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

Proceeding	91202219
Party	Plaintiff Eat Right Foods Ltd.
Correspondence Address	SIMONE M KATZ ONEILL SHARTISIS FRIESE LLP ONE MARITIME PLAZA, 18TH FLOOR SAN FRANCISCO, CA 94111 UNITED STATES skatz@sflaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Joseph V. Mauch
Filer's e-mail	jmartin@sflaw.com, jmauch@sflaw.com, calendar@sflaw.com
Signature	/Joseph V. Mauch/
Date	09/25/2012
Attachments	Notice of Reliance No. 31.pdf (45 pages)(5659069 bytes)

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

EAT RIGHT FOODS LTD., Opposer, v. KEVIN LEVILLE, Applicant.	Opp. No.: 91202219 Ser. No.: 77/868,068 Date of Publication: April 26, 2011

OPPOSER EAT RIGHT FOODS LTD.'S
NOTICE OF RELIANCE NO. 31

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to 37 C.F. R. § 2.120(j)(5) and 704.10 of the Trademark Trial and Appeal Board Manual of Practice and Procedure, Opposer Eat Right Foods Ltd. provides Notice of Reliance on Applicant's Responses and Supplemental Responses to Opposer's First Set of Interrogatories, submitted herewith.

Dated: September 25, 2012.

Respectfully Submitted,
SHARTSIS FRIESE LLP

By: _____
JOSEPH V. MAUCH

Attorneys for Opposer
EAT RIGHT FOODS LTD.

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

EAT RIGHT FOODS LTD., Opposer, v. KEVIN LEVILLE, Applicant.	Opp. No.: 91202219 Ser. No.: 77/868,068 Date of Publication: April 26, 2011

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT (NOS. 1 TO 61)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer EAT RIGHT FOODS LTD. ("Opposer") hereby requests that Applicant KEVIN LEVILLE ("Applicant") provide written responses to the following special interrogatories within thirty (30) days of service of this request to the law offices of Shartsis Friese LLP, One Maritime Plaza, 18th Floor, San Francisco, California 94111, subject to the definitions and instructions set forth herein below.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions shall apply to these interrogatories:

1. The term "YOU" and its cognates means and refers to Applicant and includes its predecessors, successors, agents, employees, attorneys, consultants, affiliates, partners and any other PERSON (defined below) or entity acting on its behalf, and also includes any other PERSON (defined below) in which Applicant has any ownership interest or control.

2. The term "EAT RIGHT" means and refers to Opposer.

3. The term "NE" means and refers to Nutritional Excellence, LLC.

4. The term "FUHRMAN" means and refers to Dr. Joel Fuhrman.

5. The term "STOLL" means and refers to Dr. Scott Stoll.

6. The term "PERSON" means and refers to any natural person, general partnership, limited partnership, trust, estate, association, corporation, limited liability company or any other entity or PERSON, whether domestic or foreign.

7. The term "OPPOSER'S GOODS OR SERVICES" means and refers to medicated confectionery, food preparations adapted for medical purposes; Snack mix consisting primarily of processed fruits, processed nuts and/or raisins; Organic nut and seed-based snack bars; Fruit-based snack food; Fruit-based organic food bars; Fruit-based organic food bars, also containing nuts and seeds; Organic and allergy sensitive cakes and cookies.

8. The term "APPLICANT'S GOODS OR SERVICES" means and refers to providing a personalized nutritional assessment, health risk evaluation and personal eating plan by means of the Internet; providing online information in the fields of health, nutrition and lifestyle wellness; providing an online computer database featuring information in the fields of health, nutrition and lifestyle wellness; providing a website that features information in the fields of health, nutrition and lifestyle wellness; providing online social networking services; computer programs in the field of diet and nutrition for providing a database of dietary and nutritional information and for providing to purchasers dietary and nutritional information relevant to products purchased and/or to purchaser health; Nutritional health services; personal nutritional health services; health and eating assessments; Providing information in the fields of health, nutrition and lifestyle wellness; Electronic publications, namely, books, magazines, written articles, newsletters, recipes, and manuals featuring information in the fields of diet, health, nutrition, and lifestyle wellness recorded on computer media; Pre-recorded CDs and DVDs featuring information in the fields of diet, health, nutrition, and lifestyle wellness; A series of books, magazines, written articles, newsletters, recipes, and manuals in the fields of diet, health, nutrition and lifestyle wellness.

9. The term "EAT RIGHT AMERICA MARK" means and refers to the mark EAT RIGHT AMERICA for nutritional supplements, dietary supplements, herbal supplements, homeopathic supplements, mineral supplements, multi-vitamins, and nutraceuticals for use as a dietary supplement; frozen, prepared and packaged vegetable-based entrees, frozen vegetables, and soups; salad dressings; or for any other food or supplement products.

10. The term "APPLICANT'S RELATED MARKS" means and refers to the other marks including "EAT RIGHT' or derivations thereof that have been used by Applicant or that Applicant intends to use on or in connection with APPLICANT'S GOODS OR SERVICES, which marks include, without limitation, EAT RIGHT UNITED KINGDOM, EAT RIGHT CANADA, EAT RIGHT NUTRIENT INDEX, ERNI and AMERICA EATS RIGHT.

11. The term "APPLICATION" means and refers to Application Serial No. 77/868,068 that NE filed with the United States Patent and Trademark Office on November 9, 2009 for the EAT RIGHT AMERICA MARK.

12. The term "ANSWER" means and refers to the answer that YOU filed on November 30, 2011 with the Trademark Trial and Appeal Board in the opposition proceeding, Opposition No. 91202219.

