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Filing date: **08/26/2015**

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

Proceeding	91213527
Party	Defendant Greater Omaha Packing Co., Inc.
Correspondence Address	STEPHEN I SAMUELS SAMUELS & HIEBERT LLC TWO INTERNATIONAL PL, 23RD FL BOSTON, MA 02110 UNITED STATES iss@samuelstm.com
Submission	Motion to Compel Discovery
Filer's Name	I. Stephen Samuels
Filer's e-mail	iss@samuelstm.com
Signature	s/I. Stephen Samuels/s
Date	08/26/2015
Attachments	OSlvGOPDefendant's Motion To Compel.pdf(1314090 bytes)

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

Omaha Steaks International, Inc.
Plaintiff

v.

Greater Omaha Packing Co., Inc.
Defendant

Opposition No. 91213527 (Parent)
Cancellation No. 92059629
Cancellation No. 92059455

DEFENDANT'S MOTION TO COMPEL DISCOVERY AND TO RESUME PROCEEDINGS

Defendant hereby moves for an Order concerning Plaintiff's required responses to the hereafter identified four sets of discovery requests. Defendant also hereby moves for an Order lifting the suspension of proceedings and resuming the proceedings, including the re-setting of discovery and trial dates.

**THE DISCOVERY REQUESTS WHICH ARE
THE SUBJECT OF THIS MOTION TO COMPEL**

(A) June 10, 2015 - Defendant's Request for Production of Documents and Things. On July 17, 2015, Plaintiff provided responses raising many objections. On July 20, 2015, Defendant's attorney sent Plaintiff's attorney a communication noting that Plaintiff's many objections to producing documents were not well-taken because they misconstrued the requests and/or they did not comply with the Trademark Rules. On July 24, 2015, Plaintiff's attorney sent Defendant's attorney a communication stating that: "*I believe that I can withdraw the pertinent objections and otherwise reach consensus. I will be in touch next week.*" After not receiving any communication from Plaintiff's attorney for ten days, Defendant's attorney on August 3, 2015 sent a communication to

Plaintiff's attorney stating that: *"On the condition that Plaintiff responds to the June 10, 2015 requests for production of documents and things in compliance with the Trademark Rules by August 13, 2015, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel."* On August 13, 2015, Plaintiff's attorney sent a communication to Defendant's attorney stating that: *"I hoped to respond today, as you requested. Due to the press of other business, especially preparations for a jury trial beginning in 2 weeks, combined with my unexpected illness this week, I am unable to do so. I believe that we can reach agreement on many of the issues, and I will respond to you in one week or less."* On August 14, 2015, Defendant's attorney sent a communication to Plaintiff's attorney stating that: *"This is in response to your August 13 email (below). In view of your unexpected illness, my client is willing to grant your request for an additional "one week or less" within which to respond to the points raised in my August 3 email (below). Accordingly, if you respond as described in my August 3 email by no later than Thursday, August 20, 2015, my client will deal with your response as if it were received by August 13, 2015. However, please understand that my client does not wish to grant any further requests to extend the response deadline."* It is now six days past the extended August 20, 2015 deadline and Plaintiff's attorney has neither responded to the June 10, 2015 Request for Production of Documents or Things nor sent any communication of any kind to Defendant's attorney. Therefore, Defendant is filing this motion **requesting an order compelling Plaintiff to respond to Defendant's June 10, 2015 Request for Production of Documents and Things, such responses to be made without objections.**

(B) June 25, 2015 - Defendant's Request for Production of Documents and Things. Plaintiff has not ever served any response to this Request. Notwithstanding this failure to serve any response, Defendant's attorney on August 3, 2015 sent a communication to Plaintiff's attorney stating that: *"On the condition that Plaintiff responds to the June 25, 2015 requests for production of documents and things in compliance with the Trademark Rules by August 13, 2015, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel."* On August 14, 2015, Defendant's attorney sent a communication to Plaintiff's attorney stating that: *"This is in response to your August 13 email (below). In view of your unexpected illness, my client is willing to grant your request for an additional "one week or less" within which to respond to the points raised in my August 3 email (below). Accordingly, if you respond as described in my*

August 3 email by no later than Thursday, August 20, 2015, my client will deal with your response as if it were received by August 13, 2015. However, please understand that my client does not wish to grant any further requests to extend the response deadline.” It is now six days past the extended August 20, 2015 deadline and Plaintiff’s attorney has neither responded to the June 25, 2015 Request for Production of Documents or Things nor sent any communication of any kind to Defendant’s attorney. Therefore, Defendant is filing this motion **requesting an order compelling Plaintiff to respond to Defendant’s June 25, 2015 Request for Production of Documents and Things, such responses to be made without objections.**

(C) June 25, 2015 - Defendant’s Requests for Admissions. Plaintiff did not serve any responses to these Requests by the July 25, 2015 deadline. On July 31, 2015 (six days late), Plaintiff provided responses. Under Fed. R. Civ. P. 36(a)(3), and the relevant TBMP sections, failure to timely respond to requests for admissions results in the following: the requests for admissions are deemed to have been admitted. Therefore, Defendant is filing this motion **requesting an order declaring that, because Plaintiff failed to timely respond to Defendant’s June 25, 2015 Requests for Admissions, all such requests are deemed to have been admitted.**

(D) June 29, 2015 - Defendant’s Request for Production of Documents and Things. Plaintiff did not serve any response to this Request by the July 29, 2015 deadline. On July 31, 2015 (two days late), Plaintiff provided responses. Under Fed. R. Civ. P. 34(b)(2)(A), and the relevant TBMP sections, **failure to timely respond to discovery requests results in the following: the party on which the requests for production of documents and things were served forfeits its right to object to the requests on their merits.** Notwithstanding this failure to timely serve discovery responses, Defendant’s attorney on August 3, 2015 sent a communication to Plaintiff’s attorney stating that: *“On the condition that Plaintiff responds to the June 29, 2015 requests for production of documents and things as just set forth and without objecting to any request on the merits by August 13, 2015, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.”* On August 14, 2015, Defendant’s attorney sent a communication to Plaintiff’s attorney stating that: *“This is in response to your August 13 email (below). In view of your unexpected illness, my client is willing to grant your request for an additional “one week or less” within which to respond to the points raised in my August 3 email (below). Accordingly, if you respond as described in my August 3 email by no later than Thursday, August 20, 2015, my client*

will deal with your response as if it were received by August 13, 2015. However, please understand that my client does not wish to grant any further requests to extend the response deadline.” It is now six days past the extended August 20, 2015 deadline and Plaintiff’s attorney has neither responded to the June 29, 2015 Request for Production of Documents or Things nor sent any communication of any kind to Defendant’s attorney. Therefore, Defendant is filing this motion **requesting an order compelling Plaintiff to respond to Defendant’s June 29, 2015 Request for Production of Documents and Things, such responses to be made without objections.**

Note – copies of all of the documents referred to above are attached in chronological order.

