.

15          Q.     Reaching people up in New Hampshire the  
16 same way?

17          A.     Yes.

18          Q.     And you get a big influx of out-of-state  
19 people coming to "Whatta Wing!"?

20          A.     Not that big.

21          Q.     Do you know what the percentage is?

22          A.     No idea. It's mostly local.

1 Q. Pretty small percentage?

2 A. Of outside?

3 Q. Mm hmm.

4 A. Very small.

5 Q. Under five percent?

6 A. Under half a percent.

7 Q. What is -- and on (e) we asked for the  
8 annual dollar amount spent on advertising and  
9 promotion. I don't think we've gotten a response for  
10 that. So can you tell me what the annual dollar  
11 amount you have spent on advertising and promotion of  
12 your restaurant is?

13 A. Probably four or \$500, which was in  
14 SuperCoups.

15 Q. Four or \$500 a year?

16 A. No, just that one time.

17 Q. Four or \$500 total?

18 A. Mm hmm.

19 Q. Are you inputting the value of the gift  
20 certificates in that?

21 A. No.

22 Q. Do you know how much in gift certificates

1 you gave?

2 A. I believe it was a hundred gift  
3 certificates.

4 Q. For how much?

5 A. \$30.

6 Q. For \$30 apiece?

7 A. I'm sorry?

8 Q. \$30 apiece?

9 A. Correct.

10 Q. Do you know what they sold them for?

11 A. 15.

12 Q. Any other expenses that you had for  
13 advertising?

14 A. No.

15 (Exhibit 18 marked for identification.)

16 Q. Handing you what's been marked as Exhibit  
17 18, do you recognize that document?

18 A. Yes.

19 Q. What is it?

20 A. Looks like a copy of my online menu.

21 Q. Is this your website?

22 A. Yeah.

1 Q. And is this the --

2 A. Sorry, website, yeah.

3 Q. At whattawing.com?

4 A. Yeah.

5 Q. You own that domain name?

6 A. Yeah.

● ● [REDACTED]

● [REDACTED]

● ● [REDACTED]

● [REDACTED]

● [REDACTED]

20 Q. Is your website accessible all over the  
21 country?

22 MS. GARKO: Objection.

1 A. As far as a computer goes, yeah.

● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]

9 Q. Okay. By the way, when you say you're  
10 marketing to the New England area, are you marketing  
11 anywhere outside the New England area?

12 A. Just where those -- I think Chronicle is  
13 the largest one, so wherever Chronicle goes or went  
14 is as far as I've gone.

● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]











● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]

5 Q. Did you do any independent evaluation of  
6 whether the services were identical?

7 A. They're both restaurants.

● ● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]  
● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]

1 [REDACTED]

2 Q. How do people find your restaurant?

3 A. Some know about it; some, I don't know how  
4 the search engine works.

5 Q. Okay. Do you get a lot of hits on your  
6 website?

7 A. I don't know.

8 Q. Do you track hits at all?

9 A. I do not.

[REDACTED]

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## CERTIFICATE OF NOTARY PUBLIC

I, JUDITH A. TWOMEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was stenographically taken by me and thereafter by me reduced to typewriting; that said deposition is a true record of the testimony given by the witness; that I am neither counsel for, related to, nor employed by and of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

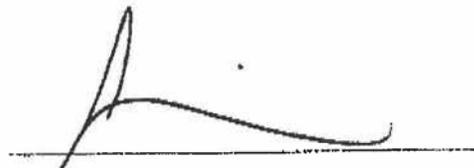
  
JUDITH A. TWOMEY, RPR  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires 9/8/2011

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Errata Sheet

Name of Case: Whataburger Partnership v. Sarkis Avakian  
Date of Deposition: 6/25/2010  
Name of Deponent: Sarkis Avakian

PAGE	LINE	CORRECTION	REASON
8	20	Change "prepares" to "repairs"	incorrect word
9	10	Change "Mm hnm" to "Yes"	clarification
10	44	Change "I" to "I'm"	incorrect word
11	50	Change "Mm hnm" to "Yes"	clarification
12	62	Change "Mm hnm" to "Yes"	clarification
13	76	Change "Mm hnm" to "Yes"	clarification
14	91	Change "either .00 or .075" to ".0075"	clarification
15	112	Change "Mm hnm" to "Yes"	clarification
16	122	Change "needs" to "meat is"	incorrect words
17	148	Change "Mm hnm" to "Yes"	clarification
18	159	Change "Mm hnm" to "Yes"	clarification
19	165	Change "Mm hnm" to "Yes"	clarification
20	165	Change "Mm hnm" to "Yes"	clarification
21	173	Change "Mm hnm" to "Yes"	clarification



Sarkis Avakian

ESTTA Tracking number: **ESTTA269002**

Filing date: **02/26/2009**

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	03/04/2009
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
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**Applicant Information**

Application No	77494179	Publication date	11/04/2008
Opposition Filing Date	02/26/2009	Opposition Period Ends	03/04/2009
Applicant	Sarkis Avakian 218 Massachusetts Avenue Arlington, MA 02474 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. First Use: 2007/11/14 First Use In Commerce: 2008/01/12 All goods and services in the class are opposed, namely: restaurant services
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**Grounds for Opposition**

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

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

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	<p>Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29</p> <p>PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES</p>		

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	<b>WHATABURGER</b>		
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	<b>WHATAGUY</b>		
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	<b>WHATAKIDS</b>		
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	<b>WHATACOMIX</b>		
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	<b>WHATAPLACE! WHATATASTE!</b>		
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	<b>WHATABURGER</b>		
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	<b>WHATABLENDERS</b>		
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	<b>WHATASIZE</b>		
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	<b>WHATABURGER FIELD</b>		
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.	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		

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 ) 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 )
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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	02/26/2009

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

WHATABURGER PARTNERSHIP	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	Mark:       WHATTA WING!
	)	Ser. No.:     77/494,179
SARKIS AVAKIAN	)	
	)	
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. 77/494,179 – WHATTA WING! for “restaurant services,” in International Class 43, filed June 9, 2008, by Sarkis Avakian (“Applicant”), and published for purposes of opposition in the Official Gazette dated November 4, 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 700 restaurants in the United States under the WHATABURGER name.

3. Opposer, 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. Opposer uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify an array of 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 sales 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 has adopted and commenced use of the designation WHATTA WING! in connection with restaurant services.

12. Applicant's services are identical to Opposer's restaurant services and closely related to Opposer's food products. Applicant's services, moreover, are not restricted as to types of customers and channels of trade.

13. The designation WHATTA WING! 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 services, to cause confusion and mistake and to deceive.

14. The designation WHATTA WING! 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 service or food product sold under the designation WHATTA WING! would injure the valuable reputation and goodwill Opposer has established for its products and services sold under its WHATABURGER and WHATA marks.

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

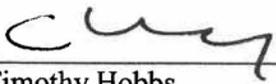
WHEREFORE, Opposer prays that its opposition be sustained and that the opposed mark be denied registration.

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.

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 26, 2009

12964239.1

WHATTIA WING!

WHATTIA WING!



WHATTIA WING!  
 781-546-9464  
 FREE DELIVERY  
 WRAPS • SALADS

EXHIBIT  
 AVALON 2  
 6-25-10  
 PERCAD-Bygone, M. L.

