ESTTA Tracking number: **ESTTA385856**
Filing date: **12/28/2010**

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

Proceeding	91192099
Party	Plaintiff McDonald's Corporation
Correspondence Address	LAWRENCE E. JAMES, JR. NEAL, GERBER & EISENBERG LLP 2 NORTH LaSALLE STREET, SUITE 1700 CHICAGO, IL 60602 UNITED STATES rbrowne@ngelaw.com, jcullis@ngelaw.com, rbrowne@ngelaw.com, mturner@ngelaw.com, mbenson@ngelaw.com, lbailey@ngelaw.com
Submission	Reply in Support of Motion
Filer's Name	Robert E. Browne
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Signature	/Robert E. Browne/
Date	12/28/2010
Attachments	12282010Reply.pdf (7 pages)(276692 bytes) Turner Declaration.pdf (31 pages)(1507935 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 TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO WITHDRAW ITS RESPONSE TO APPLICANT'S REQUEST FOR ADMISSION NO. 105

Opposer's Motion to Withdraw its Response was filed merely to correct the record so as to adhere to the facts. Simply put, Opposer initially responded to Applicant's request indicating that its goods were not sold in grocery stores, but its investigation has since shown that they are. However, instead of ensuring that the record accurately reflects the evidence in this proceeding, Applicant has, yet again, unreasonably objected to a motion by Opposer and has forced a non-issue to be adjudicated by the Board. Opposer has provided Applicant with ample proof that Opposer's goods *are*, in fact, sold in many of the same grocery stores where Applicant's goods are found. There can be no question that presentation on the merits is furthered by recognizing where Opposer's goods are actually sold instead of ignoring the truth.

I. The Undeniable Evidence Proves that Goods Under Opposer's Marks are Sold in Grocery Stores.

Applicant states that, "[w]hen an admission is made inadvertently, or new evidence is discovered after the admission, Rule 36(b) withdrawal should be allowed." (Opp'n at 6.) Yet, despite this recognition and accurate statement of the law, Applicant has chosen to ignore the

new evidence that Opposer has discovered and presented to Applicant. Applicant notes that certain referenced exhibits showing Opposer's sale of goods in grocery stores were not attached to Opposer's Motion,[1] but Applicant cannot say that it has not been provided this evidence. In fact, Opposer provided the exhibits to Applicant on December 10, 2010, as part of a set of responsive production. (*See* Reply Decl., Ex. F.) This production set also included substantial other evidence showing that Opposer's goods are sold in grocery stores. (*See* Id., Ex. F.) Furthermore, an Internet link to the contents of documents from Opposer's production set Bates labeled McD7021-7022, which identify that Opposer's Arch Cards are available at Giant Eagle, Safeway, Kroger, SuperValu and Ahold grocery stores nationwide, was provided to Applicant via email on November 24, 2010—a full week before Opposer filed its Motion. (*See* Id., Ex. G.) Thus, Applicant's comment that "Opposer has not offered *any* evidence to suggest that what it admitted is not true" (Opp'n at 5 (emphasis in original)) is simply false, and the fact that Applicant is still seriously questioning Opposer's grounds for this motion (*See, e.g.,* Opp'n at 6 ("Even if Opposer sells Arch Cards at grocery stores....")) is absurd.

II. The Vague and Broad Format of Request No. 105 Further Compels Withdrawal.

Applicant's justification for ignoring Opposer's photographic evidence showing that Opposer's Arch Cards sold alongside Applicant's McSweet-branded products, appears to be based on its tortured interpretation of Request No. 105, which asks:

[1] Opposer now recognizes that a transmittal error excluded examples of Opposer's sale of its goods in grocery stores, which Opposer identified in its initial Motion as Exhibits A, B, C and D to the Turner Declaration filed in support of that Motion. Opposer regrets this error, and has included the Exhibits concurrent with this filing. (*See* Declaration of Mike R. Turner in Support of Opposer's Reply to Applicant's Opposition to Opposer's Motion to Withdraw its Response to Applicant's Request for Admission No. 105 ("Reply Decl."), Exs. A, B, C, and D.) However, instead of alerting Opposer to the absence of the exhibits when it received a copy of Opposer's filings on December 2, 2010 (*see* Reply Decl., Ex. E), Applicant elected to raise Opposer's oversight for the first time in its Opposition brief on December 21, 2010.

> Admit that Opposer has not sold or distributed goods to grocery stores for the purpose of making the goods available to grocery store customers in either the meat, fresh produce, dairy, or baked goods department, or along the shelf space reserved for canned, packaged and frozen goods, or among the various non-food items such as household cleaners, alcohol, pharmacy products and pet supplies.

Applicant does not suggest that Arch Cards are not goods, or that Opposer does not distribute them to grocery stores. Rather, it seems to suggest that the cards are not located within the stores in the locations listed. Realistically, it would be hard to imagine a location within a grocery store that would *not* fit within one of these broad, abstract categories. Opposer questions where a display of Arch Cards could be in a grocery store such that it would not be "among the various non-food items" or in the "meat, fresh produce, dairy or baked goods department" or along shelves of "canned, packaged and frozen goods".[2]

Applicant also takes issue with the objections posited in Opposer's proposed Supplemental Response regarding the vague and indefinite store locations listed in Applicant's Request No. 105. Opposer does not look to the Board for its "objections . . . [to] be granted" (Opp'n at 4), and Applicant's concerns over Opposer's stated objections are not relevant to this Motion. Opposer has simply moved the Board to grant Opposer's request to withdraw an admission—a request which Federal Rule of Civil Procedure 36 endorses and authorizes. Fed. R. Civ. P. R36(b). If Applicant takes issue with the substance of Opposer's objections and responses, it should provide Opposer with a written summary of its objections and seek to resolve such discovery dispute directly with Opposer prior to involving the Board.

