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Filing date: **02/04/2011**

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

Proceeding	91189023
Party	Plaintiff Whataburger Partnership
Correspondence Address	JENNIFER L ELGIN WILEY REIN LLP 1776 K STREET NW WASHINGTON, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jennifer L. Elgin
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Signature	/JLE/
Date	02/04/2011
Attachments	Revised Notice_of_Reliance--6.pdf ( 12 pages )(1217388 bytes ) COS-WRFMAIN-#13241532-v1.pdf ( 1 page )(144472 bytes )



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February 4, 2011

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Trademark Trial and Appeal Board  
Madison Buildings  
600 Dulany Street  
Alexandria, VA 22314

**Re: *Whataburger Partnership v. Avakian*, Opp. No. 91/189,023 (TTAB)**

Dear Sir/Madame:

Attached hereto is a revised "Opposer's Sixth Notice of Reliance" in the above-referenced action. Opposer's Sixth Notice of Reliance was timely filed on January 28, 2011. Thereafter, Opposer's counsel realized that the attachment to the Notice, which was properly identified and described in the Notice as Exhibit "F", was incorrect – Opposer had mistakenly filed Exhibit "G" instead of the referenced Exhibit "F" with the Notice.

The Interlocutory Attorney has confirmed via telephone to Opposer's counsel that the filing of a revised Notice of Reliance, substituting Exhibit "F" for Exhibit "G", is a ministerial change and should be allowed. The Applicant's counsel already has been provided with Exhibit "F" and will be served with the revised "Opposer's Sixth Notice of Reliance", and therefore is not prejudiced.

The Board is requested to substitute the attached revised "Opposer's Sixth Notice of Reliance" for the Notice filed on January 28, 2011.

Sincerely yours,

Jennifer L. Elgin

Attachment

13241508.1

**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.	)	

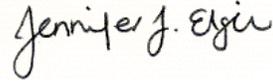
**Opposer’s Sixth Notice of Reliance**

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 “Applicant’s Objections and Responses to Opposer’s First Set of Interrogatories to Applicant,” responses to Interrogatories Nos. 1 (to show origin and meaning of opposed mark), 4 (to show priority of Opposer’s mark over opposed mark; the channels of trade of the opposed mark; and the classes of potential purchasers of opposed mark), and 5 (to show amount, types and geographic scope of advertising and promotion for opposed mark).

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

Respectfully submitted,

WHATABURGER PARTNERSHIP



By: \_\_\_\_\_

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

Attorneys for Whataburger Partnership

Dated: January 28, 2011

# **EXHIBIT F**

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

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

**APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to Federal Rule of Civil Procedure 33, Applicant Sarkis Avakian d/b/a Whatta Wing! ("Applicant" or "Whatta Wing!") hereby responds to the First Set of Interrogatories served by Whataburger Partnership ("Opposer" or "Whataburger").

**GENERAL OBJECTIONS**

The following General Objections apply to all of Applicant's Responses to Opposer's First Set of Interrogatories.

1. Applicant objects to the Instructions and Definitions set forth in Opposer's First Set of Interrogatories to the extent that they purport to impose any obligation on Applicant beyond those imposed by the Federal Rules of Civil Procedure or the Rules of the Trademark Trial and Appeal Board.

2. Applicant objects to Opposer's First Set of Interrogatories as overly broad to the extent that they are unbounded by any time frame and/or encompass time frames not relevant to the conduct and events that are at issue in this lawsuit.

failure to object to each Interrogatory on a particular ground shall not be construed as a waiver of any rights to object on that ground or any additional proper ground at any time.

10. Applicant's factual investigation in this matter continues and its Responses and objections are based upon current information and belief and are made without waiver and with reservation of all rights to provide further, supplemental responses if Applicant learns of additional information that would affect these Responses.

**RESPONSES AND SPECIFIC OBJECTIONS**

**INTERROGATORY NO. 1:** Describe with particularity when and why You selected Applicant's Mark.

**RESPONSE:** Subject to and without waiving the foregoing General Objections, Applicant states that it selected its "Whatta Wing!" Mark in approximately fall 2007. Applicant selected its "Whatta Wing!" Mark because the term "Whatta" is a common slang term for "What a" in the Boston area. Applicant frequently heard the term "Whatta" and a similar term was used by the office supply company W.B. Mason in advertisements around that time. Specifically, W.B. Mason used the phrase "Whatta Bargain" in its Boston area advertisements. Based on the foregoing, Applicant thought "Whatta Wing!" would be a catchy, regionally-appropriate name for its chicken wing restaurant.