**WHATTIA WING!**

**WHATTIA WING!**  
**Wings & Grill**  
**SUBS • BURGERS**

**Free Delivery**  
**781-646-9464**  
**WRAPS • SALADS**

**WHATTIA WING!**

Wings & Grill

**SUBS · BURGERS**

**Free Delivery**

**781-646-9464**

**WRAPS · SALADS**

218  
HOURS:  
11AM TO 10PM  
7 DAYS A WEEK



**WHATTA WING!**

**WINGS & GRILL**

**FREE DELIVERY**



SODA 1.75

WINGS 1.75

GRILL 1.75

WINGS 1.75

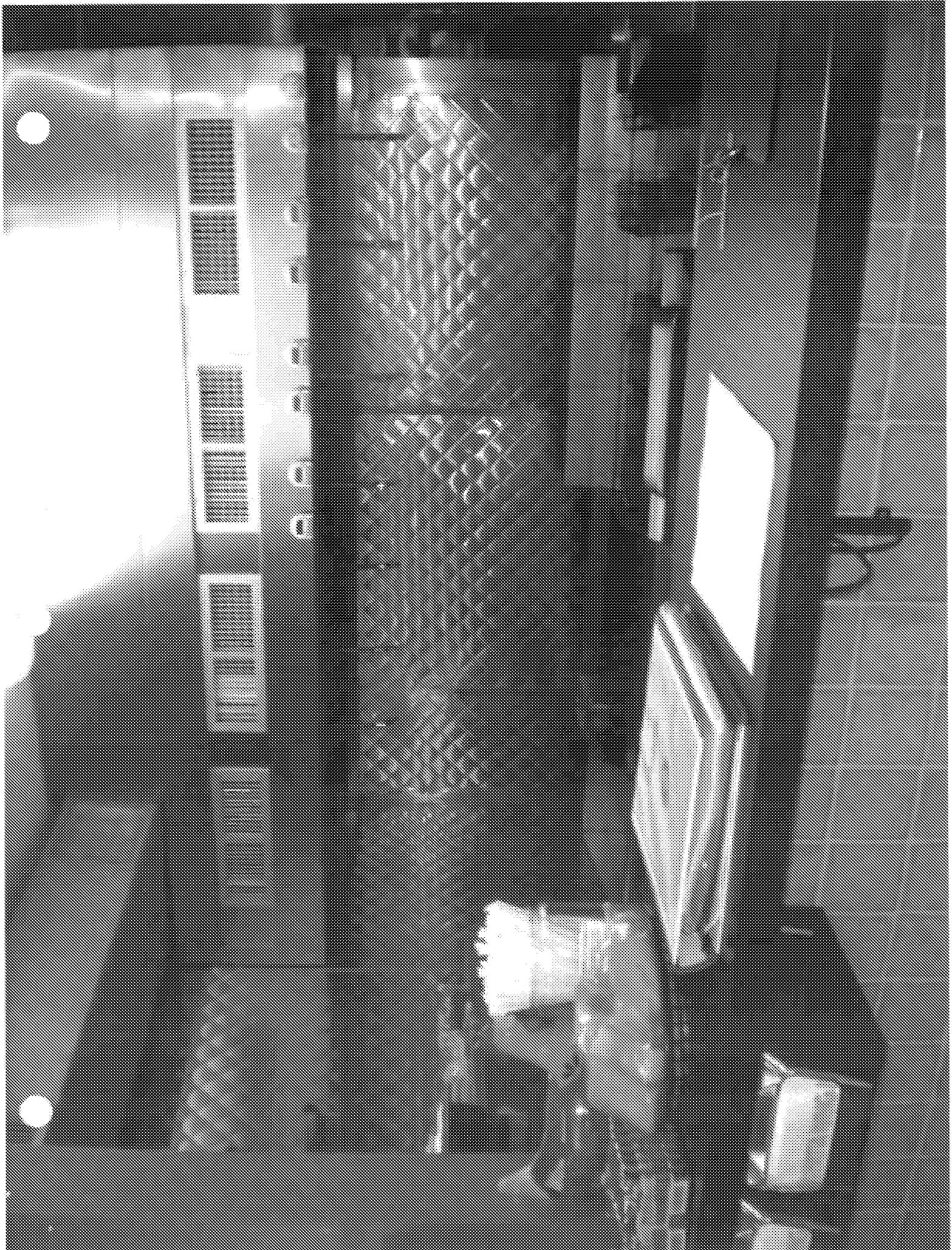
GRILL 1.75



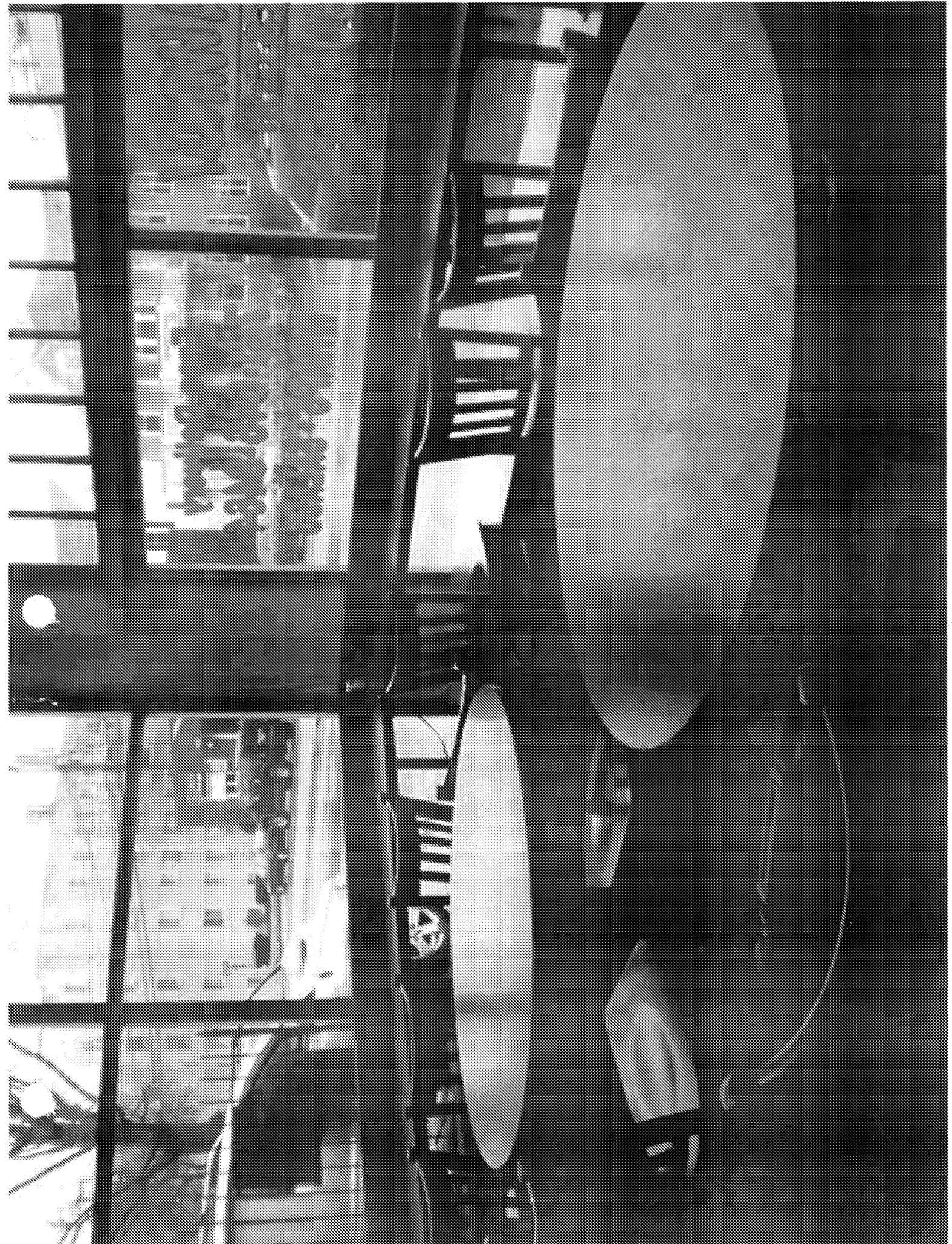
# WATTAWING!

## SAUCES

Buffalo Mild - Buffalo Medium - Buffalo Hot  
Buffalo Suicide - Honey Buffalo - Garlic Buffalo  
Garlic Parmesan - Garlic Marinara - Honey Mustard  
Honey Sweet & Sour - Teradactal *Spicy Teradactal*  
Mango Habanero - Teriyaki - Hot Teriyaki - Honey-  
Teriyaki - Honey Hot Teriyaki - BBQ - Honey BBQ  
Spicy BBQ - BBQ Honey Mustard - Oriental Sesame  
Creamy Caesar - Spicy Ranch - Buttermilk Ranch







