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

Proceeding	91213527
Party	Plaintiff Omaha Steaks International, Inc.
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Submission	Testimony For Plaintiff
Filer's Name	Nora M. Kane
Filer's e-mail	nora.kane@stinson.com
Signature	/Nora M. Kane/
Date	03/02/2016
Attachments	OSI Bruce Simon signed deposition taken 1_13_16 w_exhibits.PDF(4641575 bytes) OSI Todd Simon signed deposition taken 1_12_16 w_exhibits and requested changes page.PDF(1554301 bytes)

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

OMAHA STEAKS INTERNATIONAL, INC.,	)	Opposition No. 91213527 (Patent)
Opposer,	)	
v.	)	Cancellation No. 92059629
GREATER OMAHA PACKING CO., INC.,	)	Cancellation No. 92059455
Applicant.	)	AFFIDAVIT

Comes now the Affiant, Cheryl A. Rooney, RPR, Court Reporter and General Notary Public within and for the State of Nebraska, and deposes and says:

That Affiant reported the deposition of BRUCE SIMON on January 13, 2016, at 1299 Farnam Street, Suite 1501, Omaha, Nebraska.

That the Deponent was notified on January 19, 2016, with regard to the reading and signing of said deposition; that the Deponent has not responded to said notification; and, therefore, the original of said deposition is being transmitted to the attorney for the Opposer without signature.

FURTHER, AFFIANT SAITH NOT.

Dated this 23rd day of February, 2016.

Cheryl A Rooney

Cheryl A. Rooney, RPR

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Subscribed and sworn to before me this 23rd day of February, 2016.

State of Nebraska - General Notary
CAROLINE L. MILLER
My Commission Expires
May 10, 2018

Caroline L Miller

GENERAL NOTARY PUBLIC

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

OMAHA STEAKS INTERNATIONAL, INC.,	)	Opposition No. 91213527 (Patent)
Opposer,	)	Cancellation No. 92059629
v.	)	
GREATER OMAHA PACKING CO., INC.,	)	Cancellation No. 92059455
Applicant.	)	TAKEN ON BEHALF OF OPPOSER

DEPOSITION OF BRUCE SIMON, taken at 10:06 a.m. on January 13, 2016, by Cheryl A. Rooney, RPR, CSR, and General Notary Public in and for the State of Nebraska, at STINSON LEONARD STREET, 1299 Farnam Street, Suite 1501 , Omaha, Nebraska.

ORIGINAL

APPEARANCES:

Ms. Nora M. Kane — For Opposer
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E X A M I N A T I O N

By Ms. Kane:

DIRECT.....4

E X H I B I T I N D E X

Exhibit	Page	Description
10	13	12/21/11 Cease and Desist Letter
11	15	5/16/12 Cease and Desist Letter
12	15	11/3/09 Cease and Desist Letter
13	17	10/17/12 Cease and Desist Letter
14	18	1/22/14 Cease and Desist Letter
15	18	7/29/13 Cease and Desist Letter
16	19	6/28/11 Cease and Desist Letter
17	20	2/26/08 Cease and Desist Letter
18	20	1/9/12 Cease and Desist Letter
19	21	4/24/13 Cease and Desist Letter
20	21	9/17/09 Cease and Desist Letter
21	22	1/28/09 Cease and Desist Letter
22	23	1/3/12 Cease and Desist Letter
23	24	7/31/09 Cease and Desist Letter
24	24	2/5/10 Cease and Desist Letter
25	25	12/11/13 Cease and Desist Letter
26	34	Packaging Diagrams
27	36	Food Service Box Design
28	37	Omaha Fresh/Omaha Fresh Angus Brochures

BRUCE SIMON,

of lawful age, being first duly cautioned and solemnly sworn as hereinafter certified, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KANE:

Q. What is your name, sir?

A. Bruce Allen Simon.

Q. What do you do for a living, Mr. Simon?

A. I am president and CEO of Omaha Steaks.

Q. How long have you been president and CEO?

A. That's a pretty good question, Norma. I think since 1994 or 1995, something like that.

Q. I take it that's not the first position you've held with Omaha Steaks?

A. No.

Q. Why don't we start at the beginning.

A. Started -- after college, right?

Q. No. You started before then, didn't you?

A. Well, yeah, okay. So when I was 9 or 10 I used to make boxes for two cents a box. My

dad moved me to minimum wage, which was $1.65 at the time, and I realized I was making 100 boxes an hour. So I went down and told my dad that that wasn't fair, and he told me to get back up and go to work, and the union steward gave me a union card to go down and get my grandfather, and then I got my two cents a box. I worked there all throughout high school, especially during peak periods and during the summer. I've done everything in the plants from clean-up to cutting steaks to grinding hamburger to packaging steaks to taking inventory in the freezer. You know, I've done every single job in the plant. I've done telemarketing, I've done order processing, I've done just about -- you know, now the jobs are a lot more specialized. So some of the jobs in the manufacturing facility have been split up into several different jobs. So I haven't done every single job in there, but certainly the processes.

Q. So you mentioned college. When did you go to college? When did you graduate from college?

A. '81.

Q. Where did you go?

A. First I went to Syracuse, then I went

to the University of Pennsylvania.

Q. Did you get a degree?

A. Yeah, I got a BDA in business administration in economics from Wharton.

Q. What did you do after you graduated from Wharton?

A. I was assistant plant manager -- had a bunch of jobs. I was assistant manager, then plant manager --

Q. For Omaha Steaks?

A. Yes. Then I was plant manager. Then next step was director of purchasing. Then I took over IT as well, sort of created my own division. It was management -- it was purchasing and management information systems, so I named it PMIS, just to pimp my family around a little bit. So I was in charge of IT, I was in charge of purchasing. I had that job for I think about 12 years, and then I became president.

Q. And tell me again what year did you say that you thought you became president?

A. '95. I know that's what year I joined YPO, and I joined YPO after I became president.

Q. What's YPO?

A. Young President's Association.

Q. Give us kind of a broad overview of what your duties are as president and CEO of Omaha Steaks.

A. I'm the head MF in charge. I mean, I have to -- all aspects of the company. I mean, you know, typical CEO. I mean, I have responsibility for the whole thing.

Q. How many people report directly to you?

A. Direct. Probably six or seven direct on the organizational chart, but it's actually a little broader than that.

Q. How many employees does Omaha Steaks have?

A. At peak, around 4300. During the rest of the year, about 1800 -- 1700, 1800.

Q. Is peak over the December holidays?

A. Yes.

Q. And why is that?

A. Well, because we have to process 100,000 orders a day. You know, takes a lot of people to do that.

Q. Is that because people are giving your product as gifts?

A. Yes. Yes, we're a world-famous brand,

you know. I've had the strangest things happen to me in the strangest places with respect to our brand. One time my wife and I were in Madrid, we went to a bull fighting -- not bull fighting, flamenco dancing venue. So they sit you down at these, like, long picnic table kind of places, you know, and you don't know who else is sitting at the table. It was just Stacy and I. And there was this Japanese man and his wife sitting across from us. And he decided he was going to take this opportunity to practice his English. He says, "Ah, where you from?" I said, "Well, I'm from the United States." He says, "Where in United States?" I said, "Omaha, Nebraska." He says, "Ah, Omaha, Nebraska. Omaha Steaks."

So I mean, stuff like that happens all the time. It's just weird, you know. My wife and I just looked at each other and kind of smiled.

Q. Omaha Steaks, today you said at peak it employs about 4300 people?

A. I don't know what this year was, honestly.

Q. A ballpark number is all right. How did Omaha Steaks begin, do you know?

A. Yeah, well, I'm 5th generation --

MR. SAMUELS: Objection to the question, calls for speculation, no personal knowledge.

THE WITNESS: You're kidding, right?

Q. You can answer.

A. Okay. My grandfather and my great grandfather immigrated to the United States. I know that for a fact because I've seen the Ellis Island stuff. They worked as butchers at the Washington Street Market in south Omaha when they first came to Omaha in 1914 -- I don't know how they got here, or why. Wish it would have been Miami. And in 1917 they opened the Table Supply Meat Company, which was on 12th and Howard, just over there. And they had Table Supply Meat Company. And my grandfather joined the company when he graduated college. My father joined the company after he graduated college, and I after I graduated college I joined the company as well.

MR. SAMUELS: Objection to all of that testimony on the grounds of competence under Federal Rule of Evidence 602, no foundation laid to show that the witness has personal knowledge of the matter about which he has been asked. Testimony by witness who lacks personal knowledge

of the matter is not admissible under Federal Rule of Evidence 602. Also I object to the testimony on the grounds it's speculation by a layman. The question calls for an answer in the form of an opinion and speculation, not based on personal perception of the witness. Such opinion is speculative. Testimony by a layman is not admissible under Federal Rule of Evidence 701.

MS. KANE: I would ask that you refrain from speaking objections and simply state the rule.

Q. So the company began as Table Supply. At some point did the name change?

A. They started doing business as Omaha Steaks I believe in 1958 or '9.

MR. SAMUELS: I'm just going to say, I'm going to have a running line of objection to all of the testimony that he's giving --

THE WITNESS: Well, then why am I here? Why are you deposing me?

MR. SAMUELS: I'm objecting to the testimony on the grounds of Rule 802, 701 and 602 to anything that he doesn't have personal knowledge of.

Q. I'm going to show you what was marked

in Todd Simon's deposition yesterday as Exhibit 9. Do you recognize Exhibit 9?

A. Yep.

Q. What is it?

A. Well, it's an award that was given to my Uncle Fred from The New Yorker magazine as the longest advertiser or consecutive advertiser in the magazine. I don't know when it was given to him, but I know that it's been in our offices for a long time.

Q. Was it given to him while you were employed by Omaha Steaks?

A. Yes.

Q. And it's dated -- can you see the date there?

A. November 29, 1958.

Q. And it's your testimony, then, that The New Yorker gave this gift to him later than that date?

A. Oh, yes, yes. It was -- I'm not sure if it was in the 1990s or the 2000s.

MR. SAMUELS: Let the record show all my objections made yesterday to these exhibits that are OSI 1 through 9 that I made yesterday I'm remaking today to the extent that Ms. Kane is

going to be discussing them with the witness. I won't remake them, but I stand on what I said yesterday.

Q. The name was officially changed at some point, I assume?

A. Yes.

Q. And is Omaha Steaks a Nebraska corporation?

A. Yes.

Q. So we'll rely on the Secretary of State's official records to show what year that happened. Does Omaha Steaks have trademarks?

A. Yes.

Q. I'm going to show you what was marked yesterday as Exhibit 1.

A. Mm-hmm.

Q. Do you recognize that document?

A. Yes, I do.

Q. What is it?

A. Statement of mark, schedule of marks, a list of all the marks that Karen Shirk prepared.

Q. Who is Karen Shirk?

A. Karen Shirk is my executive assistant. She also has other duties as well.

Q. You've seen this document before,

then?

A. Yes.

Q. You're familiar with it?

A. Yes.

Q. Do you know why she put this document together?

A. She was instructed to.

Q. By whom?

A. Myself. Actually, I asked her to do it. I didn't direct her. I don't direct. I ask.

Q. Have you had occasion over the years to believe that others were infringing upon any of Omaha Steaks trademarks?

A. Yes. And we rigorously defend our marks.

(Off-the-record discussion was had.)

(Exhibit 10 marked.)

BY MS. KANE:

Q. I'm going to hand you what's been marked as Exhibit 10 for identification. Do you recognize Exhibit 10?

A. Yes.

Q. And what is Exhibit 10?

A. I believe it's a cease and desist to some slime bag that was infringing on our marks.

Q. Who was the author?

A. Denise Mazour.

Q. Who is Denise Mazour?

A. She is an attorney at McGrath North who handles a lot of our trade work.

Q. At whose direction did she send this letter, if you know?

A. Probably Karen -- Karen handles this kind of thing for us at either my or Todd's direction.

MR. SAMUELS: I'm going to object to the exhibit on the grounds of hearsay, grounds of competence. This witness has no foundation laid to show, I'll just say 602 again, 701, 802, and especially 901. Those are all numbers under the Federal Rules of Evidence.

Q. When Denise Mazour sent cease and desist letters, was she acting on behalf of Omaha Steaks?

A. Yes.

Q. She was not acting in her own capacity?

A. No.

Q. I'm going to hand you what's marked as -- what will be marked as Exhibit 11.

(Exhibit 11 marked.)

Q. Do you recognize that document?

A. Yes.

Q. Who's the author?

A. Denise Mazour.

Q. What's the date?

A. May 16, 2012.

Q. And can you tell to whom it's addressed?

A. Mr. Kees at Sendiik's Management, Inc.

MR. SAMUELS: Just so I won't burden the record, I'm going to object to all of these letters that are similarly cease and desist letters on the same grounds that I objected to Exhibit 10.

Q. And is this another cease and desist letter?

A. Yes.

Q. Was Denise Mazour acting on Omaha Steaks' behalf when she sent this?

A. Yes.

Q. Did she send it at your direction?

A. Yes.

Q. You can put it back in the pile.

(Exhibit 12 marked.)

Q. Handing you what's been marked as Exhibit 12. Do you recognize 12?

A. Give me a minute. Yes.

Q. Who is the author?

A. Denise Mazour.

Q. To whom is it sent?

A. Craig Jackson, president of Superior Gourmet Foods.

Q. The date?

A. November 3rd, 2009. Oh, I remember this guy.

Q. What do you remember?

A. Oh, there are -- things like this come up all the time where people will represent -- they'll go out on trucks and represent that they're selling our product when they're not, to customers. And normally our customers are the ones who bring this to our attention.

Q. And this Exhibit 12, is that another cease and desist letter?

A. Yes.

Q. And was that sent at your direction?

A. Yes.

Q. And Denise Mazour was acting on behalf of Omaha Steaks?

A. Yes.

(Exhibit 13 marked.)

Q. Exhibit 13. Do you recognize Exhibit 13?

A. Give me a minute.

MR. SAMUELS: Let the record show that as yesterday I objected to the leading questions by Ms. Kane, I'm objecting to them today. I won't keep making the same objection. But I want it to be a continuing objection.

A. Yes, I recognize this.

Q. What is it?

A. It is a cease and desist letter.

Q. Authored by whom?

A. Denise Mazour.

Q. Dated?

A. October 17th, 2012.

Q. Addressed to whom?

A. Addressed to Chris Maselka, Iowa Steak Company.

Q. Can you identify the attachments?

A. Well, our trademarks, definition of our trademarks.

Q. Does this appear to be another cease and desist letter?

A. Yes, it is. This is another door-to-door guy.

Q. Was this sent at your direction by Ms. Mazour?

A. Yes.

(Exhibit 14 marked.)

Q. Exhibit 14. Do you recognize Exhibit 14?

A. Yes.

Q. Who is the author?

A. Denise Mazour.

Q. To whom is it addressed?

A. Music Station. Attention: Owner.

Q. Date?

A. January 22nd, 2014.

Q. Was this sent at your direction?

A. Yes.

Q. And does it appear to be another cease and desist letter?

A. Yes, it is.

(Exhibit 15 marked.)

Q. Fifteen. Do you recognize Exhibit 15?

A. Yes.

Q. What is it?

A. Another cease and desist letter.

Q. Author?
A. Denise Mazour.
Q. Addressed to?
A. Solomon Kleinsmith.
Q. Date?
A. July 29th, 2013.
Q. Was this sent at your direction?
A. Yes.
(Exhibit 16 marked.)
Q. Exhibit 16. What is Exhibit 16?
A. Another trademark infringement, cease and desist.
Q. Authored by?
A. Denise Mazour.
Q. Dated?
A. 28 June 2011.
Q. Can you tell to whom it was sent?
A. Just says abuse@dot.tk. It's an e-mail address. It is cyber swatting.
Q. I see. Was this sent at your direction?
A. Yes.
Q. And Ms. Mazour was acting on behalf of Omaha Steaks?
A. Yes.

(Exhibit 17 marked.)

Q. Seventeen.

A. This is an old one. Okay.

Q. Do you recognize Exhibit 17?

A. Yep.

Q. What is it?

A. It's another cease and desist.

Q. Authored by?

A. Denise.

Q. Dated --

A. Is it Denise? Yes, it's before she was at McGrath. February 26th, 2008.

Q. Sent to whom?

A. John Norman.

Q. And was this sent at your direction?

A. Yes.

Q. And Ms. Mazour was acting on behalf of Omaha Steaks when she sent it?

A. Yes.

(Exhibit 18 marked.)

Q. Eighteen. Do you recognize 18?

A. Yes.

Q. What is it?

A. Another cease and desist letter.

Q. Authored by...

A. Denise Mazour.
Q. Sent to?
A. Luis Rivera.
Q. Date?
A. January 9, 2012.
Q. Was this sent at your direction?
A. Yes.
(Exhibit 19 marked.)
Q. Nineteen. Do you recognize 19?
A. Yes.
Q. What is it?
A. Cease and desist letter, another door-to-door guy.
Q. Authored by?
A. Denise.
Q. Sent to?
A. Mr. James Nations.
Q. And date?
A. April 24, 2013.
Q. And was this sent at your direction?
A. Yes.
(Exhibit 20 marked.)
Q. Twenty. Do you recognize Exhibit 20?
A. Give me a second. Yes.
Q. What is it?

A. Cease and desist letter.
Q. Authored by?
A. From Denise Mazour to -- huh. Lavandis Vaught, V-A-U-G-H-T.
Q. What is the subject line?
A. Omaha Steaks registered certificates --
Q. Up above the subject.
A. Oh, omahasteak.net.
Q. Is that Omaha Steaks' website address?
A. No. Cyber swatter guy.
Q. Did you direct Denise Mazour to send this e-mail?
A. Yes. I believe we own that URL now.
Q. URL?
A. Yeah.
Q. Okay.
(Exhibit 21 marked.)
Q. Twenty-one.
A. Yes, I recognize it.
Q. What is it?
A. A cease and desist letter.
Q. Authored by...
A. Denise Mazour.
Q. Sent to?

A. Mr. Mike Schmidt.
Q. And dated?
A. January 28, 2009.
Q. Was this sent at your direction?
A. Yes.
Q. Was Ms. Mazour acting on behalf of Omaha Steaks?
A. Yes.
(Exhibit 22 marked.)
Q. Do you recognize 22?
A. Just a minute. There's a cover.
Q. I'm sorry, you said there's a cover?
A. Cover. Oh, yes, I do.
Q. What is it?
A. Cease and desist letter.
Q. Authored by...
A. Denise Mazour.
Q. Sent to?
A. Ricky Turco.
Q. And dated?
A. 3 January 2012.
Q. Was this sent at your direction?
A. Yes.
Q. Was Ms. Mazour acting on behalf of Omaha Steaks?

A. Yes.

(Exhibit 23 marked.)

Q. Twenty-three.

A. Okay.

Q. Same questions. Do you recognize it?

A. Yes.

Q. What is it?

A. Cease and desist letter.

Q. Authored by...

A. Denise Mazour.

Q. Sent to?

A. Anthony S. Carpenter.

Q. And dated?

A. July 31, 2009.

Q. Was this sent at your direction?

A. Yes.

Q. Are all the cease and desist letters that are sent on behalf of Omaha Steaks sent at your direction?

A. Yes.

(Exhibit 24 marked.)

Q. Identify Exhibit 24, if you can.

A. Another cease and desist letter. Yes, I recognize it. It's from Denise to David Bingham.

Q. Dated?
A. February 5, 2010.
(Exhibit 25 marked.)
Q. Change of law firms. Exhibit 25. Do you recognize Exhibit 25?
A. Oh, yes, I do. Cease and desist.
Q. The author is?
A. Mark Peterson.
Q. From my law firm under its former name; correct?
A. Yes.
Q. And to whom is it sent?
A. Joseph Petschl.
Q. And the date?
A. December 13, 2013.
Q. December 11th, I believe?
A. Sorry, December 11th.
Q. What is the nature of the letter?
A. Cease and desist.
Q. Was this sent at your direction?
A. Yes, it was.
Q. Was Mark Peterson acting on behalf of Omaha Steaks?
A. Yes, he was.
Q. Was Omaha Steaks --

MR. SAMUELS: Are you done with the group of cease and desist or not?

MS. KANE: Yes.

MR. SAMUELS: I would like to simply object to the admission of all of the cease and desist letters that they were either not provided during discovery responses or that they were inconsistent with other discovery responses provided by Omaha Steaks International, Inc.

MS. KANE: And I would like to state for the record that these are Bates stamped OSI 13 through OSI 82, and that all documents bearing such Bates stamps were provided to you. I think that objection is disingenuous, at best.

Q. Has Omaha Steaks ever filed any lawsuits for trademark infringement?

A. Yes.

Q. At whose direction were those lawsuits filed?

A. Mine.

Q. Do you have committed to memory the names and courts of where all those lawsuits were filed?

A. All of them?

Q. Yes.

A. No.

Q. Are there any that you recall?

A. Oh, I remember the one against this guy, Anshu. I think that was Omaha Beef, or something like that. Because he was just such a litigious little twerp.

Q. Do you recall what court that --

A. I think it was California.

Q. Do you recall any other defendants, as you sit here today, that Omaha Steaks sued for trademark infringement?

A. I mean, not specifically. I just remember Anshu because he was such a twerp.

Q. I'm going to show you what was marked yesterday as Exhibit 2, and I have turned it to page 9 and I want you to look at the answer to Interrogatory Number 26 --

MR. SAMUELS: Ms. Kane, let me get with --

A. Oh, yes, this is --

MS. KANE: Hold on a second.

MR. SAMUELS: This is yesterday's exhibit?

MS. KANE: Yes.

MR. SAMUELS: You say exhibit which?

MS. KANE: Two.

MR. SAMUELS: Are you directing Mr. Simon to look at any particular page?

MS. KANE: Yes, I sent him to page 9.

A. This is a list of the suits that we filed against people who were infringing on our trademark.

Q. And the names of the defendants appear on that document?

A. Yes.

Q. The courts where the lawsuits were filed?

A. Yes.

MR. SAMUELS: I'm renewing my objection to Exhibit 2 for all of the reasons I stated yesterday, and to the extent Mr. Simon is merely reading from an objected-to exhibit, I object to that testimony.

THE WITNESS: Can I say something about his objection just now?

MS. KANE: What would you like to say?

THE WITNESS: Well, it so happens that I was very much specifically involved in these conversations and these interrogatories, and I have read that, seen that. I had to look at the

documents to see the first page. But, yes, I've seen it and am very familiar with it.

Q. You stated earlier, and I'm paraphrasing -- let me ask it this way: Does Omaha Steaks police their trademarks?

A. Yes, very rigorously, as well as our photos and all of our intellectual properties.

Q. What steps does Omaha Steaks take to police their trademark?

A. What --

Q. What steps does it take to police their trademark?

A. Well, when we identify what we feel is a trademark infringement, Karen is sort of the keeper of all those documents.

Q. Karen Shirk?

A. Yes. And she'll notify Denise or you, and we rely on our attorneys to, you know, send the cease and desist letters, and in the cases where it's been necessary, to pursue legal action.

Q. You testified a little earlier that sometimes your customers bring to your attention --

A. Oftentimes.

Q. How else do you learn of potential

infringers?

A. Well, when one of my employees sees something, or if I see something, Todd sees something. We also routinely look around the Internet. There actually, in the case of photographs and stuff like that, we have little digital --

Q. Watermark?

A. Well, they're not really watermarks. They're like pixel changes that you can go out and search the Internet. And I'm not sure to the extent that we're actually deploying that technology right now to search the Internet, but I know that we did it because we were introduced to it, and so I know that in our photos on the web, things like that, that we incorporate those so that you can't steal our pictures and then put them up on your website. There's supposedly technology that would allow us to crawl the Internet looking for those. I don't know the extent that that's actually being done right now.

Q. When you say that someone couldn't steal it and put it on their website, could they put it on their website but that's the identifying mark that it's yours, is that what you mean?

A. No.

Q. Okay. I don't understand.

A. Okay. So these photos are expensive to produce, okay, you have to have food stylists, you have to have photography, everything, right. And so, you know, we have quite an investment in our intellectual property, our photographs, our trademarks, our drawings of like the cooler, that kind of thing. And so what you do -- so what was your question again? How does that work?

Q. How does it prevent someone from using it?

A. Oh. So what you'll do is you'll take a picture. And let's say the picture is -- there's a purple tablecloth. We know exactly where we changed a couple of pixels from purple to a different blue so that to the naked eye you'd never see it, but that really makes it very easy to identify. It's like a watermark, but it's just a tricky little sneaky way of making sure you can say -- because somebody could claim that that's not your picture. You say, oh, yeah, it is, see these right here?

Q. Are there any other steps Omaha Steaks takes to police their marks that we haven't

discussed?

A. Not that I'm really aware of, no.

MS. KANE: I need a break. So ten minutes, please.

(Brief recess was taken.)

BY MS. KANE: When we finished with the cease and desist letters, Mr. Samuels made the objection that the documents had not been previously produced, and I pointed out the Bates numbers of those documents were OSI 13 through OSI 83, and I want the record to reflect that Exhibit 2, answer to Interrogatory Number 34, represents that those documents were produced and that I signed a certificate of service that I indeed did send those to Mr. Samuels on May 13, 2014.

MR. SAMUELS: And I'll respond, to the extent that they were provided, I withdraw my objection as to their not being provided. On the other hand, to the extent they're inconsistent with other discovery responses, I maintain that objection.

MS. KANE: Well, that makes absolutely no sense to me. So maybe you should explain the inconsistency so that I can clear that up while I

am making my record.

MR. SAMUELS: What I'm talking about is in discovery responses themselves, they stand for whatever they say. And you can deal with them in your brief if I object to them and -- doesn't have anything to do with the witness, Mr. Simon.

MS. KANE: It has everything to do with the discovery responses that have been produced in this case, read by, reviewed by and authorized by Mr. Simon before I served them, and when you make an objection during someone's testimony that it's inconsistent with something else, I should have an opportunity to know what in the world you're talking about so that I can attempt to adjust or react to any such alleged discrepancy. So if you have something, tell me. And if you don't, withdraw your objection.

MR. SAMUELS: I won't withdraw my objection. I'll state the objection in the brief where it's proper to make the objection with regard to discovery responses.

MS. KANE: Then don't make an objection now if you're not going to share what grounds it's based upon. How can I cure it during this person's testimony if you're not going to tell me

what the objection is?

MR. SAMUELS: It doesn't have anything to do with this person's testimony. It had to do with the exhibits.

MS. KANE: Can you please explain to me how the cease and desist letters are inconsistent with some of the response?

MR. SAMUELS: I don't have your discovery responses in front of me, so it's impossible to do that. I'll do that at the appropriate time, which is in my main brief.

MS. KANE: Made up rules. All right. So are we on 26?

(Exhibit 26 marked.)

BY MS. KANE:

Q. I'm going to hand you what's been marked as Exhibit 26, Mr. Simon.

A. Mm-hmm.

Q. Do you recognize this document?

A. Yes.

Q. For the record, can you please identify the Bates number that appears in the lower right? It begins with OSI. Do you see that?

A. Right here?

Q. Yeah.

A. 0090.

Q. OSI 0090?

A. Yes.

Q. And what is this document?

A. These are our packaging diagrams for food service boxes. This one is a food service box, the Omaha Steaks Angus box, along with the safe handling that would go on the box -- USDA requires safe handling instruction on our boxes, and so there's a copy of our bug on page 2. The front page is the diagram for the die cut and the logo that goes on the box, on the Omaha Steaks Food Service Angus box.

Q. For the persons reading this testimony, they may not understand what you meant when you said "food service." Can you define that for us?

A. Right. So our food service is general -- generally speaking, food service is product that is distributed through distributors or sold directly to customers through our food service division.

Q. Does Exhibit 26 bear one of your trademarks?

A. Yes. This is our Omaha Steaks Angus trademark.

Q. Does Omaha Steaks use this trademark as we speak today?

A. Yes, often. I buy product for it every week.

Q. We'll get to that in just a second. Put 26 back in the pile.

(Exhibit 27 marked.)

Q. I'm going to hand you what's been marked as Exhibit 27.

A. Mm-hmm.

Q. Can you identify that document, please?

A. Yes.

Q. What is it?

A. Another Omaha Steaks Angus food service box design. It's the die cut specifications going to the box manufacturer and printer.

Q. And just for the record, could you please identify the Bates number again?

A. Yes. This is OSI 0093.

Q. And does one of Omaha Steaks trademarks appear on this packaging?

A. Yes.
Q. Which mark is this?
A. This is the Omaha Steaks Angus mark.
Q. Does Omaha Steaks use this mark as we sit here today?
A. Yes.
(Exhibit 28 marked.)
Q. Handing you what's been marked as Exhibit 28. What is this document, sir?
A. This is one of our Omaha Fresh and Omaha Fresh Angus brochures. This is where we advertise that we can -- what we do here is we take subprimals and make them -- clean up the specifications on the raw materials, and then sell them -- they're nearly steak -- they are steak-ready -- to Omaha Steaks Food Service customers who prefer to cut their own steaks.
Q. I think you might have just used a term that persons reading this testimony --
A. Subprimals?
Q. Yes. Please define.
A. When animals are processed, generally speaking they are broken down by the packer into subprimals. These are -- for example, on a loin, on a bovine loin, you have -- and I'm going to use

the meat packer terms. I don't know the specific anatomical terms for each one of these muscle groups, and some of the subprimals contain multiple anatomical muscle groups. So on the loin you've got the top butt, bottom butt, the strip, the tender loin -- missing something here. Or that could also be processed into a short loin, something like that. But generally speaking, when the product comes out of the packers, although there are specifications, the packers generally don't adhere to them, so we clean them up, make them pretty, make them more steak-ready, take tendons off, things like that.

Q. All right. Do you slaughter animals?

A. No.

Q. How do I -- let me back up.

From whom do you acquire the subprimals from which you make your product?