13. The term "EATRIGHT MARKS" means and refers to the design marks "EATRIGHT" used by EAT RIGHT for OPPOSER'S GOODS OR SERVICES.

14. The term "EATRIGHT REGISTRATIONS" means and refers to Registration No. 3,045,314, Registration No. 3,694,692, and Registration No. 3,694,693 from the United States Patent and Trademark Office, owned by EAT RIGHT.

15. The term "RETAILER" means and refers to any store, online store, grocery store, health food store, specialty food store or any other PERSON that sells or offers to sell to consumers any of APPLICANT'S GOODS OR SERVICES or OPPOSER'S GOODS OR SERVICES.

16. The term "WHOLE FOODS" means and refers to Whole Foods Market, Inc.

17. "EXPLAIN IN DETAIL" means to state the date, circumstances, amount (if

applicable), and PERSONS or entities involved.

18. "IDENTIFY" means to identify the subject matter of the interrogatory by providing all information in YOUR control or reasonably available to YOU, including but not limited to any pertinent dates, names of people or entities with knowledge of the subject matter, location, surrounding circumstances and/or any other identifying factor. With respect to a trademark or trademark application or registration, "IDENTIFY" means to provide its United States Patent and Trademark Office registration number and application number, if applicable; its dates of first use anywhere and in commerce and the goods on which used; and its trademark owner. With respect to documents, "IDENTIFY" means to provide with respect to such document, a description of the document, the date, the sender, and all addressees.

19. The singular includes the plural, and the plural includes the singular. The conjunctive ("and") includes the disjunctive ("or"), and the disjunctive includes the conjunctive.

20. Each answer must be as complete and straightforward as the information reasonably available to YOU permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

21. If YOU do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other PERSONS or entities, unless the information is equally available to the asking party.

22. Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

23. YOUR answers to these interrogatories must be verified, dated and signed.

24. Each paragraph of these Definitions and Instructions is incorporated into each request below as if set forth in full therein.

INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY all PERSONS who participated in or were responsible for the adoption, selection or creation of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 2:

IDENTIFY all PERSONS who participated in or were responsible for the adoption, selection or creation of APPLICANT'S RELATED MARKS.

INTERROGATORY NO. 3:

EXPLAIN IN DETAIL what YOU did, if anything, to determine whether EAT RIGHT AMERICA was available for use prior to filing the APPLICATION, including without limitation whether you conducted any searches or investigations with respect to similar marks used by other PERSONS.

INTERROGATORY NO. 4:

IDENTIFY all PERSONS who participated in any way in the decision to file the APPLICATION.

INTERROGATORY NO. 5:

EXPLAIN IN DETAIL why the APPLICATION was filed under Section 1(b) of the Lanham Act (15 U.S.C. section 1051(b)) and not under Section 1(a) of the Lanham Act (15 U.S.C. section 1051(a)).

INTERROGATORY NO. 6:

IDENTIFY all federal, state, and international registrations or applications owned by YOU or NE for any marks including EAT RIGHT for food or supplement products.

INTERROGATORY NO. 7:

IDENTIFY all federal and state registrations or applications owned by any PERSON of which YOU are aware for a mark including EAT RIGHT for food or supplement products.

INTERROGATORY NO. 8:

IDENTIFY the owner of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 9:

IDENTIFY the owner of APPLICANT'S RELATED MARKS.

INTERROGATORY NO. 10:

IDENTIFY the owner of the APPLICATION.

INTERROGATORY NO. 11:

IDENTIFY any agreements, understandings or settlements, oral or written, that REFER OR RELATE TO the ownership, licensing or use of the EAT RIGHT AMERICA MARK or the APPLICATION.

INTERROGATORY NO. 12:

IDENTIFY all agreement, understandings or settlements, oral or written, regarding ownership, licensing or use of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 13:

IDENTIFY each PERSON having any right to use the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 14:

EXPLAIN IN DETAIL the relationship between YOU and NE concerning the ownership of NE or the ownership of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 15:

IDENTIFY any general partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, whether domestic or foreign, that YOU have an ownership interest in or that YOU control. For purposes of this Interrogatory, "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a PERSON whether through the ownership of voting securities, by contract, or otherwise.

INTERROGATORY NO. 16:

With respect to any PERSON identified in your response to the previous Interrogatory, IDENTIFY all predecessors-in-interest, successors, subsidiaries, parents, related corporations, related partnerships, joint ventures or other affiliates.

INTERROGATORY NO. 17:

EXPLAIN IN DETAIL the nature of YOUR business in relation to the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 18:

IDENTIFY the earliest day that YOU had knowledge that EAT RIGHT used at least one of its EATRIGHT MARKS for food products.

INTERROGATORY NO. 19:

IDENTIFY the earliest day that YOU had knowledge that EAT RIGHT owned federal registrations for at least one of its EATRIGHT MARK.

INTERROGATORY NO. 20:

EXPLAIN IN DETAIL any instances of consumer confusion between the EAT RIGHT AMERICA MARK and the EATRIGHT MARKS.

INTERROGATORY NO. 21:

EXPLAIN IN DETAIL any instances of consumer confusion between APPLICANT'S RELATED MARKS and the EATRIGHT MARKS.

INTERROGATORY NO. 22:

EXPLAIN IN DETAIL any instances of confusion from RETAILERS between the EAT RIGHT AMERICA MARKS and the EATRIGHT MARKS.

INTERROGATORY NO. 23:

EXPLAIN IN DETAIL any instances of confusion from RETAILERS between APPLICANT'S RELATED MARKS and the EATRIGHT MARKS.

INTERROGATORY NO. 24:

EXPLAIN IN DETAIL how the EAT RIGHT AMERICA MARK is currently being used.