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[2] Even if the store locations referenced in Request No. 105 could be discreetly and universally defined such that they apply to all grocery stores (which they clearly cannot), Opposer's Arch Cards would still almost certainly be sold in one of those locations in some grocery stores. Opposer has provided evidence that the location where Arch Cards are stocked can vary between two grocery stores owned by the same company and operating in the same city. Certainly the location varies much wider than this across the thousands of other grocery stores in which Arch Cards are sold across the country.

III. The Timing of Opposer's Motion Does Not Prejudice Applicant.

A. Opposer's timing and diligence was proper.

There is no reason why Opposer would not admit its sale of Arch Cards in grocery stores if Opposer was aware of it. To the contrary, Opposer's interest was in finding that it does sell goods in grocery stores. Unfortunately, Opposer's investigation did not initially come across evidence of it. Opposer's counsel first recognized its Arch Card sales through grocery stores on November 9, 2010, and immediately began reviewing its prior discovery responses to determine if a supplement was necessary in light of the discovery. By the following Wednesday it had identified the need to amend its Response to Request No. 105, and reached out to Applicant's counsel to discuss the matter. (*See* Reply Decl., Ex. H.) Though a meet and confer was not technically required, Opposer sought to extend this courtesy to see if Applicant would simply consent to the withdrawal in light of Opposer's evidence. Due to Applicant's desire to discuss unrelated topics which were not ripe for a meet and confer, Opposer and Applicant were not able to discuss the proposed admission withdrawal until December 1, 2010. Upon realizing that Applicant would not agree to a consented motion, Opposer drafted and filed its Motion the very next day.

B. Applicant is in the same position with respect to discovery that it was before.

Applicant states that "[t]he test to determine whether prejudice exists is if the non-moving party is now any less able to obtain the evidence required to prove the matter which was admitted than it would have been at the time the admission was made." (Opp'n at 4-5.)[3] Applying Applicant's proposed test, it is clear that prejudice is not a factor in this case. Here, the

[3] Two sentences later, Applicant changes its mind and suggests that "[t]iming is merely one factor to consider" in the analysis. But for purposes of this Reply, Opposer does not take issue with Applicant's statement of the law on this point.

"matter which was admitted" is that Opposer does not sell or distribute goods through grocery stores. Were this "matter" true, Applicant could conceivably prove it through eliciting testimony or written discovery now, just as it could have done on October 5, 2010, when the matter was admitted. As Applicant notes, discovery has been extended into late January, 2011. Thus, all discovery options available to it when the "matter" was admitted are still available, and Opposer has already communicated to Applicant a willingness to further extend discovery, if necessary.

Nevertheless, Applicant asserts that it would be "unrealistic" for it to conduct additional discovery on this matter (Opp'n at 5), and that withdrawal of the admission would likely require Applicant to depose Opposer's personnel. This latter suggestion is disingenuous since Applicant has never once expressed to Opposer an interest in deposing any of its personnel on any substantive claim at issue in this proceeding. Moreover, such a deposition could not possibly unsettle the photographic evidence Opposer has presented to Applicant showing Opposer's Arch Cards on sale at the same grocery stores where Applicant's products are also offered. Furthermore, there is nothing to preclude Applicant from performing any additional investigation or inspection of the sale of Arch Cards in grocery stores such as QFC. Considering that Applicant's principal, Mr. James McCaslin, is known to shop at his local QFC grocery store and has inspected the McSweet product inventory at that QFC location from time-to-time, such an investigation is both conceivable and likely.

IV. Conclusion

Unfortunately, Applicant seems determined to fight Opposer at every procedural turn. It filed a multi-page opposition to a request for a one day extension of time, and has now filed this meritless objection to a simple discovery issue. To say that Applicant is being vexatious is an understatement. Opposer is committed to cooperating with Applicant to reach resolution of this proceeding on the merits, and encourages Applicant to extend the same courtesy. Because withdrawal of Opposer's admission as to Request No. 105 will further resolution on the merits and will not prejudice Applicant's discovery efforts, the Board should grant Opposer's Motion to Withdraw under Rule 36(b).

