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

Proceeding	91214191
Party	Defendant Boston Iced Tea Company, Inc.
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Attachments	Boston Iced Tea - ACR Resp Brief FINAL 031715.pdf(550573 bytes)

**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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APPLICANT’S ACCELERATED CASE RESOLUTION (ACR) RESPONSE BRIEF

I. INTRODUCTION

The subject opposition is a sham and one only needs to read the sworn testimony deposition of Ms. Alysia Maltepes, sole owner of BBK Pictures, Inc. (“BBK” or “Opposer”) to see this. If this Board does nothing else but read the Deposition of Ms. Maltepes, it will reach the inescapable conclusion that the opposition is a sham and must be dismissed. What has become apparent during this proceeding is that BBK has no regard for the rules and will say or do anything to advance its own interests, including, among other things, submitting a lawyer-crafted declaration that contradicts Ms. Maltepes’ own sworn deposition testimony. For example, Ms. Maltepes’ Declaration (“Maltepes Decl.”), states at paragraph 13 that “BBK Pictures, Inc. sells its products under the BOSTON TEA Mark to grocery stores, lunch trucks, and restaurants.” But, during her deposition under oath, Ms. Maltepes unequivocally admitted that BBK has not made any sales of any product, including its tea product. See January 21, 2015 Deposition of

Alysia Maltepes (“Maltepes Depo.”, attached hereto as Exhibit “A”), 36:23-37:9. Likewise, Ms. Maltepes declares that BBK exclusively licenses use of the BOSTON TEA mark to 1300 North 9th Street, LLC. See Maltepes Decl., ¶ 11. But, when asked about whether there are any agreements between BBK and 1300 North 9th Street, LLC, Ms. Maltepes stated there are none. Maltepes Depo., 61:8-19. But, putting these brazen contradictions under oath aside, BBK’s Opposition fails for a number of other reasons.

First, BBK lacks standing to bring the subject opposition. BBK has no real interest in the outcome of this opposition because, among other things, (a) it has never sold any products, (b) it has no revenue, (c) it has no customers, and it (d) has no business operations. Maltepes Depo., 11:6-12;15:9-18:15. Even more outrageous, BBK submitted a Statement of Use to the USPTO in March of 2014, claiming use of the mark on all products in that same month – March of 2014. However, Ms. Maltepes testified in her deposition that he business did not even acquire a license to make and sell any products until December of 2014! Maltepes Depo., 21:20-22:19.

Indeed, BBK admits (as it must) that it has not been nor would be harmed by registration of Applicant’s mark. BBK cannot even articulate an ethical or philosophical basis to oppose Applicant’s application. Rather, according to the owner of BBK (Ms. Maltepes), the company just exists to “own” a claimed trademark. Even this claim of ownership, however, is based on fraud – including fraud on the USPTO, as will be shown below.

As its name implies, BBK was formed to make independent films. It claims to have made one such film, called the “*The Greek American*.” But BBK’s status as a producer of independent films bears no rational relationship to Applicant’s mark or the goods that are the subject of the Applicant’s application. As noted, BBK has no “real interest” in this proceeding. Under applicable authority, a person may only have a "real interest" if he or she has "a personal interest

in the proceeding beyond that of the general public." *Ritchie v. Simpson*, 170 F.3d 1092, 1095-1096 (Fed. Cir. 1999). BBK *admits* that it does not sell any beverage products (or any products, for that matter). BBK further *admits* that it has not been harmed or damaged (nor would be) as a result of Applicant's application to register its trademark. This is, in popular parlance, nothing more than a shake-down.

Second, BBK claims ownership of several trademarks incorporating the word "BOSTON." BBK has even gone so far as to apply for registrations of these trademarks with the USPTO. And, worse, BBK has defrauded the USPTO by submitting Statements of Use – asserting use in commerce of a wide range of beverage products – knowing that it has never sold *any* such goods in commerce. For example, among the goods listed in BBK's application to register the mark "BOSTON TEA" (for which a Statement of Use was filed on March 23, 2014), are "concentrated fruit juice, concentrates for making fruit juices, fruit drinks and fruit juices."

When asked about these claimed uses in commerce, however, BBK testified as follows:

Q: Has BBK Pictures, Inc., ever sold concentrated fruit juice under the Boston Tea label?

A: *No.*

Q: Has BBK Pictures, Inc., ever sold concentrates for making fruit juices under the Boston Tea label?

A: *No.*

Q: And has BBK Pictures, Inc., ever sold fruit drinks and fruit juices under the Boston Tea label?

A: *No.*

Maltepes Depo., 81:2-13.

Third, Opposer is not the owner of its claimed mark. Even assuming, *arguendo*, that sales of products were actually made under the "Boston Tea" mark (which is doubtful), BBK claims that those sales were made by an entirely different entity - 1300 North 9th Street LLC. So, even common law trade mark rights (if they exist at all) would not be owned by Opposer. Indeed, the nature and quality of the goods allegedly being sold are actually being controlled by a

completely different entity, 1300 North 9th Street LLC. In this regard, Opposer's application is also void because it was not filed by the person or entity that actually sells the product. Here, as admitted by the Opposer, it has not sold any goods.

And fourth, Opposer's mark is geographically deceptively misdescriptive because neither the company nor the product have any connection to Boston.

II. STATEMENT OF FACTS/PROCEDURAL HISTORY

Applicant filed its Intent-to-Use application for MAGUIRE'S BOSTON ICED TEA on March 22, 2013. The application was approved and subsequently published for opposition on August 7, 2013. Applicant has not yet filed a Statement of Use for its mark. Opposer filed its Notice of Opposition on December 14, 2013, and, following a telephone conference with the Interlocutory Attorney the parties elected to an accelerated case resolution (ACR) procedure.

III. ARGUMENT

A. Opposer Lacks Standing to Bring the Subject Opposition.

As noted in the introduction, BBK lacks standing to bring the subject opposition. BBK has no real interest in the outcome of this opposition because, among other things, (a) it has never sold any products, (b) it has no revenue, (c) it has no customers, and it (d) has no business operations. Thus, it has no interest beyond that of the general public. *Ritchie v. Simpson*, 170 F.3d 1092, 1095-1096 (Fed. Cir. 1999).

B. Opposer has Defrauded the UPSTO by Filing a Statement of Use Claiming Actual Use in Commerce of Various Beverage Products, Knowing that None of the Claimed Products Had Ever Been Sold by Opposer Under the Claimed Mark, BOSTON TEA.

As the Board is well aware, Section 1(b) of the Trademark Act permits the filing of an application to register a mark on the basis of the applicant's bona fide intention to use the mark in commerce for the identified goods or services. Before a registration can issue, however, the applicant must actually use the mark in commerce on or in connection with all the goods or services specified in the application and file an allegation of use of the mark in commerce (i.e., either an amendment to allege use under 15 U.S.C. §1051(c) or a statement of use under 15 U.S.C. §1051(d)) that states that the applicant is using the mark in commerce on or in connection with the goods or services, includes dates of use for each class, and includes one specimen evidencing such use for each class).

Here, BBK filed an intent-to-use application to register the mark BOSTON TEA on February 8, 2011 (Ser. No. 85237182). The application cites beverages in two international classes (30 and 32), namely, "tea-based beverages with fruit flavoring; tea; tea-based beverages" and "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." And, on March 23, 2014, BBK filed a Statement of Use with the USPTO attesting to use of *all* of the goods listed in the application. And today, March 17, 2015 (the very date Applicant is submitting its brief to the Board in this action), BBK received its registration certificate from the USPTO for the "Boston Tea" mark (Reg. No. 4703971).¹

Stunningly, and further evidence of its intent to defraud the USPTO, BBK has allowed a registration to issue even after testifying under oath that BBK has *not sold any* of the goods

¹ Now that a registration has issued for BBK's application, Applicant is separately filing a Petition to Cancel BBK's registration of the "Boston Tea" mark.

listed in its application. Maltepes Depo., 36:23-37:7. Further, BBK testified under oath that it has no written agreements (of any kind) with other companies or individuals licensing or authorizing the use of the claimed mark on tea beverages or fruit juices. BBK has thus procured its registration of the “Boston Tea” mark by defrauding the USPTO. As a result, the entire registration is void.

For a statement to give rise to fraud, the following requirements must be met:

1. The statement must be false;
2. The statement must be a material representation;
3. The person making the statement must have done so with the intent to deceive the Patent and Trademark Office.

In re Bose Corp., 580 F.3d 1240, 1243-44 (Fed.Cir.2009); *see also Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48 (Fed.Cir.1986). Fraud “involves a willful withholding from the Patent and Trademark Office by an applicant or registrant of material information of facts which, if disclosed to the office, would have resulted in the disallowance of the registration sought or to be maintained.” *Smith Int'l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (T.T.A.B.1981); *see also Kemin Indus., Inc. v. Watkins Prods., Inc.*, 192 USPQ 327, 329 (T.T.A.B.1976). If fraud can be shown in the procurement of a registration, **the entire resulting registration is void**. *General Car and Truck Leasing Systems, Inc. v. General Rent-A-Car Inc.*, 17 USPQ2d 1398, 1401 (S.D. Fla. 1990), *aff'g General Rent-A-Car Inc. v. General Leaseways, Inc.*, Canc. No. 14,870 (TTAB May 2, 1998); cited in *Medinol Ltd v. Neuro Vasx Inc.*, 67 USPQ2d 1205 (TTAB 2003).

A statement in a statement of use regarding the use of the mark on goods or services is material to the issuance of the registration, because a registration will not be granted for goods or services in connection with which the mark has not been used. (*Herbaceuticals, Inc v Xel*

Herbaceuticals, Inc., 86 USPQ 2d 1572, 1576 (TTAB 2008); *Hurley International LLC v Volta*, 82 USPQ2d 1339 (TTAB 2007)). Indeed, an applicant may not file a statement of use until the applicant has made use of the mark in commerce on or in connection with all goods/services specified in the notice of allowance, unless the applicant files a request to divide. See Trademark Rule 2.88(c);8 TMEP § 1109.03.

