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

Proceeding	91214191
Party	Plaintiff BBK Pictures, Inc.
Correspondence Address	DINA LEYTES GRIESING LAW LLC 1717 ARCH STREET, SUITE 3630 PHILADELPHIA, PA 19103 UNITED STATES dleytes@griesinglaw.com
Submission	Brief on Merits for Plaintiff
Filer's Name	Dina Leytes
Filer's e-mail	dleytes@griesinglaw.com
Signature	/Dina Leytes/
Date	02/17/2015
Attachments	Opposer's ACR Brief Exs.1-8.pdf(3882684 bytes) Opposer's ACR Brief Exs.9-16.pdf(3295365 bytes) A Maltepes Declaration and Exhibit.pdf(112376 bytes) M Arnold Deposition and Exhibits.pdf(4061850 bytes)

EXHIBIT 1

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

BBK Pictures, Inc.,	:	
Opposer	:	OPPOSITION NO. 91214191
	:	
v.	:	Application Serial No. 85884091
	:	
Boston Iced Tea Company, Inc.,	:	
Applicant.	:	

**OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO APPLICANT**

BBK Pictures, Inc. (“Opposer”) requests that Boston Iced Tea Company, Inc. (“Applicant”), by an officer or agent thereof, and in accordance with Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the U.S. Patent and Trademark Office Rules of Practice, produce within thirty (30) days, the documents requested herein for inspection and copying at the offices of Griesing Law, LLC, 1717 Arch Street, Suite 3630, Philadelphia, PA 19103. These Requests are intended to be continuing in nature. Any information that is discovered after timely production should be brought to the attention of Opposer’s counsel through supplemental production within reasonable time thereafter.

DEFINITIONS

A. “Possession, custody, or control” of documents means possession, custody or control, or right to possession, custody or control, by Applicant, including Applicant’s agents, attorneys, and all other persons acting or purporting to act on Applicant’s behalf.

B. “Document” means all originals and all non-identical copies of any document as defined by Fed. R. Civ. P. 34(a), including all matter of any kind or character constituting the

recording of any communication upon any tangible thing by any means, which are in Applicant's possession, custody, or control and known by Applicant to exist.

C. "Boston Iced Tea Company, Inc." and "Applicant" mean the applicant of U.S. Application Serial Number 85884091 and any parent, division, subsidiary, or affiliate thereof and officers, directors, employees, agents and representatives thereof.

D. "BBK Pictures, Inc." and "Opposer" mean BBK Pictures, Inc. and any parent, division, subsidiary, or affiliate thereof and officers, directors, employees, agents and representatives thereof.

E. The term "Opposer's BOSTON TEA Mark" means the standard character mark and details of U.S. Application Serial Number 85237182.

F. The term "Applicant's MAGUIRE'S BOSTON ICED TEA Mark" means the claimed design plus words mark in U.S. Application Serial Number 85884091.

G. "All documents" means every document as defined above, which can be located or discovered by reasonably diligent efforts.

H. "Correspondence" means letter, memorandum, e-mail, or any other method used to communicate among individuals or business entities.

I. "Including" means including but not by way of limitation.

J. The conjunctions "and" and "or" shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any document otherwise within the scope of any request.

K. "Relates to," "relating to," "concerns" or "concerning" means referring to, discussing, reflecting, dealing with, analyzing, evaluating, estimating, constituting, describing, evidencing or pertaining to in any way either directly or indirectly, and either in whole or in part.

INSTRUCTIONS

A. Applicant's production in response to the following document requests is to be supplemented to the fullest extent required by the Federal Rules of Civil Procedure, and each such document request shall be construed to include any supplemental documents responsive to the document request which later is discovered by Applicant or otherwise becomes available.

B. In responding to the following document requests, Applicant is instructed to furnish any information that is in Applicant's possession, custody or control, and is available to Applicant by the exercise of reasonable diligence.

C. If any document request posed herein requires the disclosure of information that Applicant claims to be privileged or otherwise not properly discoverable, produce as many responsive documents as possible, by redaction or otherwise, so as to avoid the disclosure of information that Applicant claims to be privileged or otherwise not properly discoverable, and state the reason for Applicant's objection to producing and not redacting any withheld responsive documents.

D. If Applicant believes that a document request is vague, ambiguous, broad or unduly burdensome, Applicant is requested to timely contact the undersigned counsel to resolve the ambiguity or minimize the burden, otherwise Opposer will understand Applicant's production to be full and complete.

E. In responding to these document requests, if Applicant claims any ambiguity in interpreting either the document request itself or a definition or instruction applicable thereto, such claim shall not be utilized by Applicant as a basis for refusing to respond, but there shall be set forth as part of Applicant's response the language deemed to be ambiguous and the interpretation chosen or used in responding and producing documents responsive to the request.

F. If any document request cannot be answered in full, respond to the extent possible and specify the reasons for Applicant's inability to fully answer.

G. Each document request is to be responded to separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to respond to each document request as fully as possible with respect to the information available to Applicant at the time of Applicant's response.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents relating to Applicant's creation, consideration, selection, and/or decision to adopt Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
2. All documents relating to the use or future use of Applicant's MAGUIRE'S BOSTON ICED TEA Mark in connection with any goods or services.
3. All documents relating to Applicant's first use of Applicant's MAGUIRE'S BOSTON ICED TEA Mark for any goods or services with which Applicant's MAGUIRE'S BOSTON ICED TEA Mark has been used in the United States.
4. Specimens of all goods or services bearing Applicant's MAGUIRE'S BOSTON ICED TEA Mark or upon which Applicant intends to use Applicant's MAGUIRE'S BOSTON ICED TEA Mark in the future.
5. All documents relating to publicity (both solicited and unsolicited) in the United States concerning Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
6. All documents relating to marketing or consumer research, including individual questionnaires, pilot studies, focus group and surveys undertaken concerning Applicant's MAGUIRE'S BOSTON ICED TEA Mark or Opposer's BOSTON TEA Mark, including documents that identify persons who participated in the activities.
7. All documents, including trademark searches, conducted or caused to be conducted by Applicant relating to Applicant's MAGUIRE'S BOSTON ICED TEA Mark or designed to identify any trademark that is identical or confusingly similar to Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
8. All documents, including specimens, relating to proposed or actual marketing, distribution, sale, advertising or promotion of Applicant's goods or services

bearing Applicant's MAGUIRE'S BOSTON ICED TEA Mark, including each different logotype, sign, display, point of sale display, label, design, hang tag, wrapper, container, label, package, advertisement, brochure, promotional material, and the like, in which Applicant's MAGUIRE'S BOSTON ICED TEA Mark or any variation thereof has been used or is intended to be used.

9. All documents relating to the consideration of sales, marketing or distribution channels for goods or services in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
10. All documents relating to the amount of advertising and promotional expenditures from goods or services offered under Applicant's MAGUIRE'S BOSTON ICED TEA Mark in the United States.
11. All documents relating to any person having, or having had, any right to use Applicant's MAGUIRE'S BOSTON ICED TEA Mark, including all documents relating to the possibility of a license, franchise, assignment or distribution agreement with Applicant concerning Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
12. All documents relating to Applicant's knowledge of Opposer's BOSTON TEA Mark.
13. All documents relating to instances of likelihood of confusion or actual confusion caused by or in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark and any third party mark.
14. All documents relating to any state, federal or foreign application to register Applicant's MAGUIRE'S BOSTON ICED TEA Mark ever granted to, considered, applied for, sought, acquired, denied or abandoned by Applicant.
15. All documents relating to each cease and desist letter, correspondence, complaint, objection, opposition, administrative proceeding, legal opinion, hearing, civil or criminal action brought by a third party to Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
16. All documents relating to each cease and desist letter, correspondence, complaint, objection, opposition, administrative proceeding, legal opinion, hearing, civil or criminal action brought by Applicant against any third party related to Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
17. All documents summarizing or memorializing Applicant's sales or projected sales of each good or service sold or intended to be sold in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

18. All documents summarizing or memorializing Applicant's geographic distribution of each good or service sold or intended to be sold in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
19. All documents summarizing or memorializing Applicant's geographic distribution of marketing and promotional material made or intended in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
20. All documents referring or relating to Opposer or Opposer's BOSTON TEA Mark.
21. All documents that disclose any media (including website, newspapers, periodicals, brochures, press releases, and other print media, television advertising, radio advertising, trade show or otherwise) where Applicant uses or intends to use Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
22. All documents that disclose Applicant's channels of trade for its goods or services sold or intended to be sold in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
23. All documents that disclose or are related to the demographics of customers for the goods or services sold or intended to be sold in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.
24. All documents that disclose the State where Applicant was and is legally organized, Applicant's legal name, Applicant's entity type, Applicant's current legal status, and Applicant's officers, executives and managers.
25. All documents relating to websites, newspapers, periodicals, brochures, press releases and other print media, radio and television programs, or any other media, in which the Applicant or Applicant's MAGUIRE'S BOSTON ICED TEA Mark is mentioned, discussed or otherwise appears.
26. All documents that disclose statements or opinions of any expert, including any attorney opinion letter, obtained by Applicant or any person acting for or on behalf of Applicant regarding any of the issues in this opposition proceeding.
27. All documents disclosing the facts that Applicant relies upon in support of Applicant's MAGUIRE'S BOSTON ICED TEA Mark in this proceeding.
28. For each of Opposer's interrogatories in this proceeding, all documents, other than those documents already produced, used to prepare Applicant's responses.
29. For each of Opposer's requests for production of documents in this proceeding, all documents, other than those documents produced, used to prepare Applicant's

response.

30. All documents Applicant was asked to identify in reference or response to Opposer's First Set of Interrogatories to Applicant.

RESPECTFULLY SUBMITTED,
GRIESING LAW, LLC,

BY: /Dina Leytes/
Dina Leytes, Esquire.
PA Bar Identification No. 310303
1717 Arch Street, Suite 3630
D. Craig Callaghan
PA Bar Identification No. 43815
Philadelphia, PA 19103
(215) 618-3720
(215) 814-9049 [fax]
dleytes@griesinglaw.com
dccallaghan@griesinglaw.com
www.griesinglaw.com

Dated: July 29, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Opposer's First Set of Requests for Production of Documents has been served this day, July 29, 2014, upon Roger N. Behle, Jr. Esquire, counsel for Applicant Boston Iced Tea Company, Inc., by electronic mail at the following address:

rbehle@foleybezek.com

/Dina Leytes/
Dina Leytes, Esq.
Attorney for Opposer

EXHIBIT 2

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

BBK Pictures, Inc.,	:	
Opposer	:	OPPOSITION NO. 91214191
	:	
v.	:	Application Serial No. 85884091
	:	
Boston Iced Tea Company, Inc.,	:	
Applicant.	:	

OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT

BBK Pictures, Inc. (“Opposer”) requests that Boston Iced Tea Company, Inc. (“Applicant”) answer the following interrogatories, pursuant to the provisions of Rule 33 of the Federal Civil Rules of Procedure and Rule 2.120 of the U.S. Patent and Trademark Office Trademark Rules of Practice under oath and within thirty (30) days of service hereof. These interrogatories shall be deemed to be continuing so as to require supplemental answers if Applicant or anyone acting on Applicant’s behalf obtains further or corrected information between the time the answers are served and the time of trial.

DEFINITIONS

A. “Possession, custody, or control” of documents means possession, custody or control, or right to possession, custody or control, by Applicant, including Applicant’s agents, attorneys, and all other persons acting or purporting to act on Applicant’s behalf.

B. “Document” means all originals and all non-identical copies of any document as defined by Fed. R. Civ. P. 34(a), including all matter of any kind or character constituting the recording of any communication upon any tangible thing by any means, which are in Applicant’s possession, custody, or control and known by Applicant to exist.

C. “Boston Iced Tea Company, Inc.” and “Applicant” mean the applicant of U.S. Application Serial Number 85884091 and any parent, division, subsidiary, or affiliate thereof and officers, directors, employees, agents and representatives thereof.

D. “BBK Pictures, Inc.” and “Opposer” mean BBK Pictures, Inc. and any parent, division, subsidiary, or affiliate thereof and officers, directors, employees, agents and representatives thereof.

E. The term “Opposer’s BOSTON TEA Mark” means the standard character mark and details of U.S. Application Serial Number 85237182.

F. The term “Applicant’s MAGUIRE’S BOSTON ICED TEA Mark” means the claimed design plus words mark in U.S. Application Serial Number 85884091.

G. “All documents” means every document as defined above, which can be located or discovered by reasonably diligent efforts.

H. “Correspondence” means letter, memorandum, e-mail, or any other method used to communicate among individuals or business entities.

I. “Including” means including but not by way of limitation.

J. The conjunctions “and” and “or” shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any document otherwise within the scope of any request.

K. “Relates to,” “relating to,” “concerns” or “concerning” means referring to, discussing, reflecting, dealing with, analyzing, evaluating, estimating, constituting, describing, evidencing or pertaining to in any way either directly or indirectly, and either in whole or in part.

L. “Identify” shall mean, when used in reference to:

(i) A natural person - to set forth his or her full name, present or last known residence and business addresses, residence and business telephone numbers, occupation

and business title, both at the present time and during the time to which the response refers.

(ii) A company, corporation, association, joint venture, sole proprietorship, firm, partnership, or any other business or legal entity not a natural person - to set forth its full name, address, and principal place of business both at the present time and during the time to which the response refers.

(iii) A document - to set forth a description with sufficient particularity that such document may thereafter be specified and recognized as such.

(iv) Any other thing - to set forth a description with sufficient particularity that such thing may thereafter be specified and recognized as such.

INSTRUCTIONS

A. Applicant's answers to the following interrogatories are to be supplemented to the fullest extent required by the Federal Rules of Civil Procedure, and each such interrogatory shall be construed to include any supplemental information, knowledge, or data responsive to the interrogatory that later is discovered by Applicant or otherwise becomes available.

B. In responding to the following interrogatories, Applicant is instructed to furnish any information that is in Applicant's possession, custody or control, and is available to Applicant by the exercise of reasonable diligence.

C. If any interrogatory posed herein requires the disclosure of information that Applicant claims to be privileged or otherwise not properly discoverable, answer as much of the interrogatory as does not require the disclosure of information that Applicant claims to be privileged or otherwise not properly discoverable and state the basis for objecting to answer the remainder of the interrogatory

D. If Applicant believes that an interrogatory is vague, ambiguous, broad or unduly burdensome, Applicant is requested to timely contact the undersigned counsel to resolve the ambiguity or minimize the burden.

E. In responding to these interrogatories, if Applicant claims any ambiguity in interpreting either the interrogatory itself or a definition or instruction applicable thereto, do not use such a claim as a basis for refusing to answer, but rather set forth as part of Applicant's answer the language deemed to be ambiguous and the interpretation chosen or used in answering the interrogatory.

F. If any interrogatory cannot be answered in full, answer to the extent possible and specify the reasons for Applicant's inability to fully answer.

G. Each interrogatory is to be responded to separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to respond to each interrogatory as fully as possible.

INTERROGATORIES

1. Identify all persons interviewed or who have provided information used to prepare the answers to these interrogatories and state specifically with reference to the interrogatory numbers, the nature and extent of the participation of each person.

ANSWER:

2. Identify all memoranda, correspondence, documents or other writings relied on in

answering these interrogatories; identify their authors and identify those persons who now have possession, custody or control of these materials.

ANSWER:

3. Identify each good or service that has been provided or is intended to be provided in connection with the Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

4. State the earliest date Applicant first used Applicant's MAGUIRE'S BOSTON ICED TEA Mark in the United States in connection with each good or service specified in response to Interrogatory No. 3 or state none if not applicable.

ANSWER:

5. State the earliest date Applicant first used Applicant's MAGUIRE'S BOSTON ICED TEA Mark in commerce in the United States in connection with each good or service specified in response to Interrogatory No. 3 or state none if not applicable.

ANSWER:

6. State Applicant's understanding of the meaning or significance of Applicant's MAGUIRE'S BOSTON ICED TEA Mark and for each of its components, including the word "Maguire's."

ANSWER:

7. Identify all persons involved in the creation or selection of Applicant's MAGUIRE'S BOSTON ICED TEA Mark and describe in detail the nature and extent of each person's involvement.

ANSWER:

8. Describe in detail all facts surrounding the selection and adoption of Applicant's MAGUIRE'S BOSTON ICED TEA Mark, including all reasons why Applicant selected Applicant's MAGUIRE'S BOSTON ICED TEA Mark for use.

ANSWER:

9. For each provided good and service identified in response to Interrogatory No. 3 state the monthly sales of each by units and dollars.

ANSWER:

10. For each provided good and service identified in response to Interrogatory No. 3, state the monthly dollar amount that the Applicant has spent in connection with advertising or promoting such good or service.

ANSWER:

11. For each provided good and service identified in response to Interrogatory No. 3, state the average suggested retail price for each type of good or service distributed or sold in connection with the Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

12. Identify each different logotype, sign, display, point of sale display, label, design, hang tag, wrapper, container, label, package, advertisement, brochure, promotional material, and the like, that contains or bears Applicant's MAGUIRE'S BOSTON ICED TEA Mark or any variation thereof and which is intended to be used or has been used or disseminated by Applicant.

ANSWER:

13. Identify Applicant's known competitors in the marketplace for the goods and services that the Applicant offers or intends to offer in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Application.

ANSWER:

14. Identify all persons having information concerning Applicant's consideration, selection and adoption of Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

15. Identify all documents concerning Applicant's consideration, selection and adoption of Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

16. Identify all past and present officers of Applicant and state their duties, and responsibilities during all periods relevant to this matter.

ANSWER:

17. For each of the past and present officers of Applicant, state the time period and details of his or her educational and employment history.

ANSWER:

18. Identify all research that Applicant has conducted or caused to be conducted relating to adoption, use and/or registration of Applicant's MAGUIRE'S BOSTON ICED TEA Mark or formative elements thereof, including, but not limited to, trademark searches intended to reveal or discover other trademarks or trade names that are similar to or confusingly similar to Applicant's MAGUIRE'S BOSTON ICED TEA Mark, and any opinions which Applicant has obtained relating thereto.

ANSWER:

19. List each State in the United States in which the Applicant (a) has distributed, offered or provided any good, service, product, advertising material or promotional material in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark, and (b) intends to distribute, offer or provide any good, service, product, advertising material or promotional material in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

20. Identify the channels of trade through which the Applicant (a) has marketed, promoted, advertised, distributed, offered or provided goods or services in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark, and (b) intends to market, promote, advertise, distribute, offer or provide goods or service in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

21. Identify all third parties (including advertising agencies and public relations firms) that have been involved at any time in advertising, promoting, marketing or publicizing any goods and services Applicant intends to sell, has sold, or has offered for sale at any time under Applicant's MAGUIRE'S BOSTON ICED TEA Mark, and, for each third party: (a) describe in detail the nature of that third party's involvement, (b) identify Applicant's account representative or other primary points of contact with the third party, and (c) identify all documents that relate to Applicant, the third party and Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

22. Identify each item of advertising, marketing, promotional material, or other media that Applicant has used or intends to use to advertise, market, promote or sell goods or services in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark and, where applicable, for each item identify (a) the dates of distribution, (b) the channels of distribution (including the names of all media or

distribution outlets), (c) the person most knowledgeable about the creation and distribution of the items, (d) the quantity distributed, and (e) the territory within which the item was distributed.

ANSWER:

23. Identify the intended target or actual audience for each of Applicant's goods and services with the Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

24. Identify each business entity to which the Applicant has or intends to promote goods or services in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

25. Identify each magazine, newspaper, professional journal, trade journal, broadcast or other media story which has discussed or reported on the Applicant or Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

26. Describe all occasions on which Applicant has received any inquiries or complaints related to whether the goods or services provided in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark are associated with, sponsored by, approved by or are in any other manner connected with a third party other than Opposer.

ANSWER:

Describe all occasions on which Applicant has filed or sent a cease and desist letter, correspondence, complaint, objection, opposition, cancellation, administrative proceeding, or civil action against any third party in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

27. Identify the legal name of Applicant and State where legally organized.

ANSWER:

28. Identify all websites and webpages where goods or services in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark have been or will be advertised, marketed, promoted or sold.

ANSWER:

29. Identify all websites and webpages owned or operated by Applicant or operated in part or in whole on behalf of Applicant by a third party.

ANSWER:

30. State the date and describe the circumstances surrounding when Applicant first became aware of Opposer's BOSTON TEA Mark and identify the person or persons who initially obtained this information.

ANSWER:

31. Identify all marks or source identifiers other than Applicant's MAGUIRE'S BOSTON ICED TEA Mark that Applicant has used in connection with any of the goods and services specified in response to Interrogatory No. 3.

ANSWER:

32. Identify any use by Applicant of the word "Maguire's" or a variant thereof in connection with goods or services other than those goods and services specified in response to Interrogatory No. 3.

ANSWER:

33. Identify all market studies or other surveys conducted or commissioned by Applicant in connection with Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

34. Identify all persons having a past or present ownership interest in Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

35. Identify all experts that have at any time been retained by Applicant for this Opposition or any other administrative proceeding or litigation concerning Applicant's MAGUIRE'S BOSTON ICED TEA Mark.

ANSWER:

36. For each document which is produced by Applicant in this proceeding, identify the interrogatory and/or document request to which the document responds.

ANSWER:

37. To the extent that Applicant contends any third party marks are relevant to any issue in this proceeding, identify the marks, the mark owners, and all information that Applicant has regarding the nature and scope of the use of each mark.

ANSWER:

38. Identify any agreements that Applicant has entered into that relate in any way to Applicant's MAGUIRE'S BOSTON ICED TEA Mark, including any assignment agreements, concurrent use agreements, or covenants not to sue, and state the dates of parties to and material terms of each such agreement.

ANSWER:

39. State whether Applicant obtained an attorney opinion letter with respect to the application for Applicant's MAGUIRE'S BOSTON ICED TEA Mark and provide the date and author of any such letter.

ANSWER:

40. Identify the person or persons who answered these interrogatories.

ANSWER:

RESPECTFULLY SUBMITTED,
GRIESING LAW, LLC,

BY: /Dina Leytes/
Dina Leytes, Esquire.
PA Bar Identification No. 310303
1717 Arch Street, Suite 3630
D. Craig Callaghan
PA Bar Identification No. 43815
Philadelphia, PA 19103
(215) 618-3720
(215) 814-9049 [fax]
dleytes@griesinglaw.com
dccallaghan@griesinglaw.com
www.griesinglaw.com

Dated: July 29, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Opposer's First Set of Interrogatories has been served this day, July 29, 2014, upon Roger N. Behle, Jr. Esquire, counsel for Applicant Boston Iced Tea Company, Inc., by electronic mail at the following address:

rbehle@foleybezek.com

/Dina Leytes/
Dina Leytes, Esq.
Attorney for Opposer

EXHIBIT 3

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

BBK Pictures, Inc.,	:	
Opposer	:	OPPOSITION NO.
	:	
v.	:	Application Serial No. 85884091
	:	
Boston Iced Tea Company, Inc.,	:	
Applicant.	:	

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR
PRODUCTION
PRELIMINARY STATEMENT**

Applicant has not completed its investigation of the facts related to this action. Therefore, the responses contained herein are based upon such information and documents as are presently available and are specifically known, and disclose only those facts and contentions and identify only those documents that presently occur to Applicant.

It is anticipated that further discovery, legal research, independent investigation, and analysis will supply additional facts and documentation, and will add meaning to the known facts, as well as establish entirely new facts and legal contentions, all of which may lead to the discovery of substantial additions to, changes in, and derivations from the facts and contentions and the documentation identified herein.

