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

Proceeding	91192099
Party	Plaintiff McDonald's Corporation
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Date	01/19/2010
Attachments	Opposer's Reply_In_Support_of_Motion_To_Leave_To_Amend.pdf (37 pages) (4947101 bytes)

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

McDONALD'S CORPORATION,)	
)	Opposition No. 91192099
Opposer,)	
)	
v.)	Mark: McSWEET
)	Application S/N: 77/722,272
McSWEET, LLC,)	Filed: April 24, 2009
)	Published: September 1, 2009
Applicant.)	

**OPPOSER'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO AMEND ITS
NOTICE OF OPPOSITION**

The Brief of Applicant, McSweet, LLC ("Applicant"), opposing Opposer's Motion for Leave to Amend, grossly mischaracterizes the nature of the proposed amendments to the Notice of Opposition in an attempt to create prejudice where none exists. Contrary to Applicant's assertions, Opposer is neither adding a new claim nor submitting "evidence." Furthermore, Opposer's proposed Amended Notice of Opposition was filed before discovery even opened in this proceeding and is therefore timely and will cause no prejudice whatsoever.

Applicant also mischaracterizes Opposer's proposed withdrawal of certain registrations which are the subject of Applicant's counterclaims as an attempt to avoid judgment with respect to Applicant's counterclaims. Because Opposer has voluntarily surrendered those registrations, it agrees that the entry of judgment of abandonment with respect to Registration Nos. 1,118,362; 1,541,797; 1,552,143; 1,566,184; 1,943,180; and 2,289,608 is proper. As a result, Applicant's complaints are moot. Opposer's Amendments serve to streamline the proceeding so that a decision on the merits of the registerability of Applicant's McSweet mark may be reached.

A. Opposer's Proposed Amendments are Permissible and Should be Entered

Opposer's Amended Notice of Opposition includes three changes from the initial Notice of Opposition: (1) the addition of a sentence in paragraph No. 9 explaining that the term "sweet"

is a generic or descriptive term for Applicant's pickled asparagus; (2) the addition of references to certain decisions of the Trademark Trial and Appeal Board and the Federal Circuit recognizing the strength of McDonald's family of "Mc" marks in paragraph No. 8; and (3) the removal of the reference to certain registrations.

1. The Amendments to Add Paragraphs 8 and 9 Do Not Add Claims, but Merely Provide Further Notice and Are Therefore Permissible

Since the function of the notice of opposition is to give fair notice of the claims, a party is allowed reasonable latitude in its statement of its claims. *Harsco Corp. v. Electrical Sciences Inc.*, 9 USPQ2d 1570, 1571 (TTAB 1988); *See also Ohio State University v. Ohio University*, 51 USPQ2d 1289, 1292 (TTAB 1999) (since purpose of pleadings is to give fair notice of claims, the Board may in its discretion decline to strike even objectionable pleadings where their inclusion will not prejudice adverse party but rather will provide fuller notice of basis for claim). Furthermore, "[a]mendments to pleadings should be allowed with great liberality at any stage of the proceeding . . . unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties." *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1505 (TTAB 1993).

Opposer's new paragraphs Nos. 8 and 9 serve to clarify and provide Applicant with additional notice of Opposer's grounds for its opposition. Paragraph 8, by reference to numerous judicial decisions recognizing McDonald's famous "Mc" family of marks, further explains the basis for Opposer's claim of rights in its "Mc" family of marks. Paragraph No. 9, which alleges that the term "sweet" is a generic or descriptive term for Applicant's pickled asparagus, combines with new paragraph No. 10 to further explain that Applicant's mark follows the exact format of Opposer's family of marks in that it is comprised of the formative "Mc" followed by a generic or descriptive term. Since both of these paragraphs provide further notice of the basis of

Opposer's claims they are appropriate and permissible.

Applicant's characterization of paragraph No. 9 as an attempt to add a claim of genericness is mistaken because Opposer clearly does not assert that the entire mark is the generic name for Applicant's product and does not assert a claim of genericness. Therefore, Applicant's opposition to this amendment is baseless.

Similarly, Applicant's characterization of the citation of cases recognizing Opposer's famous "Mc" family of marks in paragraph No. 8 as "evidence to support" its claim is misplaced. As explained above, paragraph No. 8 is included to provide notice. Although the cases themselves have evidentiary value, the mere reference to prior judicial decisions in the Notice of Opposition does not constitute submission of evidence. However, even if those references were considered evidence, the inclusion of such facts in the Notice of Opposition is not improper if it provides additional notice of the grounds for the opposition, as it does here. *See Harsco Corp. v. Electrical Sciences Inc.*, 9 USPQ2d 1570, 1571 (TTAB 1988) (if evidentiary facts are pleaded, and they aid in giving a full understanding of the complaint as a whole, they need not be stricken). Since paragraph No. 8 simply provides Applicant with additional notice of the basis for the Opposition, it is permissible and should be entered.

2. The Amendment to Withdraw Certain Registrations From the Notice of Opposition Focuses the Proceeding

Opposer's Amended Notice of Opposition also seeks to remove reference to ten registrations initially identified in its Notice of Opposition. Six of those registrations are the subject of Applicant's counterclaims, but four others are not.

With respect to the registrations which Opposer has voluntarily surrendered and seeks to remove from the Notice of Opposition (Registration Nos. 1,118,362; 1,541,797; 1,552,143; 1,566,184; 1,943,180; and 2,289,608), and which are the subject of Applicant's counterclaims,

Opposer agrees that Applicant is entitled to judgment on its counterclaims of abandonment for those marks. Thus, Applicant's objections to the removal of those marks and its request for a show cause order are moot.

With respect to the registrations that Opposer seeks to remove from the Notice of Opposition but which are not the subject of Applicant's counterclaims, Applicant does not provide any legal argument or valid reason as to why Opposer should not be permitted to withdraw those marks. As stated in Opposer's Motion for Leave to Amend, Opposer's withdrawal of those registrations streamlines the proceeding. Despite the fact that Opposer has made clear that it is alleging infringement of its "Mc" family of marks, Applicant has chosen to attack Opposer's individual registrations. Indeed, the "Mc" family of marks encompasses numerous marks in addition to those marks that are the subject of the registrations asserted in the Notice of Opposition. And, while certain individual members of the Mc family may have changed, the distinctive feature of the family, namely the "Mc" formative has remained the constant distinctive feature of the family for the past 30 years. McDonald's long use of numerous "Mc" marks belonging to the "Mc" Family, whether or not specific individual marks are in current use, has contributed over many years to the consumer recognition and fame of the "Mc" Family. Opposer has chosen to narrow its list of pleaded registrations illustrative of this family to ten registrations, the validity of which is beyond reproach, to focus the proceeding on whether Applicant's registration of the mark "McSweet" for pickled asparagus will create a likelihood of confusion with McDonald's "Mc" family of marks without having to spend time addressing maneuvers by Applicant that are designed to divert this matter from the ultimate issue.