As noted above, Opposer’s “BOSTON TEA” application covered a wide-range of goods in International Classes 030 and 032.² And, Opposer submitted its Statement of Use on March 23, 2014, with claimed first use and first use in commerce dates of March 14, 2014. However, in deposition, BBK admitted that it has never sold any products, including any tea products:

- Q: Has BBK Pictures made any sales?
- A: Of the film?
- Q: No, of any product.
- A: No.
- Q: Including your tea product.
- A: No. Like I said, BBK owns the trademark. That's all it does really.

Maltepes Depo., 36:23-37:7.

For the avoidance of doubt, BBK was asked about the specific products in its trademark application – each of which BBK claimed had been sold under the “Boston Tea” mark at least as early as March 2014 – during the testimony deposition in this matter on January 21, 2015, nearly a full year after the alleged use:

- Q: Has BBK Pictures, Inc., ever sold concentrated fruit juice under the Boston Tea label?
- A: No.
- Q: Has BBK Pictures, Inc., ever sold concentrates for making fruit juices under the Boston Tea label?

² The goods listed include: Tea-based beverages with fruit flavoring; tea; Tea-based beverages; 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.

A: No.
Q: And has BBK Pictures, Inc., ever sold fruit drinks and fruit juices under the Boston Tea label?
A: No.
Q: How about fruit juices?
A: No.
Q: How about herbal juices?
A: No.
Q: Mixed fruit juices?
A: No.
Q: How about non-alcoholic beverages containing fruit juices?
A: No.
Q: Non-alcoholic fruit juice beverages?
A: No.
Q: And non-alcoholic beverages with tea flavor?
A: No.

Maltepes Depo., 81:6-82:4.

Here, Opposer knowingly made a material representation to the USPTO in order to obtain registration of its trademark for the identified goods, despite not having ever sold *any* of the goods listed in the Statement of Use. It is undeniable that the Statement of Use would not have been accepted but for Opposer's misrepresentation, since the USPTO will not issue a registration covering goods upon which the mark has not been used. (*Medinol Ltd v. Neuro Vasx Inc.*, 67 USPQ2d 1205 (TTAB 2003)). Accordingly, Opposer's fraudulent application should be deemed void.

C. Opposer is Not the Owner of its Own Alleged "BOSTON TEA" Mark

In an application under §1(b) or §44 of the Trademark Act, 15 U.S.C. §1051(b) or §1126, the applicant must be entitled to use the mark in commerce on the application filing date, and the application must include a verified statement that the applicant has a bona fide intention to use the mark in commerce. 15 U.S.C. §§1051(b)(3)(A), 1051(b)(3)(B), 1126(d)(2), and 1126(e). When the person designated as the applicant was not the person with a bona fide intention to use the mark in commerce at the time the application was filed, the application is void. *Am. Forests*

v. Sanders, 54 USPQ2d 1860, 1864 (TTAB 1999), *aff'd*, 232 F.3d 907 (Fed. Cir. 2000) (holding an intent-to-use application filed by an individual void, where the entity that had a bona fide intention to use the mark in commerce on the application filing date was a partnership composed of the individual applicant and her husband).

If the party applying to register the mark is in fact the owner of the mark, but there is a mistake in the manner in which the name of the applicant is set out in the application, the mistake may be corrected by amendment. *U.S. Pioneer Electronics Corp. v. Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974). However, the application may not be amended to designate another entity as the applicant. 37 C.P.R. §2.71(D); TMEP §803.06. An application filed in the name of the wrong party is void and cannot be corrected by amendment. *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991).

The facts in this case clearly establish that BBK is not the owner of the alleged “Boston Tea” mark and was not when that application was filed. Indeed, Opposer admitted that 1300 North 9th Street LLC, not BBK Pictures, Inc., was the company allegedly conducting the sales of the products bearing the “Boston Tea” label:

Q: Has BBK Pictures made any sales?

A: Of the film?

Q: No, of any product.

A: No.

Q: Including your tea product.

A: No. Like I said, BBK owns the trademark. That's all it does really.

Q: What do you mean, that's all it does?

A: It owns the trademark. And so our production company is the warehouse, which we sell out of.

Q: So the production company is the warehouse. Is that different than BBK Pictures, Inc.?

A: Yes.

Q: And what's the name of the production company?

A: The manufacturing company that makes the iced tea is 1300 North 9th Street, LLC.

Maltepes Depo., 36:23-37:21.

- Q. How many different products has BBK Pictures sold using the [Boston Tea] label we see in Trial Exhibit-2, Page 80?
- A. How many pictures or products has BBK sold?
- Q. Right. Products, with that label.
- A. It hasn't sold any because we don't run that out of BBK.
- Q. What written agreements, if any, exist between BBK Pictures and the 1300 North 9th Street, LLC entity?
- A. What do you mean?
- Q. Well, do those two entities have any written agreements between them?
- A. For example?
- Q. Any written agreements. Any documents at all that express an agreement or understanding between those two companies?
- A. I don't believe so, no.

Maltepes Depo., 60:23-61:19.

- Q. So is it accurate to say that all of the sales are made by 1300 North 9th Street, LLC from the warehouse?
- A. Yeah. Yes.

Maltepes Depo., 63:11-14.

- Q. Are any of the ingredients that are used in any of the BBK, Inc., beverage products organic?
- A. Okay. When you say BBK products, BBK owns the trademark. It doesn't sell the product.

Maltepes Depo., 85:4-9.

Corporations are not “related companies” within the meaning of §5 of the Trademark Act, 15 U.S.C. §1055, merely because they have the same stockholders, directors, or officers, or because they occupy the same premises. *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235, 1243 (TTAB 2007) (holding that the fact that both the applicant corporation and the corporate user of the mark have the same president and controlling stockholder, and share the same

premises, does not make them related companies); *In re Raven Marine, Inc.*, 217 USPQ 68, 69 (TTAB 1983) (holding statement that both the applicant corporation and the corporate user of the mark having the same principal stockholder and officer is insufficient to show that the user is a related company). Even if the two entities were assumed to be related parties, the owner is the party who controls the nature and quality of the goods sold or services rendered under the mark. The owner is the only proper party to apply for registration. 15 U.S.C. §1051. This situation is a non-correctable error as outlined in TMEP Section 1201.02(c). If an application is filed in the name of corporation A and a sister corporation (corporation B) owns the mark, the application is void as filed, because the applicant is not the owner of the mark. *Great Seats*, 84 USPQ2d at 1244 (holding §1(a) application void where the sole use and advertising of the mark was made by a sister corporation who shared the same president, controlling shareholder, and premises as the applicant).

There is no question that Opposer's "BOSTON TEA" application is void *ab initio* and should not have been approved; it suffers from a fatal defect under the law and the mark should not be allowed to mature to registration.

D. Opposer's "BOSTON TEA" Mark is Primarily Geographically Deceptively

Misdescriptive.

A mark is primarily geographically deceptively misdescriptive under 15 U.S.C. §1052(e)(3) if the following is shown:

- (1) The primary significance of the mark is a generally known geographic place or location.
- (2) The goods for which applicant seeks registration do not originate in the geographic place identified in the mark.

- (3) Purchasers would be likely to make a goods-place association; that is, purchasers would be likely to believe that the goods originate in the geographic place identified in the mark.
- (4) The misrepresentation regarding the geographic origin of the goods would be a material factor in a significant portion of the relevant consumers' decision to buy the goods.

See, In re Miracle Tuesday, LLC, 695 F.3d 1339, 1343, 104 USPQ2d 1330, 1332 (Fed. Cir. 2012) (citing, *In re Cal. Innovations Inc.*, 329 F.3d 1334, 1341, 66 USPQ2d 1853, 1858 (Fed. Cir. 2003)); *In re Les Halles De Paris J.V.*, 334 F.3d 1371, 1373, 67 USPQ2d 1539, 1541 (Fed. Cir. 2003); TMEP §1210.01(b). see also, *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1353, 90 USPQ2d 1489, 1493 (Fed. Cir. 2009) (holding that the test for materiality incorporates a requirement that a “significant portion of the relevant consumers be deceived”).

As stated in TMEP 1210.05(c)(i) for products, in determining "materiality," this Board has stated that it looks to evidence regarding the probable reaction of purchasers to a particular geographical term when it is applied to particular goods. See *In re House of Windsor, Inc.*, 221 USPQ 53, 56 (TTAB 1983), recon. denied, 223 USPQ 191 (TTAB 1984). Materiality, or the lack thereof, may be established inferentially based on indirect evidence such as gazetteer entries and third-party websites. See *Corporacion Habanos, S.A. v. Guantanamera Cigars Co.*, 102 USPQ2d 1085, 1098 (TTAB 2012). To establish a prima facie case of deceptiveness, the Examining Attorney must provide sufficient evidence that the misdescriptive quality or characteristic would be a material factor in the purchasing decision of a significant portion of the relevant consumers. To do so, the Examining Attorney must provide evidence that the misdescriptive quality or characteristic would make the product or service more appealing or more desirable, and not less desirable, to prospective purchasers. TMEP 1203.02(d); *In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 (TTAB 2013) (citing *In re Juleigh Jeans Sportswear Inc.*, 24 USPQ2d 1694, 1698-99

(TTAB 1992)). A product or service is usually more desirable because of objective standards or criteria that provide an objective inducement to purchase the goods and/or services beyond that of mere personal preference.

In assessing whether a misdescription would affect the decision to purchase, for example, the evidence may show that goods deemed “organic” because they are produced in compliance with objective criteria can also be more costly, provide health benefits, and satisfy a social policy of reducing the impact on the environment by utilizing chemical-free growing practices. The evidence also must suffice to indicate that the misdescriptive quality or characteristic would affect the purchasing decision of a significant portion of the relevant consumers. TMEP 1203.02(d)(i); *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 1353, 90 USPQ2d 1489, 1493 (Fed. Cir. 2009).

Here, Opposer has admitted that its products and ingredients are not from Boston and could not articulate any reason why the word Boston was used as part of its mark. *Maltepes Depo.*, 74:22-76:8. And the products are not even sold in the Boston area, but rather (and to the extent there are even any sales), in New Jersey and Philadelphia. *Maltepes Depo.*, 24:2-7.³

IV. CONCLUSION

In light of the foregoing, Applicant respectfully requests that this Board dismiss Opposer’s Opposition with prejudice.