WHATTA WING!®

Wings & Grill



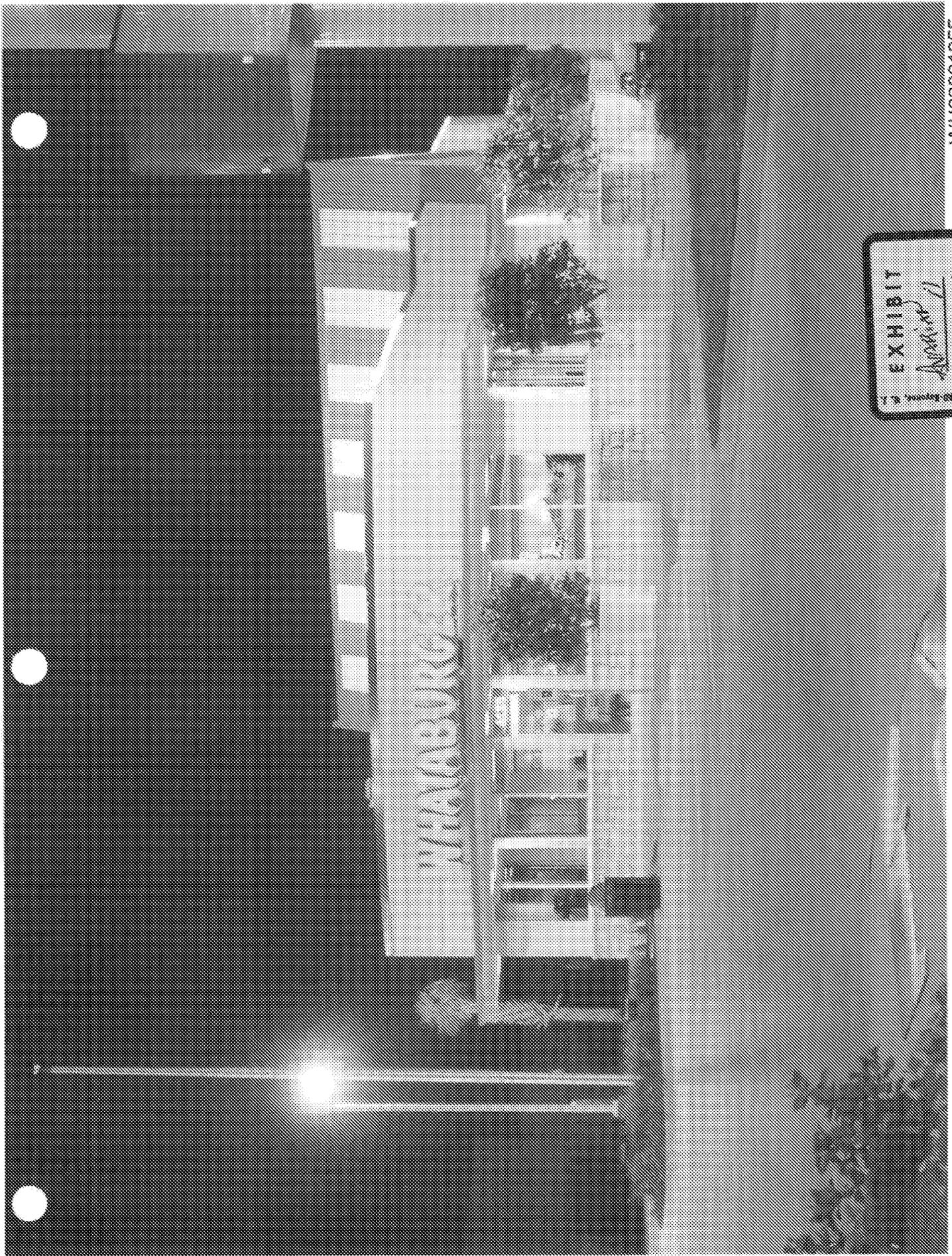


EXHIBIT  
A-1  
6-25-10  
SBR

WH00001255

NEW

TRY A

**BUFFALO**

**WHATACHICK'N**

SANDWICH

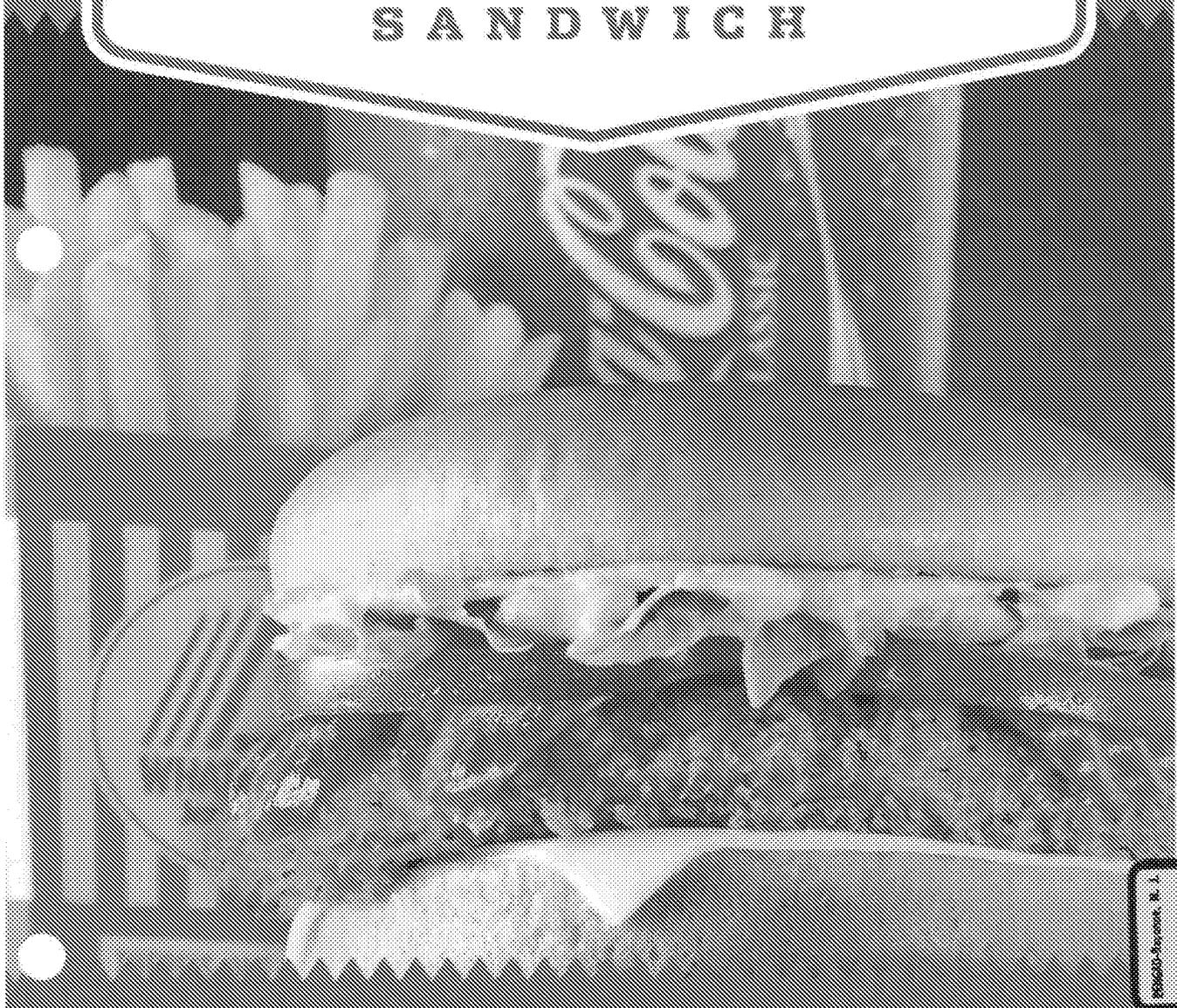


EXHIBIT  
APR 12  
6-25-10 ON

GET THAT **KICK** FOR A LIMITED TIME ONLY

NEW

HONEY  
MUSTARD

Whatachick'n

SANDWICH



FOR A LIMITED TIME ONLY

WH00001252

Gift Certificates Available!

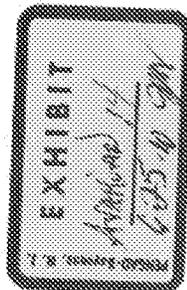
# WHATTA WING!

## Wings & Grill

### Free Delivery!

### Og Trans Fat

Minimum \$10.00 Cash  
Minimum \$15.00 Credit Card



# TEL: 781-646-9464

# (Wing)



Store Hours:  
Open 7 Days A Week:  
11:00 am to 10:00 pm

## Fresh Chicken Not Frozen

218 Massachusetts Avenue •  
Arlington, MA. 02474 WW0020

# Wings & Tenders

## Wings

Only Buffalo Wings & Tenders Served with  
Blue Cheese & Celery. 1 Sauce Per Order.

Extra Sauce . . . \$1.00

Extra Blue Cheese . . . \$0.50

Extra Celery . . . \$0.50

8 PCS . . . . .	6.95
16 PCS. . . . .	12.95
24 PCS. . . . .	17.95
32 PCS. . . . .	23.95
45 PCS. . . . .	32.95
100 PCS. . . . .	62.95

## Tenders

### BONELESS

6 PCS . . . . .	7.25
12 PCS. . . . .	13.45
18 PCS. . . . .	18.75
24 PCS. . . . .	25.95
35 PCS. . . . .	36.50
75 PCS. . . . .	71.70

### SAUCES:

Buffalo Mild • Buffalo Medium • Buffalo Hot •  
Buffalo Suicide • Honey Buffalo • Garlic Buffalo •  
Garlic Parmesan • Garlic Marinara • Honey  
Mustard • Honey • Sweet & Sour • Teradactal •  
Spicy Teradactal • Mango Habanero • Teriyaki •  
Hot Teriyaki • Honey Teriyaki • Honey Hot  
Teriyaki • BBQ • Honey BBQ • Spicy BBQ • BBQ  
Honey Mustard • Oriental Sesame • Creamy  
Caesar • Spicy Ranch • Buttermilk Ranch

## Combos

**SINGLE . . . . . 23.95**

10 Wings, 10 Tenders & 1 Appetizer

**DOUBLE . . . . . 44.95**

20 Wings, 20 Tenders & 2 Appetizers

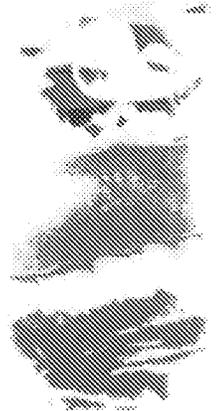
**TRIPLE . . . . . 66.95**

30 Wings, 30 Tenders & 3 Appetizers

# Cold Subs

12" Sub or Wrap  
Add Cheese . . . \$0.50

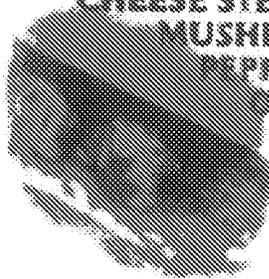
VEGGIE .....	6.25
BLT.....	6.25
HAM & CHEESE .....	6.25
TURKEY.....	6.25
ITALIAN.....	6.25
GENOA SALAMI .....	6.25
TUNA .....	6.25
CHICKEN SALAD.....	6.25



# Hot Subs

Add Cheese . . . \$0.50

PEPPER & EGG.....	6.25
MEATBALL .....	6.25
SAUSAGE .....	6.25
EGGPLANT.....	6.25
VEAL PARM .....	6.25
GRILLED CHICKEN .....	6.25
CHICKEN CUTLET.....	6.25
CHICKEN PARM .....	6.25
HAMBURGER.....	6.25
CHEESEBURGER .....	6.75
PASTRAMI .....	6.95
CHEESE STEAK .....	6.50
MUSHROOM STEAK .....	6.50
PEPPER STEAK .....	6.50
ONION STEAK .....	6.50