B. The Proposed Amendments Will Not Cause Any Prejudice to Applicant Whatsoever

Applicant's claim that the amendments will cause it prejudice is preposterous. The

Motion for Leave to Amend was filed before discovery opened in this proceeding, and therefore, there can be no claim that Applicant was prejudiced by any purported delay. In fact, Applicant has not yet served its initial disclosures and therefore, the Motion for Leave to Amend was filed before any discovery had been or even could have been conducted by Applicant. 37 C.F.R. 21.120(a).

The only cases cited by Applicant for the proposition that prejudicial delay may be grounds for denial of an amendment, *Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 U.S.P.Q.2d 1540 (TTAB 2001) and *Int'l Finance Corp. v. Bravo Co.*, 64 U.S.P.Q.2d 1597, 1604 (TTAB 2002), are clearly distinguishable from the present matter because those cases (a) involved significant delays of eight months (*Trek Bicycle*) and two years (*Int'l Finance*) after the filing of the original notice of opposition, (b) had amendments filed during the discovery period, and (c) involved the addition of a new claim to the proceeding. By contrast, here, the proposed Amended Notice of Opposition was filed less than three months after the original Notice of Opposition and before discovery had even opened and before the parties held their Rule 26 discovery conference. Moreover, the amendment does not add a new claim to the proceeding, but instead seeks to remove the reference to certain registrations from the Notice of Opposition. New paragraphs Nos. 8 and 9 merely clarify Opposer's basis for the opposition.

Furthermore, Applicant was well aware of the content of paragraphs Nos. 8 and 9 prior to the filing of the Amended Notice of Opposition. In fact, Opposer's position that "sweet" is a generic or descriptive term for Applicant's pickled asparagus was explained in paragraph No. 9 of the initial Notice of Opposition, which stated "'sweet,' [] is a descriptive term used to describe a characteristic of the processed vegetables identified in the Second McSWEET Application." See Notice of Opposition, ¶9. Moreover, Applicant has admitted that "the 'sweet' portion of

Applicant's mark refers to the signature 'sweet', rather than sour or sharp, brine used in the pickling of Applicant's products." See Exhibit A, hereto, Applicant's Answers to Opposer's First Set of Interrogatories to Applicant, at p. 10, Answer No. 21.

Similarly, Opposer had identified the cases cited in paragraph No. 8 of the Amended Notice of Opposition to Applicant via documents produced to Applicant on January 7, 2009, in Opposition No. 91178758, to registration of the mark McSweet for use in connection with "pickled gourmet vegetables, namely, pickled cocktail onions, pickled garlic, pickled, marinated olive medley, pickled green beans, and giardiniera, namely, a pickled celery, carrot, red pepper, garlic, green bean, and cucumber mix". See Exhibit B, hereto. Opposer had also previously identified *McDonald's Corp. v. McKinley*, 13 U.S.P.Q.2d 1895 (TTAB 1989) via correspondence with Applicant's counsel dated February 20, 2008. See Exhibit C, hereto. Thus, Applicant's assertion that it would be prejudiced by these amendments or Opposer's withdrawal of registrations from the Notice of Opposition is simply not credible. Indeed, given the nature of the proposed amendments, which will streamline this proceeding and narrow the issues by removing Applicant's counterclaims for cancellation, Applicant's opposition to those amendments and baseless claims of prejudice appear to be little more than an attempt to unduly compound these proceedings and burden Opposer and the Board with unnecessary motion practice and discovery.

WHEREFORE, Opposer respectfully requests that he Board grant its Motion for Leave to Amend its Notice of Opposition, enter the Amended Notice of Opposition and grant whatever other relief it deems proper.

Respectfully submitted,

McDONALD'S CORPORATION

Date: January 19, 2010

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EXHIBIT A

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

In the Matter of:
Application Serial No. 78/947,247
Published in the *Official Gazette*
April 10, 2007

McDONALD'S CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91178758
)	
JMC SALES,)	
)	
Applicant.)	

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

Pursuant to 37 CFR § 2.120, 37 CFR § 2.119(c) and Rules 26 and 33 of the Federal Rules of Civil Procedure Applicant JMC Sales and McSweet, LLC ("Applicant" or "McSweet, LLC") hereby responds to Opposer McDonald's Corporation ("Opposer" or "McDonald's") First Set of Interrogatories Nos. 1-35.

GENERAL STATEMENTS AND OBJECTIONS

1. Applicant objects to each interrogatory to the extent it requests information outside the scope of discovery authorized by the Federal Rules of Civil Procedure, i.e., information not reasonably calculated to lead to the discovery of admissible evidence.
2. Applicant objects to each interrogatory to the extent it requests information subject to the attorney-client privilege and/or the attorney work product doctrine.
3. The inadvertent provision of any information subject to the attorney-client privilege and/or the attorney work product doctrine is not intended to be, and shall not operate as, a waiver of such privilege or doctrine, nor is such inadvertent provision of information intended to be a waiver of the right to object to use of such information.

4. Applicant generally objects to each interrogatory as overly broad and unduly burdensome to the extent it seeks information without limits as to time and geography, namely, the United States.

5. Applicant generally objects to Opposer's definition of "Applicant" as set forth in its First Set of Interrogatories to Applicant as it is broader in scope than the definition of "party" under the Federal Rules of Civil Procedure.

6. Applicant generally objects to each interrogatory to the extent it seeks information that Applicant considers to be confidential or proprietary prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board.

7. These general objections are expressly incorporated into each of the responses set forth herein.

8. Applicant reserves the right to supplement these responses if or as necessary as additional information becomes available.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name of Applicant as well as the full name of all of its affiliated businesses, companies or other entities, and for each, identify its principal(s), and if applicable, its state of organization.

ANSWER: The full name of Applicant was JMC Sales, Inc., prior to the assignment of the business in its entirety to McSweet, LLC on January 1, 2007. The full name of Applicant is now McSweet, LLC. James B. McCaslin was the sole proprietor of JMC Sales, Inc., and is now the sole member of McSweet, LLC. McSweet, LLC is a limited liability company registered in Washington State.