Respectfully submitted,

McDONALD'S CORPORATION

Date: December 28, 2010

By: s/Robert E. Browne/
One of the Attorneys for Opposer

Robert E. Browne (Reg. No. 26,150)
John A. Cullis
Lawrence E. James, Jr.
Mike R. Turner
NEAL, GERBER & EISENBERG, LLP
2 N. LaSalle Street, Suite 1700
Chicago, IL 60602

CERTIFICATE OF SERVICE

I, John A. Cullis, an attorney, state that I served a copy of the foregoing ***Opposer's Reply to Applicant's Opposition to Opposer's Motion to Withdraw its Response to Applicant's Request for Admission No. 105***, via first class U.S. mail, postage pre-paid, upon:

Katherine Hendricks
HENDRICKS & LEWIS PLLC
901 Fifth Ave., Ste 4100
Seattle, WA 98164

on this 28th day of December, 2010.

s/John A. Cullis/
John A. Cullis

NGEDOCS: 1759800.3

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.	)		

DECLARATION OF MIKE R. TURNER IN SUPPORT OF OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO WITHDRAW ITS RESPONSE TO APPLICANT'S REQUEST FOR ADMISSION NO. 105

I, Mike R. Turner, an attorney, state and depose on oath that, if called to testify as a witness in this matter, I could competently testify as follows:

1. I am licensed to practice law in the State of Illinois and before the United States District Court for the Northern District of Illinois. I am an associate of the law firm Neal, Gerber & Eisenberg LLP, and serve as counsel to Defendant in the above-captioned matter.

2. On November 9, 2010, I visited several retail establishments identified by Applicant as locations where Applicant's products are sold.

3. One of the establishments I visited was a QFC Grocery Store located at 9999 Holman Road NW, Seattle, WA 98117 ("the Holman Road QFC"). I noted two separate locations within the Holman Road QFC where stored-value cards bearing Opposer's marks were offered for sale. These cards are commonly referred to as "Arch Cards," and are distributed exclusively under license by and for Opposer. Arch Cards may be redeemed at Opposer's restaurants in exchange for various food or drink products.

4. Attached as Exhibit A is a true and accurate copy of a first photo taken by me of Arch Cards as displayed at the Holman Road QFC.

5. Attached as Exhibit B is a true and accurate copy of a second photo taken by me of Arch Cards as displayed at the Holman Road QFC.

6. The Holman Road QFC also sold McSweet Pickled Garlic, McSweet Pickled Cocktail Onions, and McSweet Gourmet Olive Bliss.

7. Attached as Exhibit C is a true and accurate copy of a third photo taken by me of a display of McSweet-branded products as they were found at the Holman Road QFC.

8. Attached as Exhibit D is a true and accurate copy of a receipt from the Holman Road QFC showing the purchase of one container of McSweet Pickled Garlic and one of Opposer's Arch Cards valued at $15.

9. I later confirmed the availability of Opposer's Arch Cards at a second QFC Grocery Store located at 2500 SW Barton St., Seattle, WA 98106 ("the Barton Street QFC"). The Arch Cards were offered for sale at the Barton Street QFC through display arrangements and in store locations completely different than at the Holman Road QFC, such as on aisle end caps and within aisles instead of on rotating displays.

10. Attached as Exhibit E is a true and accurate copy of an email I sent to Applicant's counsel on December 2, 2010. Attached to the email were courtesy copies of Opposer's Motion and the supporting Declaration that identified Exhibits A, B, C & D. The Exhibits were not attached.

11. Attached as a part of Exhibit F is a true and accurate printout of a Federal Express tracking receipt showing a package delivered to and signed for by Applicant's counsel on Dec. 10, 2010. This package included the following Bates labeled documents, which are also

included in Exhibit F: McD7004-7005, McD7021-7023, McD7067, McD7074, McD7076 and McD7077. The latter four of these documents correspond to Exhibits A, B, C, and D to this Declaration.

12. Attached as Exhibit G is a true and accurate copy of an email I sent to Applicant's counsel on November 24, 2010.

13. Attached as Exhibit H is a true and accurate copy of an email I sent to Applicant's counsel on November 14, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of December, 2010.

By: s/Mike R. Turner/
MIKE R. TURNER
One of the Attorneys for Opposer

Robert E. Browne
John A. Cullis
Lawrence E. James, Jr.
Mike R. Turner
NEAL, GERBER & EISENBERG, LLP
2 N. LaSalle Street, Suite 1700
Chicago, IL 60602

NGEDOCS: 1759823.1

Exhibit A

Dining Out
Red Lobster
Applebee's
P.F. CHANG'S
McDonald's
OUTBACK
Say Cheesecake
Tuesday
CLAIM JUMPER
One Stop Card Shop

Exhibit B

OUTBACK
STEAKHOUSE
$25
Gift card has no value until activated by cashier.
Because it's always a great day for ice cream.
COLD STONE GIFT CARD
$15
COLD STONE
Live Adventurous. Go Outback.
OUTBACK
STEAKHOUSE
TO:
FROM:
$15
Arch Card
load it. gift it. love it.
Card has no value until activated by checkout.
$15
Because it's always a great day for ice cream.
COLD STONE GIFT CARD
$15
COLD STONE
OUTBACK
STEAKHOUSE
$50
$50
Live Adventurous. Go Outback.
OUTBACK
STEAKHOUSE
TO:
FROM:
$25
Arch Card
load it. gift it. love it.
$25
$25
COLD STONE
OUTBACK
STEAKHOUSE
$50
TO:
FROM:
Arch Card
load it. gift it.
COLD STONE
$30
Pizza Hut
10
10
10

Exhibit C

CAPERS
SALTED
Imported
ocktail Onions
M. SWEET
M. SWEET
M. SWEET
WHISKEY
tipsy
CHERRIES
VERMOUTH
tipsy
OLIVES
29
6.29
11.56
2.89
11.98
5.99
11.98
5.99
13.59
10.19
11.18
6.99
22.91
7.59
With Card
5.49
10.98
Save 50¢
With Card
5.49
10.98
Save 50¢
With Card
6.99
21.10
Save 60¢
PELOPON

Exhibit D

NOW HIRING - APPLY TODAY
www.qfc.com

QFC
Quality Food Centers
You Know It's Going To Be Good.