Dated: March 17, 2015

FOLEY BEZEK BEHLE & CURTIS, LLP

³ In light of the *Maltepes Depo.*, and now that Applicant has additional factual support for the same, Applicant hereby moves to amend its Answer to re-allege its affirmative defense of Geographic Misdescriptiveness, which facts were not available to Applicant at the pleading stage.

/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 17th day of March, 2015, the foregoing ACCELERATED CASE RESOLUTION (ACR) RESPONSE BRIEF was served on Opposer by sending a copy thereof to:

BBK PICTURES, INC.
c/o Dina Leytes
GRIESING LAW, LLC
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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: March 17, 2015

FOLEY BEZEK BEHLE & CURTIS, LLP

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

EXHIBIT A

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

- - -

BBK PICTURES, INC. :
:OPPOSITION NO.
v. :Application Serial
:No. 85884091
BOSTON ICED TEA COMPANY, :
INC. :

- - -

JANUARY 21, 2015

- - -

Oral deposition of ALYSIA
MALTEPES, taken pursuant to notice, was
held at GRIESING LAW, 1717 Arch Street,
Suite 3630, Philadelphia, Pennsylvania,
commencing at 3:00 p.m., on the above
date, before LISA MARIE CAPALDO, RPR, a
Registered Professional Reporter and
Notary Public in and for the Commonwealth
of Pennsylvania.

GOLKOW TECHNOLOGIES, INC.
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11 Via Speakerphone

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Testimony of: ALYSIA MALTEPES

By Mr. Behle 5

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E X H I B I T S
- - -

NO.	DESCRIPTION	PAGE
Exhibit-1	Notice of Deposition	45
Exhibit-2	Trademark/Service Mark Statement of Use	53
Exhibit-3	Boston Tea Label	84

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DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer

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None

Request for Production of Documents

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None

Stipulations

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5 1

Question Marked

Page Line Page Line Page Line

None

1 (It is hereby stipulated and
2 agreed by and between counsel that
3 sealing, filing and certification
4 are waived; and that all
5 objections, except as to the form
6 of questions, be reserved until
7 the time of trial.)

8 - - -

9 ALYSIA MALTEPES, after
10 having been duly sworn, was
11 examined and testified as follows:

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. BEHLE:

16 Q. Would you state and spell
17 your full name for the record?

18 A. Alysia Maltepes. And that's
19 A-L-Y-S-I-A. The last name is M-A-L-T-E,
20 P as in Paul, E-S.

21 Q. And did you say P as in
22 Paul, E as in Edward, S as in Sam?

23 A. Yes.

24 Q. And that's pronounced

1 Maltepes?

2 A. Yes.

3 Q. Ms. Maltepes, we're here
4 today to take your testimony because of
5 an agreement that we entered into earlier
6 in this case. There's going to be one
7 opportunity for you to testify.

8 This is not a -- a
9 deposition is sometimes conducted in
10 discovery phases of cases. This is going
11 to be your testimony that we're going to
12 use to present to the Trademark Trial and
13 Appeals Board in connection with the
14 opposition that was filed against my
15 client's trademark application, Maguire's
16 Boston Iced Tea.

17 And your counsel and I have
18 agreed to conduct this portion of the
19 proceeding by telephone, and we've done
20 that for a number of reasons, not the
21 least of which is expense to the parties.

22 And although this testimony
23 is being recorded and my questions are
24 being asked over a telephone line, your

1 testimony is going to have the same force
2 and effect and you're under the same
3 penalties of perjury that you would have
4 if you were testifying in a court of law
5 before a judge or a jury.

6 Do you understand that?

7 A. Yes.

8 Q. And I gather you've had an
9 opportunity to talk with your counsel
10 about what it is we're going to be doing
11 here this afternoon in taking your
12 testimony.

13 Have you had an opportunity
14 to do that?

15 A. I have.

16 Q. The only thing I'll ask you
17 to do is that if you don't hear or don't
18 understand one of my questions, either
19 because you don't hear it well over the
20 phone line or you just don't understand
21 it, let me know and I'll repeat it or
22 rephrase it.

23 If you answer my questions,
24 I'm going to assume that you heard and

1 understood those questions. Do you
2 understand?

3 A. Yes, I do.

4 Q. What is your affiliation
5 with BBK Pictures, Inc.?

6 A. I own the company.

7 Q. And are you the sole owner?

8 A. I am.

9 Q. When did you become the sole
10 owner of BBK Pictures, Inc.?

11 A. I believe it was in 2005.

12 Q. And when was BBK Pictures,
13 Inc., formed?

14 A. The same year.

15 Q. And have there ever been any
16 other owners of BBK Pictures other than
17 you?

18 A. No.

19 Q. What is BBK Pictures'
20 primary business?

21 A. It's a bottling company.

22 Q. And when you say bottling
23 company, do you mean that BBK Pictures
24 manufactures bottled beverages for sale?

1 A. Yes.

2 Q. And in 2005, when you formed
3 BBK Pictures, what products did BBK
4 Pictures sell?

5 A. When I formed it originally,
6 it was for my film company. I produce
7 independent films. But then over the
8 years, we've made it into a bottling
9 company. And that's what it is today.

10 Q. In 2005, when you formed BBK
11 Pictures, you weren't selling any bottled
12 beverage products, correct?

13 A. Right.

14 Q. Rather, you formed the
15 company in connection with your
16 production of an independent motion
17 picture. Is that correct?

18 A. Yes.

19 Q. And how many motion pictures
20 did you produce through BBK Pictures?

21 A. One.

22 Q. And what was the title of
23 that?

24 A. The Greek American.

1 Q. And that motion picture was
2 completed in -- did you ever distribute
3 it for sale?

4 A. We haven't distributed it
5 yet. I have the website for it but no
6 actual distribution.

7 Q. Other than producing the
8 motion picture Greek American, did BBK
9 Pictures conduct any other business in
10 the year 2005?

11 A. No.

12 Q. Did BBK generate any revenue
13 in 2005?

14 A. No.

15 Q. Did BBK Pictures conduct any
16 business other than the production of the
17 motion picture Greek American in the year
18 2006?

19 A. No.

20 Q. And how about revenue in
21 2006, was there any revenue?

22 A. No, there wasn't.

23 Q. Same questions for 2007.
24 Any other business other than the

1 production of the motion picture Greek
2 American in 2007?

3 A. No.

4 Q. And revenue in that year?

5 A. No.

6 Q. All right. Can you identify
7 for me the first year that BBK Pictures,
8 Inc., ever earned any revenue?

9 A. We haven't.

10 Q. To this moment, you have not
11 generated any revenue?

12 A. No.

13 Q. Is it correct that you've
14 not generated any revenue as of --

15 A. Well, I haven't --

16 Q. Hold on just a moment. Let
17 me correct the record.

18 The court reporter indicated
19 that she couldn't hear the remainder of
20 my question. And, Ms. Maltepes, it's
21 important that as we conduct this
22 testimony deposition, that you allow me
23 to complete my question before you begin
24 your answer.

1 We want to ensure that the
2 court reporter accurately takes down what
3 I say and what you say. And so if you
4 begin speaking while I'm still speaking,
5 we're going to have an incoherent and
6 incomprehensible transcript.

7 Will you do that?

8 A. Of course.

9 Q. My question restated is, is
10 it true that as of January 21st, 2015,
11 BBK Pictures, Inc., has not ever
12 generated any revenue?

13 A. That's not true. We have
14 generated revenue. I'm not exactly sure
15 how much as of right now. My father
16 takes care of that.

17 Q. You're here as the person
18 that's most knowledgeable on behalf of
19 BBK Pictures, Inc., to respond to the
20 questions that I ask concerning the
21 opposition you filed against my client's
22 trademark application.

23 A. Okay.

24 Q. So are you now telling me

1 that there's somebody more knowledgeable
2 than you about your company's revenues?

3 A. From what I understand, I'm
4 here because I own the company. And my
5 father runs it. I recently started
6 getting involved.

7 Because I also have a coffee
8 shop I opened up recently. So a lot of
9 the details concerning revenue my father
10 knows.

11 Q. Well, as the owner of the
12 company, you are required to file taxes?

13 A. Yes. We haven't done that
14 yet.

15 Q. Tax returns, right?

16 A. Right.

17 Q. So in the year 2014, did you
18 submit any or did you file a tax return?

19 They're not due yet, but did
20 you submit one?

21 A. I'm not sure. I can't
22 answer that.

23 Q. And what about revenue for
24 the year 2014? Did BBK Pictures, Inc.,

1 to your knowledge, as the owner of the
2 business, generate any revenue?

3 A. I know we've generated some
4 revenue. I don't know the details. My
5 father helps me out with that.

6 I'm starting to get involved
7 right now in the past few months. I
8 basically own the company. He runs it.

9 I also have a coffee shop.
10 And now I'm starting to get involved.
11 And he's teaching me slowly things about
12 the business, bottling company, et
13 cetera.

14 Q. Well, what revenue do you
15 believe was generated by BBK Pictures in
16 the year 2014?

17 A. I don't know. I can't
18 answer that question.

19 Q. And what type of business do
20 you believe was conducted by BBK Pictures
21 that resulted in revenue in 2014?

22 A. The selling of beverages.

23 Q. And what beverages did you
24 sell in 2014?

1 A. Our Boston Tea label.

2 Q. Your Boston Tea labeled
3 beverage?

4 A. Iced tea. Our Boston Iced
5 Tea.

6 Q. And to whom did you sell
7 your Boston Iced Tea product in the year
8 2014?

9 A. I don't know the specifics.
10 But we have a warehouse that we sell out
11 of which we also produce out of.

12 My father delivers and
13 there's also pickup. It's basically
14 mom-and-pop stores.

15 Q. Well, identify for me any
16 customer that's purchased a Boston Iced
17 Tea product from BBK, Inc.

18 A. I can't do that. I was at
19 the coffee shop. My dad did the selling
20 of the product.

21 Q. So as the owner of the
22 business, you don't know of any customers
23 at BBK Pictures?

24 A. I trust my father to take

1 care of that in the past. And now I'm
2 starting to get involved, like I said.