INTERROGATORY NO. 25:

EXPLAIN IN DETAIL how the EAT RIGHT AMERICA MARK has been used in the past.

INTERROGATORY NO. 26:

EXPLAIN IN DETAIL YOUR plans for the EAT RIGHT AMERICA MARK for food and supplement products.

INTERROGATORY NO. 27:

IDENTIFY the amount of sales by volume and revenue for each food or supplement product sold under the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 28:

IDENTIFY all products for which YOU have provided a numeric score related to nutrients, such as ANDI or ERNI.

INTERROGATORY NO. 29:

IDENTIFY all products, including foods and supplements, which bear the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 30:

IDENTIFY all products, including foods and supplements, which bear the ANDI nutrient index.

INTERROGATORY NO. 31:

IDENTIFY all products, including foods and supplements, which bear the ERNI nutrient index.

INTERROGATORY NO. 32:

IDENTIFY all products, including foods and supplements, for which YOU have provided an ANDI or ERNI score to any RETAILER, along with any point-of-sale DOCUMENTS, including without limitation signage, information materials for consumers or other marketing or advertising materials which include the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 33:

IDENTIFY any point-of-sale DOCUMENTS bearing the EAT RIGHT AMERICA MARK that YOU have provided to any RETAILER

INTERROGATORY NO. 34:

IDENTIFY all RETAILERS YOU have communicated with regarding use of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 35:

IDENTIFY all RETAILERS who currently use or have used the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 36:

IDENTIFY all RETAILERS who currently offer for sale or have offered for sale products with a nutrient index score such as ANDI or ERNI that has been used in connection with the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 37:

EXPLAIN IN DETAIL the channels of trade in which goods bearing the EAT RIGHT AMERICA mark or food products with a nutrient index such as ANDI or ERNI have been or are offered for sale.

INTERROGATORY NO. 38:

IDENTIFY the level of care exercised by the ordinary purchaser of goods bearing the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 39:

EXPLAIN IN DETAIL what products have been offered for sale under the EAT RIGHT AMERICA MARK on the www.shopnbc.com website at any time.

INTERROGATORY NO. 40:

EXPLAIN IN DETAIL what products have been offered for sale under the EAT RIGHT AMERICA MARK on the www.eatrightamerica.com or www.eatrightamerica.me websites at any time.

INTERROGATORY NO. 41:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER.

INTERROGATORY NO. 42:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER for salad bar items, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI in areas of the store where such items are offered for sale.

INTERROGATORY NO. 43:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER for bulk and packaged food items, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI in areas of the store where such items are offered for sale.

INTERROGATORY NO. 44:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER for fruit and vegetable food items, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI in areas of the store where such items are offered for sale.

INTERROGATORY NO. 45:

IDENTIFY all WHOLE FOODS or any other RETAILER's stores that currently use or have used the EAT RIGHT AMERICA MARK, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI.

INTERROGATORY NO. 46:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA in connection with any Health Starts Here programs at WHOLE FOODS.

INTERROGATORY NO. 47:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK in connection with any Health Immersion Programs at WHOLE FOODS.

INTERROGATORY NO. 48:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA

MARK in connection with any Wellness Clubs at WHOLE FOODS.

INTERROGATORY NO. 49:

EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK with the ANDI nutrition rating system at WHOLE FOODS.

INTERROGATORY NO. 50:

EXPLAIN IN DETAIL all facts regarding any meetings that YOU and FUHRMAN had with WHOLE FOODS representatives in 2010 regarding use of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 51:

IDENTIFY any in-person meetings that YOU have had with any RETAILER regarding use of the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 52:

EXPLAIN IN DETAIL all past relationships between YOU and any PERSON relating in any manner to the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 53:

EXPLAIN IN DETAIL all existing relationships between YOU and any PERSON relating in any manner to the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 54:

If YOU have been a party to any litigation, administrative proceeding, or arbitration other than the present opposition proceeding, involving the EAT RIGHT AMERICA MARK, EXPLAIN IN DETAIL the litigation, administrative proceeding, or arbitration.

INTERROGATORY NO. 55:

EXPLAIN IN DETAIL the terms of any agreements, understandings or settlements, oral or written, between YOU and FUHRMAN with respect to the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 56:

IDENTIFY any agreements, understandings or settlements, oral or written, between YOU and FUHRMAN that REFER OR RELATE TO the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 57:

EXPLAIN IN DETAIL the terms of any agreements, understandings or settlements, oral or written, between YOU and STOLL with respect to the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 58:

IDENTIFY any agreements, understandings or settlements, oral or written, between YOU and STOLL that REFER OR RELATE TO the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 59:

State all facts which support YOUR affirmative defense alleged in YOUR ANSWER that that the EAT RIGHT AMERICA MARK and EATRIGHT MARKS are not confusingly similar.

INTERROGATORY NO. 60:

State all facts which support YOUR affirmative defense alleged in YOUR ANSWER that that EAT RIGHT is not likely to be damaged by registration of the APPLICATION.

INTERROGATORY NO. 61:

State all facts which support YOUR affirmative defense alleged in YOUR ANSWER that that EAT RIGHT'S rights in the EATRIGHT MARKS are limited and narrow in scope of protection.

Dated: February 21, 2012

Respectfully Submitted
SHARTSIS FRIESE LLP

By: _____
SIMONE M. KATZ-O'NEILL

Attorneys for Opposer
EAT RIGHT FOODS LTD.