INTERROGATORY NO. 2: State the full name of McSweet, LLC as well as the full name of all of its respective affiliated businesses, companies or other entities, and for each, identify its principal(s), and if applicable, its state of organization.

ANSWER: The full name of McSweet, LLC is McSweet, LLC. McSweet, LLC is a Washington State registered limited liability company. James B. McCaslin is the sole shareholder and officer of McSweet, LLC.

INTERROGATORY NO. 3: Identify all persons who are members of Applicant or who hold any ownership interest in Applicant.

ANSWER: James B. McCaslin
c/o Hendricks & Lewis, PLLC
901 Fifth Avenue, Suite 4100
Seattle, Washington 98164

INTERROGATORY NO. 4: Identify all persons who are members of McSweet, LLC or who hold any ownership interest in Applicant.

ANSWER: James B. McCaslin.

INTERROGATORY NO. 5: Identify each person who has knowledge of the selection and adoption of Applicant's mark and who has knowledge of how it has been, is currently, and/or may be used in the future. To the extent that this interrogatory identifies more than ten (10) persons, limit the response to only those persons who possess the best knowledge.

ANSWER: 1) James B. McCaslin
2) Leo McIntyre
c/o Barbara Murray (power of attorney)
12345 Lake City Way NE #114
Seattle, WA 98125

INTERROGATORY NO. 6: Describe in detail all products or services offered or to be offered by Applicant in conjunction with Applicant's mark, and for each, identify (i) the dates of first use on each product; (ii) the states or geographical areas in which such use has occurred or is intended to occur; (iii) the sales price; and (iv) the persons with the best knowledge thereof.

ANSWER: James B. McCaslin has the best knowledge of the following: All of the below delineated "pickled" products are pickled in a "sweet" rather than sour or sharp brine. There will be new pickled products introduced in 2008, but there are no specific plans as yet.

(1) McSweet Pickled Cocktail Onions

- (i) 1990
- (ii) USA
- (iii) 8 oz. jar = \$4.99 - \$5.99, 16 oz. jar = \$6.99 - \$7.99

(2) McSweet Pickled Garlic

- (i) October 29, 2005
- (ii) USA
- (iii) 8 oz. jar = \$4.99 - \$6.99

(3) McSweet Gourmet Olive Bliss (a medley of five gourmet French olives in an herbal oil marinade)

- (i) March 24, 2006
- (ii) USA
- (iii) 12 oz. jar = \$8.99 - \$10.99

(4) McSweet Pickled Dilly Beans

- (i) September 22, 2007
- (ii) USA
- (iii) 12 oz. jar = \$6.99 - \$7.99

(5) McSweet Pickled Giardiniera (a pickled vegetable medley with carrots, celery, red peppers, cucumbers, garlic, and green beans)

- (i) September 22, 2007
- (ii) USA
- (iii) 16 oz. jar = \$4.99 - \$5.99

INTERROGATORY NO. 7: Identify the annual sales and gross revenues, if any, in U.S. dollars, of Applicant's products or services offered in connection with Applicant's Mark and the persons with knowledge thereof.

ANSWER: James B. McCaslin has knowledge of the annual sales and gross revenues of Applicant's products offered in connection with Applicant's Mark. Since no time period was specified, Applicant answers that Applicant's annual gross revenue for the last five years for Applicant's products are as follows: 2007 --\$41,241; 2006 - \$32,998; 2005 - \$23,403; 2004 - \$12,688; 2003 - \$5,591.

INTERROGATORY NO. 8: Describe in detail the manner in which Applicant's products or services are advertised or promoted, or will be advertised or promoted, in connection with Applicant's Mark in the United States, including each geographic region in which such are conducted or will be conducted.

ANSWER: Applicant advertises and promotes its products for sale and/or delivery in the USA over the internet via its website at www.mcsweet.com for delivery in the United States, through grocery store specials, product placement in gift bags at celebrity events, magazine advertisements, trade shows, consumer shows, inclusion in farmer's markets, through other websites' promotion and via flyers printed and handed out to local bars, hotels, and restaurants in the greater Seattle area.

INTERROGATORY NO. 9: Identify the annual expenditures for advertising and promotion for each service or product offered in connection with Applicant's Mark, including setting forth the expected expenditures for each type of publication, broadcast, or other medium, as well as for any advertising or marketing campaign featuring Applicant's Mark.

ANSWER: Because no time period is specified, Applicant answers that its annual expenditures for advertising and promotion for each of its products offered in connection with its mark is for the year 2007, unless otherwise indicated, are as follows:

Website, www.mcsweet.com (\$1,000.00/yr)

Grocery store specials (\$300/yr)

Product placement in gift bags at celebrity events (\$600.00/yr)

Trade shows – January 2008 Fancy Food Show, San Diego, CA (\$3,000 - \$6,000)

Consumer shows – 2008 Tacoma Holiday Food & Gift Festival, A Victorian Country Christmas (\$4,000)

Farmers markets (varies per year)

Product photography (\$250/yr)

Other websites' promotion (\$300/yr)

INTERROGATORY NO. 10: Identify the person or persons who are or have been responsible for the marketing or promotion of Applicant's products under Applicant's Mark and indicate the period during which each person was so responsible. To the extent that this interrogatory identifies more than ten (10) persons, limit the response to only those persons who possess the most recent knowledge.

ANSWER: Leo McIntyre (1990-2003); James B. McCaslin (1990-present).

INTERROGATORY NO. 11: Identify all advertising agencies, public relations agencies or market relations agencies or third party entities that Applicant has employed, used, participated with or cooperated with in advertising, marking or promoting the products or services identified in response to Interrogatory No. 3, and indicate the time period(s) during which each advertising agency, public relations agency or market research agency was so employed or otherwise used.

ANSWER: Web masters:

Wayne Dyrness (1999-2003)
Tape Duplication Supply
11123 SE 208th Street
Kent, Washington 98031;

Michael O'Connell (2003-2007)
21426 SE 258th Street
Maple Valley, Washington 98038;

Ngoc Dzung Nguyen Smith (2007-2008)
425 Jason Avenue N.
Kent, Washington 98030.

ISP Providers:

Fox Communications (1999-2003)
10230 NE Points Dr. Suite 540
Kirkland, Washington 98033
(425) 562-2900;

Seonet Corporation (2003-2008)
701 Fifth Avenue, #6801
Seattle, Washington 98104
(206) 343-7828.