DEFENDANT’S GOOD FAITH EFFORT TO RESOLVE DISCOVERY DISPUTE

Pursuant to TBMP Section 532.02, Defendant’s attorney I. Stephen Samuels has made a good faith effort, by both correspondence and telephone conferences, with Plaintiff’s counsel Nora Kane to resolve the issues presented in this motion, but they have been unable to reach agreement. For reasons best known to Attorney Kane, Plaintiff has not complied with the applicable Rules in providing discovery responses.

Defendant submits that it has fully complied with the requirements of TBMP Section 532.02 by making a good faith attempt to resolve the issues contained in this motion. Defendant has provided Plaintiff with numerous extensions of time to properly respond to the four sets of discovery requests. **Therefore, Defendant has been forced, for good cause shown, to file this motion for an Order compelling Plaintiff to respond to Defendant’s June 10, June 25 and June 29, 2015 Requests for Production of Documents and Things, all such responses to be made without objections by Plaintiff; said Order also declaring that, because Plaintiff failed to timely respond to Defendant’s June 25, 2015 Requests for Admissions, all such Requests are deemed to have been admitted.**

DEFENDANT'S MOTION TO RESUME PROCEEDINGS

Because Plaintiff disclosed plans to use expert testimony, the Board suspended proceedings on July 1, 2015, pending the exchange of discovery limited to planned expert testimony, including that of any rebuttal expert. Both parties have now exchanged expert reports and neither party has indicated that any further discovery related to planned expert testimony is needed. Likewise, both parties will presumptively take oral testimony from the parties' expert witnesses. Accordingly, it is believed that both parties have satisfied their obligations under Fed. R. Civ. P. 26, as specified in the Board's July 1, 2015 Order.

Accordingly, for good cause shown, Defendant requests that the Board issue an Order lifting the suspension of proceedings and resuming the proceedings, including the re-setting of discovery and trial dates.



I. Stephen Samuels
Registration No. 20,919
Samuels & Hiebert LLC
Two International Place, 23rd Floor
Boston, MA 02110
Tel: (617) 426-9181 Ext. 107
Fax: (617) 426-9182
E-mail: ISS@SamuelsTM.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the other party by e-mail on August 26, 2015.



I. Stephen Samuels

Exhibits to Defendant's Motion to Compel Discovery

- A. June 10, 2015 - Defendant's Request for Production of Documents and Things.**
- B. June 25, 2015 - Defendant's Request for Production of Documents and Things.**
- C. June 25, 2015 - Defendant's Requests for Admissions.**
- D. June 29, 2015 - Defendant's Request for Production of Documents and Things.**
- E. July 17, 2015 - Plaintiff's Responses to Defendant's June 10 Request for Production of Documents and Things.**
- F. July 20, 2015 - Defendant's Attorney's Email to Plaintiff's Attorney.**
- G. July 24, 2015 - Plaintiff's Attorneys Email to Defendant's Attorney.**
- H. July 31, 2015 - Plaintiff's Responses to Defendant's June 25 Requests for Admissions.**
- I. August 3, 2015 - Defendant's Attorney's Email to Plaintiff's Attorney.**
- J. August 13, 2015 - Plaintiff's Attorneys Email to Defendant's Attorney.**
- K. August 14, 2015 - Defendant's Attorney's Email to Plaintiff's Attorney.**

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

Omaha Steaks International, Inc.

Plaintiff

v.

Greater Omaha Packing Co., Inc.

Defendant

Opposition No. 91213527 (Parent)

Cancellation No. 92059629

Cancellation No. 92059455

DEFENDANT'S REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant hereby serves its Request for Production of Documents and Things upon Plaintiff. Plaintiff is requested to produce, make copies and mail such copies to Defendant's attorney's office within 30 days of service hereof, of the following documents and things which are in Plaintiff's possession, custody, or control.

These Requests shall be deemed to be continuing and Plaintiff shall be obligated to produce, copy and mail subsequently discovered documents and things as prescribed by Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

For purposes of this Request, the definitions set forth in the accompanying Defendant's First Interrogatories shall apply.

1.

A

OBJECTIONS

If an objection is made to producing all or any part of a requested **Document** or **Thing**, state the specific grounds on which the objection is based, and produce the requested **Document** or **Thing** to the extent to which it is not objected, and provide a complete **identification** of the withheld **Document** or **Thing**.

DOCUMENTS AND THINGS TO BE PRODUCED

1. All **Documents** and **Things** submitted by **Plaintiff** to the Department of Agriculture between January 1, 2006 to January 1, 2015 in which **Defendant** is identified as a supplier of Angus beef to **Plaintiff**.
2. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** between January 1, 2014 and June 26, 2014 of **Plaintiff's 330 Mark**, other than those previously produced.
3. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2013 of **Plaintiff's 330 Mark**, other than those previously produced.
4. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2012 of **Plaintiff's 330 Mark**, other than those previously produced.
5. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2011 of **Plaintiff's 330 Mark**, other than those previously produced.
6. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** between January 1, 2014 and June 26, 2014 of **Plaintiff's 329 Mark**, other than those previously produced.
7. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2013 of **Plaintiff's 329 Mark**, other than those previously produced.
8. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2012 of **Plaintiff's 329 Mark**, other than those previously produced.
9. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2011 of **Plaintiff's 329 Mark**, other than those previously produced.

10. All **Documents** and **Things Showing** that **Plaintiff** prior to June 26, 2014 ever sent **Communications** to **Defendant** objecting in any way to **Defendant's 768 Mark** or to **Defendant's 768 Registration**, other than those previously produced.

11. All **Documents** and **Things** including invoices and/or bills of lading dated between January 1, 2006 and June 26, 2014 **Concerning** shipments of beef from **Defendant** to **Plaintiff** in shipping containers bearing **Defendant's 768 Mark**.

12. All **Documents** and **Things** including invoices and/or bills of lading dated between January 1, 2006 and June 26, 2014 **Concerning** shipments of beef from **Defendant** to **Plaintiff** in shipping containers bearing **Defendant's 763 Mark**.

13. All **Documents** and **Things** including copies of invoices and/or bills of lading dated prior to July 1, 2009 sent by **Defendant** to **Plaintiff** for Angus beef purchases.

14. All **Documents** and **Things Showing** that **Plaintiff** since January 1, 2009 has sold Angus beef bearing **Plaintiff's Mark**.

15. All **Documents** and **Things Showing** that **Plaintiff** since January 1, 2009 has sold Hereford beef bearing **Plaintiff's Mark**.

16. All **Documents** and **Things Showing** that **Plaintiff** since January 1, 2009 has sold boxed beef primal cuts bearing **Plaintiff's Mark**.

17. All **Documents** and **Things Showing** any federal **Trademark** registrations owned by **Plaintiff** for the word "Omaha" as a single word **Trademark**.