9999 Holman Rd NW
206-783-8888
YOUR CASHIER WAS JASON

QFC ADVANTAGE CUSTOMER
MCSWT GARLIC *******5088
SC QFC SAVINGS QA 5.49 F
MR MCDNLDS $15 0.50
GB **********8309 15.00
TAX 15.00 Binc
**** BALANCE 0.00
20.49

705 HOLMAN ROAD #872
9999 Holman Rd NW
Seattle WA 98117
VISA Purchase
**********0735
TOTAL: 20.49
REF#: 03594C

VISA 20.49
CHANGE 0.00
TOTAL NUMBER OF ITEMS SOLD = 1

QFC ADVANTAGE SAVINGS
TOTAL SAVINGS (2 Percent) $ 0.50
$ 0.50

11/09/10 03:39pm 872 4 32 723361

****
Save $0.10 off per gallon on 1 fillup
for every 100 Fuel Points

Fuel Points This Order = 35
Fuel Points Expiring 12/31/10 = 65
Points under 100 do not carry over.
Months' points do not combine.

See Store for Details & Restrictions
Or Visit www.qfc.com
****
0

YEAR TO DATE ADVANTAGE SAVINGS:$4.00

THANK YOU FOR SHOPPING AT YOUR
HOLMAN ROAD QFC

Exhibit E

Turner, Mike R.

From: Turner, Mike R.
Sent: Thursday, December 02, 2010 4:21 PM
To: 'cab@hllaw.com'; Katherine Hendricks
Cc: Cullis, John A.; James Jr., Lawrence E.
Subject: Motion to Withdraw Admission
Attachments: Motion.pdf; Declaration.pdf; Supplemental Response.pdf

Kate and Caitlin –

Please find attached courtesy copies of documents that were filed with the Board and served on Applicant through US Mail yesterday.

Regards,

Mike R. Turner
Associate - Intellectual Property
NEAL ▪ GERBER ▪ EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street ▪ Suite 1700
Chicago IL ▪ 60602-3801
312.827.1092 phone ▪ 312.980.0779 fax
mturner@ngelaw.com ▪ www.ngelaw.com
www.linkedin.com/in/mikerturner

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply e-mail and immediately delete it and any attachments without copying or further transmitting the same.

Exhibit F

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

December 22,2010

Dear Customer:

The following is the proof-of-delivery for tracking number **977172922257**.

Delivery Information:

Status:	Delivered	**Delivered to:**	Receptionist/Front Desk
Signed for by:	.ADDINGTON	**Delivery location:**	901 FIFTH AVE. Seattle, WA 98164
Service type:	Priority Overnight	**Delivery date:**	Dec 10, 2010 12:10

Shipping Information:

Tracking number:	977172922257	**Ship date:**	Dec 9, 2010
		Weight:	9.0 lbs/4.1 kg

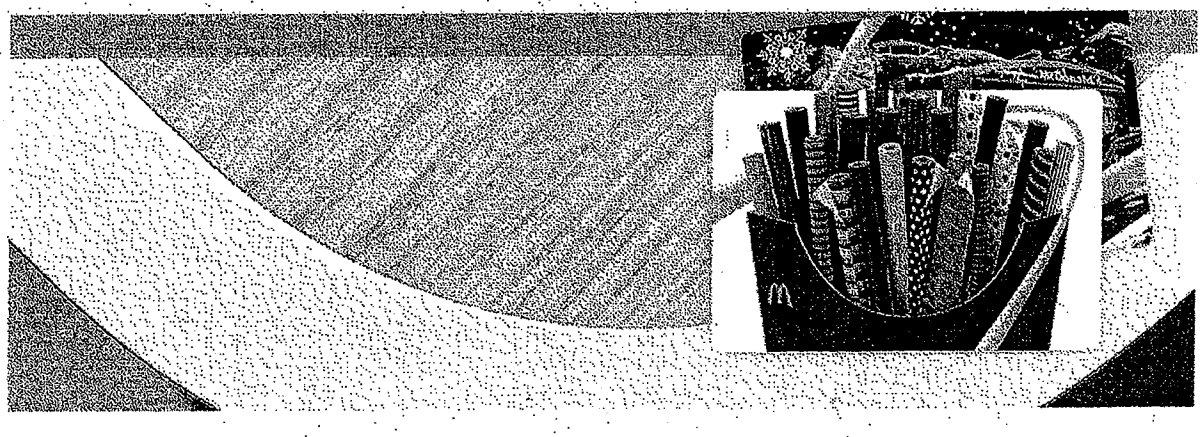
Recipient:
Katherine Hendricks
Hendricks & Lewis PLLC
901 Fifth Ave.
Suite 4100
Seattle, WA 98164 US

Shipper:
Donna Dwyer
NEAL GERBER & EISENBERG LLP
2 N LA SALLE ST STE 2000
CHICAGO, IL 60602 US

Reference 049872.4395

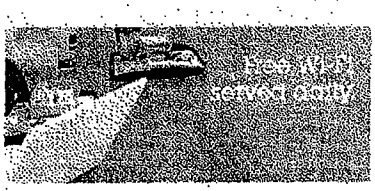
Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339



Gift Cards

Whether you're looking to reward your co-workers for a job well done or say "thank you" to someone special, give the Arch Card* or McDonald's Gift Certificates**. Great for a cash-free fries run, too!