Promotion Consultant:

Jeff Bergman (2006-2007)
Bergman Food Concepts
4611 51st Avenue S.
Seattle, Washington 98118

Advertising Agency:

Thomas Duran & Associates (2005)
1367 E. Lafayette Street, Suite A
Tallahassee, Florida 32301
(850) 671-2055

INTERROGATORY NO. 12: Describe in detail the channels of distribution by which the products and services offered in connection with Applicant's Mark reach or are expected to reach the ultimate user or consumer, and identify the persons most knowledgeable of such distribution.

ANSWER: James B. McCaslin is the person most knowledgeable of Applicant's channels of distribution, which are through a retail website at www.mcsweet.com; grocery distributors for western Washington and foodservice distributors for Washington, Idaho, Montana, Oregon, and Hawaii; wholesale to retail stores and restaurants in other states as delineated in Customers on website: Washington, Florida, Louisiana, Indiana, North Carolina, Missouri, Pennsylvania, Wisconsin, and Arizona.

INTERROGATORY NO. 13: Identify any and all licensees of Applicant's Mark, if any, and in so doing, describe each licensing arrangement and identify each product or service offered or sold by each licensee under Applicant's Mark or any similar designation.

ANSWER: Applicant has one royalty agreement between JMC Sales and Automated Sales (the former business of Leo McIntyre) to pay royalties for the continued use and distribution of McSweet Cocktail Onions. *See* JMC Sales Royalty Agreement, MS 000081, among those documents made available to Opposer pursuant to Opposer's First Set of Requests for Production of Documents.

INTERROGATORY NO. 14: Describe in detail any adversarial proceeding or challenge involving the Applicant's claimed rights in Applicant's Mark, the "Mc" formative or any similar designation, before the Trademark Trial and Appeal Board, Bureau of Customs, Federal Trade Commission, or any other court or tribunal, including but not limited to any challenge in the form of a cease and desist letter, aside from the instant proceedings.

ANSWER: To Applicant's knowledge, there have been no adversarial proceedings or challenges involving Applicant's rights in Applicant's Mark and/or the "Mc" formative aside from the instant proceedings.

INTERROGATORY NO. 15: Identify and describe any and all investigations, polls, studies, evaluations, analysis, tests, ratings, trademark search reports or surveys relating to Applicant's Mark or Opposer's trademarks, and the persons knowledgeable thereof. To the extent this interrogatory identifies more than ten (10) persons, limit the response to only those persons who possess the most recent knowledge.

ANSWER: To Applicant's knowledge, there have been no investigations, polls, studies, evaluations, analysis, tests, ratings, trademark search reports or surveys relating to Applicant's Mark or Opposer's trademarks by Applicant or anybody employed by Applicant. James B. McCaslin has the most recent knowledge of this information.

INTERROGATORY NO. 16: Describe in detail Applicant's awareness and knowledge of Opposer, Opposer's business activities, Opposer's family of "Mc" formative marks, at the time immediately prior to Applicant's filing of the Subject Application or prior to any actual use of Applicant's Mark.

ANSWER: Applicant, consisting of James B. McCaslin, states that he was aware of Opposer's fast food retail business and vaguely aware of food items sold with the "Mc" formative marks of Opposer as an average consumer or member of the public, but had not investigated or been made aware of Opposer's business or trademark activities beyond this general public information prior to any use of Applicant's Mark or immediately prior to Applicant's filing of the Subject Application.

INTERROGATORY NO. 17: Identify the type of intended and actual consumers of Applicant's products or services offered or sold to be offered or sold under or in connection with Applicant's Mark.

ANSWER: Bars and restaurants serving alcoholic beverages or gourmet foods, and individual customers looking for condiments for alcoholic beverages or specialty/gourmet foods.

INTERROGATORY NO. 18: State the meaning, if any, of the "Mc" formative as used in Applicant's Mark.

ANSWER: There is no specialized meaning of the "Mc" formative as used in Applicant's Mark.

INTERROGATORY NO. 19: Describe the derivation of the "Mc" formative as used in Applicant's Mark.

ANSWER: "Mc" was derived from Leo McIntyre's, the founder's, last name and remained, by coincidence, also associated with the current owner's, James B. McCaslin's, last name.

INTERROGATORY NO. 20: State the meaning, if any, of the term "McSweet".

ANSWER: The term “McSweet” is a partially descriptive, partially name-based brand name referring to the last name of the founder/owner of the brand and the signature sweet brine used in the pickling of Applicant’s products.

INTERROGATORY NO. 21: State whether the term “sweet” has any meaning in relation to Applicant’s products offered or sold under or in connection with the Applicant’s Mark.

ANSWER: The “sweet” portion of Applicant’s mark refers to the signature “sweet,” rather than sour or sharp, brine used in the pickling of Applicant’s products.

INTERROGATORY NO. 22: Identify all terms other than the “Mc” formative that were proposed or considered for use by Applicant at any time in connection with Applicant’s goods or services.

ANSWER: McSassy – this term was considered by Mr. McCaslin when expanding the line of products from “sweet” pickled products to products that also included marinated olives.

INTERROGATORY NO. 23: State whether Applicant has taken legal action against a third party to police or enforce its alleged rights in Applicant’s Mark. If so, identify the following for each instance:

1. The names and addresses of the part(ies) involved;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. the title, index number and tribunal;
5. a complete description of the allegations involved;
6. the result of the legal action.

ANSWER: Applicant has taken no legal action against a third party to police or enforce its rights in Applicant’s Mark.

INTERROGATORY NO. 24: Other than the instant proceeding, state whether any party has taken legal action against Applicant regarding the use of Applicant’s Mark. If so, identify the following for each instance:

1. The names and addresses of the part(ies) involved;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. the title, index number and tribunal;
5. a complete description of the allegations involved;
6. the result of the legal action.

ANSWER: Other than the instant proceeding, no party has taken legal action against Applicant regarding the use of Applicant's Mark.

INTERROGATORY NO. 25: State whether Applicant has received any mail, inquiries, complaints, requests for refunds, orders, checks, or other communications that in any manner were intended for Opposer, referred to Opposer, or that in any way indicated an association or connection between Applicant and Opposer, and if so, with respect to each: (1) identify each such caller, sender addresser or communicator, the date and place of such occurrence, the substance of such communication, and the person receiving the communication; (2) state whether or not and response to, or record of, the communication was made; and (3) identify all persons most knowledgeable thereof.

ANSWER: Applicant has received no mail, inquiries, complaints, requests for refunds, orders, checks, or other communications that in any manner were intended for Opposer, referred to Opposer, or that in any way indicated an association or connection between Applicant and Opposer.