A. Well, I have a variety of suppliers, including Tyson, Cargill, Swift, JBS, National Beef, Greater Omaha Beef and Greater Omaha Packing Company. And there are others. I mean, those are the principal ones.

Q. Do you personally purchase?

A. I do.

Q. Does anyone else?

A. Yes.

Q. How many people besides you -- let me -- how many people besides you are tasked with purchasing the subprimals from the packers?

A. Not including backups, because if someone was on vacation, if two of us were on vacation at the same time or if I was out and my purchasing manager was sick, somebody else would cover. But principally two.

Q. Are you the primary person tasked with purchasing the raw material?

A. Yes, yes. I still do that.

Q. How do you determine from whom you're going to buy on a given day or week?

A. Well, I survey the market. I call our suppliers. Given my suppliers, you know, because I've been doing this for, I don't know -- I'm 58 -- 33 or 34 years now, I know what kind of quality I'll accept. So we don't really have to have that conversation very often unless there's a problem. I survey them, I get their prices. I have yield-tested, prior to purchasing their product, all their products. I know essentially how the product -- what to expect when I receive

their product, and then I'm able to ascertain which is the -- which will yield me the best economic results, depending on who I'm buying from. Now, you know, there are times I go to a packer and they're out of a product that I want so I have to go to number two, down the line. But that's essentially how it's done.

Q. Are you able to testify to what percent -- what average percent per year you purchase from Omaha Packing?

A. No, other than to say it's fairly small.

Q. By fairly small, approximately what percentage do you mean?

A. I would say less than -- by weight or dollars, much less than ten percent. I'm not sure if it would be in the five percent or three percent range. It certainly could be, very easily. Because generally speaking, I buy trim from Henry --

Q. And Henry is who?

A. Henry Davis, the owner of Greater Omaha Packing. I buy trim from them --

Q. What is trim?

A. 50-50 trim lean-to-fat ratio. And we

used to buy the Angus product from him, but his specifications were less desirable than some of our other suppliers who could supply the same type of product.

Q. What does that mean?

A. Product didn't yield as well, trim was out of specification, price-value relationship just wasn't there and, you know, I'm measuring that on every product all the time, constantly. So just became less favorable for me to do that. And -- but so the trim value -- I mean, this has been a crazy year, last year was a crazy year, price of beef was way -- a huge anomaly for the last two years.

Q. Meaning high?

A. Really high, really high.

Q. Okay.

A. So 50 percent trim, I don't know, it's probably around $1.35 comes to mind, something like that. I'd have to look at my records to know exactly. So typically I'm buying, you know, maybe 10 or 20,000 pounds of product from him at $1.35, maybe some odds and ends. And where someone like Tyson I would be buying four truckloads of peeled tenderloins at -- for the sake of argument right

now, $10 a pound. So 420,000 pounds a load, roughly, 420,000 pounds a load, and I'm going through two to five loads a week, you know. And, you know, you multiply that over the course of the year, and what we buy from Henry is a fairly small percentage.

Q. Understood.

A. And he couldn't supply that much anyway.

Q. Simply because he's not as big as some of the other suppliers?

A. No, huh-uh, huh-uh.

Q. Do you have a relationship with Henry?

A. Yes, I do.

Q. Do you consider him a friend?

A. Yes, I do.

Q. How long have you known him?

A. Almost 40 years, 38 years, really, that we've really been friendly. I knew who he was since I was a little boy, he's a little older than I am -- he's a lot older than I am. Jesus, he's over 60, for goodness sakes. So I've known him a really long time.

Q. And he's a friend --

A. And I knew his dad. As a matter of

fact, when my father took me to see a packing house when I was 16 years old, because I'd never been to a slaughterhouse, Greater Omaha was where my dad took me.

Q. And you meant Henry at that time?

A. Yes.

Q. So do you have an opinion on Greater Omaha Packing's plant and its operation?

A. Their plant is second to none in the United States. I've visited a lot of kill floors before --

MR. SAMUELS: I'm sorry, you've visited a lot of what?

THE WITNESS: Kill floors, slaughterhouses.

A. -- and Henry's slaughter facility is the best I've ever seen. I mean, it is the cleanest, it is absolutely straight up and down as good as it gets. My wife used to be a vegetarian -- this is going to go on the record, right? My wife used to be a vegetarian. When I first met her, she was a vegetarian. I kind of cured her of that. I don't know, we'd been married five or ten years and she wanted to see a slaughterhouse -- and I assure you, we would have

been eating rice and beans, if I would have taken her anywhere but Henry's, for the rest of our life, which would have made it a problem for the CEO of Omaha Steaks.

Q. Yes. So given your personal friendship with Henry and your high opinion of his plant, why did you initiate -- why did you direct my law firm to initiate this proceeding?

A. Because a trademark is a trademark, and we have to defend our trademarks. There's just no ifs, ands, or buts about it. And I discussed it with Henry. My cousin, Todd, discussed it with Henry.

Q. What did Henry say?

A. He was intransigent. Look, if there was any other way to settle this -- we suggested, what do you call it, the common use, the shared --

Q. Co-existence?

A. Co-existence. You know, if Henry would have agreed -- Henry is not in our business. He doesn't do -- traditionally he hadn't been in the steak cutting business. I understand he is now. As long as he sticks to food service, that's just fine. But when he moves into the direct-to-consumer business, we're going to have

to defend our trademark. There's just no -- I have no choice. I have a responsibility to our company, to my employees, and that's the way it's got to be. And we feel that he is infringing on our trademark. He's trading on what we've spent hundreds of millions of dollars developing our brand over the years since my Uncle Fred started placing the ads in The New Yorker magazine in 1958. And listen, if there's a co-existence -- co-existence, right -- arrangement that we could work out with Greater Omaha Packing, I'd love to do that. I don't want to fight with Henry, anymore than I want to fight with my wife. I'd probably fight with Henry more than I'd fight with my wife. But, you know, this isn't something that I'm excited about at all. In fact, I hate it because I have a great deal of respect for Henry, and I have a great deal of respect for his employees, and I have a great deal of respect for Greater Omaha Packing.

MR. SAMUELS: I'd like to object to that part of Mr. Simon's testimony where he is quoting Mr. Davis and perhaps others on the ground of hearsay, also some of the other parts of his testimony were opinion and speculation, and also

with regard to his competence. Witness is not competent to make some of those statements as to where no foundation was laid to show that the witness has personal knowledge of the matter about which he has been asked. Testimony by a witness who has personal knowledge is not admissible under the Rule 602.

THE WITNESS: Excuse me, sir, are you serious? I don't have competence? I've been in dozens of kill floors in the United States. I've been in dozens of plants. I know what kind of equipment Henry purchased to cut the steaks. Questioning my competence is as insulting as me questioning yours.

MS. KANE: I have no further questions.

MR. SAMUELS: Why don't we take a five-minute break and then we'll start cross-examination.

(Brief recess was taken.)

MR. SAMUELS: I have no questions for Mr. Simon. Thank you very much.

(Deposition concluded at 11:30 a.m.)

- C E R T I F I C A T E -

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Cheryl A. Rooney, RPR and General Notary Public in and for the State of Nebraska, do hereby certify that BRUCE SIMON was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him as above set forth was reduced to writing by me.

That the within and foregoing deposition was taken by me at the time and place herein specified and in accordance with the within stipulations, the reading and signing of the witness to his deposition having not been waived.

That I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

IN TESTIMONY WHEREOF, I have placed my hand and notarial seal this 20th day of January, 2016.

Cheryl A Rooney
GENERAL NOTARY PUBLIC

State of Nebraska - General Notary
CHERYL A. ROONEY
My Commission Expires
November 24, 2018

COST: $_____

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

OMAHA STEAKS INTERNATIONAL, INC., Opposer,	)	Opposition No. 91213527 (Patent)
v.	)	Cancellation No. 92059629
GREATER OMAHA PACKING CO., INC., Applicant.	)	Cancellation No. 92059455
	)	AFFIDAVIT

Comes now the Affiant, Cheryl A. Rooney, RPR, Court Reporter and General Notary Public within and for the State of Nebraska, and deposes and says:

That Affiant reported the deposition of BRUCE SIMON on January 13, 2016, at 1299 Farnam Street, Suite 1501, Omaha, Nebraska.

That the Deponent was notified on January 19, 2016, with regard to the reading and signing of said deposition; that the Deponent has not responded to said notification; and, therefore, the original of said deposition is being transmitted to the attorney for the Opposer without signature.

FURTHER, AFFIANT SAITH NOT.

Dated this 23rd day of February, 2016.

Cheryl A Rooney

Cheryl A. Rooney, RPR

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Subscribed and sworn to before me this 23rd day of February, 2016.

State of Nebraska - General Notary
CAROLINE L. MILLER
My Commission Expires
May 10, 2018

Caroline L Miller

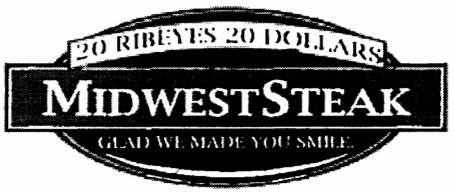
GENERAL NOTARY PUBLIC

Mazour, Denise

From:	Mazour, Denise
Sent:	Wednesday, December 21, 2011 4:44 PM
To:	'coreyjgatlin@yahoo.com'
Cc:	'admin@midweststeak.com'
Subject:	Omaha Steaks International, Inc.
Attachments:	3768690.pdf; 3768691.pdf
Importance:	High

Dear Mr. Gatlin:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). It has come to our attention that Midwest Steak offers steaks and chicken for sale online at www.midweststeak.com in connection with the use of the following logos ("the infringing logos"):



The use of the infringing logos in connection with the offering for sale of steaks and chicken infringes Omaha Steaks' trademark rights, including its rights in U.S. Trademark Registration Nos. 3,768,691 and 3,768,690. Copies of the registration certificates are attached for your information. The use by Midwest Steak of the infringing logos is likely to cause confusion, mistake or deception in the marketplace and constitutes conduct that is actionable under state and federal statutes for trademark infringement. In addition, such use also constitutes trademark dilution, false designation of origin, and unfair competition under state and federal laws. All of those causes of action entitle our client to the recovery of money damages and injunctive relief.

In addition, we also have information that representatives of your company are offering meat for sale via door-to-door sales, in radio advertisements, and via trucks parked in shopping malls, all at various locations in the central United States, and all of which make the representation that such meat is affiliated with "Omaha Steaks". As you can imagine, our client owns numerous federal trademark registrations for the mark OMAHA STEAKS. All such uses by your company and its representatives of OMAHA STEAKS constitutes trademark infringement, trademark dilution, false designation of origin, deceptive trade practices, and unfair competition under state and federal laws.

On behalf of Omaha Steaks, we demand an immediate written confirmation that you, Midwest Steak and its officers, agents and representatives immediately cease use of the infringing logos, the mark OMAHA STEAKS, and any other similar logos or trademarks. You are hereby expected to confirm to the undersigned within five (5) days of receipt of this email that such use has ceased, or our client will be advised to take all necessary actions to enforce its rights you personally, as well as Midwest Steak, and its officers, agents and representatives.

I look forward to hearing from you.

Denise C. Mazour
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street

1/13/16
EXHIBIT NO. 10
C. ROONEY

Omaha, Nebraska 68102
Phone (402) 341-3070
Direct (402) 633-1531
Fax (402) 952-1531
dmazour@mcgrathnorth.com
www.mcgrathnorth.com

Mazour, Denise

From:	Mazour, Denise
Sent:	Wednesday, May 16, 2012 4:00 PM
To:	'nkees@gklaw.com'
Subject:	Sendik's Management, Inc./Omaha Steaks International, Inc.
Attachments:	77613775[1].pdf; 77613768[1].pdf

Dear Mr. Kees:

This firm represents Omaha Steaks International, Inc. of Omaha, Nebraska. It has come to our attention that your client, Sendik's Management, Inc., has recently filed trademark applications (Serial Nos. 85585235, 85585247, and 85585228, respectively) with the United States Patent and Trademark Office for registration of the trademarks displayed below:

All of the foregoing applications seek registration of the trademarks for use on meat. The foregoing marks are also displayed on the website www.sendiksbeef.com. Our client is the owner of U.S. Trademark Registration Nos. 3,768,690 and 3,768,691 for the trademarks displayed below, which are registered for various goods and services, including meat:

Copies of the U.S. Trademark Registration Certificates for the same are attached to this email. As you can see, our client filed its applications on November 13, 2008 and has been using the marks of the cited registrations since March, 2009. Clearly, your client's marks and the goods for which registration are sought are highly similar to our client's marks and the goods for which the marks are registered. Such similarities are likely to cause confusion, mistake or deception in the marketplace as to the source of the goods offered under the marks. The use by your client of the foregoing marks on meat constitutes trademark infringement.

On behalf of Omaha Steaks International, Inc., we seek your client's assurance that it will immediately cease use of the foregoing trademarks, as well as any similar trademarks, and that it will file express abandonments with the USPTO for the above-referenced trademark applications. We hope to resolve this matter in an amicable manner and look forward to hearing from you.

Denise C. Mazour
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street

1/13/16
EXHIBIT NO. 11
C. ROONEY

OSI0015

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United States of America

United States Patent and Trademark Office

Reg. No. 3,768,691
Registered Mar. 30, 2010

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

Int. Cls.: 29, 30, and 35

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 3-31-2009; IN COMMERCE 3-31-2009.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2009; IN COMMERCE 3-31-2009.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102)

FIRST USE 3-3-2009; IN COMMERCE 3-3-2009.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159, AND OTHERS.

THE COLOR(S) BURGUNDY AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SEC. 2(F) AS TO "OMAHA".

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "QUALITY" "STEAKS" AND "SINCE 1917", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "HEARTLAND QUALITY" IN BURGUNDY APPEARING WITHIN A WHITE CURVED RECTANGULAR BANNER, THE WORDS "OMAHA

David J. Kappos

Director of the United States Patent and Trademark Office

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

November 3, 2009

VIA FEDEX DELIVERY
Craig Jackson, President
Superior Gourmet Foods
7163 121ST Way North
Seminole, FL 33772

Re: Omaha Steaks International, Inc.

Dear Mr. Jackson:

This firm represents Omaha Steaks International, Inc. (hereinafter referred to as "Omaha Steaks") in regard to its trademark, copyright and other intellectual property matters. As you must know, Omaha Steaks is a very successful and widely known company that has been in business for decades and has customers all over the world. It is the owner of a number of U.S. Trademark Registrations for the mark OMAHA STEAKS. Enclosed are copies of U.S. Trademark Registration Certificates for just a few of the registrations for that trademark.

We have had reports that your representatives are engaged in door-to-door sales of food products and making false representations that the food offered for sale and sold by them originate from Omaha Steaks. Such representations are false and clearly infringe and dilute Omaha Steaks' trademark rights and constitute conduct that is actionable under state and federal statutes for damages and injunctive relief.

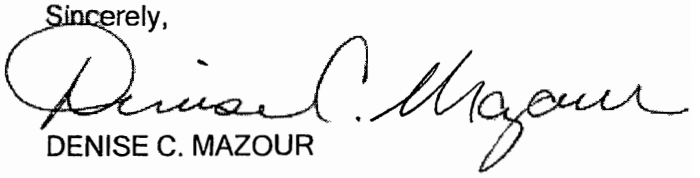
Omaha Steaks has a strong record of protecting its trademarks from appropriation by others. It does not hesitate to file suit in U.S. District Courts across the country against others who have appropriated its trademarks. In those suits, Omaha Steaks seeks damages and injunctive relief for trademark infringement, trademark dilution, false designation or origin under Section 43(a) of the Lanham Act, violation of the various state Deceptive Trade Practices Acts and unfair competition.

In short, Omaha Steaks has a history of successfully enforcing its rights against others who have infringed upon and seek to dilute its valuable trademark rights. It does not tolerate the use by others of its trademarks, including "OMAHA STEAKS", or any other similar marks, in the sale or advertising of food and food related products that are not its products.

1/13/16
EXHIBIT NO. 12
C. ROONEY

Therefore, Omaha Steaks demands that you and your agents, independent contractors, employees and representatives immediately cease any and all uses of its trademarks and that all of the foregoing parties conduct themselves in an ethical and honest manner. We expect you to confirm to the undersigned immediately upon receipt of this letter that you and your officers, independent contractors, agents, employees and representatives have done and will do so, or we will advise our client to take all necessary actions to enforce its rights against you.

Sincerely,



DENISE C. MAZOUR

cc: Todd Simon, Omaha Steaks International, Inc.

Encs.

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,140,390

United States Patent and Trademark Office

Registered Mar. 3, 1998

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL (NEBRASKA CORPORATION)
P. O. BOX 3300
OMAHA, NE 68103

FOR: BARBECUE SAUCE, MUSTARD, KETCHUP AND MEAT, FISH AND POULTRY SEASONINGS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

OWNER OF U.S. REG. NOS. 1,458,802, 1,674,686 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OMAHA", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-201,990, FILED 11-21-1996.

SAMUEL E. SHARPER JR., EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 1,515,602

United States Patent and Trademark Office

Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).
FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.
SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,674,686

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

October 17, 2012

VIA FEDERAL EXPRESS

Mr. Chris Maselka
Iowa Steak Company
1441 29th St., Suite 210
West Des Moines, IA 50266

Re: Omaha Steaks International, Inc.

Dear Mr. Maselka:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). It has come to our attention that one of your door-to-door sales representatives has, on at least one occasion in Omaha, Nebraska, made the representation that he was offering food for sale originating from Omaha Steaks. He was driving a truck bearing License Plate No. 645 ZWY, which is registered to Iowa Steak Company. Omaha Steaks is the owner of numerous U.S. trademark registrations for the trademark OMAHA STEAKS. Enclosed please find copies of U.S. Trademark Registration Certificates for the mark OMAHA STEAKS, all of which are owned by Omaha Steaks.

The use of the mark OMAHA STEAKS by your salesman in connection with the offering for sale of foods infringes Omaha Steaks' trademark rights. Your salesman's use of OMAHA STEAKS is likely to cause confusion, mistake or deception in the marketplace and constitutes conduct that is actionable under state and federal statutes for trademark infringement. In addition, such use also constitutes trademark dilution, false designation of origin, and unfair competition under state and federal laws. All of those causes of action entitle our client to the recovery of damages and injunctive relief.

On behalf of Omaha Steaks, we demand a written assurance that your company, its agents, representatives and sales representatives immediately cease use of OMAHA STEAKS and any other similar trademarks. Please confirm to the undersigned immediately upon receipt of this letter, in writing, that such activity has ceased and will not occur in the future, or our client will be advised to take all necessary actions to enforce its rights.

Sincerely,

Denise C. Mazour

DENISE C. MAZOUR

DCM:sd

cc: Todd Simon, Omaha Steaks International, Inc.
Encl.

1/13/16
EXHIBIT NO. 13
C. ROONEY

OSI0024

United States of America
United States Patent and Trademark Office

OMAHA STEAKS

Reg. No. 3,774,260

Registered Apr. 13, 2010

Int. Cls.: 29, 30 and 35

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS, TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "OMAHA".

SER. NO. 77-731,765, FILED 5-7-2009.

REBECCA SMITH, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,674,686

United States Patent and Trademark Office

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

EXHIBIT 1

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 1,515,602

United States Patent and Trademark Office

Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).
FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.
SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

McGrath | North
ATTORNEYS

Denise C. Mazour
P: 402.633.1531 | F: 402.952.1531
dmazour@mcgrathnorth.com

January 22, 2014

Music Station
Attn: Owner
1420 W 1st Street
Cedar Falls, IA 50613

Re: Omaha Steaks International, Inc.

Dear Sir or Madam:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks") with respect to trademark, copyright, and other intellectual property matters. Omaha Steaks is a successful and widely known company that has been in international and interstate commerce for decades in connection with the sale and advertisement of high quality foods.

It has recently come to our attention that you prominently display a sign at a store located at the address above that is a reproduction of our client's federally registered mark "PREMIUM HEARTLAND QUALITY OMAHA STEAKS SINCE 1917" and Design. I have enclosed a photo that shows how this mark is displayed at your store for your reference. Omaha Steaks is the owner of a number of U.S. Trademark Registrations for the mark OMAHA STEAKS, including U.S. Trademark Registration No. 2,840,193 for the mark "PREMIUM HEARTLAND QUALITY OMAHA STEAKS SINCE 1917" that you are currently using. A copy of Omaha Steaks' registration certificate is enclosed.

You may not have known this, but the use of Omaha Steaks' mark in this manner gives the false impression that the store is an authorized Omaha Steaks retail store, which it is not. Therefore, the display of the sign is conduct that is technically actionable under state and federal statutes for trademark infringement, trademark dilution, false designation of origin, and unfair competition under state and federal laws. All of these causes of action entitle Omaha Steaks to the recovery of damages and injunctive relief.

On behalf of Omaha Steaks, while our client is willing to give your company the benefit of the doubt that such use of Omaha Steaks' mark was an oversight, we would ask that the sign be removed from public display and that written assurance be provided to the undersigned within two (2) weeks that this action has been taken.

1/13/16
EXHIBIT NO. 14
C. ROONEY

OSI0029

If you have any questions whatsoever, please do not hesitate to contact me. We appreciate your anticipated cooperation.

Thank you.

Sincerely,

DENISE C. MAZOUR

cc: Todd Simon, Omaha Steaks International, Inc.
Enclosures

OSI0031

Int. Cls.: 29, 30 and 35

Prior U.S. Cls.: 46, 100, 101 and 102

Reg. No. 2,840,193

United States Patent and Trademark Office

Registered May 11, 2004

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: MEAT, HOT DOGS, HAMBURGER PATTIES, CORNED BEEF, HAM, LIVER, BACON, PORK, PROCESSED LAMB, TURKEY, ROAST BEEF, SOUPS, CHICKEN, FISH, PROCESSED POTATOES, FROZEN VEGETABLES, FISH DIP, AND FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY OR VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 1-1-1996; IN COMMERCE 1-1-1996.

FOR: BAKERY DESSERTS, FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE, STEAK SEASONING, BREAD, BUTTER SAUCE, HOLLANDAISE SAUCE, BEARNAISE SAUCE, PEPPERCORN SAUCE, BORDELAISE SAUCE, GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-1996; IN COMMERCE 1-1-1996.

FOR: ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-1996; IN COMMERCE 1-1-1996.

OWNER OF U.S. REG. NOS. 1,674,686, 2,140,390 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PREMIUM, QUALITY, OMAHA STEAKS, AND SINCE 1917". APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "OMAHA".

SER. NO. 78-207,792, FILED 1-28-2003.

ZHALEH DELANEY, EXAMINING ATTORNEY

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

July 29, 2013

VIA FEDERAL EXPRESS
Solomon Kleinsmith
3322 Burt St.
Omaha, NE 68131

Re: Omaha Steaks International, Inc.

Dear Mr. Kleinsmith:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). As you know, Omaha Steaks has been in business for decades and has a reputation for high quality food. In addition, it is the owner of numerous U.S. trademark registrations for the trademark OMAHA STEAKS, as well as the mark "Heartland Quality Omaha Steaks Since 1917" and Design ("Omaha Steaks Logo"). Enclosed please find copies of U.S. Trademark Registration Certificates for the mark OMAHA STEAKS and the Omaha Steaks Logo, all of which are owned by Omaha Steaks.

It has come to our attention that you that you recently registered the domain name <omahasteaksprime.com> ("the Domain Name"). Further, the website www.omahasteaksprime.com displays a logo that is virtually identical to the Omaha Steaks Logo, and displays numerous uses of OMAHA STEAKS and "Omaha Steaks & Prime Meats Company". All such uses are likely to cause confusion, mistake or deception in the marketplace and constitute conduct that is actionable under state and federal statutes for trademark infringement, trademark dilution, unfair competition, deceptive trade practices, and false designation of origin. All of those causes of action entitle our client to recovery of damages and injunctive relief.

On behalf of Omaha Steaks, we demand a written assurance that you, your company, and all of you and your company's agents and representatives will immediately cease use of: 1) the domain name <omahasteaksprime.com>; 2) OMAHA STEAKS; 3) Omaha Steaks & Prime Meats Company; and, 4) the logo appearing on the www.omahasteaksprime.com website, and any and all domain names or marks confusingly similar thereto. Please confirm to the undersigned immediately upon receipt of this letter, in writing or via email to dmazour@mcgrathnorth.com, that such activity has ceased and will not occur in the future. If we fail to receive such assurance within five (5) business days of receipt of this letter, our client will be advised to take all necessary actions to enforce its rights.

Sincerely,

DENISE C. MAZOUR

DCM:sd
cc: Todd Simon, Omaha Steaks International, Inc.
Encls.

1/13/16
EXHIBIT NO. 15
C. ROONEY

United States of America
United States Patent and Trademark Office

OMAHA STEAKS

Reg. No. 4,250,829

Registered Nov. 27, 2012

Int. Cls.: 35 and 43

SERVICE MARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FOOD KIOSK SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-18-2011; IN COMMERCE 6-18-2011.

FOR: FOOD PREPARATION SERVICES; PREPARATION OF FOOD AND BEVERAGES; PROVIDING OF FOOD AND DRINK; SERVING OF FOOD AND DRINK/BEVERAGES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 4-5-2011; IN COMMERCE 4-5-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F) AS TO "OMAHA".

OWNER OF U.S. REG. NOS. 2,840,193, 3,768,691, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SN 85-319,059, FILED 5-12-2011.

DANNEAN HETZEL, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,515,602
Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).
FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.
SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

Reg. No. 4,250,830

Registered Nov. 27, 2012

Int. Cls.: 35 and 43

SERVICE MARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FOOD KIOSK SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-18-2011; IN COMMERCE 6-18-2011.

FOR: FOOD PREPARATION SERVICES; PREPARATION OF FOOD AND BEVERAGES; PROVIDING OF FOOD AND DRINK; SERVING OF FOOD AND DRINK/BEVERAGES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 4-5-2011; IN COMMERCE 4-5-2011.

OWNER OF U.S. REG. NOS. 2,840,193, 3,768,691, AND OTHERS.

SEC. 2(F) AS TO "OMAHA".

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "QUALITY", "STEAKS" AND "SINCE 1917", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "HEARTLAND QUALITY" APPEARING WITHIN A CURVED RECTANGULAR BANNER, THE WORDS "OMAHA STEAKS" APPEARING THEREUNDER WITHIN A RECTANGULAR BOX HAVING A BORDER AND THE WORDS "SINCE 1917" APPEARING THEREUNDER WITHIN A SEMI-CIRCULAR DESIGN.

SN 85-319,082, FILED 5-12-2011.

DANNEAN HETZEL, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

Reg. No. 3,768,691
Registered Mar. 30, 2010

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

Int. Cls.: 29, 30, and 35

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 3-31-2009; IN COMMERCE 3-31-2009.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2009; IN COMMERCE 3-31-2009.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS, TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-3-2009; IN COMMERCE 3-3-2009.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159, AND OTHERS.

THE COLOR(S) BURGUNDY AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SEC. 2(F) AS TO "OMAHA".

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "QUALITY" "STEAKS" AND "SINCE 1917", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "HEARTLAND QUALITY" IN BURGUNDY APPEARING WITHIN A WHITE CURVED RECTANGULAR BANNER, THE WORDS "OMAHA

David J. Kappos

Director of the United States Patent and Trademark Office

From: (402) 633-1409
Stephanie De Bauche

1601 Dodge St.
Ste. 3700
Omaha, NE 68102

Origin ID: AIAA

FedEx Express

J1311302120326

Ship Date: 29JUL13
ActWgt: 1.0 LB
CAD: 102026535/INET3370

Delivery Address Bar Code

SHIP TO: (402) 577-0729
Solomon Kleinsmith

3322 Burt St.

Omaha, NE 68131

BILL SENDER

Ref #
Invoice #
PO #
Dept #

TUE - 30 JUL 3:00P
STANDARD OVERNIGHT

TRK# 7963 4296 9306
0201

77 AIAA

68131
NE-US
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518G1/AA04/93AB

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OSI0038

Mazour, Denise

From: Mazour, Denise
Sent: Tuesday, June 28, 2011 3:30 PM
To: 'abuse@dot.tk'
Subject: complaint of trademark infringement and domain name abuse by reviewomahasteaks.tk
Attachments: OMAHA STEAKS registration certificate 2.pdf; OMAHA STEAKS registration certificate 3.pdf; OMAHA STEAKS registration certificate 4.pdf; OMAHA STEAKS registration certificate.pdf

Importance: High

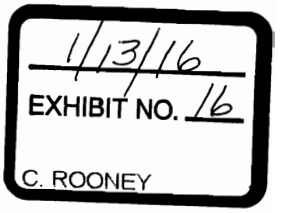
Dear Sir/Madame:

This firm represents Omaha Steaks International, Inc. of Omaha, Nebraska, U.S.A. (hereinafter "Omaha Steaks"). It is the owner of numerous U.S. Trademark Registrations for the trademark OMAHA STEAKS for use on various foods and food related services. Copies of some of its U.S. Trademark Registration Certificates are attached to this email. In addition, it is the owner of numerous trademark registrations throughout the world for the mark OMAHA STEAKS. The trademark OMAHA STEAKS has been in use for decades and qualifies as a famous trademark.

The owner of the domain name registered through your organization, namely, <reviewomahasteaks.tk> is committing trademark infringement and trademark dilution under federal and state statutes of Omaha Steaks' trademark rights by virtue of the fact that it is offering food products under the marks "Review Omaha Steaks" and "Omaha Steak" at that domain name address. In addition, the use and registration of the domain name address <reviewomahasteaks.tk> constitutes "cybersquatting" under Section 43(d) of the Lanham Act, 15 U.S.C. §1125(d). The domain name was clearly registered and is being used with a bad faith intent to trade on the good will associated with our client's trademarks rights.