CERTIFICATE OF SERVICE

I, Wendy Cornell, hereby certify that a true and complete copy of the foregoing document(s):

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT (NOS. 1 TO 61)

has been served upon the party Kevin Leville by emailing said copy to SWOLDOW@sgrlaw.com as per the parties' agreement and mailing said copy on February 21, 2012 via first-class mail, postage pre-paid, to his attorneys, Scott D. Woldow, Smith, Gambrell & Russell, LLP 1130 Connecticut Avenue, NW, Suite 1130, Washington, DC 20036.

Executed on February 21, 2012, in San Francisco, California.

Wendy Cornell

Wendy Cornell

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

EAT RIGHT FOODS LTD., Opposer,	Opposition No.: 91202219
v.	Serial No.: 77/868,068
KEVIN LEVILLE, Applicant.	Date of Publication: April 26, 2011

APPLICANT KEVIN LEVILLE'S RESPONSES TO OPPOSER'S
FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 405, 37 C.F.R. §§ 2.116 and 2.120, and Rules 26 and 33 of the Federal Rules of Civil Procedure, Applicant Kevin Leville ("Applicant" or "Leville") hereby responds to Opposer Eat Right Foods Ltd.'s (the "Opposer") First Set of Interrogatories to Applicant dated February 21, 2012 (the "Interrogatories") based on: (1) a reasonable and thorough search for documents maintained in Applicant's possession, custody, or control responsive to such Interrogatories in locations where such documents are most likely to be found; (2) a reasonable and thorough inquiry of those persons most likely to have information responsive to the Interrogatories; and (3) a reasonable and thorough review of such information and documents.

The following responses by Applicant are made without waiving, or intending to waive, but on the contrary, intending to preserve and preserving: (1) any privilege or work-product objection; (2) the right to object, on the grounds of competency, admissibility, privilege, relevancy, or materiality, or any other proper grounds, to the use of the information for any other purpose at trial or otherwise; (3) the right to object on any and all grounds, at any time, to other Interrogatories or other discovery procedures involving or relating to the subject matter of the

Interrogatories to which Applicant has responded herein; and (4) the right at any time to modify, amend, revise, correct, add to, supplement, or clarify any of the responses herein.

The inadvertent production of any privileged information is not intended to waive any applicable privilege with respect to such information. Applicant's responses to the Interrogatories do not constitute an admission of reliance, relevance, or any other matter. Applicant reserves the right to amend or supplement his responses to the Interrogatories as needed pursuant to the Federal Rules of Civil Procedure and the Rules of Practice in Trademark Cases.

GENERAL OBJECTIONS

All of the following General Objections made by Applicant are incorporated by reference into each and every response by Applicant to each and every Interrogatory. The failure to specify any General Objection in response to a particular Interrogatory is not a waiver of any of the General Objections.

1. Applicant objects to the Interrogatories, including the Definitions and Instructions therein, to the extent they impose obligations on Applicant beyond those prescribed by the Federal Rules of Civil Procedure and the Rules of Practice in Trademark Cases.

2. Applicant objects to the definition of "APPLICANT'S RELATED MARKS" and any Interrogatory referring to "APPLICANT'S RELATED MARKS" on the ground that the term and the Interrogatories are overbroad and seek information that are neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. The Opposer has opposed only the application for the Eat Right America mark in application serial number 77/868,068.

3. Applicant objects to the Interrogatories to the extent that they seek any information or documents that are subject to and protected from disclosure by the attorney-client privilege, the accountant-client privilege, the work-product doctrine, or any other applicable privileges and immunities afforded by law, and/or that constitute confidential or proprietary business information, or trade secrets of Applicant.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1: IDENTIFY all PERSONS who participated in or were responsible for the adoption, selection or creation of the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the ground that it is vague as to the terms "participated in" and "responsible for." Subject to and without waiving this objection, Applicant states:

Kevin Leville, Applicant

John Brunjes

Don Stillman

INTERROGATORY NO. 2: IDENTIFY all PERSONS who participated in or were responsible for the adoption, selection or creation of APPLICANT'S RELATED MARKS.

RESPONSE: Applicant objects to this Interrogatory on the ground that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 3: EXPLAIN IN DETAIL what YOU did, it if anything, to determine whether EAT RIGHT AMERICA was available for use prior to filing the

doctrine. Subject to and without waiving this objection, Applicant states that the APPLICATION was filed under Section 1(b) of the Lanham Act because Applicant had an intent to use the mark in commerce.

INTERROGATORY NO. 6: IDENTIFY all federal, state, and international registrations or applications owned by YOU or NE for any marks including EAT RIGHT for food or supplement products.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and it is overbroad as to the term "any marks."

INTERROGATORY NO. 7: IDENTIFY all federal and state registration or applications owned by any PERSON of which YOU are aware for a mark including EAT RIGHT for food or supplement products.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and that is equally available to the Opposer. Applicant further objects to this Interrogatory on the ground that it is overbroad as to the terms "any person" and "for a mark…for food or supplement products."

INTERROGATORY NO. 8: IDENTIFY the owner of the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it seeks information equally available to Opposer and it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Applicant states that Nutritional Excellence, LLC was the registrant of the EAT RIGHT AMERICA MARK, which was assigned to Kevin Leville on or about October 12, 2011.

INTERROGATORY NO. 9: IDENTIFY the owner of APPLICANT'S RELATED MARKS.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. The Opposer has opposed the APPLICATION, as defined in the Interrogatories. Applicant objects to the Opposer's definition of "APPLICANT'S RELATED MARKS."

INTERROGATORY NO. 10: IDENTIFY the owner of the APPLICATION.