The following responses are given without prejudice to Applicant's right to produce evidence of subsequently discovered facts and/or documents that may later be discovered, remembered, and/or located.

Applicant accordingly reserves the right to change any and all answers as additional facts are ascertained, analyses are made, legal research is completed, contentions are framed, and documents are discovered. The answers contained herein are made in a reasonable and good-faith effort to obtain and provide as much factual information, with as much specificity as possible, but should in no way lead to Applicant's (a) prejudice in relation to further discovery, investigation, research, and/or analysis or (b) obligation to obtain information which is equally available to the

Opposer.

Applicant specifically reserves:

- (a) The right to object to the admission of evidence before the TTAB on any permissible ground whatsoever, including but not limited to competency, vagueness, relevance, and materiality, to the admission into evidence or other use of any of these responses at the trial of this action or at any other proceeding in this action or any other action;
- (b) The right to object to the admission of evidence before the TTAB on any permissible ground whatsoever to any demand for further responses to the responses or any other discovery procedure involving or relating to the subject matter of the response; and
- (c) The right at any time to revise, correct, add to, or clarify any of the responses set forth herein, as discovery is ongoing.

RESPONSES TO REQUESTS FOR PRODUCTION

RESPONSE TO REQUEST NO. 1:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages and materials filed with the USPTO.

RESPONSE TO REQUEST NO. 2:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages and materials filed with the USPTO.

RESPONSE TO REQUEST NO. 3:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request namely materials filed with the USPTO.

RESPONSE TO REQUEST NO. 4:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely photographs.

RESPONSE TO REQUEST NO. 5:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages and photographs.

RESPONSE TO REQUEST NO. 6:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 7:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages and materials filed with the USPTO.

RESPONSE TO REQUEST NO. 8:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages, photographs, and materials filed with the USPTO.

RESPONSE TO REQUEST NO. 9

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 10:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 11:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages and materials filed with the USPTO.

RESPONSE TO REQUEST NO. 12:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely materials filed with the USPTO.

RESPONSE TO REQUEST NO. 13:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant has been unable to locate any documents in Applicant's possession, custody or control responsive to this Request.

RESPONSE TO REQUEST NO. 14:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable

inquiry, Applicant has been unable to locate any documents in Applicant's possession, custody or control responsive to this Request.

RESPONSE TO REQUEST NO. 15:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant has been unable to locate any documents in Applicant's possession, custody or control responsive to this Request.

RESPONSE TO REQUEST NO. 16:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant has been unable to locate any documents in Applicant's possession, custody or control responsive to this Request.

RESPONSE TO REQUEST NO. 17:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant has been unable to locate any documents in Applicant's possession, custody or control responsive to this Request.

RESPONSE TO REQUEST NO. 18:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages and news articles.

RESPONSE TO REQUEST NO. 19:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 20:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely materials filed with the USPTO and photographs.

RESPONSE TO REQUEST NO. 21:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 22:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 23:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 24:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 25:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable

inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages.

RESPONSE TO REQUEST NO. 26:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant has been unable to locate any documents in Applicant's possession, custody or control responsive to this Request.

RESPONSE TO REQUEST NO. 27:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages, photographs, and materials filed with the USPTO.

RESPONSE TO REQUEST NO. 28:

Subject to the reservations above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: After a diligent search and upon reasonable inquiry, Applicant identifies and attaches hereto all documents in Applicant's possession, custody or control in response to this Request, namely webpages, photographs, and materials filed with the USPTO.

Respectfully submitted,

Dated: September 25, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/s/ Roger N. Behle, Jr. _____

Roger N. Behle, Jr.

Attorney for Applicant.

VERIFICATION

Opposition No. 91214191

I, Michael Arnold, on behalf of Boston Iced Tea Company, Inc., the Applicant in the above referenced matter, and have read the foregoing FIRST SET OF REQUESTS FOR PRODUCTION TO APPLICANT and know the content thereof and certify the same is true of my own knowledge, except on those matters which are stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the 24th day of September, 2014 at the County of Ventura, California.

A handwritten signature in black ink, appearing to read "Michael Arnold", with a long horizontal flourish extending to the right.

MICHAEL ARNOLD
Boston Iced Tea Company, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that on the 25th day of September, 2014, the foregoing
APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR
PRODUCTION was served on Opposer by sending a copy thereof to:

Dina Leytes
D. Craig Callaghan
Griesing Law, LLC
1717 Arch Street, Suite 3630
Philadelphia, PA 19103
UNITED STATES

Attorneys for Opposer, by first-class, postage-prepaid mail.

Dated: September 25, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/s/ Roger N. Behle, Jr. _____

Roger N. Behle, Jr.

Attorney for Applicant.



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Santa Barbara Man Finds His Cup of (Iced) Tea with New Product Line

http://www.noozhawk.com/noozhawk/article/new_organic_iced_tea_to_be_launched_in_america

By Linda Sturesson, Noozhawk Intern | [@NoozhawkNews](#)



Michael Arnold of Santa Barbara is in the process of launching the Boston Iced Tea Co., a line of organic beverages. (Linda Sturesson / Noozhawk photo)

Michael Arnold puts two years into taste-testing organic beverages for his newly launched Boston Iced Tea Co.

A Santa Barbara man is in the process of launching a new line of organic iced tea, which he plans to distribute to food chains, hospitals, military bases and schools across America.

"We are very pleased with the final product, and believe most consumers will be, too," said Michael Arnold, CEO of Boston Iced Tea Co.

More than two years have gone into the development of Boston Iced Tea, Arnold said, and he's in negotiations for early purchase orders for select supermarkets, hospitals, and military base exchange and commissaries in California and Boston.

Arnold has dedicated the past month to give the organic beverage the exact right taste.

"I've been sitting around for four weeks just drinking tea," he said with a laugh. "I can't sleep at night because I've had like 40 cups of tea, and then I wonder why I can't sleep until 2 in the morning."

The Boston native said he's done everything from building custom homes to flying live lobsters from the East Coast to the West Coast, selling them to top restaurants in Los Angeles.

His original trade is finish carpentry; one of many fields hampered from the economy.

Two years ago, unable to secure consistent construction work, Arnold decided to create something from scratch.

He began watching hundreds of customers at Starbucks and 7-Eleven stores to find out what was making money at those popular locations.

"I realized that people, no matter what, are not going to give up their habit," he said. "And their habit is, every morning they go get an iced tea or a coffee ... and spend an average of \$5 to \$7."

He did his research and found that the most popular drink in America after water is iced tea.

There are currently 12 iced tea distributors in the United States, he said, and Arnold wanted to create the healthiest iced tea, starting with making it organic.

"What I want is," he said, then paused. "On a really hot day, you grab (a Boston Iced Tea), and it's ice cold and refreshing. When you're done you get that pungent snap to your mouth, where it's crisp and clean. That's what we're trying to get."

He's also adding mushroom extract to Boston Iced Tea. Mushroom extract is a frequently used product in military food to increase energy.

One thing missing will be the artificial sweeteners, found in energy drinks and sodas. Boston Iced Tea will be the first on the market to fully deliver on the promise of a healthy iced tea, Arnold said.

"OK, so this is the black one," he said and swooped a glass of "African Black" from across the table. "How's that?"

It had a sweet but bitter aftertaste, and Arnold explained he's still working on converting the bitterness to another taste profile — pleasing to senses without adding sugar.

"He's gone through a lot of different tests and resources with organic teas to get that right combination," said artist Emiliano Campobello, who's doing the graphic artwork for Boston Iced Tea. "We want to make sure we have the right formulation that we want to stand by."

When asked if he plans to sell off the company once it gets big, Arnold made it clear he's become attached to and is proud of the product he's developed for so long.

"You have no idea how many sleepless nights, hours and meetings it's taken to get to this point," Campobello said.

"I want to see it grow and create a happy, healthy, humble company," Arnold added, referring to its slogan.

Some 320 cases with the finished product were scheduled to be shipped recently to distributors from Ventura to San Diego.

If all goes well, he hopes to sell the Boston Iced Tea to chains such as Whole Foods that share his vision for healthy consumer foods and beverages.

"If you're going to do the organic thing," he said, "you're going to have to do it all the way."

— Noozhawk intern Linda Stuesson can be reached at lsturesson@noozhawk.com. Follow Noozhawk on Twitter: [@noozhawk](#), [@NoozhawkNews](#) and [@NoozhawkBiz](#). Connect with [Noozhawk on Facebook](#).

http://www.noozhawk.com/noozhawk/article/new_organic_iced_tea_to_be_launched_in_america



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Organic

100% Organic ingredients—
No 'natural flavors'.
No artificial anything

Harmonious



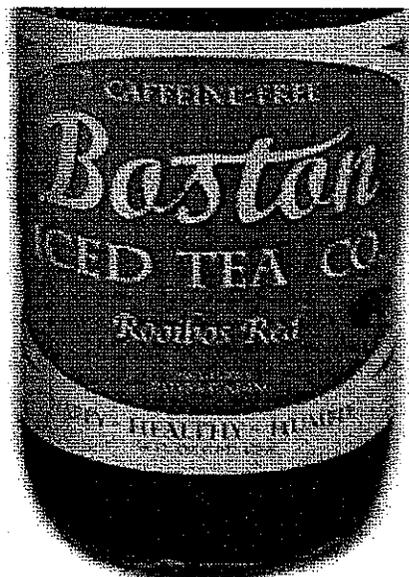
Healthy

Our tea is 100% organic tea and medicinal mushroom extracts, one gram of sugar, and only four calories.

Our teas are in harmony with your taste buds. As soon as you drink it, your body knows you are in for a wholesome treat—in harmony with your health.

One Gram of Sugar

Delicious iced tea with only 1 gram of sugar.



40% More Oxygen

We include Cordyceps Mushroom (non-GMO) which helps the body retain up to 40% more oxygen. Allowing your body to function better and burn more calories during athletic activities.

Balanced

Our tea formulations incorporate a specific balance between each ingredient. The resulting formulas provide the ultimate ready-to-drink iced tea experience.

Powered by Reilly Newman & Co.



KENYA GREEN

ROOIBOS RED

AFRICAN BLACK

CHINA WHITE



Unit Volume	16 fl. oz.
Unit Dimensions	2-3/4" x 7"
Case Pack	12
Case Dimensions	12"L x 9"W x 7"H
Case Weight	14 lbs
Cases per Pallet	96
Pallet Configuration	16 Cases per Pallet Tie; 6 High
Pallet Weight	1396 lbs

Boston Iced Tea Benefits

100% Organic Ingredients • No Artificial or "Natural" Anything
 Organic Tea Extracts, Organic Medicinal Mushroom Extracts, Deionized Water, <2 gr. Sugar
 Shelf-Stable (2-Yr. Shelf Life) Ready To Drink
 Packed in Glass—Not Plastic

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EXHIBIT C

APP000006



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**African
Black**



**Rooibus
Red**



**Kenya
Green**



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White**





Our Teas

In a word: Exceptional.
Brisk, fresh, refreshing, incredibly
delicious!
All are wholesome, healthy, and
100% organic.

What else could anyone want
from a ready-to-drink iced tea?

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Sales Info Sheet

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John Doe

john@bmail.com

Information

OUR OFFICE

Boston Iced Tea Company
924 A Chapala Street
Santa Barbara, CA 93101

CONTACT US

+1 (805) 455 9249

info@boston-icedtea.com

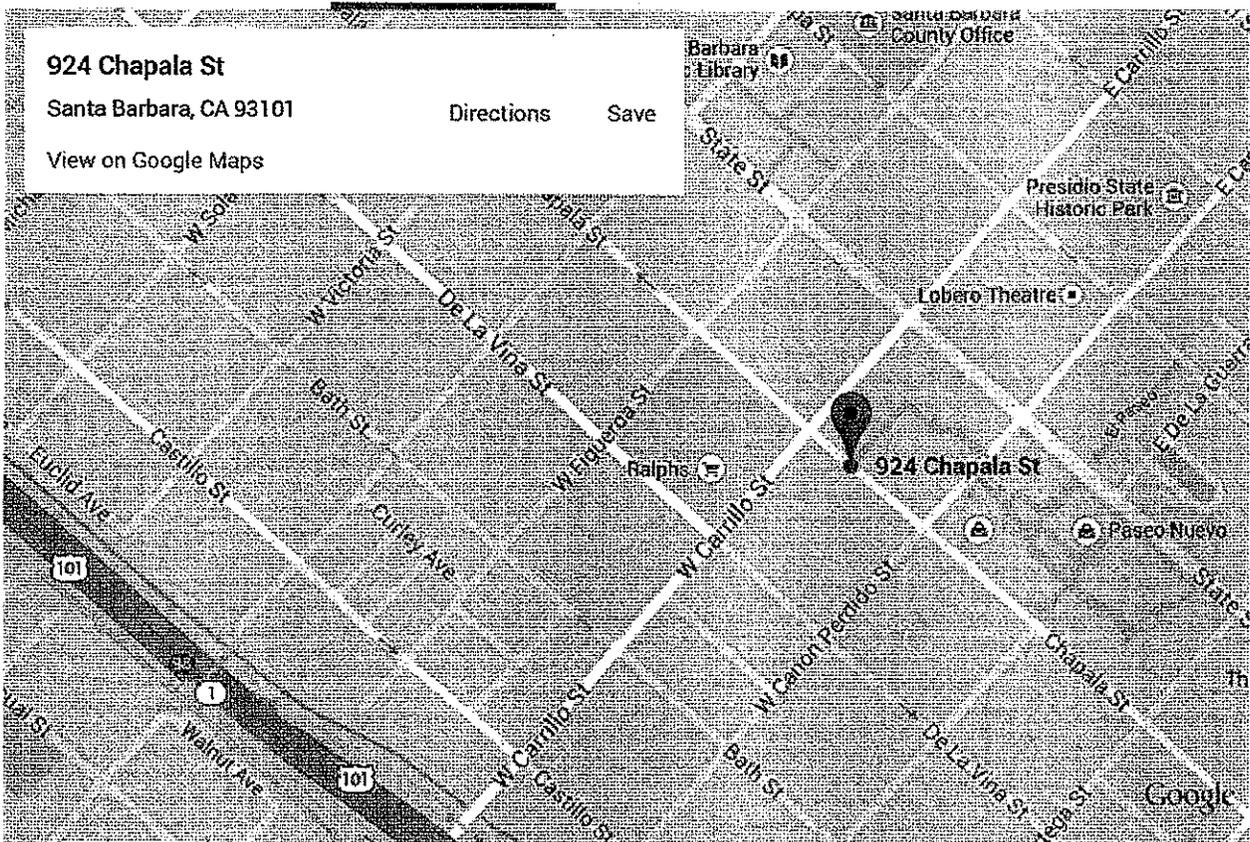
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Information

OUR OFFICE

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Santa Barbara, CA 93101

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Business Plan

Business Plan

Investor Information

By your reading the Boston Iced Tea Company business plan, you acknowledge it is not an offer to sell nor a solicitation to buy securities. Any investment in Boston Iced Tea Company can only be offered to and made by investors who can demonstrate they are Accredited Investors, and that such investment is suitable for them.

By checking the box below, and signing your name, you represent you are an accredited investor.

Yes, I am an accredited investor

Sign name here

Print name here

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Upon submitting, a link to the business plan will be sent to your email.

Thank you for your interest in Boston Iced Tea.



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Business Entity Detail

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Entity Name:	BOSTON ICED TEA COMPANY, INC.
Entity Number:	C3564329
Date Filed:	05/09/2013
Status:	ACTIVE
Jurisdiction:	DELAWARE
Entity Address:	224 LOYOLA DRIVE
Entity City, State, Zip:	SANTA BARBARA CA 93109
Agent for Service of Process:	MICHAEL ARNOLD
Agent Address:	224 LOYOLA DRIVE
Agent City, State, Zip:	SANTA BARBARA CA 93109

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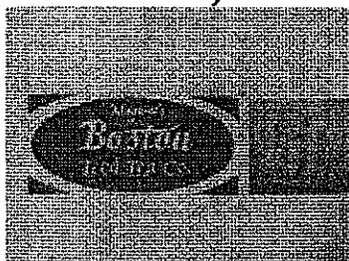
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Word Mark MAGUIRE'S BOSTON ICED TEA

Goods and Services IC 030. US 046. G & S: Beverages made of tea; Beverages with a tea base; Iced tea; Tea; Tea-based beverages

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 18.07.04 - Brigs (boats); Clippers (boats); Schooners (boats); Ships with two and three masts, including brigs, clippers and schooners
26.03.21 - Ovals that are completely or partially shaded
26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

Serial Number 85884091

Filing Date March 22, 2013

Current Basis 1B

Original Filing Basis 1B

Published for Opposition August 27, 2013

Owner (APPLICANT) Boston Iced Tea Company, Inc. CORPORATION DELAWARE 924-A Chapala Avenue Santa Barbara CALIFORNIA 93101

Attorney of Record Roger N. Behle, Jr.

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BOSTON ICED TEA CO." APART FROM THE MARK AS SHOWN

APP000016

Description of Mark The color(s) red, white, and gray is/are claimed as a feature of the mark. The mark consists of the wording "MAGUIRE'S BOSTON ICED TEA CO." and the design of a tall ship. The word "Maguire's", in a stylized font, is positioned above the word "Boston" in the same stylized font, positioned above the words "Iced Tea Co.", in the same stylized font. The wording is all in white and enclosed within a white oval against a red rectangular background carrier. The wording is to the right of a gray square background carrier containing a tall ship image in varying shades of gray.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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KENYA GREEN

ROOIBOS RED

AFRICAN BLACK

CHINA WHITE



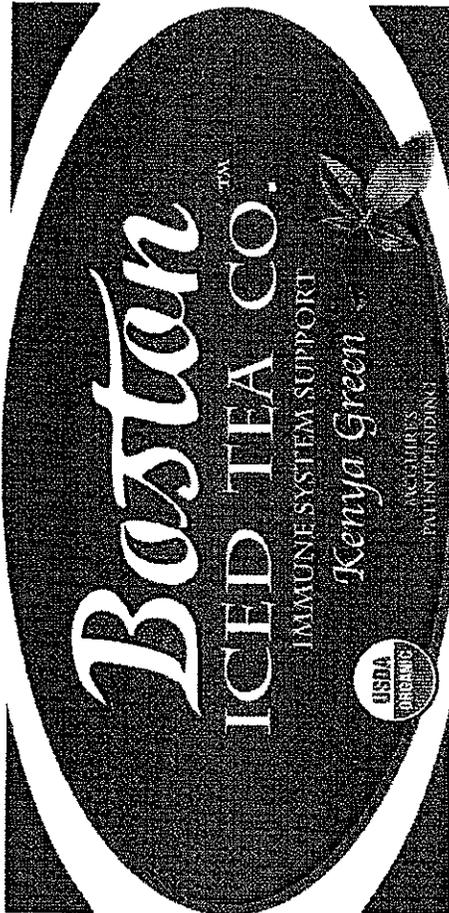
Unit Volume	16 fl. oz.
Unit Dimensions	2-3/4" x 7"
Case Pack	12
Case Dimensions	12"L x 9"W x 7"H
Case Weight	14 lbs
Cases per Pallet	96
Pallet Configuration	16 Cases per Pallet Tie; 6 High
Pallet Weight	1,396 lbs

Boston Iced Tea Benefits

100% Organic Ingredients • No Artificial or "Natural" Anything
 Organic Tea Extracts, Organic Medicinal Mushroom Extracts, Deionized Water, <2 gr. Sugar
 Shelf-Stable (2-Yr. Shelf Life) Ready To Drink
 Packed in Glass—Not Plastic

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⁴ CALORIES
 " HAPPY ~ HEALTHY ~ HUMBLE " ONLY 1 GRAM OF SUGAR
 16 FL OZ (1PT) 473ml

SMILE, LAUGH, LOVE, ENJOY LIFE

CA CASH REFUND

Nutrition Facts	
Serving size 8 fl oz.	
Servings per container 2	
Amount per serving	
Calories 4	
<hr/>	
Total Fat	0g 0%
Sodium	0g 0%
Total Carbohydrates	2.5g 1%
Sugars	1g
Protein	0g
<hr/>	
*Percent Daily Values are based on a diet of 2000 calories per day.	

NON-GMO



Do not drink if you are allergic to mushrooms



Boston Iced Tea is as American as innovation—always striving for the best!

For the first time, the finest certified organic teas are infused with a patented mushroom formulation designed to energize the body and mind, and strengthen the immune system. Refreshing, delicious Boston Iced Tea.

Ingredients:
 Purified Water, *Green Tea, *Mushrooms extracts (Agaricus blazei - Cordyceps sinensis - Maitake - Ganoderma/Reishi - Coriolus versicolor - Shiitake), *Cane Sugar, Citric Acid, *Organic Ingredients

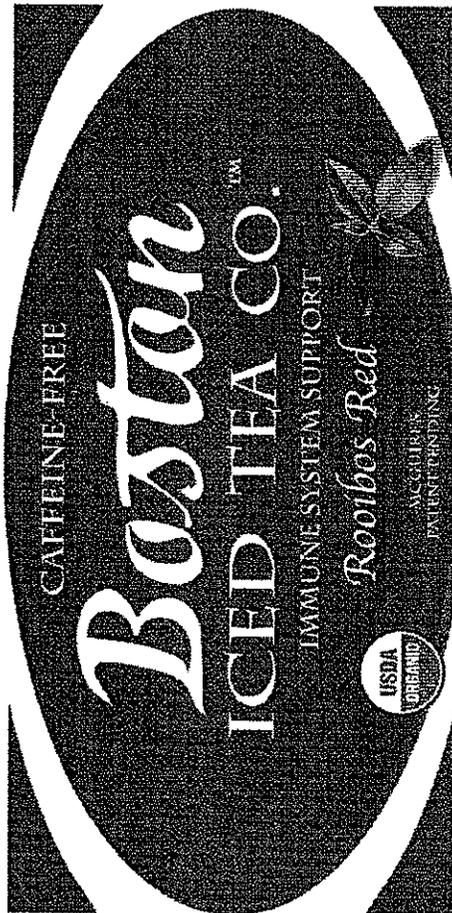


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 Certified Organic by OTCO



PLEASE RECYCLE

These statements are not intended to diagnose, treat, cure, or prevent any disease.



SMILE. LAUGH. LOVE. ENJOY LIFE.

CASH REFUND

Nutrition Facts	
Serving size 8 fl oz	
Servings per container 2	
Amount per serving	
Calories 2	% Daily Value*
Total Fat 0g	0%
Sodium 0g	0%
Total Carbohydrates 2g	4%
Sugars 2g	
Protein 0g	

NON-GMO



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Boston Iced Tea is as American as innovation—always striving for the best! For the first time, the finest certified organic teas are infused with a patented mushroom formulation designed to energize the body and mind, and strengthen the immune system. Refreshing, delicious Boston Iced Tea.