You are therefore requested to either transfer ownership of the domain name <reviewomahasteaks.tk> to Omaha Steaks, shut down access to it or to cancel its registration. Please let me know if you have any questions or need any further information. Thank you.

Denise C. Mazour
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, Nebraska 68102
Phone (402) 341-3070
Direct (402) 633-1531
Fax (402) 952-1531
Cell (402) 681-1425
dmazour@mcgrathnorth.com
www.mcgrathnorth.com



OSI0039

MAZOUR LAW, PC, LLO

P. O. Box 541154
Omaha, NE 68154

Denise C. Mazour, Esq.

(402) 884-5221
mazour@mazourlaw.com

February 26, 2008

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. John Norman
2905 Stearns Road
Valrico, FL 33594

Re: OMAHA STEAKS INTERNATIONAL, INC.

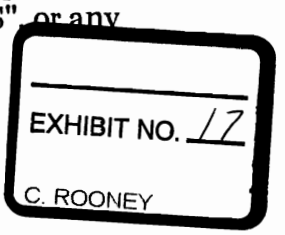
Dear Mr. Norman:

This firm represents Omaha Steaks International, Inc. (hereinafter referred to as "Omaha Steaks") in regard to its trademark, copyright and other intellectual property matters. As you must know, Omaha Steaks is a very successful and widely known company that has been in business for decades and has customers all over the world. It is the owner of a number of U.S. Trademark Registrations for the mark OMAHA STEAKS. Enclosed are copies of U.S. Trademark Registration Certificates for just a few of the registrations for that trademark.

It has come to our attention that you are engaging in door-to-door sales of meat products in the Zephyrhills, Florida area and, in a blatant disregard for Omaha Steaks' trademark rights, making the false representation that the products offered for sale originate from Omaha Steaks. The use of Omaha Steaks' trademark is a clear infringement and dilution of Omaha Steaks' trademark rights and constitutes conduct that is actionable under state and federal statutes for damages and injunctive relief.

Omaha Steaks has a strong record of protecting its trademarks from appropriation by others. It does not hesitate to file suit in U.S. District Courts across the country against others who have appropriated its trademarks. In those suits, Omaha Steaks seeks damages and injunctive relief for trademark infringement, trademark dilution, false designation of origin under Section 43(a) of the Lanham Act, violation of the various state Deceptive Trade Practices Acts and unfair competition.

In short, Omaha Steaks has a history of successfully enforcing its rights against others who have infringed upon and seek to dilute its valuable trademark rights. It does not tolerate the use by others of its trademarks, including "OMAHA STEAKS", or any



other similar marks, in the sale or advertising of food and food related products that are not its products.

Therefore, Omaha Steaks demands that you immediately cease any and all uses of its trademarks. We expect you to confirm to the undersigned within five (5) days of receipt of this letter that you have done so, or we will advise our client to take all necessary actions to enforce its rights against you.

Sincerely yours,

DENISE C. MAZOUR

cc: Omaha Steaks International, Inc.
Enclosures

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,140,390

United States Patent and Trademark Office

Registered Mar. 3, 1998

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL (NEBRASKA CORPORATION)
P. O. BOX 3300
OMAHA, NE 68103

FOR: BARBECUE SAUCE, MUSTARD, KETCHUP AND MEAT, FISH AND POULTRY SEASONINGS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

OWNER OF U.S. REG. NOS. 1,458,802, 1,674,686 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OMAHA", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-201,990, FILED 11-21-1996.

SAMUEL E. SHARPER JR., EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,515,602
Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,674,686

United States Patent and Trademark Office

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

April 24, 2013

VIA FEDERAL EXPRESS

Mr. James Nations
President
Steakhouse, Inc.
1232 Hugh Wallis Road South
Lafayette, LA 70508

Re: Omaha Steaks International, Inc.

Dear Mr. Nations:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). It has come to our attention that one of your door-to-door sales representatives named "Paul" has, on at least one occasion in Lincoln City, Oregon, made the representation that he was offering food for sale originating from "Omaha Steak Company". He was driving a truck bearing a Washington state license plate. Omaha Steaks is the owner of numerous U.S. trademark registrations for the trademark OMAHA STEAKS. Enclosed please find copies of U.S. Trademark Registration Certificates for the mark OMAHA STEAKS, all of which are owned by Omaha Steaks.

The use of the mark OMAHA STEAK COMPANY by your salesman in connection with the offering for sale of foods infringes Omaha Steaks' trademark rights. Your salesman's use of OMAHA STEAKS is likely to cause confusion, mistake or deception in the marketplace and constitutes conduct that is actionable under state and federal statutes for trademark infringement. In addition, such use also constitutes trademark dilution, false designation of origin, and unfair competition under state and federal laws. All of those causes of action entitle our client to the recovery of damages and injunctive relief.

On behalf of Omaha Steaks, we demand a written assurance that your company, and all of its agents, representatives and sales representatives immediately cease use of OMAHA STEAKS and any other similar trademarks. Please confirm to the undersigned immediately upon receipt of this letter, in writing, that such activity has ceased and will not occur in the future, or our client will be advised to take all necessary actions to enforce its rights.

Sincerely,

DENISE C. MAZOUR

DCM:sd
cc: Todd Simon, Omaha Steaks International, Inc.
Encls.

OSI0053

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

January 9, 2012

VIA FEDERAL EXPRESS

Mr. Luis Rivera
20 Danada Square West,
Wheaton, IL 60189.

Re: Omaha Steaks International, Inc.

Dear Mr. Rivera:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). It has come to our attention that you are the registrant of the domain name <omahasteaksgiftcard.info>. The use and registration of that domain name infringes the trademark rights of Omaha Steaks. Attached please find copies of U.S. Trademark Registration Certificates for the trademark OMAHA STEAKS, all of which are owned by Omaha Steaks.

In addition to the use and registration of a domain name that infringes our client's trademark rights, the content displayed at that domain name address also infringes the trademark rights of Omaha Steaks. The web page at that domain name displays not only the wording OMAHA STEAKS, but also displays a clear reproduction of a logo that is owned by Omaha Steaks and which is also federally registered with the United States Patent and Trademark Office. A copy of a U.S. Trademark Registration Certificate for the logo is also attached to this email. The use of OMAHA STEAKS and its logos constitutes conduct that is actionable under state and federal statutes for trademark infringement, trademark dilution, false designation of origin, and unfair competition. All of those causes of action entitle our client to the recovery of damages and injunctive relief. Further, it is clear that the domain name was registered and is being used in bad faith, which entitles our client to transfer of the domain name registration.

The aforementioned website also displays a photograph which is clearly a copy of a photograph in which Omaha Steaks owns the copyright rights. Such copying and reproduction constitute violations of the U.S. Copyright Act. One who infringes a copyright owner's rights is subject to suit in federal court for copyright infringement. 17 U.S.C. § 501. The remedies available to Omaha Steaks in a suit for copyright infringement include the following:

1. Temporary and final injunctions to prevent or restrain infringement of a copyright;
2. Impoundment and/or destruction of all copies claimed to have been used or used in violation of a copyright owner's exclusive rights;
3. The damages suffered by the copyright owner;
4. The infringer's profits;
5. Statutory damages;
6. Attorney fees; and
7. Costs.

17 U.S.C. § 502-505.

1/13/16
EXHIBIT NO. 18
C. ROONEY

On behalf of Omaha Steaks, demand is made that you and your agents and representatives immediately discontinue any and all uses and displays of Omaha Steaks photographs, trademarks and logos, including the immediate removal of the aforementioned infringing photograph, logo and the trademark OMAHA STEAKS from any and all websites, and that you confirm that there will be no further reproduction, or use in any manner, of any Omaha Steaks photographs, trademarks and logos. Again, I expect you to confirm to the undersigned that you have done so, or we will advise our client to take all necessary actions to enforce its rights against you.

Thank you for your anticipated immediate cooperation.

Sincerely,

DENISE C. MAZOUR

DCM:sd

cc: Todd Simon, Omaha Steaks International, Inc.
Encl.

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,674,686

United States Patent and Trademark Office

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

OMAHA STEAKS

Reg. No. 3,774,260

Registered Apr. 13, 2010

Int. Cls.: 29, 30 and 35

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS, TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "OMAHA".

SER. NO. 77-731,765, FILED 5-7-2009.

REBECCA SMITH, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

Reg. No. 3,768,691
Registered Mar. 30, 2010

Int. Cls.: 29, 30, and 35

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 3-31-2009; IN COMMERCE 3-31-2009.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2009; IN COMMERCE 3-31-2009.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS, TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-3-2009; IN COMMERCE 3-3-2009.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159, AND OTHERS.

THE COLOR(S) BURGUNDY AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SEC. 2(F) AS TO "OMAHA".

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "QUALITY" "STEAKS" AND "SINCE 1917", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "HEARTLAND QUALITY" IN BURGUNDY APPEARING WITHIN A WHITE CURVED RECTANGULAR BANNER, THE WORDS "OMAHA

David J. Kappos

Director of the United States Patent and Trademark Office

Reg. No. 3,768,691 STEAKS" IN WHITE APPEARING THEREUNDER WITHIN A BURGUNDY RECTANGULAR BOX HAVING A WHITE AND BURGUNDY BORDER AND THE WORDS "SINCE 1917" IN WHITE APPEARING THEREUNDER WITHIN A BURGUNDY SEMI-CIRCULAR DESIGN WITH A WHITE LINE APPEARING WITHIN AND AT THE BOTTOM OF THE SEMI-CIRCLE.

SN 77-613,775, FILED 11-13-2008.

NAKIA HENRY, EXAMINING ATTORNEY

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MÁZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

April 24, 2013

VIA FEDERAL EXPRESS

Mr. James Nations
President
Steakhouse, Inc.
318 Bellevue Plantation Road
Lafayette, LA 70503

Re: Omaha Steaks International, Inc.

Dear Mr. Nations:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). It has come to our attention that one of your door-to-door sales representatives named "Paul" has, on at least one occasion in Lincoln City, Oregon, made the representation that he was offering food for sale originating from "Omaha Steak Company". He was driving a truck bearing a Washington state license plate. Omaha Steaks is the owner of numerous U.S. trademark registrations for the trademark OMAHA STEAKS. Enclosed please find copies of U.S. Trademark Registration Certificates for the mark OMAHA STEAKS, all of which are owned by Omaha Steaks.

The use of the mark OMAHA STEAK COMPANY by your salesman in connection with the offering for sale of foods infringes Omaha Steaks' trademark rights. Your salesman's use of OMAHA STEAKS is likely to cause confusion, mistake or deception in the marketplace and constitutes conduct that is actionable under state and federal statutes for trademark infringement. In addition, such use also constitutes trademark dilution, false designation of origin, and unfair competition under state and federal laws. All of those causes of action entitle our client to the recovery of damages and injunctive relief.

On behalf of Omaha Steaks, we demand a written assurance that your company, and all of its agents, representatives and sales representatives immediately cease use of OMAHA STEAKS and any other similar trademarks. Please confirm to the undersigned immediately upon receipt of this letter, in writing, that such activity has ceased and will not occur in the future, or our client will be advised to take all necessary actions to enforce its rights.

Sincerely,

DENISE C. MAZOUR

1/13/16
EXHIBIT NO. 19
C. ROONEY

DCM:sd
cc: Todd Simon, Omaha Steaks International, Inc.
Encls.

OSI0054

United States of America
United States Patent and Trademark Office

OMAHA STEAKS

Reg. No. 3,774,260

Registered Apr. 13, 2010

Int. Cls.: 29, 30 and 35

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS, TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "OMAHA".

SER. NO. 77-731,765, FILED 5-7-2009.

REBECCA SMITH, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,674,686

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,515,602

Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

Mazour, Denise

From: Mazour, Denise
Sent: Thursday, September 17, 2009 2:30 PM
To: Lavandis Vaught (lavandisvaught@yahoo.com)
Subject: www.omahasteak.net
Importance: High
Sensitivity: Confidential
Attachments: Omaha Steaks reg cert 1.pdf; Omaha Steaks reg cert 2.pdf; Omaha Steaks reg cert 3.pdf

Dear Mr. Vaught,

The undersigned represents Omaha Steaks International, Inc. (hereinafter "OSI"). It is the owner of several U.S. Trademark Registrations for the trademark OMAHA STEAKS, including U.S. Trademark Registration Nos. 1458802, 1515602 and 1674686. Copies of those registrations are attached. It has come to our attention that your company, Vaught Vision Unlimited, is the registrant of the domain name omahasteak.net, and that you are the administrative and technical contact for that domain name.

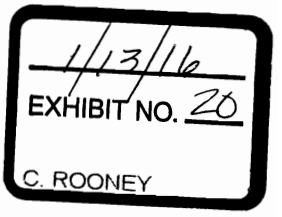
Such use of a domain name that is nearly identical to our client's registered trademark gives rise to liability under federal and state statutes for trademark infringement, trademark dilution and unfair competition entitling our client to the recovery of damages and injunctive relief, and constitutes "cybersquatting" under the federal statute know as the Anticybersquatting Consumer Protection Act. Your registration and use of a domain name that is identical or confusing similar to OSI's trademarks gives rise to liability in a federal civil action in which the court may order the forfeiture, cancellation or transfer of the domain name to OSI. *15 U.S.C. §1125(d)(1)(B)(i).*

In addition, pursuant to the Uniform Domain Name Dispute Resolution Policy adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), your conduct in registering and using the domain name omahasteak.net would entitle our client to cancel, transfer or otherwise change that domain name address. *UDRP Rule 4.b.*

OSI has a history of successfully enforcing its rights against others who have infringed upon and seek to dilute its valuable trademark rights. It does not tolerate the use by others of its trademarks, including "OMAHA STEAKS", or any other similar marks. Therefore, OSI demands that you and your agents, employees and representatives immediately cease any and all uses of its trademarks. We expect you to confirm to the undersigned immediately upon receipt of this email that you and your officers, agents, employees and representatives have done so, or we will advise our client to take all necessary actions to enforce its rights against you. We also expect you to transfer ownership of the domain name to OSI.

I look forward to hearing from you.

Denise C. Mazour
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, Nebraska 68102
Phone (402) 341-3070
Direct (402) 633-1531
Fax (402) 952-1531
Cell (402) 681-1425
dmazour@mcgrathnorth.com
www.mcgrathnorth.com



Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

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FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

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SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,515,602

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TRADEMARK
PRINCIPAL REGISTER

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FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,674,686

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

January 28, 2009

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
Mr. Mike Schmidt
Steak House Steaks Eastern Region LLC
d/b/a Steakhouse Steaks
880 Candia Road, Suite 10
Manchester, NH 03109

Re: Omaha Steaks International, Inc.

Dear Mr. Schmidt:

This firm represents Omaha Steaks International, Inc. (hereinafter referred to as "Omaha Steaks") in regard to its trademark, copyright and other intellectual property matters. As you must know, Omaha Steaks is a very successful and widely known company that has been in business for decades and has customers all over the world. It is the owner of a number of U.S. Trademark Registrations for the mark OMAHA STEAKS. Enclosed are copies of U.S. Trademark Registration Certificates for just a few of the registrations for that trademark.

It has come to our attention that Steakhouse Steaks, represented by a man named "Bill" is engaging in door-to-door sales of meat products in the Needham, Massachusetts area and, in a blatant disregard for Omaha Steaks' trademark rights, making the false representation that the products offered for sale originate from Omaha Steaks. The use of Omaha Steaks' trademark is a clear infringement and dilution of Omaha Steaks' trademark rights and constitutes conduct that is actionable under state and federal statutes for damages and injunctive relief.

Omaha Steaks has a strong record of protecting its trademarks from appropriation by others. It does not hesitate to file suit in U.S. District Courts across the country against others who have appropriated its trademarks. In those suits, Omaha Steaks seeks damages and injunctive relief for trademark infringement, trademark dilution, false designation or origin under Section 43(a) of the Lanham Act, violation of the various state Deceptive Trade Practices Acts and unfair competition.

In short, Omaha Steaks has a history of successfully enforcing its rights against others who have infringed upon and seek to dilute its valuable trademark rights. It does not tolerate the use by other of its trademarks, including "OMAHA STEAKS", or any other similar marks, in the sale or advertising of food and food related products that are not its products.

1/13/16
EXHIBIT NO. 21
C. ROONEY

Therefore, Omaha Steaks demands that your company and its officers, agents, employees and representatives, including "Bill", immediately cease any and all uses of its trademarks. We expect you to confirm to the undersigned within five (5) days of receipt of this letter that Steakhouse Steaks and all of its officers, agents, employees and representatives have done so, or we will advise our client to take all necessary actions to enforce its rights against the foregoing parties.

Sincerely,

DENISE C. MAZOUR

cc: Omaha Steaks International, Inc.
Enclosures

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,140,390

United States Patent and Trademark Office

Registered Mar. 3, 1998

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL (NEBRASKA CORPORATION)
P. O. BOX 3300
OMAHA, NE 68103

FOR: BARBECUE SAUCE, MUSTARD, KETCHUP AND MEAT, FISH AND POULTRY SEASONINGS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

OWNER OF U.S. REG. NOS. 1,458,802, 1,674,686 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OMAHA", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-201,990, FILED 11-21-1996.

SAMUEL E. SHARPER JR., EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,515,602
Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).
FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.
SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,674,686
Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

Mazour, Denise

From: Mazour, Denise
Sent: Tuesday, January 03, 2012 3:30 PM
To: 'sales@omahameatsofyork.com'; 'rick_turco@yahoo.com'
Subject: Omaha Steaks International, Inc.
Attachments: Cease & Desist Notice - Ricky Turco.PDF

Importance: High

Dear Mr. Turco,

Please see the attached correspondence.

Denise C. Mazour
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, Nebraska 68102
Phone (402) 341-3070
Direct (402) 633-1531
Fax (402) 952-1531
dmazour@mcgrathnorth.com
www.mcgrathnorth.com

1/13/16
EXHIBIT NO. 22
C. ROONEY

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

January 3, 2012

VIA EMAIL ONLY TO sales@omahameatsofyork.com and rick_turco@yahoo.com

Mr. Ricky Turco
Omaha Meats a/k/a Omaha Meats of York
309 North Iowa Ave.
York, NE 68467

Re: Omaha Steaks International, Inc.

Dear Mr. Turco:

This firm represents Omaha Steaks International, Inc. ("Omaha Steaks"). It has come to our attention that you offer steak, chicken, seafood, pork and other "specialty meats" for sale online at www.omahameatsofyork.com in connection with the use of the following marks ("the infringing marks"):

1) OMAHA MEATS; and
2) OMAHA MEATS OF YORK

The use of the infringing marks in connection with the offering for sale of the above-described foods infringes Omaha Steaks' trademark rights, including its rights in U.S. Trademark Registration Nos. 1,458,802; 1,674,686; and 3,774,260. Copies of the registration certificates are attached for your information. Your use of the infringing marks is likely to cause confusion, mistake or deception in the marketplace and constitutes conduct that is actionable under state and federal statutes for trademark infringement. In addition, such use also constitutes trademark dilution, false designation of origin, and unfair competition under state and federal laws. All of those causes of action entitle our client to the recovery of damages and injunctive relief.

On behalf of Omaha Steaks, we demand a written assurance that you will immediately cease use of the infringing marks and any other similar logos or trademarks. Please confirm to the undersigned immediately upon receipt of this letter, in writing, that such action has been taken, or our client will be advised to take all necessary actions to enforce its rights.

Sincerely,

DENISE C. MAZOUR

DCM:sd

cc: Todd Simon, Omaha Steaks International, Inc.
Encl.

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

EXHIBIT 1

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,674,686

United States Patent and Trademark Office

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

OMAHA STEAKS

Reg. No. 3,774,260

Registered Apr. 13, 2010

Int. Cls.: 29, 30 and 35

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; FROZEN MEALS CONSISTING PRIMARILY OF MEAT, FISH, POULTRY, SEAFOOD OR VEGETABLES; MEAT; POULTRY; PORK; FRANKFURTERS; BRATWURST; HAMBURGERS; SAUSAGES; SOUPS; SEAFOOD; CRABS; SHRIMP; LOBSTERS; SALMON; VEAL; PROCESSED LAMB; FROZEN APPETIZERS CONSISTING PRIMARILY OF CHICKEN OR SEAFOOD; BEEF JERKY; PREPARED NUTS; OMELETS; MEATBALLS; DIPS; FROZEN VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

FOR: SAUCES; BAKERY DESSERTS; FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; SPRING ROLLS; FROZEN MEALS CONSISTING PRIMARILY OF PASTA OR RICE; RICE CAKES; SEASONINGS; MUSTARD; HORSERADISH; CAKES; CREAM PUFFS; COOKIES; COOKIE DOUGH; BREAKFAST BURRITOS; TARTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING FOOD AND FOOD RELATED ITEMS; MAIL ORDER CATALOG SERVICES FEATURING FOOD AND FOOD RELATED ITEMS, TELEPHONE SHOP-AT-HOME SERVICES IN THE FIELD OF FOOD AND FOOD RELATED ITEMS; RETAIL STORE SERVICES FEATURING FOOD AND FOOD-RELATED ITEMS , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-31-1968; IN COMMERCE 6-30-1976.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,674,686, 2,893,159 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "OMAHA".

SER. NO. 77-731,765, FILED 5-7-2009.

REBECCA SMITH, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Mazour, Denise

From: Microsoft Outlook
To: 'sales@omahameatsofyork.com'; 'rick_turco@yahoo.com'
Sent: Tuesday, January 03, 2012 3:31 PM
Subject: Relayed: Omaha Steaks International, Inc.

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

'sales@omahameatsofyork.com' (sales@omahameatsofyork.com) <mailto:sales@omahameatsofyork.com>

'rick_turco@yahoo.com' (rick_turco@yahoo.com) <mailto:rick_turco@yahoo.com>

Subject: Omaha Steaks International, Inc.

McGRATH NORTH

ATTORNEYS AT LAW

DENISE C. MAZOUR

Phone (402) 633-1531
Fax (402) 952-1531
E-mail dmazour@mcgrathnorth.com

July 31, 2009

VIA FEDEX DELIVERY
Anthony S. Carpenter
404 Toney Creek Road
Belton, SC 29627

Re: Omaha Steaks International, Inc.

Dear Mr. Carpenter:

This firm represents Omaha Steaks International, Inc. (hereinafter referred to as "Omaha Steaks") in regard to its trademark, copyright and other intellectual property matters. As you must know, Omaha Steaks is a very successful and widely known company that has been in business for decades and has customers all over the world. It is the owner of a number of U.S. Trademark Registrations for the mark OMAHA STEAKS. Enclosed are copies of U.S. Trademark Registration Certificates for just a few of the registrations for that trademark.

We have had numerous reports that you are engaged in door-to-door sales of food products in South Carolina and making false representations that the food offered for sale by Superior Meats is distributed by Omaha Steaks. In addition, price lists given to customers bear the mark "Omaha Steaks." Such representations and uses are false and clearly infringe and dilute Omaha Steaks' trademark rights and constitute conduct that is actionable under state and federal statutes for damages and injunctive relief.

Omaha Steaks has a strong record of protecting its trademarks from appropriation by others. It does not hesitate to file suit in U.S. District Courts across the country against others who have appropriated its trademarks. In those suits, Omaha Steaks seeks damages and injunctive relief for trademark infringement, trademark dilution, false designation or origin under Section 43(a) of the Lanham Act, violation of the various state Deceptive Trade Practices Acts and unfair competition.

In short, Omaha Steaks has a history of successfully enforcing its rights against others who have infringed upon and seek to dilute its valuable trademark rights. It does not tolerate the use by others of its trademarks, including "OMAHA STEAKS", or any other similar marks, in the sale or advertising of food and food related products that are not its products.

1/13/16
EXHIBIT NO. 23
C. ROONEY

Therefore, Omaha Steaks demands that you and your agents, employees and representatives immediately cease any and all uses of its trademarks. We expect you to confirm to the undersigned immediately upon receipt of this letter that you and your officers, agents, employees and representatives have done so, or we will advise our client to take all necessary actions to enforce its rights against you.

Sincerely,

DENISE C. MAZOUR

cc: Todd Simon, Omaha Steaks International, Inc.

Encs.

Int. Cl.: 42

Prior U.S. Cl.: 101

Reg. No. 1,458,802

United States Patent and Trademark Office

Registered Sep. 22, 1987

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: RETAIL MAIL-ORDER AND RETAIL FOOD STORE SERVICES IN THE FIELD OF GOURMET FOOD PRODUCTS, KITCHEN APPAREL AND KITCHEN UTENSILS, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,346,851 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 616,747, FILED 8-25-1986.

ROGER KATZ, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,140,390

United States Patent and Trademark Office

Registered Mar. 3, 1998

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL (NEBRASKA CORPORATION)
P. O. BOX 3300
OMAHA, NE 68103

FOR: BARBECUE SAUCE, MUSTARD, KETCHUP AND MEAT, FISH AND POULTRY SEASONINGS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-1-1996; IN COMMERCE 9-1-1996.

OWNER OF U.S. REG. NOS. 1,458,802, 1,674,686 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OMAHA", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-201,990, FILED 11-21-1996.

SAMUEL E. SHARPER JR., EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,515,602
Registered Dec. 6, 1988

TRADEMARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
4400 SO. 96TH STREET
OMAHA, NE 68127

FOR: MEAT SOLD TO HOTELS, RESTAURANTS AND INSTITUTIONS, IN CLASS 29 (U.S. CL. 46).
FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 1,471,522 AND OTHERS.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.
SEC. 2(F).

SER. NO. 697,700, FILED 11-27-1987.

LORI BOATRIGHT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,674,686

Registered Feb. 4, 1992

SERVICE MARK
PRINCIPAL REGISTER

OMAHA STEAKS

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
8420 WEST DODGE ROAD
SUITE 525
OMAHA, NE 68114

FOR: RETAIL FOOD STORE SERVICES, IN CLASS 42 (U.S. CL. 101).

FIRST USE 0-0-1968; IN COMMERCE 6-0-1976.

OWNER OF U.S. REG. NOS. 888,852, 2,262,273 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEAKS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 74-158,733, FILED 4-19-1991.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

McGRATH NORTH

ATTORNEYS AT LAW

TRACY L. DEUTMEYER

Phone (402) 341-3070
Fax (402) 952-6870
E-mail tdeutmeyer@mcgrathnorth.com

February 5, 2010

VIA FEDERAL EXPRESS

David Bingham
Sun Chase Foods Inc.
8421 Pasatiemp Drive
Nixa, MO 65714

Dear Mr. Bingham:

Our client has previously advised you to cease the offering, advertising and sale of meat products under the trademark OMAHA STEAKS in the State of Missouri. It has now come to our attention that you have not ceased such activity, but are also now offering and advertising the sale of meat products under the trademark OMAHA STEAKS in Chattanooga, Tennessee, which has resulted in confusion in the marketplace. Such willful disregard of the intellectual property rights of our client after having been warned previously can only mean that your actions are intentional. Therefore, unless you advise the undersigned within five (5) days of the receipt of this letter that you have ceased all use of the trademark OMAHA STEAKS, including ceasing use in any and all radio advertisements, pamphlets, business cards, etc., you can expect further action on the part of my client.

Sincerely,

DENISE C. MAZOUR

DCM:deb

cc: Kent Knoll

EXHIBIT NO. 24
C. ROONEY

OSI0081

STINSON
MORRISON
HECKER
LLP

Mark J. Peterson
1299 Farnam Street, Suite 1500
Omaha, NE 68102-1818
402.930.1764 DIRECT
402.829.8741 DIRECT FAX
MPeterson@stinson.com

December 11, 2013

VIA E-MAIL TO JOE.PETSCHL@INTERBAYFOODS.COM AND REGULAR U.S. MAIL

Joseph Petschl, President
Interbay Food Company
19210 144th Ave NE
Woodinville, WA 98072

Re: Omaha Steaks

Dear Mr. Petschl:

I have had a chance to further review the descriptions your company uses on the Amazon Fresh website and your company website. In follow up to our telephone conversation late last week, I wanted to advise you as to our lingering concerns.

Your company's use of the term "Omaha" in combination with beef, steaks, or other meat causes confusion generally in the marketplace and especially on the Amazon Fresh website. As you know, my client has spent exceptionally large amounts of capital to market, develop, and maintain this important trademark and the use of the words Omaha Steaks.

With the above in mind, there are uses on the Amazon Fresh website which seem reasonable with respect to the marketing of your products. In the description lines where Interbay describes the product being sold as "Natural Angus" or any other type of meat being sold without the use of the term "Omaha" in the description, such use would seem reasonable. However, on the occasions where you continue to use the term "Omaha" in combination with "Natural Angus" or other types of meats, the confusion with my client's products and marks is very problematic.

I also understand from our conversation that you are obtaining some of your meat products from Greater Omaha Packing Company. I understand how you may wish to identify your affiliation with that entity. But, in doing so in combination with the sale of products using "Omaha," you must ~~utilize~~ the entire name of your partner "Greater Omaha Packing Company." That is, when you use the term "Omaha" to describe a product by identifying your supplier, you must identify that supplier by their full name, Greater Omaha Packing Company. They, like anyone else, are not entitled to use the word term "Omaha" to describe their product in combination with steaks, beef, or any other meat product as it is confusingly similar to the marks of my client.

1/13/16
EXHIBIT NO. 25
C. ROONEY

I realize that sales through Amazon Fresh are minimal, thus all the more reason to reach a resolution of this matter quickly. Consequently, I would ask you to make the amendments to the Amazon Fresh website and your company website immediately by removing the term "Omaha" when describing your products. Rather, simply use terms such as "Natural Angus" without the using the term "Omaha." If you do choose to use the term "Omaha" it must be in combination with the identification of your supplier, Greater Omaha Packing Co. Thanks for your attention to this matter and please call me if you wish to discuss further.