INTERROGATORY NO. 26: Describe the circumstances leading to and reasons for Applicant's choice of the term "McSWEET," and identify the following:

- a) the person or persons who made the decision to use the term "McSWEET" and any documents that relate to that decision.
- b) the person or persons primarily responsible for the creation, testing, developing, marketing, sale, advertising, or distribution of any product or service used in connection the term "McSWEET" and all documents related to the decision to produce such products or services.

c) whether a trademark search relating to the term “McSWEET” was conducted and whether a trademark opinion was requested and/or rendered relating to the term “McSWEET,” and, if so, all documents that relate to the results of those searches and opinions.

d) the person or persons who made the decision to file the decision to file the application to register the Applicant’s Mark and any documents that relate to such decision.

ANSWER:

a) Leo McIntyre

b) Leo McIntyre; James McCaslin; Jeff Bergman; Craig Cayton, Crown Pacific Fine Foods, 8809 S. 190th Street, Kent, Washington 98031, (425) 251-8750.

c) James B. McCaslin conducted the trademark search on the US Trademark & Patent website and found no registrations for the term “McSweet.” No trademark opinion was requested and there were no documents that Mr. McCaslin printed related to the search

d) James B. McCaslin made the decision to file the application to register Applicant’s Mark. The documents (namely, the application) can be found on the US Trademark & Patent website and are included in the documents Opposer requested for production, MS 00001-000020.

INTERROGATORY NO. 27: Identify all other businesses in the food services and/or in the food products industry with which the Applicant or any of the Applicant’s members, officers, directors or employees, is affiliated.

ANSWER: Neither Applicant nor any of the Applicant’s members, officers, directors or employees are affiliated with any other businesses in the food services and/or food products industry.

INTERROGATORY NO. 28: Identify all employment, whether past or present, of Applicant or any of Applicant’s members, officers, directors or employees, by any other business in the food services area or in the food products industry.

ANSWER: James B. McCaslin was employed by Jarrah Foods, Melbourne, Australia, from 1984 to 1986. The company was sold in 1988 and there is no current business address or contact information.

INTERROGATORY NO. 29: Identify all licenses, whether former or current, of Applicant or any of Applicant's members, officers, directors or employees, with any other business in the food services area or in the food products industry.

ANSWER: Neither Applicant nor any of the Applicant's members, officers, directors or employees have any licenses, former or current, with any other business in the food services area or in the food products industry.

INTERROGATORY NO. 30: Identify the party who owned Applicant's Mark at the time that the application was filed on August 8, 2006.

ANSWER: JMC Sales (James B. McCaslin, sole proprietor).

INTERROGATORY NO. 31: Identify the party who currently owns Applicant's Mark.

ANSWER: McSweet, LLC (James B. McCaslin, sole member).

INTERROGATORY NO. 32: In the event that the party who presently owns Applicant's Mark is different than the party identified in response to Interrogatory 28, please describe in detail the manner in which ownership was transferred to the present owner.

ANSWER: To the extent that this Interrogatory meant to refer back to Interrogatory No. 30 rather than Interrogatory No. 28, this information can be found in documents MS 000022-000028 included in those documents made available by Applicant pursuant to Opposer's First Set of Requests for Production of Documents.

INTERROGATORY NO. 33: Identify all facts and documents that relate to or tend to support Applicant's contention that the registration of the Marks would not diminish and dilute the distinctive quality of Opposer's rights in its family of famous "Mc" marks, or tarnish such distinctiveness.

ANSWER: Applicant objects to Interrogatory No. 33 on the grounds that it is overly broad and unduly burdensome as it requests that Applicant, in advance of trial, specify "all facts

and documents” supporting Applicant’s case and is therefore improper. TBMP § 414(9) at 400-69. Applicant further objects to Interrogatory No. 33 as it is premature, discovery has not been completed, and Opposer has not yet provided good faith responses to Applicant’s discovery requests to enable Applicant to fulfill the request made in Interrogatory No. 33. Applicant will, at the appropriate time, identify all facts and documents that it expects to present in accordance with any requirements of the Trademark Rules and the Federal Rules of Civil Procedure. Applicant further objects to Interrogatory No. 33 on the grounds that, in requesting “[a]ll documents,” it seeks documents protected by the attorney-client privilege and/or attorney work product doctrine. Applicant further objects to Interrogatory No. 33 on the ground that the requested documents, as public records, are equally accessible to Opposer.

Without waiving the foregoing objections, Applicant states that the documents identified by and made available for inspection and copying pursuant to Opposer’s First Set of Requests for Production to Applicant support Applicant’s contention that the registration of the Marks would not diminish and dilute the distinctive quality of Opposer’s rights in its family of “Mc” marks, or tarnish those marks. Applicant states that Opposer’s mark “Mc-” is defined in Merriam-Webster’s Collegiate Dictionary (11th ed. 2003), at 768, as a prefix “used to indicate an inexpensive, convenient, or easy but usu[ally] low-quality or commercialized version of something specified <McBook> <McDoctor>.” Applicant’s mark, on the other hand, is used exclusively on gourmet foods and would therefore be unlikely to cause an “association” between Applicant’s and Opposer’s marks, and even if such an association could be shown, the association of Applicant’s high quality gourmet products could not tarnish Opposer’s mark.

Applicant further states that there is no likelihood of dilution by blurring because Opposer’s and Applicant’s marks are not sufficiently similar in appearance; there are, upon information and belief, numerous uses and registrations of third party marks with the “Mc” formative such that one more use of the “Mc” formative is unlikely to “dilute” any other use of the “Mc” formative by any other party; and upon information and belief, ordinary prospective purchaser’s of Applicant’s products do not associate Applicant’s and Opposer’s marks.

INTERROGATORY NO. 34: Identify all facts and documents that relate to or tend to support Applicant's contention that the registration of the Marks will not result in confusion with Opposer's "Mc" family of marks.

ANSWER: Applicant objects to Interrogatory No. 34 on the grounds that it is overly broad and unduly burdensome as it requests that Applicant, in advance of trial, specify "all facts and documents" supporting Applicant's case and is therefore improper. TBMP § 414(9) at 400-69. Applicant further objects to Interrogatory No. 34 as it is premature, discovery has not been completed, and Opposer has not yet provided good faith responses to Applicant's discovery requests to enable Applicant to fulfill the request made in Interrogatory No. 34. Applicant will, at the appropriate time, identify all facts and documents that it expects to present in accordance with any requirements of the Trademark Rules and the Federal Rules of Civil Procedure. Applicant further objects to Interrogatory No. 34 on the grounds that, in requesting "[a]ll documents," it seeks documents protected by the attorney-client privilege and/or attorney work product doctrine. Applicant further objects to Interrogatory No. 34 on the ground that the requested documents, as public records, are equally accessible to Opposer.