Ingredients: Purified Water, Rooibos Red Tea, Mushroom extract (Agaricus blazei, Cordyceps sinensis, Maitake, Ganoderma/Reishi, Cordyceps vesicolor, Shiitake), Cane Sugar, Citric Acid, Organic Ingredients

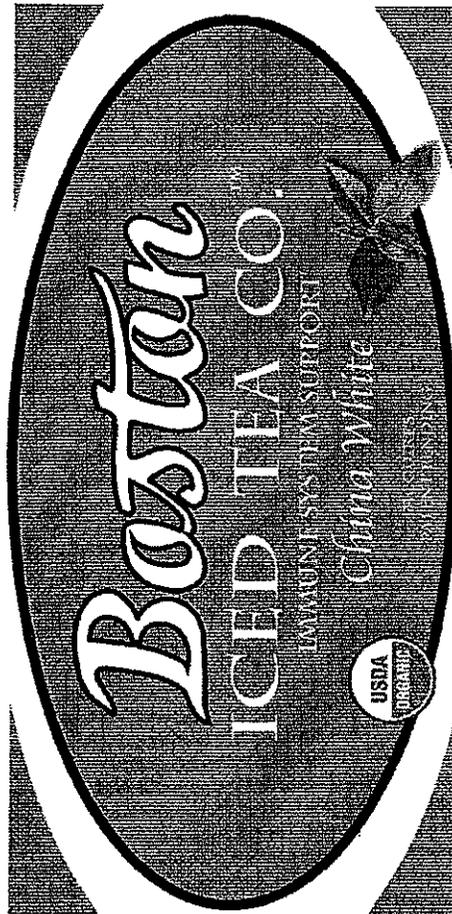
SHAKE WELL, DRINK ICE COLD, & ENJOY!

PLEASE RECYCLE

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These statements have not been evaluated by the FDA. These statements are not intended to diagnose, treat, cure, or prevent any disease.



4 CALORIES "HAPPY ~ HEALTHY ~ HUMBLE" **#1 ONLY 1 GRAM OF SUGAR**
16 FL OZ (1PT) 473ml

SMILE, LAUGH, LOVE, ENJOY LIFE

CA CASH REFUND

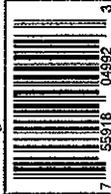
Nutrition Facts	
Serving size 8 fl oz	
Servings per container 2	
Amount per serving	
Calories 4	
Total Fat 0g	0%
Sodium 0g	0%
Total Carbohydrates 2.5g	1%
Sugars 1g	2%
Protein 0g	

% Daily Value*
*Percent Daily Values are based on a diet of pure bliss.

NON-GMO



Do not drink if you are allergic to mushrooms



Boston Iced Tea is as American as Innovation—always striving for the best! For the first time, the finest certified organic teas are infused with a patented mushroom formulation designed to energize the body and mind, and strengthen the immune system. Refreshing, delicious Boston Iced Tea.

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 (Use the "Back" button of the Internet Browser to return to TESS)

BOSTON TEA

Word Mark BOSTON TEA
Goods and Services IC 030. US 046. G & S: Tea-based beverages with fruit flavoring; tea; Tea-based beverages
 IC 032. US 045 046 048. G & S: Concentrated fruit juice; Concentrates for making fruit juices; Fruit drinks and fruit juices; Fruit drinks and juices; Fruit juices; Fruit juice bases; Fruit juice concentrates; Herbal juices; Mixed fruit juice; Non-alcoholic beverages containing fruit juices; Non-alcoholic fruit juice beverages; Non-alcoholic beverages with tea flavor
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85237182
Filing Date February 8, 2011
Current Basis 1B
Original Filing Basis 1B
Published for Opposition December 20, 2011
Owner (APPLICANT) BBK Pictures, Inc. CORPORATION PENNSYLVANIA 404 North 19th Street Philadelphia PENNSYLVANIA 19130

APP000022

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Input Fieldsssssss	Entered
SERIAL NUMBER	85237182
LAW OFFICE ASSIGNED	LAW OFFICE 111
EXTENSION OF USE	NO
MARK SECTION	
MARK	BOSTON TEA
OWNER SECTION	
NAME	BBK Pictures, Inc.
STREET	404 North 19th Street
CITY	Philadelphia
STATE	Pennsylvania
ZIP/POSTAL CODE	19130
COUNTRY	United States
PHONE	267-254-8972
EMAIL	amaltepes@gmail.com
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	030
CURRENT IDENTIFICATION	Tea-based beverages with fruit flavoring; tea; Tea-based beverages
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	03/14/2014
FIRST USE IN COMMERCE DATE	03/14/2014
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT\16\IMAGEOUT 16\852\371\85237182\xml16\SOU0002.JPG
SPECIMEN DESCRIPTION	A label showing the mark in use on the subject goods.

INTERNATIONAL CLASS	032
CURRENT IDENTIFICATION	Concentrated fruit juice; Concentrates for making fruit juices; Fruit drinks and fruit juices; Fruit drinks and juices; Fruit juices; Fruit juice bases; Fruit juice concentrates; Herbal juices; Mixed fruit juice; Non-alcoholic beverages containing fruit juices; Non-alcoholic fruit juice beverages; Non-alcoholic beverages with tea flavor
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	03/14/2014
FIRST USE IN COMMERCE DATE	03/14/2014
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\852\371\85237182\xml16 \SOU0003.JPG
SPECIMEN DESCRIPTION	A label showing the mark in use on the subject goods.
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	2
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	200
TOTAL AMOUNT	200
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Alysia Maltepes/
SIGNATORY'S NAME	Alysia Maltepes
SIGNATORY'S POSITION	Owner
DATE SIGNED	03/22/2014
SIGNATORY'S PHONE NUMBER	267-254-8972
FILING INFORMATION	
SUBMIT DATE	Sun Mar 23 17:47:20 EDT 2014
TEAS STAMP	USPTO/SOU-68.166.212.154- 20140323174720189849-8523 7182-5002ba4caf4d65995c89 39984e2175364e2b196905fd0 655c749c192fe16e1c1-CC-80 83-20140321171230539743

APP000024

APP000025

**Trademark/Service Mark Statement of Use
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

**MARK: BOSTON TEA
SERIAL NUMBER: 85237182**

The applicant, BBK Pictures, Inc., having an address of
404 North 19th Street
Philadelphia, Pennsylvania 19130
United States

is submitting the following allegation of use information:

For International Class 030:

Current identification: Tea-based beverages with fruit flavoring; tea; Tea-based beverages

The mark is in use in commerce on or in connection with all goods or services listed in the application or Notice of Allowance or as subsequently modified for this specific class

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 03/14/2014, and first used in commerce at least as early as 03/14/2014, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) A label showing the mark in use on the subject goods..

Specimen File1

For International Class 032:

Current identification: Concentrated fruit juice; Concentrates for making fruit juices; Fruit drinks and fruit juices; Fruit drinks and juices; Fruit juices; Fruit juice bases; Fruit juice concentrates; Herbal juices; Mixed fruit juice; Non-alcoholic beverages containing fruit juices; Non-alcoholic fruit juice beverages; Non-alcoholic beverages with tea flavor

The mark is in use in commerce on or in connection with all goods or services listed in the application or Notice of Allowance or as subsequently modified for this specific class

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 03/14/2014, and first used in commerce at least as early as 03/14/2014, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) A label showing the mark in use on the subject goods..

Specimen File1

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$200 will be submitted with the form, representing payment for the allegation of use for 2 classes.

Declaration

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Alysia Maltepes/ Date Signed: 03/22/2014
Signatory's Name: Alysia Maltepes
Signatory's Position: Owner
Signatory's Phone: 267-254-8972

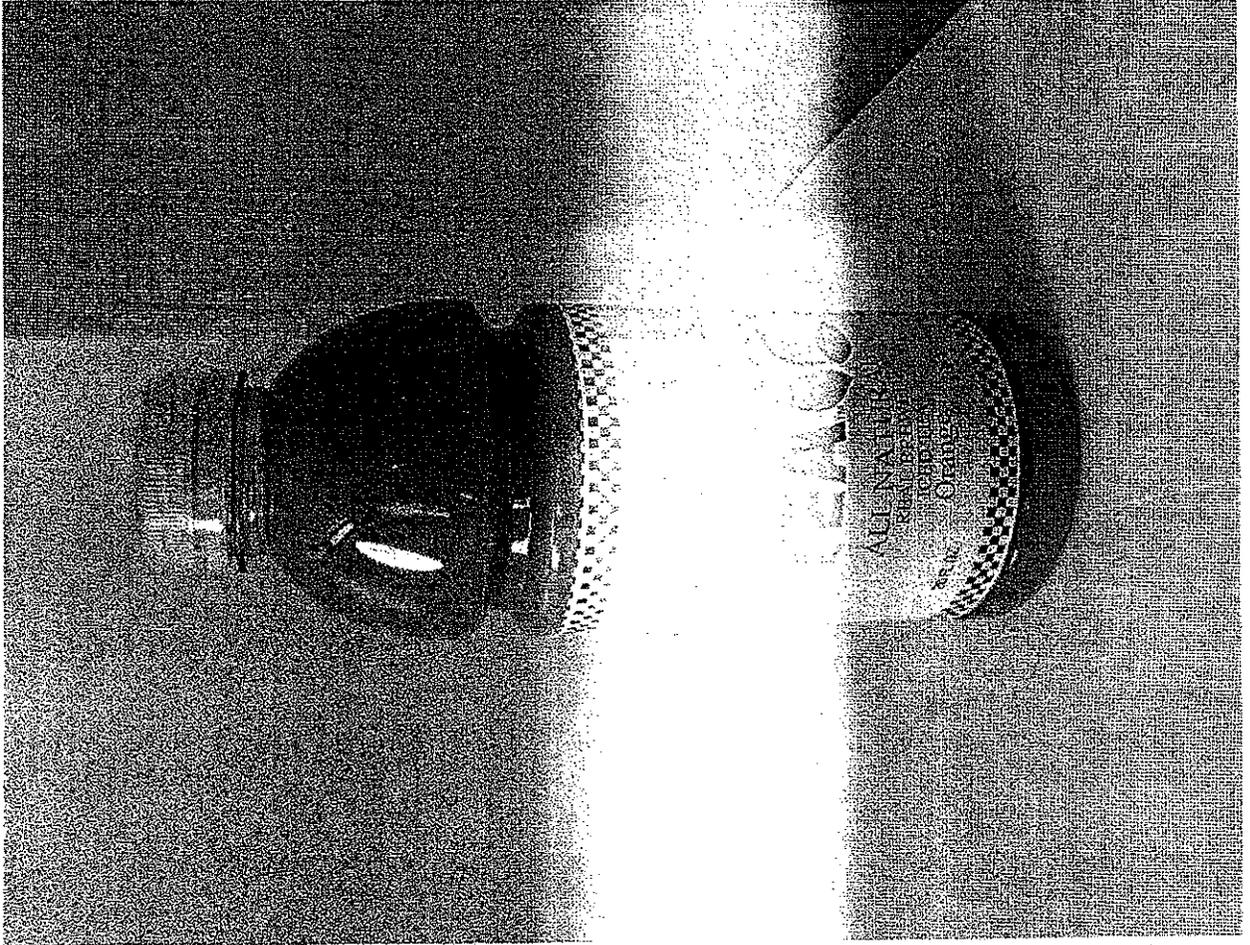
RAM Sale Number: 85237182
RAM Accounting Date: 03/24/2014

Serial Number: 85237182
Internet Transmission Date: Sun Mar 23 17:47:20 EDT 2014
TEAS Stamp: USPTO/SOU-68.166.212.154-201403231747201
89849-85237182-5002ba4caf4d65995c8939984
e2175364e2b196905fd0655c749c192fe16e1c1-
CC-8083-20140321171230539743

APP000027



APP000028



APP000029

FEE RECORD SHEET

Serial Number: 85237182



RAM Sale Number: 85237182

Total Fees: \$200

RAM Accounting Date: 20140324

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20140323	\$100	2	\$200

Transaction Date: 20140323





APP000031

EXHIBIT 4

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

BBK Pictures, Inc.,	:	
	:	
Opposer	:	OPPOSITION NO. 91214191
	:	
v.	:	Application Serial No. 85884091
	:	
Boston Iced Tea Company, Inc.,	:	
	:	
Applicant.	:	

APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES
PRELIMINARY STATEMENT

Applicant has not completed its investigation of the facts related to this action. Therefore, the responses contained herein are based upon such information and documents as are presently available and are specifically known, and disclose only those facts and contentions and identify only those documents that presently occur to Applicant.

It is anticipated that further discovery, legal research, independent investigation, and analysis will supply additional facts and documentation, and will add meaning to the known facts, as well as establish entirely new facts and legal contentions, all of which may lead to the discovery of substantial additions to, changes in, and derivations from the facts and contentions and the documentation identified herein.

The following responses are given without prejudice to Applicant's right to produce evidence of subsequently discovered facts and/or documents that may later be discovered, remembered, and/or located.

Applicant accordingly reserves the right to change any and all answers as additional facts are ascertained, analyses are made, legal research is completed, contentions are framed, and documents are discovered. The answers contained herein are made in a reasonable and good-faith effort to obtain and provide as much factual information, with as much specificity as possible, but should in no way lead to Applicant's (a) prejudice in relation to further discovery, investigation,

research, and/or analysis or (b) obligation to obtain information which is equally available to the Opposer.

Applicant specifically reserves:

- (a) The right to object to the admission of evidence before the TTAB on any permissible ground whatsoever, including but not limited to competency, vagueness, relevance, and materiality, to the admission into evidence or other use of any of these responses at the trial of this action or at any other proceeding in this action or any other action;
- (b) The right to object to the admission of evidence before the TTAB on any permissible ground whatsoever to any demand for further responses to the responses or any other discovery procedure involving or relating to the subject matter of the response; and
- (c) The right at any time to revise, correct, add to, or clarify any of the responses set forth herein, as discovery is ongoing.

RESPONSES TO INTERROGATORIES

RESPONSE TO INTERROGATORY NO. 1:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Michael Arnold of Boston Iced Tea Co., Inc. and Roger N. Behle, Jr., Foley Bezek Behle & Curtis, LLP

RESPONSE TO INTERROGATORY NO. 2:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant identifies the Documents produced in response to Opposer's Request for Production and no other memoranda, correspondence, documents or writings. The author of the produced documents is Applicant, and its employees as works made for hire pursuant to 17 U.S.C. §101. Applicant has possession, custody and control of the produced documents.

RESPONSE TO INTERROGATORY NO. 3:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Beverages made of tea, beverages with a tea base and iced tea, including, energy drinks and carbonated beverages.

RESPONSE TO INTERROGATORY NO. 4:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: At least as early as March 22, , 2012 for the identified products.

RESPONSE TO INTERROGATORY NO. 5:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: At least as early as March 22, 2012 for the identified products.

RESPONSE TO INTERROGATORY NO. 6:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant's President, Michael Arnold, is a native of Boston, Massachusetts and the mark MAGUIRE'S BOSTON ICED TEA was coined by Mr. Arnold without any particular meaning or significance, except as a source identifier for Applicant's high-quality beverages.

RESPONSE TO INTERROGATORY NO. 7:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Michael Arnold of Boston Iced Tea Co., Inc. Mr. Arnold conceived of the mark, including all of its distinctive graphic elements.

RESPONSE TO INTERROGATORY NO. 8:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant's President, Michael Arnold, is a native of Boston, Massachusetts and the mark MAGUIRE'S BOSTON ICED TEA was coined by Mr. Arnold without any particular meaning or significance, except as a source identifier for Applicant's high-quality beverages.

RESPONSE TO INTERROGATORY NO. 9:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Approximately 320 cases of products bearing the mark have been shipped to distributors in California and Massachusetts.

RESPONSE TO INTERROGATORY NO. 10:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant has spent an estimated \$1,000 or more per month to advertise products bearing the subject mark, selling and promoting its brand.

RESPONSE TO INTERROGATORY NO. 11:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: The average retail price for the products bearing the mark approximates \$2.49 per bottle

RESPONSE TO INTERROGATORY NO. 12:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant identifies the Documents produced in response to Opposer's Request for Production, which Documents reflect certain variations considered by Applicant for use with its products.

RESPONSE TO INTERROGATORY NO. 13:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant identifies the following companies that produce tea-based products in the United States: Lipton, Snapple, Arizona Sweet Leaf, Tazo, SoBe, Gold Peak, Honest Tea, Nestea and, Twinings, Tetley, Ahmad Tea, Clipper Tea and many others; however, Applicant does not necessarily view these companies as direct competitors.

RESPONSE TO INTERROGATORY NO. 14:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Michael Arnold.

RESPONSE TO INTERROGATORY NO. 15:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant identifies the Documents produced in response to Opposer's Request for Production.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Michael Arnold, President, Secretary and Treasurer of Boston Iced Tea Co, Inc. Mr. Arnold has performed the duties typically performed by those holding the offices of president, secretary and treasurer, respectively, of corporations in the State of California since the inception of the company.

RESPONSE TO INTERROGATORY NO. 17:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Michael Arnold, President, Secretary and Treasurer of Boston Iced Tea Co, Inc. Mr. Arnold has performed the duties typically performed by those holding the offices of president, secretary and treasurer, respectively, of corporations in the State of California since the inception of the company.

RESPONSE TO INTERROGATORY NO. 18:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant and its counsel conducted searches of the USPTO relative to the adoption, use and/or application to register Applicant's mark.

RESPONSE TO INTERROGATORY NO. 19:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: California and Massachusetts.

RESPONSE TO INTERROGATORY NO. 20:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Retail stores and internet sales.

RESPONSE TO INTERROGATORY NO. 21:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant.

RESPONSE TO INTERROGATORY NO. 22:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant has advertised via the internet and through news media, as reflected in the Documents produced by Applicant in response to Opposer's Request for Production of Documents.

RESPONSE TO INTERROGATORY NO. 23:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Retail consumers of tea-based beverages, including consumers of Costco, Starbucks and 7-Eleven.

RESPONSE TO INTERROGATORY NO. 24:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Retail businesses, including supermarkets, convenience stores, liquor stores and big box stores such as Costco, Starbucks and 7-Eleven.

RESPONSE TO INTERROGATORY NO. 25:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant identifies the Documents produced in response to Opposer's Request for Production, which include media coverage of Applicant's products.

RESPONSE TO INTERROGATORY NO. 26:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: None to date.

RESPONSE TO INTERROGATORY NO. 27:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Boston Iced Tea Co., Inc., a Delaware Corporation.

RESPONSE TO INTERROGATORY NO. 28:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant has advertised via the internet, as reflected in webpages included in the Documents produced by Applicant in response to Opposer's Request for Production of Documents.

RESPONSE TO INTERROGATORY NO. 29:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant has advertised via the internet, as reflected in webpages included in the Documents produced by Applicant in response to Opposer's Request for Production of Documents.

RESPONSE TO INTERROGATORY NO. 30:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Receipt of the first notice from Opposer's counsel.

RESPONSE TO INTERROGATORY NO. 31:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant has identified all current marks and source identifiers for MAGUIRE'S BOSTON ICED TEA in the Documents produced by Applicant in response to Opposer's Request for Production of Documents.

RESPONSE TO INTERROGATORY NO. 32:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: None.

RESPONSE TO INTERROGATORY NO. 33:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: None.

RESPONSE TO INTERROGATORY NO. 34:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: Applicant and no others.

RESPONSE TO INTERROGATORY NO. 35:

Subject to the General Objections Nos. 1 through 5, which are incorporated by reference herein as through specifically set forth, Responding Party responds as follows: None.

RESPONSE TO INTERROGATORY NO. 36:

Subject to the reservations set forth above, which are incorporated by reference herein as through specifically set forth, Applicant responds as follows: This interrogatory is unintelligible.

RESPONSE TO INTERROGATORY NO. 37:

Subject to the General Objections Nos. 1 through 5, which are incorporated by reference herein as through specifically set forth, Responding Party responds as follows: None to date.

RESPONSE TO INTERROGATORY NO. 38:

Subject to the General Objections Nos. 1 through 5, which are incorporated by reference herein as through specifically set forth, Responding Party responds as follows: None to date.

RESPONSE TO INTERROGATORY NO. 39:

Subject to the General Objections Nos. 1 through 5, which are incorporated by reference herein as through specifically set forth, Responding Party responds as follows: None to date.

RESPONSE TO INTERROGATORY NO. 40:

Subject to the General Objections Nos. 1 through 5, which are incorporated by reference herein as through specifically set forth, Responding Party responds as follows: Applicant and its counsel.

Respectfully submitted,

Dated: September 25, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/s/ Roger N. Behle, Jr. _____

Roger N. Behle, Jr.

Attorney for Applicant.

VERIFICATION

Opposition No. 91214191

I, Michael Arnold, on behalf of Boston Iced Tea Company, Inc., the Applicant in the above referenced matter, and have read the foregoing FIRST SET OF INTERROGATORIES TO APPLICANT and know the content thereof and certify the same is true of my own knowledge, except on those matters which are stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the 24th day of September, 2014 at the County of Ventura, California.

A handwritten signature in black ink, appearing to read "Michael Arnold", with a horizontal line drawn underneath it.

MICHAEL ARNOLD
Boston Iced Tea Company, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that on the 25th day of September, 2014, the foregoing
APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was
served on Opposer by sending a copy thereof to:

Dina Leytes
D. Craig Callaghan
Griesing Law, LLC
1717 Arch Street, Suite 3630
Philadelphia, PA 19103
UNITED STATES

Attorneys for Opposer, by first-class, postage-prepaid mail.

Dated: September 25, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/s/ Roger N. Behle, Jr.
Roger N. Behle, Jr.
Attorney for Applicant.

EXHIBIT 5

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

<p>BBK PICTURES, INC.,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">vs.</p> <p>BOSTON ICED TEA COMPANY, INC.,</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No. : 91214191 Mark : MAGUIRE'S BOSTON ICED TEA Application Serial No. : 85/884,091</p>
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NOTICE OF DEPOSITION OF OPPOSER BBK PICTURES, INC.

TBMP 404.06(b); FED. R. CIV. P. 30(b)(6)

PLEASE TAKE NOTICE that the deposition of Opposer BBK PICTURES, INC. (“Opposer”), in the above-captioned matter has been set for October 1, 2012 at 9:00 a.m., or such other time as the parties shall mutually agree. This deposition will take place at FOLEY BEZEK BEHLE & CURTIS, LLP, located at 575 Anton Boulevard, Suite 710, Costa Mesa, California, 92626 and Applicant intends to take said deposition by remote means, namely telephone, pursuant to TBMP 404.06 and Fed. R. Civ. P. 30(b)(4).

Said deposition will take place before any notary public as may be present at said date and time. Opposer is hereby required to designate one or more officers, directors, or managing agents, who are knowledgeable on the following issues, to testify on behalf of the Opposer:

1. Actual use of the BOSTON TEA mark, which is subject of application serial no. 85/237,182 (“BOSTON TEA MARK”), in commerce;
2. Marketing of products bearing the BOSTON TEA MARK;
3. Sales of products bearing the BOSTON TEA MARK;
4. Marketing channels for products bearing the BOSTON TEA MARK;

5. Evidence of actual confusion between the BOSTON TEA MARK and Applicant's MAGUIRE'S BOSTON ICED TEA mark, subject of application serial no. 85/884,091;
6. Date of first use of the BOSTON TEA MARK.

Said deposition will be taken pursuant to TBMP 404.06(b) and Fed. R. Civ. P. 30(b)(6). If for any reason the taking of said deposition is not completed on said date, the taking of said deposition will be continued from day to day in compliance with the limitations imposed by the Federal Rules of Civil Procedure, excluding Sundays and holidays until completed. Applicant may record the deposition testimony of the above named deponent by videotape and/or audiotape and may have instant display of the testimony, in addition to recording the testimony by stenographic method. Plaintiff reserves the right to use the videotape and/or audiotape deposition at time of hearing before the Trademark Trial & Appeal Board.

If an interpreter is required to translate testimony, notice of same must be given at least five (5) days before the deposition date, including the special language and/or dialect needed.