3 Q. Just so the record is clear,
4 though, you cannot identify for me a
5 single customer of BBK Pictures. Is that
6 correct?

7 A. Not specifically, no.

8 Q. How about generally?

9 A. Well, generally I can
10 assume. We have a warehouse there. I've
11 seen customers come in. I can't tell you
12 who exactly came in.

13 Q. So you can't identify for me
14 even generally any customers?

15 A. Nope.

16 Q. Is that correct?

17 A. That's correct.

18 Q. Can you give me any general
19 estimate of the total amount of sales
20 revenue that you've generated in
21 connection with the sale of your tea
22 beverage?

23 A. I'd like to, but I can't. I
24 don't know what that number is. And I

1 don't want to assume.

2 Q. I don't want you to assume
3 either. Can you give me any estimate?

4 A. I don't. I can't give you
5 an estimate.

6 Q. And then how many total
7 units have you sold under the Boston Tea
8 label in 2014?

9 A. I don't know. I can't give
10 you a clear answer on that.

11 Q. How about an estimate?

12 A. I can't give you an
13 estimate.

14 Q. How many have you
15 manufactured? How many products bearing
16 the Boston Tea label have you
17 manufactured since the company began?

18 A. I'm not sure. My father
19 takes care of the packing. And up until
20 a few months ago, I've gotten involved in
21 packing at our facilities.

22 What the details are with
23 his packing and all of that, I just --
24 that's something that he dealt with. I

1 can't answer that question.

2 Q. Have you ever seen any
3 records that reflect the total number of
4 products that BBK Pictures has
5 manufactured bearing the Boston Tea
6 label?

7 A. Can you repeat the question?

8 Q. Sure. Have you ever seen
9 any records that reflect the total number
10 of products that BBK Pictures
11 manufactured?

12 A. No.

13 Q. Bearing the Boston Tea
14 label?

15 A. No.

16 Q. Do you have any reason to
17 believe any records exist?

18 A. Go ahead.

19 Q. Do you have reason to
20 believe that any such records exist?

21 A. Yes, of course. I trust my
22 father.

23 Q. I'm sure you do. But I need
24 to know what records you have

1 irrespective of your trust.

2 A. I don't have the records.
3 He has the records. He's dealt with the
4 packing. He has established co-packers.

5 I don't know the details on
6 the packing. I just got involved when we
7 got our production company, and in the
8 past few months I've been slowly getting
9 involved.

10 Q. Well, have you turned over
11 the records that you have that reflect
12 the total number of products that you
13 manufactured that have the Boston Tea
14 label?

15 Have you turned those over
16 to your lawyer?

17 A. I have not.

18 Q. And why have you not?

19 A. I think my father took care
20 of that.

21 Q. Well, is it your belief that
22 your father turned over to your lawyer
23 the records that show the total number of
24 products that you manufactured bearing

1 the Boston Tea label?

2 A. I know he turned over some
3 records. I'm not sure if it's the total
4 records.

5 Q. And what do you believe he
6 turned over?

7 A. Proof of sale, I'm assuming.

8 Q. And you've never seen those?

9 A. I have not.

10 Q. Tell me why it is that
11 you're appearing here and your father's
12 not appearing here.

13 A. I believe I'm appearing here
14 because I own the company. That's what I
15 believe.

16 Q. But you don't know anything
17 about the business other than what your
18 ownership status is, right?

19 A. Like I said, I'm just
20 recently getting involved. It just so
21 happened that we opened up a coffee shop.
22 And I've been busy trying to get that
23 started.

24 So my father took care of

1 everything on the BBK front. In the past
2 two months, I've been getting more
3 involved because I've established my
4 coffee shop business.

5 So I'm starting to get a
6 little knowledge on the detail of
7 packing, suppliers, and ingredients. But
8 that's just been in the past few months.

9 Q. Right. But other than the
10 fact that you own BBK Pictures, you don't
11 know anything else about its business,
12 right?

13 A. No. My father is basically
14 teaching me the business slowly.

15 Q. So it's correct that other
16 than the fact that you own the business,
17 you don't know anything else about the
18 business, right?

19 A. That's not correct, no.

20 Q. Well, tell me everything you
21 know about the business.

22 A. Well, we just got our
23 license to produce a few months ago in
24 our own warehouse and bottle the iced

1 tea, so.

2 Q. So you got a license when?

3 A. Sometime in December we got
4 the license.

5 Q. December of 2014?

6 A. Yes.

7 Q. And what license did you get
8 in 2014 in December?

9 A. A license to manufacture and
10 produce iced tea.

11 Q. I'm sorry. Go ahead,
12 finish.

13 A. A bottling company.

14 Q. And prior to that, you
15 didn't have a license to manufacture iced
16 tea, correct?

17 A. No.

18 Q. Is that correct?

19 A. That's correct.

20 Q. And your company would not
21 manufacture products without the proper
22 licenses, correct?

23 A. Correct. Well, no. What
24 does that mean? I misunderstood you.

1 Without our license or a general license
2 to produce?

3 Q. Well, you just told me you
4 got a license in December of 2014 to
5 manufacture beverages, right? You
6 remember testifying to that?

7 A. Right.

8 Q. And you also testified that
9 prior to December of 2014, you didn't
10 have a license to manufacture beverages.
11 You remember testifying to that?

12 A. Yes.

13 Q. And prior to December of
14 2014, you didn't have any licenses,
15 correct?

16 A. Right.

17 Q. What is the geographic
18 region that your bottled tea products are
19 sold?

20 A. It's --

21 Q. Rephrase that. In what
22 geographic regions are your tea products
23 bearing the Boston Tea label sold?

24 A. In Pennsylvania and

1 New Jersey.

2 Q. And how do you know they're
3 sold in New Jersey?

4 A. I know because my father has
5 sold to his mom-and-pop stores and
6 they're basically around the Jersey,
7 Philadelphia area.

8 Q. Well, are they in the state
9 of New Jersey or are they in
10 Philadelphia?

11 A. The state of New Jersey.

12 Q. And what customers have you
13 sold to in the state of New Jersey?

14 A. I don't know the specifics
15 on that.

16 Q. Where are they located in
17 New Jersey?

18 A. I can't tell you where
19 they're located.

20 Q. You cannot?

21 A. No.

22 Q. How many customers do you
23 have in the state of New Jersey?

24 A. I'm not sure. Like I said,

1 I don't know the details of those numbers
2 and customer details.

3 Q. How many total products have
4 you sold into the state of New Jersey?

5 A. I don't know.

6 Q. And how many total products
7 have you sold into the state of
8 Pennsylvania?

9 A. I don't know.

10 Q. How many customers do you
11 have in the state of Pennsylvania?

12 A. I don't know that.

13 Q. Can you tell me what your
14 total sales revenue has been for sales in
15 the state of New Jersey?

16 A. Again, I don't know the
17 details. I can't answer that question.

18 Q. And then how many dollars in
19 revenue have you received in connection
20 with sales made in the state of
21 Pennsylvania?

22 A. Again, I don't know the
23 details. I can't answer the question.

24 Q. How many employees does BBK

1 Pictures have now?

2 A. It's me, my father, and my
3 uncle.

4 Q. And what's your uncle's
5 name?

6 A. John Maltepes.

7 Q. And what does John Maltepes
8 do for BBK Pictures?

9 A. He helps us do everything.
10 If we want to make a small run, he's
11 there with my father doing that. If I
12 can't be there, he's there. He helps
13 sales.

14 It's usually him and my
15 father. And then now I'm starting to get
16 more involved. I don't need to be at the
17 coffee shop all the time.

18 Q. What's your father's name?

19 A. Michael Maltepes.

20 Q. And what is your father's
21 position with BBK Pictures?

22 A. I don't understand the
23 question. What do you mean?

24 Q. Well, you said he works for

1 BBK Pictures. What position does he have
2 with the company?

3 A. Like I said earlier, he's
4 running it. And now I'm starting to get
5 more involved so I can help more with
6 running the business together.

7 Q. Does your corporation have
8 officers?

9 A. I don't think so.

10 Q. Does your corporation have a
11 board of directors?

12 A. I'm not sure. I believe so.
13 I opened it up in 2005. We had a board
14 of members. Right now I'm not sure what
15 that means today.

16 Q. Well, who's on the board of
17 directors of BBK Pictures, Inc.,
18 currently?

19 A. I can't answer that.

20 Q. And who are the officers of
21 BBK Pictures, Inc., currently?

22 A. I can't answer that either.

23 Q. Your uncle John is an
24 employee of the company. Does he get a

1 paycheck?

2 A. He's an employee.

3 Q. So he gets a paycheck?

4 A. I'm not sure what -- how
5 he's paying him.

6 Q. Does your corporation, BBK
7 Pictures, Inc., does it withhold taxes
8 from payments it makes to your uncle,
9 John Maltepes?

10 A. I don't know. I can't
11 answer that question.

12 Q. And with regard to your
13 father, does your corporation, BBK
14 Pictures, Inc., withhold taxes from
15 payments that it makes to him?

16 A. Can you repeat that?

17 Q. Sure. Does your
18 corporation, BBK Pictures, Inc., withhold
19 taxes from payments that it makes to your
20 father, Michael Maltepes?

21 A. I can't answer that.

22 Q. Do you receive a paycheck
23 from BBK Pictures, Inc.?

24 A. No, not right now.

1 Q. Have you ever received any
2 revenue from BBK Pictures, whether it's
3 in the form of a salary, a distribution,
4 dividend, anything like that?

5 A. No, I don't rely on that at
6 this moment for my income.

7 Q. Where does BBK Pictures,
8 Inc., bank?

9 A. TD Bank.

10 Q. And it has a checking
11 account there?

12 A. Yes.

13 Q. Are all of the transactions
14 that the corporation conducts relative to
15 its beverage business, are they run
16 through this account at TD Bank?

17 A. I can't answer that because
18 BBK Pictures I know owns the trademark.
19 But I'm not sure we're necessarily doing
20 business out of BBK Pictures' account at
21 TD Bank.

22 I'm not sure. I can't
23 answer that.

24 Q. Well, who owns the account

1 at TD Bank?