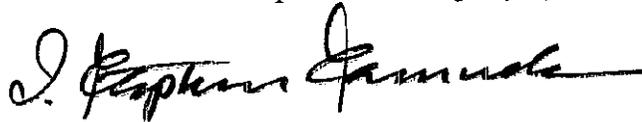
18. All **Documents** and **Things Showing** that **Plaintiff** since July 1, 2009 has used the word "Omaha" as a single word **Trademark** on meat or beef products.



I. Stephen Samuels
Registration No. 20,919
Samuels & Hiebert LLC
Two International Place, 23rd Floor
Boston, MA 02110
Tel: (617) 426-9181 Ext. 107
Fax: (617) 426-9182
E-mail: ISS@SamuelsTM.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the other party by e-mail on June 10, 2015.



I. Stephen Samuels

210.15G

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

Omaha Steaks International, Inc.
Plaintiff

v.

Greater Omaha Packing Co., Inc.
Defendant

Opposition No. 91213527 (Parent)
Cancellation No. 92059629
Cancellation No. 92059455

DEFENDANT'S REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant hereby serves its Request for Production of Documents and Things upon Plaintiff. Plaintiff is requested to produce, make copies and mail such copies to Defendant's attorney's office within 30 days of service hereof, of the following documents and things which are in Plaintiff's possession, custody, or control.

These Requests shall be deemed to be continuing and Plaintiff shall be obligated to produce, copy and mail subsequently discovered documents and things as prescribed by Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

For purposes of this Request, the definitions set forth in the accompanying Defendant's First Interrogatories shall apply.

1.

B

OBJECTIONS

If an objection is made to producing all or any part of a requested **Document** or **Thing**, state the specific grounds on which the objection is based, and produce the requested **Document** or **Thing** to the extent to which it is not objected, and provide a complete **identification** of the withheld **Document** or **Thing**.

DOCUMENTS AND THINGS TO BE PRODUCED

1. **All Documents and Things Showing** that **Plaintiff** between April 2, 2012 and June 26, 2014 always had an intent to continue use of **Plaintiff's 330 Mark**.

2. **All Documents and Things Showing** that **Plaintiff** between April 2, 2012 and June 26, 2014 always had an intent to continue use of **Plaintiff's 329 Mark**.

3. **All Documents and Things Showing** that **Plaintiff** prior to November 15, 2013 ever sent **Communications** to **Defendant** objecting in any way to any name or **Trademark** used by **Defendant**.

4. **All Documents and Things**, including purchase orders, created or dated between January 1, 1992 and December 31, 2005 **Concerning** purchases of beef by **Plaintiff** from **Defendant**.

5. **All Documents and Things**, including purchase orders, created or dated between January 1, 2006 and June 26, 2014 **Concerning** purchases of beef by **Plaintiff** from **Defendant**.

6. **All Documents and Things**, including purchase orders, created or dated between January 1, 2006 and June 26, 2014 **Concerning** purchases of Angus beef by **Plaintiff** from **Defendant**.

7. **All Documents and Things Showing** or **Concerning** purchase order numbers which **Plaintiff Communicated** verbally or in writing to **Defendant Concerning** purchases of beef by **Plaintiff** from **Defendant** between January 1, 2006 and June 26, 2014.

8. **All Documents and Things Showing All** federal **Trademark** applications or registrations ever filed by or issued to **Plaintiff** for a **Trademark** which includes the word "Omaha" (in any font or capitalization), and which does not include the word "Steaks" (in any font or capitalization or position) in the **Trademark**.

9. **All Documents and Things Showing** that **Plaintiff** since January 1, 2006 has ever used a **Trademark**, which includes the word “Omaha” (in any font or capitalization), and which does not include the word “Steaks” (in any font or capitalization or position) in the **Trademark** on meat or beef products.

10. **All Documents and Things** which **Plaintiff** submitted to the U.S. Department of Agriculture between January 1, 1992 and December 31, 2008 in which **Plaintiff** identified **Defendant** as a supplier of beef.

11. **All Documents and Things** which **Plaintiff** submitted to the U.S. Department of Agriculture between January 1, 2009 and December 31, 2014 in which **Plaintiff** identified **Defendant** as a supplier of beef.

12. **All Documents and Things Showing** payments made by **Plaintiff** to **Defendant** during the calendar year 2009 for beef purchases made from **Defendant**.

13. **All Documents and Things Showing** payments made by **Plaintiff** to **Defendant** during the calendar year 2010 for beef purchases made from **Defendant**.

14. **All Documents and Things Showing** payments made by **Plaintiff** to **Defendant** during the calendar year 2011 for beef purchases made from **Defendant**.

15. **All Documents and Things Showing** payments made by **Plaintiff** to **Defendant** during the calendar year 2012 for beef purchases made from **Defendant**.

16. **All Documents and Things Showing** payments made by **Plaintiff** to **Defendant** during the calendar year 2013 for beef purchases made from **Defendant**.

17. **All Documents and Things Showing** payments made by **Plaintiff** to **Defendant** during the calendar year 2014 for beef purchases made from **Defendant**.

18. **All Documents and Things Showing or Concerning** studies or surveys designed or conducted by or for Hal Poret for **Plaintiff** in connection with this consolidated proceeding (entitled Opposition No. 91213527-Parent) other than those contained in the **Poret Expert Report**.

19. **All Documents and Things Showing or Concerning** studies or surveys designed or conducted by or for Hal Poret for **Plaintiff** in connection with this consolidated proceeding (entitled Opposition No. 91213527-Parent) which have not previously been produced, delivered or in some manner provided by **Plaintiff** to **Defendant**.

20. **All Documents and Things Showing or Concerning** studies or surveys designed or conducted by or for Hal Poret for **Plaintiff** in connection with this consolidated proceeding (entitled Opposition No. 91213527-Parent) in which one or more of **Defendant's 951 Mark** or **Defendant's 768 Mark** or **Defendant's 763 Mark** were **Shown** to respondents.

21. **All Documents and Things Showing or Concerning** any instances or occurrences of actual confusion as to source which **Plaintiff** believed or believes involved **Persons** who became confused in any way because of the concurrent use of **Defendant's** names or **Defendant's Trademarks** and **Plaintiff's** names or **Plaintiff's Trademarks**.

22. **All Documents and Things Showing or Concerning** the following **Plaintiff's** Purchase Orders created or issued by **Plaintiff** or **Communicated** orally or in writing by **Plaintiff** to **Defendant** during 2009 for beef purchased from **Defendant**: Purchase Order Nos. 35540, 35546, 35559, 35597, 35308, and 35319.

23. **All Documents and Things Showing or Concerning** the following **Plaintiff's** Purchase Orders created or issued by **Plaintiff** or **Communicated** orally or in writing by **Plaintiff** to **Defendant** during 2010 for beef purchased from **Defendant**: Purchase Order Nos. 35039, 35046, 35082, 35087, 34912, 34921, 34930, 34940, 34948, 34961, and 34704.