Dated: September 23, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/Roger N. Behle, Jr./
Roger N. Behle, Jr.
Attorney for Applicant
Boston Iced Tea Company, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that on the 31st day of January, 2014, the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served on Opposer by sending a copy thereof to:

Dina Leytes
GRIESING LAW, LLC
1717 Arch Street Suite 3630
Philadelphia, PA 19103
UNITED STATES
Phone: 215-732-3924
dleytes@griesinglaw.com

Opposer, by first-class, postage-prepaid mail. Electronic copies were also served via email.

Dated: September 23, 2014

FOLEY BEZEK BEHLE & CURTIS, LLP

/Roger N. Behle, Jr./
Roger N. Behle, Jr.
Attorney for Applicant
Boston Iced Tea Company, Inc.

EXHIBIT 6

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

BBK Pictures, Inc.,	:	
Opposer	:	OPPOSITION NO. 91214191
	:	
v.	:	Application Serial No. 85884091
	:	
Boston Iced Tea Company, Inc.,	:	
Applicant.	:	

**NOTICE OF DEPOSITION OF
APPLICANT BOSTON ICED TEA
COMPANY**

**TBMP 404.06(b); FED. R. CIV. P.
30(b)(6)**

PLEASE TAKE NOTICE that the deposition of Applicant BOSTON ICED TEA COMPANY, INC., (“Applicant”), in the above-captioned matter has been set for December 10, 2014 at 9:00 a.m., or such other time as the parties shall mutually agree. This deposition will take place at GRIESING LAW, LLC, located at 1717 Arch Street, Suite 3630, Philadelphia PA 19103 and Opposer intends to take said deposition by remote means, namely telephone, pursuant to TBMP 404.06 and Fed. R. Civ. P. 30(b)(4).

Said deposition will take place before any notary public as may be present at said date and time. Applicant is hereby required to designate one or more officers, directors, or managing agents, who are knowledgeable on the following issues, to testify on behalf of the Applicant:

1. Actual use of the MAGUIRE’S BOSTON ICED TEA mark, which is subject of application serial no. 85/884,091 (“MAGUIRE’S BOSTON ICED TEA Mark”), in commerce;
2. Marketing of products bearing the MAGUIRE’S BOSTON ICED TEA Mark;
3. Sales of products bearing the MAGUIRE’S BOSTON ICED TEA Mark;

4. Marketing channels for products bearing the MAGUIRE'S BOSTON ICED TEA Mark;
5. Evidence of actual confusion between the MAGUIRE'S BOSTON ICED TEA Mark and Applicant's BOSTON TEA mark, subject of application serial no. 85/237,182;
6. Date of first use of the MAGUIRE'S BOSTON ICED TEA Mark;
7. The meaning or significance of the MAGUIRE'S BOSTON ICED TEA Mark;
8. The facts surrounding the selection and adoption of the MAGUIRE'S BOSTON ICED TEA Mark;

Said deposition will be taken pursuant to TBMP 404.06(b) and Fed. R. Civ. P. 30(b)(6). If for any reason the taking of said deposition is not completed on said date, the taking of said deposition will be continued from day to day in compliance with the limitations imposed by the Federal Rules of Civil Procedure, excluding Sundays and holidays until completed. Opposer may record the deposition testimony of the above named deponent by videotape and/or audiotape and may have instant display of the testimony, in addition to recording the testimony by stenographic method. Opposer reserves the right to use the videotape and/or audiotape deposition at time of hearing before the Trademark Trial & Appeal Board.

If an interpreter is required to translate testimony, notice of same must be given at least five (5) days before the deposition date, including the special language and/or dialect needed.

BY: /Dina Leytes/
Dina Leytes, Esquire.
PA Bar Identification No. 310303
1717 Arch Street, Suite 3630
Philadelphia, PA 19103
(215) 618-3720
(215) 814-9049 [fax]
dleytes@griesinglaw.com
www.griesinglaw.com

Dated: September 30, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Opposer's Notice of Deposition of Applicant Boston Iced Tea Company, Inc. has been served this day, September 30, 2014, upon Roger N. Behle, Jr. Esquire, counsel for Applicant Boston Iced Tea Company, Inc., by electronic mail at the following address:

rbehle@foleybezek.com

/Dina Leytes/
Dina Leytes, Esq.
Attorney for Opposer

EXHIBIT 7



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BOSTON TEA

Word Mark	BOSTON TEA
Goods and Services	IC 030. US 046. G & S: Tea-based beverages with fruit flavoring; tea; Tea-based beverages. FIRST USE: 20140314. FIRST USE IN COMMERCE: 20140314 IC 032. US 045 046 048. G & S: Concentrated fruit juice; Concentrates for making fruit juices; Fruit drinks and fruit juices; Fruit drinks and juices; Fruit juices; Fruit juice bases; Fruit juice concentrates; Herbal juices; Mixed fruit juice; Non-alcoholic beverages containing fruit juices; Non-alcoholic fruit juice beverages; Non-alcoholic beverages with tea flavor. FIRST USE: 20140314. FIRST USE IN COMMERCE: 20140314
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85237182
Filing Date	February 8, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	December 20, 2011
Owner	(APPLICANT) BBK Pictures , Inc. CORPORATION PENNSYLVANIA 404 North 19th Street Philadelphia PENNSYLVANIA 19130
Prior Registrations	1994407

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TEA" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

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<input type="checkbox"/>	Feb. 07, 2015	Notice of Acceptance of Statement of Use	XML
<input type="checkbox"/>	Feb. 07, 2015	TRAM Snapshot of App at Pub for Oppostn	MULTI
<input type="checkbox"/>	Feb. 05, 2015	ITU Unit Action	MULTI
<input type="checkbox"/>	Mar. 23, 2014	Specimen	JPEG
<input type="checkbox"/>	Mar. 23, 2014	Statement of Use	MULTI
<input type="checkbox"/>	Feb. 13, 2014	ITU Extension Approval	XML
<input type="checkbox"/>	Feb. 13, 2014	ITU Unit Action	MULTI
<input type="checkbox"/>	Feb. 11, 2014	Extension of Time to File SOU	XML
<input type="checkbox"/>	Feb. 11, 2014	ITU Extension Approval	XML
<input type="checkbox"/>	Feb. 11, 2014	ITU Unit Action	MULTI
<input type="checkbox"/>	Aug. 01, 2013	Extension of Time to File SOU	MULTI
<input type="checkbox"/>	Jan. 05, 2013	ITU Extension Approval	XML
<input type="checkbox"/>	Jan. 05, 2013	ITU Unit Action	MULTI
<input type="checkbox"/>	Jan. 03, 2013	Extension of Time to File SOU	XML
<input type="checkbox"/>	Sep. 13, 2012	ITU Unit Action	MULTI
<input type="checkbox"/>	Sep. 12, 2012	ITU Extension Approval	XML
<input type="checkbox"/>	Sep. 12, 2012	ITU Unit Action	MULTI
<input type="checkbox"/>	Sep. 07, 2012	Notice Of Revive Application	XML
<input type="checkbox"/>	Sep. 07, 2012	TEAS Petition to Revive SOU	MULTI
<input type="checkbox"/>	Sep. 05, 2012	TEAS Revoke Appointed Attorney	XML
<input type="checkbox"/>	Feb. 14, 2012	Notice of Allowance	XML

Select All <input type="checkbox"/>	Create/Mail Date	Document Description	Document Type
<input type="checkbox"/>	Jan. 25, 2012	TEAS Revoke Appointed Attorney	XML
<input type="checkbox"/>	Dec. 20, 2011	OG Publication Confirmation	XML
<input type="checkbox"/>	Nov. 30, 2011	Notice of Publication	XML
<input type="checkbox"/>	Nov. 30, 2011	Notification Of Notice of Publication	XML
<input type="checkbox"/>	Nov. 16, 2011	Publication & Issue Review Complete	MULTI
<input type="checkbox"/>	Nov. 09, 2011	TRAM Snapshot of App at Pub for Oppostn	MULTI
<input type="checkbox"/>	Nov. 08, 2011	Amendment and Mail Process Complete	MULTI
<input type="checkbox"/>	Oct. 18, 2011	TEAS Response to Suspension Inquiry	XML
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<input type="checkbox"/>	May 21, 2011	Amendment and Mail Process Complete	MULTI
<input type="checkbox"/>	May 20, 2011	Response to Office Action	MULTI
<input type="checkbox"/>	May 11, 2011	Offc Action Outgoing	MULTI
<input type="checkbox"/>	May 10, 2011	XSearch Search Summary	XML
<input type="checkbox"/>	Feb. 08, 2011	Application	MULTI
<input type="checkbox"/>	Feb. 08, 2011	Drawing	JPEG

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EXHIBIT 9



Boston
TEA

ALL NATURAL
REAL BREWED
ICED TEA

33 FL OZ

105860010



MAY 15 1924

Boston
TEATM

ALL NATURAL
REAL BREWED
ICED TEA

Orange (1.25L)
24 FL OZ

EXHIBIT 10



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BOSTON

Word Mark BOSTON
Goods and Services IC 030. US 046. G & S: Tea; Tea-based beverages; Tea-based beverages with fruit flavoring
 IC 032. US 045 046 048. G & S: Concentrated fruit juice; Concentrates for making fruit juices; Fruit drinks and fruit juices; Fruit juice bases; Fruit juice concentrates; Fruit juices; Herbal juices; Mixed fruit juice; Non-alcoholic beverages containing fruit juices; Non-alcoholic beverages with tea flavor; Non-alcoholic fruit juice beverages
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86094211
Filing Date October 17, 2013
Current Basis 1B
Original Filing Basis 1B
Published for Opposition January 21, 2014
Owner (APPLICANT) **BBK Pictures**, Inc. CORPORATION PENNSYLVANIA 301 Fulton St 404 North 19th Street Philadelphia PENNSYLVANIA 19130
Attorney of Record Steven M. Levy, Esq.
Type of Mark TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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<input type="checkbox"/>	Jan. 01, 2014	Notification Of Notice of Publication	XML
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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

<u>File Number:</u>	5114948	<u>Incorporation Date / Formation Date:</u>	02/24/2012 (mm/dd/yyyy)
<u>Entity Name:</u>	BOSTON ICED TEA COMPANY, INC.		
<u>Entity Kind:</u>	CORPORATION	<u>Entity Type:</u>	GENERAL
<u>Residency:</u>	DOMESTIC	<u>State:</u>	DE

REGISTERED AGENT INFORMATION

Name:	A REGISTERED AGENT, INC.		
Address:	1521 CONCORD PIKE #303		
City:	WILMINGTON	County:	NEW CASTLE
State:	DE	Postal Code:	19803
Phone:	(302)288-0670		

Additional information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Word Mark **MAGUIRE'S BOSTON ICED TEA**
Goods and Services IC 030. US 046. G & S: Beverages made of tea; Beverages with a tea base; Iced tea; Tea; Tea-based beverages
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 18.07.04 - Brigs (boats); Clippers (boats); Schooners (boats); Ships with two and three masts, including brigs, clippers and schooners
 26.03.21 - Ovals that are completely or partially shaded
 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
Serial Number 85884091
Filing Date March 22, 2013
Current Basis 1B
Original Filing Basis 1B
Published for Opposition August 27, 2013
Owner (APPLICANT) Boston Iced Tea Company, Inc. CORPORATION DELAWARE 924-A Chapala Avenue Santa Barbara CALIFORNIA 93101
Attorney of Record Roger N. Behle, Jr.

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BOSTON ICED TEA CO." APART FROM THE MARK AS SHOWN

Description of Mark The color(s) red, white, and gray is/are claimed as a feature of the mark. The mark consists of the wording "MAGUIRE'S BOSTON ICED TEA CO." and the design of a tall ship. The word "Maguire's", in a stylized font, is positioned above the word "Boston" in the same stylized font, positioned above the words "Iced Tea Co.", in the same stylized font. The wording is all in white and enclosed within a white oval against a red rectangular background carrier. The wording is to the right of a gray square background carrier containing a tall ship image in varying shades of gray.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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<input type="checkbox"/>	Jul. 08, 2013	Examiners Amendment	XML
<input type="checkbox"/>	Jul. 07, 2013	XSearch Search Summary	XML
<input type="checkbox"/>	Mar. 27, 2013	Design Search Code Corr Project	XML
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<input type="checkbox"/>	Mar. 22, 2013	TEAS Plus New Application	MULTI

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[Business Plan](#)

Teas

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African
Black



Rooibus
Red



Kenya
Green



China
White





Our Teas

In a word: Exceptional.
Brisk, fresh, refreshing, incredibly delicious!
All are wholesome, healthy, and 100% organic.

What else could anyone want from a ready-to-drink iced tea?

Resources:

[Sales Info Sheet](#)

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EXHIBIT 16



[About](#) [Teas](#) [Contact Us](#)

Business Plan

Organic



Healthy

100% Organic ingredients—
No 'natural flavors'.
No artificial anything

Harmonious

Our teas are in harmony with your taste buds. As soon as you drink it, your body knows you are in for a wholesome treat—in harmony with your health.

One Gram of Sugar

Delicious iced tea with only 1 gram of sugar.



Our tea is 100% organic tea and medicinal mushroom extracts, one gram of sugar, and only four calories.

40% More Oxygen

We include Cordyceps Mushroom (non-GMO) which helps the body retain up to 40% more oxygen. Allowing your body to function better and burn more calories during athletic activities.

Balanced

Our tea formulations incorporate a specific balance between each ingredient. The resulting formulas provide the ultimate ready-to-drink iced tea experience.

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

BBK Pictures, Inc.,	:	
Opposer	:	OPPOSITION NO. 91214191
	:	
v.	:	Application Serial No. 85884091
	:	
Boston Iced Tea Company, Inc.,	:	
Applicant.	:	

DECLARATION OF ALYSIA MALTEPES

I, Alysia Maltepes, state and declare as follows:

1. I am knowledgeable about the history of BBK Pictures, Inc., as well as my father's history in the tea and tea-based beverages business. I am also knowledgeable about the trademark applications and registrations filed with the Patent and Trademark Office by BBK Pictures, Inc. and by my father. I am also familiar with BBK Pictures, Inc. business practices.

2. BBK Pictures, Inc. is a Pennsylvania corporation that was formed in 2006, initially to produce and promote my first feature film.

3. I am the owner of BBK Pictures, Inc. and the daughter of Michael Maltepes, a Philadelphia area business owner.

4. Since 1994, my father has been in the tea and tea-based beverage business.

5. My father is listed as the owner of Registration No. 1994407 for the stylized mark CLASSIC BOSTON TEA used in connection with International Class 030 for: "tea and tea-based beverages." It was registered on August 20, 1996. A true and correct copy of the PTO TESS record for CLASSIC BOSTON TEA, dated February 16, 2015, is attached here as Ex. A.

6. In 2010, my father began to encourage me to enter into the family tea and tea-based beverage business with his support, tutelage and financial backing.

7. I agreed and on February 8, 2011, BBK Pictures, Inc. filed its “intent to use” application for the mark BOSTON TEA.

8. My father and I chose BOSTON TEA for the application to build on the family’s longstanding use of BOSTON in connection with tea and tea-based beverages.

9. To further solidify BBK Pictures, Inc.’s rights in and to BOSTON in connection with tea and tea-based beverages, BBK Pictures, Inc. also filed on October 17, 2013 an “intent to use” application for the standard mark BOSTON in connection with the same Goods and Services as those set forth in the BOSTON TEA application.

10. BOSTON TEA is manufactured, bottled, marketed and distributed by 1300 NORTH 9TH STREET, LLC, a Pennsylvania Limited Liability Company, which is located at 1300 North 9th Street in Philadelphia and jointly owned by me and my father.

11. BBK Pictures, Inc. exclusively licenses use of the BOSTON TEA Mark to 1300 NORTH 9TH STREET, LLC.

12. BOSTON TEA has been sold in Pennsylvania and New Jersey since March 2014.

13. BBK Pictures, Inc. sells its products under the BOSTON TEA Mark to grocery stores, lunch trucks and restaurants.

14. BBK Pictures, Inc. intends to make its products available for sale through national distributors and retailers in the future.

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



Alysia Maltepes

February 16, 2015

EXHIBIT A



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Word Mark	CLASSIC BOSTON TEA
Goods and Services	IC 030. US 046. G & S: tea and tea-based beverages. FIRST USE: 19940615. FIRST USE IN COMMERCE: 19940615
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches 05.03.25 - Leaf, single; Other leaves
Serial Number	74542160
Filing Date	June 21, 1994
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 28, 1996
Registration Number	1994407
Registration Date	August 20, 1996
Owner	(REGISTRANT) MALTEPES BOTTLING CO., LTD. CORPORATION PENNSYLVANIA P.O. Box 835 Broomall PENNSYLVANIA 19008 (LAST LISTED OWNER) MALTEPES MICHAEL INDIVIDUAL BY ASSIGNMENT ANDORRA 404 NORTH 19TH STREET PHILADELPHIA PENNSYLVANIA 19130 ASSIGNMENT RECORDED

Assignment

Recorded

Attorney of Record Frank J. Benasutti

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BOSTON TEA" APART FROM THE MARK AS SHOWN

Description of Mark The mark is lined for the color red, blue and green.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060410.

Renewal 1ST RENEWAL 20060410

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1 APPEARANCES OF COUNSEL:

2

3 FOR OPPONENT:

4 GRIESLING LAW, LLC

5 BY: DINA LEYTES, ESQ.

6 1717 Arch Street

7 Suite 3630

8 Philadelphia, Pennsylvania 19103

9 215/732-3924

10 Email: dleytes@griesinglaw.com

11 (Appearing telephonically)

12

13 FOR APPLICANT:

14 FOLEY, BEZEK, BEHLE & CURTIS, LLP

15 BY: ROGER N. BEHLE, JR., ESQ.

16 575 Anton Boulevard

17 Suite 710

18 Costa Mesa, California 92626

19 714/556-1700

20 Email: rbehle@foleybezek.com

21 (Appearing telephonically)

22

23 ALSO PRESENT:

24 ALYSIA MALTEPES (Appearing telephonically)

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I N D E X

MONDAY, FEBRUARY 2, 2015

WITNESS EXAMINATION

MICHAEL ARNOLD

By Ms. Leytes

05

QUESTIONS NOT ANSWERED PAGE LINE

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DEPOSITION EXHIBITS

MICHAEL ARNOLD

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Exhibit G	Photocopy of a label	73

1 SANTA BARBARA, CALIFORNIA; MONDAY, FEBRUARY 2, 2015

2 1:34 P.M.

3
4 MICHAEL ARNOLD,

5 having been first duly sworn,

6 was examined and testified

7 as follows:

8
9 EXAMINATION

10 MS. LEYTES: Objections to the acceptance of
11 the form of question are reserved; does that work?

12 MR. BEHLE: Yes, we do that for your folks.

13 MS. LEYTES: Yes, I believe so.

14 MR. BEHLE: All right. And we'll have to
15 figure out a protocol for doing that so that's fine.

16 BY MS. LEYTES:

17 Q. Great. So I represent BBK Pictures. I
18 am here in Philadelphia and Alysia Maltepes who is the
19 owner of BBK Pictures is here with me as well.

20 A. What's her name?

21 Q. Alysia, I'll spell it, A-l-y-s-i-a,
22 Maltepes, which is M-a-l-t-e-p-e-s.

23 A. Go ahead.

24 Q. All right. So I'm going to ask you some
25 questions. I'd like to find out what you know about

1 the facts that have given rise to this dispute. It's
2 important since we are in three different locations
3 that we not speak at the same time. The Court Reporter
4 can only take down one voice at a time.

5 If you don't understand my question, just
6 tell me, I'll rephrase it or ask the Court Reporter to
7 read it back, otherwise I'll assume that your answer is
8 responsive to my question.

9 If you get tired and want to take a break
10 just say so.

11 Do you have any questions regarding the
12 instructions I just gave you?

13 A. Go ahead.

14 Q. Great. Can you please state and spell
15 your full name for the record?

16 A. Yeah, Michael, M-i-c-h-a-e-l, Paul,
17 P-a-u-l, Arnold, A-r-n-o-l-d.

18 Q. Thank you. And can you please state your
19 address?

20 A. Yeah.

21 Q. Your home address?

22 A. My address here is 133 East De La Guerra,
23 D-e, space, L-a, space, G-u-e-r-r-a, Street.

24 Q. Thank you.

25 A. Santa Barbara, California, U.S.A., 93101.

1 Q. Great. Thank you.

2 And what is your age and date of birth,
3 please?

4 A. 6/5/56. I am 95 -- i will be when I get
5 done with this.

6 All right. Let's roll.

7 Q. Where were you born, please, Mr. Arnold?

8 A. In Boston, Massachusetts.

9 Q. Are you taking any medications that could
10 effect your memory of past events?

11 A. Of course not.

12 Q. Are you taking any medications that could
13 effect your ability to hear or understand my questions?

14 A. Of course not.

15 Q. Have you ever been deposed before?

16 A. Yes.

17 Q. When?

18 A. Roger -- I don't know, last year some
19 time. I have no idea what the date was.

20 MR. BEHLE: To be clear, she asked you about a
21 deposition which is what we are doing here today with a
22 Court Reporter.

23 THE WITNESS: Right, I did one before about
24 four years ago. I had a problem with an insurance
25 company and they -- they set their lawyers on it. They

1 wouldn't pay me my \$40,000.

2 BY MS. LEYTES:

3 Q. Thank you.

4 A. You are welcome.

5 Q. Your testimony is going to be used to
6 present to the trademark trial and appeal board in
7 connection with my client's opposition to the Boston
8 Iced Tea Company's trademark application.

9 Do you understand that?

10 A. Yeah, I do. I have spent \$14,000 so far,
11 I understand it.

12 MR. BEHLE: Mike, just answer the questions,
13 don't add.

14 THE WITNESS: Right, let's get on with it. All
15 right.

16 BY MS. LEYTES:

17 Q. Okay. So I would like to confirm that
18 you are here as a 30(b)6 witness.

19 MR. BEHLE: I'll confirm that. He doesn't know
20 what that is. I'll confirm he is the 30(b)6 witness.

21 BY MS. LEYTES:

22 Q. Thank you, Roger. And confirm that the
23 witness understands that he must testify to information
24 that is known or reasonably known by Boston Iced Tea
25 Company?

1 MR. BEHLE: We'll stipulate to that. He's the
2 30(b)6 person most knowledgeable.

3 BY MS. LEYTES:

4 Q. Thank you.

5 Mr. Arnold, what steps have you taken to
6 inform yourself of information that is known or
7 reasonably available to Boston Iced Tea Company; have
8 you met with anybody?

9 A. Excuse me?

10 Q. Have you met with anybody to review any
11 information having to do with your company?

12 A. In regards to what?

13 MR. BEHLE: Hold on, hold on. Excluding
14 conversations with your lawyers, she wants to know if
15 you've met with someone, excluding conversations with
16 your lawyer which are privileged.

17 Go ahead.

18 THE WITNESS: I've met with people to do
19 business with Boston Iced Tea?

20 BY MS. LEYTES:

21 Q. Sorry, no, to prepare for this
22 deposition?

23 A. No, just the lawyers.

24 Q. Okay. And did you review any information
25 to prepare for this deposition?

1 A. I read the stuff, yeah. I read this
2 packet that we have.

3 Q. Okay. Did you review any of your own --
4 did you review any records that are maintained by
5 Boston Iced Tea Company?

6 A. I read them all the time. I'm working
7 full time, yeah.

8 Q. Okay. Where is Boston Iced Tea Company
9 located?

10 A. Where is it located? Wherever I am.

11 Q. Okay. So it's located at your home
12 address?

13 A. It is -- yeah, for right now it is.

14 Q. Any prior address?

15 A. No. Well, that's not true. Yeah, I
16 lived at another location up in the Mesa.

17 Q. So it was previously at another location?

18 A. Yeah. I have to explain something to you
19 so that you can understand this, okay. The iced tea
20 gets made at a cold packer. There are truck loads of
21 iced tea and then they get sent to the distributors. I
22 don't carry the iced tea around with me. I carry a
23 computer, my pen and my pad. So I can do business
24 wherever I am.

