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Filing date: **02/24/2016**

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	Defendant's Notice of Reliance
Filer's Name	I. Stephen Samuels
Filer's e-mail	iss@samuelstm.com
Signature	s/I. Stephen Samuels/s
Date	02/24/2016
Attachments	OSlvGOP3NDefendant's Third Notice of Reliance.pdf(430652 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 THIRD NOTICE OF RELIANCE

Please take notice that, pursuant to Rule 2.122(e) of the *Trademark Rules of Practice*, Defendant, Greater Omaha Packing Co., Inc., hereby makes of record and will rely upon the following discovery responses by Plaintiff Omaha Steaks, copies of which are attached hereto.

NR-5 – Plaintiff Omaha Steaks' November 12, 2014 Responses to Defendant Greater Omaha's September 22, 2014 Request for Admissions.

NR-5

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

Omaha Steaks International, Inc.,)	Opposition No.: 91213527
)	Mark:
Opposer,)	
v.)	
Greater Omaha Packing Co., Inc.,)	
Applicant.)	U.S. Ser. No. 85897951
)	Filed April 8, 2013
)	Published September 17, 2013

**OPPOSER'S RESPONSES TO APPLICANT'S
FIRST REQUEST FOR ADMISSIONS**

COMES NOW Opposer Omaha Steaks International, Inc. and for its Responses to Applicant's First Request for Admissions, responds as follows.

REQUEST NO. 1: Opposer is not presently aware of any instances of actual customer confusion occurring because of the resemblance of Applicant's Opposed Mark to Opposer's Mark.

RESPONSE: Admitted, but only because Opposer understands that Applicant's Mark has not yet been used.

REQUEST NO. 3: Omaha, Nebraska is the corporate headquarters of Opposer.

RESPONSE: Admitted.

REQUEST NO. 4: In 1966, Opposer changed its corporate name to Omaha Steaks International, Inc.

RESPONSE: Admitted.

REQUEST NO. 7: Since at least as early as 1966, Opposer has been aware of the existence of Applicant.

RESPONSE: Admitted.

REQUEST NO. 8: Between 1966 and the present, Opposer has purchased meat products from Applicant.

RESPONSE: Admitted.

REQUEST NO. 10: Opposer has never brought a federal trademark infringement suit against Applicant.

RESPONSE: Admitted.

REQUEST NO. 12: Opposer (including its predecessor or predecessors) has been located in Omaha, Nebraska for approximately ninety-seven years.

RESPONSE: Admitted.

REQUEST NO. 14: At least one of the reasons why the word "OMAHA" in Opposer's Mark was originally chosen by Opposer was because Opposer was located in Omaha, Nebraska.

RESPONSE: Admitted.

REQUEST NO. 16: Omaha is a city in Nebraska.

RESPONSE: Admitted.

REQUEST NO. 18: Omaha is the largest city in Nebraska.

RESPONSE: Admitted.

REQUEST NO. 19: The Union Stockyards operated in Omaha from approximately 1883 to approximately 1991.

RESPONSE: Admitted.

REQUEST NO. 20: Omaha, Nebraska was a large meatpacking industry center from approximately 1955 to approximately 1991.

RESPONSE: Admitted.

REQUEST NO. 29: Omaha Meat Processors operates a meat processing facility at 6016 Grover Street in Omaha. [See Exhibit 5]

RESPONSE: Admitted.

REQUEST NO. 30: "B.I.G. MEATS OMAHA," located at 4853 South 137ths Street, Omaha, offers beef and other meats at its website at www.bigmeatsomaha.com. [See Exhibit 6]

RESPONSE: Admitted.

REQUEST NO. 32: Opposer has no Documents or any other evidence Concerning confusion as to source between Opposer's Mark and Applicant's Opposed Mark.

RESPONSE: Admitted, but only because Opposer understands that Applicant's Mark has not yet been used.

REQUEST NO. 33: Opposer has no present knowledge that it has ever received any Communications that were intended to be directed to Applicant.

RESPONSE: Admitted.

REQUEST NO. 36: Opposer's officers all have their offices in Omaha, Nebraska.

RESPONSE: Admitted.

DATED this 12th day of November, 2014.

Respectfully submitted,

By: **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) 829-8733
Nora.Kane@stinsonleonard.com
Attorney for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document were served on Applicant by sending the same this 12th day of November, 2014, via electronic mail to I. Stephen Samuels at ISS@SamuelsTM.com.

Nora M. Kane

Nora M. Kane

Omaha Meat Processors

[Write a Review](#)  Not Rated

6016 Grover Street, Omaha, NE 68106
(402) 554-1965

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Business Details

Category (Edit)
Meat Processing



Are You the Business Owner?

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Data provided by one or more of the following: Dex Media, Acxiom, InfoGroup.