Arch Card

The Arch Card is a pre-paid card that gives customers a quick and convenient way to pay at McDonald's. Arch Cards also make the perfect gift for holidays or any special occasion. Arch Cards come in denominations of $5, $10, $25, and $50.

They can be purchased for the first time or reloaded later at participating McDonald's restaurants nationwide. They are also available at retailers including Giant Eagle, Safeway, Kroger, SuperValu and Ahold.

McDonald's Arch Cards never expire, and there are no penalty or dormancy fees.

Services / Gift Cards

Check Arch Card Balance

Using your Arch Card

Corporate Sales

Fries can be a powerful incentive. Arch Cards are a convenient way to deliver appreciation, motivation, and recognition for the people who make you look good. Arch Cards come in denominations of $5, $10, $25, and $50.

Need 25 or more Arch Cards? Purchase in multiples of 25 using the Corporate Sales Order Form. Free standard ground shipping. Rush shipping is available for an additional charge. Discounts available for orders of $10,000 and above.

Corporate Sales Order Form [pdf 3.8 MB]

Corporate Sales Guide [pdf 1.5 MB]

Corporate Sales Terms & Conditions [pdf 1.9 MB]

Call 1-630-623-8162 to purchase Arch Cards in quantities of 25 or more.

Lost/Damaged Cards

Have another question about the Arch Card?

Arch Card Terms & Conditions

Gift Certificates

McDonald's Gift Certificates will create smiles! They're perfect for birthdays, holiday gifts, surprising friends and co-workers, or just saying "thanks".

You can purchase McDonald's Gift Certificates at your nearest participating McDonald's or on the Gift Certificate website.

* Subject to availibility
** McDonald's Gift Certificates are valid in the U.S.A, Canada and Puerto Rico.

PRESS RELEASE

FOR IMMEDIATE RELEASE
August 10, 2006

CONTACT:
Ashley M. Page (773)772-5724

IGA, LAUREL GROCERY COMPANY AND MCDONALD'S JOIN FORCES TO BRING A NEW CO-BRANDED FORMAT TO THE SUPERMARKET INDUSTRY

Laurel Grocery Supplied Petrucci's Market IGA to Open Outside of Pittsburgh

(CHIGAGO, IL) – IGA today announced it has joined forces with McDonald's and Laurel Grocery Company to bring a new co-branded supermarket/fast-food format to the industry. Burgettstown, Pennsylvania- based Petrucci's Market IGA, a full-service supermarket that includes within the building an independently owned, full-sized McDonald's franchise, will have its Grand Opening on August 12. This is the first co-branding endeavor of its kind for IGA, Laurel Grocery Company and McDonald's.

The Petrucci family have owned and operated Burgettstown's sole supermarket since 1917. When Jim and Tom Petrucci, grandsons of the original Petrucci's owner, lost their supermarket to flooding resulting from a tropical storm in 2004, they began to explore new concepts for rebuilding. The Petruccis began working with McDonald's to develop a co-branding effort that would bring Burgettstown its first fast-food restaurant in conjunction with a newly constructed Petrucci's Market. The Petruccis then sought and received license to join IGA with Laurel Grocery Company distribution.

According to McDonald's corporation's Patrick Hoffman, McDonald's has a history of co-branding with convenience store/gas station combinations, yet has not engaged in a co-branding effort with full-service supermarket. "The Petruccis owned the only supermarket within 15 minutes of Burgettstown.To make it work, we essentially morphed our oil-based co-branding initiative into one that would fit the Petrucci's Hometown Proud IGA supermarket model."

Petrucci's Market IGA is a full-sized supermarket that is highly driven by perishable items such as produce, meat and deli. The Petruccis have tried to create an innovatively designed market that steered away from a traditional supermarket look. Their supermarket follows a "Tuscan" market style that features terracotta tile and hardwood in various areasthroughout the store. To maximize linear feet, the Petruccis chose sleek black upright cases over traditional coffin cases and higher gondola shelving with three

foot sections to enhance variety. The full-service McDonald's occupies the same building and is market accessible.

Jim Petrucci said the new store endeavor with McDonald's has occupied every aspect of their lives for the last two years and they are thankful for the opportunity. "We know that we have a unique concept here and we're glad that IGA, Laurel Grocery Company and McDonald's agreed that it was one that could work. Knowing that you have that kind of support takes away the fear of being involved in a new concept. IGA and Laurel have put together a program that I feel will give the business longevity. They've really stepped up to the plate to help us make this work. Our community needed this, and we're proud that we are going to be able to bring it to them."

"We are delighted to be developing a relationship with these excellent retailers, working with McDonald's, and expanding our service area," Robert Kirch, executive vice president/COO, Laurel Grocery Company said. "Jim and Tom Petrucci have demonstrated a true commitment to their community. They didn't simply rebuild their supermarket; they looked for a way to improve it. It is our hope that this experience will open a door to allow other IGA Retailers to adopt this unique format."