2 A. I do.

3 Q. You personally do?

4 A. Yes.

5 Q. Does BBK Pictures, the
6 corporation, have any bank account of its
7 own?

8 A. Does BBK Pictures
9 Corporation have a bank account of its
10 own?

11 Q. Yes.

12 A. Yes.

13 Q. Where is that bank account?

14 A. We opened that for the film
15 originally.

16 Q. And where is that bank
17 account?

18 A. TD Bank.

19 Q. Do you know the account
20 number for the TD Bank account that was
21 set up for BBK Pictures, Inc.?

22 A. I don't.

23 Q. Who has that information?

24 A. I have the information. I

1 just don't have it here with me.

2 Q. And is it accurate that all
3 of the sales transactions that have been
4 made by BBK Pictures that involved the
5 bottle tea products have been run through
6 the bank account that was set up at
7 TD Bank for BBK Pictures?

8 A. No, that's not true.

9 Q. Have any of the sales
10 transactions involving the tea beverages
11 bearing the Boston Tea label that have
12 been made by BBK Pictures, have any of
13 them been run through the bank account
14 that was set up for BBK Pictures at
15 TD Bank?

16 A. No.

17 Q. Why not?

18 A. They just haven't been.

19 Q. Is there a reason they
20 haven't been?

21 A. I'm not sure what the reason
22 is. But I believe my father deals more
23 with cash business, but they just haven't
24 been run through that account.

1 Q. So are all of the sales that
2 have been made cash sales where people
3 hand cash to your father?

4 A. I don't know. I can't
5 answer that.

6 Q. Have you ever seen a check
7 made payable to BBK Pictures, Inc.?

8 A. No.

9 Q. Has BBK Pictures, Inc., ever
10 advertised any of its products, namely
11 the tea product called Boston Tea?

12 A. I believe my father's done
13 some small advertising.

14 Q. What advertising has he
15 done?

16 A. I'm not sure. Maybe some
17 banners. I'm not sure. Umbrellas. But
18 I'm assuming. I'm not quite positive on
19 that.

20 Q. Have you ever seen any
21 advertising for BBK Pictures related to
22 the Boston Tea product?

23 A. I've seen banners.

24 Q. Where have you seen those

1 banners?

2 A. In the warehouse.

3 Q. Inside the warehouse?

4 A. Yeah, and outside.

5 Q. Where is the warehouse
6 located?

7 A. 1300 North 9th Street.
8 That's in Philadelphia, 19130.

9 Q. And what other business is
10 conducted out of that warehouse?

11 A. The same warehouse
12 manufactures the tea. And we also sell
13 the tea out of the same warehouse.

14 Q. Is any other business
15 conducted out of the warehouse at 1300
16 North 9th Street, Philadelphia, PA?

17 A. No.

18 Q. And how long have you had
19 this warehouse?

20 A. It's my father's building,
21 and he's had it since 2000, 2001, I
22 believe.

23 Q. Your father owns the
24 building?

1 A. Yes.

2 Q. Is your father leasing the
3 warehouse to BBK Pictures, Inc.?

4 A. I'm not sure what the
5 details on that is. We have the
6 corporation under that address. The
7 corporation is 1300 North 9th Street and
8 we're both owners of it today.

9 Q. You're both owners of what
10 today?

11 A. The building. In the past I
12 wasn't, but right now I am.

13 Q. When did you become an owner
14 of the building?

15 A. It may have been a few years
16 ago.

17 Q. And when you say you are an
18 owner of the building currently, you mean
19 you personally are an owner of the
20 building along with your father?

21 A. Yes.

22 Q. BBK Pictures, Inc., is not
23 an owner of the building, correct?

24 A. Correct.

1 Q. And BBK Pictures, Inc.,
2 doesn't pay rent for the use of the
3 warehouse, correct?

4 A. Yes.

5 Q. Is that correct?

6 A. Correct.

7 Q. From 2000 up until BBK
8 Pictures, Inc., was formed in 2005, what
9 was the warehouse used for?

10 A. Storage space. There's the
11 rental property.

12 Q. And after 2005, did BBK
13 Pictures begin using the warehouse in
14 connection with the production of the
15 motion picture called Greek American?

16 A. Can you repeat that?

17 Q. Sure. In 2005, did BBK
18 Pictures, Inc., begin using the warehouse
19 in any way related to the production of
20 the motion picture you described earlier?

21 A. The only way it used it was
22 for filming a scene. Part of a scene
23 there.

24 Q. Have BBK Pictures ever

1 submitted sales taxes to the state of
2 Pennsylvania?

3 A. No.

4 Q. Why not?

5 A. Can you explain sales tax to
6 me again?

7 Q. Do you know what sales tax
8 is?

9 A. Well, that's why I'm asking.
10 I'm not too savvy on the tax end of
11 business.

12 Q. My question to you is, do
13 you know what sales tax is?

14 A. When you sell something and
15 you make a profit and you report that.

16 Q. Right.

17 A. Okay. No, it did not, no.

18 Q. Why did BBK Pictures not pay
19 any sales tax to the state of
20 Pennsylvania?

21 A. Because we have not made a
22 profit as of today on the film.

23 Q. Has BBK Pictures made any
24 sales?

1 A. Of the film?

2 Q. No, of any product.

3 A. No.

4 Q. Including your tea product.

5 A. No. Like I said, BBK owns
6 the trademark. That's all it does
7 really.

8 Q. What do you mean, that's all
9 it does?

10 A. It owns the trademark. And
11 so our production company is the
12 warehouse, which we sell out of.

13 Q. So the production company is
14 the warehouse. Is that different than
15 BBK Pictures, Inc.?

16 A. Yes.

17 Q. And what's the name of the
18 production company?

19 A. The manufacturing company
20 that makes the iced tea is 1300 North 9th
21 Street, LLC.

22 Q. And who owns that LLC?

23 A. My father and I.

24 Q. And when did you form that

1 LLC?

2 A. Well, I think that was a
3 couple of years ago as well.

4 Q. And what business other than
5 manufacturing tea does 1300 North 9th
6 Street, LLC do?

7 A. Good question. I think
8 that's the only thing it does. I'm not
9 sure if my father has anything else under
10 that LLC.

11 Q. And for what companies does
12 1300 North 9th Street, LLC make products?

13 A. Can you repeat that?

14 Q. Sure. For what companies
15 does 1300 North 9th Street, LLC make
16 product?

17 A. For what companies?

18 Q. Right.

19 A. Other than ourselves?

20 Q. Well, you said you make tea
21 and that tea is sold by 1300 North 9th
22 Street, LLC, right?

23 A. Right.

24 Q. So it sells it itself,

1 right?

2 A. Yes.

3 Q. And then I want to know for
4 what other companies does 1300 North 9th
5 Street, LLC make product?

6 A. It does not.

7 Q. So the only company that
8 1300 North 9th Street, LLC makes product
9 for sale is itself?

10 A. Right.

11 Q. Has it ever made any
12 products for any other company?

13 A. No.

14 Q. And how many total products
15 has 1300 North 9th Street, LLC made?

16 A. Again, I don't know the
17 details on how much was made.

18 Q. And how about how much was
19 sold by 1300 North 9th Street, LLC? How
20 much tea product has been sold since it
21 began?

22 A. Right. I don't know those
23 details.

24 Q. And how much in sales tax

1 has 1300 North 9th Street paid to the
2 state of Pennsylvania in connection with
3 any sales of tea that's made?

4 A. Again, I don't know that
5 information.

6 Q. How about sales tax paid to
7 the state of New Jersey? You earlier
8 told me that there were sales of tea
9 products made to some customers in the
10 state of New Jersey.

11 How about how much sales tax
12 has 1300 North 9th Street, LLC paid to
13 the state of New Jersey?

14 A. Again, I know I'm being
15 redundant. I don't know that. My father
16 has been handling those details.

17 Q. And is it your testimony
18 that you believe that sales taxes have
19 been remitted to the state of New Jersey
20 or you don't know?

21 A. I don't know.

22 Q. Has 1300 North 9th Street,
23 LLC ever filed a tax return?

24 A. I believe so.

1 Q. And have you had an
2 opportunity to review tax returns that
3 were filed on behalf of 1300 North 9th
4 Street, LLC?

5 A. No.

6 Q. And in connection with any
7 tax returns that might have been filed,
8 do you remember seeing any numbers that
9 were represented to the government as
10 being gross sales for 1300 North 9th
11 Street, LLC?

12 A. I have not.

13 Q. Do you know whether 1300
14 North 9th Street, LLC has ever paid
15 income tax?

16 A. I don't know.

17 Q. And has BBK Pictures, Inc.,
18 ever paid income tax?

19 A. What does that mean exactly,
20 if we've made revenue and paid income
21 tax?

22 Q. Well, have you, yourself,
23 ever submitted a tax return to the
24 government?

1 A. No, I have not.

2 Q. How old are you,

3 Ms. Maltepes?

4 A. It sounds like I'm ten, but
5 I'm actually 35.

6 Q. And in your 35 years, you've
7 never once submitted a tax return?

8 A. That's the thing. My father
9 has taken care of taxes and those type of
10 things in the past.

11 Q. Have you ever earned income,
12 you, yourself?

13 A. Yes.

14 Q. And through what business
15 have you earned income?

16 A. Around 2001, 2002, we had a
17 beer distributor that I had some income
18 come out of for a few years. But mostly
19 my father's been supporting me, so I
20 haven't filed income tax.

21 Q. And you say your father has
22 been supporting you. He pays for your
23 living?

24 A. Yes. That's why we got this

1 coffee shop started, recently started.

2 Q. You started the coffee shop
3 when?

4 A. It opened up this year.
5 We've been working on it for a few years.

6 Q. And when you say this year,
7 you mean 2015?

8 A. I'm sorry, 2014.

9 Q. And you work at the coffee
10 shop?

11 A. Yes.

12 Q. In 2014, did you ever work
13 at BBK Pictures, Inc.?

14 A. Well, what do you mean?
15 Work as in how?

16 Q. In any capacity at all, did
17 you do anything at all for BBK Pictures,
18 Inc., in the year 2014?

19 A. I don't think so. Like I
20 said, my father has been running it.
21 I've been focusing on the coffee shop. I
22 don't have too many details.