Sincerely,

STINSON MORRISON HECKER LLP

Mark J. Peterson

MJP:lad

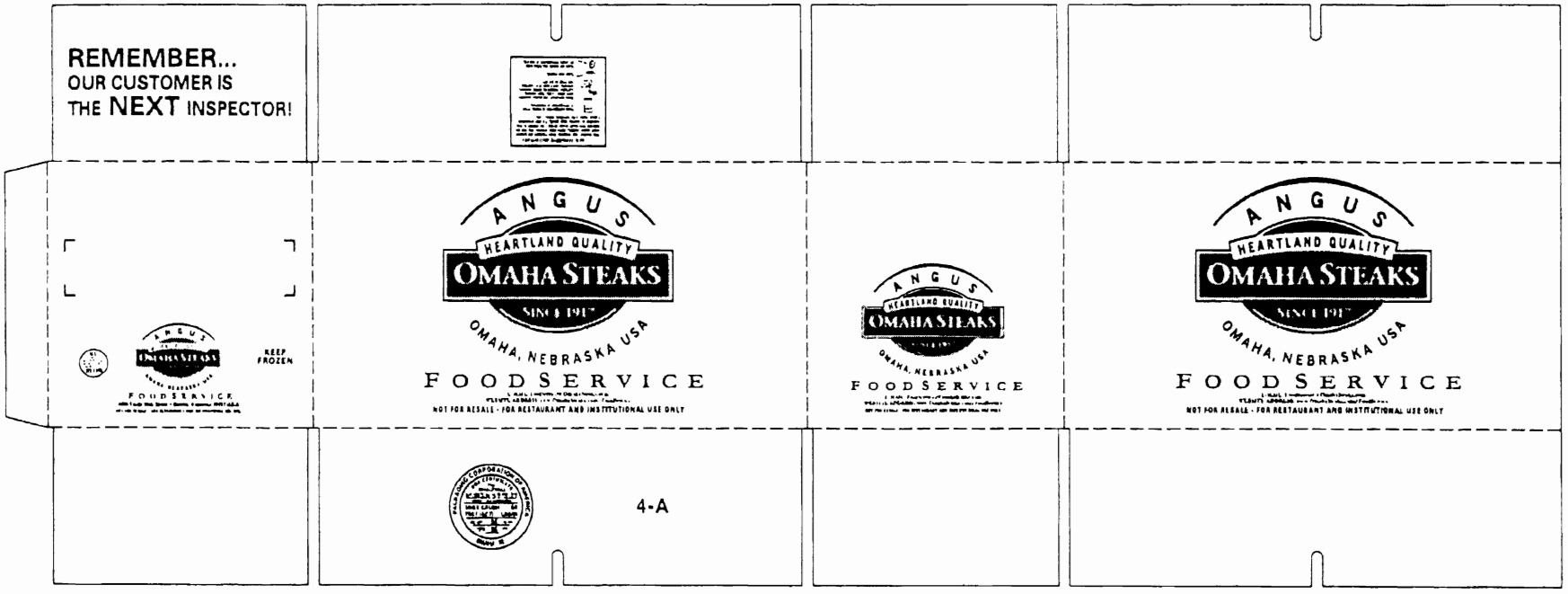
cc: Todd Simon
Shari Gouldsmith
Karen Shirk
Scott Meyerson

Brand Identification: OMAHA STEAKS
Item Code: 4A
Carton Size: 17 1/8 X 8 11/16 X 8 7/8
Carton Style: D/C-RSC
Board: 275# C

Outer Liner: KRAFT
Color: Angus Red
General Requirements:
Plant:
Location:

Packaging Specifications

Red



FOODSERVICE
4400 South 96th Street • Omaha, Nebraska 68127 U.S.A.
NOT FOR RESALE - FOR RESTAURANT AND INSTITUTIONAL USE ONLY

E-MAIL: FoodService@OmahaSteaks.com
WEBSITE ADDRESS: www.OmahaSteaks.com/FoodService

NOT FOR RESALE - FOR RESTAURANT AND INSTITUTIONAL USE ONLY

Matthews Packaging Graphics

10866 Indian Head Industrial Boulevard, St. Louis, MO 63132
tel 314-423-9800 • fax 314-423-7307
email: stlouisart@matw.com

Matthews BRAND SOLUTIONS

INK AND PAPER COLORS USED IN PRODUCING THIS SHEET ARE FOR INDICATION ONLY AND SHOULD NOT BE USED AS A COLOR GUIDE. USE SEPARATE INK SPECIFICATIONS. OUR LIABILITY WITH RESPECT TO DEFECTIVE PRODUCTS AND PRODUCTS WHICH FAIL TO MEET THE WRITTEN SPECIFICATION ACCEPTED BY US IS LIMITED AS SET FORTH ON OUR PACKING SLIP AND [illegible] WITH SHIPMENT OF PLATES.

1/13/16
EXHIBIT NO. 31
C. ROONEY

FEBRUARY 3, 2009 • 626994 NCO

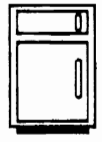
OSI0090

U.S.
INSPECTED
AND PASSED BY
DEPARTMENT OF
AGRICULTURE
EST.1198

4-A

Safe Handling Instructions

This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.



Keep refrigerated or frozen. Thaw in refrigerator or microwave.

Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry.

Cook thoroughly.

Keep hot foods hot. Refrigerate leftovers immediately or discard.

OSI0091

COLORS USED IN PRODUCING THIS SHEET ARE FOR INDICATION ONLY AND SHOULD NOT BE USED AS COLOR GUIDE. USE SEPARATE INK SPECIFICATIONS. OUR LIABILITY WITH RESPECT TO DEFECTIVE PRODUCTS AND PRODUCTS WHICH FAIL TO MEET THE WRITTEN SPECIFICATIONS ACCEPTED BY US IS LIMITED AS SET FORTH ON OUR CREDIT SLIP AND ENCLOSED WITH SHIPMENT OF PLATES.

Packaging Specifications

Brand Identification:
Item Code:
Carton Size:
Carton Style:
Board:
Outer Liner:
Color:
General Requirements:

Plant:

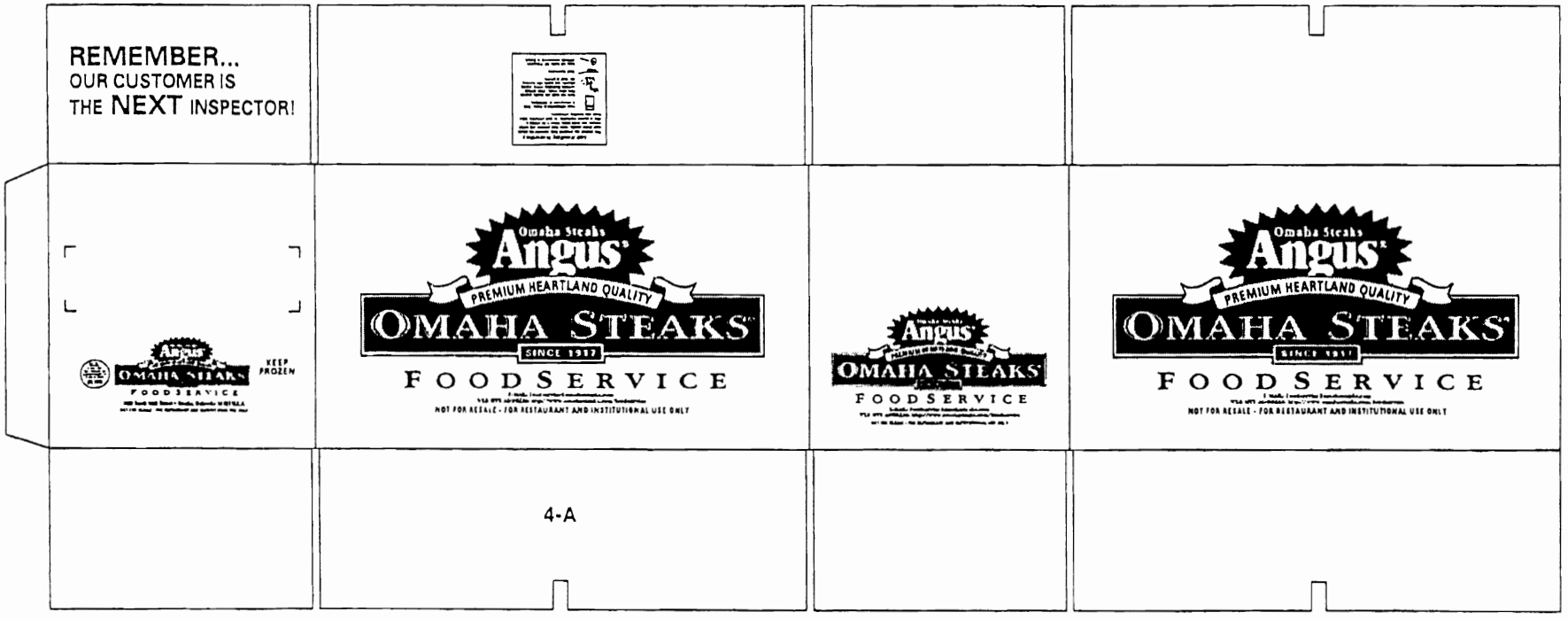
Location:

Matthews INTERNATIONAL CORPORATION
...a tradition of quality since 1850

Matthews International Corporation
Graphic Systems
10866 Indian Head Ind. Blvd.
St. Louis, MO 63132
(314) 423-9800

1-7-99

07-8709



U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST.1198

Omaha Steaks Angus PREMIUM HEARTLAND QUALITY OMAHA STEAKS SINCE 1917 FOOD SERVICE

4400 South 96th Street • Omaha, Nebraska 68127 U.S.A.

NOT FOR RESALE - FOR RESTAURANT AND INSTITUTIONAL USE ONLY

KEEP FROZEN

Safe Handling Instructions

This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is - dried or cooked improperly. for your protection, follow these safe handling procedures.

Keep refrigerated or frozen. Thaw in refrigerator or microwave.

Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry.

Cook thoroughly.

Keep hot foods hot. Refrigerate leftovers immediately or discard.

E-MAIL: Foodservice@omahasteaks.com
WEB SITE ADDRESS: http://www.omahasteaks.com/foodservice

NOT FOR RESALE - FOR RESTAURANT AND INSTITUTIONAL USE ONLY

OSI0093

1/13/16
EXHIBIT NO. 27
C. ROONEY

PREMIUM HEARTLAND QUALITY

OMAHA STEAKS®

SINCE 1917

FOODSERVICE

A Division of OS Salesco, Inc.

IS PROUD TO PRESENT...

Omaha Fresh

Omaha Fresh Angus

Now you can brand your meat counter with fresh Omaha St

Omaha Steaks FoodService

1/13/16
EXHIBIT NO. 28
C. ROONEY

Offer Omaha Steak
& Improve Your Bo

Up-scale consumers know Omaha Steaks®. In fact, we're the only nationally recognized brand reputation your customers will be thrilled when you choose to brand your meat case with Oma products and will take full advantage of the opportunity to purchase them from you... and that

Plus you can count on Omaha Steaks® to deliver:

- **A Great Yield**
- **Superior Consistency**
- **USDA Choice or Higher Product**
- **National and International Distributio**
- **Custom hand-trimmed cuts**
- **Grain-fed Midwestern Beef**
- **Two distinctive brands to choose from:**

Omaha Fresh by Omaha Steaks & Omaha Fresh Angus by Omaha Steaks

Plus, we back all of our products with our 100% Guarantee of Satisfaction.

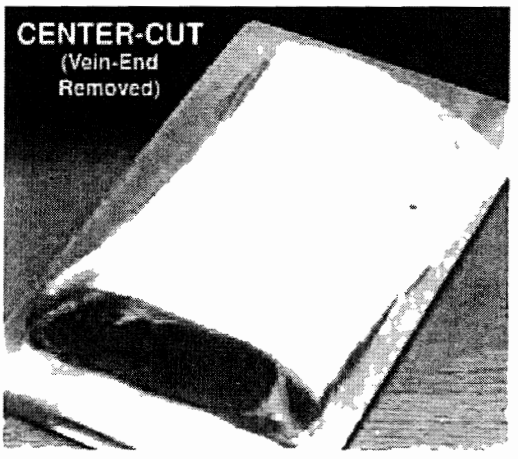
Selling Omaha Steaks Is Easy...

When you decide to brand your meat case with nationally renowned Omaha Steaks® we make it easy for you.

First, our Small Box Program makes it easy to buy product as you need it. So you won't need a lot of storage space or a large investment to get started.

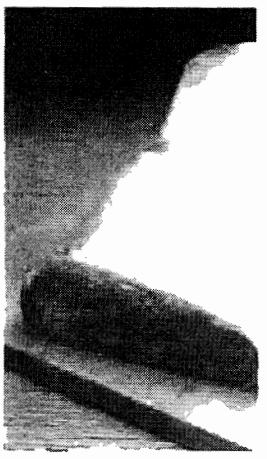
Second, with our years of consumer marketing experience, you'll find that our professionally designed merchandising support materials are created specifically to drive traffic into your store and help you complete the sale!

Finally, as a national brand, Omaha Steaks® commands a strong retail price, providing you with a high profit margin and quick inventory turns.



Boneless Strip

Finished Weight: 7 to 9 lbs.
Trimmed 1 inch from the eye. Fat cover ⅛ inch not to exceed ¼ inch at any one point. Product to be faced off. This product available with tendon of Nucci removed.



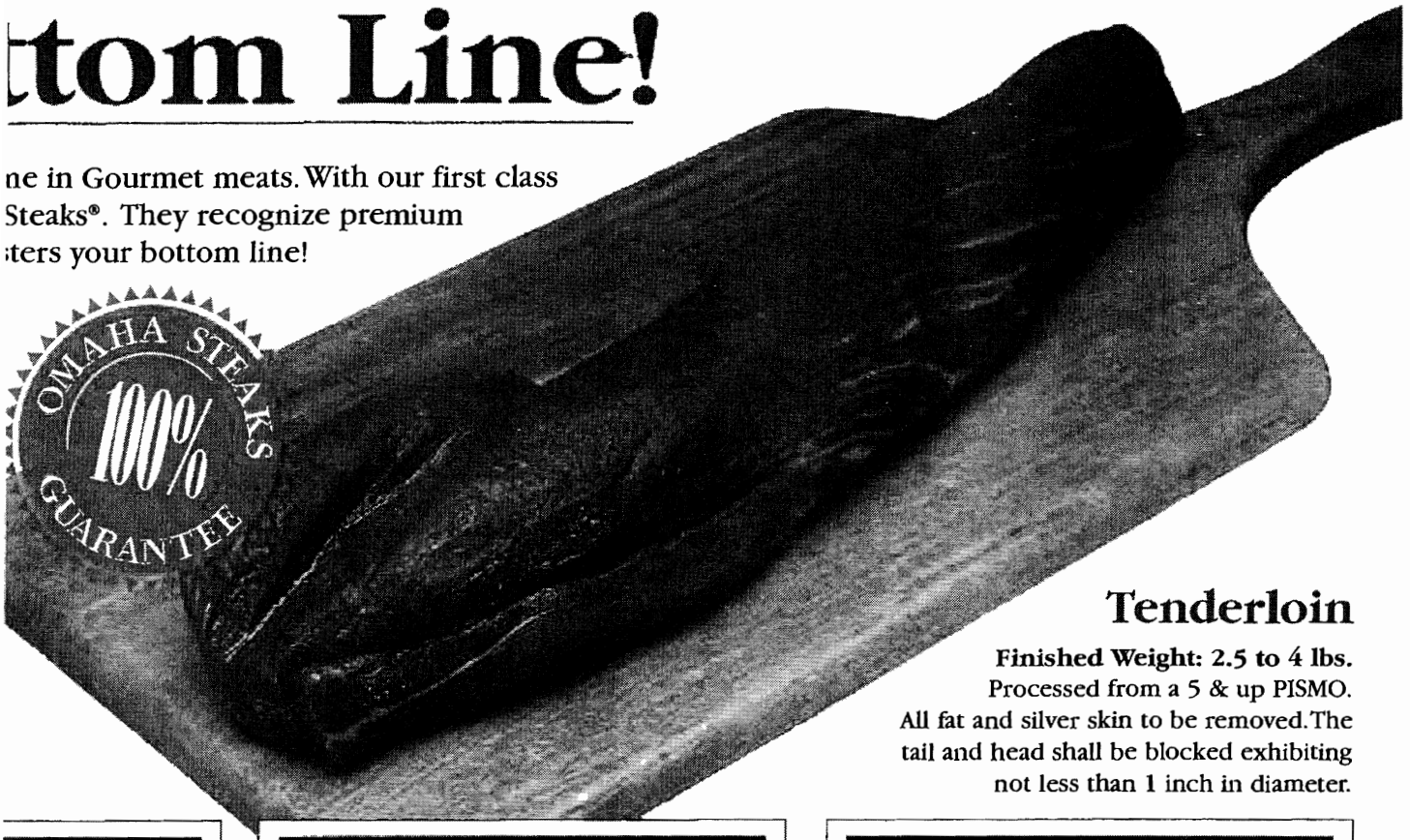
Bonele

Finished Weight: 10
Trimmed 1 inch from
⅛ inch not to exceed ¼
point. Product to be fa
available with ten

OSI0607

To Your Customers
ttom Line!

ne in Gourmet meats. With our first class
Steaks®. They recognize premium
sters your bottom line!

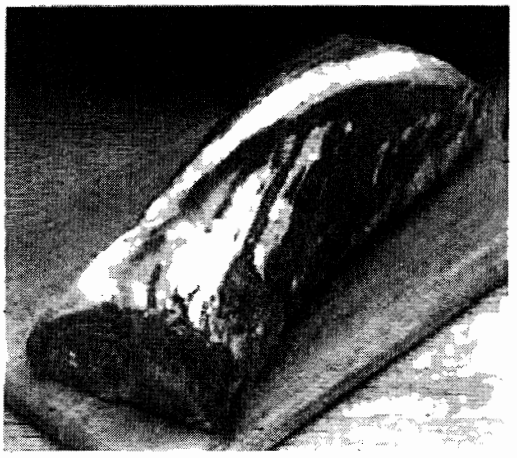


Tenderloin

Finished Weight: 2.5 to 4 lbs.
Processed from a 5 & up PISMO.
All fat and silver skin to be removed. The tail and head shall be blocked exhibiting not less than 1 inch in diameter.

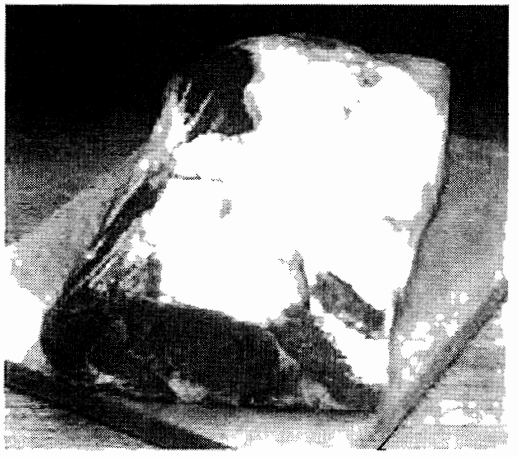
Strip

12 lbs.
eye. Fat cover
h at any one
off. This product
i removed.



Rib Eye - No Lip

Finished Weight: 8 to 10 lbs.
All excess cover fat removed. No lip.



Rib Eye - 2" Lip

Finished Weight: 10 to 12 lbs.
All excess cover fat removed. USDA tab on.
Maximum 2 inch lip.

OSI0608

Omaha Steaks® Delivers:

- The Best Name in the Industry.
- Great Yield & Superior Consistency.
- USDA Choice or Higher Product.
- Convenient Small Box Program.
- Grain-fed, Hand-trimmed Midwestern Beef.
- National and International Distribution.
- Plus two distinctive brands to choose from:
  Omaha Fresh by Omaha Steaks®
  Omaha Fresh Angus by Omaha Steaks®

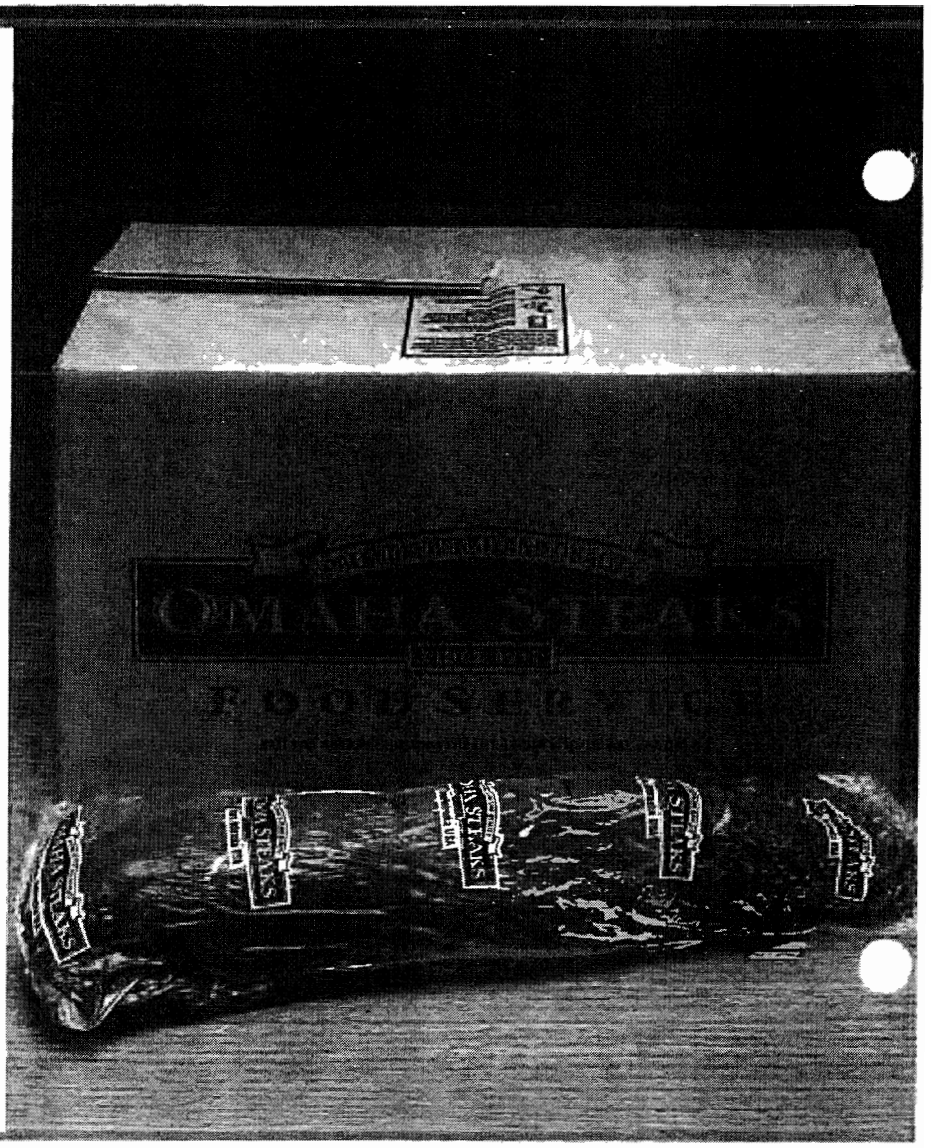
Our Programs Fit Your Needs:

Buy as you need means:

- Minimal investment.
- No storage issues.
- Quick inventory turns.

Professionally designed merchandising support helps:

- Drive traffic to your store.
- Complete sales.
- Boost profit margins.



PREMIUM HEARTLAND QUALITY
OMAHA STEAKS®
SINCE 1917
FOODSERVICE
Division of OS Salesco, Inc.

10909 John Galt Blvd.
Omaha, Nebraska 68137-2382

Phone (402) 597-8106
Fax: (402) 597-8222

E-mail Address:
Foodservice@omahasteaks.com

Web Site Address:
http://www.omahasteaks.com/foodservice

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98146 FS8016

OSI0609

DEPOSITION CORRECTIONS OF TODD SIMON

CASE: Omaha Steaks International, Inc. v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527 (Parent)

PAGE NO.	LINE NO.	CORRECTION	REASON FOR CORRECTION
7	9	"'90s" → "80s"	misspoke
22	2	"making" → "taking"	typo
22		"an insert" → "a freestanding insert"	clarification
49	4	"category" → "catalog"	typo
54	22	"conver" → "conversation"	clarification

SIGNATURE OF WITNESS

STATE OF NEBRASKA)
) ss
COUNTY OF Nebraska)

Subscribed and sworn to before me this 16th day of February, 2016.

GENERAL NOTARY - State of Nebraska
KAREN L. SHIRK
My Comm. Exp. December 28, 2016

GENERAL NOTARY PUBLIC

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

Omaha Steaks International, Inc., Opposer, v. Greater Omaha Packing Co., Inc., Applicant.	)	Opposition No. 91213527 (Parent)
	)	Cancellation No. 92059629
	)	Cancellation No. 92059455
	)	TAKEN ON BEHALF OF OPPOSER

APPEARANCES:

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Boston, MA 02110-4104

Mr. Mark Theisen
General Counsel
GREATER OMAHA PACKING CO
3001 L Street
P.O. Box 7566
Omaha, NE 68107

DEPOSITION OF TODD SIMON, taken at 1:10 p.m. on January 12, 2016, by Deanna L. Maley, RPR, CRR, and General Notary Public in and for the State of Nebraska, at 1299 Farnam Street, Suite 1500, Omaha, Nebraska.

ORIGINAL

E X H I B I T I N D E X

Ex. No.	Pg. Ref. No.	Description
1	7	Schedule of Marks
2	11	Opposer's Answers to Applicant's First Set of Interrogatories
3	36	Trade Show Information
4	65	Holiday Season: 2014/2015 Summary Report by Finn Partners
5	71	Father's Day: 2014/2015 Summary Report by Finn Partners
6	73	Finn Partners 2014 Annual PR Report for Omaha Steaks
7	78	Omaha Steaks Company Information
8	80	News Item Report
9	100	Photograph
GOP-1	105	Steer Head Logo Trademark
GOP-2	106	ONA Logo Trademark
GOP-3	108	Hereford Logo Trademark
GOP-5	133	Omaha Fresh by Omaha Steaks Trademark
GOP-6	134	Omaha Fresh Angus by Omaha Steaks Trademark

(There is no Exhibit GOP-4.)

TODD SIMON

Of lawful age, being first duly cautioned and solemnly sworn as hereinafter certified, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KANE:

Q. Good afternoon. Please state your name for the record.

A. Todd Simon.

Q. Todd Simon, where do you work?

A. Omaha Steaks.

Q. How long have you been with Omaha Steaks?

A. Since 1986. So I guess that's 31 years.

Q. How old were you in 1986?

A. How old was I? Twenty-two.

Q. Was that the first time that you worked for Omaha Steaks?

A. No. I worked there, you know, like every summer and every spare moment probably from the time I was about 10 or 12.

Q. What did you do when you were 10 or 12?

A. I made boxes in the -- for our

product and dropped them down a chute.

Q. Omaha Steaks is a family business?

A. That's correct.

Q. And your father is one of the co-founders; is that correct?

A. The company was started by my great-great-grandfather in 1917. And --

Q. What was his name?

A. He was B. A. Simon. And actually -- B. A. was my great-grandfather. He was J. J. Simon. It's hard to keep it straight.

Q. And your grandfather continued the business after your great-grandfather?

A. My grandfather, then my great -- or my great-great grandfather, then my great-grandfather, then my grandfather, then my father and his two brothers are the fourth generation in the family business, and my cousin and I are the fifth generation.

Q. You're the fifth. Right. So you grew up in Omaha?

A. That's correct.

Q. Went to high school here?

A. Yes.

Q. Did you go to college?

A. Yes.

Q. Where did you go?

A. The University of Pennsylvania in Philadelphia.

Q. What degree did you get?

A. I have a business degree. A bachelor of science in economics.

Q. Did you go on for any further degrees?

A. I did not.

Q. What did you do upon graduation?

A. Went to work for the family business.

Q. What was your entry-level position when you were 22?

A. My official title was research and development specialist. And what that meant was do every job in the company for 15 minutes for about two years.

Q. To learn the ropes, so to speak?

A. Correct.

Q. What did you move on to? Or did you -- I guess my question is, did you end up specializing in what you do for Omaha Steaks?

A. Yes.

Q. And what is that?

A. Marketing and sales and strategy.

Q. How long have you held that position?

A. So I became the sales manager of our -- I'm closing my eyes because I'm trying to remember. I'm trying to visualize the -- where I was and when. But I became the sales manager for our retail stores in the late '80s. And then I went on to become the general manager of our retail store business, and that's where I started to have a broader marketing and sales function. And then in, and then in 1995 I became head of all consumer sales and marketing.

Q. Is that your title today?

A. Today, I guess, I'm sort of -- I'm SVP of sales and marketing.

Q. Senior vice president?

A. Senior vice president of sales and marketing and our -- or I guess my title is just senior vice president. And the chief marketing officer and his whole organization reports up through me.

Q. Right. What, what was your father's name?

A. Fred Simon.

Q. Was Fred Simon in charge of

advertising and marketing before you? Not necessarily the title, but the duties.

A. Yes. There was an interim. He was, he was -- he basically built our consumer business and was in charge of everything relating to that.

Q. Fred did?

A. Fred did. Up until, oh, the -- probably the early '90s, then he hired a team of professionals to work with him, broaden the team. And then, and then one person, a woman named Vicki Hagen, became our like -- she became the general manager of our consumer direct business. And then she left the company to pursue full-time motherhood and I stepped into the role as head of consumer marketing, brought the retail store business with me.

Q. All right. What year was that?

A. 1995.

(Deposition Exhibit Number 1 was marked for identification.)

Q. I've handed you what's been marked for the record as Exhibit 1. And I'll tell you that this was filed in one of the proceedings in which we're here today as Exhibit A to our

petition to cancel one of Greater Omaha's marks. Do you recognize this document?