RESPONSE: Applicant objects to this Interrogatory as being vague as to the term "owner." Subject to and without waiving this objection, Applicant states that Kevin Leville is the Applicant. Applicant further refers to the Response to Interrogatory No. 8, which is incorporated herein.

INTERROGATORY NO. 11: IDENTIFY any agreements, understandings or settlements, oral or written, that REFER OR RELATE TO the ownership, licensing or use of the EAT RIGHT AMERICA MARK or the APPLICATION.

RESPONSE: Applicant objects to this Interrogatory because it assumes facts not in evidence. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to the claims and defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and vague as to the term "consumer confusion."

INTERROGATORY NO. 22: EXPLAIN IN DETAIL any instance of confusion from RETAILERS between the EATRIGHT AMERICA and the EATRIGHT MARKS.

RESPONSE: Applicant objects to this Interrogatory because it assumes facts not in evidence. Applicant further objects to this Interrogatory on the grounds that it is overbroad and vague as to the term "confusion." Subject to and without waiving these objections, Applicant states that in or around the summer or fall of 2010, a check of approximately $35.00 was sent to Eat Right Foods, Ltd. for the cost of certain books purchased from EAT RIGHT AMERICA.

INTERROGATORY NO. 23: EXPLAIN IN DETAIL any instance of confusion from RETAILERS between APPLICANT'S RELATED MARKS and the EATRIGHT MARKS.

RESPONSE: Applicant objects to this Interrogatory because it assumes facts not in evidence. Applicant further objects to this Interrogatory on the grounds that the term "confusion" is vague and the Interrogatory seeks information that is neither relevant to the claims and defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 24: EXPLAIN IN DETAIL how the EAT RIGHT AMERICA MARK is currently being used.

RESPONSE: Applicant objects to this Interrogatory because it is overbroad. Subject to and without waiving this objection, Applicant states that the EAT RIGHT AMERICA MARK is currently being used in relation to books, computer programs, DVDs and audio tapes, and maybe being used in sauces and dressings.

INTERROGATORY NO. 25: EXPLAIN IN DETAIL how the EAT RIGHT AMERICA MARK has been used in the past.

RESPONSE: Applicant objects on the ground that this Interrogatory is overbroad. Subject to and without waiving said objection, Applicant states that the EAT RIGHT AMERICA MARK had been used in relation to computer programs, books, DVDs, audio tapes, and food bars.

INTERROGATORY NO. 26: EXPLAIN IN DETAIL YOUR plans for the EAT RIGHT AMERICA MARK for food and supplement products.

RESPONSE: Applicant objects on the ground that this Interrogatory seeks information that constitutes confidential, proprietary business information.

INTERROGATORY NO. 27: IDENTIFY the amount of sales by volume and revenue for each food or supplement product sold under the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the ground that it is overbroad. Subject to and without waiving this objection, Applicant states that 18 boxes of food bars were sold under the EAT RIGHT AMERICA MARK on Shop NBC at $13.95 per box, for a total revenue of $251.10. All other boxes of the food bars expired and thus were discarded.

INTERROGATORY NO. 28: IDENTIFY all products for which YOU have provided numeric score related to nutrients, such as ANDI or ERNI.

RESPONSE: Applicant objects to this Interrogatory on the grounds that is it overbroad as to time and scope, is unduly burdensome, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 29: IDENTIFY all products, including foods and supplements, which bear the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope and is unduly burdensome. Applicant further objects to the extent that answering the Interrogatory would cause annoyance, embarrassment, oppression, or undue burden or expense to any party or third person. Subject to and without waiving these objections, Applicant states that there are products too voluminous to reasonably provide a list, including but not limited to the products in the produce department at WHOLE FOODS.

INTERROGATORY NO. 30: IDENTIFY all products, including foods and supplement, which bear the ANDI nutrient index.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, unduly burdensome, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that answering the Interrogatory

INTERROGATORY NO. 41: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, and seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions. Applicant further objects to the extent that answering the Interrogatory would cause annoyance, embarrassment, oppression, or undue burden or expense to any party or third person.

INTERROGATORY NO. 42: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER for salad bar items, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI in areas of the store where such items are offered for sale.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, and seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions. Applicant further objects to the extent that answering the Interrogatory would cause annoyance, embarrassment, oppression, or undue burden or expense to any party or third person. Subject to and without waiving these objections, Applicant states that based upon information and belief, WHOLE FOODS is using the EAT RIGHT AMERICA MARK on single ingredient items only.

INTERROGATORY NO. 43: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK at WHOLE FOODS or any other RETAILER for bulk and packaged

food items, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI in areas of the store where such items are offered for sale.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, and seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions. Applicant further objects to the extent that answering the Interrogatory would cause annoyance, embarrassment, oppression, or undue burden or expense to any party or third person. Subject to and without waiving these objections, Applicant states that based upon information and belief, WHOLE FOODS is using the EAT RIGHT AMERICA MARK on bulk beans, but not on packaged food items.

INTERROGATORY NO. 44: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA at WHOLE FOODS or any other RETAILER for fruit and vegetable food items, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI in areas of the store where such items are offered for sale.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, and seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions. Applicant further objects to the extent that answering the Interrogatory would cause annoyance, embarrassment, oppression, or undue burden or expense to any party or third person. Subject to and without waiving these objections, Applicant states that based upon information and belief, WHOLE FOODS is using the EAT RIGHT AMERICA MARK in the produce department.

INTERROGATORY NO. 45: IDENTY all WHOLE FOODS or any other RETAILER's stores that currently use or have used the EAT RIGHT AMERICA MARK, including without limitation any use in connection with a nutrient index such as ANDI, MANDI or ERNI.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, and seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions. Applicant further objects to the extent that answering the Interrogatory would cause annoyance, embarrassment, oppression, or undue burden or expense to any party or third person. Subject to and without waiving these objections, Applicant states that based upon information and belief, WHOLE FOODS is currently using the EAT RIGHT AMERICA MARK in all of their stores.