23 It's something we're just
24 starting together. He's trying to teach

1 me the business as he runs it.

2 Q. I'm going to ask you to take
3 a look at what should be in the stack of
4 documents you have there. And turn to
5 the document that begins with the
6 numbering at the bottom right, APP000035.

7 And let me know when you've
8 located that page.

9 A. Okay.

10 Q. And then I would like you
11 then to look at that page all the way
12 through what's been marked as APP00040.

13 I don't want you to read all
14 the pages, but just make sure you have
15 that range at hand there.

16 A. Okay.

17 MR. BEHLE: I'm going to
18 mark this, Madam Court Reporter,
19 as Applicant Respondent's Trial
20 Exhibit-1.

21 BY MR. BEHLE:

22 Q. And my question is, have you
23 ever seen what's been marked as
24 Applicant's Trial Exhibit-1?

1

- - -

2

(Whereupon, Exhibit-1 was

3

marked for identification.)

4

- - -

5

THE WITNESS: Yes.

6

BY MR. BEHLE:

7

Q. When did you first see it?

8

A. Sometime this year. I can't

9

give you an exact date.

10

Q. And when you say this year,

11

do you mean 2015?

12

A. 2014.

13

Q. And under what circumstances

14

were you shown this document?

15

A. In the law office.

16

Q. Was that in the office of

17

your counsel?

18

A. Yes.

19

Q. If you'll turn to the page

20

marked APP000039, you'll see there's a

21

signature there?

22

A. Yes.

23

Q. Down in the lower left-hand

24

corner of that same page, you'll see a

1 date, December 24th, 2013. That's
2 Christmas Eve 2013.

3 Do you see that?

4 A. Yes.

5 Q. Did you see this document,
6 Applicant's Trial Exhibit-1, at any time
7 prior to December 24, 2013?

8 A. Probably. I can't remember
9 when I saw this document exactly. But I
10 obviously saw it.

11 Q. And why do you say you
12 obviously saw it?

13 A. Because this is my lawyer
14 and she gave it to me. And we filed an
15 opposing case against you and your
16 client.

17 Q. All right. And you've read
18 this document to ensure that it didn't
19 contain any inaccuracies. Is that right?

20 A. I did.

21 Q. And is it your testimony
22 that this document is true and correct?

23 A. Yes.

24 Q. And you would not have

1 authorized your lawyer to submit this if
2 it contained inaccuracies, correct?

3 A. Correct.

4 Q. Turn to Page 4 of the
5 document. The numbering in the lower
6 right-hand corner ends in 38.

7 A. Okay.

8 Q. In Paragraph No. 16 that
9 appears there, I'll read this into the
10 record. This is Paragraph 16 from the
11 document that you authorized your lawyer
12 to file back in December of 2013.

13 It says, the alleged mark so
14 resembles opposer's Boston Tea's mark as
15 to be likely, when used on or in
16 connection with the goods identified in
17 the opposed application, to cause
18 confusion, to cause mistake, or to
19 deceive. An applicant's alleged mark is,
20 therefore, unregistrable.

21 Do you see that language?

22 A. Yes.

23 Q. Have you ever received a
24 notification from anyone at any time

1 indicating to you that they were confused
2 by my client's product, thinking that it
3 originated from you?

4 A. I don't remember. I can't
5 answer that.

6 Q. Well, have you ever heard
7 that someone has contacted BBK Pictures,
8 Inc., and has explained that they had
9 encountered my client, Boston Iced Tea
10 Company, Inc.'s, product in the market
11 and they thought it originated from you
12 in Pennsylvania?

13 A. Can you repeat that?

14 Q. Sure.

15 MR. BEHLE: Madam Court
16 Reporter, can you read that back,
17 please?

18 - - -

19 (Whereupon, the court
20 reporter read the pertinent part
21 of the record.)

22 - - -

23 THE WITNESS: I have not
24 personally been contacted.

1 BY MR. BEHLE:

2 Q. Has your dad ever told you
3 that somebody called him and thought that
4 my client's, Boston -- Maguire's Boston
5 Iced Tea product, was somehow affiliated
6 with you?

7 A. I'm sorry. Repeat that.

8 Q. Sure. Did your dad ever
9 tell you that any customer ever contacted
10 him and expressed the view that my
11 client, Boston Iced Tea Company, Inc.,
12 Maguire's Boston Iced Tea product,
13 originated from your company in
14 Pennsylvania?

15 A. I can't clearly answer the
16 question. I remember some confusion,
17 talking about some confusion. But I
18 can't say for sure when my father told me
19 and what the details were about that.

20 Q. What confusion did he tell
21 you he had heard about?

22 A. That your client's trademark
23 is confusing with our trademark. That
24 they're similar and indistinguishable.

1 Q. So he told you that was his
2 opinion or that somebody had called him
3 and expressed that view?

4 A. Like I said, I'm not sure.
5 I remember there was a discussion about
6 confusion. I'm not sure if someone
7 contacted him or I just vaguely remember
8 discussing the labels and thinking there
9 was confusion among them.

10 Q. Have you ever seen anything
11 in writing indicating that someone
12 believed you, BBK Pictures, Inc., was
13 affiliated with my client, Boston Iced
14 Tea Company, Inc.?

15 A. I have not personally seen
16 anything in writing.

17 Q. Have you ever listened to
18 any voice mails or anything of that
19 variety where somebody's called looking
20 for my client or its products?

21 A. No.

22 Q. Has your company, BBK
23 Pictures, has it set up an order center
24 where people can call to place orders?

1 A. No.

2 Q. And if I wanted to buy your
3 product, how would I buy your product?

4 A. I'm sorry. Back to the last
5 question.

6 What do you mean order
7 center? Just like a telephone number?

8 Q. Sure. If I want to buy
9 product, I can call a number or go online
10 and order it.

11 Is there such a facility set
12 up by your company, BBK Pictures, Inc.?

13 A. Yes, there's a telephone
14 number, yes, that you can call and order
15 the product.

16 Q. And what's the number I can
17 call to order the products?

18 A. It's in my phone. I don't
19 remember off the top of my head. I'm
20 sorry.

21 Q. Is it an 800 number?

22 A. No, it's a 215 number.

23 Q. And that's local there in
24 Pennsylvania?

1 A. Yes.

2 Q. And if I call that number,
3 who is going to answer the phone?

4 A. Most likely my father or my
5 uncle.

6 Q. And they're going to be able
7 to take orders that way?

8 A. Yes.

9 Q. How many orders has BBK
10 Pictures taken in via telephone?

11 A. I don't know.

12 Q. How do you track your sales
13 via telephone?

14 A. I don't track the sales. My
15 father, again, takes care of those
16 details.

17 Q. I'm going to have you take a
18 look at what's been marked in the stack
19 in front of you in the lower right-hand
20 corner as APP000075.

21 Let me know when you're
22 there. And I'm going to ask you to look
23 at the range of documents that begins
24 there on that page, 75, and continues

1 through 81.

2 A. Okay.

3 Q. Have you ever seen the
4 document?

5 MR. BEHLE: We're going to
6 mark this as Applicant's Trial
7 Exhibit-2, that range of
8 documents, please.

9 - - -

10 (Whereupon, Exhibit-2 was
11 marked for identification.)

12 - - -

13 BY MR. BEHLE:

14 Q. Did you ever see the
15 document that appears as Applicant's
16 Trial Exhibit-2? The first two pages
17 numbered 75 and 76?

18 A. Yes.

19 Q. When did you first see
20 those?

21 A. I can't remember when I
22 first saw them. But I have seen them.

23 Q. And can you tell me what
24 they are?

1 A. Well, the first page
2 basically says when we first used or sold
3 the tea, Boston Tea, which was in March
4 of 2014. And then -- should I keep
5 going?

6 Q. So let's just stop there.
7 So on the second page of Trial Exhibit-2,
8 there's a signature that says declaration
9 signature. And that appears to be your
10 name printed below that.

11 Do you see that?

12 A. Yes.

13 Q. Did you authorize your
14 signature to be placed here under the
15 signature section where it says
16 declaration signature?

17 A. Yes.

18 Q. Did you review for accuracy
19 the contents of the information that
20 appears on Pages 78 and 79 of Trial
21 Exhibit-2?

22 A. Yes.

23 Q. And I want to direct your
24 attention to Page 78. The mark was first

1 used by the applicant or the applicant's
2 related company licensee or predecessor
3 in interest, at least as early as March
4 14th, 2014, and first used in commerce at
5 least as early as March 14th, 2014, and
6 is now in use in such commerce.

7 What occurred on March 14th,
8 2014, in connection with the sale of a
9 product for BBK Pictures?

10 A. Well, I don't understand.
11 What do you mean like occurred? What --

12 Q. Why did you pick March 14th,
13 2014, as the date to represent the mark
14 was first used?

15 A. Okay. My father came to me
16 and told me we were using it. So I guess
17 that's why we filed. Because he came to
18 me and then I spoke to Dina and we filed.

19 I don't remember the
20 specifics of that.

21 Q. And when your father came to
22 you and said we're using it, what did you
23 understand that to mean?

24 A. Selling. Selling the Boston

1 Tea.

2 Q. And who did you sell to on
3 March 14th, 2014?

4 A. I don't know their names,
5 but I believe they're his old customers.
6 He used to be in the distribution
7 business and he sold to a few of his old
8 customers, if I remember correctly.

9 Q. And what are the names of
10 these customers?

11 A. I don't have that
12 information.

13 Q. And how much product was
14 sold to them?

15 A. I'm not sure. He has all
16 that information.

17 Q. How much was paid for the
18 products by these customers?

19 A. I don't know.

20 Q. What was the price per
21 bottle?

22 A. I don't know.

23 Q. What was the total number of
24 bottles sold?

1 A. Again, I don't know.

2 Q. Where were these customers
3 located?

4 A. What do you mean located?

5 Q. Well, like where did they
6 reside or do business?

7 A. I don't know.

8 Q. How many total customers
9 bought product from BBK Pictures, Inc.,
10 on March 14th, 2014?

11 A. Again, my father has that
12 information.

13 Q. Do you know, as you sit here
14 today, whether there were, in fact,
15 actual sales of products on March 14th,
16 2014?