A. Yes.

Q. What is it?

A. This is a schedule of all of the different trademarks and intellectual property that we have registered.

Q. And who is responsible -- am I correct that it's Karen Shirk is responsible for maintaining records of your trademarks?

A. That is correct. She's the -- she handles the administrative roles around that, yes.

Q. And she is Bruce Simon's executive assistant --

A. Yes.

Q. -- correct?

MR. SAMUELS: I'm going to object to this exhibit on the ground of authenticity. So are you going to lay a foundation for it, or what? Until you do I'm going to object on the ground of authenticity.

Q. All right. Do you know who compiled this schedule of marks?

A. I believe Karen did in conjunction

with our trademark counsel.

Q. With Nancy Morris of my firm?

A. Yes, Nancy and probably Denise Mazour of -- wherever she is.

Q. McGrath.

A. McGrath.

Q. McGrath North.

A. McGrath North, yeah.

MR. SAMUELS: I'm going to object to his testimony on the ground he's speculating, unless he testifies that he has personal knowledge about who prepared this since he didn't.

MS. KANE: And I'm not offering it for more substantive purposes than just to show that Mr. Simon is familiar with Omaha Steaks' marks portfolio only to talk about the advertising that he's done in conjunction with them. I plan to introduce more substantive information by notice of reliance and through Mr. Bruce Simon tomorrow.

MR. SAMUELS: I'll maintain my objection until that happens.

MS. KANE: Okay. That's fine.

BY MS. KANE:

Q. But you generally recognize that Omaha Steaks is the owner of federally-registered trademarks bearing the name Omaha Steaks; is that correct?

A. Yes.

Q. And it's been your responsibility and duty for many years to direct the advertising and marketing relating to that mark?

A. Yes.

Q. You obviously have an advertising budget; is that correct?

A. Yes.

MR. SAMUELS: Ms. Kane, let me just ask you a question. You're obviously leading this witness. Maybe you're considering these preliminary questions. But you're just stating facts and having Mr. Simon say yes or no. So I'm going to object to your questions on the ground they're leading and object to the answers on the ground they're speculation because he's just answering what you've stated.

Q. Are you responsible for the sales, marketing, and advertising relating to the trademarks owned by Omaha Steaks?

A. Yes.

(Deposition Exhibit Number 2 was marked for identification.)

Q. I'm going to hand you what's been marked as Exhibit 2. And if you'll turn to answer 31, which unfortunately --

A. Page 10?

Q. There we go. Answer to interrogatory number 31 I'll represent to you was prepared by me and sworn to by you. Can you tell us in interrogatory number 31 if the answer to the annual domestic advertising budget is correct for the years shown?

MR. SAMUELS: Objection. Hold on, Mr. Simon. First of all, this document is not in evidence. This is a document that is a discovery response that was submitted by Omaha Steaks. I'm objecting to the submission of this as an exhibit.

I'm also objecting to all witness testimony about the exhibit on a number of grounds. The exhibit has not been properly authenticated as required by the Federal Rule of Evidence 901. The exhibit is certainly not a business record. There's been no foundation laid to show that the witness has personal knowledge

about the methodology or the detailed totals of the exhibit being shown to him, which is a requirement of Federal Rule of Evidence 602. There's no foundation laid to show that the witness created this exhibit or is a custodian of the underlying records as required by Federal Rule of Evidence 803(6). Therefore, the exhibit is hearsay, which is prohibited by the Federal Rule of Evidence.

The exhibit relates also to sales of all products by the plaintiff, Omaha Steaks International, Inc., and not solely to the sales of beef products, and, therefore, is an inadmissible under Federal Rule of Evidence 402 because it is not relevant to the issue of the strength of the Omaha Steaks trademark in connection with beef products.

The exhibit relates to all sales throughout the world by plaintiff, Omaha Steaks International, Inc., and not solely to the sales of beef products to customers in the United States --

MS. KANE: I'm not asking about sales.

MR. SAMUELS: Let me finish,

please -- and therefore is inadmissible. Let me go on, please. And therefore is inadmissible under Federal Rule of Evidence 402 because it's not relevant to the issue of the strength of Omaha Steaks' trademark in connection with the products in the United States.

The exhibit relates to all advertising of all products, for all products, by plaintiff, Omaha Steaks International, Inc., and not solely to advertising for beef products and, therefore, is not inadmissible -- and therefore is inadmissible under Federal Rule of Evidence 402 because it is not relevant to the issue of the strength of the Omaha Steaks trademark in connection with beef products.

And the exhibit relates to all advertising throughout the world by plaintiff, Omaha Steaks International, Inc., and not solely to advertising in the United States for beef products and, therefore, is inadmissible under a Federal Rule of Evidence 402 because it is not relevant to the issue of the strength of the Omaha Steaks trademark in the United States in connection with beef products.

And with regard to any answer that

Mr. Simon gives to the question, the question calls for speculation by a lay witness. Such speculation by lay witnesses is prohibited by Federal Rule of Evidence 701. The question calls for a hearsay answer because it would be based substantially on the out-of-court statements made by a declarant, such as a records custodian, who is available to be a witness but who has not been called to testify. All such hearsay is prohibited by Federal Rule of Evidence 802.

The witness who is a layman cannot testify about the specific amounts of advertising expenditures because there's been no foundation laid to show that the witness has personal knowledge about the accuracy of those specific amounts which is a requirement of Federal Rule of Evidence 602.

The question calls for information regarding all advertising of all products by plaintiff, Omaha Steaks, and not solely to advertising of beef products and, therefore, is inadmissible under Federal Rule of Evidence 402 because it is not relevant to the issue of the strength of the Omaha Steaks trademark in connection with beef products.

And the question calls for information regarding all advertising throughout the world by plaintiff, Omaha Steaks International, Inc., and not solely to advertising of beef products to customers in the United States and, therefore, is inadmissible under Federal Rule of Evidence 402 because it is not relevant to the issue of the strength of the Omaha Steaks trademark in connection with beef products to customers in the United States.

MS. KANE: Are you through?

MR. SAMUELS: I'm through.

BY MS. KANE:

Q. Mr. Simon, do you recall when I received these interrogatories and sent them to you for your assistance in preparing the answers?

A. Yes.

Q. Interrogatory number 31 asks "Specify the approximate annual domestic advertising expenditure amounts for OMAHA STEAKS beef products during 2011, 2012 and 2013."

How did you ascertain the answer to interrogatory number 31?

A. I consulted our budgets and our financials. I have been involved with the

preparation of those budgets and financials and with the expenditures related to them for many years.

Q. And are you responsible for compilation of those documents?

A. I'm part of a team that would do that. And I believe that these were verified by our CFO.

Q. And that's David Hershiser?

A. David Hershiser.

Q. And were you satisfied after you reviewed the documents that were used to provide me with these answers that they were true and correct?

A. Yes.

Q. And do you believe that these numbers are accurate specifically as stated for the years 2011, 2012, and 2013?

A. Yes.

Q. And what are those numbers, please?

A. 45 million plus in 2011. 50 million plus in 2012. And in -- 50 million plus in 2013 and 2014 -- I'm sorry, 2012 and 2013.

Q. And do you agree that these numbers reflect strictly domestic advertising, i.e.,

within the 50 states of America?

A. Yes. We don't -- we do very little international advertising.

Q. And do you also agree that these amounts are limited to advertising for specifically beef products?

MR. SAMUELS: Let me state an objection. I'm not going to say about -- I'm not going to object to every leading question you ask, but almost every question you've asked since we've sat down is a leading question asking him to say yes or no which is an improper kind of question.

Q. Are these numbers reflective of any certain product sold by Omaha Steaks?

A. Yes. We're, we're a -- you know, our name is Omaha Steaks, and so we're always steak and beef forward in all of our marketing.

Q. Do you agree that -- well, let me ask it this way: During the process of answering this interrogatory were there any efforts made to be sure that the numbers provided me were related strictly to beef products as the question called for?

A. Yes. Yes. We -- you know, so we

have a, we have a broad product line, but we're always, you know -- Omaha Steaks is what we're always, what we're always advertising.

Q. Well, let's talk about some of that advertising why don't we. Why don't you start by telling us a little bit about your advertising program maybe in a broad sense and then we'll break it down in areas.

A. So Omaha Steaks is an omni-channel marketer of steaks and other protein items. We have -- we do that through catalog and direct mail. We do it through direct sales, through e-mail marketing, trade shows. We have 75, approximately, retail stores in 25 states -- 26 states. We have -- we do national television campaigns, national radio campaigns, national print campaigns in magazines, newspapers, and free-standing inserts. We do national and regional share direct mail and co-op direct mail. We have an active program to drive earned media through public relations, this would be, you know, appearances on television shows and, you know, newspaper, standard public relations stuff. Digital marketing is a big piece of our marketing these days, and that would include search

affiliates, I mentioned e-mail, vouchers, deal sites, ad network advertising, retargeting, social media. And then we've -- you know, I think -- well, that's, that's relatively complete.

Q. That's the broad overview. So let's break it down then to the direct mailing. To whom do you direct mail?

A. We have basically two components to our direct mail program, one is to our existing customers, of which we have a total of about 18 million on file, but there's a rotating group of probably around a maximum of about 2 million that we're marketing to in one form or another throughout, throughout the year. We send direct mail weekly to some subset of that group. And then we also have a direct mail prospecting program where we use targeted lists to prospect for new customers.

Q. Do you purchase lists from an agency?

A. We rent lists through a list brokerage firm.

Q. Which one do you use?

A. The last one I -- we may have switched vendors since I was managing the process

directly, but I think that it was -- we used to use Direct Media. And we -- I know that we were -- at the end of last year we were entertaining proposals for a new vendor.

Q. All right. And how about e-mail, to whom do you e-mail?

A. We e-mail our existing customers that we have permission to e-mail that have opted into our file. We also e-mail -- and that would be -- that's actually a broader and bigger group than our direct mail because it's -- you know, we can e-mail more often and less expensively. We --

Q. Approximately how many e-mails per year are sent?

A. We send an e-mail every day pretty much.

Q. How many?

A. What quantity of e-mails every day?

Q. Yes. Yes. I'm sorry.

A. I do not know the exact number, so I don't -- I can probably get it, but -- I'm thinking it's around a million.

Q. Is it like a blast e-mail where all the addresses are hidden from the recipient, is that why you said one a day?

A. No. I mean, we send an e-mail campaign to a million customers every day.

Q. All right.

A. Is that --

Q. Yeah, I understand. And do you -- does Omaha Steaks call customers?

A. Yes.

Q. Who -- how many do you call and who?

A. It's a subset. It represents about a third of our file. Again, these are customers that have opted, opted into our calling program or not opted out of our calling program. And I think it's about 300 -- 300- to 400,000 customers that we -- that are available for calling, you know, as part of our database. And how many calls or contacts per day I don't know, but it's a lot.

Q. Do you have a specific call center?

A. We have our own call center.

Q. How many employees approximately work there?

A. We have a 366-seat call center. But that would -- but there's obviously more than one employee per seat. And not all of those employees are making out calls. We have a

certain -- you know, probably half of them are making in calls as well.

Q. Taking orders?

A. Taking orders.

Q. You mentioned newspapers. Which newspapers have you -- "you" meaning Omaha Steaks -- placed advertisements for Omaha Steaks in? Can you list some of them for us?

A. *USA Today*, *Wall Street Journal*, *New York Times*, and then all of the local market papers that would represent our retail store markets. So I mean, you know, we have a store in Tampa, so we've probably placed an ad in the Tampa paper in the last couple years, you know, Omaha. And then we do national newspaper inserts that go to, you know -- they go in almost every single newspaper in the country.

Q. So if I were to pick up an *LA Times*, there may or may not be an Omaha Steaks insert in that paper?

A. If you picked up an *LA Times* in like the fourth quarter on a Sunday, there would almost certainly be a newspaper -- an insert that would have an Omaha Steaks offer in it.

Q. And that's true of other regional

newspapers --

A. Yeah.

Q. -- as well?

A. Yes.

Q. TV spots you mentioned. Explain what you meant by TV spots.

A. We have been for many years and we currently are running two different kinds of TV promotions, short -- both short form and long form. So short form are, like, 30-second and 60-second television ads that promote an Omaha Steaks special and ask the, and ask the viewer to go online, to our website, or call our 800 number to place an order.

Q. What markets are those TV spots placed in?

A. We use a national buying service that, you know, uses a very sophisticated algorithm to try to figure out, you know, where to put an ad, at what time, on what channel. So generally speaking it's -- it would be cable, you know, it'd be like the national cable channels, things like Fox News or CNBC. We actually -- we do pretty well on the news channels. And then -- but they also do -- they have a system that

allows them to figure out that they should be able to place an ad at, you know -- I'm giving this as an example, but, you know, at 3 o'clock in the morning in Cleveland or something, you know, on the local -- say the local NBC affiliate. So it's really -- you know, I would say the term that we use in the industry is run of station, you know, run of market, those are the kinds of buys that we're doing. We're optimizing for, for efficiency.

Q. Have you found that that company concentrates more on one area of the country than the other?

A. No. It's, it's pretty broad based.

Q. All 50 states?

A. I would -- yeah, I would imagine.

Q. And you also mentioned radio spots. Is that -- are those conducted by the same company that does your TV spots?

A. I don't know if it's the same vendor or a different vendor. There's somebody that specializes in these kinds of placements. What we've been doing is -- primarily is having talk radio hosts -- we basically sponsor their program and they talk about us on the interstitials. And

some of them, you know -- they're all nationally syndicated or certainly regionally syndicated radio shows.

Q. For example, someone like Rush Limbaugh, somebody that well known?

A. Yeah. He would be a little -- he would probably be a hot potato, so we wouldn't go for him in particular. But there are other, other people like that. I don't have the names off the top of my head.

Q. So how does that work? Does the talk radio host, the DJ himself, make statements praising Omaha Steaks?

A. Correct.

Q. So it's not an ad playing over, it's actually the DJ speaking?

A. Right. We don't have a -- in that particular case we haven't -- we didn't, like, produce a spot where -- it's more of a partnership with the host.

Q. So you pay a certain amount, and in exchange for that the DJ discusses your product?

A. Correct.

Q. Are there specific directions or requirements that they use the term "Omaha

Steaks", do you know?

A. Oh, absolutely. Yeah, they're -- that's the whole point.

Q. Okay. Do you have a presence on social media?

A. We do. We have -- I mean, our biggest social media is Facebook where we have a few hundred thousand, I think a little bit more than 300,000 followers. And then we also participate in Twitter, Instagram, Pinterest.

Could we take a break so I could get a glass of water?

Q. Yes.

(A short recess was taken.)

BY MS. KANE:

Q. Is someone with Omaha Steaks responsible for maintaining, for example, Facebook, updating posts, things like that?

A. Yeah. We have a social media team and a content team. It's not a very big team, it's probably like three people, but that's their -- they spend their time maintaining that.

Q. Is that what they do all day in their jobs?

A. We have one person who's full-time,

and then the -- I think reports to the content team, our copywriters, and they spend their time writing about our products.

Q. And posting on the -- for sites that you mentioned, Facebook, Twitter, Instagram, Pinterest?

A. (The witness nodded in the affirmative.)

Q. And are those --

COURT REPORTER: I'm sorry. Is that a yes?

A. Yes. I'm sorry. Yes.

Q. And are those regularly updated, the posts to these sites?

MR. SAMUELS: Let me just say I'm not going to keep saying leading, but virtually every question you've been asking is a leading question, just asking him to say yes or no, with a few exceptions.

Q. Do you know whether these social media sites are updated on a regular basis?

A. Yeah, they're updated several times a day.

Q. Thank you. Have you appeared on any television shows personally promoting Omaha

Steaks?

A. Yes. Would you like me to say which ones they were?

Q. I would. I would.

A. I have been personally on *Fox & Friends*.

Q. How many times?

A. I'm going to say in the last three years I've been on four times, maybe five.

Q. Is that a nationally broadcast show?

A. Yes.

Q. Okay. Go on, and for each show that you mention mention how many times you've been on.

A. I've been on *The View* once. I've been on, I've been on CNBC a few times. I've been on MSNBC. I've been on CNN. I was on *The Celebrity Apprentice*. I was on *Hell's Kitchen*.

Q. And when you say these you're not giving me how many times, so I'm assuming once?

A. Sorry. I'm sorry. I was on *Celebrity Apprentice* once.

Q. Was that with Mr. Trump?

A. That was with Mr. Trump. And I was on *Hell's Kitchen* once, that's with Gordon

Ramsay. I guess I'm -- I don't know what exact time period we're asking about. I mean, if we're asking like, you know, since the beginning of time.

Q. We are.

A. The, the reason I'm a little, you know -- you know, I'm just imagining how many times I was in the UNO satellite uplink talking, you know, on the screen, but, you know, I mean, that's -- you know, it's been at least half a dozen times and that would have been spread between, like, CNBC and MSNBC and CNN.

Q. Have you ever been on *The Oprah Winfrey Show*?

A. Omaha Steaks has been on *The Oprah Winfrey Show*. I personally have not.

Q. Who was -- who appeared on *The Oprah Winfrey Show*?

A. No personality appeared, but they've used our product on a couple different occasions for different events. There's a lot -- I mean, that would be a very --

Q. We'll move, we'll move to that.

A. Okay.

Q. Have you ever been on *The Ellen*

DeGeneres Show?

A. Omaha Steaks has been on *The Ellen DeGeneres Show*.

Q. All right. So have you listed, to the best of your recollection, the ones that you've personally appeared on?

A. Yes.

Q. Have you ever appeared on *Food Factory*?

A. Omaha Steaks appeared on -- they did a segment. You know, *Food Factory* I think they do three segments per show, so they did a segment about us. We were also -- we also were in another show about food called *Unwrapped*. Again, they did a segment about our company. And....

Q. When, when a show like -- I've never seen *Food Factory*. When a show like *Food Factory* does a segment on Omaha Steaks, can you tell the Board what you mean?

A. Yes. They're interested in -- they're interested in showing the public how certain kinds of foods are -- they want to give kind of a peek under -- behind the curtain of how different food businesses work. So they -- you know, they send in a production team and a

director and they filmed -- you know, they filmed around our, around our plant how the steaks are made, they took the -- they take the consumer through the process. They show pictures of the product. They talk to people in -- you know, different employees at different levels involved in different parts of the process. In the case of *Food Factory* my cousin Bruce, who's the CEO, was on air.

Q. Was interviewed and then it was later broadcast?

A. Correct. Yeah, then they edit the whole thing to -- the show with snappy music and nice graphics.

Q. Is *Unwrapped* similar?

A. Yeah. Very -- it's a very similar show. You know, they might show how -- they show how -- they showed how Omaha Steaks are produced, they might show how jelly beans get made or something or Snickers bars, you know, something like that.

MR. SAMUELS: I'm going to make a general objection to Mr. Simon's testimony about what these various shows think and want. He has no personal knowledge about that. It's hearsay

and I'm going to object to it. It's also speculation.

Q. The -- do you advertise on Amazon?

A. We are -- yeah, we've been a marketplace -- so it's not strictly advertising. We're a Marketplace partner. We sell Omaha Steaks on Amazon.

Q. Is that AmazonFresh or Amazon in general or both?

A. It's Amazon, the mother ship, and we have sold on AmazonFresh as well.

Q. As I understand it AmazonFresh is only in a few cities; is that correct?

A. Correct.

Q. And they actually deliver product that day or the next day to customers?

A. Yes.

Q. We don't have that in Omaha --

A. No.

Q. -- correct? Okay.

MR. SAMUELS: Objection. Three leading questions in a row.

Q. Does Omaha Steaks have a chef in-house?

A. Yes.

Q. What's his name?

A. Karl Marsh.

Q. Karl with a C?

A. With a K.

Q. With a K. What are Mr. Marsh's duties?

A. He is -- he has two roles. One is -- he's part of the product development team, so he's testing products, doing recipes, developing content, helping the creative team think about how products should be presented and talked about. And then he also is -- we work together on the public relations side. So he would -- he -- he's been in our -- he's in our, he's in our long form television spot as, you know, the executive chef of Omaha Steaks. He's also -- he also does cooking demonstrations and on-air appearances on, you know, various TV shows when required. And he was recently on a show called -- the last one I -- over the holiday season one of the ones he did was called *Military Makeover* where he was, like, demonstrating Omaha Steaks. We were participating in a show that did a makeover of a home for a military family.

Q. What was his role on behalf of Omaha

Steaks in *Military Makeover*?

A. He was, he was the company representative on the show. We were -- as part of a product integration. And so he was the company representative. He talked to the host about the product. He gave some cooking tips. He showed them how to cook the, how to cook the product.

Q. Did Omaha Steaks donate food to that military family?

A. Yes.

Q. Has Mr. Marsh -- and I'll back up. I've not seen *Military Makeover*. Is that a television show that's nationally syndicated?

A. Yeah. *Military Makeover*, it's on -- you know, it's like on Home & Garden TV or the Travel Channel or one of those kinds of -- one of those, one of those cable channels, national cable channels.

Q. I just want to be clear that it was a television show.

A. Yes.

Q. I see. Okay. Has Mr. Marsh appeared on any other television shows?

A. Yeah, he's appeared on a number of

different shows. He's assisted me on my appearances on *Fox & Friends*. He's -- not all of them, but a couple of them. He's been on -- although I don't know if he made it on the camera when he was assisting me, but he was there. He was there supporting in the background.

He's, he's done numerous cooking shows on -- and we've done -- not this last season but the season before we did a satellite media tour where -- what we do is we basically set Karl up in a demonstration kitchen in one location, I think it was in Omaha, and he -- and then we offer that to TV affiliates all over the country to put on their morning show and then he just does like one right after another. So it's like, hey, here's chef Karl Marsh from Omaha Steaks to give us your holiday cooking tips and then the affiliates are able to cut over to him. So we'll do -- we'll get, you know, 15, 20, 30 pick-ups of something like that when we do it.

Q. How long has he been the executive chef for Omaha Steaks?

A. I don't know for sure, but I -- 10 years. I don't know exactly when he started.

Q. Do you --

MR. SAMUELS: I'm going to object to his answer on the grounds of speculation and no personal knowledge.

Q. Did you mention when you were listing -- you talk fast so I don't know if I got them all written down -- did you list trade shows?

A. I did mention trade shows.

Q. And tell us what you mean about your involvement with trade shows.

A. So I have a list of the last couple years' worth of trade shows. So we participate -- Omaha Steaks has an incentive and business gift department where we sell our steaks to corporations to use as gifts in different kinds of programs. And in order for us to expose ourselves to those different kinds of companies we go to trade shows, we set up a booth, and we promote our products that way.

(Deposition Exhibit Number 3 was marked for identification.)

Q. I've handed you what's been marked for the record as Exhibit 3. Did you provide that document to me today?

A. Yes.

Q. And can you identify what it is, please?

A. Yeah. It's a printout of a page from our b-to-b website that shows the current --

Q. I'm going to stop you. It's a printout from your b-to-b, what is b-to-b?

A. I'm sorry. Business-to-business website.

Q. Is that available to the public?

A. Yes.

Q. Okay. Go ahead.

A. Anybody can see this, but this is targeted to that particular segment of the market, which is that buyer of business gifts, let's say. And so this shows the different shows that we were participating in in 2015 and planning on participating in in 2016 as of today.

MR. SAMUELS: I'm going to object to the exhibit on the grounds of lack of authenticity. I don't believe that the witness prepared it and based on hearsay. And there's no foundation laid to show that the witness has required knowledge of when, where, how, and by whom this exhibit was created and prepared and distributed, therefore, it's --

THE WITNESS: I printed it out from my computer today.

MR. SAMUELS: Excuse me. Let me finish.

THE WITNESS: I'm sorry.

MR. SAMUELS: Therefore it's not admissible under Federal Rule of Evidence 901.

BY MS. KANE:

Q. Does Omaha Steaks maintain a website?

A. Yes.

Q. Are you responsible for directing the content of any of the sites?

A. The group that, the group that does all of the website development -- or the website content reports up through me.

Q. And when you wanted to find out what trade shows -- if you wanted to find out what trade shows were coming up, how would you, how would you ascertain that information?

A. I sent an e-mail yesterday to my -- to the manager responsible for this area and I asked him what trade shows will we be participate -- have we -- did we participate in last year and which ones will we be participating in next year, and he responded by sending me this

link to our website which I clicked on, brought up the page, and printed out to give to you.

Q. And the information that appears on this page was compiled by whom?

A. It was compiled by our incentive and business -- our business-to-business sales team.

MR. SAMUELS: Objection. Hearsay. This witness has no personal knowledge of what he's trying to testify to and he's giving opinion and speculation.

Q. So the persons that you just testified compiled this website report to you?

A. They report to our chief marketing officer who reports to me.

Q. And the people that compile the information on this website are tasked with doing so?

A. Yes.

MR. SAMUELS: Objection. Again, leading, leading, leading questions.

Q. And did you appear personally at any of the trade shows that are listed in this document?

A. No.

Q. Do you know whether any of -- do you

know if any Omaha Steaks employees were present at these trade shows?

A. Omaha Steaks employees -- there's a picture of the booth there, of our trade show booth, and the Omaha Steaks employees man that booth. In fact, Karl Marsh, our executive chef we were talking about before, is actually in -- at a trade show now supporting the team that is there displaying the product.

Q. Where is that trade show?

A. I think it's in Las Vegas. What does it say?

Q. Does that appear on this document?

A. Yeah, January 12th through 14th, the PPAI Expo in Las Vegas.

Q. You said that your chef, Karl Marsh, is there now?

A. Yes.

Q. Are you familiar with -- as you look at this list of trade shows, are you personally aware of any Omaha Steaks employees who have traveled to any of the individual shows?

A. Yes.

Q. Can you tell us, for example, the Realtors Conference shown November 2015 in

San Diego, do you know who went to that?

A. I'm sure it was Matt Burdette, who's our national sales manager for that department, among others.

Q. Does Mr. Burdette regularly attend these trade shows?

A. Yes. That's his responsibility.

Q. Okay. Have you ever appeared at a trade show on behalf of Omaha Steaks?

A. Yes.

Q. When and where?

A. It would have been -- I don't remember the exact year, but I know I was at the incentive -- whatever the big incentive show was in New York at the Javits Center probably in the -- I don't know, the late '90s.

Q. Did Omaha Steaks have a booth?

A. Yes.

Q. Were you present --

A. We've been -- we've had booths at these kind of industry shows for as long as -- I mean, as long as I've been with the company.

Q. When you -- when Omaha Steaks is present at a trade show, is there always a booth there?

MR. SAMUELS: Objection. Leading.

Q. Yes or no?

A. Yes. When we're an exhibitor in a trade show, there's always a booth there. There are times when we attend trade shows not as exhibitors.

Q. I see. Are there -- other than trade shows are there sponsorship events, something like that that you're involved in?

A. Yes. We -- we've had an on-again, off-again strategy of participating in festivals, food fairs, you know, dinners, tastings, you know, those kinds of things. So one year we were a sponsor at the South Beach Wine & Food Festival.

Q. South Beach, Florida?

A. Yeah. And that's a big, big event. We've been, we've been -- we've participated in the New York Wine & Food Festival. I don't think we were a sponsor of the New York Wine & Food Festival, per se, but we hosted an event tangentially to that to capture some of that audience.

Q. Were you present for that?

A. I was at the South Beach Festival,

not at the New York event.

Q. Was Bruce at the New York event?

A. No.

Q. Bruce, your cousin. No, okay. Just a little bit about local advertising. Besides the TV and the direct mail and the radio, do you do any advertising in buildings or locations in Omaha that aren't related to your own facilities?

A. Well, we have -- yeah, we have a number of, like, sponsorships like at the stadiums, you know. So we have a -- we have relationships with all of the venues in town, the CenturyLink Center, the TD Ameritrade Park, and the -- like the Ralston arena and also at the Storm Chasers stadium. So they have, like, branded, like, an Omaha Steaks Grill there. Also the zoo also has an Omaha Steaks Grill. We have -- we provide -- they buy product from us and we provide them with, with a promotional fee and then they brand us within the center. Is that what you're asking about?

Q. Yes. Yes. And specifically for the CenturyLink Center --

A. Uh-huh.

Q. -- what presence do you have there?

A. Our -- at the CenturyLink Center, you know, we're on -- our -- it says like Omaha Steaks, you know, burger on the menu. That's what -- they're selling an Omaha Steaks burger to their customers. And then there's ribbon signage throughout the stadium that goes on between the performances and so we're on the electronic signage, we're on that.

Q. And because the people reading this aren't from Omaha, explain what the CenturyLink Center is.

A. Sorry. The CenturyLink Center is our, is our big municipal arena. It's a 20,000-seat arena where they have, you know, concerts and sporting events, and then it also has a convention center attached to it.

Q. And you mentioned the TD Ameritrade Park, tell the Court what is that.

A. That's the baseball stadium where the College World Series is played. And we have -- there's, again, Omaha Steaks branded food service concession there. And there's also -- we also participate in a hospitality event that's across the street from the stadium where our, where our logo and food is also served.

Q. Is that at the Hilton Hotel?

A. No. That's at the -- that's actually a big tent that's set up outside the event across the street.

Q. And the College World Series, do you know when that occurs?

A. It's usually in the middle of June every year.

Q. Every year, okay. You mentioned -- did you say the Baxter Arena?

A. No. I said the Ralston Arena.

Q. Ralston Arena. And what's the Ralston Arena?

A. The Ralston Arena is a smaller venue where I think some local hockey teams play. They also do concerts and events there. I know there's hockey there because my daughter ice skates there too. And they have, they have an Omaha Steaks -- again, Omaha Steaks Grill branded Omaha Steaks concession there.

Q. And you mentioned the Henry Doorly Zoo?

A. Uh-huh.

Q. That's in Omaha?

A. Yes. The zoo in Omaha is one of the

most poplar tourist attractions in town. And they, they buy all of their burgers from us. And they have an Omaha Steaks Grill, a big outdoor concession where they -- where people dine on Omaha Steaks.