Ex. 5

<http://www.superpages.com/bp/Omaha-NE/Omaha-Meat-Processors-L0014336185.htm>

9/17/2014

Food Products

September 17, 2014 4:10 PM ET

Company Overview of Omaha Meat Processors Inc

Snapshot

People

Company Overview

Omaha Meat Processors Inc provides portion controlled beef, pork steaks, sausage, roasted, and diced products. The company was founded in 1981 and is headquartered in Omaha, Nebraska.

6016 Grover Street
Omaha, NE 68106-4358
United States

Phone: 402-554-1965
Fax: 402-554-0224

Founded in 1981

Key Executives For Omaha Meat Processors Inc

Mr. David A. Kousgaard
President

Compensation as of Fiscal Year 2014.

Similar Private Companies By Industry

Company Name	Region
Excess Limited, Inc.	United States
U W Provision Company, Inc.	United States
Bakio Flavors, LLC	United States
Chula Vista Cheese Co.	United States
Newburg Egg Corporation	United States

Recent Private Companies Transactions

Type	Date	Target
No transactions available in the past 12 months.		

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B.I.G. MEATS OMAHA
CERTIFIED ANGUS BEEF-FAMILY OWNED SINCE 1969

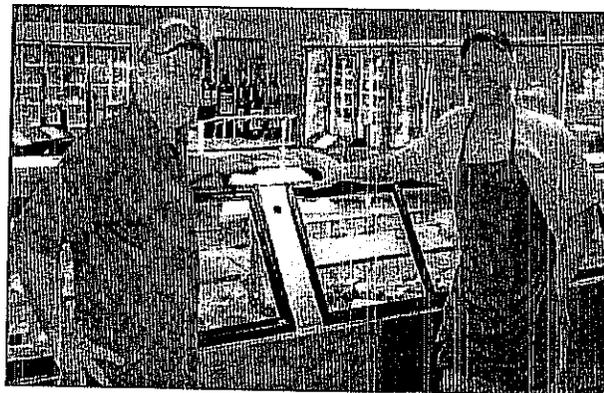


home page big meats wild game proc bundle contact us

BIG MEATS OMAHA

CALL US TODAY AT (402) 895-9525

B.I.G. MEATS of Omaha, Nebraska is a family Owned Business based in Omaha, Nebraska. Brothers Mark and Dave Hanke are the current owners of B.I.G. Meats and have continued what their father and Uncle started in 1969. B.I.G. MEATS Of Omaha offers Certified Angus Beef and a wide variety of other gourmet meats and specialty foods.



B.I.G. MEATS offers High Quality Certified Angus Beef and is the ONLY Certified Angus Beef Supplier in Omaha, Nebraska!

Please visit our sister company Husker Foods at www.huskerfoods.com

BIG MEATS LOGO



BIG MEATS

Page 2 of 2



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NR-6 – Plaintiff Omaha Steaks’ July 17, 2015 Responses to Defendant Greater Omaha’s June 10, 2015 Request for Admissions.

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 REQUEST FOR ADMISSIONS

1. **Plaintiff** is not presently aware of any instances of actual customer confusion occurring because of the resemblance of **Defendant’s 951 Mark** to **Plaintiff’s Mark** or to any other **Trademark** owned by **Plaintiff**.

RESPONSE: Admitted that Plaintiff is not presently aware of any instances of actual confusion, but Plaintiff cannot admit that there has been no actual confusion, because such would be an impossible statement to make as it asserts as fact that which cannot be known. Moreover, the ultimate issue is whether there is a likelihood of confusion.

2. **Plaintiff** is not presently aware of any instances of actual customer confusion occurring because of the resemblance of **Defendant's 768 Mark** to **Plaintiff's Mark** or to any other **Trademark** owned by **Plaintiff**.

RESPONSE: Admitted that Plaintiff is not presently aware of any instances of actual confusion, but Plaintiff cannot admit that there has been no actual confusion, because such would be an impossible statement to make as it asserts as fact that which cannot be known. Moreover, the ultimate issue is whether there is a likelihood of confusion.

3. **Plaintiff** is not presently aware of any instances of actual customer confusion occurring because of the resemblance of **Defendant's 763 Mark** to **Plaintiff's Mark** or to any other **Trademark** owned by **Plaintiff**.

RESPONSE: Admitted that Plaintiff is not presently aware of any instances of actual confusion, but Plaintiff cannot admit that there has been no actual confusion, because such would be an impossible statement to make as it asserts as fact that which cannot be known. Moreover, the ultimate issue is whether there is a likelihood of confusion.

5. Prior to November 15, 2013, **Plaintiff** never made any objection to **Defendant** about **Defendant's** use of its full corporate name.

RESPONSE: Admitted.

6. Prior to November 15, 2013, **Plaintiff** never made any objection to **Defendant** about **Defendant's** use of the first three words in its corporate name.

RESPONSE: Admitted.

7. Prior to June 26, 2014, **Plaintiff** never made any objection to **Defendant** about **Defendant's 768 Mark**.

RESPONSE: Admitted.