25 Q. Okay. What's the name of your cold

1 packer, please?

2 A. I use all kinds of cold packers. There
3 are cold packers in Florida, Texas, California, just
4 depends on what size the load is and where it's going.

5 Q. Okay. And do they distribute as well?

6 A. The cold packers send it to the
7 distributors.

8 Q. Can you give me the name of one of your
9 larger company cold packers?

10 A. I really don't feel -- Roger, I don't
11 want to disclose any of the people, my contacts that
12 I'm working with.

13 MR. BEHLE: Okay. So, you know, you can
14 describe --

15 THE WITNESS: I don't mind if it's all right
16 with you.

17 MR. BEHLE: We have to have an agreement if
18 it's confidential who you are using then we have to
19 have a stipulation we'll keep it confidential for this
20 proceeding and discuss how we lodge that. I mean
21 certainly retail is a different story because it's
22 publicly known. But if you want to keep the identity
23 of your cold packers privileged we'll have to have a
24 stipulation that will be used solely for purposes of
25 this case and won't be publicly made available.

1 BY MS. LEYTES:

2 Q. Of course that would be fine for us.

3 A. Do you want the cold packer that we are
4 going to be using this month.

5 Q. Sure.

6 A. It's Norcal Cold Packers.

7 Q. Norcal Cold Packers?

8 A. They are in San Francisco.

9 Q. And how many cold packers would you say
10 that you use total?

11 A. Well, when we go national we would just
12 submit it nationally to all the big huge corporations.
13 We are going to be using probably four or five
14 different cold packers throughout the United States.

15 Q. And you said you are going to be going
16 national. Can you say a little bit more about what
17 that means?

18 A. We are going to go national, not local.
19 We are going to go to national chains of supermarkets,
20 Costco, Trader Joe's, health, Vitamin Shoppe, places
21 like that, public supermarkets, 1100 supermarkets in
22 Florida, Stop and Shop, Giant. You can hit odd
23 supermarkets on your computer and come up with a whole
24 page. We are going to every one of them. We submitted
25 to most of them already.

1 Q. And you've submitted to them and is there
2 a process by which your product is then reviewed and
3 accepted?

4 A. True.

5 Q. Because you've submitted that means that
6 you will be --

7 A. No, we submit -- we submit it. Obviously
8 they are different each one. We submit it and then we
9 send them stamps and they get back into contact with
10 us.

11 Q. So just to get some additional background
12 information, what is your occupation?

13 A. My occupation?

14 Q. Uh-huh.

15 A. I am the owner of this company.

16 Q. Okay. Are you the sole owner?

17 A. I am the sole owner, but I have -- I've
18 sold a little bit of stock off.

19 Q. Okay. And are you the founder?

20 A. I am.

21 Q. When did you found the company?

22 A. About three years ago.

23 Q. And what are your primary
24 responsibilities at Boston Iced Tea Company?

25 A. Everything.

1 Q. Okay.

2 A. I have 15 different hats on a wall and I
3 run ragged.

4 Q. Okay. What did you do prior to founding
5 Boston Iced Tea Company?

6 A. I was -- I own -- I built custom homes
7 for 35 years.

8 Q. Can you repeat that?

9 A. I built custom homes for 35 years.

10 Q. And do you have any prior experience in
11 the beverage business?

12 A. No, I don't.

13 Q. How did you decide to go into this
14 business?

15 A. In 2001 I was working. I had a 33-man
16 framing crew and I thought how it would be a good idea
17 to put vitamins in water and came up with vitamin water
18 and somebody else did it and took it. But then I came
19 up with Boston Iced Tea and I kept that for myself and
20 I said I'll rejoin this one day maybe. So I kept it a
21 secret. But I took out the domain in 2001.

22 Q. In 2001; is that correct?

23 A. Yeah, 2001.

24 Q. How did you learn the business?

25 A. Excuse me?

1 Q. How did you learn the beverage business?

2 A. I called everybody and talked to
3 everybody that I could talk to in the world about
4 beverage until they gave me the answer to what I needed
5 to know and I just put it together slow and easy and I
6 did each step 100 percent and I dealt with factual
7 information and scientific facts. And I worked off of
8 stat reports.

9 And then I got quite a few people that
10 are seasoned veteran beverage people and they kind of
11 mentored me.

12 Q. I see. Can you tell me about how Boston
13 Iced Tea Company is structured? Is it incorporated?

14 A. It is incorporated.

15 Q. Where is it incorporated?

16 A. It's a Delaware corporation.

17 Q. And do you know exactly when it was
18 formed?

19 A. The date, I don't know. I don't have the
20 papers in front of me.

21 Q. And it was formed by you; is that
22 correct?

23 A. By a business manager, yeah.

24 Q. You mentioned that there are -- that
25 there is some stock that's outstanding in the company?

1 A. Uh-huh.

2 Q. Who owns that stock?

3 A. Those are private individual people, they
4 don't want their names released. I'm not going to tell
5 you the names of the people that bought stock in my
6 company.

7 Q. And what percentage of the company do
8 they own?

9 A. Roger --

10 MR. BEHLE: Yeah, you don't have to disclose
11 the names. Can you give a percentage or not?

12 THE WITNESS: I own 98 and a half percent.

13 BY MS. LEYTES:

14 Q. You own 98 and a half percent so they own
15 one and a half percent?

16 A. That's 100 percent.

17 Q. All right. Thank you.

18 A. Sorry if I get a little grumpy. I am
19 really not like into this, but go ahead.

20 Q. I can certainly appreciate that.

21 Are there any investors in Boston Iced
22 Tea Company?

23 A. There are.

24 Q. And --

25 A. You can call her, she's my mother. Go

1 ahead and call her, see what she'll tell you.

2 Q. Other than your mother, are there any
3 investors in the company?

4 A. Yes, there are.

5 Q. Can you identify them by name, please?

6 A. I can't.

7 Q. And can you tell me how much they have
8 invested?

9 A. Yeah, about \$140,000, everybody all
10 together.

11 Q. Does your company have a Board of
12 Directors?

13 A. It does. It's not -- it's not set up as
14 a full on board with the stock and everything set up
15 and all that there, but it is under way right now.

16 Q. Can you identify the board members?

17 A. How can I identify the board members when
18 we are not fully structured?

19 Q. Okay. So you don't know who they are
20 yet?

21 A. I know roughly who they will be, but, no,
22 I can't give you the names.

23 Q. How many officers does Boston Iced Tea
24 Company have?

25 A. Two.

1 Q. Who are they?

2 A. Myself and my business manager.

3 Q. What is your business manager's name,
4 please?

5 A. My business manager, he'll be -- Roger,
6 do I have to say that?

7 MR. BEHLE: Yes, probably. Public information
8 anyway if he's an officer.

9 THE WITNESS: It's not -- it's not -- we
10 haven't got a board, a legal board. I don't even know
11 how you put the legal board deal.

12 MR. BEHLE: Let me interpose this objection,
13 let's keep this formal. If it's public information you
14 can answer. If it's confidential or you don't
15 understand what an officer or board member is, I'll
16 object that it calls for a legal conclusion.

17 So to the extent you understand what
18 she means when she says officer, I believe she is
19 asking about formal officers within the
20 corporation.

21 THE WITNESS: We don't have any formal
22 officers, just myself.

23 MR. BEHLE: Again I'll object the question
24 calls for a legal conclusion to the extent he
25 understands what a formal officer is, but go ahead.

1 BY MS. LEYTES:

2 Q. Okay. And so your title at the company
3 is owner; is that correct?

4 A. Yeah.

5 Q. What is Boston Iced Tea Company's primary
6 business?

7 A. What do you think it is?

8 MR. BEHLE: Mike, just answer the questions.

9 THE WITNESS: This lady is getting on my
10 goddamn nerves.

11 All right. The primary business is
12 selling iced tea, Lady, all right, that's the answer,
13 okay. Stop wasting my time and my money. Damn idiot.

14 MS. LEYTES: Roger, can you instruct your
15 client that this is a deposition?

16 MR. BEHLE: Just answer the questions,
17 otherwise we going to have to suspend this. Let's just
18 get through this, answer the questions if you have an
19 answer.

20 THE WITNESS: Go ahead.

21 BY MS. LEYTES:

22 Q. So Boston Iced Tea Company -- does Boston
23 Iced Tea conduct any other business other than selling
24 iced tea?

25 A. No, not yet.

1 Q. How many employees does Boston Iced Tea
2 Company currently have?

3 A. One.

4 Q. Who is that?

5 A. Myself.

6 Q. And as an employee, how do you get paid?

7 A. How do I get paid?

8 Q. Direct deposit, check, cash?

9 A. Mostly direct deposit.

10 Q. Through a payroll company?

11 A. No, through the bank.

12 Q. Okay. How much do you get paid?

13 A. What has that got to do with this, Roger?

14 MR. BEHLE: All right.

15 THE WITNESS: Is she working for the IRS or is
16 she working --

17 MR. BEHLE: Hold on, either you get paid on a
18 regular basis or you don't. If you don't get paid on a
19 regular basis there's no --

20 THE WITNESS: I don't get paid on a regular
21 basis. Every dime I got it goes into the company.

22 BY MS. LEYTES:

23 Q. How much revenue did Boston Iced Tea
24 Company generate in its first year which I understand
25 to be 2012?

1 A. I don't have those figures.

2 Q. How much revenue did Boston Iced Tea
3 Company generate in its second year 2013?

4 A. I don't have the figures.

5 Q. How much revenue did Boston Iced Tea
6 Company generate in its third year, 2014?

7 A. I do not have the figures in front of me.

8 Q. Has Boston Iced Tea Company filed taxes?

9 A. Yes, Boston Iced Tea -- well, we didn't
10 file the taxes. We have the taxes done. We didn't
11 make any money; what are we going to file?

12 Q. So there has been no revenue until -- but
13 you are going to file for 2014?

14 A. 2014 -- 2013 and 2014.

15 Q. Well, there was revenue in 2013 and 2014?

16 A. Yeah. I don't know, the accountant is
17 taking care of that.

18 Q. Is your primary income now from Boston
19 Iced Tea Company?

20 A. It is.

21 Q. Where does Boston Iced Tea Company bank?

22 A. Roger?

23 MR. BEHLE: If it has a bank account you can
24 tell her where it's banked. That's all you are going
25 to give her.

1 THE WITNESS: Wells Fargo.

2 BY MS. LEYTES:

3 Q. Thank you. And is it under the name
4 Boston Iced Tea Company?

5 A. Yes, it is.

6 Q. The account?

7 A. Of course it is.

8 Q. Thank you. All right. Well, let's talk
9 about your tea product.

10 A. Okay.

11 Q. How did you develop your product?

12 A. How did I develop it?

13 Q. Yes.

14 A. I hired a food scientist and I spent a
15 lot of time with the food scientists and corporations.

16 Q. And how long did that process take?

17 A. Probably like six months.

18 Q. When did you start?

19 A. About three years ago.

20 Q. So sometime in 2011?

21 A. I guess if that was three years ago,
22 probably '12 but --

23 Q. So then three years ago?

24 A. Two and a half, three years ago, yeah.

25 Q. Okay. And what flavors do you currently

1 sell?

2 A. Oh, man, which ones do I currently sell
3 right now?

4 Q. Yes.

5 A. A red, a green, a black and a white.

6 Q. Do you have nutritional facts on your
7 bottle?

8 A. We do.

9 Q. How did you get the nutritional facts?

10 A. How did we get the nutritional facts?

11 Q. Yes.

12 A. We got them from the company that
13 supplies me with the nutrition.

14 Q. Did you ever send a bottle of your
15 product to a lab to analyze it?

16 A. Yeah. It came from an FDA plant bio --
17 80,000 square foot biotech where there's an FDA plant
18 inside the company. It's all government, U.S. FDA,
19 USDA approved, stamped, everything.

20 Q. Okay. So each product that you offer for
21 sale was analyzed by that plant?

22 A. Exactly. And we have the paperwork.

23 Q. Do you list trans fat on your label?

24 A. Do we list what?

25 Q. Trans fat?

1 A. What is trans fat?

2 Q. Are you familiar with the FDA's rule with
3 an effective date of January 1st, 2006 that requires
4 food labels to include trans fat in nutrition labeling
5 on product?

6 A. And when did that come out?

7 Q. 2006, January 1st, 2006?

8 A. I don't think there's any fat in the tea.
9 As a matter of fact, I can assure you that there's no
10 fat in this tea, trans fat.

11 Q. So you are not familiar with the rule
12 that I mentioned?

13 A. I am not. Why would I be? There's no
14 fat in here.

15 Q. Do you have a bar code on your bottle?

16 A. Yeah, I do.

17 Q. How did you obtain the bar code?

18 A. From the bar code company.

19 Q. Can you describe that process?

20 A. If you would like one of these we could
21 send you one. I am not going to describe anything.

22 MR. BEHLE: It's vague, what do you mean
23 describe this, what does that mean; what's "this"?

24 BY MS. LEYTES:

25 Q. What's the process by which you obtained

1 a bar code?

2 A. We called the bar code company -- we
3 called the bar code company, we sent them the money and
4 we obtained the bar codes.

5 Q. Thank you.

6 A. You are welcome.

7 Q. Where do you pack the majority of your
8 tea product today?

9 A. There's no -- it doesn't -- I answered
10 that question before. There's no place that we pack
11 it. It's packed wherever the site is. If there's a
12 small pack and it's closer for trucking we go to a
13 small packer. If we are doing a large load and we get
14 a large load we go to a large packer.

15 Q. So is there any limit on your production
16 capacity?

17 A. No, there is not.

18 Q. Who makes the labels you use on your
19 bottles?

20 A. Different people.

21 Q. Please be more specific.

22 A. I started out with one company at eight
23 cents --

24 MR. BEHLE: Hold on, hold on, Mike. Hold on.
25 Let me object. We are getting into trade secret

1 information again. Who he uses and what companies he's
2 selected and why he selected them is trade secret.
3 We've got another company that's brought this claim
4 against him and they are using this procedure to try to
5 get trade secret information. So you can ask him about
6 the fact that he has a packing company or label making
7 company, but we are not going to disclose the identity
8 to a competitor or someone who claims to be a
9 competitor.

10 MS. LEYTES: Well, even if we enter into a
11 confidentiality --

12 MR. BEHLE: We've got your -- the owner of your
13 client's business sitting next to you. And I don't
14 have anything in the form of a signed protective order.
15 So absent that we are not going to disclose to somebody
16 who purports to be in the same business after my client
17 has taken the time, effort and money to select the
18 vendors and suppliers that it's using, we are not going
19 to disclose that in the context of this procedure.

20 So I am going to instruct him not to
21 answer anything that requires him to disclose a trade
22 secret of his company.

23 MS. LEYTES: Would you like to adjourn this
24 until we get a protective order in place?

25 MR. BEHLE: I don't know that's going to solve

1 the problem. I think you need to ask the questions
2 that go to the nature of your opposition proceeding and
3 not those that go to the identities of vendors and
4 suppliers he may be using. That has nothing to do with
5 this opposition proceeding so I think we are going to
6 adjourn for no reason at all.

7 MS. LEYTES: Well, I am just trying to
8 understand your client's business and how he --

9 THE WITNESS: I'll bet you are.

10 MR. BEHLE: He's got a label manufacturer, he's
11 got a bottle manufacturer, he's got cold packers. All
12 of those exist. The identities of those companies have
13 no bearing at all on an opposition proceeding, none.
14 He's got them, the product exists. It's made wherever
15 it's made. It's distributed wherever it's distributed.
16 You can ask him about channels, whenever it's sold but
17 we are getting into you probing trade secret
18 information. We are not going to go there and I am not
19 going to allow it.

20 MS. LEYTES: Well, I appreciate that. You
21 asked the same questions of my client and --

22 MR. BEHLE: But she didn't know, she didn't
23 know anything. So let's just move on. Let's finish
24 this up and I think you can get to the questions that
25 go to the heart of your client's opposition and we can

1 be finished with this.

2 MS. LEYTES: We have been at this for 35
3 minutes which is not an unreasonable length of time for
4 a deposition.

5 MR. BEHLE: I am not saying it is. I just want
6 to get on with it though. I don't want to spend time
7 arguing over whether you are going to get the
8 identities of his suppliers and vendors, which I think
9 is a trade secret.

10 BY MS. LEYTES:

11 Q. Well, let's move on for now.

12 A. Geez, thanks.

13 Q. When you purchase your bottles, how many
14 do you purchase -- or do you purchase bottles? Sorry.
15 Rephrase that. Do you purchase bottles?

16 A. I do purchase bottles. How would I --

17 Q. I'm sorry, I didn't hear you.

18 A. Of course I purchase bottles.

19 Q. How many do you purchase at a time?

20 A. Different amounts.

21 Q. Where do you store them?

22 A. I don't store them.

23 Q. Okay. What happens to the bottles that
24 you purchase?

25 A. I am not going to tell you how I put my

1 business together. If you need a point that has to do
2 with the bottles, bring it up, let's get to the point.
3 Stop jerking me around, Lady.

4 Q. I am trying to understand --

5 A. You are trying to figure out how to be a
6 beverage company and I am not going to be a teacher for
7 you and teach you how to be a beverage person. Your
8 client should have hired a lawyer that's a beverage
9 lawyer.

10 Q. The questions that I'm asking you are --

11 A. Ask the question and get to the point
12 then.

13 Q. Roger, I'd like to take a break for five
14 minutes.

15 MR. BEHLE: We'll take a break for five
16 minutes.

17 THE WITNESS: Thanks.

18 (Brief recess taken.)

19 BY MS. LEYTES:

20 Q. I am going to continue asking questions
21 along the lines of what I was asking earlier. If you
22 choose not to answer that is up to you.

23 Please tell me where you buy your
24 bottles?

25 MR. BEHLE: I'll object and instruct on the

1 grounds that it violates his trade secrets rights.

2 BY MS. LEYTES:

3 Q. Please tell me where you buy your caps?

4 MR. BEHLE: Same objection, same instruction.

5 MS. LEYTES: He's not going to answer?

6 MR. BEHLE: Correct. I am instructing him not
7 to answer on the grounds that the answer to that
8 question would violate his trade secrets rights. He's
9 identified suppliers and vendors and those are trade
10 secrets. And we have a company that claims to be a
11 competitor that's brought this action so same
12 instruction, same objection as I said before.

13 BY MS. LEYTES:

14 Q. Okay. And who is the bottler for Boston
15 Iced Tea Company?

16 MR. BEHLE: Well, he's already -- same
17 instruction, same -- any information you want, he's got
18 a bottling company, he's bought got a label company,
19 he's got a cap company. But when you are asking about
20 particulars who he is working with, that's a trade
21 secret, that's a problem.

22 BY MS. LEYTES:

23 Q. Do you have invoices supporting whoever
24 is providing those raw ingredients to you?

25 A. Yes, I do.

1 Q. How do consumers order your product?
2 A. They buy it off the shelf.
3 Q. Can they purchase it on line?
4 A. In the supermarkets.
5 Q. I understand. But can they also purchase
6 it on line?
7 A. Not as of yet.
8 Q. Can they purchase it over the phone?
9 A. Not as of yet. Do you want some sent to
10 your office?
11 Q. No, thank you.
12 A. All right.
13 Q. Can you describe specifically the names
14 of the products that Boston Iced Tea is making today?
15 A. Maguire's Boston Iced Tea.
16 Q. That is the name of the product that you
17 are making?
18 A. That's what we make, Maguire's Boston
19 Iced Tea, four flavors and five coming out.
20 Q. Do you make any product under a name that
21 is not Maguire's Boston Iced Tea?
22 A. No, not yet.
23 Q. Are there any products that you've made
24 in the past that you are not making today?
25 A. No.

1 Q. Okay. And what geographic regions are
2 you selling Maguire's Boston Iced Tea?

3 A. We are -- we are -- we have called
4 California, we are doing business under Boston Iced Tea
5 in California, Massachusetts, Florida and Arizona and
6 Nevada soon.

7 Q. So in all of those states you are selling
8 Maguire's Boston Iced Tea?

9 A. No, three of them, Boston, Florida and
10 California.

11 Q. And what about Arizona and Nevada?

12 A. I said soon.

13 Q. Soon?

14 A. Soon.

15 Q. And in what types of establishments are
16 you selling Maguire's Boston Iced Tea in California,
17 Massachusetts and California?

18 A. The supermarkets in California, probably
19 just to just like small stores, test markets in
20 Massachusetts and Florida.

21 Q. I didn't hear that, what type of markets?

22 A. Test markets in Florida and
23 Massachusetts, health food stores -- it's a healthy
24 tea.

25 Q. Are your -- is your Maguire's Boston Iced

1 Tea product also -- is it made in California?

2 A. It will be this month.

3 Q. Where has it been made previously?

4 A. Roger?

5 MR. BEHLE: Yeah, you can give her the state.

6 All you are doing is giving her a state.

7 THE WITNESS: Washington and California.

8 BY MS. LEYTES:

9 Q. You just said that it will be made in
10 California as of this month?

11 A. It will be a different cold packer. I
12 told you one is for small -- we have cold packers for
13 large orders and cold packers for small orders,
14 remember.

15 Q. So you've been using a cold packer in
16 California for small orders?

17 A. We had one for small orders and now we
18 are going to have one for 10,000 cases.

19 Q. Okay. And in Washington were you using a
20 cold packer for large orders or small orders?

21 A. Medium.

22 Q. What is a medium order?

23 A. I don't know, somewhere between zero and
24 10,000 cases.

25 Q. So when a product is made in Washington,

1 how does it then come to be sold in California?

2 A. It takes a truck and it goes to the
3 distributor.

4 Q. And what does it cost to ship your
5 product from --

6 A. Sure.

7 Q. -- Washington to California?

8 A. I don't think that you are going to get
9 away with that; do you really think so?

10 MR. BEHLE: All the costs and all the prices
11 he's negotiated are all trade secrets, same objection,
12 same instruction as prior information. We are not
13 getting into pricing and how much he is paying and all
14 those kinds of things. You can ask him about where he
15 distributes.

16 MS. LEYTES: I am asking about cost because I
17 am trying to understand if he is sending a meaningful
18 amount of product to California.

19 MR. BEHLE: You can ask him about volume. You
20 don't have to know prices and what he's negotiated.
21 What he's negotiated with his vendors and suppliers is
22 trade secret. If you want to ask him about volume
23 generally, go ahead.

24 BY MS. LEYTES:

25 Q. What is the volume of product that you

1 have sent to California from Washington, how many
2 units?