Q. Is there Omaha Steaks signage present?

A. Yes.

Q. I think those are all the places you mentioned. Have you ever had a presence at the stadium in Lincoln where the Nebraska Cornhuskers play?

A. Yes. We, we had for many years a fixed sign on a -- on one of the secondary scoreboards on the -- what they call the tunnel which is where the team runs out, you know, at the start of the game, where the Nebraska team comes out.

Q. And is the camera on the team as they come out?

A. Yeah. We have some good pictures over the years of the team running out, you know, with the Omaha Steaks sign behind them on the scoreboard.

Q. Okay. That's what I was wondering.

I've never been down there, so I didn't know.

A. They did away with the static signage so we don't have a sign there now, but we had that sign there for a long time.

Q. Okay. Do you have a presence at the -- our airport, the Eppley Airfield?

A. Yeah. That's part of our retail, part of our retail store strategy we have two kiosks at the Omaha airport. We want people to -- we want the very first thing that people see when they come to Omaha is to see Omaha Steaks. And so we've had those kiosks for, I don't know, at least 20 years, maybe longer.

Q. Can people purchase the steaks directly at the kiosk?

A. Yeah, they can buy them to take them with them or they can place an order that we would ship to them.

Q. Are they permitted these days to take them on the plane if they buy steaks at the kiosk?

A. Yes.

Q. You mentioned earlier that Omaha Steaks has retail stores?

A. Yes.

Q. Where are they located? Let me -- are there any in Omaha?

A. Yes.

Q. How many?

A. Well, there's the two at Eppley, and then there's three more. So five total in Omaha.

Q. Where -- in what other locations are there retail stores?

A. We have stores in I think it's 26 states. The number -- we close and open stores fairly often. So there's a full list on the website. But we're in -- I know we're in -- can I just -- I don't know that I'm going to be able to come up with all 26 states off the top of my head, but do I need to?

Q. Go ahead and list the ones that you know with certainty.

A. New York, Illinois, Florida, Georgia, Ohio, Kentucky, Missouri, Nebraska, California. I think we still have a store in --

Q. Just the ones you're sure of.

A. Okay. Colorado, Nevada, Arizona, Texas.

Q. All right. The --

A. Pennsylvania, New Jersey.

Q. And what can persons purchase at those retail stores?

A. They can purchase a subset of our, you know, of our online/category product line. So we have our -- sort of our best sellers in each category, everything from steaks and burgers and beef tips to prepared items like, you know, fully-cooked brisket or a chicken cordon bleu or something like that.

Q. Can they place an online order -- or I'm sorry, not an online order. Can they place an order to be mailed as well?

A. Yes. They can also -- people can also have gifts shipped from the stores.

Q. Are the -- do the stores have signage?

A. Yeah. I mean, every landlord requires signage, you know, exterior signage that conforms to the -- whatever the landlord's signage requirements are, and then we, of course, would have window signage, window displays, you know, point of purchase, you know, extensive point of purchase.

Q. You said the b-to-b, was that buyer-to-buyer?

A. Business-to-business.

Q. Business-to-business. Does that involve corporate gifts?

A. Yes.

Q. And explain how that works.

A. So, so we have a whole department that's set up to deal directly with sort of -- they're larger volume customers that are buying our product for a specific business purpose but that's not a food service purpose. So they're not buying it to serve in a restaurant or to, you know -- they're buying our consumer product to use for something.

So, for instance, somebody -- we've had -- we had a partnership with Buick one year where they -- where if you test drove a Buick you got a box of Omaha Steaks. So Buick was using Omaha Steaks as an incentive to get people to come in and test drive a Buick. So that's the incentive portion.

They're also used as awards. So an example of an award -- and oftentimes we'll use certificates then that are redeemed for steaks. But an example of an award might be an oil filter company wants their oil filters to sell through

their distributors more quickly than their competitors' oil filters, so they'll say for every case of oil filters you sell, you'll get 10 Omaha Steak Bucks. And then when you get a hundred Omaha Steak Bucks you can redeem those for Omaha Steaks. So that's kind of a contest award kind of thing.

And then they also use them for business gifts. So we just came off of the holiday season, so a law firm like Mr. Samuels' law firm wants to send his clients gifts. He might have his assistant fax a list or e-mail a list of the 50, the 50 clients that he'd like to send a gift to and then we would, we would figure out a way to kind of do one billing, get his personal message in there, you know, provide it -- sort of an elevated level of service to what we would do for somebody who's buying one or two packages for Aunt Betsy.

Q. You used Mr. Samuels' law firm as an example. Do you have a specific example of a company that used your company to give Christmas gifts or holiday gifts?

A. I'm sure I do. Well, I -- a local example would be there's a company in town that

operates apartments called Broadmoor Development and they send a gift out to their -- I don't know, their VIP list, whatever it is, and so they've done that over the years. And then -- I mean, I didn't really come with any -- with a list of customers. We got 2 million customers. But, I mean, there's a lot of examples of those.

Q. All right. Oh, and the --

A. Actually, I have a great example. I don't know why I didn't think about it before because they're one of our biggest customers. Is KPMG, the large accounting firm.

Q. Yes.

A. So they, they give a gift to their auditors, the people right after tax time, I guess that's the busiest time, they're stressed out. So at the end of tax season in April, end of April, they send a, they send a gift to I want to say it's several thousand of their employees and they use Omaha Steaks for that.

MR. SAMUELS: Objection. A lot of that testimony was based on speculation, not admissible.

Q. The -- let's go back to the airport kiosks for a second. Are you aware of whether

those kiosks have ever appeared in any media?

A. Yes. Those -- those kiosks have been in at least two feature films. So there's been a couple feature films where they've actually filmed people walking or running through the Omaha airport, and, you know, whatever was in the background of the airport appeared. And so Omaha Steaks' kiosk appeared in the film *Up in the Air* and also *About Schmidt*. We've been in other films through product placements too.

Q. Can you list some of those for us?

A. Yeah. We were in the film *DodgeBall*. We have a mention --

Q. Did you see *DodgeBall*?

A. Yes, I saw *DodgeBall*.

Q. And did you see where Omaha Steaks appeared?

A. Yes. We were mentioned by William Shatner when he was doing a, when he was doing an announcement -- an announcer of the dodgeball tournament.

Q. All right. And any, any other movies that you've seen that you saw your product placement or mentioned?

A. Yeah. We were in the movie *Flipper*.

Q. Did you see *Flipper*?

A. I saw *Flipper*.

Q. And in what context did it appear?

A. There was a scene where the -- where somebody was breaking into a house and for some reason opened the freezer, and when they opened the freezer there was Omaha Steaks in the freezer.

Q. All right. Any other movies or TV shows?

A. Been in a number of TV shows. Most of this is part of the -- sort of the -- whatever, you know, this isn't stuff that we have paid for, it's stuff that, you know, writers have just incorporated in TV shows. Things like -- shows like *The West Wing*.

Q. Did you see *The West Wing* where you were mentioned?

A. I did.

Q. What was the context?

A. Martin Sheen played the President of the United States and there was a conver -- they were concerned about his cholesterol level. And somebody slipped him, like, some Omaha Steaks on the QT or he asked them to order some Omaha

Steaks. And then we were in *Seinfeld*.

Q. Did you see that?

A. I did.

Q. In what context was it exhibited?

A. Kramer was being interrogated by the Postmaster General, and it was something about, something about, you know, the catalogs he'd received and he rattled off a list of catalogs.

Of course we talked about *Celebrity Apprentice*. We talked about *Hell's Kitchen*. *The George Lopez Show*.

Q. Is he a comedian?

A. George Lopez is a comedian. And it was a sports context. A coach was -- a big box of Omaha Steaks or something like that. That was many years ago.

Oh, Dennis Miller. So Dennis Miller used to have a standup -- used to have a stand-up show, *Dennis Miller Live*.

Q. I remember.

A. And in his monologue -- opening monologue one of the shows right after George Bush got elected he told --

Q. Which Bush?

A. The second one. So like in 2000, I

think. It must have been in 2000. He said -- Dennis Miller said the first thing I do before I did a bunch of other stuff was send Alan Greenspan a box of Omaha fucking Steaks.

Q. Any --

A. Can we say that on the court reporter?

Q. Dennis Miller said it. You're just quoting.

A. Right.

Q. Any other, any other shows?

A. There are others, but I -- they're not coming to mind right now.

MS. KANE: Right. I need a break.

THE WITNESS: Okay.

(A short recess was taken.)

BY MS. KANE:

Q. Welcome back, Mr. Simon.

A. Thank you.

Q. I think I skipped one area, and that is Omaha Steaks' digital marketing efforts that you mentioned when you gave us the overview. First begin by telling the Board what digital marketing means.

A. So as I think everybody knows, you

know, the world has gone digital. And so, you know, whereas, you know, 20 years ago, you know, 90 percent of our, of our emphasis was on direct mail, you know, today probably 30 percent of our emphasis is in direct mail and a significant, you know, emphasis is on digital. Digital mean --

Q. So how does that -- excuse me.

A. Digital means things like search, branded and nonbranded terms in search. So we maintain a portfolio of 350 branded terms and 3,000 nonbranded terms that we're always bidding on, trying to get people who are using search, we want to come up when they're searching for us.

Interesting about the branded terms, you know, the branded terms would be what you'd think, Omaha, Omaha Steaks, you know, those, you know, those kinds of words. And then we also want to -- we bid on and want to have the misspellings of those. So if somebody types Omaha but they spell it O-M-A-A-H, you know, we want to -- so we're -- that's another -- and also people mistype our website. You know, like they spell it S-T-A-E-K-S or something, we want to make sure we have that, we have those terms.

Q. Well, just break that down a little

bit if you would, please, and unpack. Begin with search. I think we all know what you're talking about, but --

A. I'm sorry. So search would be, search would be the -- would be like Google, Bing, and Yahoo!, the search engines that people use to search for things online. And they're also integrated into the web -- you know, into the web browsers themselves. So like on Safari if you type a term in the address bar, that's also a search and you get to choose when you set up your browser which search provider you're going to use for that functionality.

Q. And so then explain how you manipulate or use that search process with the branded and unbranded terms.

A. Okay. So I'll use Google as an example because they're -- it's pretty much the same for everybody, but Google has a, has a system by which you bid on terms. And you say I'm willing to pay whatever, 30 cents, for a click of this -- on this term. And other people also bid on those terms. And then if your -- and then when someone does a search, their system in the background dynamically says, okay, somebody's

doing a search for this, is anybody paying me for this? Oh, there's some people paying me. Who's paying me the most, I'll show them first, who's going to pay me the next one, I'll show them second, who's going to pay the next, I'll show them third. So they charge you for position based on what you're bidding. And if you really want a term, you know, -- if you really want to show up first every time -- now that's on the, that's on the paid search side. We also work very hard to optimize our website. And, you know, we have -- we work with consultants, we also have an in-house team and they, they make sure that our web pages are built in such a way that they are optimized to show up in an organic search, which is not the paid search part. You know, on Google there's three or four positions that show up at the beginning, those are sponsored links. There's some stuff on the side that's also sponsored links. But the stuff in the middle below the initial sponsored links is organic search. And that's where -- so if you type Omaha Steaks, we obviously want to be the first people that show up in organic search and we work hard to make sure that that happens.

Q. Those -- the ones that you referred to as paid searches, do they say ad in what's displayed on the screen, A-D as an advertisement?

A. I think -- today I think those actually say sponsored, and then elsewhere on the page or on other websites where we also do marketing on the ad networks, that's where it says, like, Google AdSense and there's a little circle with an arrow. And that's -- so -- and that's, that's like banners and boxes and other kinds of -- that sometimes appears on search engine-generated web pages and oftentimes appears on other web pages that allow themselves to accept advertising.

Q. In preparation for your deposition today did you consult with anybody on your team that reports to you about the numbers involved in your digital advertising?

A. I did. We have a, we have a director of digital marketing who I, who I e-mailed about the current numbers.

Q. And what did you ask him and what did he respond to you?

MR. SAMUELS: Objection. Calls for a hearsay answer.

Q. What did you ask him?

A. I asked him how many affiliates we have these days. I asked him how many, how many digital impressions we serve. I asked him how many keywords we bid on in search.

Q. Is that information kept in Omaha Steaks' business records?

A. Yes.

Q. And is -- are those specific business records ones upon which you rely on a regular basis?

A. Yes.

Q. And do you believe they're reliable?

A. Yes.

Q. Why?

A. We have a great team that understands what they're evaluated on and what the metrics are that they have to track. And so they're -- you know, they, they basically live and die by these numbers, so I would expect them to know them well.

Q. Do the numbers also involve -- I think I'm going to start over with that.

When you testified earlier today about your advertising budget, are these digital imaging, is

that included within your budget?

A. You mean digital marketing?

Q. Yes.

A. Yeah, so digital marketing is included within our budget. That would be like the paid search is included in our budget. E-mail marketing, you know, we use an e-mail service provider that we pay. And we have a whole -- there's a lot that goes into sending an e-mail in terms of preparing it and segmenting the list and doing all the things you need to do to send an e-mail.

And then we do, and then we do paid retargeting, search -- or social and affiliates. So the number of impressions between those three things, search, e-mail, and digital retargeting and social is close to a billion. It's 354 million in digital which includes site retargeting, social, and affiliates.

MR. SAMUELS: Objection. Wait before you answer the next question. I'm restating all of the objections that I made before with regard to Exhibit 1. All of the testimony that Mr. Simon is giving is hearsay and it also -- he's not an expert. So to the extent

that it's based on evidence that is provided by a person who is at his company who is available to testify, like a custodian, who didn't testify, is not admissible. But everything that I said with regard to Exhibit 1 I'm saying again, I don't want to repeat that whole thing, I'm saying again with regard to the entire testimony that Mr. Simon is giving, or is trying to give, with regard to this digital marketing financial figures.

MS. KANE: Are you done?

MR. SAMUELS: I am.

BY MS. KANE:

Q. So the records that -- I'm sorry. Who is the person that you consulted?

A. Mike Robinson.

Q. Mike Robinson. Mike Robinson responded to your inquiries and you listed your inquiries out -- and you went through them pretty quickly.

A. Uh-huh.

Q. Begin with the first one, what did you ask?

A. Approximately how many total affiliates do we have in the affiliate program.

Q. And how did he respond?

A. He said that we have about 9,500 affiliates of which 2,500 are active in the last 12 months.

MR. SAMUELS: I will not make the same objection. I want it to be a continuing objection to all of this testimony.

MS. KANE: Understood.

BY MS. KANE:

Q. What was the second question that you asked him?

A. How many branded and unbranded search terms do we try on an annual basis.

Q. And how did he respond?

A. 350 branded and 3,000 nonbranded, so those would be paid search terms. And then --

Q. What did you ask him next?

A. I asked him how many digital impressions we make annually over all media, including social and retargeting. And he said the digital including site retargeting, social, and affiliates is about 350 million. The search, including paper click, search retargeting, GSP ads and RLSA is about 155 million. And the e-mail including active labs, prospecting,

retail, and all triggered e-mails is about 440 million impressions. So close to a billion when you add all that up.

Q. Okay. You brought me a couple of documents when you came today and I'm going to have you identify them.

(Deposition Exhibit Number 4 was marked for identification.)

Q. I'm handing you what's been marked as Exhibit 4. Can you identify what Exhibit 4 is, please?

A. Yes. Exhibit 4 is the executive summary of a report from our PR agency in New York, Finn Partners, about the performance of our public relations efforts for the holiday season 20 -- this past year.

MR. SAMUELS: Objection. I'm going to object to this exhibit on many of the same grounds that I objected to Exhibit 1. This is a document that's got summary information. It's not been properly authenticated as required by Federal Rule of Evidence 901. It's not a business record. There's no foundation laid to show if the witness has personal knowledge about the methodology or the detailed totals of this

exhibit being shown, which is a requirement of Federal Rule of Evidence 602. No foundation laid to show the witness created the exhibit or is a custodian of the underlying records as required by Federal Rule of Evidence 803 (6). Therefore, the exhibit is hearsay, which is prohibited by Federal Rule of Evidence 802. And I'm going to stop there.

BY MS. KANE:

Q. Okay. Who is Finn Partners?

A. Finn Partners is an international PR agency based -- PR agency based in New York that has offices around the world. We use their -- we hire them to do our external PR work in the United States.

MR. SAMUELS: So the exhibit is something prepared by someone else and is hearsay because you're saying that the information contained in it was provided by this agency. Therefore, it's inadmissible.

Q. So what is Finn -- exactly does Finn Partners do for you?

A. Finn Partners works with our in-house PR team to get us media placements throughout the year on -- in TV, radio, print. And this --

Q. And before you get to this specifically. Are they tasked with keeping any sort of records on your behalf?

A. Yeah. Their, their -- part of their, part of their job is to track all of our, all of our media hit -- we call them media hits and then to translate those into, into an impact metric. And in this case the impact metric they use is impression.

So if we're on a web -- if we end up on a web publication that has a million monthly viewers, they'll say, well, you got a million, you know, impressions out of this. If we're on a TV show that has -- you know, the Nielsen rating points indicate what -- how many viewers that TV show has, we're on the *Today* show it has 7 million viewers, they say you got 7 million impressions out of that.

MR. SAMUELS: Objection. As Mr. Simon has just testified, they will say, they will say, they will say. That's exactly why it's called hearsay and it's inadmissible.

Q. The -- Finn Partners provides reports to you?

A. They do.

Q. How often?

A. Well, on an ongoing basis they give us a report about sort of every -- I would say they give us a weekly report with what happened in the media that week, if something happens. Sometimes nothing happens in a week. And then they provide us with, you know, summaries on an annual basis when we review their work.

Q. All right. The -- previously in response to Greater Omaha Packing's discovery we had provided Mr. Samuels' law firm with some thumb drives and disks showing some digital images of -- and I'm not sure if you're aware of this because I worked with Karen Shirk to get that information.

A. Are you talking about like the -- like videos and --

Q. Correct.

A. Okay. Of our -- so basically of -- digital versions of our media hits, like digital clip book.

Q. Correct.

A. Okay.

Q. For example, I saw an interview with *Fox & Friends* on there.

A. Okay.

Q. Okay. That form of evidence isn't something that I'm going to be able to use, so I asked you to provide me with some still images that appeared in that discovery; is that correct?

A. Yes. Or some examples of those kinds. These are actually more current. What we have on this sheet here is actually more current than what was on that.

Q. Let's talk about what information is shown on this report that Finn Partners gave to you. And I'm not interested in the information on the left, but tell me specifically what these six boxes show starting one by one.

A. So they're just showing --

MR. SAMUELS: Objection. Pardon me, Mr. Simon. Another basis for objecting to Exhibit 4 is the fact that it was never provided in discovery to Greater Omaha Packing Company, and, therefore, it's inadmissible for yet another reason.

Q. The first box says *Fox & Friends*, can, can you tell the Board what that's representative of?

A. Yeah. So that's, that's just a --

that has a couple still images of my appearance on *Fox & Friends* for this past Christmas season in December.

Q. All right. And the second?

A. Second one has a -- shows that we participated in Oprah's Favorite Things, that we were included in Oprah's Favorite Things list for this holiday season.

Q. And the third?

A. The third one shows a still image of us being featured on *Jill's Steals and Deals* on the Today program, the NBC *Today* show.

Q. And then lower left in the second row?

A. Lower left is a -- the image and text that was included in a national *USA Today* article about Omaha Steaks and holiday sales.

Q. Next?

A. Next one was a *Huffington Post* online article about -- featuring Omaha -- mentioning Omaha Steaks as one of the 25 best gifts for curious eaters.

And then the last one was, was a feature about Omaha Steaks being a great dinner choice from examiner.com.

And then they -- and they list the characteristics of each one of these media as part of it.

MR. SAMUELS: Objection. To the extent that I haven't already objected on this Exhibit Number 4, I want to object again on the ground of authenticity. There's been no foundation laid to show that this witness has the required personal knowledge of when, where, how, and by whom this exhibit was created and prepared. The exhibit, which has not been properly authenticated and has not been provided to my client, Greater Omaha, which is totally not admissible under federal rule of evidence. This is the first time I've ever seen it. And it's not provided in the -- any of the materials that we've ever seen before.

MS. KANE: Are you done?

MR. SAMUELS: I am.

BY MS. KANE:

Q. I'm going to hand you what's been marked as Exhibit 5.

MR. SAMUELS: I won't burden the record. Everything I said about Exhibit 4 I'm going to say about Exhibit 5. Object for all the

same reasons.

Q. Mr. Simon, can you please identify what Exhibit 5 is?

A. Exhibit 5 is a summary report prepared by our PR firm showing --

Q. Finn?

A. Finn Partners showing some examples of some of the media that they assisted us in -- earned media that they assisted us in getting for Father's Day this past year, in 2015.

Q. And Father's Day occurs in the month of June?

A. Father's Day occurs in the month of June. And it's an important, it's an important strategic sales objective for us.

Q. And is this a document -- you testified that it was created by Finn partnerships?

A. Yes.

Q. Is --

A. Finn Partners.

Q. Finn Partners. And is it a document that has become part of Omaha Steaks' business records?

A. Yes.

Q. And why is that? What is it used for?

A. Well, we use it to evaluate our own performance and we use it to evaluate Finn's performance as it relates to getting us earned media. We also use it to just track how often our brand appears in the national media.

Q. And each of the images similar to Exhibit 4, just to save time, just shows different advertising and it's identified by --

A. Not advertising, but different PR -- so this is earned media. So we didn't -- this is not advertising we paid for. This is what -- this is when we're included, the same as the other exhibit, when we're included in the editorial comment of national media publishers.

Q. All right.

A. And broadcasters.

Q. I appreciate that clarification.

(Deposition Exhibit Number 6 was marked for identification.)

Q. Going to hand to you what's been marked as Exhibit 6 for the record. Can you identify this document, please, Mr. Simon?

A. Yes. This is the 2014 annual report

from Finn Partners that shows the earned media and how we were represented in national publications and broadcasters in the year 2014.

MR. SAMUELS: Mr. Simon, I'm going to just ask you to pause for a second. I'm going to object to Exhibit 6 for all of the same reasons that I objected to Exhibits 4, 5, and 6. We've never received this document before and it's totally inadmissible, as is Mr. Simon's testimony about it.

Q. The -- Exhibit 6 contains -- the pages aren't numbered, but as we go through we can see in some of the photographs, for instance -- I'll count the page, that'll make it easier. Page 4, "Top Media Highlights."

A. Yes.

Q. These images were included in the documentation that Karen Shirk put together for me which was produced to Omaha Steaks, do you know that?

A. I don't know that. I mean, I would -- I don't know that.

Q. All right.

A. To the extent that this was from 2014, so I know that, you know, that this very

well -- I don't know exactly the time frame of what was --

Q. I understand.

MR. SAMUELS: Objection. I'm going to object to Mr. Simon's testimony that he just gave on the ground of competence, that the witness is not competent to answer that question. No foundation laid to show that the witness has personal knowledge of the matter about which he has been asked. Testimony by a witness who lacks personal knowledge of the matter is not admissible under Federal Rule of Evidence 602. Also hearsay, also opinion, also speculation, also authenticity.

Q. And as we go through the rest of the document that --- this was also provided by Finn Partners?

A. Yes.

Q. As it states on the first page. There are other still images of television shows, correct, which are identified we can tell, we can see the logos in the lower right-hand corner?

A. That's correct.

MR. SAMUELS: Objection. That's a leading question. You're just asking him --

you're stating facts and then asking him to agree. And we've already objected on the grounds that he has no personal knowledge about Exhibit 6 at all.

MS. KANE: And I would ask that you cease with the speaking objections and limit it to your rule of evidence, please and thank you.

BY MS. KANE:

Q. Let's see. I can't read my own writing, I apologize. Turn to page 7, please. Here, I'll show it to you, "Highjacking Father's Day cont."

A. Got it.

Q. There are two photographs on that page, can you describe the upper one? Is there a logo?

A. Yeah. That's -- KAMR TV is an NBC affiliate.

Q. And how can you tell that's an NBC affiliate?

A. Because the NBC logo is next to the station number.

Q. Do you know the man that appears in that photo?

A. It's Karl Marsh, our executive chef.

Q. Do you know where he is in that scene?

A. Yeah. This is the -- I talked about this earlier about satellite media tour. So this is a photograph of how -- illustrating how satellite media tour happened. So this is describing and showing a couple examples. He was in Omaha and 19 broadcast stations picked up, picked up the satellite media tour live at the time we did it which is before Father's Day.

Q. Is that --

A. Of 2014.

Q. It appears that he's in a kitchen?

A. Yeah.

Q. Where is that kitchen, if you know?

A. I don't know for sure. I think it might have been the NBC affiliate in Omaha. We had to do it in a place where there's a satellite uplink. So this is him appearing live and being allowed to -- and then different affiliates around the country pick up, pick up the TV segment and broadcast it live.

Q. And that -- you testified about that earlier --

A. Yeah.

Q. -- that that was one of his duties.
A. Yeah. So this is just a visual representation of an example of some of the marketing that we do.
Q. Understood. I just wasn't sure if that -- that was your on-site kitchen or something else.
A. Yeah.
(Deposition Exhibit Number 7 was marked for identification.)
Q. Okay. I'm going to hand you what's been marked as Exhibit 7 for identification. What is this document, Mr. Simon?
A. This is a piece that we've produced as -- to use in developing partnerships with other brands. And I, I sent this to you because it has some salient facts about the scale of the business that we've talked about before but they're just kind of presented in a more graphical way.
Q. Was this --
MR. SAMUELS: Can I just object to this on the same grounds that I objected to 4, 5, and 6? This is 7?
MS. KANE: Yes.

BY MS. KANE:

Q. Was this document created by Omaha Steaks?

A. Yes.

Q. Do you know when it was created?

A. In December of 2015.

Q. All right. Let me just take a few minutes.

You listed newspapers that you'd placed paid advertising in earlier. You had also mentioned magazines. Can you give us an example of some of the magazines in which you've placed ads?

A. Yes. The way we buy ads in national magazines is through a media agency that uses a network of publications. And we do it oftentimes on a revenue share basis.

Q. What does that mean?

A. That means that when the, when the publisher has unsold space, they'll, they'll put our ad in and we will pay them either on a per order or percentage of sales basis based on, based on that.

So as a result of that we basically have access to the entire universe of publications that are out there, because almost every magazine

participates in these kinds of programs. So we've been in, you know, giant circulation magazines like *Time* magazine, *Newsweek* when it was still, when it was still around, *Playboy*. And then even things like *PC Magazine* or, you know, of course cooking and recipe magazines.

So it's a -- you know, it's, it's an ongoing program where we're inserted based on availability throughout the -- usually throughout the fourth quarter and then sometimes around Father's Day.

MS. KANE: Okay. I just need to take a minute.

MR. SAMUELS: Off the record.

(An off-the-record discussion was held, and Deposition Exhibit Number 8 was marked for identification.)

BY MS. KANE:

Q. Welcome back, Mr. Simon. We've marked a voluminous document as Exhibit 8, and I just want to get on the record the Bates numbers of what I've marked. It's OSI, which stands for Omaha Steaks International, 0850?

A. I think it's 0 -- isn't it a 6? 0650.

Q. Your eyes are better than mine. You're wearing your glasses. Go ahead, tell me the first number.

A. The first page is 0650.

Q. Okay.

A. OSI0650.

Q. All right. The last page is a little more clear it's, OSI1720. Can you identify or describe for the record what this document is that you provided me?

A. Yeah. This is a comprehensive media listing of all of the news items that contain references to Omaha Steaks. It looks like there's some -- a couple references in here that are....

MR. SAMUELS: Mr. Simon, can you pause, please?

THE WITNESS: Sure.

MR. SAMUELS: I'm going to object to Exhibit Number 8 on the identical grounds that I objected to Exhibits 4 and 5. I'll just briefly repeat what I wanted to say and did say about 4 and 5 about the exhibit has not been properly authenticated as required by Federal Rule of Evidence 901. It's not a business record. No

foundation laid to show that the witness has personal knowledge about the methodology or the detailed totals of the exhibit being shown to him which is a requirement of Federal Rule of Evidence 602. No foundation laid to show that this witness created the exhibit or is a custodian of the underlying records as required by Federal Rule of Evidence 803 (6). Therefore, the exhibit is hearsay which is prohibited by the Federal Rule of Evidence 802. And, therefore, I object to its admission into evidence.

BY MS. KANE:

Q. Well, I barely asked one question, which was can you identify the document. Would you please do so?

A. Yeah. It's a -- this is a comprehensive report of all, of all of the news mentions of Omaha Steaks.

Q. Who compiled this document?

A. I do not know.

Q. Does the front page reveal that?

A. Omaha -- if it was compiled by Omaha Creative Group that would be our in-house advertising agency.

Q. So Omaha Creative Group, Inc. is part

of Omaha Steaks?

A. Correct.

Q. And tell us what Omaha Creative Group, Inc. does.

A. Omaha Creative Group is the -- is our -- is the in-house advertising agency for Omaha Steaks. It's part of the Omaha Steaks groups -- group of companies. And they do all of the -- they do all of the marketing for Omaha -- for all of the Omaha Steaks affiliated companies.

Q. Are the persons involved in Omaha Creative Group, Inc. within the group of people who report to you?

A. Yes.

Q. Are they tasked with compiling the information that is contained within Exhibit 8?

A. Yes.

MR. SAMUELS: I'm going to just object to the line of questions as leading.

MS. KANE: They're asking for yes or no answers and that is not leading.

MR. SAMUELS: I think it is.

MS. KANE: Well, your objection is noted.

BY MS. KANE:

Q. If I ask are they tasked with compiling the information that contained -- is contained in this report, the answer is yes or no. What is the answer?