INTERROGATORY NO. 46: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA in connection with any Health Starts Here programs at WHOLE FOODS.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Applicant responds that the EAT RIGHT AMERICA MARK is not used in connection with any Health Starts Here programs at WHOLE FOODS.

INTERROGATORY NO. 47: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK in connection with any Health Immersion Program at WHOLE FOODS.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Applicant responds that the EAT RIGHT AMERICA MARK is not used in connection with any Health Immersion Program at WHOLE FOODS.

INTERROGATORY NO. 48: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK in connection with any Wellness Clubs at WHOLE FOODS.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Applicant responds that the EAT RIGHT AMERICA MARK is not used in connection with any Wellness Clubs at WHOLE FOODS.

INTERROGATORY NO. 49: EXPLAIN IN DETAIL all facts regarding the use of the EAT RIGHT AMERICA MARK with the ANDI nutrition rating system at WHOLE FOODS.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Applicant responds the EAT RIGHT AMERICA MARK sometimes appears before the ANDI nutrition score on certain products.

INTERROGATORY NO. 50: EXPLAIN IN DETAIL all facts regarding any meetings that YOU and FUHRMAN had with WHOLE FOODS representatives in 2010 regarding use of the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad as to time and scope, seeks information that is protected from disclosure pursuant to enforceable confidentiality provisions, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 51: IDENTIFY any in-person meetings that YOU have had with any RETAILER regarding use of the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad, seeks information that constitutes proprietary business information, seeks information that is protected from disclosure by enforceable confidentiality provisions, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Applicant states that he has met with WHOLE FOODS.

INTERROGATORY NO. 61: State all facts which support YOUR affirmative defense alleged in YOUR ANSWER that the EAT RIGHT'S rights in the EATRIGHT MARKS are limited and narrow in scope of protection.

RESPONSE: See Response to Interrogatory No. 59, which is incorporated herein.

Dated: New York, NY
March 27, 2012

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Attorneys for Applicant
Kevin Leville

VERIFICATION

I, KEVIN LEVILLE, declare under penalty of perjury that I have reviewed Opposer's First Set of Interrogatories, and the responses and facts contained therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 27th day of March, 2012.

Kevin Leville, Applicant

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

EAT RIGHT FOODS LTD., Opposer,	Opposition No.: 91202219
v.	Serial No.: 77/868,068
KEVIN LEVILLE, Applicant.	Date of Publication: April 26, 2011

CERTIFICATE OF SERVICE

I, Samantha Hooper-Hamersley, do hereby certify that I caused to be served the APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES upon the Opposer by placing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Simone M. Katz-O'Neill
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111

A courtesy copy is being sent by email.

This 27th day of March, 2012.

Samantha Hooper-Hamersley

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

EAT RIGHT FOODS LTD., Opposer,	Opposition No.: 91202219
v.	Serial No.: 77/868,068
KEVIN LEVILLE, Applicant.	Date of Publication: April 26, 2011

APPLICANT KEVIN LEVILLE'S SUPPLEMENTAL RESPONSES
TO OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 405, 37 C.F.R. §§ 2.116 and 2.120, and Rules 26 and 33 of the Federal Rules of Civil Procedure, Applicant Kevin Leville ("Applicant" or "Leville") hereby propounds its supplemental responses to Opposer Eat Right Foods Ltd.'s (the "Opposer") First Set of Interrogatories to Applicant dated February 21, 2012 (the "Interrogatories") based on: (1) a reasonable and thorough search for documents maintained in Applicant's possession, custody, or control responsive to such Interrogatories in locations where such documents are most likely to be found; (2) a reasonable and thorough inquiry of those persons most likely to have information responsive to the Interrogatories; and (3) a reasonable and thorough review of such information and documents.

The following supplemental responses by Applicant are made without waiving, or intending to waive, but on the contrary, intending to preserve and preserving: (1) any privilege or work-product objection; (2) the right to object, on the grounds of competency, admissibility, privilege, relevancy, or materiality, or any other proper grounds, to the use of the information for any other purpose at trial or otherwise; (3) the right to object on any and all grounds, at any time, to other Interrogatories or other discovery procedures involving or relating to the subject matter

of the Interrogatories to which Applicant has responded herein; and (4) the right at any time to modify, amend, revise, correct, add to, supplement, or clarify any of the supplemental responses herein.

The inadvertent production of any privileged information is not intended to waive any applicable privilege with respect to such information. Applicant's supplemental responses to the Interrogatories do not constitute an admission of reliance, relevance, or any other matter. Applicant reserves the right to amend or supplement his responses to the Interrogatories as needed pursuant to the Federal Rules of Civil Procedure and the Rules of Practice in Trademark Cases. Applicant incorporates by reference Applicant's Reponses to Opposer's First Set of Interrogatories dated March 27, 2012.

GENERAL OBJECTIONS

All of the following General Objections made by Applicant are incorporated by reference into each and every response by Applicant to each and every Interrogatory. The failure to specify any General Objection in response to a particular Interrogatory is not a waiver of any of the General Objections.

1. Applicant objects to the Interrogatories, including the Definitions and Instructions therein, to the extent they impose obligations on Applicant beyond those prescribed by the Federal Rules of Civil Procedure and the Rules of Practice in Trademark Cases.