"If there has ever been an illustration of taking lemons and making lemonade, the Petruccis are it," said Dr. Thomas Haggai, chairman and CEO of IGA. "They overcame the great disappointment of losing their store only to bring back to the community an even better model of operation. We are so pleased to have the opportunity to team with McDonald's. IGA, Laurel Grocery Company and McDonald's share compatible thinking in that each recognize selling our products is simply a part of working to the greater good of community activism and development."

IGA is the world's largest voluntary supermarket network with aggregate worldwide retail sales of more than $19.1 billion per year. The Alliance includes more than 4,000 Hometown Proud Supermarkets worldwide, supported by 52 distribution companies and more than 55 major manufacturers, vendors and suppliers encompassing everything from grocery to equipment items. IGA ranks in the top 10 in world food supermarketing. IGA has operations in 48 of the United States and more than 40 countries, commonwealths and territories on all six inhabited continents. IGA's theme and philosophy, Hometown Proud, dates from its 1930s national radio show, IGA Hometown Hour, reflecting the local roots of IGA independent grocers.

###

Arch Cards Now Available in over 1,250 Food Lion Locations

McDonald's continually seeks to profitably expand its points of Arch Card distribution through key strategic 3rd party retail partners. This allows us to capture our fair share of 3rd party retail sales across all geographic areas.

To help achieve this goal, we are pleased to announce that Arch Cards are now available for purchase at 1,256 Food Lion grocery stores throughout the mid-Atlantic and Southern U.S. In total, Arch Cards are now available for sale in over 8,000 grocery stores across the U.S., including Kroger, Safeway, Giant Eagle, Supervalu and Ahold.

All six retailers sell Arch Cards in $15 and $25 denominations. Giant Eagle, Safeway and Kroger also now have Arch Card Multipacks available for purchase (each Multipack includes four $10 Arch Cards). Listed below are the retail brands represented by these major chains.

Kroger (2,500 stores)	Safeway (1,595 stores)	Supervalu (1,590 stores)	Food Lion (1,256 stores)
- Ralphs - Fry's - Fred Meyer - Dillons - Jay C Food Stores - Food 4 Less - Foods Co - King Soopers - City Market - Kroger - Smith's - Scott's - Hilander - Gerbes - Owen's - Pay Less - Price Rite - QFC - Baker's (Nationwide locations)	- Genuardi's - Dominck's - Safeway - Randalls - Tom Thumb - Carrs - Pak 'n Save Foods - Vons - Pavilions (Located in California, Illinois, Nevada, Texas, Pennsylvania and Alaska)	- Acme - Albertsons - Bristol Farms - Sav-a-lot - bigg's - Cub Foods - Farm Fresh - Hornbacher's - Jewel-Osco - Lucky - Shaw's - Shop 'n Save - Shoppers (Nationwide locations)	- Food Lion - Bloom - Bottom Dollar - Reids (Located in Delaware, Florida, Georgia, Kentucky, Maryland, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia)

Giant Eagle (370 stores)	Ahold (713 stores)
- All groceries under the Giant Eagle name (Located in Pennsylvania, Ohio, W. Virginia and Maryland)	- Giant - Martins - Foodsource - Stop & Shop (Located in Idaho, Wyoming, Maryland, Virginia, West Virginia, Connecticut, Delaware, Pennsylvania, Maine, Massachusetts, New York, New Hampshire, Rhode Island, New Jersey and Washington DC)

NOW HIRING - APPLY TODAY
www.qfc.com

QFC
Quality Food Centers
You Know It's Going To Be Good.

9999 Holman Rd NW
206-783-8888
YOUR CASHIER WAS JASON

QFC ADVANTAGE CUSTOMER *******5088
MCSWT GARLIC QA 5.49 F
SC QFC SAVINGS 0.50
MR MCDNLDS $15 15.00
GB ********8309 15.00 Blnc
TAX 0.00
**** BALANCE 20.49

705 HOLMAN ROAD #872
9999 Holman Rd NW
Seattle WA 98117
VISA Purchase
**********0735
TOTAL: 20.49
REF#: 03594C

VISA 20.49
CHANGE 0.00
TOTAL NUMBER OF ITEMS SOLD = 1

QFC ADVANTAGE SAVINGS
TOTAL SAVINGS (2 Percent) $ 0.50
$ 0.50

11/09/10 03:39pm 872 4 32 723361

****
Save $0.10 off per gallon on 1 fillup
for every 100 Fuel Points

Fuel Points This Order = 35
Fuel Points Expiring 12/31/10 = 65
Points under 100 do not carry over.
Months' points do not combine.

See Store for Details & Restrictions.
Or Visit www.qfc.com
****
0

YEAR TO DATE ADVANTAGE SAVINGS:$4.00

THANK YOU FOR SHOPPING AT YOUR
HOLMAN ROAD QFC

McD 007067

CAPERS
SALTED
Imported
cktail Onions
M.Sweet
tipsy
CHERRIES
tipsy
OLIVES
6.29
2.89
5.99
5.99
10.19
6.99
7.59
With Card
5.49
10.98
Save 50¢
With Card
5.49
10.98
Save 50¢
With Card
6.99
21.10
Save 60¢
Asparagus
Asiago
Bruschetta
PELOPON

Dining Out
Red Lobster
Applebee's
P.F. CHANG'S
Applebee's
P.F. CHANG'S
Applebee's
P.F. CHANG'S
Applebee's
Tuesday
CLAIM JUMPER
Tuesday
CLAIM JUMPER

OUTBACK
STEAKHOUSE
$25
Gift card has no value until activated by cashier.
Card has no value until activated by checkout
Because it's always a great day for ice cream.
COLD STONE GIFT CARD
$15
COLD STONE
50
OUTBACK
$15
Arch Card
load it. gift it. love it.
$15
Because it's always a great day for ice cream.
COLD STONE GIFT CARD
$15
COLD STONE
OUTBACK
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OUTBACK
$25
Arch Card
load it. gift it. love it.
$25
COLD STONE GIFT CARD
$25
COLD STONE
OUTBACK
$50
50
Arch Card
COLDSTONE
30
gift it.