A. The answer is yes.

Q. Let's try it this way: Who is tasked with compiling the information that appears in this report?

A. The team at Omaha Creative Group.

Q. Do you have personal information about the steps they take to compile this information?

A. Yes.

Q. And what are those steps?

A. They would be using a -- we subscribe to a clipping service to keep track of all of our, of all of our media hits. And so they would, they would query the clipping service, you know, which is a digital service, and they would -- and this would be the output of such a query.

Q. How often is a report such as Exhibit 8 compiled?

A. My, my experience has been that these are compiled on an as-needed basis. So this one

was probably compiled for the purpose of this, of this, of this proceeding. Oftentimes we'll get them on a less frequent basis. On as an-needed basis I should say.

Q. And let's go to page 0651. Tell us what appears on that page. I see table of contents at the part -- at the top, but what appears below that? Can you identify for the record what information that's imparting?

A. Yeah. This first one is listing print, print media and it's divided -- the table of contents is fairly long, but it's indicating that there's 342 items in print media. And then as we move through the, through the table of contents I'm sure it'll be shifting to different media types.

Q. The numbers on the right-hand side are page numbers?

A. Yes.

Q. It appears that way.

A. Or item number.

Q. So for example I just pulled a random one out. Go to the Bates number in the lower right hand 968.

A. Bates number 968.

Q. Yeah, 0968.
A. 096 --
Q. On the left-hand side it's page 319 if that helps. Are we on the same page, 0968?
A. Yes.
Q. All right.
MR. SAMUELS: Can I --
MS. KANE: Yeah. On this side look for 319.
MR. SAMUELS: 319.
MS. KANE: Yeah, there's the page numbers that the group put on. There we go. It's that one.
BY MS. KANE:
Q. Okay. Todd, start at the top and tell us what we're looking at.
A. So this is a news item report. And what it's showing is -- in this particular case it's showing -- it's mentioning that there were job fairs -- in this particular case it's about job fairs and different kinds of, different kinds of food technology, and in both of those articles Omaha Steaks was mentioned.
Q. When you say "both of those articles," I'm not sure what you mean --

A. Sorry.

Q. -- because I see five.

A. Okay. There's five articles mentioned on the page. Four of the five articles relate to job fairs and food technology and in those Omaha Steaks is mentioned.

Q. And what is the information in the upper left mean, "MEDIA GROUP: INTERNET"?

A. This -- that would mean that in this particular case they're talking about a reference to a, to an article that appeared in an Internet publication or on a website.

Q. Does this document contain information -- just answered my own question. I'm going to send you way to the end, sorry, close to the end.

A. Yeah.

Q. The number is 1663 and on the left it's 1014. I'm not here to make life easy, but I would share with you if you'd like.

A. 1663.

Q. And it's 1014 on the left, lower left page number.

A. Yep.

Q. Just make sure we're on the same one.

Similarly to the page we just looked at, what are we looking at here, first beginning upper left?

A. This is talking about broadcast media. And they're talking about where an Omaha Steaks product was featured on these different stations. So in this particular case we were on WZZM TV in Grand Rapids, Michigan, twice. And we were in -- on station in Fresno, California, and the same station in St. Louis, Missouri, twice. And they were talking about using gourmet meats from Omaha -- we were mentioned gourmet meats from Omaha Steaks, catalogs from Omaha Steaks, and then one of them mentioned a special package from Omaha Steaks that included our burgers and some other things.

Q. Okay. So we've seen representative hits from the Internet and broadcast. If you will turn to 0866.

A. 0866. Couldn't we just have this on an iPad?

Q. No. If we were in federal court we could do it all that way.

A. Sorry.

Q. That's okay. It's 217 on the lower left if that helps.

A. I'm getting close.

Q. Okay. Similarly to the Internet and the broadcast information, this one appears to impart print. What does print mean?

A. This is -- print means printed publications like newspapers and magazines.

Q. And give us -- look over the items that are shown on page 866 and tell us what is disclosed there.

A. Well, in 866 there is a number of different print hits, and one of them specifically represents Omaha Steaks from a *U.S. News & World Report*, "8 Stores to Shop for Easy Labor Day Savings".

Q. Okay.

A. The other ones I think are more generally talking about Omaha, Nebraska, so may have been in this particular case it picked up, it picked up something in error, but I don't know for sure.

Q. Okay. So we've had the Internet, broadcast, and print. I'm looking, but are you aware are there any other categories or would that be the three? It looks like to me that's it.

A. That's it.

Q. I don't know if there could be any other. All right. And this document is based upon what information again?

A. This document is based on a query to the media clipping research service that we would be using to track our media hits, one of the resources we would use to track our media hits.

MR. SAMUELS: Is this an appropriate time for me to object to his testimony? I want to let you finish talking about that exhibit.

MS. KANE: Is it the same objections you said when I started? If so, you don't need to repeat them.

MR. SAMUELS: Well --

MS. KANE: But now would be the time, yeah. Go ahead.

MR. SAMUELS: Okay. Everything that Mr. Simon testified to was based on his looking at Exhibit 8 and reading from it. I don't want to repeat all the reasons I gave to support my ground of objection earlier, but it really is not a business record of regularly-conducted activity made at or near the time the events took place by a person with knowledge in the course of

regularly-conducted business activity as required by Federal Rule of Evidence 803. Instead, this exhibit is a document that was subsequently prepared by a person other than this witness specifically for this litigation and therefore constitutes prohibited hearsay under Federal Rule of Evidence 802, plus all the other reasons I gave for objecting to 4 and -- Exhibits 4 and 5 previously.

BY MS. KANE:

Q. Is Exhibit 8 an example of the only time that this news item report has ever been created?

A. No.

Q. Do you have any idea how many times that such a news item report has been generated by your Omaha Creative Group?

A. I don't know exactly how many times, but we have -- as I mentioned, you know, the PR agency gives us reports almost in real-time of what's going on. So this would be a compilation of, of, you know, of all of those at one time. And then we also would create something like this on an ad hoc basis for, for some purpose.

Q. But generally this information -- is

this information generally only kept digitally? I guess I'll object to my question.

When the information comes in to the Omaha Creative Group, Inc. --

A. Uh-huh.

Q. -- what do they do with it?

A. Well, I mean, so much -- well, we would, we would archive it, store it, and be able to reference it at some point in the future.

Q. Digitally?

A. Yeah, because almost everything comes in via e-mail or as a link from the media provider or from our clipping service that way, you know.

Q. Is it updated on a regular basis?

A. Well, as I said before, it's updated in real-time. So we're constantly getting a stream of information about what media hits are happening and what the performance of the -- what the performance of our PR is and whenever we're mentioned. One of the things that's important for us is to monitor the buzz, if you will, about the business. And so, you know, we're -- if we're mentioned in a news article, you know, good, bad, or indifferent, you know, we want to

know about it. So we have a listening function, if you will.

Q. If I called you on the telephone and asked you about items that appear in this report, how -- and you're sitting at your desk, what would you do to respond to me? Would you print this out? Would you go online?

A. What I would do is search my e-mail to see if I had a reference to it. If I didn't have a reference to it, I would call our PR department and ask them what they, what they knew about it and they would likely have -- they would have it archived somewhere.

MR. SAMUELS: Objection. The question called for speculation. It was totally hypothetical and the witness answered in a hypothetical fashion which makes it inadmissible under Federal Rule of Evidence 701.

Q. Have, have you ever accessed this information personally?

A. Yes.

Q. How?

A. Typically a report would be e-mailed to me and then I would read the report.

Q. And would it be identical to the

information that's contained in Exhibit 8?

A. Yes, but it wouldn't be as voluminous.

MR. SAMUELS: Objection, both to the question and the answer. Hypothetical. Requires speculative answer by the witness. Not admissible under Federal Rule of Evidence 701.

Q. The question wasn't really fair, because it couldn't be identical, as you said --

A. Right.

Q. -- it's updated in real-time.

A. Right.

Q. So a better question would be when you have accessed the news item report in the past, is the information that you retrieved similar to what appears in Exhibit 8?

A. Yes. Typically the real-time reports are a little bit more involved. They would involve graphics, live links, other kinds of things that -- this is a summary of it.

Q. That's what's available to you when you access it digitally you mean?

A. Right.

Q. Right, okay. All right. One I didn't -- I wanted to talk a little bit more

about your father.

A. Okay.

Q. And he passed away recently. Our condolences for that.

A. Thanks.

Q. What was his role with Omaha Steaks when he was an active member?

A. So my dad took the idea -- my grandfather had an inkling that there was a business in this direct consumer sales of beef from Nebraska and he'd been dabbling in it. When my dad graduated from college, he was sort of given the task of taking that idea and running with it and seeing if there could be, you know, a big national business there. And --

Q. I'm going to stop you for a second. Was his role with the company similar to yours?

A. Yes. So he was the EVP of sales and marketing and I became the SVP of sales and marketing. My dad is a member of the Direct Marketing Hall of Fame. He's viewed in the industry as one of the pioneers of the whole direct marketing industry. And, you know, up there with Lillian Vernon and Mr. Sears. And so he's a -- he's regarded as a -- he was regarded

as a pioneer.

Q. And --

MR. SAMUELS: Objection. The answer that Mr. Simon gave is speculation and object on that ground.

Q. Did your father receive awards during his career for his efforts with Omaha Steaks?

A. Yes. And culminated with his induction into the Direct Marketing Hall of Fame, the Direct Marketing Association's highest honor.

Q. Is that a national organization?

A. Yes.

Q. Just going to take a sec, sorry.

Has Omaha Steaks been presented with other awards and accolades for their efforts in advertising?

A. Yes.

Q. And can you please state for the record those of which you are aware.

A. Yeah. So we've -- we received the American Tasting Institute's best of show in 2002. We were -- we got an award from the Nebraska Commission of Labor in 2000 -- 2000 for employment diversity. We were -- we've been in -- we were honored in 2000 by the

Nebraska Food Industry Association, the Simon Family for a lifetime outstanding leadership. We were -- we had a big program with Delta Air Lines where they served our steaks to all of their employees in the late '90s which we got an award from the International Flight Catering Association where my -- Lester Simon, my grandfather, was inducted into the Greater Omaha Chamber of Commerce Omaha Business Hall of Fame. And my dad and his two brothers were also subsequently inducted into the Omaha Chamber of Commerce.

Q. What were the brothers' names?

A. Fred -- or Stephen and Al.

MR. SAMUELS: Excuse me. Is Mr. Simon just reading from a document that is not an exhibit? I'm not sure I -- I thought he was testifying from his memory previously, but is he now just reading answers to your questions?

MS. KANE: He relying upon answers to interrogatories that were provided to you previously. Go ahead.

MR. SAMUELS: So he's reading the answers from interrogatories as opposed to testifying from his own personal knowledge. I

object on that basis. The basis is competence, Rule 602.

BY MS. KANE:

Q. Continue with the list of awards that Omaha Steaks has received.

A. So we've, we've received the Catalog of the Year award from Catalog Age. We've received customer service Gold Award from the Direct Marketing Association. We received the Governor's Arts Award. We've received -- we've been honored by the Jewish Federation of Omaha.

Q. And are each of those awards displayed in any way in your office?

A. Yeah. We have a room we call the awards room and we have a lot of -- almost -- you know, it's got four walls of awards.

Q. Do they include the awards to which you just testified?

A. Yes.

Q. And have you seen each of the awards to which you just testified?

A. Yes.

Q. Do you have all the awards memorized and committed to memory?

A. No.

Q. All right. Do you know the first time that the term "Omaha Steaks" was used in any kind of advertising?

MR. SAMUELS: I'm going to object to the question to the extent that it calls for him to speculate not based on his own personal knowledge.

Q. You can answer the question.

A. Okay.

Q. Do you know?

A. Yes, I do. In 1958.

Q. And how do you know that?

A. We have a -- we have our -- we were given an award by the, by *The New Yorker* magazine for being one of their longest continuously running advertisers. And that, that plaque is up on our awards room and it has the magazine and the date, which was in November of 1958, and it has -- features Omaha Steaks in our -- in the ad.

MR. SAMUELS: Objection. Mr. Simon is testifying as to something that happened which he claims happened before he was born. So obviously it's not of his own personal knowledge. And I object on the grounds of hearsay and also his competence to speculate. So that's Rule 602,

Rule 701, Rule 802.

(Deposition Exhibit Number 9 was marked for identification.)

Q. And I'm handing you what's been marked as Exhibit 9. What is -- this is a photograph. What is it a photograph of?

A. This is a photograph of the plaque that I referenced just a few minutes ago.

Q. Does -- is this displayed in the Omaha Steaks office?

A. Yes.

Q. In the upper right it says to Fred Simon. Is Fred your father?

A. Yes.

Q. And you --

A. The New Yorker cost 25 cents back then.

Q. And this plaque was presented to Omaha Steaks by *The New Yorker*?

A. Correct.

MR. SAMUELS: And I object. I'm objecting to the Exhibit Number 9 on grounds of authenticity and also this witness' competence to discuss this photograph which he had -- he did not take. Also -- unless you want to tell me he

did take it. Also --

THE WITNESS: I actually did take it.

MS. KANE: He actually did take it.

MR. SAMUELS: That's good.

THE WITNESS: I have it on my phone.

MR. SAMUELS: All right. I object to the exhibit on the grounds of authenticity nonetheless. And the testimony he's giving about something that happened before he was born is objectionable on the ground of competence and hearsay.

BY MS. KANE:

Q. And did you take the picture that's depicted in Exhibit 9?

A. Yes. And I would like to say that this was presented to Omaha Steaks while I was alive. I mean, this was presented to Omaha Steaks while I was in my -- at my career at Omaha Steaks, this, this commemoration, if you will, of our involvement with *The New Yorker* magazine. They were using our original magazine cover and original ad as a way to say thanks for us being an advertiser, so....

Q. So this --

A. So this thing was presented to us, you know, in the last 10 years.

Q. And you were personally aware of Omaha Steaks' receipt of this gift from *The New Yorker*?

A. Yes.

Q. It was not presented to Omaha Steaks in 1958?

A. No.

Q. It simply shows an Omaha Steaks ad, I take it?

A. Yes. It shows an Omaha Steaks ad from 1958.

MS. KANE: All right. I need a break just for a minute, and then I think I'm done.

(A short recess was taken.)

MS. KANE: We're back on the record, and I have no further questions at this time.

MR. SAMUELS: Thank you, Ms. Kane.

CROSS-EXAMINATION

BY MR. SAMUELS:

Q. Mr. Simon, I'm going to ask you some questions in this cross-examination. This trademark opposition proceeding was filed on

November 13, 2013. The official record of this proceeding will confirm that November 15, 2013, was the opposition filing date. To the best of your knowledge prior to that November 15, 2013, filing date, you personally never issued any communications of any kind to anyone at Greater Omaha Packing Company objecting to that company's use of the term "Greater Omaha" in connection with its beef products; isn't that correct?

A. I never personally -- that's true. I never personally sent any -- had any correspondence with them.

Q. Thank you. To the best of your knowledge prior to that November 15, 2013, opposition filing date, you personally never issued any communications of any kind to anyone at Greater Omaha Packing Company objecting to that company's use of the term "Omaha" in connection with its beef products; isn't that correct?

A. That is not correct. They at one point were attempting to -- they filed for a trademark on -- for a name of a business called Omaha Meat Traditions, and we had a lot of correspondence about that. And I'm sure that was

before -- I'm pretty sure that was before November of 2013.

Q. I'm not asking you about the company Omaha Steaks International, Inc. I'm asking you if you personally issued any communications of any kind to anyone at Greater Omaha Packing Company objecting to that company's use of the term "Omaha" in connection with its beef products.

A. And the answer is yes. They were, they were attempting --

Q. I'm asking you if you personally --

A. Yes. I personally, I personally had communication.

Q. With someone at Omaha Steak --

A. At Greater Omaha.

Q. Greater Omaha Packing?

A. Uh-huh.

Q. Who is that?

A. I'm sure I had communication with Henry Davis about Omaha Meat Traditions.

Q. You know that as a fact or are you doing the best you can to remember that?

MS. KANE: Objection. Argumentative.

Q. Please answer the question.

A. I know that as a fact.

Q. I now show you Exhibit GOP, for Greater Omaha Packing, 1.

MS. KANE: Get a sticker on there.

A. Yeah.

Q. Which shows a trademark which we call the steer head logo, the registration of which your company has opposed in this proceeding. To the best of your knowledge prior to that November 15, 2013, filing date of the opposition, your company never made any objection, written or oral, to Greater Omaha Packing Company's use of that steer head logo shown in Exhibit GOP 1; isn't that correct?

A. That's correct.

MS. KANE: Two things. One, we need an exhibit sticker, and, two, I ask that you be seated while you ask.

MR. SAMUELS: There's an exhibit sticker on there.

THE WITNESS: Oh, it's already on here.

MS. KANE: Will hardly appear as an original.

MR. SAMUELS: I'm sorry?

MS. KANE: Never mind.

BY MR. SAMUELS:

Q. Mr. Simon, to the best of your knowledge your company has never used any design of a steer as part of a trademark for beef; isn't that correct?

A. That's correct.

Q. And to the best of your knowledge your company has never used the two words "Greater Omaha" as part of a trademark for beef; isn't that correct?

A. Correct.

Q. And to the best of your knowledge your company has never used the five words "providing the highest quality beef" as part of a trademark for beef; isn't that correct?

A. Correct.

Q. I now show you Exhibit GOP 2 which shows a trademark which we call the ONA logo, the registration of which your company has petitioned to cancel in this proceeding. This trademark cancellation proceeding was filed on June 26, 2014. The official record of this consolidated proceeding will confirm that June 26, 2014, was

the cancellation filing date.

To the best of your knowledge prior to that June 24, 2014, cancellation filing date, your company never made any objection, written or oral, to Greater Omaha Packing Company's use of the ONA logo which is shown on this Exhibit GOP 2; isn't that correct?

MS. KANE: And I'm going to object on the basis that these questions go beyond the scope of direct examination. They go beyond the scope of what this witness was disclosed to be qualified and prepared to testify about today. And as a courtesy to you before the deposition I spoke to you and I told you what topics Mr. Simon -- Mr. Todd Simon was here to testify about. I believe this to be a waste of time and an abuse of the process, as Mr. Bruce Simon is here tomorrow for a greater length of time and prepared and disclosed to testify about these matters. Mr. Todd Simon was here today strictly to address marketing, advertising, and famousness of the Omaha Steaks brand and mark.

MR. SAMUELS: Your objection's noted. I've got three exhibits that I want to show Mr. Simon and I appreciate his continuing to

just answer those questions.

MS. KANE: Okay.

THE WITNESS: Is that okay?

MS. KANE: That's okay. And there is a question pending. Dee Dee will read it back to you.

(The requested portion of the testimony was read back at page 107, line 2.)

A. Correct.

Q. To the best of your knowledge your company has never used the three words "Omaha Natural Angus" as part of a trademark for beef; isn't that correct?

A. Correct.

Q. And to the best of your knowledge your company has never used a shield design like that shown in Exhibit GOP 2 as part of a trademark for beef; isn't that correct?

A. Correct.

Q. Thank you. I now show you Exhibit GOP 3 which shows a trademark which we call the 1881 Hereford, H-E-R-E-F-O-R-D, Hereford logo, the registration of which your company has petitioned to cancel in this proceeding. To the best of your knowledge prior to the June 26,

2014, cancellation filing date your company never made any objection, written or oral, to Greater Omaha Packing Company's use of the 1881 Hereford logo which is shown on Exhibit GOP 3; isn't that correct?

A. Correct.

Q. To the best of your knowledge your company has never used the two words "Omaha Hereford" as part of a trademark for beef; isn't that correct?

A. Correct.

Q. To the best of your knowledge your company has never used an oval design like that shown in Exhibit GOP 3 as part of a trademark for beef; isn't that correct?

A. Can I look at my list?

MS. KANE: Do you have your list? Oh, the exhibit --

A. List of all the exhibits.

MS. KANE: Or all the trademarks?

THE WITNESS: Yeah. Because --

MS. KANE: Well, you weren't prepared to testify on this topic today.

Q. And I'm asking you of your own personal knowledge.

A. Right. Well, I think I might want to -- I mean, you know, this is a matter of art and interpretation, but I feel like actually our Private Reserve logo is very shield-like maybe.

MS. KANE: That's fine.

A. I'm looking at this.

MS. KANE: Yeah, Exhibit 1, page 14, Steve.

Q. Can you look at the number on the left-hand column and tell me which --

A. Sure. It's on -- well, it appears also on page 11 and it's 775 -- starts out 775.

Q. I'm sorry, so it's 77566409; is that correct?

A. Correct.

Q. And you're saying that to the best of your knowledge you think that the oval design like that shown in Exhibit GO 3 -- GOP 3 looks like 77566409, am I understanding you correctly?

A. No, no, no. What I'm saying is that -- I'm going back to your question relating to GOP 2 and when you asked me to the best of my knowledge have we ever had a logo in a shield-type format.

Q. See, you're, you're not talking about

Exhibit GOP 3?

A. No. I'm talking about GOP 2. I backed up. I'm sorry. I apologize.

Q. So you're testifying, if I understand your testimony, that the shield shown in GOP 2 looks like something on page 11 of Exhibit 1 --

A. You asked me the question in words have we ever used a logo that resembles a shield to the best of my knowledge.

Q. That's incorrect.

A. Okay.

Q. I asked you, I asked you to the best of your knowledge your company has never used a shield design like that shown in Exhibit GOP 2.

A. Okay.

MS. KANE: And your answer is?

A. My answer is I think that the Private Reserve logo that I referenced second has -- is a -- has elements of a shield design.

Q. All right. Thank you.

A. And now we can go on to GOP 3. I apologize.

Q. Now we were talking about Exhibit GOP 3.

A. Right.

Q. And I said to you, to the best of your knowledge your company has never used an oval design like that shown in Exhibit GOP 3 as part of a trademark for beef; isn't that correct?

MS. KANE: And wait just one second. Are you saying an oval design?

MR. SAMUELS: Yes.

THE WITNESS: Of this. He's talking about that.

MS. KANE: Okay. I just want to be sure. I didn't hear the word correctly.

A. And that -- and I would, and I would -- and my answer to that is the oval shape figures prominently into the Omaha Steaks logo. As indicated on page 12 there's two logos pictured there, both of them are based around the shape of an oval.

MS. KANE: And I just want to clarify that you're looking at Exhibit 1, page 12.

THE WITNESS: Exhibit 1, page 12.

BY MR. SAMUELS:

Q. Thank you. Now, Mr. Simon, you don't prepare -- you don't prepare the marketing or advertising expenditure records for your company;

isn't that correct?

A. We're a big company. We have 2,000 regular employees. There's about a thousand people in my part of the organization. So we work as a group, as any big company would, to work together to create plans and budgets and all those things. And then I'm, I'm involved in the approval, recommendation, direction of the plans as they move through the process.

Q. I'll ask you again, Mr. Simon, you don't prepare the advertising expenditure records for your company; isn't that correct?

A. Correct.

Q. Thank you. During your direct testimony today you were shown a number of exhibits, Exhibits OSI 1 through OSI 8.

MR. SAMUELS: Off the record.

(An off-the-record discussion was held.)

BY MR. SAMUELS:

Q. Now, Mr. Simon, during your direct testimony today you were shown Exhibit OSI 1. You did not prepare Exhibit OSI 1; isn't that correct?

A. Correct.

Q. You don't know the name of the person who actually prepared Exhibit OSI 1; isn't that correct?

A. It was prepared by Karen Shirk.

Q. Do you know that as a fact?

A. I guess I don't know that as a fact. It was prepared by somebody who is responsible for dealing with our trademark records.

Q. Thank you. You did not personally instruct the preparer of Exhibit OSI 1 to prepare Exhibit OSI 1; isn't that correct?

A. That's correct.

Q. You cannot personally swear that all of the information contained in Exhibit OSI 1 is completely accurate; isn't that correct?

A. That's correct.

Q. Thank you. I'm going to ask you the same kinds of questions, just on the other ones. We can move through them as quickly or as slowly as you wish.

During your direct testimony today you were shown Exhibit OSI 2, this was the interrogatories.

A. Yes. Got it.

MS. KANE: They're all here. I'm

just getting those that aren't exhibits out of the way, so yellow stickers are so helpful.

A. Got it.

Q. You did not prepare Exhibit OSI 2; isn't that correct?

A. I participated in the preparation of it. Is that -- I mean....

MS. KANE: Of course. I certainly couldn't have done it without you.

Q. I'm asking you about the Exhibit Number OSI 2 --

A. Uh-huh.

Q. -- which is a....

A. And my answer is I participated in the preparation of it.

Q. I would like you to answer my question. It's a 14-page document.

A. Uh-huh.

Q. You did not prepare Exhibit OSI 2; isn't that correct?

MS. KANE: Asked and answered.

Q. I haven't heard an answer.

A. My answer was I participated in the preparation of it.

Q. But you didn't prepare it?

MS. KANE: What's the difference?

MR. SAMUELS: I'm not asking for your testimony, Ms. Kane.

MS. KANE: Well, I'm objecting. He's told you twice that he participated in putting this document together, and I don't know what else you want to know. The answer is yes, he's part of the preparation of the document. Move on.

MR. SAMUELS: Thank you for your testimony.

BY MR. SAMUELS:

Q. You did not -- well, let me say it this way: You cannot personally swear that all of the information contained in interrogatory answer number 31 on page 10 is completely accurate; isn't that correct?

A. I'm reading the interrogatory.

Q. Would you like me to ask the question again?

A. Sure.

Q. You cannot personally swear that all of the information contained in Exhibit OSI 2, and specifically with regard to interrogatory number 31 and its answer, is completely accurate;

isn't that correct?

A. I think I can swear that it's accurate. Can't I?

Q. Don't ask Ms. Kane.

A. Well, I participated in preparing the document and I already attested to the document on the last page.

Q. So you have personal knowledge that the financial information in the answer to interrogatory number 31 is completely accurate based on your own personal knowledge?

A. Yeah.

Q. And where did you get that personal knowledge?

A. From our financial team at our company.

Q. Thank you. With regard to Exhibit 3, OSI 3, during your direct testimony today you --

MS. KANE: Hold on. We don't have it out yet.

A. I'm sorry. Okay.

Q. During your direct testimony today you were shown Exhibit OSI 3. You did not prepare Exhibit OSI 3; isn't that correct?

A. That's correct.

Q. You do not know the name of the person who prepared Exhibit OSI 3; isn't that correct?

A. We have a team of individuals that are responsible for the content. Again, we're a big organization that everybody reports up through me. I'm confident that the, that the process by which this information was listed, which is simply a listing of the trade shows that we have and will participate in, is accurate and I know -- certainly know the department from which it came from.

Q. Okay. So you know the name of the department, but you don't know the name of the person or persons who prepared the exhibit; is that correct?

A. Well, I could list the names of all the people in the department, but....

Q. But you don't have personal knowledge as to those persons, the identity of those persons who created Exhibit OSI 3, do you?

A. I know who the people are who would have, who would have prepared this.

Q. And you're speculating as to that; is that correct?

A. I'm not speculating. I know who works in the company.

Q. Thank you. You cannot personally swear that all of the information contained in Exhibit OSI 3 is completely accurate; isn't that true?

A. Certainly there could be a typo of a date of when a trade show is happening that may have -- that I might not know about.

Q. Thank you.

MS. KANE: Going to 4?

MR. SAMUELS: Number 4.

BY MR. SAMUELS:

Q. Mr. Simon, during your direct testimony today you were shown Exhibit OSI 4. You did not prepare Exhibit OSI 4; isn't that correct?

A. Correct.

Q. And you do not know the name of the person who prepared Exhibit OSI 4; isn't that correct?

A. I know the name of the person who prepared it. I mean, again, it was one of three people at the PR firm who we work with.

Q. But you don't know which one?

A. I don't know which one specifically.

Q. And you did not personally instruct the preparer of Exhibit OSI 4 to prepare Exhibit OSI 4, did you?

A. I did not personally instruct them, but my PR team, who is the one who's responsible for managing the relationship with the PR firm, would have instructed them to prepare this as part of their work.

Q. But my question was you did not personally instruct the preparer of Exhibit OSI 4 to prepare Exhibit OSI 4; isn't that correct?

A. That's correct.

Q. And you cannot personally swear that all of the information, and particularly the numerical information shown in Exhibit OSI 4, is completely accurate; isn't that correct?

A. That's correct, but I rely on our -- on the team that does it to provide accurate information.

MS. KANE: And I'm going to object, because in a way that question was in the nature of a compound question. You asked him if he could -- if he had personal knowledge of the information appearing on the document and then

you isolated him to the numbers. Are you asking him about the still shots or the numbers or both? I think the record's unclear.

MR. SAMUELS: Let me ask the question again then.

BY MR. SAMUELS:

Q. Mr. Simon, you cannot personally swear that all of the numerical information contained in Exhibit OSI 4 is completely accurate; isn't that correct?

A. That's correct.

Q. Thank you. I'm going to ask you the same questions about Exhibit OSI 5 which is a somewhat similar exhibit.

A. I can attest to the fact that those -- that's me on TV.

Q. I understand that.

A. I think you could too just by looking at those pictures.

(An off-the-record discussion was held.)

BY MR. SAMUELS:

Q. Mr. Simon, during your direct testimony today you were shown Exhibit OSI 5. You did not prepare Exhibit OSI 5; isn't that

correct?

A. Correct.

Q. You do not know the name of the person who prepared Exhibit OSI 5; isn't that correct?

A. The same -- whatever my answer was to Exhibit 4.

Q. I'll accept that. You did not personally instruct the preparer of Exhibit OSI 5 to prepare Exhibit OSI 5; isn't that correct?

A. Same answer that I gave about Exhibit 4.

Q. That's acceptable. You cannot personally swear that all of the numerical figures contained in Exhibit OSI 5 are completely accurate; isn't that correct?