# Specialty Subs

Add Cheese . . . \$0.50

BBQ GRILLED CHICKEN .....	6.50
BUFFALO TENDER .....	6.75
CHICKEN STIR FRY.....	6.95
CHICKEN CORDON BLUE.....	6.95
CHEESEBURGER CLUB.....	7.25
TURKEY CLUB .....	6.95
STEAK & EGG.....	6.95
STEAK BOMB .....	7.25
<i>Mushroom, Onion, Pepper, Salami, &amp; Cheese</i>	
BUFFALO STEAK .....	6.95
<i>Buffalo Sauce &amp; Blue Cheese</i>	
ITALIAN STEAK .....	6.95
<i>Marinara Sauce &amp; Provolone Cheese</i>	
ORIENTAL STEAK .....	7.25
<i>Mushroom, Onion, Pepper, &amp; Teriyaki</i>	
★ PORK TIPS .....	7.25
<i>Grilled Pork Tips with Fixings</i>	
★ TURKEY TIPS .....	7.95
<i>Grilled Marinated Turkey Tips with Fixings</i>	
★ STEAK TIPS .....	7.95
<i>Grilled Marinated Steak Tips with Fixings</i>	

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# Specialty Wraps

*Plus or Wheat*

<b>PCHICKEN CAESAR</b> .....	7.25
<i>Grilled Chicken, Romano, Croutons, Caesar Dressing, Shredded Parmesan Cheese</i>	
<b>BUFFALO CHICKEN</b> .....	7.25
<i>Tender, Buffalo Sauce, Lettuce, Blue Cheese Dressing</i>	
<b>GRILLED GREEK</b> .....	7.25
<i>Grilled Chicken, Feta, Tomato, Romano, Olive Oil, Lemon</i>	
<b>CHICKEN CORDON BLUE</b> .....	7.25
<i>Tender, Ham, Provolone, &amp; Onion</i>	
<b>CHICKEN PESTO</b> .....	7.25
<i>Grilled Chicken, Roasted Red Pepper, Grilled Onion, Provolone, &amp; Pesto</i>	
<b>SANTA FE CHICKEN</b> .....	7.25
<i>Grilled Chicken, Rice, Grilled Mushrooms, Peppers, Onion, &amp; Pico de Gallo</i>	
<b>CHICKEN CLUB</b> .....	7.25
<i>Grilled Chicken, Bacon, Lettuce, Tomato, &amp; Mayo</i>	
<b>TURKEY CLUB</b> .....	7.25
<i>Even Roasted Turkey, Bacon, Lettuce, Tomato, &amp; Mayo</i>	
★ <b>PORK TIPS</b> .....	7.25
<i>Grilled Pork Tips with Fries</i>	
★ <b>TURKEY TIPS</b> .....	7.95
<i>Grilled Marinated Turkey Tips with Fries</i>	
★ <b>STEAK TIPS</b> .....	7.95
<i>Grilled Marinated Steak Tips with Fries</i>	

## ★ Burgers

*Served with Choice of Fries or Onion Rings  
Substitute Curly or Sweet Fries Extra \$1.00*

<b>HAMBURGER</b> .....	6.50
<i>1/2 lb. Burger with Lettuce &amp; Tomato</i>	
<b>CHEESEBURGER</b> .....	6.95
<i>1/2 lb. Burger with Cheese, Lettuce &amp; Tomato</i>	
<b>MUSHROOM SWISS</b> .....	7.25
<i>1/2 lb. Burger with Grilled Mushrooms, Swiss Cheese, Lettuce &amp; Tomato</i>	
<b>BACON CHEESE BURGER</b> .....	7.25
<i>1/2 lb. Burger with Bacon, Cheese, Lettuce &amp; Tomato</i>	
<b>TEX BURGER</b> .....	7.25
<i>1/2 lb. Burger with BBQ Sauce, Bacon, Cheese, Lettuce &amp; Tomato</i>	
<b>BUFFALO BURGER</b> .....	7.25
<i>1/2 lb. Burger with Buffalo Sauce, Blue Cheese Dressing, Lettuce &amp; Tomato</i>	
<b>PHILLY BURGER</b> .....	7.25
<i>1/2 lb. Burger with Grilled Mushrooms, Onions, Melted Cheddar, Lettuce &amp; Tomato</i>	
<b>GOOMBA BURGER</b> .....	7.25
<i>1/2 lb. Burger with Roasted Red pepper, Grilled Onions, Provolone, Lettuce &amp; Tomato</i>	

PRICE, ITEMS & OFFERS ARE SUBJECT TO CHANGE WITHOUT NOTICE

★ **CONSUMER ADVISORY: WARNING FOR RAW PORKS**  
IN COMPLIANCE WITH THE DEPARTMENT OF PUBLIC HEALTH,  
WE ADVISE THAT EATING RAW OR UNDERCOOKED MEAT,  
POULTRY, OR SEAFOOD POSES A RISK TO YOUR HEALTH!

WW0021

## SPECIAL #1

### COMBO MEAL

12 WINGS OR 8 TENDERS, FRIES, &  
A 20 OZ. SODA (CHOOSE 1 SAUCE)

**\$12.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$1.00  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #2

### FAMILY COMBO

24 WINGS OR 16 TENDERS, FRIES, ONION  
RINGS & A 2 LTR SODA (CHOOSE 1 SAUCE)

**\$24.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$1.00  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #3

### WHATTA SPECIAL

25 WINGS, 25 TENDERS,

& A 2 LTR SODA (CHOOSE 1 SAUCE)

**\$39.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$1.00  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #4

### WHATTA DEAL

50 WINGS, 50 TENDERS,

& TWO 2 LTR SODA (CHOOSE 1 SAUCE)

**\$79.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$1.00  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #1

### COMBO MEAL

12 WINGS OR 8 TENDERS, FRIES, &  
A 20 OZ. SODA (CHOOSE 1 SAUCE)

**\$12.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #2

### FAMILY COMBO

24 WINGS OR 16 TENDERS, FRIES, ONION  
RINGS & A 2 LIT. SODA (CHOOSE 1 SAUCE)

**\$24.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #3

### WHATTA SPECIAL

25 WINGS, 25 TENDERS,  
& A 2 LIT. SODA (CHOOSE 1 SAUCE)

**\$39.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #4

### WHATTA DEAL

50 WINGS, 50 TENDERS,  
& TWO 2 LIT. SODA (CHOOSE 1 SAUCE)

**\$79.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## Chicken Sandwiches

Served with Choice of  
Fries or Onion Rings  
Substitute Curly or  
Sweet Fries Extra \$1.00

GRILLED CHICKEN .....	6.75
<i>Grilled Chicken with Peppers</i>	
GRILLED CLUB .....	7.50
<i>Grilled Chicken Bacon Lettuce Tomato &amp; Mayo</i>	
ITALIAN CHICKEN .....	7.50
<i>Grilled Chicken with Marinara &amp; Provolone</i>	
SOUTHWEST CHICKEN .....	7.50
<i>Grilled Chicken BBQ Sauce Bacon Lettuce &amp; Tomato</i>	
BUFFALO CHICKEN .....	7.50
<i>Tenders Buffalo Sauce Blue Cheese Dressing Lettuce &amp; Tomato</i>	
CHICKEN CORDON BLUE .....	7.50
<i>Tenders Ham Provolone Dijon Lettuce &amp; Tomato</i>	
CHICKEN PESTO .....	7.50
<i>Grilled Chicken Roasted Red Pepper Grilled Onion Pesto Lettuce &amp; Tomato</i>	

## Specialty Plates

Served with Choice of Fries or Onion Rings  
Substitute Curly or Sweet Fries ... \$1.00 Extra

CORNED BEEF REUBEN .....	8.95
<i>Corned Beef Sauerbrout &amp; Dressing on Rye with Swiss Cheese</i>	
PASTRAMI REUBEN .....	7.95
<i>Grilled Pastrami Sauerbrout &amp; Dressing on Rye with Swiss Cheese</i>	
CHICKEN REUBEN .....	7.50
<i>Grilled Chicken Sauerbrout &amp; Dressing on Rye with Swiss Cheese</i>	
TURKEY REUBEN .....	7.50
<i>Roasted Turkey Sauerbrout &amp; Dressing on Rye with Swiss Cheese</i>	
6 TENDERS .....	8.50
<i>Served with Choice of Sauce</i>	
8 WINGS .....	8.50
<i>Served with Choice of Sauce</i>	

## Dinners

Served with Side Salad & Choice of Rice, or Fries  
Substitute Curly or Sweet Fries ... \$1.00 Extra

GRILLED CHICKEN w/ Rice .....	11.95
★ PORK TIPS w/ Rice .....	11.95
★ STEAK TIPS w/ Rice .....	12.95
★ TURKEY TIPS w/ Rice .....	11.95
COMBO .....	14.95

PREPARE TO PAY  
US POSTAGE  
PAID  
PERMIT NO. 1000  
BOSTON, MA

# Salads

Add Grilled Chicken . . . \$3.00

Add Steak Tips

or Turkey Tips . . . \$4.00

GARDEN . . . . .	5.50
CAESAR . . . . .	5.50
GREEK . . . . .	6.25
TUNA . . . . .	6.95
CHICKEN SALAD . . . . .	6.95
CHEF . . . . .	6.95
ANTIPASTO . . . . .	6.95
BUFFALO CHICKEN . . . . .	8.50

*Grilled to Order*

## DRESSINGS:

*Italian • Russian • Greek • Caesar • Blue  
Cheese • Ranch • Vinaigrette • Lite Italian*