[REDACTED]

[REDACTED]

**INTERROGATORY NO. 4:** For each product or service in connection with which Applicant has used Applicant's Mark, describe with particularity:

- (a) The inclusive time period(s) during which it has been marketed in connection with Applicant's Mark;
- (b) The channels of trade through which it has been marketed in connection with Applicant's Mark;
- (c) The classes of potential purchasers to whom Applicant has marketed it in connection with Applicant's Mark;
- (d) Its annual wholesale and retail sales in units and to the nearest thousands of dollars;

(e) The annual dollar amount spent by You on its advertisement and promotion.

**RESPONSE:** Applicant objects to this interrogatory as vague, ambiguous, overly broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it calls for information subject to the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing specific and General Objections, Applicant states:

(a) Applicant has used Applicant's Mark in marketing its services from Novmeber 2007 to the present.

(b) Applicant has used Applicant's Mark for limited direct-mail marketing through "SuperCoups," a local by-mail coupon service. Applicant's Mark is displayed on its signage and menus available at Whatta Wing! in Arlington, Massachusetts and on-line at <http://www.whattawing.com>. Applicant's Mark has been used in two newspaper articles about Applicant's Whatta Wing! restaurant and has appeared on television during segments of the Phantom Gourmet, a regional TV restaurant rating show shown on New England Cable News network and on Chronicle, a regional TV newsmagazine produced out of Boston, Massachusetts and Manchester, New Hampshire. Applicant's Whatta Wing! restaurant was also been featured on the New England radio station WBCN 104.1 FM in their "Steals and Deals" segment.

(c) Applicant has marketed its services on a regional basis to consumers in the New England area in connection with Applicant's Mark.

(d) Applicant states that it will respond to this sub-part subject to and upon entry of a mutually acceptable protective order.

(e) Applicant states that it will respond to this sub-part subject to and upon entry of a mutually acceptable protective order.

**INTERROGATORY NO. 5:** For each advertisement produced in response to Document Request No. 26 to Applicant, state the date(s) of publication; the publisher of the media in which the advertisement appeared/will appear, and the geographic distribution of each such media.

**RESPONSE:** Applicant objects to this interrogatory as vague, ambiguous, overly broad and unduly burdensome. Subject to and without waiving the foregoing specific and General Objections, Applicant states:

<u>Advertisement</u>	<u>Date(s) of Publication</u>	<u>Publisher</u>
TV Segment	January 12, 2008 and approximately 10 times thereafter	Phantom Gourmet
TV Segment	January 25, 2008	Chronicle
Newspaper article	January 30, 2008	Boston Herald
Newspaper article	March 23, 2008	Boston Globe
Radio Segment	January 9 – January 15, 2009	WBCN 104.1
Coupons	April 16, 2009 June 15, 2009	SuperCoups
Menus	November 2007 through present	
<a href="http://www.whattawing.com">www.whattawing.com</a>	November 2007 through present	
Signage	November 2007 through present	

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respectfully submitted,

SARKIS AVAKIAN

By his Attorneys,

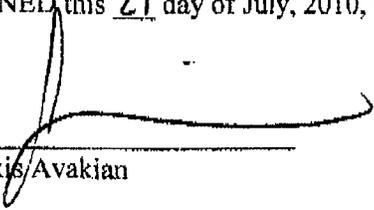
Dated: August 28, 2009

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

**AMENDED VERIFICATION**

I, Sarkis Avakian d/b/a Whatta Wing!, hereby state that the facts recited in Response Nos. 1, 2, 4, 5, 6, 7 and 8 of Applicant's Objections and Responses to Opposer's First Set of Interrogatories to Applicant are true and correct to the best of my information and belief.

SIGNED this 29 day of July, 2010, under the penalties of perjury.

  
\_\_\_\_\_  
Sarkis Avakian

**CERTIFICATE OF SERVICE**

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

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

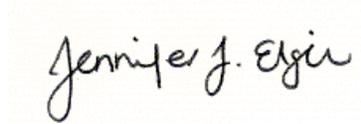
/s/ Sheryl Koval Garko  
Sheryl Koval Garko

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I served a copy of the revised OPPOSER'S SIXTH NOTICE OF RELIANCE by causing a copy thereof to be sent via electronic mail (by agreement of the parties) to the following address:

Sheryl Koval Garko  
Goodwin Procter LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
SGarko@goodwinprocter.com

This 4<sup>th</sup> day of February 2011.



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Jennifer L. Elgin