24. **All Documents and Things Showing or Concerning** the following **Plaintiff's** Purchase Orders created or issued by **Plaintiff** or **Communicated** orally or in writing by **Plaintiff** to **Defendant** during 2011 for beef purchased from **Defendant**: Purchase Order Nos. 34799, 34632, 34653, 34679, 34692, 35453, 35226, 35469, 35473, 35493, 35024, 35040, 35120, and 35146.

25. **All Documents and Things Showing or Concerning** the following **Plaintiff's** Purchase Orders created or issued by **Plaintiff** or **Communicated** orally or in writing by **Plaintiff** to **Defendant** during 2012 for beef purchased from **Defendant**: Purchase Order Nos. 35236, 35333, 35339, 35437, 35506, 35599, 35679, and 35685.

26. **All Documents and Things Showing or Concerning** the following **Plaintiff's** Purchase Orders created or issued by **Plaintiff** or **Communicated** orally or in writing by **Plaintiff** to **Defendant** during 2013 for beef purchased from **Defendant**: Purchase Order Nos. 35753, 35911, 35913, 35932, 35943, 35949, 36012, 36019, 36045, 36073, 36095, and 36176.

27. **All Documents and Things Showing or Concerning** the following **Plaintiff's** Purchase Orders created or issued by **Plaintiff** or **Communicated** orally or in writing by **Plaintiff** to **Defendant** during 2014 for beef purchased from **Defendant**: Purchase Order Nos. 36308, 36378, 36407, 36444, 36451, 36494, 36295, and 36763.



I. Stephen Samuels
Registration No. 20,919
Samuels & Hiebert LLC
Two International Place, 23rd Floor
Boston, MA 02110
Tel: (617) 426-9181 Ext. 107
Fax: (617) 426-9182
E-mail: ISS@SamuelsTM.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the other party by e-mail on June 25, 2015.



I. Stephen Samuels

219.15G

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

Omaha Steaks International, Inc.
Plaintiff

v.

Greater Omaha Packing Co., Inc.
Defendant

Opposition No. 91213527 (Parent)
Cancellation No. 92059629
Cancellation No. 92059455

DEFENDANT'S REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant, Greater Omaha Packing Co., Inc. hereby serves its Request for Admissions upon Plaintiff to be admitted or denied under oath, said admissions or denials to be served upon Defendant's Attorney within 30 days of service hereof.

This Request for Admissions shall be deemed to be continuing and Plaintiff shall be obligated to change, supplement and amend its responses as prescribed by Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

For purposes of this Request, the definitions set forth in Defendant's accompanying Interrogatories shall apply.

1.

C

OBJECTIONS

If an objection is made to responding to all or part of any Request for Admissions, state the specific grounds on which the objection is based, and respond to the Request for Admissions to the extent to which it is not objected.

REQUEST FOR ADMISSIONS

Admit or deny that:

1. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 1992 and December 31, 2005.

2. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2006 and December 31, 2009.

3. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2010 and December 31, 2010.

4. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2011 and December 31, 2011.

5. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2012 and December 31, 2012.

6. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2013 and December 31, 2013.

7. **Plaintiff** has (or has access to) records or **Documents Concerning** or **Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2014 and December 31, 2014.

8. **Plaintiff** does not use **Plaintiff's Mark** as a **Trademark** on or in connection with Angus beef.

9. **Plaintiff** does not use **Plaintiff's Mark** as a **Trademark** on or in connection with Hereford beef.

10. **Plaintiff** uses **Plaintiff's Mark** as its house mark.

11. **Plaintiff** has no **Documents** showing that **Plaintiff** has ever objected to any **Person's**, other than **Defendant's**, use of the term "Omaha," unless that term was immediately followed by the term "Steaks," regardless of the capitalization of either term.

12. **Plaintiff** has no **Documents** showing that **Plaintiff** has ever objected to any **Person's**, other than **Defendant's**, registration of the term "Omaha," unless that term was immediately followed by the term "Steaks," regardless of the capitalization of either term.

13. Hal Poret conducted, or had conducted, one or more surveys of **Persons** who were shown one or more of **Defendant's Trademarks**.

14. In the **Poret Expert Report**, no respondent could select from the list of randomized options that he or she had purchased meat products in the past twelve months from a meat packing house.

15. In the **Poret Expert Report**, no respondent could select from the list of randomized options that he or she had purchased meat products in the past twelve months from a wholesaler or distributor of meat products.

16. **Plaintiff** has no **Documents** or **Things** or anything else **Showing** that either **Plaintiff** or any of **Plaintiff's** predecessors ever used the **Plaintiff's Mark** as a **Trademark** prior to January 1, 1965.

17. **Plaintiff** has no **Documents** or **Things** or anything else **Showing** that either **Plaintiff** or any of **Plaintiff's** predecessors ever used the **Plaintiff's Mark** as a **Trademark** between January 1, 1965 and December 31, 1968.

18. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2009 for beef purchases made from **Defendant**.

19. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2010 for beef purchases made from **Defendant**.

20. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2011 for beef purchases made from **Defendant**.

21. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2012 for beef purchases made from **Defendant**.

22. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2013 for beef purchases made from **Defendant**.

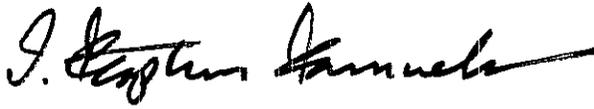
23. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2014 for beef purchases made from **Defendant**.



I. Stephen Samuels
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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the other party by e-mail on June 25, 2015.



I. Stephen Samuels

220.15G

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DEFINITIONS

For purposes of this Request, the definitions set forth in the Defendant's First Interrogatories served on June 25, 2015 shall apply.

1.

D

OBJECTIONS

If an objection is made to producing all or any part of a requested **Document** or **Thing**, state the specific grounds on which the objection is based, and produce the requested **Document** or **Thing** to the extent to which it is not objected, and provide a complete **identification** of the withheld **Document** or **Thing**.

DOCUMENTS AND THINGS TO BE PRODUCED

1. **All Documents and Things, including Communications**, other than those produced in response to **Defendant's** Request Nos. 18, 19 and 20 served on June 25, 2015, **Showing or Concerning All** surveys conducted by or for Hal Poret other than those contained in the **Poret Expert Report**.
2. **All Documents and Things Concerning All** pre-tests of **All** surveys conducted by or for Hal Poret for **Plaintiff** other than those contained in the **Poret Expert Report**.
3. **All Documents and Things Concerning All** pilot tests of **All** surveys conducted by or for Hal Poret for **Plaintiff** other than those contained in the **Poret Expert Report**.
4. **All Documents and Things, including Communications**, between Research Now (referred to in the **Poret Expert Report**) and Hal Poret and/or anyone associated with Hal Poret **Concerning** surveys in any way **Concerning** the OMAHA STEAKS and/or OMAHA terms.
5. **All Documents and Things, including Communications**, between Decipher, Inc. (referred to in the **Poret Expert Report**) and Hal Poret and/or anyone associated with Hal Poret **Concerning** surveys in any way **Concerning** the OMAHA STEAKS and/or OMAHA terms.