3 A. Two truck loads.

4 Q. How many units is that would you
5 estimate?

6 A. I don't know, different trucks, different
7 sizes, two truck loads.

8 Q. And when were those two truck loads sent?

9 A. Last year -- last year.

10 Q. In 2014?

11 A. That was last year.

12 Q. Are your products made anywhere else
13 other than Washington and California right now?

14 A. Lady, are you kidding me or what? Not
15 right now they are not.

16 MR. BEHLE: You've already answered it, you've
17 already answered it.

18 THE WITNESS: No, they are not.

19 BY MS. LEYTES:

20 Q. Can you tell me how many units of your
21 product are sold in California per month?

22 A. Why?

23 MR. BEHLE: Vague as to time. What are you
24 talking about, last year, what year, what, average?

25 MS. LEYTES: Average.

1 MR. BEHLE: Can you give her an estimate of the
2 number you have sold on a monthly basis in 2014 in
3 California?

4 THE WITNESS: In 2014 or 2015?

5 BY MS. LEYTES:

6 Q. We've only had one month in 2015 so let's
7 go with 2014.

8 A. On average roughly around a pallet a
9 month, 96 cases on that pallet.

10 Q. 96 cases per month in California?

11 A. Right.

12 Q. And how many units would you say you have
13 sold in Massachusetts per month on average for 2014?

14 A. I don't have that information in front of
15 me.

16 Q. How about Florida?

17 A. I don't have that information in front of
18 me either.

19 Q. What is your total for revenue for the
20 cases that you've sold in California?

21 A. I don't have -- Roger?

22 MR. BEHLE: Do you have gross numbers or not?
23 Give her an estimate of gross.

24 THE WITNESS: It's about \$1,556 a pallet,
25 whatever.

1 BY MS. LEYTES:

2 Q. I'm sorry, I didn't hear that answer.

3 A. About \$1,600 a pallet.

4 Q. So what would you say your revenue was
5 for 2014, your gross revenue in California?

6 A. I don't know. I told you that earlier
7 because the accountant does that and it's growing at a
8 steady incline going up. And I don't have those
9 figures and I'm only one person that's running this
10 show, although I have an accountant, a business
11 manager. My thing is to push this and get this company
12 moving in an upward thing. We don't -- like we spend
13 money hands over fist so we are trying to keep this
14 together.

15 It's a startup company. And so there's a
16 lot of loose ends, there's a lot of facts and
17 scientific facts in the bottle that's the finish deal.
18 But as far as doing the startup company, it's pretty
19 basic. It's just a lot of hard work and a lot of loose
20 ends that you are altering throughout the year putting
21 it together. So when you ask me a specific question
22 like how much money, I have no idea, you know, I cannot
23 answer that question to you.

24 Q. Where is your product stored after it's
25 manufactured?

1 MR. BEHLE: Asked and answered, he's said it's
2 not.

3 THE WITNESS: It doesn't store. It goes to
4 the, what do you call it, the distributor.

5 BY MS. LEYTES:

6 Q. You don't have any product that's stored.
7 It goes immediately to the distributor; is that
8 correct?

9 A. Most likely it goes to the distributor.
10 I have a little bit of stuff that's stored because we
11 need it for samples and stuff like that and sales.

12 Q. And where is that little bit of product
13 that you keep for samples stored?

14 A. In California.

15 Q. At what address?

16 A. Why?

17 MR. BEHLE: Do you have an address where you
18 store it or not?

19 THE WITNESS: I don't have the address right
20 now.

21 BY MS. LEYTES:

22 Q. Is it a space that you own?

23 A. No, it's not.

24 Q. Is it a space that you lease?

25 A. It is a space that I lease.

1 Q. How many square feet is it?

2 A. I don't know.

3 Q. Is it a residence?

4 A. It's not a residence.

5 Q. Is it a warehouse?

6 A. It's a warehouse.

7 Q. Does Boston Iced Tea enter into formal
8 agreements with its distributors?

9 A. Of course they do.

10 Q. Are the distributors that you use
11 licensed?

12 A. They are national, largest in the
13 country.

14 Q. Is it your intention to suggest to
15 consumers that your product, Maguire's Boston Iced Tea
16 is made in Boston?

17 A. No. Why would I do that?

18 Q. Okay. I'd like to draw your attention to
19 the paper that you have in front of you, the papers?

20 A. Uh-huh.

21 Q. The first one I'd like to make this
22 Exhibit A, BBK001-002.

23 A. Go ahead.

24 (Deposition Exhibit A was marked for
25 identification.)

1 Q. So when I refer to the Maguire's Boston
2 Iced Tea trade name, I am referring to the mark that is
3 in the application that you submitted or your attorney
4 submitted to the patent and trademark office?

5 A. Right.

6 Q. Have you seen those BBK001 and 002
7 before?

8 A. Have I? Have I seen this trademark
9 that's in front of me on this first page; is that what
10 you are asking me?

11 Are you asking me if I've seen the
12 Maguire's Boston Iced Tea label?

13 MR. BEHLE: No, she's asking if you've seen
14 these two pages that are printed, the whole pages,
15 first page and second page.

16 THE WITNESS: I'm looking at them right now.
17 What's the point? What are you getting to?

18 BY MS. LEYTES:

19 Q. Have you seen them before today?

20 A. Have I seen these before today, no.

21 Q. What is the date that you first used the
22 Maguire's Boston Iced Tea trademark?

23 A. I have no idea. Roger, do you know?

24 MR. BEHLE: If you don't remember you can say
25 you don't remember unless something refreshes your

1 recollection.

2 THE WITNESS: When did I first use the label or
3 when was it first trademarked?

4 MR. BEHLE: She's asking about use of the label
5 or use of the mark itself on a product.

6 THE WITNESS: Oh, three years ago.

7 BY MS. LEYTES:

8 Q. Okay. So I would like to refresh your
9 recollection just to get the dates nailed down and make
10 sure that --

11 A. Don't have the dates.

12 Q. The correct dates?

13 A. I don't have the correct date. We
14 started -- when I started out I had no idea that it was
15 going to take off so I had labels that I made up and
16 stuff like that that were test bottles so that we could
17 see what they looked like and stuff like that. It's
18 been transforming from the beginning. Now it's come to
19 a complete clean end and now we have Maguire's Boston
20 Iced Tea label.

21 Q. The first date was March 22, 2012?

22 A. That sounds like the trademark date, yes.

23 Q. Is that the first date that you started
24 to make use of the Maguire's Boston Iced Tea trademark?

25 A. I believe so. Hold on one second -- hold

1 on one second.

2 (Pause in proceedings.)

3 A. All right. Go ahead.

4 Q. So looking at the trademark application
5 with the label that was submitted with the trademark
6 application --

7 A. Yes.

8 Q. -- what is the meaning or significance of
9 the word Maguire's?

10 A. It's my nickname. It was my dog's name.

11 Q. What's the meaning or significance of the
12 ship?

13 A. Like the Boston Tea Party. It's like a
14 flag ship from the old days.

15 Q. Who first thought of the Maguire's Boston
16 Iced Tea mark, that full mark with the logo with the
17 ship?

18 A. I did.

19 Q. Did you consider any alternative mark?

20 A. No. I mean I had a different label in
21 the beginning and it was just -- we hired a guy to draw
22 it and it was just ridiculous.

23 Q. Okay.

24 A. This actually came off my surfboard.

25 Q. Did you consider simply having the brand

1 be Boston Iced Tea?

2 A. I did not. Because the legal remedy was
3 that you couldn't own Boston or iced tea so it had to
4 either be my name Arnold's Iced Tea or something, so I
5 said, well, I'll use my nickname or the dog's name and
6 it was Maguire so I said, all right. We'll have
7 Maguire's Boston Iced Tea and that seemed to suffice
8 everything.

9 Q. Did you design the logo for Maguire's
10 Boston Iced Tea?

11 A. I did.

12 Q. You personally designed it?

13 A. Yeah, it was the logo that was on my
14 surfboard. I drew a circle and then I drew Boston on
15 it and that's where we got the Boston -- that's why I
16 said it's been growing, you see what I'm saying?
17 Startup company, concept, business plan, concept and
18 then we add to it as we go. That's what a startup
19 company does.

20 So we did -- we took the Boston and the
21 circle off the surfboard and then we added the iced tea
22 and then we added the Maguire's and then we added the
23 flag ship on the back because it would be for like old
24 time -- kind of an old thing and then like the tea.
25 Does that make sense?

1 Q. Yes, thank you.

2 Do you advertise your product?

3 A. We do media -- a little bit of media
4 stuff right now but we are going to wait until we do
5 the final -- until we finally bring it out. We are
6 going to bring it out big. We have got many people
7 right now that are putting a large amount of money up
8 and so we are going to -- we are going to come out with
9 some PR people and the whole thing, yeah.

10 Q. You are working with a PR company?

11 A. I am.

12 Q. As you get ready to bring your product
13 out nationally; is that right?

14 A. Correct.

15 Q. You said that you started to use
16 Maguire's Boston Iced Tea, the trademark, in 2012. How
17 much did you spend in 2012 to advertise or promote?

18 A. I don't think we spent a lot of money at
19 all.

20 Q. Okay. What about 2013?

21 A. No. We did a little promotion. We did a
22 lot of demos.

23 Q. Okay. What about 2014?

24 A. Still a lot of demos, more demos.

25 Q. Can you ballpark how much you spend per

1 month advertising and promoting Maguire's Boston Iced
2 Tea?

3 A. As much as I can possibly get out of
4 these pockets because the promotion is what drives the
5 sales.

6 Q. Were you aware when you applied for the
7 Maguire's Boston Iced Tea mark of BBK Pictures
8 trademark application for Boston Tea?

9 A. I have never heard of BBK until this
10 whole thing started. And I personally don't understand
11 what --I don't understand what BBK has to do with
12 Boston Iced Tea. But go ahead.

13 Q. BBK Pictures, the opposer, has a
14 trademark application that was filed prior to yours for
15 Boston Iced Tea.

16 A. Yes. Do they have a trademark?

17 MR. BEHLE: Let's get down to question and
18 answer.

19 THE WITNESS: Do they have a trademark for
20 Boston Iced Tea?

21 MR. BEHLE: Let's have her ask the questions.

22 THE WITNESS: Okay. Ask the question again,
23 please.

24 BY MS. LEYTES:

25 Q. Were you concerned once you learned about

1 BBK Pictures Boston Tea mark that your Maguire's Boston
2 Iced Tea mark might be confusingly similar?

3 A. No.

4 MR. BEHLE: Hold on, let me interpose the
5 objection that it may require the witness to disclose
6 attorney-client communications, including
7 communications the witness has had with his lawyer
8 concerning legal issues surrounding the opposition and
9 the effect on his company. But if you can answer that
10 without revealing communications you've had with your
11 lawyer, you can. Otherwise I'll instruct you not to
12 answer if it requires you to disclose conversations
13 you've had with your lawyer.

14 THE WITNESS: Okay. All right. Next?

15 BY MS. LEYTES:

16 Q. Will you answer? No?

17 A. What is the question again?

18 MR. BEHLE: Not unless he can answer without
19 disclosing attorney-client communications.

20 BY MS. LEYTES:

21 Q. All right. Let me phrase it a little bit
22 differently and maybe this way you can avoid disclosing
23 any attorney-client communications.

24 A. Okay.

25 Q. Did you or your attorney do any research

1 before you picked the name Boston -- Maguire's Boston
2 Iced Tea?

3 MR. BEHLE: Same objection, same instruction.
4 I'll instruct the witness not to answer because it
5 would require him to disclose what he or his lawyer did
6 to search the mark.

7 MS. LEYTES: I am not asking about what you
8 did, I am asking if you did anything.

9 MR. BEHLE: I'll represent to you we did. I'll
10 stipulate that we did, so next question.

11 BY MS. LEYTES:

12 Q. Who is the target audience for Maguire's
13 Boston Iced Tea?

14 A. Everybody on earth.

15 Q. Have you received any inquiries or
16 questions about Boston Iced Tea Company's possible
17 affiliation with BBK Pictures?

18 A. Did anybody ever call me?

19 Q. Yes.

20 A. I don't recall anybody -- did anybody
21 call us, Roger?

22 MR. BEHLE: If you know you can answer.
23 Otherwise you can say you don't know.

24 THE WITNESS: Somebody called, but I don't
25 think they are the same people. Remember we had two

1 kids that called or something like that and they were
2 saying blah, blah, blah, or whatever was going on.

3 MR. BEHLE: Only answer if you know whether
4 someone has called.

5 THE WITNESS: From BBK? You know, this is
6 really the first time that I gave this any thought. I
7 have just like let the lawyer handle it pretty much
8 most of the way through.

9 In answer to your question, I don't
10 recall -- I don't recall getting a call from anybody at
11 BBK.

12 BY MS. LEYTES:

13 Q. Okay. Thank you. Have you entered into
14 any agreements for licensing the Maguire's Boston Iced
15 Tea mark?

16 A. Could you elaborate on that a little
17 more?

18 Q. Do you have any agreement by which you
19 would let somebody use your trademark and pay you a
20 royalty for it?

21 A. I have had people discuss it, yeah, for
22 China.

23 Q. It's been discussed but you haven't
24 actually signed anything?

25 A. We haven't.

1 Q. Are those licensees or potential
2 licensees aware of the trademark dispute?

3 A. They can go on line, I guess. It's
4 public domain, right?

5 Q. It is.

6 A. Yeah, so if they want to find out -- the
7 guy that's raising my money knows. He's not too
8 concerned.

9 Q. I interrupted you and didn't hear what
10 you said.

11 A. The guy that's raising my cash knows.

12 Q. And have you had any conversations to
13 sell the Maguire's Boston Iced Tea brand?

14 A. I have actually.

15 Q. And is there any -- are the potential
16 buyers aware of the dispute?

17 A. I declined, I am not selling it.

18 Q. Have you ever filed or sent any cease and
19 desist letter or taken any other action to protect the
20 Maguire's Boston Iced Tea trademark?

21 MR. BEHLE: I am going to make the same
22 objection and instruction. To the extent that answer
23 to that would require you to reveal information you've
24 learned from your lawyer as to what your lawyer may
25 have done concerning your trademark I'll instruct you

1 not to answer. If you can answer without revealing
2 communications from your lawyer, go ahead.

3 THE WITNESS: So go ahead.

4 BY MS. LEYTES:

5 Q. Okay. Have you had any variation of
6 Maguire's Boston Iced Tea?

7 A. On my label?

8 Q. I'm sorry.

9 A. On my label?

10 Q. You've used a variation of Maguire's
11 Boston Iced Tea on your label?

12 A. No, I am asking you is that what you are
13 asking me? Is there another label besides the one
14 that's on the bottle right now?

15 There's a bunch of labels. I told you
16 we've been developing the company since we started.

17 Q. Right. Well, you've told me you've been
18 using the Maguire's Boston Iced Tea label since 2012.
19 And we've agreed that the Maguire's Boston Iced Tea
20 label is the label that's in the trademark application
21 you looked at earlier which is Exhibit A?

22 A. Right.

23 Q. And now I'm asking you, have you used any
24 variation on that label?

25 A. Yes, I have.

1 Q. So now I'd like to direct your attention
2 to BBK 85. Can you go to that page?

3 MR. BEHLE: And the numbers are in the lower
4 right-hand corners.

5 THE WITNESS: I got it.

6 MR. BEHLE: You'll see the numbers.

7 THE WITNESS: All right. What can we do on 85?

8 BY MS. LEYTES:

9 Q. Okay. Can you describe what's here?

10 A. Yeah. This is what the label is right
11 now.

12 Q. And can you describe the label, please?

13 A. It's Maguire's Boston Iced Tea, Immune
14 System Support. This one here is for the Kenya Green.

15 Q. It could be because of the printout but I
16 don't see the word Maguire's above the word Boston.

17 A. Boston Iced Tea Company Immune System
18 Support Kenya Green Tea. Maguire's is down at the
19 bottom.

20 Q. So the word Maguire's does not appear at
21 the top of that oval?

22 A. No, this is the graphic artist wanted to
23 move Boston up and make it more visible, Boston Iced
24 Tea, and so he put down Maguire's down to the bottom.

25 Q. And is this the label that -- an example

1 of the label that you are using now for Kenya Green,
2 for all of your Kenya Green product?

3 A. Not right this second.

4 Q. Are you using a different label for Kenya
5 Green?

6 A. No, we have the Kenya Green Maguire's
7 patent on the bottom. So is that the question you are
8 asking me, is it on the top or on the bottom?

9 Q. No, I'm just trying -- I'm just asking is
10 this label that we are looking at which I would like to
11 make --

12 A. Yeah, it looks pretty much -- it's pretty
13 much the green bottle, yeah. Everything on here looks
14 similar.

15 Q. Let's make this Exhibit B, please.

16 (Deposition Exhibit B was marked for
17 identification.)

18 A. There's one thing on the back here and
19 something that says -- where it says -- it's got the
20 little saying all the way on the right-hand side. On
21 this bottle here it says here Helps the body retain up
22 to 40 percent more oxygen. Enjoy refreshing organic
23 ice cold Boston Iced Tea. Over here on the other side
24 it says, "Formulation designed to energize the body and
25 mind, and strengthen the immune system. Refreshing,

1 delicious Boston Iced Tea."

2 Q. I don't know where you are reading from.

3 A. Top right-hand corner of the page.

4 Q. The top right-hand corner of the page
5 that I'm looking at starts with, "Boston Iced Tea is as
6 American an innovation - always striving for the best."

7 A. That's the one. So on the label it's a
8 little bit different. It says something about GMO's,
9 it's got all of that there and then goes into, "We
10 include cordyceps mushroom and non-GMO which helps the
11 body retain more oxygen, up to 40 percent. Enjoy
12 refreshing organic Boston Iced Tea. "

13 Q. So we are looking right now at the label
14 that you use for Kenya Green; is that right?

15 A. I am looking at it, yeah.

16 Q. Okay. I am looking at it too.

17 A. No, I am looking at the one that's on the
18 bottle.

19 Q. And we are both looking at it; is that
20 right?

21 A. Do you have a bottle in your hand? You
22 asked me a question is everything --

23 Q. I am looking at 85.

24 A. I am on that. And you asked me a
25 question. You asked me the question is everything on

1 this label the way it is on the Kenya Green bottle.
2 And so I picked up the Kenya Green bottle which is in
3 my hand, the one that I pulled off the shelf today.
4 And I am saying to you that if you go on BBK85 up to
5 the right-hand corner of the label, it says Boston Iced
6 Tea is as American an innovation, right? And then when
7 it comes down it stops at strengthen the immune system,
8 refreshing, delicious Boston Iced Tea.

9 On the bottle itself, the actual Kenya
10 Green bottle that I have in my hand, this label, new
11 label that we are improving says, "We include cordyceps
12 mushroom non-GMO which helps the body to retain up to
13 40 percent more oxygen, refreshing and organic ice cold
14 Boston Iced Tea."

15 And this is the difference between 85 and
16 the actual bottle that's in my left hand.

17 Q. So the only difference between the Kenya
18 Green label that I see right now BBK85 and the one that
19 you are actually using is that additional language that
20 you just read?

21 A. Correct, absolutely.

22 Q. Okay. Thank you. And the Kenya Green
23 label that you are using now does not have the word
24 Maguire's above the word Boston?

25 A. It does not.

1 Q. And it has the word Maguire's at the
2 bottom. Again it could be that my -- all the printing
3 these back and forth here has made it a little bit
4 tricky to read. But it looks like Maguire's is spelled
5 differently from how it's spelled on your trademark
6 application. It looks like it's spelled
7 M-c-g-u-i-r-e-s; is that how it's spelled on the label?

8 A. We -- did we have -- we had a problem
9 with the spelling. There was one label was spelled
10 incorrectly and the other label was spelled -- I
11 believe that the application one is spelled different
12 than the one that was on the label.

13 Q. So which is the correct spelling?

14 A. The correct spelling is the one that is
15 on the trademark.

16 Q. So the spelling that is on your label
17 that you are using right now is not the correct
18 spelling?

19 A. Right.

20 Q. And then underneath the Maguire's it says
21 patent pending?

22 A. Uh-huh.

23 Q. Have you applied for a patent for your
24 tea product?

25 A. Yes, we are in that position right now.

1 We are talking to lawyers right now.

2 Q. In whose name is that patent going to be
3 filed?

4 A. It will be patented under Boston Iced
5 Tea.

6 Q. And for what product?

7 A. For all the products.

8 Q. What is the name of the product?

9 A. Maguire's Boston Iced Tea.

10 Q. Okay. So just to go back and look at the
11 top right part of the label, it says, "Boston Iced Tea
12 is as American an innovation - always striving for the
13 best"?

14 A. Uh-huh.

15 Q. Why do you refer to your product as
16 Boston Iced Tea?

17 A. Because I am from Boston.

18 Q. Is your product called Boston Iced Tea?

19 A. It's called Maguire's Boston Iced Tea.

20 Didn't you get that?

21 Q. I don't see the word Maguire's there.

22 A. Well, read it. It says right here. Look
23 on the trademark. It says Maguire's Boston Iced Tea.
24 Is your tea called Maguire's?

25 Q. I'm sorry.

1 A. Is your tea called Maguire's?

2 Q. I didn't catch that.

3 A. That's all right. Go ahead, Lady.

4 What's your next question? You are really starting to
5 get on my nerves.

6 Q. I am asking about why --

7 A. Yeah, what's the point?

8 Q. -- you don't state Maguire's before
9 Boston Iced Tea when you refer to your product on your
10 label, because that is what is on your trademark
11 application?

12 A. Right. And I told you that the graphic
13 artist made a mistake and so he is now putting -- he
14 put down on the bottom Maguire's Boston Iced Tea. And
15 now the Maguire's Boston Iced Tea is not at the top. I
16 think that we've made some changes with the trademark,
17 I don't know. But what is the point? Is there a big
18 point there? I mean it sounds like is there a problem
19 with green?

20 Q. Are you selling the product using the
21 label that I'm looking at BBK85?

22 A. Yeah.

23 Q. And does this label have a picture of a
24 ship?

25 A. Does it have a picture of a ship? It

1 doesn't because it was faded.

2 Q. Are you using a picture of a ship in --

3 A. We were going to use it. We are not sure
4 whether we are going to use it or not because it blurs
5 the words on the back of the bottle.

6 Q. So you are not going to use the ship?

7 A. We are not sure.

8 MR. BEHLE: We've not filed a statement of use
9 yet. There is no statement of use on file with a
10 purported in use label, so go ahead.

11 MS. LEYTES: Well, your client has said that he
12 has used Maguire's Boston Iced Tea mark as it appears
13 in the trademark application so I'm just trying to --

14 MR. BEHLE: I disagree with that
15 representation, but go ahead, ask your next question.

16 THE WITNESS: Let's ask that same question
17 over. What was the question?

18 BY MS. LEYTES:

19 Q. Are you using -- have you sold any Boston
20 Iced Tea, Maguire's Boston Iced Tea with a ship on a
21 label?

22 A. In the beginning we have because we used
23 this label in the beginning. And I'll explain to you
24 one more time and I hope you can catch on to this,
25 right. It's a startup company. As we've been going

1 along things are changing all the time. Figures are
2 changing, the label is changing, the tea is changing,
3 different food scientists, people are changing.
4 Everything is changing, that's why it's called a
5 startup company. It's -- we are pulling it together so
6 that we can have a nice, tight unit that's refreshing
7 and ice cold and people love. So I'm not trying to get
8 pissed with you but I just don't see where your
9 questioning is going, you know. So if you could just
10 like just ask me the questions, I'll tell you the
11 answers. But I don't get the point, you know, that's
12 why it's frustrating.

13 Q. Well, do you understand that we are here
14 because my client is opposing your application for
15 Maguire's Boston Iced Tea?

16 MR. BEHLE: What's your question though? He
17 understands why we are here. What is the question that
18 has to do with the question -- let's not ask why we are
19 here.

20 BY MS. LEYTES:

21 Q. And the mark that my client opposes is
22 the mark that was submitted to the patent and trademark
23 office, not -- that's what we are talking about today,
24 right, not whatever your use has evolved to.

25 MR. BEHLE: Yeah. You opposed the application

1 and it's of record so that's of record. We don't need
2 to talk about things that aren't of record. This is of
3 record. You've opposed the application that's of
4 record. So now we are just arguing -- what question do
5 you have for the witness, though?