Exhibit G

Turner, Mike R.

From: Turner, Mike R.
Sent: Wednesday, November 24, 2010 2:03 PM
To: 'cab@hllaw.com'
Cc: Katherine Hendricks; Cullis, John A.; James Jr., Lawrence E.
Subject: RE: Meet and Confer

Caitlin,

That time and date works for us. We will call your office at 1 PM PST next Tuesday.

However, we are concerned that Applicant's offer to conditionally provide an email the day before the meet and confer regarding its concerns with 42 of Opposer's Responses to Applicant's 105 requests for admission will not provide us with sufficient time to address or respond to each of these concerns. It is noted that Applicant received Opposer's Responses in question on October 5, 2010. Consequently, we must reserve our right to postpone the meet and confer as to the sufficiency of Opposer's Responses if we have not had adequate time to consider all of Applicant's objections. We cannot reasonably be expected to review, consider, and consult with our client about Applicant's objections within a 24-hour period. As we have previously indicated, Applicant is obligated to provide Opposer with a good faith opportunity to address its objections to Opposer's responses. In addition, we are finalizing a set of documents responsive to Applicant's First Set of Requests for the Production to Opposer which may address some or all of Applicant's purported objections. This set of documents should be ready for production next week.

Information about Arch Cards is publicly available through Opposer's website at the following URL:
http://www.mcdonalds.com/us/en/services/arch_card.html?DCSext.destination=http://www.mcdonalds.com/us/en/services/arch_card.html
In addition, we are evaluating recently discovered evidence suggesting that additional McDonald's products may be sold within grocery stores.

Mike R. Turner
Associate - Intellectual Property
312.827.1092 phone • 312.980.0779 fax
mturner@ngelaw.com

From: Caitlin A. Bellum [mailto:cab@hllaw.com]
Sent: Tuesday, November 23, 2010 3:41 PM
To: Turner, Mike R.
Cc: Katherine Hendricks; Cullis, John A.; James Jr., Lawrence E.
Subject: RE: Meet and Confer

Hi Mike,

Does Tuesday, November 30, at 1:00PM PST work for you? If it does, then I will email you on Monday, November 29 regarding our concerns with 42 of Opposer's responses.

Also, by Arch cards, do you mean gift cards that can be purchased and activated at the grocery store?

Thank you.

Kind regards,

Caitlin

-----Original Message-----
From: Turner, Mike R. [mailto:mturner@ngelaw.com]
Sent: Thu.11/18/2010 7:01 PM
To: Caitlin A. Bellum
Cc: Katherine Hendricks; Cullis, John A.; James Jr., Lawrence E.
Subject: RE: Meet and Confer

Caitlin,

We are encouraged that Applicant has significantly reduced the number of Opposer's responses in issue, and look forward to receiving correspondence setting forth Applicant's specific concerns as to 42 of Opposer's yet-to-be-identified responses.

In the case of the single response we have expressed concern with, the explanation as to why a motion is necessary is simple. We responded with an admission that Opposer's goods have were not available through grocery stores, and, through ongoing discovery, have realized that is not the case. Specifically, within the last two weeks, we have learned that Opposer's Arch Cards are offered for sale at a number of grocery stores. Thus, we are obligated to amend under Rule 26, and forced to do so by motion under Rule 36. There is really nothing more to it, thus no need for a separate writing to explain the matter.

We are unable to convene the meet and confer immediately after the Christie deposition as we have to travel back to Los Angeles for our flight. We will, however, be back in the office on November 29th. Please let us know your availability on November 29th or 30th.

Thank you,

Mike R. Turner
Associate - Intellectual Property
312.827.1092 phone ? 312.980.0779 fax
mturner@ngelaw.com<mailto:lzhu@ngelaw.com>

From: Caitlin A. Bellum [mailto:cab@hllaw.com]
Sent: Thursday, November 18, 2010 8:16 PM
To: Turner, Mike R.
Cc: Katherine Hendricks; Cullis, John A.; James Jr., Lawrence E.
Subject: RE: Meet and Confer

Mike,

We would like to meet and confer regarding deficient responses to only 42 of Opposer's responses to Applicant's Requests for Admission, not all 105. We will provide you with a short, specific summary of all 42 responses and why we believe each response is deficient.

We also request that before we meet and confer you provide us with a written summary explaining why, six weeks later, your initial response to Applicant's Request for Admission No. 105 is no longer appropriate. As you explained, denying the Applicant the opportunity to review why you believe that McDonald's now sells and/or distributes goods to grocery stores will undoubtedly result in further delay and a subsequent call.

Unfortunately, we are unavailable tomorrow between 1:30 and 4:00 PM PST. Does next Tuesday, November 23, immediately after the Christie Communications deposition work for you?