# Appetizers

Add Cheese & Bacon . . . \$1.95

COLE SLAW . . . . .	2.75
POTATO SALAD . . . . .	2.75
SIDE GARDEN SALAD . . . . .	3.00
SIDE CAESAR SALAD . . . . .	3.00
FRENCH FRIES . . . . .	3.50
CURLY FRIES . . . . .	4.50
SWEET POTATO FRIES . . . . .	4.50
ONION RINGS . . . . .	4.50
FRIED MUSHROOMS . . . . .	4.50
<i>With Marinara Sauce</i>	
FRIED ZUCCHINI . . . . .	4.50
<i>with Marinara Sauce</i>	
MOZZARELLA STICKS . . . . .	4.95
<i>With Marinara Sauce</i>	
JALAPENO POPPERS . . . . .	4.95
<i>Cheddar or Cream Cheese</i>	
PIZZA ROLLS . . . . .	4.95
<i>With Marinara Sauce</i>	
TOASTED RAVIOLI'S . . . . .	5.50
<i>With Marinara Sauce</i>	
POTATO SKINS . . . . .	5.50
<i>With Cheese, Bacon, &amp; Sour Cream</i>	

# Drinks & Snacks

SODA . . . . .	1.75
WATER . . . . .	1.75
JUICE/SPORT DRINK . . . . .	2.00
2 LITER . . . . .	2.50
COOKIES . . . . .	0.80
CHIPS . . . . .	0.80    1.00    2.00



*We offer a  
large variety of  
products from*



PHOTO: ROBERTS AND ASSOCIATES; GRAPHIC: GARY SHAW/STUDIO XEROX

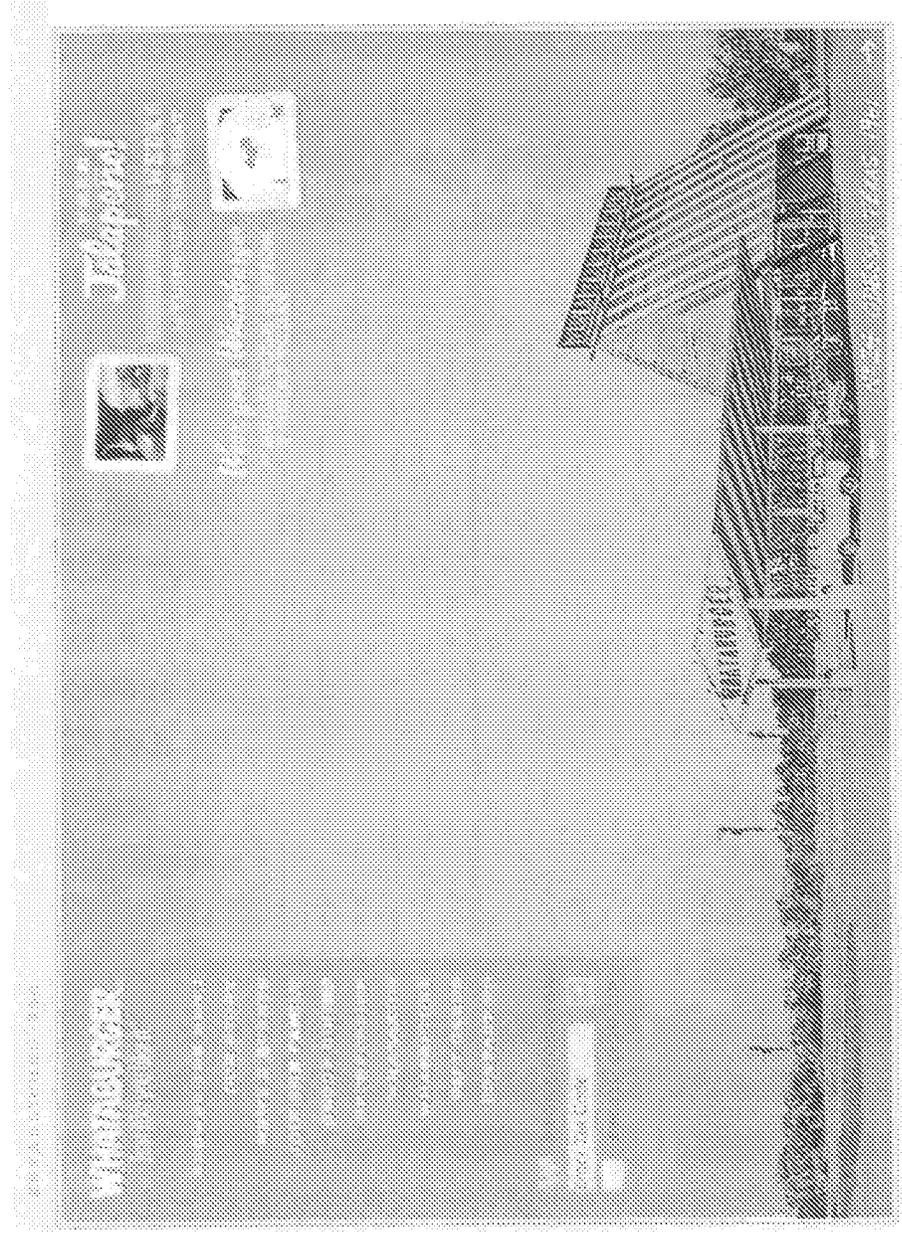


EXHIBIT  
 MMS# 15  
 6-25-10 SRA

800.4.A.BURGER

# WHATABURGER

Menu

Home

Locations

Whataburger

Whataburger

Whataburger

Whataburger

Whataburger

Whataburger

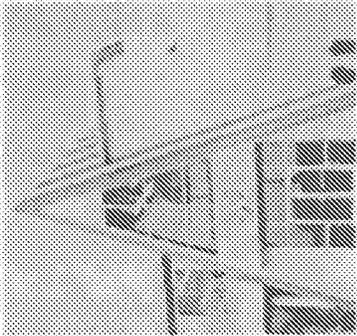
Whataburger

Whataburger

Whataburger

Cart 0/0

0/0



## BROWSE THE MENU

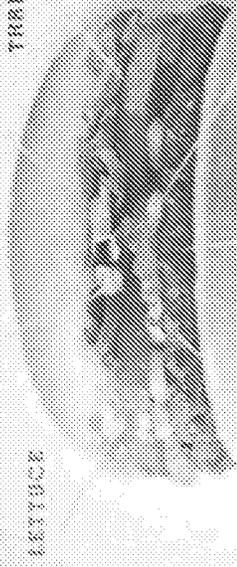
# Whataburger!

FIVE-INCH BUN

FANCUS MUSTARD

FRESH LETTUCE

THREE TOMATOES



FOUR PICKLES

DICED ONIONS

GET PURE AMERICAN BEEF

Hot, fresh and made-to-order. Whether it's our original 100% American beef Whataburger with cheese, or Whataburger topped with bacon, or a hot breakfast at Whataburger, we make everything just like you like it. Take a look at all we have to offer and come see us soon so our ambassadors meet just for you.

© 2010, Whataburger Restaurants, L.P. All Rights Reserved. Terms and Conditions [Link] Privacy Policy [Link]

# WHATABURGER

100% PURE AMERICAN BEEF

WHATABURGER

# BROWSE THE MENU

WHATABURGER

## Our Menu

100% Pure American Beef

WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER



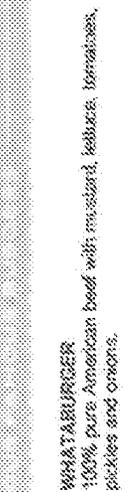
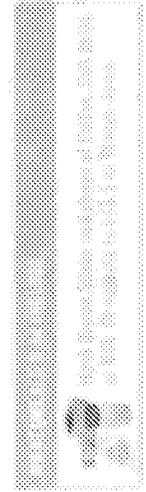
WHATABURGER



WHATABURGER



WHATABURGER



WHATABURGER  
100% pure American beef with mustard, lettuce, tomatoes, pickles and onions.

DOUBLE MEAT WHATABURGER

TRIPLE MEAT WHATABURGER

WHATABURGER, JR.

100% pure American beef cooked fresh to your order. It's the Whataburger for smaller appetites.

Served with fries, drink and a fun surprise.

**CHICKEN STRIPS**

Served with choice of cream gravy or dipping sauce

**JUSTABURGER**



**JUSTABURGER**  
100% Pure American beef cooked fresh to your order. Topped with mustard, onions and pickles.



**MILK**



**ORANGE JUICE**

**PREMIUM BLEND 100% COLOMBIAN COFFEE**



**AMERICAN CHEESE SLICE BACON JALAPEÑOS** (whole or sliced)

Vanilla, Chocolate and Strawberry

**FRENCH FRIES (SM. MD. LG.)**  
**ONION RINGS (MD. LG.)**

**GRILLED CHICKEN SANDWICH**

Marinated chicken breast grilled to perfection and served with fresh lettuce, tomatoes and mayonnaise on a wheat bun.

**WHATABURGER**

Breaded chicken breast served with fresh lettuce, tomatoes and mayonnaise on a wheat bun.

**CHICKEN STRIPS**

(available as a single strip also)  
4 delicious breaded chicken strips with your choice of cream gravy or dipping sauce.

**WHATABURGER**

Breaded white fish fillet with lettuce and tartar sauce on a small white bun.

Served with croutons, crackers, and choice of Thousand Island, Ranch, Honey Mustard, Low Fat Vinaigrette, or Fat Free Ranch dressing.

**GARDEN SALAD**

Romaine, iceberg, cabbage, lettuce, grape tomatoes, and carrots.

**GRILLED CHICKEN OR CHICKEN STRIP SALAD**

Tender strips of grilled, marinated chicken breast or breaded chicken strips over our fresh garden salad.