Without waiving the foregoing objections, Applicant states that the documents identified by and made available for inspection and copying pursuant to Opposer's First Set of Requests for Production to Applicant support Applicant's contention that the registration of the Marks will not result in confusion with Opposer's "Mc" family of marks. Applicant further states that, in the seventeen years that the MCSWEET mark has been in the marketplace, under Applicant or Applicant's predecessor, Leo McIntyre, there has not been one case of confusion with Opposer's marks that Applicant is aware of. Rather, as a result of its continuous substantial usage of its mark MCSWEET since adoption, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products sold under the mark. Such goodwill and widespread usage has made the mark distinctive to the Applicant, rather than Opposer. Applicant states that Applicant's mark MCSWEET is not confusingly similar in appearance or presentation with Opposer's marks. Moreover, Opposer's products are sold within

a completely different category of the food products industry compared to Applicant, and utilizing different channels of trade. Moreover, any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the portion "Mc" which, upon information and belief, has been used and registered by numerous third parties in the foods, restaurant and processed foods businesses without challenge by Opposer, and without apparent confusion among consumers between these third-party "Mc" uses and Opposer's family of marks.

INTERROGATORY NO. 35: Identify all persons who were consulted or participated in the preparation of the answers to these interrogatories.

ANSWER: Lori A. Benavides of Hendricks & Lewis, PLLC and James B. McCaslin were consulted or participated in the preparation of the answers to these interrogatories.

JMC Sales/McSweet, LLC

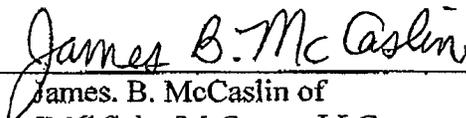
By: 

Katherine Hendricks, Esq.
Lori A. Benavides, Esq.
Hendricks & Lewis PLLC
901 Fifth Avenue, Suite 4100
Seattle, Washington 98164
(206) 624-1933
Attorneys for Applicant

Date: January 25, 2008

VERIFICATION

I declare under penalty of perjury under the laws of the United States that I have read the foregoing answers and these answers are true and correct to the best of my present knowledge and belief or based on information provided to me by other which I believe to be true.


James. B. McCaslin of
JMC Sales/McSweet, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answers to Opposer's First Set of Interrogatories to Applicant has been served on opposing counsel by mailing said copy on January 25, 2008, via First Class Mail, postage prepaid to:

Robert E. Browne, Esq.
Michael G. Kelber, Esq.
John A. Cullis, Esq.
Lawrence E. James, Jr., Esq.
Neal, Gerber & Eisenberg, LLP
2 North LaSalle Street, Suite 2200
Chicago, IL 60602
Telephone: (312) 269-8000
Facsimile: (312) 269-1747



LISA SCHAEFER

EXHIBIT B

NEAL ■ GERBER ■ EISENBERG

John A. Cullis
Attorney at Law

Tel 312.269.5988
Fax 312.269.1747
jcullis@ngelaw.com

December 7, 2007

VIA FEDERAL EXPRESS

Kristofer E. Halvorson, Esq.
The Halvorson Law Firm
1757 E. Baseline Rd., Suite 130
Gilbert, AZ 85233-1534

Re: Infringement of McDonald's Trademarks

Dear Mr. Halvorson:

We represent McDonald's Corporation with respect to certain intellectual property matters. We understand that your client, Sunset Travel, Inc., recently filed a federal trademark application for the mark "McTrips" (Ref. S/N 77/255,650) for use in connection with arranging travel tours; coordinating travel arrangements for individuals and for groups; organization of travel; organization of excursions, sightseeing tours, holidays, tours and travel; organization of travel and boat trips; travel agency services, namely, making reservations and bookings for transportation; travel and tour information service; travel and tour ticket reservation service; travel booking agencies; travel information services; and travel, excursion and cruise arrangement. We also understand that your client has registered the domain name <mctrips.com> and is using this domain name in connection with one or more of these services.

The purpose of this letter is to advise you that McDonald's objects to Sunset Travel, Inc.'s use and registration of the term "McTrips" and its use of the domain name <mctrips.com>. As you are no doubt aware, McDonald's has, for many years, used the "Mc" formative throughout the world in connection with the advertising, promotion and sale of a wide variety of goods and services, and has registered numerous "Mc" formative trademarks, including "Mc" alone with the U.S. Patent and Trademark Office. In particular, McDonald's owns Federal Registration No. 1,582,970 for the mark McTRAVEL in connection with booking airline reservations, issuing airline tickets and making hotel and rental car reservations.

In addition, McDonald's has vigorously and successfully protected the goodwill symbolized by its "Mc" formative trademarks in both the U.S. Patent and Trademark Office and before the federal courts. *See, e.g., McDonald's Corp. v. McKinley*, 13 U.S.P.Q.2d 1895, 1899 (TTAB 1989)(finding that the mark "McTEDDY" was likely to cause confusion with McDonald's "Mc" and "Mac" family of marks); *McDonald's Corp. v. Druck and Gerner, DDS., P.C.*, 814 F. Supp. 1127, 1134 (N.D.N.Y. 1993) (finding that use of the term "McDENTAL," in connection with dental services, infringed McDonald's family of marks); *J & J Snack Foods Corp. v. McDonald's Corp.*, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991)(finding that McDUGAL McPRETZEL was confusingly similar to McDonald's family of "Mc" formative marks); *Quality Inns International v. McDonald's Corporation*, 695 F. Supp. 198, 212 (D Md 1986)(finding

McD 01488

(F)

NEAL, GERBER & EISENBERG LLP

Mr. Kristofer E. Halvorson, Esq.

December 7, 2007

Page 2

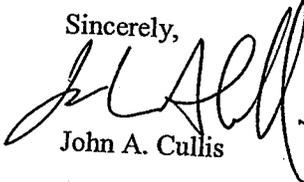
"McSLEEP" was likely to cause confusion with McDonald's "Mc" family of marks); *McDonald's Corp. v. McBagel's, Inc.*, 649 F.Supp. 1268, 1272 (S.D.N.Y. 1986) (finding "McBAGEL" was confusingly similar to McDonald's family of "Mc" and "Mac" marks); *McDonald's Corp. v. McClain*, 37 U.S.P.Q.2d 1274, 1276 (TTAB 1995)(holding that "McCLAIM" was confusingly similar to McDonald's "Mc" formative marks); *McDonald's Corporation v. 2Bell B.V.*, 2004 WL 1090662 (TTAB 2004)(finding McDATE is substantially similar to McDonald's strong and famous "Mc" family of marks).