8. Prior to June 26, 2014, **Plaintiff** never made any objection to **Defendant** about **Defendant's 763 Mark**.

RESPONSE: Admitted.

9. **Plaintiff** made purchases of Angus beef from **Defendant** prior to July 1, 2009.

RESPONSE: Admitted.

23. **Plaintiff** does not own any federal trademark registrations for the word "Omaha" as a single word **Trademark**.

RESPONSE: Admitted.

24. **Plaintiff** has not filed any federal trademark applications for the word "Omaha" as a single word **Trademark**, to the best of **Plaintiff's** knowledge.

RESPONSE: Admitted.

35. Since at least as early as 1965, **Plaintiff** has been aware that **Defendant's** name has been Greater Omaha Packing Co. or Greater Omaha Packing Co., Inc. or a name which began with the words Greater Omaha Packing.

RESPONSE: Admitted.

36. **Plaintiff** has purchased beef from **Defendant** in every decade beginning with the decade opening January 1, 1950.

RESPONSE: Admitted.

37. There has never been an adjudication by the **PTO** or by any Federal Court or State Court that **Plaintiff's Mark** is or was "famous."

RESPONSE: Admitted.

DATED this 17th day of July, 2015.

Respectfully submitted,

By: /s/ Nora M. Kane
Nora M. Kane
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1299 Farnam Street, Suite 1500
Omaha, NE 68102-1818
Telephone: (402) 930-1740
Facsimile: (402) 329-8725
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

NR-7 – Defendant Greater Omaha’s June 25, 2015 Requests for Admissions which were ordered on September 28, 2015 by the TTAB to be deemed admitted.

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.

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:

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.

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.



I. Stephen Samuels
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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

NR-8 – TTAB’s September 28, 2015 Order which deemed admitted all of Defendant Greater Omaha’s June 25, 2015 Request for Admissions.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

BUO

Mailed: September 28, 2015

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

Omaha Steaks International, Inc.

v.

Greater Omaha Packing Co., Inc.

Benjamin U. Okeke, Interlocutory Attorney:

Applicant’s motion to compel, filed August 26, 2015, is GRANTED as conceded, because Opposer failed to respond thereto. Trademark Rule 2.127(a); *Central Mfg., Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001); *Boston Chicken, Inc. v. Boston Pizza Int’l, Inc.*, 53 USPQ2d 1053 (TTAB 1999).

Accordingly, Opposer is ordered to: (i) serve, no later than THIRTY DAYS from the mailing date of this order, supplemental responses, without objection on the merits,¹ to Applicant’s Request for Production of Documents and Things, served June 25 and 29, 2015, (ii) serve supplemental responses to Requests Nos. 2-9, 11-14

NR-8

¹ Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information. See *No Fear*, 54 USPQ2d at 1554.

and 16 of Applicant's June 10, 2015 Request for Production of Documents and Things, and (iii) serve all responsive documents at Opposer's own expense.² *See, No Fear, Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000).

In the event Opposer fails to respond to Applicant's discovery requests as ordered herein, Opposer may be subject to sanctions, potentially including entry of judgment against it. Trademark Rule 2.120(g); Fed. R. Civ. P. 37(b)(2).

Additionally, Applicant's Requests for Admission served June 25, 2015, are deemed ADMITTED, inasmuch as Opposer failed to timely respond thereto. *See* Fed. R. Civ. P. 36(a)(3).

The proceeding is RESUMED, and the remaining discovery, disclosure, and trial dates are reset as follows:

Discovery Closes	10/24/2015
Plaintiff's Pretrial Disclosures	12/8/2015
Plaintiff's 30-day Trial Period Ends	1/22/2016
Defendant's Pretrial Disclosures	2/6/2016
Defendant's 30-day Trial Period Ends	3/22/2016
Plaintiff's Rebuttal Disclosures	4/6/2016
Plaintiff's 15-day Rebuttal Period Ends	5/6/2016

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

² Opposer is reminded that its obligation to conduct a thorough search of its records and produce any responsive materials includes a search of electronically stored information. Electronically stored information may be produced in the form specified by the request. If no specification is made, Opposer must produce the electronically stored information in the form in which it is ordinarily maintained, or in a reasonably usable form. *See* Fed. R. Civ. P. 34(b)(2)(E)(ii). Fed. R. Civ. P. 34(a) "requires that, if necessary, a responding party 'translate' information it produces into a 'reasonably usable' form." However, the option to produce in a reasonably usable form does not mean that a responding party is free to convert electronically stored information from the form in which it is maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation.

Opposition No. 91213527

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

The relevance of the discovery responses, although not required to be stated by the PTO rules, is to support Defendant Greater Omaha's claims and affirmative defenses in this proceeding.

Respectfully submitted,



February 24, 2016

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 February 24, 2016.



I. Stephen Samuels