I. Stephen Samuels
Registration No. 20,919
Samuels & Hiebert LLC
Two International Place, 23rd Floor
Boston, MA 02110
Tel: (617) 426-9181 Ext. 107
Fax: (617) 426-9182
E-mail: ISS@SamuelsTM.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the other party by e-mail on
June 29, 2015.



I. Stephen Samuels

224.15G

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

Omaha Steaks International, Inc.
Plaintiff

v.

Greater Omaha Packing Co., Inc.
Defendant

Opposition No. 91213527 (Parent)
Cancellation No. 92059629
Cancellation No. 92059455

**PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS**

COMES NOW Plaintiff, Omaha Steaks International, Inc. and for its Responses to Defendant's Request for Production of Documents and Things, responds as follows:

1. All **Documents** and **Things** submitted by **Plaintiff** to the Department of Agriculture between January 1, 2006 to January 1, 2015 in which **Defendant** is identified as a supplier of Angus beef to **Plaintiff**.

RESPONSE: No documents responsive to this Request are known to exist.

2. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** between January 1, 2014 and June 26, 2014 of **Plaintiff's 330 Mark**, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

3. All **Documents** and **Things Showing** that **Plaintiff** made **Use in Commerce** in 2013 of **Plaintiff's 330 Mark**, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

4. All Documents and Things Showing that Plaintiff made Use in Commerce in 2012 of Plaintiff's 330 Mark, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

5. All Documents and Things Showing that Plaintiff made Use in Commerce in 2011 of Plaintiff's 330 Mark, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

6. All Documents and Things Showing that Plaintiff made Use in Commerce between January 1, 2014 and June 26, 2014 of Plaintiff's 329 Mark, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

7. All Documents and Things Showing that Plaintiff made Use in Commerce in 2013 of Plaintiff's 329 Mark, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

8. All Documents and Things Showing that Plaintiff made Use in Commerce in 2012 of Plaintiff's 329 Mark, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

9. All Documents and Things Showing that Plaintiff made Use in Commerce in 2011 of Plaintiff's 329 Mark, other than those previously produced.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

10. All Documents and Things Showing that Plaintiff prior to June 26, 2014 ever sent Communications to Defendant objecting in any way to Defendant's 768 Mark or to Defendant's 768 Registration, other than those previously produced.

RESPONSE: No documents responsive to this Request are known to exist.

11. All Documents and Things including invoices and/or bills of lading dated between January 1, 2006 and June 26, 2014 Concerning shipments of beef from Defendant to Plaintiff in shipping containers bearing Defendant's 768 Mark.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents.

12. All Documents and Things including invoices and/or bills of lading dated between January 1, 2006 and June 26, 2014 Concerning shipments of beef from Defendant to Plaintiff in shipping containers bearing Defendant's 763 Mark.

RESPONSE: Same objection as asserted in response to Request No. 11.

13. All Documents and Things including copies of invoices and/or bills of lading dated prior to July 1, 2009 sent by Defendant to Plaintiff for Angus beef purchases.

RESPONSE: Objection, any such documents would be equally accessible to Defendant, and it would thus be unduly burdensome to locate, copy and deliver documents already in Defendant's file.

14. All Documents and Things Showing that Plaintiff since January 1, 2009 has sold Angus beef bearing Plaintiff's Mark.

RESPONSE: Plaintiff has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. See, e.g., advertising appearing at <http://www.omahasteaks.com/info/Foodservice>.

15. All Documents and Things Showing that Plaintiff since January 1, 2009 has sold Hereford beef bearing Plaintiff's Mark.

RESPONSE: Plaintiff does not specify that a particular package contains Hereford beef, so there are no documents responsive to this Request.

16. All Documents and Things Showing that Plaintiff since January 1, 2009 has sold boxed beef primal cuts bearing Plaintiff's Mark.

RESPONSE: See attached USDA label approval documents. Plaintiff also has sales information available; however, the request for "all" documents and things is objected to as overly broad and unduly burdensome, because Plaintiff estimates it would take several employees several days to search, locate, and identify all responsive documents. As such, only a sample of invoices is attached hereto.

17. All Documents and Things Showing any federal Trademark registrations owned by Plaintiff for the word "Omaha" as a single word Trademark.

RESPONSE: No documents responsive to this Request are known to exist.

18. All Documents and Things Showing that Plaintiff since July 1, 2009 has used the word "Omaha" as a single word Trademark on meat or beef products.

RESPONSE: No documents responsive to this Request are known to exist.

DATED this 17th day of July, 2015.

Respectfully submitted,

By: /s/ Nora M. Kane
Nora M. Kane
STINSON LEONARD STREET LLP
1299 Farnam Street, Suite 1500
Omaha, NE 68102-1818
Telephone: (402) 930-1740
Facsimile: (402) 829-8725
Nora.Kane@stinsonleonard.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on Defendant by sending the same this 17th day of July, 2015, via electronic mail to I. Stephen Samuels at ISS@SamuelsTM.com.

/s/ Nora M. Kane _____

I. Stephen Samuels

From: Kane, Nora M. <nora.kane@stinsonleonard.com>
Sent: Monday, July 20, 2015 6:27 PM
To: I. Stephen Samuels
Cc: Morris, Nancy; Hauser, Rachel G.; Becker, Aggie
Subject: RE: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Steve,

I am buried in pretrial preparation, but will attempt to address this no later than Thursday.

Nora M. Kane | Attorney | Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500 | Omaha, NE 68102-1818
T: 402.930.1740 | M: 402.677.7852 | F: 402.829.8733
nora.kane@stinsonleonard.com | www.stinsonleonard.com
Legal Administrative Assistant: Aggie Becker | 402.930.1718 | aggie.becker@stinsonleonard.com

From: I. Stephen Samuels [mailto:iss@samuelstm.com]
Sent: Monday, July 20, 2015 2:34 PM
To: Kane, Nora M.
Cc: Morris, Nancy; Hauser, Rachel G.
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Nora:

Plaintiff objected to a large number of **Defendant's Requests for Production of Documents and Things** on the ground that *"the request for "all" documents and things is objected to as overly broad and unduly burdensome, because plaintiff estimates that it would take several employees several days to search, locate, and identify all responsive documents."* In particular, Plaintiff made that same objection to Document Request Nos. 2-9. and 11-12, 14 and 16. Defendant hereby responds to Plaintiff's objections by pointing out that the Definitions applicable to Defendant's Requests for Production of Documents and Things state that:

"(3) "All" means every one **or at least the most recent five.**"

Therefore, Defendant hereby requests that Plaintiff withdraw its objections to Document Request Nos. 2-9. and 11-12, 14 and 16, and produce **at least the most recent five** of the requested documents or things.