Sure you can get a Whataburger 24 hours a day, but if you've got a taste for breakfast you can get any of the following items from 11pm to 11am.

**TACITO**

(available with or without cheese)  
A soft flour tortilla filled with scrambled eggs and your choice of sausage or potato or bacon.

**PANCAKES WITH SAUSAGE OR BACON**

Puffy and hot served with syrup and margarine, pork sausage patty or bacon.

**PANCAKES**

Puffy and hot served with syrup and margarine.

**BREAKFAST ON A BUN**

Pork sausage or bacon with fresh egg and cheese on a kaiser roll.

**EGG SANDWICH**

Egg & American cheese on a toasted bun.

**CRANBERRY ROLL**

Single or tray of 8

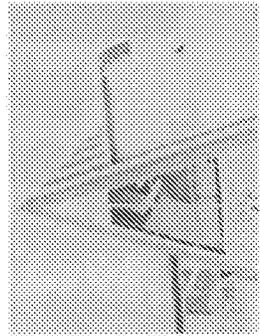
**HASH BROWN STICKS**

Plain biscuit served with margarine, jelly or honey.

**BISCUIT WITH GRAVY**

A buttermilk biscuit served with a white, creamy pork sausage gravy.

**BISCUIT WITH SAUSAGE OR BACON**



**HOT APPLE PIE**

Hot and delicious apples with cinnamon.

**GOURMET COOKIES**

White Chocolate Chunk  
Macadamia Nut  
Chocolate Chunk

**CINNAMON ROLL**

Single or tray of 6



A buttermilk biscuit with a pork sausage patty or bacon

**BISCUIT WITH EGG & CHEESE**

A buttermilk biscuit with egg & American cheese.

**BISCUIT WITH SAUSAGE OR BACON, EGG & CHEESE**

A buttermilk biscuit with a pork sausage patty or bacon, egg & American cheese.

**HONEY BUTTER CHICKEN BISCUIT**

One breaded chicken strip served on a buttermilk biscuit with warm honey butter sauce.

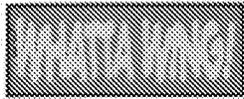
**BREAKFAST PLATTER**

Scrambled eggs with biscuit, hash brown sticks and your choice of pork sausage patty or bacon.



WHATTA WING! is on Facebook

Sign up for Facebook to connect with WHATTA WING!



## Wings & Grill

WHATTA WING!

[Wall](#) [Info](#) [Photos](#)

### Basic Info

Founded: 2007

### Detailed Info

Website: <http://www.whattawing.com/>

Company Overview: WHATTA WING!  
218 Mass Ave.  
Arlington, MA 02434

#### Best wings around!

Mission: Provide the most flavorful, highest quality food, quickly!  
Products: Wings, tenders, wraps, burgers, subs and salads.

### Information

Founded:  
2007

### 99 People Like This



Assad  
Guaheri



Eileen  
Andrews



Michael  
Guaheri



Samantha  
Rose

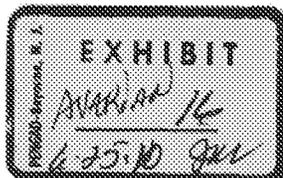


Adam Lewis

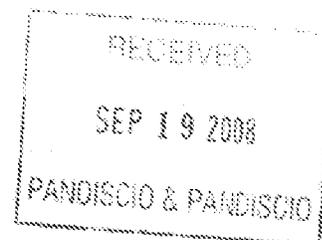


Dan Koplin

Create a Page for My Business:  
[Report Page](#)







Pandiscio & Pandiscio, P.C.

From: ECom115 [OLDECom1152@USPTO.GOV]

Sent: Thursday, September 18, 2008 5:03 PM

To: mail@pandisciolaw.com

Subject: TRADEMARK APPLICATION NO 77494179 - WHATTA WING! - AVAKIAN/TM-1

**IMPORTANT NOTICE  
USPTO OFFICE ACTION HAS ISSUED ON 9/18/2008 FOR  
APPLICATION SERIAL NO. 77494179**

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

**VIEW OFFICE ACTION:** Click on this link [http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77494179&doc\\_type=EXA&mail\\_date=20080918](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77494179&doc_type=EXA&mail_date=20080918) (or copy and paste this URL into the address field of your browser), or visit <http://tmportal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

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

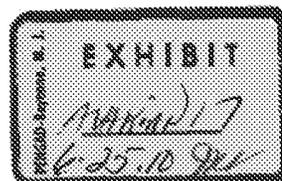
**RESPONSE MAY BE REQUIRED:** You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable response time period. Your response deadline will be calculated from 9/18/2008.

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

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

**WARNING**

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.**



WW0001

To: Sarkis Avakian (mail@pandisciolaw.com)  
Subject: TRADEMARK APPLICATION NO. 77494179 - WHATTA WING! - AVAKIAN/TM-1  
Sent: 9/18/2008 5:02:23 PM  
Sent As: ECOM115@USPTO.GOV  
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/494179

MARK: WHATTA WING!

**\*77494179\***

CORRESPONDENT ADDRESS:  
MARK J. PANDISCIO  
PANDISCIO & PANDISCIO, P.C.  
470 TOTTEN POND RD STE 4  
WALTHAM, MA 02451-1933

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

APPLICANT: Sarkis Avakian

CORRESPONDENT'S REFERENCE/DOCKET NO:  
AVAKIAN/TM-1

CORRESPONDENT E-MAIL ADDRESS:  
mail@pandisciolaw.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 9/18/2008

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

**AMENDMENT:** In accordance with the authorization granted by Mark J. Pandiscio on September 18, 2008, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

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

DESCRIPTION OF THE MARK

The applicant amends its description to the following:

The mark consists of the words "WHATTA WING!" in yellow stylized font.

DISCLAIMER

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use "WING" apart from the mark as shown. "

15 U.S.C. §1056; TMEP §§1213, 1213.03(a) and 1213.08(a)(i).

If the applicant has any questions with regards to this Examiners Amendment, please call or email the assigned examining attorney.

Law Office 115  
United States Patent and Trademark Office  
(571) 272-9478  
Lana.Pham@uspto.gov (informal)

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

---

To: Sarkis Avakian (mail@pandisciolaw.com)  
Subject: TRADEMARK APPLICATION NO. 77494179 - WHATTA WING! - AVAKIAN/TM-1  
Sent: 9/18/2008 5:02:27 PM  
Sent As: ECOM115@USPTO.GOV  
Attachments:

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**IMPORTANT NOTICE**  
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**APPLICATION SERIAL NO. 77494179**

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**VIEW OFFICE ACTION:** Click on this link  
[http://portal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77494179&doc\\_type=EXA&mail\\_date=20080918](http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77494179&doc_type=EXA&mail_date=20080918) (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

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

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

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1. The USPTO will NOT send a separate e-mail with the Office action attached.
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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1461  
Alexandria, VA 22313-1451

Mailed: February 26, 2009

Opposition No. 91189023  
Serial No. 77494179

MARK J. PANDISCIO  
PANDISCIO & PANDISCIO, P.C.  
470 TOTTEN POND RD STE 4  
WALTHAM, MA 02451-1933  
mail@pandisciolaw.com

*AVAKIAN-TM-1*

Whataburger Partnership

v.

Sarkis Avakian

Christopher Kelly  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, DC 20006  
ckelly@wileyrein.com

ESTTA269002

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVue system: <http://ttabvue.uspto.gov/ttabvue/v?qs=91189023>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TEMP).

Plaintiff must notify the Board when service has been ineffective, within 16 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for

*hw/rc  
Answer due  
4-7-09 (HAW)*

*hw/rc  
all discovery dates  
on page 2*

WW0005

the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address:  
<http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

✓ Time to Answer	4/7/2009 ✓
✓ Deadline for Discovery Conference	5/7/2009 ✓
✓ Discovery Opens	5/7/2009 ✓
✓ Initial Disclosures Due	6/6/2009 ✓
✓ Expert Disclosures Due	10/4/2009 ✓
✓ Discovery Closes	11/3/2009 ✓
✓ Plaintiff's Pretrial Disclosures	12/18/2009 ✓
✓ Plaintiff's 30-day Trial Period Ends	2/1/2010 ✓
✓ Defendant's Pretrial Disclosures	2/16/2010 ✓
✓ Defendant's 30-day Trial Period Ends	4/2/2010 ✓
✓ Plaintiff's Rebuttal Disclosures	4/17/2010 ✓
✓ Plaintiff's 15-day Rebuttal Period Ends	5/17/2010 ✓

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and

introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ftah/tbmp/stdagmt.htm>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for

pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 3.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

**ESTTA NOTE:** For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.



**Declaration**

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

Signature: /Mark J. Pandiscio/ Date Signed: 06/09/2008

Signatory's Name: Mark J. Pandiscio

Signatory's Position: Attorney for Applicant

[Back](#)

WW0010

WHATTA WING!

# WHATTIA WINGS!

**WHATTIA WINGS!**  
Wings & Grill

Free Delivery  
**781.646.9462**

WW0012

PTO Form 1475 (Rev 9/2006)  
OMB No. 0651-0009 (Exp 09/30/2008)

## Trademark/Service Mark Application, Principal Register

Serial Number: N/A

Class #

photograph of restaurant sign

**Specimen:** spec-671002038-135826353\_..AVAKIANTM1.fig1.pdf

spec-671002038-135826353\_..AVAKIANTM1.fig1.pdf

[Back](#)

WW0047

WHATTAWING!