17 A. What do you mean? I know
18 because my father has told me. In terms
19 of anything else, he keeps all the
20 records of the sales and the details of
21 that.

22 Q. Well, independent of your
23 father telling you, you have no
24 independent knowledge that any sales of

1 any products were made on March 14th,
2 2014, right?

3 A. I've seen a few receipts.
4 I've definitely seen a few receipts. Had
5 to give Dina a few receipts. I don't
6 remember the details of the receipts.

7 Q. Were those receipts in
8 connection with sales made on March 14th,
9 2014?

10 A. I don't remember.

11 Q. If you'll turn to Page 80 of
12 Trial Exhibit-2. Do you see a photograph
13 there?

14 A. Yes.

15 Q. Did you take that
16 photograph?

17 A. I did.

18 Q. Where did you take it?

19 A. I took it at my house.

20 Q. And what is depicted in the
21 photograph?

22 A. You want me to explain what
23 I see?

24 Q. Yes. What's in the

1 photograph?

2 A. It's the name.

3 Q. You have to understand,
4 Ms. Maltepes, when the Trademark Trial
5 Appeals Board reads this transcript,
6 they're not going to have the benefit
7 of --

8 A. Okay. Sure.

9 Q. You're describing what is on
10 a piece of paper. Even though you and I
11 can both see it and I know it's a picture
12 of a bottle and you know it's a picture
13 of a bottle, when the Trademark Trial
14 Appeals Board reads your transcript,
15 they're going to want to hear you
16 describe in words what we're both looking
17 at.

18 A. No problem. So it's a
19 plastic 20-ounce bottle with the name
20 Boston Tea. Underneath the name it says,
21 all-natural real brewed iced tea with a
22 leaf next to the tea and another small
23 leaf above the name Boston.

24 It has checkers framed with

1 a checker-style look, both on the top and
2 the bottom. Plastic cap.

3 Q. Who designed the label?

4 A. My father did.

5 Q. Did you approve it?

6 A. Yes.

7 Q. Was there something about
8 the label design that was important to
9 you in the marketing of your product?

10 A. Not necessarily. I trust my
11 father's experience with labeling, so I
12 was happy with what he came up with.

13 Q. And has your company, BBK
14 Pictures, ever used a label other than
15 the one we see in Trial Exhibit-2, Page
16 80?

17 A. Can you repeat that?

18 Q. Sure. Has your company, BBK
19 Pictures, ever used a label different
20 than the one we see in the photograph at
21 Page 80 of Trial Exhibit-2?

22 A. No.

23 Q. How many different products
24 has BBK Pictures sold using the label we

1 see in Trial Exhibit-2, Page 80?

2 A. How many pictures or
3 products has BBK sold?

4 Q. Right. Products, with that
5 label.

6 A. It hasn't sold any because
7 we don't run that out of BBK.

8 Q. What written agreements, if
9 any, exist between BBK Pictures and the
10 1300 North 9th Street, LLC entity?

11 A. What do you mean?

12 Q. Well, do those two entities
13 have any written agreements between them?

14 A. For example?

15 Q. Any written agreements. Any
16 documents at all that express an
17 agreement or understanding between those
18 two companies?

19 A. I don't believe so, no.

20 Q. If we look at the next
21 photograph, which is Document 81 of Trial
22 Exhibit-2, we see another bottle which
23 appears to bear a similar label except
24 that the word orange appears under real

1 brewed iced tea.

2 Do you see that?

3 A. Yes.

4 Q. Is this a product that has
5 some fruit juice included in it?

6 A. I believe so, yes.

7 Q. Whose formulation was this
8 product?

9 A. It's my father's.

10 Q. And other than the use of
11 orange juice, were there any other juices
12 that were included with the tea?

13 A. I don't know.

14 Q. Have you sold any of the
15 products that have the fruit juices
16 including orange juice included with tea?

17 A. I believe so.

18 Q. How many products of that
19 variety have you sold?

20 A. I don't know the details.

21 Q. To what market segment are
22 you marketing your product?

23 A. My father has a relationship
24 with vendors and mom-and-pop stores in

1 the city of Philadelphia and New Jersey.
2 Because he's had distribution businesses
3 in the past.

4 So I believe those are our
5 type of customers, starting out with
6 right now.

7 Q. And do you have any
8 distributors that you work with?

9 A. No, not at the moment, I
10 don't think. I don't think so.

11 Q. So is it accurate to say
12 that all of the sales are made by 1300
13 North 9th Street, LLC from the warehouse?

14 A. Yeah. Yes.

15 Q. And orders that are made are
16 filled out of that warehouse. Is that
17 right?

18 A. Yes.

19 Q. Have you ever known product
20 to be shipped anywhere?

21 A. No.

22 Q. Is it your understanding
23 that product has never been shipped?

24 A. That's my understanding,

1 yes.

2 Q. Have any of your --

3 A. Shipped meaning what, like
4 shipment delivered? Because we do
5 deliver, but in terms of a separate
6 shipping company or?

7 Q. Right. UPS, FedEx.

8 A. No.

9 Q. And have any of BBK
10 Pictures, Inc.'s, tea products ever been
11 sold in the state of California?

12 A. No.

13 Q. Have any of the BBK, Inc.,
14 Pictures -- strike that -- BBK Pictures,
15 Inc., tea products ever been sold in any
16 states other than New Jersey and
17 Pennsylvania?

18 A. No.

19 Q. Has 1300 North 9th Street,
20 LLC ever sold products bearing the Boston
21 Tea mark in any state other than
22 Pennsylvania and New Jersey?

23 A. I don't think so, no.

24 Q. What sales projections does

1 BBK Pictures, Inc., have for 2015 for its
2 Boston Tea product?

3 A. That's a good question. I
4 don't know. I have no idea.

5 Q. And how many orders has BBK
6 Pictures, Inc., received in the year 2015
7 for its products bearing the Boston Tea
8 label?

9 A. I'm not sure.

10 Q. Where are the contents of
11 the tea products actually made, meaning
12 the teas or the teas and juices, where
13 are they actually physically made?

14 A. Well, can you repeat that?

15 Q. Sure. The two pictures
16 we've looked at, the Trial Exhibit-2,
17 Pages 80 and 81, show different products.

18 One with the word orange on
19 it you told me that had some fruit juice
20 in it, and the other one just says real
21 brewed iced tea.

22 Where are the contents of
23 those products actually manufactured?

24 A. You mean like, for example,

1 the tea powder or where the orange juice
2 comes from or where it gets bottled?

3 Q. Yes. So you have an empty
4 bottle. And I'm sure you buy your bottle
5 from a supplier, and then you fill it at
6 some point with some liquid?

7 A. Right.

8 Q. So where does the liquid get
9 placed into the bottles?

10 A. We have our own bottling
11 company with the machines to do that.

12 Q. Where is that located?

13 A. 1300 North 9th Street.

14 Q. All right. And so the
15 equipment is all there. And that
16 equipment is used just to handle Boston
17 Tea products or other products?

18 A. Right now it's just Boston
19 Tea. In the future, we'd like to have
20 more products. But right now, it's just
21 Boston Tea.

22 Q. And how many products are
23 made using that bottling equipment on a
24 monthly basis?

1 A. I don't know that. I don't
2 know that.

3 Q. How many products were made
4 using that equipment in 2014?

5 A. Again, I don't know. That's
6 detailed information. My father deals
7 with all that.

8 Q. Where are the actual liquids
9 manufactured?

10 A. So I understand you
11 correctly, the liquid is manufactured at
12 our bottling company. Now, are you
13 talking about where we get our
14 ingredients?

15 Q. I'll talk about that in a
16 minute. What I'd like to know is, we
17 just talked about the step in the process
18 where you place liquid into the bottle.
19 You said that's done using bottling
20 equipment at 1300 North 9th Street in
21 Philadelphia?

22 A. Yes.

23 Q. So I'm backing up one step
24 from that and asking you where is the

1 liquid manufactured. I haven't yet asked
2 where do the ingredients to make the
3 liquid come from.

4 Right now I just want to
5 know where is the liquid put together
6 before it goes into the bottling machine?

7 A. It's in the same facility,
8 1300 North 9th Street.

9 Q. And who's responsible for
10 mixing the various ingredients together
11 at that location?

12 A. That's what my father and my
13 uncle take care of.

14 Q. And what sort of production
15 capacity do you have at that location?
16 How many gallons or hundreds of gallons
17 can you produce using that equipment?

18 A. That's stuff I'm actually
19 learning now. But I don't know. I don't
20 know the numbers.

21 Q. So the ingredients are put
22 together in the facility at 1300 North
23 9th Street, Philadelphia?

24 A. Yes.

1 Q. And then the ingredients
2 that you use, where do those come from?

3 A. Different suppliers. For
4 example, I know my father right now is
5 dealing with American Instants for tea.
6 Just starting to dabble in finding out
7 information on suppliers through my dad.

8 But he has a supplier for
9 the tea and his lemon flavor, sugar. I
10 don't remember all their names.

11 Q. Who is the supplier of the
12 tea? Is it American Instants?

13 A. Yes, that's one. I know
14 he's dealt with them. But, again, this
15 is just what I remember.

16 Q. I'm going to spell that for
17 the benefit of the court reporter.
18 American and Instants, I-N-S-T-A-N-T-S?

19 A. Yes.

20 Q. And what other ingredient
21 suppliers are you using?

22 A. Like I don't know the
23 specifics, but the ingredients are basic.
24 I know he has a supplier for the sugar.

1 It's basically sugar, lemon,
2 tea, if I remember correctly. He has
3 that information.

4 Q. And you don't have any
5 understanding other than that you buy
6 some products from American Instants as
7 to where the other ingredients come from?

8 A. I just happened to remember
9 that name. But I know he has his list of
10 suppliers he deals with.

11 Q. Is it your contention that
12 your company, BBK Pictures, has been
13 harmed by my client's filing of a
14 trademark action for Maguire's Boston
15 Iced Tea?