6 BY MS. LEYTES:

7 Q. Is there any reason why you did not
8 submit any label showing your use of Maguire's Boston
9 Iced Tea, the application that was submitted that is of
10 the record?

11 MR. BEHLE: And let me object and instruct on
12 the grounds of attorney-client communication.

13 What decisions he and his lawyer have
14 made or may make concerning statements of use are
15 between he and his lawyer and for that reason they
16 are objectionable and I will instruct him not to
17 answer.

18 BY MS. LEYTES:

19 Q. Are there labels that exist that appear
20 to be the same as the label that was submitted -- as
21 the logo that was submitted for Maguire's Boston Iced
22 Tea application?

23 MR. BEHLE: Asked and answered. He said yes.
24 But go ahead and answer again.

25 THE WITNESS: Yeah.

1 BY MS. LEYTES:

2 Q. You have those labels?

3 A. Those labels were on the first bottles
4 that we put up.

5 Q. Are you still using those labels?

6 A. No, we moved on to the -- we are moving
7 on to a revised one but we have -- you know, just as we
8 go, as it's going along. We are revising the label as
9 we going along. That should be enough. There's no
10 other way to answer it, Lady. I can't tell you anymore
11 than that.

12 Q. Okay. Is your product organic?

13 A. It is.

14 Q. Do your labels say that your product is
15 organic?

16 A. It's got a USDA label organic right on
17 the front of it.

18 Q. So for every ingredient that you put in
19 your tea --

20 A. That's correct, it's all organic.

21 Q. I'm sorry?

22 A. It is all organic. The bottle is --

23 Q. I can't hear you.

24 A. The bottle is certified organic iced tea,
25 Maguire's Boston Iced Tea.

1 Q. Do you get a specifications sheet --

2 A. I do.

3 Q. -- that each product is USDA organic?

4 A. You bet.

5 Q. Do you have those specification sheets on
6 file?

7 A. I do.

8 Q. Where are they stored?

9 A. Where are they stored? In my office of
10 my business manager, why?

11 Q. Is there anything else that you do to
12 have a USDA organic product?

13 A. Excuse me?

14 Q. Are there any other steps that you take
15 to have that USDA organic label on your product?

16 A. Is there any other steps?

17 MR. BEHLE: Hold on, hold on. It's vague. It
18 also may require him to disclose yet another trade
19 secret. He already answered that it's certified USDA
20 organic, that's the answer. The steps he takes
21 internally to accomplish that are trade secrets.

22 BY MS. LEYTES:

23 Q. All right. We can move on.

24 Let's look at the page that's labeled
25 BBK84, please.

1 How many products are listed here?

2 A. How many products are listed where?

3 Q. If you are looking at --

4 MR. BEHLE: The preceding page.

5 THE WITNESS: Four products, four skewers.

6 MS. LEYTES: Okay. I'd like to make that the
7 next exhibit. Is that Exhibit C, Madam Court Reporter,
8 can you confirm?

9 THE COURT REPORTER: Yes.

10 (Deposition Exhibit C was marked for
11 identification.)

12 BY MS. LEYTES:

13 Q. Can you please name the four products?

14 A. Green tea, red tea, black tea and a white
15 tea.

16 Q. Are the labels that are pictured there
17 the ones that you are presently packing and selling?

18 A. I believe so.

19 Q. Do those labels have the USDA organic
20 sticker on them?

21 A. I can't see it because of the -- what do
22 you call it? But I'm sure that they do.

23 Q. This is on your website as well so you
24 might be familiar with it.

25 A. Well, I don't know. You know, like again

1 what I'm trying to explain to you is like these pieces,
2 they are all different pieces as we going along in life
3 we are putting it together. But the bottles that we
4 sell on the shelf have USDA Organic on them because it
5 is organic iced tea.

6 Q. When did you first pack the label with
7 the USDA organic label?

8 A. From the beginning.

9 Q. And you have invoices to that effect?

10 A. Of course I do.

11 Q. Okay. Are you familiar with a story in a
12 publication called News Talk about your product?

13 A. Yes.

14 Q. Let's make that Exhibit D, please, BBK67
15 to 69.

16 (Deposition Exhibit D was marked for
17 identification.)

18 Q. And is that a picture of you there on the
19 first page BBK67?

20 A. It is.

21 Q. And if you turn to the next page if you
22 don't mind, about the middle of the next page?

23 A. What is the next page?

24 Q. I'm sorry?

25 A. What number?

1 Q. BBK68.

2 A. 68? Okay.

3 Q. Can you read the sentence in roughly the
4 middle of the paragraph that starts with what allotment
5 is?

6 A. I see it.

7 Q. It starts with, "What I want is, he said,
8 then paused."

9 A. Okay.

10 Q. Can you read that out loud, please?

11 A. Yeah, it says, "On a really hot day grab
12 a Boston Iced Tea. And it's ice cold, refreshing and
13 when you get done with it you get a nice snap in your
14 mouth and it's nice and crisp and clean and that's what
15 you get." I am trying to get across --

16 Q. Do you refer to your product here as
17 Maguire's Boston Iced Tea?

18 A. This was written by a publicist, not by
19 me.

20 MR. BEHLE: Parenthetical -- hold on, let me
21 get the objection in. The document speaks for itself.
22 There is a parenthetical quote that looks like it was
23 inserted by the author, but go ahead and answer anyway.

24 THE WITNESS: This was written by a college
25 person that wanted to do an article. I can't control

1 what she puts on here. It's her right to do whatever
2 she wants. When she takes a statement from me, she can
3 write whatever she wants, that's her right. If you
4 want to call her up and sue her you could sue her.

5 Next question.

6 BY MS. LEYTES:

7 Q. It says at the bottom of this page we are
8 looking at 68 that some 320 pieces were scheduled to be
9 shipped to distributors from Ventura to San Diego.

10 A. Okay.

11 Q. Were those the first cases that you
12 shipped?

13 A. No, they weren't.

14 Q. Do you happen to know if those cases
15 contained your early initial label or a subsequent
16 label?

17 A. I believe that the first ones contained
18 -- the first ones contained the label that we actually
19 did with the trademark thing. And then afterwards is
20 the graphic artist guy screwing around put this down on
21 the bottom here. But it's on the new labels that are
22 coming up. The Maguire's is back up at the top.

23 Q. And can you tell me how many units you
24 sold that had the original label?

25 A. I can't.

1 Q. Approximately?

2 A. Approximately I have -- roughly 800
3 cases.

4 Q. 800 cases. And how many units in a case?

5 A. 12.

6 Q. 12, 24?

7 A. 12.

8 Q. And is it your testimony that you have
9 labels that you plan to release now that have the word
10 Maguire's at the top of the oval?

11 A. Yes.

12 Q. And are you going to reintroduce the ship
13 as well?

14 A. It depends on whether it is going to clog
15 up the writing on the back. We want to be able to make
16 sure that the people that are buying it are able to
17 read this clearly on the back.

18 The ship throws a dingy grey color over
19 the back and I don't know if it's that important
20 anymore for us to get that on there or not. It will
21 depend. It depends on what the trademark guy thinks.
22 When we introduce the new label, the trademark guy will
23 tell us whether he -- whether he accepts it like that
24 or if he wants the ship. If he wants the ship then
25 we'll leave the ship.

1 Q. Okay. Let's take a look at -- bear with
2 me one second. Let's take a look at BBK70 through 80.
3 Let's mark that as the next exhibit, please, Exhibit E.

4 (Deposition Exhibit E was marked for
5 identification.)

6 A. What do you want to look at, which page?

7 Q. 70 through 80. These are all screenshots
8 that you provided from your website, I believe.

9 A. Hold on. I love to screw pages up.

10 Q. If you are speaking to me, I can't hear
11 you.

12 A. I said hold on because I love to screw
13 these pages up. I am not a paper person, that's why I
14 am flipping these things around here.

15 How boring is this shit, huh?

16 All right. What page now?

17 Q. Okay. So 70 through 80, let's make all
18 of that Exhibit E, please.

19 A. 70 through 80?

20 Q. Yes.

21 A. Okay. Go ahead.

22 Q. It's not easy to capture the visual video
23 that you have in paper form on your website.

24 A. Okay.

25 Q. But do you recognize this as your

1 website?

2 A. Which one, the one at the top of page 70?

3 Q. If you page through and take your time,
4 pages 70 through 80. Are they -- are those pages
5 corresponding to your website?

6 A. Yeah, they look like it.

7 This page here 75, 924 Chapala, that was
8 a mistake so that's invalid.

9 Q. Oh, that address is not correct, you are
10 saying?

11 A. Yeah, the graphic guys, they just instead
12 of asking what's going on they just kind of do things
13 so it makes me pissed off. But nevertheless there you
14 have it.

15 Q. No problem.

16 A. 76, 77 again is that same map, that thing
17 is zero'd out, that's not good anymore.

18 Is this your thing here that says our
19 office -- says our office is me, 78 -- are we at 78?
20 It says Boston Iced Tea Company. That's no good
21 anymore.

22 Q. The address information you mean?

23 A. Yeah.

24 Q. Okay. Was that ever your address?

25 A. Yeah. I was -- we were going to rent

1 that office and then the guy started being a little
2 funny and Eddie said, all right, never mind, forget it.

3 So this is -- I'm at the end of 80, it
4 looks all good.

5 Q. On the upper left-hand corner of let's
6 say the first page, the home page --

7 A. Yeah.

8 Q. -- can you describe what is there?

9 A. Describe which is where?

10 Q. On the upper left-hand corner?

11 A. Yeah. It's Maguire's Boston -- Boston
12 Iced Tea then it says Maguire's patent pending. It
13 says USDA organic and then it just says about tea,
14 contact, business plan.

15 Q. Okay. Thank you.

16 Do you know how many units you've sold
17 that have that logo that is on your website and on your
18 labels now?

19 A. You keep asking the same question. I
20 don't get it. Are you trying to get a different
21 answer?

22 Q. You don't know how many units you've sold
23 that have -- I asked you about how many units you've
24 sold that have Maguire's, the original label that you
25 filed.

1 A. Right, you asked me that.

2 Q. I'm asking you right now how many units
3 you've sold that have the label that you are using --
4 that you have been using that does not have Maguire's
5 at the top of the oval and does not have the ship?

6 A. How many have we sold? I don't have any
7 idea right now.

8 Q. Okay. You can't approximate it either?

9 A. I have no idea. Didn't we go over that,
10 like approximately a pallet a month.

11 Q. Okay.

12 A. And they are in demo form. They are for
13 demos anyway but go ahead.

14 Q. Why are you in a fight for a mark that
15 you are not using?

16 MR. BEHLE: Argumentative. Don't answer that.
17 Ask him a question that's not argumentative. Don't
18 argue with the witness, just ask him questions, also
19 assumes facts not in evidence.

20 BY MS. LEYTES:

21 Q. When do you expect that you will start to
22 use the Maguire's Boston Iced Tea mark with Maguire's
23 at the top of the word Boston?

24 A. On the next run, the next 10,000 cases.

25 Q. When do you think that might be?

1 A. I don't know, in the future, probably a
2 few months, but I'm not sure. I can't -- you are
3 asking me questions -- today is today. If something
4 happens today and somebody says, hey, we going to do a
5 run, Costco is going to take 200 stores and we'll take
6 800 pallets, then we are going to be running Maguire's
7 Boston Iced Tea new label today, you know. As soon as
8 the wind shifts and this connects, we are going to go
9 like a bat out of hell so -- but it is going to be the
10 same way.

11 If it's -- the Maguire is on the bottom I
12 explained, the graphic guy, they don't talk to me, so
13 the Maguire's is going to be Maguire's Boston Iced Tea
14 on top of the label. The only thing is that some of
15 the new wording on the back and stuff like that, but --
16 and it's up to the governor that does the trademark, if
17 he's going to -- if it's all right with him we probably
18 won't use that boat because it makes it look really
19 dark on the back and you can't read it, the ship.
20 So if he says it's all right we probably won't use
21 that. But if he says that he wants it on the back then
22 we will use it.

23 So pretty much everything is going to be
24 the exact same way that it was before only not on the
25 beginning one. The beginning one didn't -- I don't

1 believe if you look at the label that's printed on some
2 of this it didn't have USDA because those labels
3 weren't actually on bottles. And then we got the USDA
4 and then we added the tea leaf.

5 So -- and then we had to do stuff like
6 the recycle thing on the back, there was all kinds of
7 stuff. Now we are adding -- the label might change a
8 little bit more because we are doing a UE thing for the
9 Jewish people so that the rabbi blesses it so that it's
10 kosher and stuff like that. So those will be changes.
11 And as those changes come through we'll send them back
12 over to the governor there for the government and make
13 sure that he knows that everything that we are doing is
14 on the bottles and it's okay with him.

15 Q. Let's go back to BBK85 for a moment, if
16 you don't mind.

17 A. Okay. Go ahead.

18 Q. I'd like to -- I'd like to make BBK86
19 Exhibit F and BBK87 Exhibit G, please.

20 A. So what do you want to do, 85, 86?

21 Q. And 87. We are going to look at each of
22 them right now.

23 (Deposition Exhibits F and G were marked
24 for identification.)

25 Q. After -- on your label that you've been

1 making and selling it says Boston Iced Tea Company with
2 a period, and then in super script on the right it says
3 TM?

4 A. It doesn't say that on this. This is
5 pretty -- does it say this on here?

6 Q. If you can read the patent pending at the
7 bottom?

8 A. On the bottom I can see it. Yeah. I do
9 see it.

10 Go ahead.

11 Q. And can you look at what is now Exhibit
12 F; does it also have the TM symbol?

13 A. Where is that, on 85?

14 Q. On 86?

15 A. Okay, yeah.

16 Q. And can you look at 87, please?

17 A. Yeah, I did.

18 Q. And does that also have a TM symbol?

19 A. Uh-huh, uh-huh. And that again was the
20 graphic artist. I don't think that should be on there.
21 Because that says that we are trademarked, right?

22 MR. BEHLE: Just answer her questions.

23 THE WITNESS: Go ahead.

24 BY MS. LEYTES:

25 Q. Did you instruct your graphic designer to

1 put the TM symbol there?

2 A. No, I didn't.

3 Q. Were you aware the graphic designer put
4 the TM symbol there?

5 A. I wasn't aware until you just mentioned
6 it.

7 Q. Do you review your labels before you sent
8 out 10,000?

9 A. I normally do but I don't do 10,000 cases
10 yet, Lady. The thing is I normally do review
11 everything except for I am one person and I am running
12 around doing 85 million things to keep this company
13 afloat and find money. So there's a lot of loose ends
14 with a startup company.

15 The idea about it is that we are trying
16 to do 100 percent and use factual information on
17 everything that we do and do everything by the letter
18 of the law. The only thing is one person cannot
19 control 75 Indians, you know, especially when he's
20 running around doing 75 million things of his own.

21 So the trademark thing there, that will
22 not be on the following, the new labels and the
23 Maguire's will be back up on the top where it says
24 Maguire's Boston Iced Tea because I see where you are
25 going. But that's your answer, sorry.

1 Q. Who has the authority to approve these
2 labels?

3 A. I do.

4 Q. And did you approve --

5 A. I wasn't there to approve it.

6 Q. -- the labels that are in Exhibits E, F
7 and G?

8 A. No, I wasn't there.

9 Actually the business manager approved
10 this, but he was in a -- he's doing five million things
11 too. So they weren't approved, they were just -- it
12 appeared and the labels are being redone now.

13 These new labels that are coming up this
14 week or next week will have the new labels hopefully
15 and they will have all the corrections on them.

16 Q. So it's not your position that you are
17 claiming trademark rights in Boston Iced Tea Company?

18 MR. BEHLE: That is a legal conclusion, unless
19 you can answer without giving a legal conclusion.

20 THE WITNESS: No, the thing is I didn't even
21 know it was just there until I just looked at it. This
22 was a mistake that the graphic artist people put on
23 here.

24 BY MS. LEYTES:

25 Q. You are not claiming that your brand is

1 Boston Iced Tea Company?

2 A. I'm claiming my company is called
3 Maguire's Boston Iced Tea Company and I own it and it's
4 mine and this label is mine. I think that's where we
5 are having a little problem.

6 Q. And when you got nutritional facts, you
7 got them for Maguire's Boston Iced Tea or for Boston
8 Iced Tea?

9 A. I don't know, wherever they bill it at.
10 You know, some people bill things with Boston Iced Tea,
11 some people bill things with Maguire's Boston Iced Tea.
12 The thing is that the bills get paid. But it is -- if
13 the question you are getting around to, we are not
14 Boston Iced Tea. In Delaware we are but the bottle
15 itself is Maguire's Boston Iced Tea. That is the way
16 it's going to be forever and that is the name of the
17 iced tea is Maguire's Boston Iced Tea.

18 Q. Even though the labels that you are using
19 now do not have the word Maguire's over Boston?

20 A. That's the point that you are making,
21 yeah, correct. But it's still Maguire's Boston Iced
22 Tea. This was just somebody taking control of what
23 they were doing without making sure that it was done.
24 And I was pissed about it.

25 We also had a few bottles that came out

1 with kind of like dark blue labels rather than black
2 because they didn't use panitone colors because the
3 graphic artist wasn't seasoned enough to realize what
4 he was doing. But we are living with it.

5 Like I said we are a startup company and
6 we are patching holes and making things go and so that
7 we get everything right. That's why we are here
8 talking right now.

9 Q. Are you aware that the logo that's on
10 your website on your home page that we were just
11 looking at also doesn't have the word Maguire's on it?

12 A. Does it have it on the top or the bottom?

13 Q. It does not have it on the top.

14 A. Does it have it on the bottom?

15 Q. It's impossible to say.

16 A. Here, I'll look at it. I'm sure it does
17 have it somewhere. But like I said, all this stuff is
18 in process. We are a startup company, that's what I am
19 trying to get across to you. I want you to understand
20 that. It's like I'm sure Henry Ford didn't just throw
21 four tires and a motor in the car and roll it out into
22 the street and that was a Ford motor car. I'm sure he
23 changed it a million times before he actually got it
24 out the gate.

25 Q. You are saying that your graphic designer

1 is responsible for --

2 A. I've had five graphic designers because
3 we had to pay sharp money to try to get quality graphic
4 guys. And by having sharp money kind of limits us to
5 what kind of quality we can get from a graphic guy. So
6 this is kind of like the fifth graphic guy that we've
7 gone through.

8 So when we get some more money we are
9 going to hire a proper graphic company to do and redo
10 the whole entire thing. But we got it down, we'll get
11 it down so it's getting like -- it's at the point now
12 where it will be proper for the next run of bottles,
13 Maguire's Boston Iced Tea.

14 And I am going to go to the -- what do
15 you want me to do, go to the website? Let me see if I
16 can go to our website.

17 MR. BEHLE: Let her refer you to an exhibit.
18 We are not going to refer to things that aren't
19 exhibits. There will be no way in the record for us to
20 know what you are looking at or for the TTAB to look at
21 whatever you are looking at if it's not an exhibit.

22 THE WITNESS: Okay. I see.

23 BY MS. LEYTES:

24 Q. That's correct.

25 A. So what was your question now?

1 Q. My question is the logo that is featured
2 on your website, does it have the word Maguire's above
3 the word Boston?

4 A. I am not sure.

5 MR. BEHLE: She's asking from memory if you
6 know.

7 THE WITNESS: I am not sure.

8 BY MS. LEYTES:

9 Q. Okay. So let's look at the exhibit we
10 were looking at earlier which starts with, I believe,
11 BBK73.

12 A. Okay. So now we are going to different
13 pages, right?

14 Q. This is Exhibit E.

15 A. On what page?

16 Q. Sorry, BBK70 is the first one.

17 A. 70?

18 Q. 70, uh-huh.

19 A. Back and forth. Weren't we on 70 just a
20 minute ago? Let's get on one page and let's finish it.

21 Okay. Go ahead, Lady.

22 Q. Does the word Maguire's appear above the
23 word Boston?

24 MR. BEHLE: Document speaks for itself.

25 THE WITNESS: It says -- you are all over that.

1 You like that the Maguire's is down at the bottom
2 obviously and not on top of the word Boston.

3 Let me explain to you, the word Maguire's
4 is going to be on top of the word Boston on top of the
5 next 10,000 case run. I don't want to hear anymore
6 about Maguire's being on the top or the bottom. Are we
7 done with that question?

8 BY MS. LEYTES:

9 Q. Is it your testimony today that you did
10 not authorize --

11 A. That's correct.

12 Q. You did not -- let me just repeat the
13 question so that the Court Reporter can get it.

14 A. Go ahead.

15 Q. You did not authorize this in use on your
16 home page?

17 A. That's correct.

18 Q. Okay. I think let's take another break,
19 maybe 10 minutes this time and we'll wrap up, okay.

20 MR. BEHLE: We'll go on mute.

21 MS. LEYTES: Let's all go on mute. It's about
22 3:17.

23 MR. BEHLE: We'll go on mute.

24 (Brief recess taken.)

25 / / /

1 BY MS. LEYTES:

2 Q. So just a few more questions to wrap up
3 here.

4 What's the minimum amount that you can
5 have one of your cold packers pack?

6 A. I don't know, probably about 800 to
7 1,000.

8 Q. And what is the max number that anybody
9 -- that a cold packer has packed for you?

10 A. They are going to pack 10,000 cases.

11 Q. They are going to or they have already?

12 A. They are going to.

13 Q. What's the biggest amount that they have
14 packed for you so far, any one cold packer?

15 A. Two truck loads.

16 Q. Okay. And when did you first pack the
17 original label that is on the trademark application?

18 A. I don't remember.

19 Q. Take your time.

20 A. I don't remember.

21 Q. Can you give me a year?

22 A. Well, it had to be when we did the first
23 run.

24 Q. So 2012?

25 A. Probably so, yeah.

1 Q. And where -- where did you -- where did
2 you pack that one?

3 A. In California.

4 Q. And where was it sold?

5 A. California, Massachusetts and Florida.

6 Q. Okay. And where did you -- I'm sorry.
7 When did you first pack the label that you are using
8 now?

9 A. Last year.

10 Q. So 2014?

11 A. Right.

12 Q. And where did you pack that label?

13 A. You asked me that question, Washington.

14 Q. And how many units of --

15 A. I am not answering anymore units or how
16 many small units I can pack. Your client wants to pack
17 tea, she's going to have to do the research herself.

18 Q. That's not what I am asking.

19 A. I feel that you are asking those
20 questions.

21 Q. That's not what I am asking right now.

22 A. Go ahead, ask the question again.

23 Q. I am asking how many units with that
24 label are on the shelves right now?

25 A. I don't know. I don't have a spreadsheet

1 in front of me. The business manager has got it.

2 Q. Can you give me an idea; are we talking
3 about 100, 1,000, 10,000?

4 A. Watch, I don't know, do you understand
5 that?

6 Q. And you don't know the details?

7 A. I don't have the spreadsheet in front of
8 me. The business manager has it.

9 Q. So what label did you use between 2012
10 when you started and 2014 when you --

11 A. I have no idea. I used the first label
12 the first time, this label the second time, and the
13 third label that's coming up we are doing 10,000 cases
14 and as long as the government guy that does the
15 trademark goes for everything that is on here then
16 we'll do what he says and then we'll punch out 10,000
17 cases.

18 Q. Okay. I think that's it for us. Thank
19 you.

20 A. Sorry for being such an aggravated person
21 but I got a lot of things to do and this is kind of
22 frustrating. I'm sure you can understand.

23 MR. BEHLE: All right. I have no questions.
24 Do you want to -- do we want to stipulate to the
25 handling of the transcript or how do you want to do it?