2. Applicant objects to the definition of "APPLICANT'S RELATED MARKS" and any Interrogatory referring to "APPLICANT'S RELATED MARKS" on the ground that the term and the Interrogatories are overbroad and seek information that are neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible

evidence. The Opposer has opposed only the application for the Eat Right America mark in application serial number 77/868,068.

3. Applicant objects to the Interrogatories to the extent that they seek any information or documents that are subject to and protected from disclosure by the attorney-client privilege, the accountant-client privilege, the work-product doctrine, confidentiality and/or non-disclosure agreements, or any other applicable privileges and immunities afforded by law, that constitute confidential or proprietary business information, or trade secrets of Applicant.

SPECIFIC SUPPLEMENTAL OBJECTIONS AND RESPONSES

INTERROGATORY NO. 2: IDENTIFY all PERSONS who participated in or were responsible for the adoption, selection or creation of APPLICANT'S RELATED MARKS.

RESPONSE: Applicant objects to this Interrogatory on the ground that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Applicant states Kevin Leville.

INTERROGATORY NO. 6: IDENTIFY all federal, state, and international registrations or applications owned by YOU or NE for any marks including EAT RIGHT for food or supplement products.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and it is overbroad as to the term "any marks."

INTERROGATORY NO. 7: IDENTIFY all federal and state registration or applications owned by any PERSON of which YOU are aware for a mark including EAT RIGHT for food or supplement products.

RESPONSE: Applicant objects to this Interrogatory on the ground that it is overbroad in that it seeks information related to ownership by any person of "a mark...for food or supplement products."

INTERROGATORY NO. 9: IDENTIFY the owner of APPLICANT'S RELATED MARKS.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. The Opposer has opposed the APPLICATION, as defined in the Interrogatories. Applicant objects to the Opposer's definition of "APPLICANT'S RELATED MARKS." Subject to and without waiving these objections, Applicant states that Kevin Leville is the owner of APPLICANT'S RELATED MARKS.

INTERROGATORY NO. 11: IDENTIFY any agreements, understandings or settlements, oral or written, that REFER OR RELATE TO the ownership, licensing or use of the EAT RIGHT AMERICA MARK or the APPLICATION.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, is overbroad, and seeks information

that is protected from disclosure by enforceable confidentiality provisions. Subject to and without waiving these objections, EAT RIGHT AMERICA had a licensing agreement with WHOLE FOODS on or around December 9, 2009, and NE entered into an Asset Purchase Agreement with WHOLE FOODS on or around August 4, 2011. Applicant further responds that he is not permitted to provide any further information responsive to this Interrogatory due to confidentiality and/or non-disclosure agreements.

INTERROGATORY NO. 12: IDENTIFY all agreement, understandings or settlements, oral or written, regarding ownership, licensing or use of the EAT RIGHT AMERICA MARK.

RESPONSE: See Supplemental Response to Interrogatory No. 11, which is incorporated herein.

INTERROGATORY NO. 14: EXPLAIN IN DETAIL the relationship between YOU and NE concerning the ownership of NE or the ownership of the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the ground that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, as of the date herein, Applicant states that he is the Chief Executive Officer of NE. Applicant further states that NE was the registrant of the EAT RIGHT AMERICA MARK, which was assigned to Kevin Leville on or about October 12, 2011.

INTERROGATORY NO. 15: IDENTIFY any general, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, whether domestic or

foreign, that YOU have an ownership interest in or that YOU control. For purpose of this Interrogatory, "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and police of a PERSON whether though the ownership of voting securities, by contract, or otherwise.

RESPONSE: Applicant objects to this Interrogatory on the grounds that it is overbroad, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 16: With respect to any PERSON identified in your response to the previous Interrogatory, IDENTIFY all predecessors-in-interest, successors, subsidiaries, parents, related corporations, related partnerships, joint ventures or other affiliates.

RESPONSE: See Supplemental Response to Interrogatory No. 15, which is incorporated herein.

INTERROGATORY NO. 17: EXPLAIN IN DETAIL the nature of YOUR business in relation to the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the ground that it seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, is overboard, is vague as to the term "nature of your business," and seeks information that constitutes confidential, proprietary business information. Subject to and without waiving these objections, Applicant states that the EAT RIGHT AMERICA MARK is related to a personal eating analysis and social community website. Applicant further states that he is the Founder, Chief Executive Officer, and Co-

Chairman of Eat Right America, LLC, and works on designing personal eating analyses on computer programs and providing information on eating healthy and living a healthy lifestyle. Applicant has plans to use to the EAT RIGHT AMERICA MARK on food bars, juices, and supplements that promote good health and a balanced diet.

INTERROGATORY NO. 21: EXPLAIN IN DETAIL any instances of consumer confusion between APPLICANT'S RELATED MARKS and EATRIGHT MARKS.

RESPONSE: Applicant objects to this Interrogatory because it assumes facts not in evidence. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to the claims and defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and it seeks a legal conclusion. Subject to and without waiving these objections, Applicant does not have knowledge of any instances of consumer confusion between APPLICANT'S RELATED MARKS and EATRIGHT MARKS.

INTERROGATORY NO. 23: EXPLAIN IN DETAIL any instance of confusion from RETAILERS between APPLICANT'S RELATED MARKS and the EATRIGHT MARKS.

RESPONSE: Applicant objects to this Interrogatory because it assumes facts not in evidence. Applicant further objects to this Interrogatory on the grounds that the term "confusion" seeks a legal conclusion and the Interrogatory seeks information that is neither relevant to the claims and defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without these objections, Applicant does not have knowledge of any instance of confusion from RETALIERS between APPLICANT'S RELATED MARKS and the EATRIGHT MARKS.