Plaintiff objected to Document Request No 13 on the ground that *"any such documents would be equally accessible to Defendant, and it would thus be unduly burdensome to locate, copy and deliver documents already in Defendant's file."* Plaintiff's objection is not valid under the Federal Rules of Evidence. Therefore, Defendant hereby requests that Plaintiff withdraw its objection to Document Request No. 13, and produce **at least the most recent five** of the requested documents or things.

Also, the discovery rules require that Plaintiff clearly specify to which of the discovery requests the produced documents are responsive. Defendant attached copies of 12 documents, but did not identify to which document request each of the 12 copies was responsive. Please send an email remedying this issue.

Plaintiff did not respond properly to a number of **Defendant's Request for Admissions**. Defendant's Request Nos. 28-33 requested that Defendant admit or deny that "Plaintiff has no documents showing use of Plaintiff's 329 (or 330) Mark on any goods during (three specific time periods)." Plaintiff responded to each Request by stating that: "***Denied, Plaintiff made sales using the 329 (or 330) mark during (a calendar year).***" The calendar years in Plaintiff's Responses covered different time periods from the specified time periods in Defendant's Requests. In addition, the six Requests for admissions asked Plaintiff to **admit or deny that Plaintiff has no documents.** Plaintiff's Responses do not admit or deny that Plaintiff has no documents. Therefore, Defendant hereby requests that Plaintiff revise and re-serve its Responses to Defendant's Request Nos. 28-33.

The purpose of this communication is to comply with Trademark Rule of Practice 2.120(e) which requires that, before a party files a motion to compel discovery, the moving party make a good faith effort to resolve with the other party the issues presented in the motion. Please respond to all of the points which I have raised in this communication so that we can determine whether we can reach agreement as to all of these points. Thank you.

Steve

I. Stephen Samuels
Samuels & Hiebert LLC
The Trademark Attorneys
Two International Place, 23rd Floor
Boston, MA 02110-4104
Tel: (617) 426-9181 x107
Fax: (617) 426-9182
Website: www.samuelstm.com
E-mail: ISS@SamuelsTM.com

From: Hauser, Rachel G. [<mailto:rachel.hauser@stinsonleonard.com>]
Sent: Friday, July 17, 2015 5:28 PM
To: I. Stephen Samuels
Cc: Kane, Nora M.; Morris, Nancy; Becker, Aggie
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527

Mr. Samuels,

We are hereby serving the following discovery responses:

1. Opposer's Response to GOP's Req. for Production of 6-10-2015,
2. Opposer's Answers to GOP's Interrogatories of 6-10-2015 and
3. Opposer's Response to GOP's Req. for Admissions of 6-10-2015.

Thank you.

Rachel G. Hauser | Legal Administrative Assistant | Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500 | Omaha, NE 68102-1818
T: 402.930.1757 | F: 402.829.8712
rachel.hauser@stinsonleonard.com | www.stinsonleonard.com

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I. Stephen Samuels

From: Kane, Nora M. <nora.kane@stinsonleonard.com>
Sent: Friday, July 24, 2015 6:15 PM
To: I. Stephen Samuels
Cc: Morris, Nancy; Hauser, Rachel G.; Becker, Aggie
Subject: RE: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Steve,

I was in a mediation all day today, and was unable to respond to you as I had hoped. I believe that I can withdraw the pertinent objections and otherwise reach consensus. I will be in touch early next week.

Nora

Nora M. Kane | Attorney | Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500 | Omaha, NE 68102-1818
T: 402.930.1740 | M: 402.677.7852 | F: 402.829.8733
nora.kane@stinsonleonard.com | www.stinsonleonard.com
Legal Administrative Assistant: Aggie Becker | 402.930.1718 | aggie.becker@stinsonleonard.com

From: I. Stephen Samuels [mailto:iss@samuelstm.com]
Sent: Monday, July 20, 2015 2:34 PM
To: Kane, Nora M.
Cc: Morris, Nancy; Hauser, Rachel G.
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Nora:

Plaintiff objected to a large number of **Defendant's Requests for Production of Documents and Things** on the ground that *"the request for "all" documents and things is objected to as overly broad and unduly burdensome, because plaintiff estimates that it would take several employees several days to search, locate, and identify all responsive documents."* In particular, Plaintiff made that same objection to Document Request Nos. 2-9, and 11-12, 14 and 16. Defendant hereby responds to Plaintiff's objections by pointing out that the Definitions applicable to Defendant's Requests for Production of Documents and Things state that:

"(3) "All" means every one **or at least the most recent five.**"

Therefore, Defendant hereby requests that Plaintiff withdraw its objections to Document Request Nos. 2-9, and 11-12, 14 and 16, and produce **at least the most recent five** of the requested documents or things.

Plaintiff objected to Document Request No 13 on the ground that *"any such documents would be equally accessible to Defendant, and it would thus be unduly burdensome to locate, copy and deliver documents already in Defendant's file."* Plaintiff's objection is not valid under the Federal Rules of Evidence. Therefore, Defendant hereby requests that Plaintiff withdraw its objection to Document Request No. 13, and produce **at least the most recent five** of the requested documents or things.

Also, the discovery rules require that Plaintiff clearly specify to which of the discovery requests the produced documents are responsive. Defendant attached copies of 12 documents, but did not identify to which document request each of the 12 copies was responsive. Please send an email remedying this issue.

Plaintiff did not respond properly to a number of **Defendant's Request for Admissions**. Defendant's Request Nos. 28-33 requested that Defendant admit or deny that "Plaintiff has no documents showing use of Plaintiff's 329 (or 330) Mark on any goods during (three specific time periods)." Plaintiff responded to each Request by stating that: ***"Denied, Plaintiff made sales using the 329 (or 330) mark during (a calendar year)."*** The calendar years in Plaintiff's Responses covered different time periods from the specified time periods in Defendant's Requests. In addition, the six Requests for admissions asked Plaintiff to **admit or deny that Plaintiff has no documents**. Plaintiff's Responses do not admit or deny that Plaintiff has no documents. Therefore, Defendant hereby requests that Plaintiff revise and re-serve its Responses to Defendant's Request Nos. 28-33.

The purpose of this communication is to comply with Trademark Rule of Practice 2.120(e) which requires that, before a party files a motion to compel discovery, the moving party make a good faith effort to resolve with the other party the issues presented in the motion. Please respond to all of the points which I have raised in this communication so that we can determine whether we can reach agreement as to all of these points. Thank you.

Steve

I. Stephen Samuels
Samuels & Hiebert LLC
The Trademark Attorneys
Two International Place, 23rd Floor
Boston, MA 02110-4104
Tel: (617) 426-9181 x107
Fax: (617) 426-9182
Website: www.samuelstm.com
E-mail: ISS@SamuelsTM.com

From: Hauser, Rachel G. [<mailto:rachel.hauser@stinsonleonard.com>]
Sent: Friday, July 17, 2015 5:28 PM
To: I. Stephen Samuels
Cc: Kane, Nora M.; Morris, Nancy; Becker, Aggie
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527

Mr. Samuels,

We are hereby serving the following discovery responses:

1. Opposer's Response to GOP's Req. for Production of 6-10-2015,
2. Opposer's Answers to GOP's Interrogatories of 6-10-2015 and
3. Opposer's Response to GOP's Req. for Admissions of 6-10-2015.