Sunset Travel, Inc.'s use of the McTrips mark and the <mctrips.com> domain name are likely to confuse and deceive consumers into believing, incorrectly, that there is an association with, sponsorship by or relationship between your client and McDonald's. Sunset Travel, Inc.'s use of the McTrips mark and of the <mctrips.com> domain name is, therefore, a violation of McDonald's trademark rights under 15 U.S.C. § 1114(1) and 15 U.S.C. § 1125(a), as well as state trademark laws.

Consequently, we must insist that Sunset Travel, Inc. immediately: (1) abandon its application to register McTrips by filing an express abandonment of U.S. Application No. 77/250,650; (2) take the necessary steps to transfer the <mctrips.com> domain name to McDonald's; (3) discontinue any further usage of the McTrips mark in its advertising and/or on its website at www.mctrips.com; and (4) indicate Sunset Travel, Inc.'s agreement to do the foregoing by signing below and returning this letter to my attention by **December 14, 2007**.

Your prompt attention to this matter is appreciated.

Sincerely,



John A. Cullis

JAC:TEW/dfm

cc: Robert E. Browne, Esq.
Thomas E. Williams, Esq.

McD 01489



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Kevin G. Smith
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January 24, 2006

Grace J. Fishel, Esq.
11970 Borman Drive, Suite 220
St. Louis, Missouri 63146

Re: Objection to Trademark Applications
Marks: MCVAN (Serial No. 78/716,254)
MCTRUCK (Serial No. 78/716,260)
Applicant: Herman J. Wenos
Our File: 800471

Dear Ms. Fishel:

We are directing this correspondence to your attention inasmuch as you are listed as the attorney of record with respect to the above two pending trademark applications.

This Firm represents McDonald's Corporation, and we trust that you are not surprised to receive our letter regarding the applications filed on behalf of Herman J. Wenos under the provisions of Section 1(b) stating applicant's bona fide intent to adopt and use the marks MCVAN and MCTRUCK for motor vehicles, namely, vans and trucks.

We are contacting you at this early date to advise you and your client that the subject applications are offensive to the significant rights maintained by McDonald's Corporation and its famous family of trademarks incorporating the "MC" and "MAC" formatives. Our client has established a voluminous family of "MC" marks, the significance of and scope of protection for which has been recognized by federal courts and the Trademark Trial and Appeal Board.

A sample of pertinent cases is set forth below:

1. McDonald's Corp. v. McBagels, Inc., 649 F.Supp. 1268, 1 USPQ2d 1761 (S.D.N.Y. 1986) (McBAGEL for a bagel baker and restaurant infringed on McDonald's family of marks).
2. Quality Inns International v. McDonald's Corp., 695 F.Supp. 198, 8 USPQ2d (D.MD. 1988) (McSLEEP, proposed for use on a chain of motels, found to infringe the "Mc" family of marks).
3. McDonald's Corp. v. Dorothy Jill McKinley, 13 USPQ2d 1895 (TTAB 1989) (Opposition No. 74,168, decided September 25, 1989) (Opposition sustained; McTEDDY for teddy bears likely to cause confusion with McDonald's family of marks).

McD 00977



Grace J. Fishel, Esq.
January 24, 2006
Page 2

4. McDonald's Corp. v. J & J Snack Foods Corp. (Opposition Nos. 71,874; 71,928) (Opposition sustained; McPRETZEL and McDUGAL for frozen pretzels likely to cause confusion with McDonald's family of marks).
5. McDonald's Corp. v. McBabies, Inc. (Opposition sustained, Motion for Summary Judgment granted; fame of McDonald's and "Mc" family of marks entitled to great weight relative to confusing similarity).
6. McDonald's Corp. v. Druck & Gerner, 814 F.Supp. 1127 (N.D. N.Y. 1993) (McDENTAL for medical services likely to cause confusion with McDonald's family of marks; injunction issued).
7. McDonald's Corp. v. McClain, 37 USPQ2d 1274 (TTAB 1995) (MC CLAIM for legal and consultation services likely to cause confusion with McDonald's family of marks).
8. McDonald's Corp. v. James William McDonald, d/b/a McDonald Portable Buildings (Opposition No. 82,999) (Opposition sustained; MCSTORE for leasing of portable buildings likely to cause confusion with McDonald's family of marks).
9. McDonald's Corp. v. Maureen Kelly (Opposition No. 100,619) (Opposition sustained; McGREET for greeting cards likely to cause confusion with McDonald's family of marks).

Our client vigilantly protects its federal trademark rights. While we fully expect the Trademark Office to cite our client's family of trademarks against your client's applications consistent with the above referenced case law, in the unlikely event your client's subject applications are published, we intend to file formal Notices of Opposition. We trust you are familiar with the opposition process.

We are hopeful that by contacting you at this early juncture to advise you of the fact that the applications as filed are offensive to our client's significant family of marks and our intent to oppose the applications, your client can avoid the expenses associated with the continued prosecution of the applications, as well as those associated with a contested *inter partes* proceeding before the Trademark Trial and Appeal Board. (Please note, we are not aware of any actual use of the marks by your client, inasmuch as the subject applications were filed based on an intent to use. Should your client actually adopt and use the marks in commerce, such use would be considered infringing. If your client has effectuated any use of either trademark, please provide us with that information at once, since such use would seriously escalate the issue at hand.)

McD 00978



Grace J. Fishel, Esq.
January 24, 2006
Page 3

We must demand that your client immediately expressly abandon the subject applications and its stated intent to adopt and use the marks on or in association with vans or trucks in commerce. In that regard, we note that you have executed the applications swearing to applicant's bona fide intent and stating that you have first hand knowledge associated with such intent. While the trademark laws do permit attorneys to execute applications on behalf of an applicant, by so doing, in the event a dispute arises, the attorney that has executed an application will be put in the position of being a witness in the case, and therefore it would appear that a conflict will be present if this matter does escalate.

We are hopeful that your client is sensitive to the proprietary rights represented by our client's family of "MC" trademarks, and the fact that the courts have readily recognized that the "MC" formative, when combined with a generic term, is indeed confusingly similar to the McDonald's family of "MC" trademarks.