INTERROGATORY NO. 24: EXPLAIN IN DETAIL how the EAT RIGHT AMERICA MARK is currently being used.

RESPONSE: Applicant states that the EAT RIGHT AMERICA MARK is currently being used on a company website, a juicing book, a water bottle, and in relation to a computer program that analyzes a person's eating behavior and produces a personal nutrition plan.

INTERROGATORY NO. 27: IDENTIFY the amount of sales by volume and revenue for each food or supplement product sold under the EAT RIGHT AMERICA MARK.

RESPONSE: Applicant objects to this Interrogatory on the ground that it is overbroad. Subject to and without waiving this objection, Applicant states that 18 boxes of food bars were sold under the EAT RIGHT AMERICA MARK on Shop NBC at $13.95 per box, for a total revenue of $251.10. In addition, ERA used these products as a "promo" item, giving away complimentary food bars when a customer bought books and other products from the Eat Right America website. The life of the product expired in six (6) months and more than 50% of the product was discarded. Applicant further responds that no other food or supplement products have been sold under the EAT RIGHT AMERICA MARK.

INTERROGATORY NO. 28: IDENTIFY all products for which YOU have provided numeric score related to nutrients, such as ANDI or ERNI.

RESPONSE: Applicant objects to this Interrogatory on the grounds that is it overbroad as to scope, is unduly burdensome, and seeks information that is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible

evidence. Subject to and without waiving these objections, Applicant states that he has provided ANDI nutrient scores for the following products: fruits, vegetables, beans, nuts, and seeds. Eat Right America also scored other "single ingredient" items, such as meats, cheese, dairy, and fish. Applicant further states that the ERNI nutrient scores have not been provided for any products.

INTERROGATORY NO. 30: IDENTIFY all products, including foods and supplement, which bear the ANDI nutrient index.

RESPONSE: See Supplemental Response to Interrogatory No. 28, which is incorporated herein.

INTERROGATORY NO. 31: IDENTIFY all products, including foods and supplements, which bear the ERNI nutrient index.

RESPONSE: See Objections in Supplemental Response to Interrogatory No. 28, which is incorporated herein.

INTERROGATORY NO. 32: IDENTIFY all products, including foods and supplements, for which YOU have provided an ANDI or ERNI score to any RETAILER, along with any point-of-sale DOCUMENTS, including without limitation signage, information materials for customers or other marketing or advertising materials which include the EAT RIGHT AMERICA MARK.

RESPONSE: See Supplemental Response to Interrogatory No. 28, which is incorporated herein. Applicant further states that the ANDI score is displayed at WHOLE FOODS only, and WHOLE FOODS develops its own materials for signage. On one occasion, Eat Right America provided a "shipper" to hold books.

INTERROGATORY NO. 33: IDENTIFY any point-of-sale DOCUMENTS bearing the EAT RIGHT AMERICA MARK that YOU have provided to any RETAILER.

RESPONSE: Applicant objects to this Interrogatory on the grounds that is it overbroad as to scope and is unduly burdensome. Applicant states that Applicant has provided no point-of-sale documents bearing the EAT RIGHT AMERICA MARK to any RETAILER. WHOLE FOODS is the only retailer displaying the EAT RIGHT AMERICA MARK and it has developed its own materials for signage. On one occasion, Eat Right America provided a "shipper" to hold books.

INTERROGATORY NO. 37: EXPLAIN IN DETAIL the channels of trade in which goods bearing the EAT RIGHT AMERICA mark or food products with a nutrient index such as ANDI or ERNI have been or are offered for sale.

RESPONSE: Applicant objects to this Interrogatory on the ground that it is overbroad as to scope. Subject to and without waiving this objection, Applicant states that books, DVDs, and audio tapes were offered for sale online through www.shopnbc.com and www.amazon.com. Food bars were sold on Shop NBC and were a complimentary give-away on www.shopnbc.com. Applicant further states that no food products bearing the EAT RIGHT AMERICA MARK or the ANDI nutrient index are sold at WHOLE FOODS. The EAT RIGHT AMERICA MARK and the ANDI nutrient index only appear on signage in front of certain products as listed in Supplemental Response to Interrogatory No. 28. See documents Bates-stamped as ERA 000365-000369, that Applicant produced on or about March 27, 2012. The ERNI nutrient index is not used in any channels of trade at the present time.

INTERROGATORY NO. 58: IDENTIFY any agreements, understandings or settlements, oral or written, between YOU and STOLL that REFER OR RELATE TO the EAT RIGHT AMERICA MARK.

RESPONSE: See Supplemental Response to Interrogatory No. 57, which is incorporated herein.

Dated: Washington, DC
May 2, 2012

SMITH, GAMBRELL & RUSSELL, LLP

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Attorneys for Applicant
Kevin Leville

VERIFICATION

I, KEVIN LEVILLE, declare under penalty of perjury that I have reviewed Opposer's First Set of Interrogatories, and letter to Scott Woldow dated April 16, 2012, from Opposer's counsel, and the supplemental responses and facts contained therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 2nd day of May, 2012.

Kevin Leville

Kevin Leville, Applicant

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

EAT RIGHT FOODS LTD., Opposer,	Opposition No.: 91202219
v.	Serial No.: 77/868,068
KEVIN LEVILLE, Applicant.	Date of Publication: April 26, 2011

CERTIFICATE OF SERVICE

I, Samantha Hooper-Hamersley, do hereby certify that I caused to be served the APPLICANT'S SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES upon the Opposer by placing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Joseph V. Mauch, Esq.
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111

A courtesy copy is being sent by email.

This 2nd day of May, 2012.

Samantha Hooper-Hamersley