Thank you.

Rachel G. Hauser | Legal Administrative Assistant | Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500 | Omaha, NE 68102-1818

T: 402.930.1757 | F: 402.829.8712
rachel.hauser@stinsonleonard.com | www.stinsonleonard.com

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

Omaha Steaks International, Inc.

Plaintiff

v.

Greater Omaha Packing Co., Inc.

Defendant

Opposition No. 91213527 (Parent)

Cancellation No. 92059629

Cancellation No. 92059455

PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUEST FOR ADMISSIONS

COMES NOW Plaintiff, Omaha Steaks International, Inc. and for its Responses to Defendant's Request for Admissions, responds as follows:

1. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 1992 and December 31, 2005.

RESPONSE: Admitted.

2. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2006 and December 31, 2009.

RESPONSE: Admitted.

3. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2010 and December 31, 2010.

RESPONSE: Admitted.

4. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2011 and December 31, 2011.

RESPONSE: Admitted.

5. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2012 and December 31, 2012.

RESPONSE: Admitted.

6. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2013 and December 31, 2013.

RESPONSE: Admitted.

7. **Plaintiff** has (or has access to) records or **Documents Concerning or Showing Defendant's** purchase orders for beef purchases which **Plaintiff** made from **Defendant** between January 1, 2014 and December 31, 2014.

RESPONSE: Admitted.

8. **Plaintiff** does not use **Plaintiff's Mark** as a **Trademark** on or in connection with Angus beef.

RESPONSE: This Request is identical to one previously denied by Plaintiff.

9. **Plaintiff** does not use **Plaintiff's Mark** as a **Trademark** on or in connection with Hereford beef.

RESPONSE: Admitted.

10. **Plaintiff** uses **Plaintiff's Mark** as its house mark.

RESPONSE: Plaintiff is unable to admit or deny this Request, as "house mark" is not a term within Plaintiff's lexicon.

11. Plaintiff has no Documents showing that Plaintiff has ever objected to any Person's, other than Defendant's, use of the term "Omaha," unless that term was immediately followed by the term "Steaks," regardless of the capitalization of either term.

RESPONSE: This Request is identical to on previously denied by Plaintiff.

12. Plaintiff has no Documents showing that Plaintiff has ever objected to any Person's, other than Defendant's, registration of the term "Omaha," unless that term was immediately followed by the term "Steaks," regardless of the capitalization of either term.

RESPONSE: This Request is identical to on previously denied by Plaintiff.

13. Hal Poret conducted, or had conducted, one or more surveys of Persons who were shown one or more of Defendant's Trademarks.

RESPONSE: Amitted.

14. In the Poret Expert Report, no respondent could select from the list of randomized options that he or she had purchased meat products in the past twelve months from a meat packing house.

RESPONSE: The Poret Expert Report speaks for itself.

15. In the Poret Expert Report, no respondent could select from the list of randomized options that he or she had purchased meat products in the past twelve months from a wholesaler or distributor of meat products.

RESPONSE: The Poret Expert Report speaks for itself.

16. Plaintiff has no Documents or Things or anything else Showing that either Plaintiff or any of Plaintiff's predecessors ever used the Plaintiff's Mark as a Trademark prior to January 1, 1965.

RESPONSE: Plaintiff has already provided documents that show the contrary.

17. **Plaintiff** has no **Documents** or **Things** or anything else **Showing** that either **Plaintiff** or any of **Plaintiff's** predecessors ever used the **Plaintiff's Mark** as a **Trademark** between January 1, 1965 and December 31, 1968.

RESPONSE: See Response to No. 16.

18. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2009 for beef purchases made from **Defendant**.

RESPONSE: Admitted.

19. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2010 for beef purchases made from **Defendant**.

RESPONSE: Admitted.

20. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2011 for beef purchases made from **Defendant**.

RESPONSE: Admitted.

21. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2012 for beef purchases made from **Defendant**.

RESPONSE: Admitted.

22. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2013 for beef purchases made from **Defendant**.

RESPONSE: Admitted.

23. **Plaintiff** has (or has access to) records or **Documents Showing** payments made to **Defendant** during the calendar year 2014 for beef purchases made from **Defendant**.

RESPONSE: Admitted.

DATED this 31st day of July, 2015.

Respectfully submitted,

By: /s/ Nora M. Kane
Nora M. Kane
STINSON LEONARD STREET LLP
1299 Farnam Street, Suite 1500
Omaha, NE 68102-1818
Telephone: (402) 930-1740
Facsimile: (402) 829-8725
Nora.Kane@stinsonleonard.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on Defendant by sending the same this 31st day of July, 2015, via electronic mail to I. Stephen Samuels at ISS@SamuelsTJM.com.

/s/ Nora M. Kane

I. Stephen Samuels

From: I. Stephen Samuels
Sent: Monday, August 03, 2015 5:12 PM
To: Nora Kane (nora.kane@stinsonleonard.com); Aggie Becker (aggie.becker@stinsonleonard.com); Nancy Morris (nancy.morris@stinsonleonard.com)
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Nora:

This is our response to the documents you have sent, or not sent, or sent late, in response to our five discovery requests. **The purpose of this communication is to comply with Trademark Rule of Practice 2.120(e) which requires that, before a party files a motion to compel discovery, the moving party make a good faith effort to resolve with the other party the issues presented in the motion. Please respond to all of the points which I am raising in this communication so that we can determine whether we can reach agreement as to all of these points.**

June 10, 2015 - Defendant's Requests for Production of Documents and Things. On July 17, 2015, Plaintiff provided responses. On July 20, 2015, I sent you a communication noting that Plaintiff's many objections to producing documents were not well-taken because they misconstrued the requests and/or they did not comply with the Trademark Rules. On July 24, 2015, you sent me a communication stating that: "*I believe that I can withdraw the pertinent objections and otherwise reach consensus. I will be in touch next week.*" That was ten days ago. On the condition that Plaintiff responds to the June 10, 2015 requests for production of documents and things in compliance with the Trademark Rules by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

June 10, 2015 - Defendant's Requests for Admissions. On July 17, 2015, Plaintiff provided responses. On July 20, 2015, I sent you a communication noting that Plaintiff's many objections to producing documents were not well-taken because they misconstrued the requests and/or they did not comply with the Trademark Rules. On July 24, 2015, you sent me a communication stating that: "*I believe that I can withdraw the pertinent objections and otherwise reach consensus. I will be in touch next week.*" That was ten days ago. On the condition that Plaintiff responds to the June 10, 2015 request for admissions in compliance with the Trademark Rules by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

June 25, 2015 - Defendant's Requests for Production of Documents and Things. Plaintiff did not serve any responses to these Requests. Under Fed. R. Civ. P. 34(b)(2)(A), and the relevant TBMP sections, failure to timely respond to discovery requests results in the following: the party on which the requests for production of documents and things were served forfeits its right to object to the requests on their merits. On the condition that Plaintiff responds to the June 25, 2015 requests for production of documents and things without objecting to any request on the merits by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

June 25, 2015 - Defendant's Requests for Admissions. Plaintiff did not serve any responses to these Requests by the July 25, 2015 deadline. On July 31, 2015 (six days late), Plaintiff provided responses. Under Fed. R. Civ. P. 36(a)(3), and the relevant TBMP sections, failure to timely respond to requests for admissions results in the following: the requests for admissions are deemed to have been admitted.