Please immediately share this letter with your client and advise us within thirty (30) days as to whether your client will voluntarily withdraw and abandon the subject applications. If your client will acquiesce to our demand, please provide us with confirmation of the submission of the express abandonments together with your client's written confirmation that he has abandoned the stated intent to adopt and use the marks in commerce, as well. Upon receipt of the requested information, we should then be in the position to close our file.

If you have any questions regarding our position after you have reviewed the above-referenced case law, please contact me. In the meantime, we will continue to monitor the status of the applications and take all appropriate steps, as needed, to protect our client's valuable trademark rights.

Very truly yours,

Kevin G. Smith

KGS/vm

cc: McDonald's Corporation

McD 00979

EXHIBIT C

February 20, 2008

Lori A. Benavides, Esq.
Hendricks & Lewis PLLC
901 Fifth Avenue, Suite 4100
Seattle, Washington 98164**Re: McDonald's Corporation v. JMC Sales, Opposition No. 91178758**

Dear Ms. Benavides:

We are writing in response to your January 23, 2008 letter, our January 30, 2008 meet and confer, and your February 4, 2008 letter regarding the objections set forth in Opposer's Responses to Applicant's First Set of Interrogatories. Enclosed you will find Opposer's supplemental responses as discussed during our meet and confer teleconference. Below, we have provided additional support for the objections set forth in our Responses to Applicant's First Set of Interrogatories and additional explanation as to why those Interrogatories are not relevant to the present Opposition.

The Channels of Trade Are Not Limited and Not Relevant

First, the Interrogatories relating to specific channels of trade for the goods claimed in McDonald's registrations are not relevant to the present Opposition because neither Applicant's application for the McSWEET mark or McDonald's registrations are limited to specific channels of trade. In an opposition proceeding, "[i]t is well settled that the question of likelihood of confusion must be decided on the basis of the goods or services set forth in the applications and registrations involved in a proceeding, regardless of the specific nature, uses or channels of trade which may be disclosed by the evidence." *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1898 (TTAB 1989); *see also CBS, Inc. v. Morrow*, 708 F.2d 1579, 1581 (Fed. Cir. 1983) (in the absence of specific limitations in the application and registration, the normal and usual channels of trade and methods of distribution form the basis of the comparison); *Tea Board of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1888 (TTAB 2006). When an application or registration contains no restrictions as to channels of trade or classes of purchasers, it must be presumed that the goods travel in all of the normal channels of trade employed for those goods. *Hecon Corporation v. Magnetic Video Corporation*, 199 USPQ 502, 508 (TTAB 1978).

Since the registrations for many of the marks that comprise McDonald's family of Mc formative marks are unrestricted as to the channels of trade, as is the application for the McSWEET mark, the goods associated with McDonald's registrations and the McSWEET application will be presumed to travel in all normal channels of trade. Thus, the actual channels of trade in which McDonald's goods are sold or distributed are not at issue. To the extent that Interrogatories Nos. 6, 16, 17, 18, and 20 are directed to the channels of trade in which McDonald's goods are sold or distributed, they are not relevant. Similarly, to the extent that

Lori A. Benavides

February 20, 2008

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these Interrogatories are directed to specific channels of trade through which Applicant's goods are sold or distributed, they are not relevant. In particular, a defendant in an opposition is limited to the goods/services set forth in its application and will not be able to introduce evidence or to argue that its goods/services as used are narrower in scope than the goods/services identified in the application. Gary D. Krugman, *Trademark Trial and Appeal Board Practice Manual*, 2003 ed., § 3.08[3][b].

McDonald's Selection and Adoption of Individual Marks is Not Relevant

To the extent that Interrogatory Nos. 2, 4, 5 & 10 call for information concerning the trademark uses of, or the filing of applications to register marks by third parties whom Opposer has had no direct contact, such requests are irrelevant to this Opposition. In fact, this line of reasoning is articulated in the case law relied upon by Applicant in your letter dated January 23, 2008. *Johnson & Johnson v. Rexall Drug Company*, 186 U.S.P.Q. 167, 172 (TTAB 1975). The Board in that proceeding emphasized that such third party information is considered by the Board to be not only wholly irrelevant, but also a matter which should be pursued by applicant on its own, independent of opposer.

Additionally, McDonald's selection and adoption of, and searches for the individual marks that comprise its family of marks are not relevant to the present Opposition because McDonald's individual marks are not being asserted against the McSWEET application. Where an opposer has asserted a family of marks, "the question is not whether each of applicant's marks is similar to opposer's individual marks, but whether [the] applicant's marks would be likely to be viewed as members of [the] opposer's [] family of marks." *Black & Decker Corp. v. Emerson Electric Co.*, 84 USPQ2d 1482, 1491 (TTAB 2007). In the present Opposition, McDonald's is asserting that the McSWEET mark is confusingly similar to its family of marks, not to the individual marks that comprise the family. Thus, to the extent that the Applicant's Interrogatories Nos. 2, 4 and 5 are directed to information relating to the issue whether confusion between any one of McDonald's marks and the McSWEET mark is likely, those requests are not relevant. Nevertheless, as noted in Opposer's enclosed supplemental responses, Opposer has agreed to provide certain information and documents concerning Opposer's applications and registrations of its family of Mc formative marks dating back to January 1, 2005.

While your February 4, 2008 letter confirming our meet and confer teleconference indicated that Opposer would supplement its responses to Interrogatory Nos. 1, 2, 4, 5, 10, 11, 12, 13, and 19 dating back to the beginning of 2003, it our understanding that Opposer only agreed to consider supplementing its responses concerning the adoption and selection of its marks (Nos. 2, 4 and 5) for the period dating back to January 1, 2003. However, we have limited our responses to January 1, 2005 for the reasons noted above.

NEAL, GERBER & EISENBERG LLP

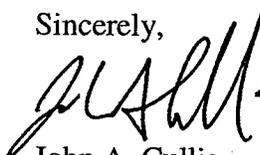
Lori A. Benavides

February 20, 2008

Page 3

We trust that the foregoing explanations and enclosed supplemental responses resolve the issues raised in your January 23, 2008 letter. Should you wish to discuss this matter further, please contact me at your convenience.

Sincerely,



John A. Cullis

JAC/LEJ

Enclosure

cc: Robert E. Browne, Esq. (w/o encl.)
Michael G. Kelber, Esq. (w/o encl.)
Lara V. Hirshfeld, Esq. (w/o encl.)
Lawrence E. James, Jr., Esq. (w/o encl.)