A. That's correct.

Q. Thank you. During your direct testimony today you were shown Exhibit OSI 6. You did not prepare Exhibit OSI 6; isn't that correct?

A. That's correct.

Q. You do not know the name of the person who prepared Exhibit OSI 6; isn't that correct?

A. Same answer as for 4 and 5.

Q. Thank you. You did not personally instruct the preparer of Exhibit OSI 6 to prepare Exhibit OSI 6; isn't that correct?

A. Same answer as OSI --

Q. That's fine. You cannot personally swear --

A. Same answer as 4 and 5, I guess.

Q. -- that all of the numerical figures contained in Exhibit OSI 6 are completely accurate; isn't that correct?

A. That's correct.

Q. Thank you. Mr. Simon, during your direct testimony today you were shown Exhibit OSI 7. You did not prepare Exhibit OSI 7; isn't that correct?

A. That's correct.

Q. You do not know the name of the person who prepared Exhibit OSI 7; isn't that correct?

A. I know the person who prepared Exhibit OSI 7.

Q. And what is that person's name?

A. Jessica Charlsen.

Q. Can you spell the last name, please?

A. C-H-A-R-L-S-E-N, I believe.
Q. And is that person an employee of Omaha Steaks International, Inc.?
A. She is.
Q. What is her title?
A. It's partnership manager or new business manager or new business and partnership manager, something like that.
Q. Does that person report directly to you?
A. No. She reports to the chief marketing officer who reports directly to me.
Q. What is the name of the chief marketing officer?
A. David Zucker.
Q. Will you spell the last name?
A. Z-U-C-K-E-R.
Q. Thank you. You did not personally instruct the preparer of Exhibit OSI 7 to prepare Exhibit OSI 7; isn't that correct?
A. I would say that's not correct. I mean, David and I brought Jessica onto the team and have been supervising her very closely on starting -- because it's a new job. And so I'm pretty sure that we gave her the instruction to

prepare this document. So yes. I mean, you know, whether that was a prime directive or a conversation that happened as part of our initial conversations, but this is something that she did at the direction of me and David.

Q. Let me ask you again. You did not personally individually instruct the preparer of Exhibit OSI 7 to prepare Exhibit OSI 7; isn't that correct?

MS. KANE: Objection. Asked and answered.

MR. SAMUELS: Not asked and answered.

BY MR. SAMUELS:

Q. Go ahead and answer the question, please. You personally directly instruct that person to prepare Exhibit OSI 7 individually, that was my question. That was my question. Shall I ask it again?

A. Okay. No. That's, that's correct, I didn't individually, I didn't individually instruct her.

Q. Thank you. Would you just look through here in Exhibit 7 and note that there are some numerical information, for example, on the

page that says "Our Reach"?

A. Uh-huh.

Q. And also "Our Business".

MS. KANE: I see "Our Business".

A. Uh-huh.

Q. You cannot personally swear that all of the numerical information contained in Exhibit OSI 7 is completely accurate; isn't that correct?

A. I think I can swear that it's correct.

Q. And how would you base your answer?

A. I would base my answer on the fact that we have a competent team that knows how to put the numbers together and knows how to do -- work a spreadsheet and use simple addition and we trust them to put together competently-prepared data. And I would stand by the numbers that my team created.

Q. Thank you. Next, during your direct testimony today, Mr. Simon, you were shown Exhibit OSI 8.

A. Correct.

Q. You did not prepare Exhibit OSI 8; isn't that correct?

A. That's correct.

Q. You do not know the name of the person who prepared Exhibit OSI 8; isn't that correct?

MS. KANE: That was asked and answered on direct who created it.

A. It was created by our -- by Omaha Creative Group, by the, by the team of individuals that is responsible for that.

Q. You did not personally instruct the preparer of Exhibit OSI 8 to prepare Exhibit OSI 8; isn't that correct?

A. I did, I did instruct them to prepare it.

Q. The team?

A. Yeah, because, because we were -- I mean, it's -- this is part of this proceeding we created this document. So we've all been working together, the legal team and everything, as part of this. So this would have been direction that I would have given to the PR team to give us a comprehensive list of all of the media hits.

Q. Thank you. You cannot personally swear that all of the numerical information contained in Exhibit OSI 8 is completely accurate based on your own personal knowledge; isn't that

correct?

MS. KANE: I'm going to object to the form and the foundation of the question. We've established that hundreds and hundreds of pages referring to numerical information is rather vague. So form and foundation.

Q. I'll ask the question again. You cannot personally swear that all of the numerical information contained in Exhibit OSI 8 is completely accurate; isn't that correct?

A. Correct.

Q. Thank you. Mr. Simon, some of your company's marketing expenditures for Omaha Steaks branded products are for products which are not beef products; isn't that correct?

A. Yes. But our marketing is for our brand. So -- and all those products are branded Omaha Steaks, and I don't think there's a single -- 99.9 percent of the marketing that we produce is -- contains the marketing of beef. So I don't know how to break it out.

Q. I'm not asking you to break it out.

A. Okay. Okay.

Q. Let me just say you answered my question yes, but then you continued on with some

discussion.

A. Yeah. Sorry.

Q. Some of your company's marketing expenditures for Omaha Steaks branded products include advertising showing or describing seafood; isn't that correct?

A. Yes.

Q. Some of your company's marketing expenditures for Omaha Steaks branded products include advertising showing or describing poultry; isn't that correct?

A. Yes.

Q. In shorthand also for vegetables; isn't that correct?

A. Yes.

Q. You have to say yes or no.

A. Yes.

Q. And also show seasonings; isn't that correct?

A. Yes.

Q. And also for soups; isn't that correct?

A. Yes.

Q. And also for pork; isn't that correct?

A. Yes.

Q. And also for veal; isn't that correct?

A. Yes.

Q. And also for lamb; isn't that correct?

A. Yes.

Q. And some of your company's marketing expenditures for Omaha Steaks branded products are for advertising seen by customers located outside of the United States; isn't that correct?

A. No. I mean, our marketing is not directed outside the United States. Now, if somebody from outside the United States goes to our website, they would do that. But I'm not -- but we don't -- we do not, we do not target marketing outside the United States.

Q. Is the Omaha Steaks website accessible by people outside of the United States?

A. Of course.

Q. Some of your company's marketing expenditures for Omaha Steaks branded products are for advertisements appearing in foreign country publications such as magazines; isn't

that correct?

A. No.

Q. You do not have personal knowledge of your company's annual total marketing expenditures for the year 2010 relating solely to your company's marketing of Omaha Steaks beef products; isn't that correct?

A. I would say that's not correct.

Q. What are your company's annual total marketing expenditures for the year 2010 relating solely -- period.

A. I mean, the answer that we gave in the interrogatory is the answer. And that answer is, is not -- that's not our total marketing budget, that's our marketing budget related to beef, that we've allocated to beef.

Q. Can you explain what you mean by that when you say "allocated to beef"?

A. Sure. Well, I think a good example would be we have a -- when I -- when I'm selling a combination package that includes beef, I'm viewing that as I'm marketing beef. We very rarely will promote a nonbeef item all by itself. I don't view a page on the website, for instance, that has a seasoning on it as a, as a marketing

expense. There's no real incremental cost to put a page on the website to have -- to promote a seasoning, and I wouldn't promote a seasoning just by itself. So, you know, every, every -- everything that we spend marketing dollars on -- almost everything that we spend marketing dollars on is to put -- is to talk about the Omaha Steaks and the other things that you could enjoy along with your Omaha Steak.

Q. Mr. Simon, you're currently senior vice president of plaintiff Omaha Steaks International, Inc.; isn't that correct?

A. Correct.

Q. In your current position you have personal knowledge about your company's sales and market -- sales and advertising of beef products to consumers; isn't that correct?

A. Yep. Yes.

Q. And to your -- the best of your own personal knowledge the average order by consumers of Omaha Steaks branded beef products totals about $110?

A. Yes.

Q. Now, I'm going to shift. I just have a couple of more questions regarding your

company's use of two trademarks that are of record in this case. And by the way, although I didn't offer into evidence, Exhibits GOP 1, GOP 2, and GOP 3 are already of record in this case.

I now show you Exhibit GOP 5 which is of record in this proceeding and which shows the Omaha Fresh by Omaha Steaks trademark.

MS. KANE: And I'm going to do the shorthand objection that I made earlier about what he'd been prepared to speak about and testify about today.

MR. SAMUELS: I understand that, but Mr. Simon has been talking about use and ownership of opposer's marks.

MS. KANE: We don't have to argue about it. I just made my objection.

MR. SAMUELS: Thank you.

BY MR. SAMUELS:

Q. Mr. Simon, can you swear that you now have personal knowledge that this trademark which is shown in Exhibit GOP 5 was used in 2012 by being placed on the packaging of meat being shipped by your company to customers?

A. Yes.

Q. You have personal knowledge that it was used on packaging for meat shipped in 2012 by your company to customers?

A. Yes.

Q. Can you swear that you now have personal knowledge that this trademark was used in 2013 by being placed on the packaging of meat being shipped by your company to customers?

A. Yes.

Q. Can you swear that you now have personal knowledge that this trademark was used in the first seven months of 2014 by being placed on the packaging of meat being shipped by your company to customers?

A. Yes.

Q. Can you swear that you now have personal knowledge that your company intended to use this trademark after July 30, 2014, by being placed on the packaging of meat being shipped by your company to customers?

A. Yes.

Q. Thank you. Mr. Simon, I now show you Exhibit GOP 6 which is of record in this proceeding and which shows the Omaha Fresh Angus by Omaha Steaks trademark. Can you swear that

you now have personal knowledge that this trademark was used in 2012 by being placed on the packaging of meat being shipped by your company to customers?

A. Yes.

Q. Same question 2013?

A. Yes.

Q. Same question first seven months of 2014?

A. Yes.

Q. Same question that your company intended to use this trademark after July 30, 2014, by being placed on the packaging of meat being shipped by your company to customers?

A. Yes.

Q. Thank you. Mr. Simon, have you personally visited the Greater Omaha Packing Company plant at its current location at 3001 L Street in Omaha, Nebraska?

A. I don't remember. If I have it would have been a very long time ago.

Q. You don't think it was within the last two or three years?

A. No, unless I went to just Henry's office in the plant, but I don't remember in the

last two or three years being at Greater Omaha.

Q. Thank you. Do you recall if you ever visited the Greater Omaha Packing Company plant at its previous location at 2523 Edward Babe Gomez Avenue in Omaha, Nebraska?

A. I don't think I ever did. I do not -- no.

Q. If you ever visited the Greater Omaha Packing Company plant at its current location on L Street, do you recall ever observing the boxed, B-O-X-E-D, boxed beef which your company had ordered from Greater Omaha Packing Company being packaged for you, for your company?

A. No. I didn't and no.

Q. Have you ever personally ordered beef on behalf of your company from defendant Greater Omaha?

A. No.

MR. SAMUELS: I have no further questions.

REDIRECT EXAMINATION

BY MS. KANE:

Q. I just have a few to wrap up, circle back.

A. Okay.

Q. Exhibit 1 --

A. Yes.

Q. -- is the -- as I represent it was Exhibit A attached to our opposition petition.

MR. SAMUELS: I'm sorry, Ms. Kane, I didn't understand what you just said.

MS. KANE: That Exhibit 1, as I represented when I first handed it to the witness, was attached as Exhibit A to the petition in opposition notice of proceeding.

MR. SAMUELS: Yes.

MS. KANE: That's all. I'm just refreshing so Mr. Simon knows what I'm talking about.

BY MS. KANE:

Q. On Exhibit 1 you see in the left-hand corner that -- I'm sorry, left-hand column that there's a series of serial numbers?

A. Yes.

Q. And in the second column a series of registration numbers?

A. Yes.

Q. Do you know to what those numbers refer?

A. They refer to our trademarks, our

various trademarks.

Q. And those numbers are assigned by whom?

A. I believe the registration number is assigned by the Trademark Office and -- both of them are assigned by the Trademark Office.

Q. And you testified before that it was your understanding that Karen Shirk had put this document together?

A. Yes.

Q. At whose direction would Ms. Shirk have done so, if you know?

A. Mine.

Q. At yours. And then I want to show you -- hold that, please. You're going to need it to answer this. Mr. Samuels asked you with regard to Exhibit GOP 2.

A. Uh-huh.

Q. Which he referred to as the ONA mark.

A. Yes.

Q. The Omaha Natural Angus.

A. Yes.

Q. And he asked whether your company, Omaha Steaks International, had ever incorporated a mark using the words "Omaha Natural Angus", do

you remember that?

A. Yes.

MR. SAMUELS: I object. You're characterizing my questions somewhat inaccurately.

MS. KANE: And I apologize for that. That was not my intention.

MR. SAMUELS: Very well.

BY MS. KANE:

Q. I'll attempt to correctly characterize an answer that you gave. Did you testify that Omaha Steaks International had never registered a mark with the words "Omaha Natural Angus"?

A. That's correct. We've never -- we never registered a mark with "Omaha Natural Angus".

MR. SAMUELS: That's not -- that's not what he testified to. I asked him about his company's use of the mark. I never --

MS. KANE: And I'm not trying to mischaracterize it at all.

MR. SAMUELS: You said -- he said that he testified.

THE WITNESS: So you can just ask

that as a question.

BY MS. KANE:

Q. Well, I'll ask you --

A. Okay.

Q. -- has Omaha Steaks International ever used a mark using the words "Omaha Natural Angus"?

A. We've used -- not Omaha Natural Angus, but we do have a mark that contains "Omaha" and "Angus".

Q. And does that mark appear by registration number on Exhibit 1?

A. The Omaha -- yeah, the Omaha Steaks Angus mark is -- do you want the serial number or the registration?

Q. Registration.

A. The registration number is 2002499.

Q. Thank you. Are there any others that incorporate the words "Omaha" and "Angus"?

A. Yes. There's registration 4172329 which is Omaha Fresh Angus by Omaha Steaks.

Q. All right. Any others?

A. There's another serial number relating to Omaha Fresh Angus by Omaha Steaks, 85153488.

Q. Thank you. And that also appears on Exhibit 1; correct?

A. Correct.

Q. All right. You testified that you did not personally prepare ad expenditure records, do you recall that testimony?

A. Yes.

Q. The person or persons responsible for compiling advertising expenditure records, are they in the line of people who report ultimately to you?

A. Yes.

Q. How many people are in the -- in your chain of command that ultimately report to you?

A. If, if we were to include the whole chain, including the customer service people, it's probably close to a thousand. If we're talking about managerial people, it's probably 200.

Q. So if we were to bring in every person who plays a part in the compilation of advertising and marketing expenditure records, how many witnesses would we need to bring?

A. Probably 40.

Q. And instead of bringing in 40

witnesses, what did you do to prepare to offer testimony on behalf of Omaha Steaks International with respect to advertising expenditure records?

A. Well, I participated in the -- in preparing the answers to the interrogatories which were -- which involved doing a lot of research and participating and making inquiries, you know, with our team.

I worked very closely with our finance team which prepares all of the budgets and tracks all of the invoices and expenditures and metrics and analysis as it relates to it.

And, you know, I'm, I'm also pretty involved in this, you know, at a -- on a -- we have a weekly, we have a weekly meeting that I attend for our marketing team where we go over, you know, all the numbers, the performance. So, I mean, I have general sense of the way that the business operates and how we are, and how we are -- I have a specific sense of how the business operates and about where we spend our money and how we market our products.

Q. And have the persons in the chain of command that report to you specifically -- well, the big group and also the smaller, the 40

managerial persons, have you ever been given cause to question the accuracy or the authenticity of the information they've provided you?

A. No. Our team is professional and capable and they have all the right tools and we have good information systems for them to pull data from.

MS. KANE: And I -- subject to the objections that Mr. Samuels has lodged today, I formally offer Exhibits 1 through -- I went up to 9.

Q. And then there was another -- Mr. Samuels asked you about Exhibit 3.

A. The trade shows?

Q. Yeah. Exhibit 4, the holiday season, and Exhibit 5, the Father's Day.

A. Uh-huh.

Q. And to each of those, I believe, and he'll correct me if I'm wrong, I think he asked you whether you, whether you had directed the creation of these documents, and I'll ask you now, were these documents created at my behest?

A. No.

Q. Were these documents extracted from

other items that your ad partners gave you at my request?

A. I'm not sure I understand the question.

Q. I'm sorry. That's good. You object to my, you object to my question. You brought these documents with you today.

A. Yes.

Q. And did I not ask you to bring these documents with you today?

MR. SAMUELS: Ms. Kane, can you specify what documents you're pointing to?

MS. KANE: I'm talking about Exhibits 3, 4, and 5 specifically.

MR. SAMUELS: Thank you.

A. Yes, you asked me to bring these documents.

Q. Okay. And that's what I'm just trying to understand. Were these, were these documents then not -- well, I asked you to bring them, what did you do to get them?

A. Well, they -- okay. Yes, so maybe you're -- I think you're asking me were these documents created especially for you as part of this proceeding, is that kind of what you're

asking?

Q. Yeah.

A. Okay. So, no. These are, these are -- this is just -- this is sort of matter-of-course business reporting and business documents that exist evergreen within our organization that are produced as part of our daily operating of our business. And so when you expressed that the trademark review or the -- whoever --

Q. The Board.

A. -- is adjudicating this proceeding they weren't going to watch the videos, I said, well, I can bring you thumbnails of that kind of a thing which would make it easier.

And then we were, you know -- the subject of the breath of the brand came up and we talked about the fact that we participate in trade shows. And you said, well, do you have some information about the trade shows you attend? And I said, yeah, I can get that. Couple clicks, send an e-mail, got it.

Q. Right. So all of the information contained in Exhibits 3, 4, and 5 are documents that are kept in the ordinary course of Omaha

Steaks' business?

A. Yes.

Q. And then --

MR. SAMUELS: Objection. That's a leading question.

Q. Does Omaha Steaks keep these records?

A. Yes.

Q. Does Omaha Steaks keep these records in the ordinary course of their business?

A. Yes.

Q. So just to reiterate, were these documents created for this litigation?

A. No.

Q. And you testified on direct about the still images that are contained in Exhibits 4 and 5. Do you personally appear in any of those images?

A. Yes.

Q. Which exhibit?

A. In Exhibit 5 I appear in three of the images that relate to television appearances.

Q. Which?

A. *Fox & Friends*, Yahoo! Finance, and *Countdown to the Closing Bell* which is on Fox Business News.

Q. So those -- I just want to clarify for the record. You've identified the bottom row of two rows on Exhibit 5 in which you appeared --

A. Yes.

Q. -- on a television show? And these are still photos of that?

A. Right.

Q. Of those shows?

A. Right.

Q. Okay. Is anything similar in 4 in which you appear, Exhibit 4?

A. In Exhibit 4 the first upper left box was a *Fox & Friends* appearance that I appeared in. And then the lower left references a *USA Today* article, and even though it doesn't show it on this picture, my photograph was in the article in the paper, if that's what you're asking.

Q. Okay. I think I just need one moment. Do you have personal knowledge about the advertising expenditures for Omaha Steaks in the year 2005?

A. Can I pull it off the top of my head?

Q. Yes.

A. No.

Q. And in the course of your duties as

senior vice president do you ever commit to memory sales figures of a given year?

A. No. I -- I mean, you know, I tend to keep in my head the most recent information, you know, that I've been exposed to. But, but I -- you know, but that would just be whatever I happen to recall.

Q. And I -- and I'm going to interrupt because I misspoke. My first question was about advertising expenditures.

A. Right.

Q. And my second question was about sales, and I didn't mean that to be.

A. Oh, okay.

Q. Do you commit to memory advertising expenditures for a particular year? Do you commit those to memory?

A. No. Again, only -- you know, I might -- if we're -- the current year that we're working on, the previous year I usually have a general, you know, sense of the order of magnitude.

Q. And --

A. But I wouldn't -- you know, if it was a years ago I probably wouldn't know the exact

number.

Q. And what would you do -- well, it happened in this litigation, you were asked of specific advertising expenditures for prior years, what did you do to ascertain those numbers?

A. Consulted the financial records of the business.

Q. And as you testified previously, that you do that in the ordinary course of your job to rely on your crew and your people to report those to you?

A. Yep. My crew and my people and we also have a -- you know, I know how to go get the data from our systems as well if I need to.

Q. And, again, have you ever had any reason to question the accuracy of the information that you've gleaned from those records?

A. No.

Q. Or from the staff that provides them to you?

A. No.

MS. KANE: No further questions.

MR. SAMUELS: I have no further

questions.

MS. KANE: Okay. Read and sign.

(The deposition was concluded at the hour of 4:51 p.m.)

- C E R T I F I C A T E -

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Deanna L. Maley, RPR, CRR, and General Notary Public in and for the State of Nebraska, do hereby certify that TODD SIMON was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him as above set forth was reduced to writing by me.

That the within and foregoing deposition was taken by me at the time and place herein specified and in accordance with the within stipulations, the reading and signing of the witness to his deposition having not been waived.

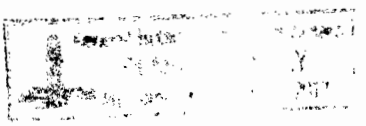
That I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

IN TESTIMONY WHEREOF, I have placed my hand and notarial seal this 27th day of January, 2016.

Deanna L Maley

GENERAL NOTARY PUBLIC

COST: $ _____



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

Omaha Steaks International, Inc.,	)	Opposition No. 91213527 (Parent)
Opposer,	)	
v.	)	Cancellation No. 92059629
Greater Omaha Packing Co., Inc.,	)	Cancellation No. 92059455
Applicant.	)	

CERTIFICATE OF REPORTER

I, Deanna L. Maley, RPR, CRR, and General Notary Public, do hereby certify that I served as the Court Reporter at the deposition of TODD SIMON on January 12, 2016, at 1299 Farnam Street, Suite 1500, Omaha, Nebraska, in which the costs of reporting and transcribing the deposition were $ 1070.00, and that such costs are to be paid by counsel for the opposer.

I further certify that the original and copies were sent to: Original and 1 copy to Ms. Nora M. Kane; 1 copy to Mr. I. Stephen Samuels.

Dated this 27th day of January, 2016.

Delivered: 1-27-16

Deanna L Maley
GENERAL NOTARY PUBLIC
Deanna L. Maley, RPR, CRR
Thibault, Suhr & Thibault, Inc.
6818 Grover Street, Suite 300
Omaha, Nebraska 68106
(402) 331-2500

General Notary - State of Nebraska
DEANNA L. MALEY
My Comm. Exp. Feb 20, 2017

January 27th, 2016

TODD SIMON
c/o Ms. Nora M. Kane
Attorney at Law
STINSON LEONARD STREET
1299 Farnam Street, Suite 1500
Omaha, NE 68102-1818

Dear Mr. Simon:

You will recall on January 12, 2016, I took your deposition at 1299 Farnam Street, Suite 1500, Omaha, Nebraska, dealing with the case of Omaha Steaks International, Inc. v. Greater Omaha Packing Co., Inc. docketed in the United States Patent and Trademark Office. Your signature on the deposition was not waived.

A minuscript of the transcript, which is an exact duplicate of the original, is ready for your review. I would appreciate it if you would read it, then sign the errata sheet and jurat page and return all back to me in the enclosed envelope as soon as possible. Local practice allows a witness 30 days in which to read and sign the transcript and return same to the reporter.

As you read the minuscript, please note any corrections you might have on the correction sheet enclosed with the minuscript giving the page number, line number, and the reason for the correction to be made as so indicated on the sheet.

After reading and noting any correction on the sheet, please sign the jurat page and also the correction sheet. Please sign both pages in front of a Notary Public and then have the Notary sign on the proper line.

Thank you for your cooperation in this matter.

Yours truly,
Deanna L Maley
Deanna L. Maley

cc: Mr. I. Stephen Samuels

DEPOSITION CORRECTIONS OF TODD SIMON

CASE: Omaha Steaks International, Inc. v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527 (Parent)

PAGE NO.	LINE NO.	CORRECTION	REASON FOR CORRECTION
7	9	"'90s" → "80s"	misspoke
22	2	"making" → "taking"	typo
22		"an insert" → "a freestanding insert"	clarification
49	4	"category" → "catalog"	typo
54	22	"conren" → "conversation"	clarification

SIGNATURE OF WITNESS

STATE OF NEBRASKA)
) ss
COUNTY OF Nebraska)

Subscribed and sworn to before me this 16th day of February, 2016.

GENERAL NOTARY - State of Nebraska
KAREN L. SHIRK
My Comm. Exp. December 28, 2016

GENERAL NOTARY PUBLIC

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Dec 9 03:20:37 EST 2013

Logout | Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

GREATER OMAHA

PROVIDING THE HIGHEST QUALITY BEEF

Word Mark	GREATER OMAHA PROVIDING THE HIGHEST QUALITY BEEF
Goods and Services	IC 029. US 046. G & S: meat, including boxed beef primal cuts
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.07.01 - Cattle; Oxen, cows, calves, bulls; Steers 03.07.03 - Heads of oxen, cows, calves, bulls
Serial Number	85897951
Filing Date	April 8, 2013
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	September 17, 2013
Owner	(APPLICANT) Greater Omaha Packing Co., Inc. CORPORATION NEBRASKA 3001 L Street Omaha NEBRASKA 68107
Attorney of Record	Chad W. Swantz
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GREATER OMAHA PROVIDING THE HIGHEST QUALITY BEEF" APART FROM THE MARK AS SHOWN
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of The words "GREATER OMAHA" are placed to the right of the profile of a steer's head. The words "PROVIDING THE HIGHEST QUALITY BEEF" are below "GREATER OMAHA".
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	

Omaha Steaks International, Inc.
v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527
Defendant's Exhibit No. GOP-1

GOP-0527

United States of America

United States Patent and Trademark Office

Reg. No. 4,006,768

Registered Aug. 2, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

GREATER OMAHA PACKING CO., INC. (NEBRASKA CORPORATION)
3001 L. ST.
OMAHA, NE 68107

FOR: ANGUS BEEF, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-0-2010; IN COMMERCE 5-0-2010.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OMAHA NATURAL ANGUS", "CORN FED", AND "MINIMALLY PROCESSED AND NO ARTIFICIAL INGREDIENTS", APART FROM THE MARK AS SHOWN.

THE COLOR(S) GOLD, YELLOW, RED, BLACK, GRAY IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A GOLD SHIELD ENCLOSING GRAY LINES EXTENDING OUT FROM THE CENTER BEHIND THE WORD "OMAHA" IN YELLOW WITH RED OUTLINE ABOVE THE WORD "NATURAL" IN YELLOW WITH RED OUTLINE ABOVE THE WORD "ANGUS" IN YELLOW APPEARING ON A RED BANNER ABOVE THE WORDS "CORN FED" IN RED SURROUNDING A YELLOW CIRCLE CONTAINING A BLACK SILHOUETTE IMAGE OF A STEER ABOVE THE WORDS "MINIMALLY PROCESSED AND NO ARTIFICIAL INGREDIENTS" IN YELLOW. THE RECTANGULAR SHAPE OF THE BLACK BACKGROUND IS NOT CLAIMED AS A FEATURE OF THE MARK.

SN 77-852,483, FILED 10-20-2009.

ALYSSA STEEL, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Omaha Steaks International, Inc.
v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527
Defendant's Exhibit No. GOP-2

United States of America

United States Patent and Trademark Office

Reg. No. 3,998,763

Registered July 19, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

GREATER OMAHA PACKING CO., INC. (NEBRASKA CORPORATION)
3001 L. ST.
OMAHA, NE 68107

FOR: HEREFORD BEEF, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-4-2011; IN COMMERCE 4-4-2011.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "U.S. BEEF", "1881", "OMAHA HEREFORD", AND "CORN FED", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLACK, WHITE, MAROON IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDS "OMAHA HEREFORD" IN WHITE WITH A MAROON BORDER BELOW A MAROON AND WHITE GRAPHIC OF A STEER, APPEARING BELOW THE YEAR "1881", ALL ENCIRCLED BY A BLACK OVAL BORDER OUTLINED IN MAROON AND CONTAINING THE WORDS "U.S. BEEF" AT THE TOP AND "CORN FED" AT THE BOTTOM. THE WHITE OUTLINE, GRAY BACKGROUND, AND THE SHAPE OF THE GRAY BACKGROUND ARE NOT CLAIMED AS A FEATURE OF THE MARK.

SN 77-824,031, FILED 9-10-2009.

ALYSSA STEEL, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Omaha Steaks International, Inc.
v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527
Defendant's Exhibit No. GOP-3

United States of America

United States Patent and Trademark Office

OMAHA FRESH BY OMAHA STEAKS

Reg. No. 4,172,330

Registered July 10, 2012

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: MEAT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-2-2012; IN COMMERCE 4-2-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F) AS TO "OMAHA".

OWNER OF U.S. REG. NOS. 2,002,499, 3,774,260, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRESH" AND "STEAKS", APART FROM THE MARK AS SHOWN.

SN 85-153,496, FILED 10-15-2010.

DANIEL CAPSHAW, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Omaha Steaks International, Inc.
v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527
Defendant's Exhibit No. GOP-5

United States of America
United States Patent and Trademark Office

OMAHA FRESH ANGUS BY OMAHA STEAKS

Reg. No. 4,172,329

Registered July 10, 2012

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

OMAHA STEAKS INTERNATIONAL, INC. (NEBRASKA CORPORATION)
11030 "O" STREET
OMAHA, NE 68137

FOR: ANGUS MEAT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 4-2-2012; IN COMMERCE 4-2-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F) AS TO "OMAHA".

OWNER OF U.S. REG. NOS. 2,002,499, 3,776,869, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRESH ANGUS" AND "STEAKS", APART FROM THE MARK AS SHOWN.

SN 85-153,479, FILED 10-15-2010.

DANIEL CAPSHAW, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Omaha Steaks International, Inc.
v. Greater Omaha Packing Co., Inc.
Opposition No. 91213527
Defendant's Exhibit No. GOP-6