1 How did we do it with your witness?

2 MS. LEYTES: I think we took it off the record
3 and then we sorted it out.

4 MR. BEHLE: All right. We'll go off the record
5 then on that representation. We'll go off the record
6 here for a moment.

7 (Discussion held off the record.)

8 MR. BEHLE: I'll note for the record we've got
9 a Court Reporter in Santa Barbara, California. Because
10 the Code of Civil Procedure imposes on court reporters
11 certain obligations with regards to the handling of the
12 transcript I'm going to propose that we stipulate to
13 relieve the Court Reporter of her duties under the
14 California Code of Civil Procedure.

15 We've had a discussion off the record.
16 Counsel for BBK Pictures has requested that the Court
17 Reporter expedite preparation of the transcript so that
18 it arrives by Email in counsel for BBK Pictures Email
19 inbox by Friday morning, the 6th of February.

20 We have agreed that the original will be
21 sent to my office there at 15 West Carrillo, Santa
22 Barbara, California. I'll arrange to have the witness
23 review, correct and sign the original transcript and
24 we'll notify counsel for BBK Pictures of any changes
25 and of the fact of signing no later than Friday the

1 13th of February.

2 MS. LEYTES: Great, thank you.

3 MR. BEHLE: All right. We are off the record,
4 thank you all.

5 MS. LEYTES: Thank you very much.

6 (Whereupon at 3:36 p.m. the
7 deposition of Michael Arnold
8 was adjourned.)

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STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.

I, MICHAEL ARNOLD, hereby certify under penalty
of perjury under the laws of the State of California,
that the foregoing is true and correct.

Executed this _____ day of
_____, 2015, at
_____, California.

MICHAEL ARNOLD

1 STATE OF CALIFORNIA)
2 COUNTY OF VENTURA) SS.

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4
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I, Katherine A. Winter, C.S.R. No. 6266, in and for the State of California, do hereby certify;

That, prior to being examined, the deponent named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand and the time and place therein named, and thereafter reduced to typewriting under my direction, and the same is a true, correct, and complete transcript of said proceedings;

I further certify that I am not interested in the event of the action.

Witness my hand this 6th day of Feburary, 2015.



Certified Shorthand
Reporter for the
State of California

[& - american]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

EXHIBIT A



United States Patent and Trademark Office

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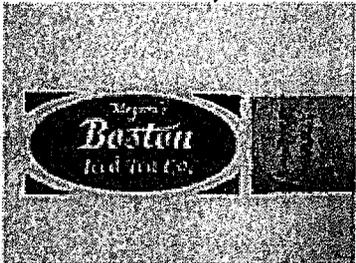
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List At: OR to record: **Record 4 out of 27**

(Use the "Back" button of the Internet Browser to return to TESS)



Word Mark MAGUIRE'S BOSTON ICED TEA

Goods and Services IC 030. US 046. G & S: Beverages made of tea; Beverages with a tea base; Iced tea; Tea; Tea-based beverages

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 18.07.04 - Brigs (boats); Clippers (boats); Schooners (boats); Ships with two and three masts, including brigs, clippers and schooners
 26.03.21 - Ovals that are completely or partially shaded
 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

Serial Number 85884091

Filing Date March 22, 2013

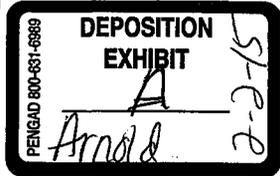
Current Basis 1B

Original Filing Basis 1B

Published for Opposition August 27, 2013

Owner (APPLICANT) Boston Iced Tea Company, Inc. CORPORATION DELAWARE 924-A Chapala Avenue Santa Barbara CALIFORNIA 93101

Attorney of Record Roger N. Behle, Jr.



Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BOSTON ICED TEA CO." APART FROM THE MARK AS SHOWN

Description of Mark The color(s) red, white, and gray is/are claimed as a feature of the mark. The mark consists of the wording "MAGUIRE'S BOSTON ICED TEA CO." and the design of a tall ship. The word "Maguire's", in a stylized font, is positioned above the word "Boston" in the same stylized font, positioned above the words "Iced Tea Co.", in the same stylized font. The wording is all in white and enclosed within a white oval against a red rectangular background carrier. The wording is to the right of a gray square background carrier containing a tall ship image in varying shades of gray.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT B



4 CALORIES

"HAPPY - HEALTHY - HUMBLE"

16 FL OZ (1PT) 473ml

ONLY 1 GRAM OF SUGAR

SMILE. LAUGH. LOVE. ENJOY LIFE.

CA CASH REFUND

Nutrition Facts	
Serving size 8 fl oz	
Servings per container 2	
Amount per serving	
Calories 4	
	% Daily Value*
Total Fat 0g	0%
Sodium 0g	0%
Total Carbohydrates 2.5g	1%
Sugars 1g	
Protein 0g	



Do not drink if you are allergic to mushrooms



Boston Iced Tea is as American as innovation—always striving for the best! For the first time, the finest certified organic tea are infused with a patented mushroom formulation designed to energize the body and mind, and strengthen the immune system. Refreshing, delicious Boston Iced Tea.

Ingredients:
 Purified Water, *Green Tea, *Mushrooms extracts (Agaricus blazei - Cordyceps sinensis - Maitake - Ganoderma/Reishi - Coriolus versicolor - Shiitake), *Cane Sugar, Citric Acid, *Organic Ingredients
SHAKE WELL. DRINK ICE COLD. & ENJOY!



© 2013 Boston Iced Tea Co. www.bostonicedtea.com Certified Organic by OTCO

These statements have not been evaluated by the FDA. These statements are not intended to diagnose, treat, cure, or prevent any disease.

APP000019

PENGAD 800-631-6889
 DEPOSITION
 EXHIBIT
 Arr'd
 5-2-15

BBK085

EXHIBIT C



KENYA GREEN

ROOIBOS RED

AFRICAN BLACK

CHINA WHITE



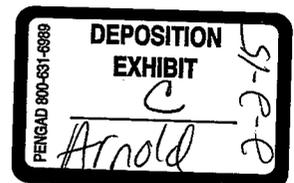
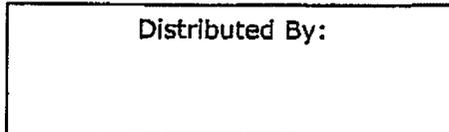
Unit Volume	16 fl. oz.
Unit Dimensions	2-3/4" x 7"
Case Pack	12
Case Dimensions	12"L x 9"W x 7"H
Case Weight	14 lbs
Cases per Pallet	96
Pallet Configuration	16 Cases per Pallet Tie: 6 High
Pallet Weight	1396 lbs

Boston Iced Tea Benefits

100% Organic Ingredients • No Artificial or "Natural" Anything
 Organic Tea Extracts, Organic Medicinal Mushroom Extracts, Deionized Water, <2 gr. Sugar
 Shelf-Stable (2-Yr. Shelf Life) Ready To Drink
 Packed in Glass—Not Plastic

DRINKBOSTONICEDTEA.COM

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APP000018

EXHIBIT D



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Santa Barbara Man Finds His Cup of (Iced) Tea with New Product Line

http://www.noozhawk.com/noozhawk/article/new_organic_iced_tea_to_be_launched_in_america

By Linda Stuesson, Noozhawk Intern | [@NoozhawkNews](#)



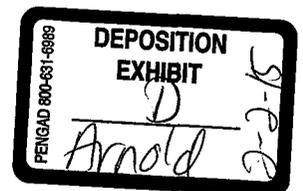
Michael Arnold of Santa Barbara is in the process of launching the Boston Iced Tea Co., a line of organic beverages. (Linda Stuesson / Noozhawk photo)

Michael Arnold puts two years into taste-testing organic beverages for his newly launched Boston Iced Tea Co.

A Santa Barbara man is in the process of launching a new line of organic iced tea, which he plans to distribute to food chains, hospitals, military bases and schools across America.

"We are very pleased with the final product, and believe most consumers will be, too," said Michael Arnold, CEO of Boston Iced Tea Co.

More than two years have gone into the development of Boston Iced Tea, Arnold said, and he's in negotiations for early purchase orders for select supermarkets, hospitals, and military base exchange and commissaries in California and Boston.



D

APP000001

9/23/2014 11:36 AM

Arnold has dedicated the past month to give the organic beverage the exact right taste.

"I've been sitting around for four weeks just drinking tea," he said with a laugh. "I can't sleep at night because I've had like 40 cups of tea, and then I wonder why I can't sleep until 2 in the morning."

The Boston native said he's done everything from building custom homes to flying live lobsters from the East Coast to the West Coast, selling them to top restaurants in Los Angeles.

His original trade is finish carpentry; one of many fields hampered from the economy.

Two years ago, unable to secure consistent construction work, Arnold decided to create something from scratch.

He began watching hundreds of customers at Starbucks and 7-Eleven stores to find out what was making money at those popular locations.

"I realized that people, no matter what, are not going to give up their habit," he said. "And their habit is, every morning they go get an iced tea or a coffee ... and spend an average of \$5 to \$7."

He did his research and found that the most popular drink in America after water is iced tea.

There are currently 12 iced tea distributors in the United States, he said, and Arnold wanted to create the healthiest iced tea, starting with making it organic.

"What I want is," he said, then paused. "On a really hot day, you grab (a Boston Iced Tea), and it's ice cold and refreshing. When you're done you get that pungent snap to your mouth, where it's crisp and clean. That's what we're trying to get."

He's also adding mushroom extract to Boston Iced Tea. Mushroom extract is a frequently used product in military food to increase energy.

One thing missing will be the artificial sweeteners, found in energy drinks and sodas. Boston Iced Tea will be the first on the market to fully deliver on the promise of a healthy iced tea, Arnold said.

"OK, so this is the black one," he said and swooped a glass of "African Black" from across the table. "How's that?"

It had a sweet but bitter aftertaste, and Arnold explained he's still working on converting the bitterness to another taste profile — pleasing to senses without adding sugar.

"He's gone through a lot of different tests and resources with organic teas to get that right combination," said artist Emiliano Campobello, who's doing the graphic artwork for Boston Iced Tea. "We want to make sure we have the right formulation that we want to stand by."

When asked if he plans to sell off the company once it gets big, Arnold made it clear he's become attached to and is proud of the product he's developed for so long.

"You have no idea how many sleepless nights, hours and meetings it's taken to get to this point," Campobello said.

"I want to see it grow and create a happy, healthy, humble company," Arnold added, referring to its slogan.

Some 320 cases with the finished product were scheduled to be shipped recently to distributors from Ventura to San Diego.

APP000002

9/23/2014 11:36 AM

If all goes well, he hopes to sell the Boston Iced Tea to chains such as Whole Foods that share his vision for healthy consumer foods and beverages.

"If you're going to do the organic thing," he said, "you're going to have to do it all the way."

— Noozhawk intern Linda Sturesson can be reached at lsturesson@noozhawk.com. Follow Noozhawk on Twitter: [@noozhawk](https://twitter.com/noozhawk), [@NoozhawkNews](https://twitter.com/NoozhawkNews) and [@NoozhawkBiz](https://twitter.com/NoozhawkBiz). Connect with Noozhawk on Facebook.

http://www.noozhawk.com/noozhawk/article/new_organic_iced_tea_to_be_launched_in_america

EXHIBIT E



About Teas Contact Us Business Plan



Organic

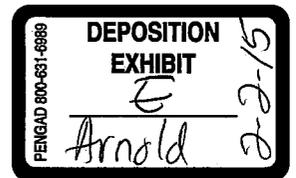
100% Organic ingredients—
No 'natural flavors'.
No artificial anything

Harmonious



Healthy

Our tea is 100% organic tea and medicinal mushroom extracts, one gram of sugar, and only four calories.



E

Our teas are in harmony with your taste buds.

As soon as you drink it, your body knows you are in for a wholesome treat—in harmony with your health.

One Gram of Sugar

Delicious iced tea with only 1 gram of sugar.



40% More Oxygen

We include Cordyceps Mushroom (non-GMO) which helps the body retain up to 40% more oxygen. Allowing your body to function better and burn more calories during athletic activities.

Balanced

Our tea formulations incorporate a specific balance between each ingredient. The resulting formulas provide the ultimate ready-to-drink iced tea experience.

Powered by Reilly Newman & Co.



KENYA GREEN

ROOIBOS RED

AFRICAN BLACK

CHINA WHITE



Unit Volume	16 fl. oz.
Unit Dimensions	2 7/8 x 3 1/2 x 8 1/2
Case Pack	12
Case Dimensions	13 1/2 x 13 1/2 x 20 1/2
Case Weight	14 lbs
Cases per Pallet	96
Pallet Configuration	16 Cases per Pallet Tie; 6 High
Pallet Weight	1365 lbs

Boston Iced Tea Benefits

100% Organic Ingredients • No Artificial or "Natural" Anything
 Organic Tea Extracts, Organic Medicinal Mushroom Extracts, Deionized Water, <2 gr. Sugar
 Shelf-Stable (2-Yr. Shelf Life) Ready To Drink
 Packed in Glass—Not Plastic

DRINKBOSTONICEDTEA.COM

Distributed By:

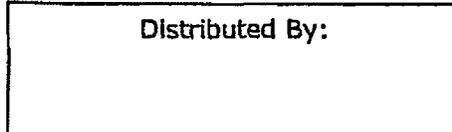


EXHIBIT C

APP000006



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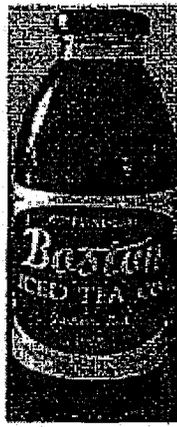
Teas

[Home / Teas](#)

**African
Black**



**Rooibus
Red**



**Kenya
Green**



**China
White**





Our Teas

In a word: Exceptional.

Brisk, fresh, refreshing, incredibly delicious!

All are wholesome, healthy, and 100% organic.

What else could anyone want from a ready-to-drink iced tea?

Resources:

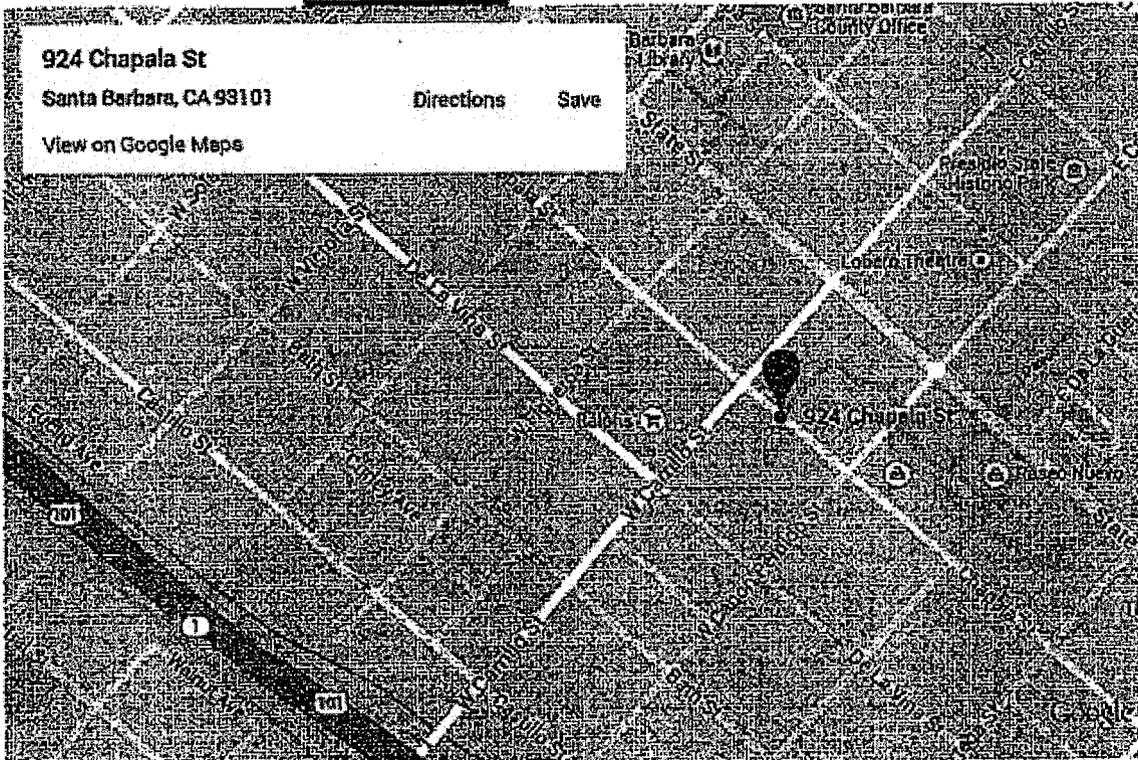
Sales Info Sheet

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Contact us by filling out the form below:

John Doe

john@bmail.com

Information

OUR OFFICE

Boston Iced Tea Company
924 A Chapala Street
Santa Barbara, CA 93101

CONTACT US

+1 (805) 455 9249

info@boston-icedtea.com

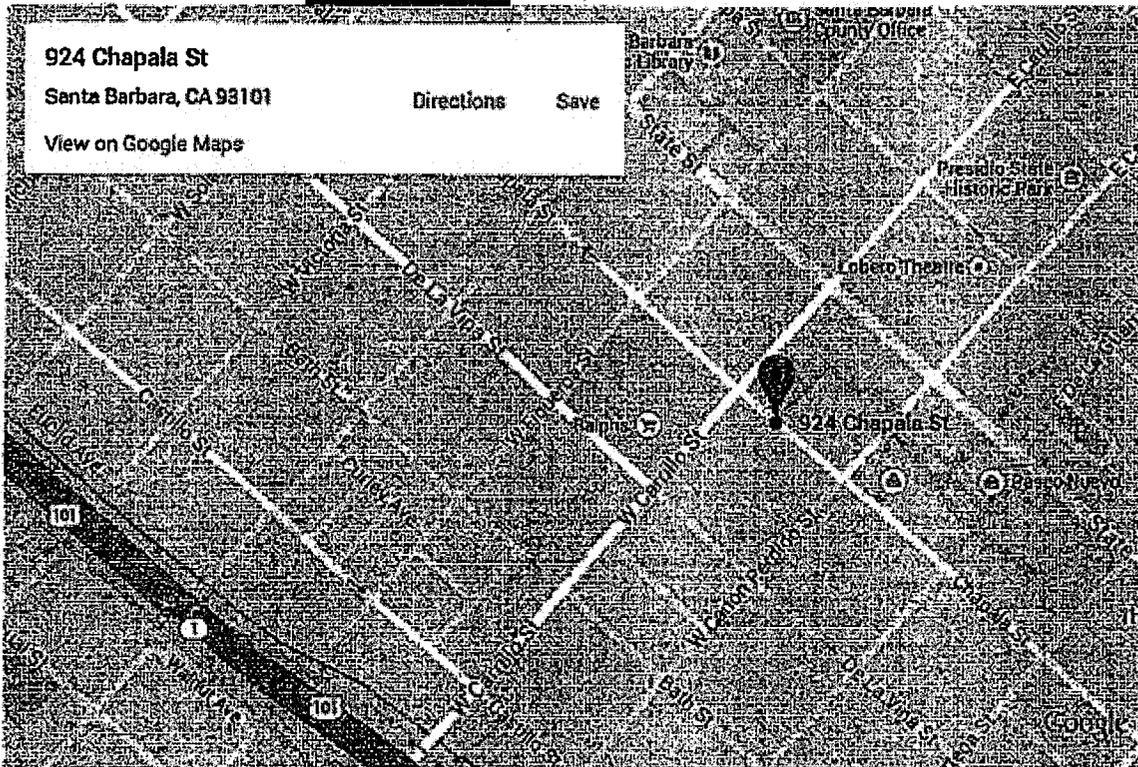
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Contact us by filling out the form below:

John Doe
john@bmail.com

Information

OUR OFFICE

Boston Iced Tea Company
924 A Chapala Street
Santa Barbara, CA 93101

CONTACT US

+1 (805) 455 9249

info@boston-icedtea.com

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Business Plan

Investor Information

By your reading the Boston Iced Tea Company business plan, you acknowledge it is not an offer to sell nor a solicitation to buy securities. Any investment in Boston Iced Tea Company can only be offered to and made by investors who can demonstrate they are Accredited Investors, and that such investment is suitable for them.

By checking the box below, and signing your name, you represent you are an accredited investor.

Yes, I am an accredited investor

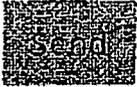
Sign name here

Print name here

john@bmail.com

Upon submitting, a link to the business plan will be sent to your email.

Thank you for your interest in Boston Iced Tea.



Powered by Reilly Newman & Co.

EXHIBIT F



2 CALORIES

"HAPPY - HEALTHY - HUMBLE"™ ONLY 1/2 GRAM OF SUGAR
16 FL OZ (1PT) 473ml

SMILE. LAUGH. LOVE. ENJOY LIFE
CA CASH REFUND

Nutrition Facts
Serving size 8 fl oz
Servings per container 2
Amount per serving
Calories 2

	% Daily Value*
Total Fat 0g	0%
Sodium 0g	0%
Total Carbohydrates 2g	<1%
Sugars 2g	
Protein 0g	

*Percent Daily Values are based on a diet of organic ingredients.
**AMU counts per day out.

Boston Iced Tea is as American as innovation—always striving for the best! For the first time, the finest certified organic teas are infused with a patented mushroom formulation designed to energize the body and mind, and strengthen the immune system. Refreshing, delicious Boston Iced Tea.



Do not drink if you are allergic to mushrooms



Ingredients
Purified Water, *Roobos Red Tea, *Mushroom extract (Agaricus blazei - Cordyceps sinensis - Maitake - Ganoderma Reishi - Coriolus versicolor - Shiitake), *Cane Sugar, Citric Acid. *Organic Ingredients



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www.bostonicedtea.com
Certified Organic by OFCO

These statements have not been evaluated by the FDA. These statements are not intended to diagnose, treat, cure, or prevent any disease.

APP000020

PENGAD 800-631-6889
DEPOSITION EXHIBIT
Arnold
2-2-15

EXHIBIT G



4 CALORIES

"HAPPY - HEALTHY - HUMBLE"

16 FL OZ (1 PT) 473ml

ONLY 1 GRAM OF SUGAR

SMILE, LAUGH, LOVE. ENJOY LIFE

CA CASH REFUND

Nutrition Facts	
Serving size 8 fl oz	
Servings per container 2	
Amount per serving	
Calories	4
% Daily Value*	
Total Fat	0g
Sodium	0g
Total Carbohydrate	2g
Sugars	1g
Protein	0g

*Percent Daily Values are based on a diet of 2000 calories per day.

Boston Iced Tea is as American as innovation—always striving for the best! For the first time, the finest certified organic teas are infused with a patented mushroom formulation designed to energize the body and mind, and strengthen the immune system. Refreshing, delicious Boston Iced Tea.



Do not drink if you are allergic to mushrooms



Ingredients:
 Purified Water, *White Tea, *Mushroom extracts (Agaricus blazei - Cordyceps sinensis - Maitake - Ganoderma Reishi - Coriolus versicolor - Shiitake), *Cane Sugar, Citric Acid, *Organic Ingredients

SHARE WELL. DRINK ICE COLD, & ENJOY :)

PLEASE RECYCLE

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These statements have not been evaluated by the FDA. These statements are not intended to diagnose, treat, cure, or prevent any disease.

APP000021

PENGAD 800-631-6989
 DEPOSITION EXHIBIT
 Arnold
 5-2-15