June 29, 2015 - Defendant's Requests for Production of Documents and Things. Plaintiff did not serve any responses to these Requests by the July 29, 2015 deadline. On July 31, 2015 (two days late), Plaintiff provided responses. Under Fed. R. Civ. P. 34(b)(2)(A), and the relevant TBMP sections, failure to timely respond to discovery requests results in the following: the party on which the requests for production of documents and things were served forfeits its right to object to the requests on their merits. In particular, Plaintiff must precisely identify its allegedly previously produced documents responsive to each of the five requests; and must not object to producing any documents on the alleged ground that they are not "required under Rule 26." On the condition that Plaintiff responds to the June 29, 2015 requests for production of documents and things as just set forth and without objecting to any request on the merits by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

Steve

I. Stephen Samuels

Samuels & Hiebert LLC

The Trademark Attorneys

Two International Place, 23rd Floor

Boston, MA 02110-4104

Tel: (617) 426-9181 x107

Fax: (617) 426-9182

Website: www.samuelstm.com

E-mail: ISS@SamuelsTM.com

I. Stephen Samuels

From: Kane, Nora M. <nora.kane@stinsonleonard.com>
Sent: Thursday, August 13, 2015 2:52 PM
To: I. Stephen Samuels; Becker, Aggie; Morris, Nancy
Subject: RE: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Steve,

I hoped to respond today, as you requested. Due to the press of other business, especially preparations for a jury trial beginning in 2 weeks, combined with my unexpected illness this week, I am unable to do so. I believe that we can reach agreement on many of the issues, and I will respond to you in one week or less.

Nora M. Kane | Attorney | Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500 | Omaha, NE 68102-1818
T: 402.930.1740 | M: 402.677.7852 | F: 402.829.8733
nora.kane@stinsonleonard.com | www.stinsonleonard.com
Legal Administrative Assistant: Aggie Becker | 402.930.1718 | aggie.becker@stinsonleonard.com

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From: I. Stephen Samuels [mailto:iss@samuelstm.com]
Sent: Monday, August 03, 2015 4:12 PM
To: Kane, Nora M.; Becker, Aggie; Morris, Nancy
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Nora:

This is our response to the documents you have sent, or not sent, or sent late, in response to our five discovery requests. **The purpose of this communication is to comply with Trademark Rule of Practice 2.120(e) which requires that, before a party files a motion to compel discovery, the moving party make a good faith effort to resolve with the other party the issues presented in the motion. Please respond to all of the points which I am raising in this communication so that we can determine whether we can reach agreement as to all of these points.**

June 10, 2015 - Defendant's Requests for Production of Documents and Things. On July 17, 2015, Plaintiff provided responses. On July 20, 2015, I sent you a communication noting that Plaintiff's many objections to producing documents were not well-taken because they misconstrued the requests and/or they did not comply with the Trademark Rules. On July 24, 2015, you sent me a communication stating that: "*I believe that I can withdraw the pertinent objections and otherwise reach consensus. I will be in touch next week.*" That was ten days ago. On the condition that Plaintiff responds to the June 10, 2015 requests for production of documents and things in compliance with the Trademark Rules by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

June 10, 2015 - Defendant's Requests for Admissions. On July 17, 2015, Plaintiff provided responses. On July 20, 2015, I sent you a communication noting that Plaintiff's many objections to producing documents were not well-taken because they misconstrued the requests and/or they did not comply with the Trademark Rules. On July 24, 2015, you sent me a communication stating that: "*I believe that I can withdraw the pertinent*

objections and otherwise reach consensus. I will be in touch next week." That was ten days ago. On the condition that Plaintiff responds to the June 10, 2015 request for admissions in compliance with the Trademark Rules by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

June 25, 2015 - Defendant's Requests for Production of Documents and Things. Plaintiff did not serve any responses to these Requests. Under Fed. R. Civ. P. 34(b)(2)(A), and the relevant TBMP sections, failure to timely respond to discovery requests results in the following: the party on which the requests for production of documents and things were served forfeits its right to object to the requests on their merits. On the condition that Plaintiff responds to the June 25, 2015 requests for production of documents and things without objecting to any request on the merits by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

June 25, 2015 - Defendant's Requests for Admissions. Plaintiff did not serve any responses to these Requests by the July 25, 2015 deadline. On July 31, 2015 (six days late), Plaintiff provided responses. Under Fed. R. Civ. P. 36(a)(3), and the relevant TBMP sections, failure to timely respond to requests for admissions results in the following: the requests for admissions are deemed to have been admitted.

June 29, 2015 - Defendant's Requests for Production of Documents and Things. Plaintiff did not serve any responses to these Requests by the July 29, 2015 deadline. On July 31, 2015 (two days late), Plaintiff provided responses. Under Fed. R. Civ. P. 34(b)(2)(A), and the relevant TBMP sections, failure to timely respond to discovery requests results in the following: the party on which the requests for production of documents and things were served forfeits its right to object to the requests on their merits. In particular, Plaintiff must precisely identify its allegedly previously produced documents responsive to each of the five requests; and must not object to producing any documents on the alleged ground that they are not "required under Rule 26." On the condition that Plaintiff responds to the June 29, 2015 requests for production of documents and things as just set forth and without objecting to any request on the merits by **August 13, 2015**, Defendant will not object to the lack of timeliness of the request responses or file a motion to compel.

Steve

I. Stephen Samuels
Samuels & Hiebert LLC
The Trademark Attorneys
Two International Place, 23rd Floor
Boston, MA 02110-4104
Tel: (617) 426-9181 x107
Fax: (617) 426-9182
Website: www.samuelstm.com
E-mail: ISS@SamuelsTM.com

I. Stephen Samuels

From: I. Stephen Samuels
Sent: Friday, August 14, 2015 2:02 PM
To: Kane, Nora M.; Becker, Aggie; Morris, Nancy
Subject: Omaha Steaks v. Greater Omaha - Opposition No. 91213527 (Parent)

Nora:

This is in response to your August 13 email (below). In view of your unexpected illness, my client is willing to grant your request for an additional "one week or less" within which to respond to the points raised in my August 3 email (below). Accordingly, **if you respond as described in my August 3 email by no later than Thursday, August 20, 2015**, my client will deal with your response as if it were received by August 13, 2015. However, please understand that my client does not wish to grant any further requests to extend the response deadline.

Steve

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