Kind regards,

Caitlin

From: Turner, Mike R. [mailto:mturner@ngelaw.com]
Sent: Thursday, November 18, 2010 5:41 PM
To: Caitlin A. Bellum
Cc: Katherine Hendricks; Cullis, John A.; James Jr., Lawrence E.
Subject: RE: Meet and Confer
Caitlin,

While we appreciate Applicant's willingness to meet and confer regarding Opposer's required motion, we are surprised to hear that Applicant would like to file a motion to test the sufficiency of "ALL" of Opposer's responses to Applicant's requests for admission - especially considering that, aside from the miscellaneous comments made in Applicant's brief in opposition to Opposer's 1-day extension request, Applicant has not advised Opposer of any objections or purported deficiencies with Opposer's responses.

As you surely know, a motion to test the sufficiency must be supported by a written statement from the moving party that such party has made a good faith effort to resolve with the other party the issues presented. 37 C.F.R. 2.120(h)(1). Applicant's failure to provide notice of the purported deficiencies for a month and a half, followed by its demand for a meet and confer to go through 105 requests for admission over the phone falls far short of any good faith effort on the part of Applicant. Given the considerable number of purported "deficient" responses, we believe that a written summary by Applicant of its objections concerning the deficiencies (which is the customary practice) would be a more reasonable and efficient approach to resolving the matter in a good faith manner. It would provide Opposer an opportunity to consider Applicant's objections and possible remedies to the claimed deficiencies. Denying Opposer the opportunity to consider the objections prior to conferring about them will undoubtedly result in further delay and a subsequent call. Consequently, we must request that Applicant provide a written summary of the perceived deficiency with respect to each of the deficient responses prior to the parties engaging in a meet and confer. By simply claiming that "ALL" Opposer's responses to Applicant's 105 requests for admission are deficient, without providing a single example or explanation, fails to provide Applicant does not provide Opposer with any meaningful opportunity to resolve Applicant's concerns.

In the meantime, we agree to meet and confer on both Opposer's required Rule 36(b) motion and the protective order. However, we are not available at 10:30 AM. We are available at any time between the hours of 1:30 and 4:00 PM your time tomorrow. Please let us know if there is a time within that window that will work for you and/or Kate.

Thank you,

Mike R. Turner
Associate - Intellectual Property
312.827.1092 phone ? 312.980.0779 fax
mturner@ngelaw.com<mailto:lzhu@ngelaw.com>

From: Caitlin A. Bellum [mailto:cab@hllaw.com]
Sent: Thursday, November 18, 2010 1:55 PM
To: Turner, Mike R.
Cc: Katherine Hendricks; James Jr., Lawrence E.; Cullis, John A.
Subject: RE: Meet and Confer

Hi Mike,

During the meet and confer, we would also like to confer on ALL of the requests for admissions as we would like to file a motion to test the sufficiency of Opposer's responses. Further, we would like to discuss the stipulation to a protective order in this proceeding.

Kate and I are available to meet tomorrow at 10:30am PST. Please let us know if that works for you.

Thank you.

Kind regards,

Caitlin

From: Turner, Mike R. [mailto:mturner@ngelaw.com]
Sent: Wednesday, November 17, 2010 5:45 PM
To: Caitlin A. Bellum
Cc: Katherine Hendricks; Cullis, John A.; James Jr., Lawrence E.
Subject: Meet and Confer
Caitlin,
Based on our continuing investigation, we have determined a need to withdraw and supplement our response to Applicant's Request for Admission No. 105. Under Fed. R. Civ. P. 36(b), this must be done via motion. The basis for our need to withdraw is that we have discovered that McDonald's does, in fact, offer goods through grocery stores. We are available for a meet and confer at your convenience, but want to get this motion filed - preferably with Applicant's consent - by the end of the week. Please let us know when you or Ms. Hendricks are available to discuss this evening, Thursday, or Friday.
Thank you,

Mike R. Turner
Associate - Intellectual Property
NEAL ? GERBER ? EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street ? Suite 1700
Chicago IL ? 60602-3801
312.827.1092 phone ? 312.980.0779 fax
mturner@ngelaw.com<mailto:mturner@ngelaw.com> ? www.ngelaw.com<http://www.ngelaw.com/>
www.linkedin.com/in/mikerturner<http://www.linkedin.com/in/mikerturner>

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Exhibit H

Turner, Mike R.

From: Turner, Mike R.
Sent: Wednesday, November 17, 2010 7:45 PM
To: 'cab@hllaw.com'
Cc: 'kh@hllaw.com'; Cullis, John A.; James Jr., Lawrence E.
Subject: Meet and Confer

Caitlin,

Based on our continuing investigation, we have determined a need to withdraw and supplement our response to Applicant's Request for Admission No. 105. Under Fed. R. Civ. P. 36(b), this must be done via motion. The basis for our need to withdraw is that we have discovered that McDonald's does, in fact, offer goods through grocery stores. We are available for a meet and confer at your convenience, but want to get this motion filed – preferably with Applicant's consent - by the end of the week. Please let us know when you or Ms. Hendricks are available to discuss this evening, Thursday, or Friday.

Thank you,

Mike R. Turner
Associate - Intellectual Property
NEAL ▪ GERBER ▪ EISENBERG
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