Welcome to...



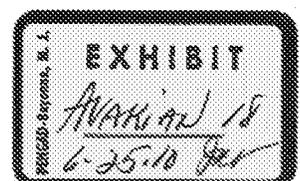
Wings & Grill

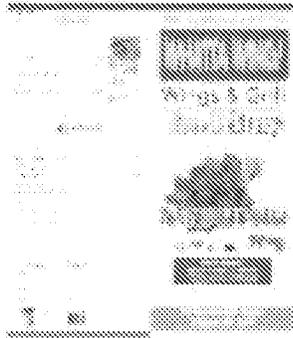
(781) 646-9464

call us to order!

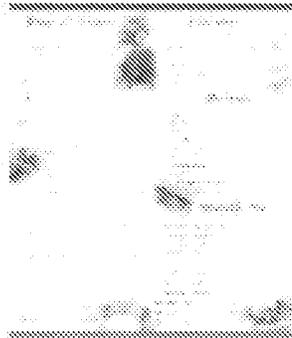
Open 11AM - 10PM 7 Days

Please click on the pictures below to view full page menu items:





Salads, Appetizers and Drinks



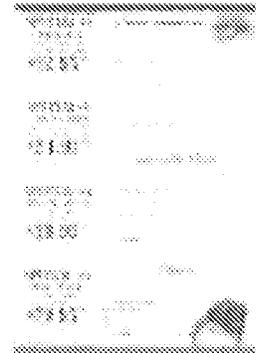
Wings and Tenders

Cold, Hot, and Specialty Subs



Specialty Wraps and Burgers

Wing/Tender Specials



Chicken Sandwiches

Specialty Plates and Dinners

Wing/Tender Specials

We would love to hear your comments - Please [Email us](#)

WhattaWing! - 218 Massachusetts Avenue - Arlington, MA 02474

PRK...10  
US POSTAGE  
PAID  
PERMIT NUMBER  
BOSTON, MA

## Salads

Add Grilled Chicken... \$3.00  
Add Steak Tips  
or Turkey Tips... \$4.00

- GARDEN ..... 5.50
- CAESAR ..... 5.50
- GREEK ..... 6.25
- TUNA ..... 6.95
- CHICKEN SALAD ..... 6.95
- CHEF ..... 6.95
- ANTIPASTO ..... 6.95
- BUFFALO CHICKEN ..... 8.50

*Grilled or Fried*

### DRESSINGS:

Italian • Russian • Greek • Caesar • Blue  
Cheese • Ranch • Vinaigrette • Lite Italian

## Appetizers

Add Cheese & Bacon... \$1.95

- COLE SLAW ..... 2.75
- POTATO SALAD ..... 2.75
- SIDE GARDEN SALAD ..... 3.00
- SIDE CAESAR SALAD ..... 3.00
- FRENCH FRIES ..... 3.50
- CURLY FRIES ..... 4.50
- SWEET POTATO FRIES ..... 4.50
- ONION RINGS ..... 4.50
- FRIED MUSHROOMS ..... 4.50
- With Marinara Sauce*
- FRIED ZUCCHINI ..... 4.50
- With Marinara Sauce*
- MOZZARELLA STICKS ..... 4.95
- With Marinara Sauce*
- JALAPENO POPPERS ..... 4.95
- Cheddar or Cream Cheese*
- PIZZA ROLLS ..... 4.95
- With Marinara Sauce*
- TOASTED RAVIOLI'S ..... 5.50
- With Marinara Sauce*
- POTATO SKINS ..... 5.50
- With Cheese, Bacon, & Sour Cream*

## Drinks & Snacks

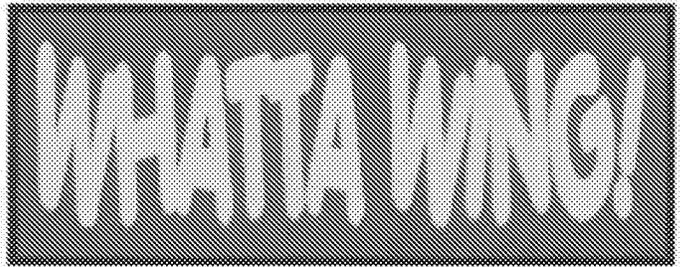
- SODA ..... 1.75
- WATER ..... 1.75
- JUICE/SPORT DRINK ..... 2.00
- 2 LITER ..... 2.50
- COOKIES ..... 0.80
- CHIPS ..... 0.80    1.00    2.00



We offer a  
large variety of  
products from...



Gift Certificates Available!



## Wings & Grill

# Free Delivery!

## 0g Trans Fat

Minimum \$15.00 Cash  
Minimum \$15.00 Credit Card



# Tel: 781-646-9464

(Wing)



### Store Hours:

Open 7 Days A Week:  
11:00 am to 10:00 pm

## Fresh Chicken Not Frozen

218 Massachusetts Avenue •  
Arlington, MA. 02474

1-800-469-1234 2287 781-646-9464

# Wings & Tenders

## Wings

Only Buffalo Wings & Tenders Served with Blue Cheese & Celery. 1 Sauce Per Order.

Extra Sauce . . . \$1.00  
Extra Blue Cheese . . . \$0.50  
Extra Celery . . . \$0.50

8 PCS . . . . .	6.95
16 PCS. . . . .	12.95
24 PCS. . . . .	17.95
32 PCS. . . . .	23.95
45 PCS. . . . .	32.95
100 PCS. . . . .	62.95

## Tenders

### BONELESS

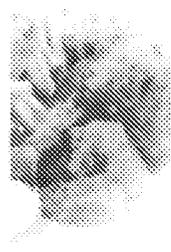
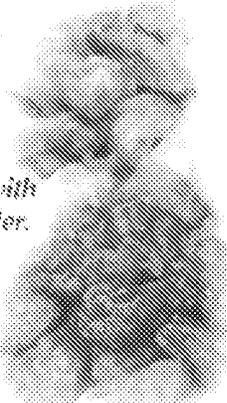
6 PCS . . . . .	7.25
12 PCS. . . . .	13.45
18 PCS. . . . .	18.75
24 PCS. . . . .	25.95
35 PCS. . . . .	36.50
75 PCS. . . . .	73.70

### SAUCES:

Buffalo Mild • Buffalo Medium • Buffalo Hot • Buffalo Suicide • Honey Buffalo • Garlic Buffalo • Garlic Parmesan • Garlic Marinara • Honey Mustard • Honey • Sweet & Sour • Teradactal • Spicy Teradactal • Mango Habanero • Teriyaki • Hot Teriyaki • Honey Teriyaki • Honey Hot Teriyaki • BBQ • Honey BBQ • Spicy BBQ • BBQ Honey Mustard • Oriental Sesame • Creamy Caesar • Spicy Ranch • Buttermilk Ranch

## Combos

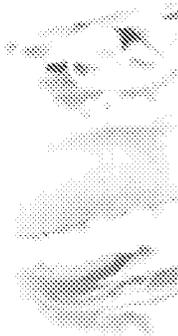
<b>SINGLE</b> . . . . .	<b>23.95</b>
<small>20 Wings, 10 Tenders &amp; 1 Appetizer</small>	
<b>DOUBLE</b> . . . . .	<b>44.95</b>
<small>40 Wings, 20 Tenders &amp; 1 Appetizer</small>	
<b>TRIPLE</b> . . . . .	<b>66.95</b>
<small>60 Wings, 30 Tenders &amp; 1 Appetizer</small>	



# Cold Subs

12" Sub or Wrap  
Add Cheese . . . \$0.50

VEGGIE . . . . .	6.25
BLT . . . . .	6.25
HAM & CHEESE . . . . .	6.25
TURKEY . . . . .	6.25
ITALIAN . . . . .	6.25
GENOA SALAMI . . . . .	6.25
TUNA . . . . .	6.25
CHICKEN SALAD . . . . .	6.25



# Hot Subs

Add Cheese . . . \$0.50

PEPPER & EGG . . . . .	6.25
MEATBALL . . . . .	6.25
SAUSAGE . . . . .	6.25
EGGPLANT . . . . .	6.25
VEAL PARM . . . . .	6.25
GRILLED CHICKEN . . . . .	6.25
CHICKEN CUTLET . . . . .	6.25
CHICKEN PARM . . . . .	6.25
HAMBURGER . . . . .	6.25
CHEESEBURGER . . . . .	6.75
PASTRAMI . . . . .	6.95
CHEESE STEAK . . . . .	6.50
MUSHROOM STEAK . . . . .	6.50
PEPPER STEAK . . . . .	6.50
ONION STEAK . . . . .	6.50



# Specialty Subs

Add Cheese . . . \$0.50

BBQ GRILLED CHICKEN . . . . .	6.50
BUFFALO TENDER . . . . .	6.75
CHICKEN STIR FRY . . . . .	6.95
CHICKEN CORDON BLUE . . . . .	6.95
CHEESEBURGER CLUB . . . . .	7.25
TURKEY CLUB . . . . .	6.95
STEAK & EGG . . . . .	6.95
STEAK BOMB . . . . .	7.25
<small>Mushroom, Onion, Pepper, Sauce &amp; Cheese</small>	
BUFFALO STEAK . . . . .	6.95
<small>Buffalo Sauce &amp; Blue Cheese</small>	
ITALIAN STEAK . . . . .	6.95
<small>Marinara, Sauce &amp; Provolone Cheese</small>	
ORIENTAL STEAK . . . . .	7.25
<small>Mushroom, Onion, Pepper, &amp; Teradactal</small>	
★ PORK TIPS . . . . .	7.25
<small>Grilled Pork Tips with Teradactal</small>	
★ TURKEY TIPS . . . . .	7.95
<small>Grilled Marinated Turkey Tips with Teradactal</small>	
★ STEAK TIPS . . . . .	7.95
<small>Grilled Marinated Steak Tips with Teradactal</small>	



6.95 DINE IN ONLY PRICE

# Specialty Wraps

*Plain or Wheat*

- CHICKEN CAESAR** ..... 7.25  
*Grilled Chicken, Romaine, Creamer, Caesar Dressing,  
& Shredded Parmesan Cheese*
- BUFFALO CHICKEN** ..... 7.25  
*Tenders, Buffalo Sauce, Lettuce, Blue Cheese Dressing*
- GRILLED GREEK** ..... 7.25  
*Grilled Chicken, Feta, Lettuce, Tomatoes, Olives, & Greek Dressing*
- CHICKEN CORDON BLUE** ..... 7.25  
*Tenders, Swiss, Prosciutto, & Cheese*
- CHICKEN PESTO** ..... 7.25  
*Grilled Chicken, Roasted Red Peppers, Grilled Onions, Prosciutto, & Pesto*
- SANTA FE CHICKEN** ..... 7.25  
*Grilled Chicken, Rice, Grilled Mushrooms, Peppers, Onions, & BBQ Sauce*
- CHICKEN CLUB** ..... 7.25  
*Grilled Chicken, Bacon, Lettuce, Tomatoes, & Mayo*
- TURKEY CLUB** ..... 7.25  
*Oven Roasted Turkey, Bacon, Lettuce, Tomatoes, & Mayo*
- ★ **PORK TIPS** ..... 7.25  
*Grilled Pork Tips with Fixings*
- ★ **TURKEY TIPS** ..... 7.95  
*Grilled Marinated Turkey Tips with Fixings*
- ★ **STEAK TIPS** ..... 7.95  
*Grilled Marinated Steak Tips with Fixings*

# ★ Burgers

*Served with Choice of Fries or Onion Rings  
Substitute Curly or Sweet Fries Extra. . . \$1.00*

- HAMBURGER** ..... 6.50  
*1/2 lb. Burger with Lettuce & Tomato*
- CHEESEBURGER** ..... 6.95  
*1/2 lb. Burger with Cheese, Lettuce & Tomato*
- MUSHROOM SWISS** ..... 7.25  
*1/2 lb. Burger with Grilled Mushrooms, Swiss Cheese, Lettuce & Tomato*
- BACON CHEESE BURGER** ..... 7.25  
*1/2 lb. Burger with Bacon, Cheese, Lettuce & Tomato*
- TEX BURGER** ..... 7.25  
*1/2 lb. Burger with BBQ Sauce, Bacon, Cheese, Lettuce & Tomato*
- BUFFALO BURGER** ..... 7.25  
*1/2 lb. Burger with Buffalo Sauce, Blue Cheese Dressing, Lettuce & Tomato*
- PHILLY BURGER** ..... 7.25  
*1/2 lb. Burger with Grilled Mushrooms, Onions, Marbled Cheddar, Lettuce & Tomato*
- GOOMBA BURGER** ..... 7.25  
*1/2 lb. Burger with Roasted Red pepper, Grilled Onions, Pesto, Prosciutto, Lettuce & Tomato*

## SPECIAL #1

### COMBO MEAL

12 WINGS OR 8 TENDERS, FRIES, & A 20 OZ. SODA (CHOOSE 1 SAUCE)

**\$12.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS • ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #2

### FAMILY COMBO

24 WINGS OR 16 TENDERS, FRIES, ONION RINGS & A 2 LT. SODA (CHOOSE 1 SAUCE)

**\$24.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS • ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #3

### WHATTA SPECIAL

25 WINGS, 25 TENDERS, & A 2 LT. SODA (CHOOSE 1 SAUCE)

**\$39.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS • ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

## SPECIAL #4

### WHATTA DEAL

50 WINGS, 50 TENDERS, & TWO 2 LT. SODA (CHOOSE 1 SAUCE)

**\$79.95<sup>+tx</sup>**

Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

PRICES, ITEMS, & OFFERS ARE SUBJECT TO CHANGE WITHOUT NOTICE

CONSUMER ADVISORY WARNING FOR RAW FOODS

*Preparation, Labeled by Item*



**CONSUMER ADVISORY WARNING FOR RAW FOODS**  
IN COMPLIANCE WITH THE DEPARTMENT OF PUBLIC HEALTH  
WE ADVISE THAT EATING RAW OR UNDERCOOKED MEAT  
PRODUCTS OR SEAFOOD POSSES A RISK TO YOUR HEALTH



Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
Substitutions \$1.00 Extra

CANNOT COMBINE SPECIALS & COUPONS •  
ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

**SPECIAL #1**  
**COMBO MEAL**  
 12 WINGS OR 8 TENDERS, FRIES, &  
 A 20 OZ. SODA (CHOOSE 1 SAUCE)  
**\$12.95<sup>+tx</sup>**  
 Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
 Substitutions \$1.00 Extra  
 CANNOT COMBINE SPECIALS & COUPONS •  
 ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

**SPECIAL #2**  
**FAMILY COMBO**  
 24 WINGS OR 16 TENDERS, FRIES, ONION  
 RINGS & A 2 LT. SODA (CHOOSE 1 SAUCE)  
**\$24.95<sup>+tx</sup>**  
 Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
 Substitutions \$1.00 Extra  
 CANNOT COMBINE SPECIALS & COUPONS •  
 ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

**SPECIAL #3**  
**WHATTA SPECIAL**  
 15 WINGS, 25 TENDERS,  
 & A 2 LT. SODA (CHOOSE 1 SAUCE)  
**\$39.95<sup>+tx</sup>**  
 Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
 Substitutions \$1.00 Extra  
 CANNOT COMBINE SPECIALS & COUPONS •  
 ALL SPECIALS & COUPONS ARE SUBJECT TO CHANGE

**SPECIAL #4**  
**WHATTA DEAL**  
 50 WINGS, 50 TENDERS,  
 & TWO 2 LT. SODA (CHOOSE 1 SAUCE)  
**\$79.95<sup>+tx</sup>**  
 Extra Sauce \$1.00 • Extra Blue Cheese \$0.50  
 Substitutions \$1.00 Extra

## Chicken Sandwiches

Served with Choice of  
 Fries or Onion Rings  
 Substitute Curly or  
 Sweet Fries Extra... \$1.00



- GRILLED CHICKEN** ..... 6.75  
Grilled Chicken with Fixings
- GRILLED CLUB** ..... 7.50  
Grilled Chicken, Bacon, Lettuce, Tomato, & Mayo
- ITALIAN CHICKEN** ..... 7.50  
Grilled Chicken, with Marinara & Prosciutto
- SOUTHWEST CHICKEN** ..... 7.50  
Grilled Chicken, BBQ Sauce, Bacon, Lettuce, & Tomato
- BUFFALO CHICKEN** ..... 7.50  
Tenders, Buffalo Sauce, Blue Cheese Dressing, Lettuce, & Tomato
- CHICKEN CORDON BLUE**..... 7.50  
Tenders, Ham, Prosciutto, Dijon, Lettuce, & Tomato
- CHICKEN PESTO**..... 7.50  
Grilled Chicken, Roasted Red Peppers, Grilled Onions,  
 Peas, Lettuce, & Tomato

## Specialty Plates

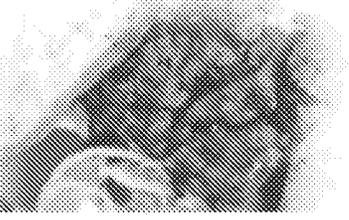
Served with Choice of Fries or Onion Rings  
 Substitute Curly or Sweet Fries... \$1.00 Extra

- CORNED BEEF REUBEN**..... 8.95  
Corned Beef, Sauerkraut, & Dressing on Rye with Swiss Cheese
- PASTRAMI REUBEN** ..... 7.95  
Grilled Pastrami, Sauerkraut, & Dressing on Rye with Swiss Cheese
- CHICKEN REUBEN** ..... 7.50  
Grilled Chicken, Sauerkraut, & Dressing on Rye with Swiss Cheese
- TURKEY REUBEN** ..... 7.50  
Roasted Turkey, Sauerkraut, & Dressing on Rye with Swiss Cheese
- 6 TENDERS**..... 8.50  
Served with Choice of Sauce
- 8 WINGS**..... 8.50  
Served with Choice of Sauce

## Dinners

Served with Side Salad & Choice of Rice, or Fries  
 Substitute Curly or Sweet Fries... \$1.00 Extra

- GRILLED CHICKEN** (6 Pcs.) 11.95
- ★ **PORK TIPS** (10 Oz.) ..... 11.95
- ★ **STEAK TIPS** (14 Oz.) ..... 12.95
- ★ **TURKEY TIPS** (11 Oz.) .... 11.95
- COMBO** ..... 14.95



Small Wings \$1.99 • Large Wing Clusters \$8.99  
Substitutions \$1.00 Extra  
CANNOT COMBINE SPECIALS & DISCOUNTS  
ALL SPECIALS & DISCOUNTS ARE SUBJECT TO LIMITS

**TURKEY TIPS** (12 Pieces) ..... 11.95  
**COMBO** ..... 14.95  
\*Add 2