16 A. Yeah. Well, harmed, yes,
17 yes, I do.

18 Q. Tell me how you've been
19 harmed. Tell me all the ways you've been
20 harmed, BBK Pictures has been harmed.

21 A. It's our name, and we'd like
22 to keep it our name and not have anyone
23 else sell under our name.

24 So it harms our product

1 because it's competing against us. And
2 that creates confusion.

3 Q. So tell me all the
4 circumstances where you perceive that
5 your brand has been harmed in the market
6 as a result of anything my client did.

7 MS. LEYTES: Objection. She
8 just answered that.

9 MR. BEHLE: Go ahead.

10 MS. LEYTES: You can go
11 ahead and answer it.

12 THE WITNESS: Well, it
13 competes with our name and our
14 product and it causes confusion in
15 the market.

16 BY MR. BEHLE:

17 Q. You said it causes
18 confusion. Tell me all the instances
19 where you've become aware that somebody
20 has been confused in the market.

21 A. Well, it's the same name, so
22 automatically it's like saying Coca-Cola,
23 I have Coca-Cola as a name and somebody
24 else comes out with Coca-Cola.

1 And I think it's just
2 assumed that, hey, is this the same
3 product. But it's not. And I've seen
4 your labels and it doesn't say Maguire's
5 Boston Tea. It says Boston Tea Real Big.

6 So I think it speaks for
7 itself that it causes confusion. And I
8 don't need to go into detail as to how it
9 does. It's the same name.

10 Q. I'll move to strike that as
11 nonresponsive and I'll ask again.

12 Describe for me all the
13 instances that you're aware of where
14 there's been confusion in the market as a
15 result of people confusing my client's
16 product with your product.

17 A. You want a specific example?
18 Because I have family and friends that
19 have mentioned confusion. I can't give
20 you a specific example.

21 Q. Yes, I want every instance
22 you're aware of where somebody has
23 confused our product with yours.

24 So tell me the list of them.

1 I'll write them all down. Go ahead.

2 A. Well, I have a coffee shop.
3 No, I can't give you that because your
4 product is in California. My product is
5 here.

6 But if this were to go
7 national, then the harm it does would be
8 a greater harm. Obviously, they're both
9 companies starting out even though the
10 Boston Tea actual name has been around
11 with my family since 1994.

12 We're just using Boston Tea
13 now. In the future, we'd like to
14 stop the harm that it could
15 possibly cause.

16 But I cannot give you a
17 specific example as to comparing
18 your client's iced tea and mine.

19 Q. So to confirm this, you
20 don't have any evidence of any confusion
21 that's occurred in the market as a result
22 of somebody confusing my client's product
23 with your product.

24 Is that accurate?

1 A. Yes.

2 Q. And you, BBK Pictures, have
3 never used Maguire's in connection with
4 the sale of any of your tea products,
5 correct?

6 A. Correct.

7 Q. And you've never used a tall
8 ship to advertise, market, or promote
9 your product. Is that correct?

10 A. Can you repeat that?

11 Q. Sure. BBK Pictures, Inc.,
12 has never used a tall ship to advertise,
13 market, or promote any of its products,
14 correct?

15 A. I don't know what tall ship
16 is. Can you explain?

17 Q. Sure. Are you familiar with
18 the sailing ships, the Columbus sailing
19 ships?

20 A. Yes, I'm familiar. We have
21 not.

22 Q. Are any of your products or
23 ingredients made in Boston?

24 A. No.

1 Q. Is part of your advertising
2 intention to suggest to your customers
3 that your tea originates from Boston?

4 A. To tell you the truth, I
5 don't know what my dad's original thought
6 was with the Boston Tea. So I can't
7 answer that question.

8 Q. Well, as the owner of BBK
9 Pictures, what is it about Boston Tea
10 that's so important to the success of
11 your brand?

12 A. Can you repeat that?

13 Q. Sure. As the owner of BBK
14 Pictures, what is it that's so important
15 to you that you use the word Boston or
16 Boston Tea to sell your product?

17 A. This is more something my
18 father can answer. It's a business that
19 he's teaching me. Try to take it over
20 sometime down the line.

21 All those details I can't
22 really answer. It's something more he
23 created. To be honest with you, that's
24 just more his baby than mine and

1 something he's going to teach me.

2 Q. So there's nothing in your
3 mind, as you sit here today, that is
4 critical to the success of your business
5 that requires you to use the word Boston
6 or the words Boston Tea, correct?

7 A. I'm not sure how to answer
8 that.

9 Q. You've not spent any money
10 to advertise the words Boston Tea, right?

11 A. Well, like I said, my father
12 has made some banners. I'm not sure how
13 much advertising he's done. I know it's
14 just minimal.

15 When you say my money, I
16 mean, I really don't have that much money
17 in terms of my personal account. So me,
18 personally, I have not spent money on
19 advertising this product.

20 Q. So you've never done an
21 advertising campaign where you've spent
22 thousands of dollars or tens of thousands
23 of dollars or hundreds of thousands of
24 dollars to market and promote the name

1 Boston Tea, right?

2 A. Personally I have not spent
3 the money, no.

4 Q. Have you commissioned anyone
5 to do any surveys of consumers to
6 determine if they associate the words
7 Boston Tea with BBK Pictures?

8 A. I have not done that
9 personally, no.

10 Q. Do you have any evidence to
11 support a contention that the consuming
12 public associates the words Boston Tea
13 with BBK Pictures, Inc.?

14 A. I personally do not have
15 specific evidence.

16 Q. Have you ever been to
17 Boston?

18 A. Yes, I have family there.

19 Q. I asked you earlier about
20 harm, and I want to be sure I have your
21 complete testimony.

22 Can you identify for me any
23 harm, and I'm going to ask you about
24 economic harm, that you believe has been

1 caused by my client's, Maguire's Boston
2 Iced Tea's, trademark?

3 A. Right now, no. The company
4 is too small to really evaluate the
5 economic harm. We're starting out with
6 this. It hasn't been ten years. It's
7 just a few.

8 Q. Have you lost sales that you
9 attribute to my client?

10 A. I have not lost sales as of
11 today, no.

12 Q. Has my client taken
13 customers away from you?

14 A. No.

15 Q. Are your sales lower than
16 you think they should be as a result of
17 my client's use of the Maguire's Boston
18 Iced Tea mark?

19 A. Well, I don't know the
20 details of the sales and fluctuations of
21 what's going on there. That's something
22 my father can answer.

23 Q. Right. But as you sit here
24 today, as the one testifying on behalf of

1 the company that's filed an opposition
2 to --

3 A. No, I don't believe the
4 sales have gone --

5 Q. Let me finish. I have to
6 get the whole question in before you
7 answer.

8 A. No problem.

9 MR. BEHLE: Madam Court
10 Reporter, can you read back so I
11 can regain my train of thought?

12 - - -

13 (Whereupon, the court
14 reporter read the pertinent part
15 of the record.)

16 - - -

17 BY MR. BEHLE:

18 Q. So let me rephrase it. Let
19 me finish and then I'll let you give your
20 complete answer.

21 As you sit here today, as
22 the owner of the company that's filed the
23 opposition to block my client's
24 registration of its Maguire's Boston Iced

1 Tea mark, do you have any evidence that
2 BBK Pictures has been economically harmed
3 in any way as a result of anything my
4 client has done?

5 A. No.

6 Q. Does BBK Pictures, Inc.,
7 have a website through which it offers
8 its products for sale?

9 A. Not yet, no, we do not.

10 MR. BEHLE: Let's do this.
11 It's now about 4:20 your time.
12 I'm going to take about a
13 five-minute break. Let me look at
14 my notes.

15 You guys can stretch. We'll
16 go off the record and then I'll
17 conclude here.

18 - - -

19 (Whereupon, a brief recess
20 was taken.)

21 - - -

22 BY MR. BEHLE:

23 Q. Ms. Maltepes, we took a
24 short break, and I have some concluding

1 questions for you here.

2 Has BBK Pictures, Inc., ever
3 sold concentrated fruit juice under the
4 Boston Tea label?

5 A. No.

6 Q. Has BBK Pictures, Inc., ever
7 sold concentrates for making fruit juices
8 under the Boston Tea label?

9 A. No.

10 Q. And has BBK Pictures, Inc.,
11 ever sold fruit drinks and fruit juices
12 under the Boston Tea label?

13 A. No.

14 Q. How about fruit juices?

15 A. No.

16 Q. How about herbal juices?

17 A. No.

18 Q. Mixed fruit juices?

19 A. No.

20 Q. How about non-alcoholic
21 beverages containing fruit juices?

22 A. No.

23 Q. Non-alcoholic fruit juice
24 beverages?

1 A. No.

2 Q. And non-alcoholic beverages
3 with tea flavor?

4 A. No.

5 Q. I noticed on one of the
6 documents we received from your attorney
7 you've got a label. And it looks like
8 your movie, The Greek American, is
9 featured as part of the label.

10 If you want to look at what
11 I'm referring to, it's the document in
12 the stack there that's numbered
13 APP000032?

14 A. Yes.

15 Q. So is this the movie that
16 you identified earlier that you produced
17 beginning back in 2005, The Greek
18 American?

19 A. Yes.

20 Q. And is that your picture
21 there on the right?

22 A. Yep.

23 Q. And these other gentlemen we
24 see to the left there, is one of those

1 your father or uncle?

2 A. My father.

3 Q. Your father is which one?

4 A. He's on the far left.

5 Q. And then the other two
6 gentlemen to the right there, who are
7 they?

8 A. They are actors.

9 Q. Was it your intention to use
10 the labeling for the Boston Tea product
11 to promote the sale of your motion
12 picture?

13 A. Not initially, no.

14 Q. When you say not initially,
15 what do you mean by that?

16 A. Well, maybe I didn't
17 understand you. Can you repeat the
18 question?

19 Q. Sure. You've printed what
20 appears to be a promotion for your movie
21 on the label of this Boston Tea product.

22 Was it your intention to use
23 the Boston Tea product as a means of
24 promoting the sale of your movie?

1 A. Yes.

2 Q. And have you made -- I asked
3 you this earlier, but have you made any
4 sales of any kind of the movie?

5 A. No. Unfortunately, no.

6 Q. If I go to the domain that's
7 listed here, thegreekamericanmovie.com,
8 what will I find at that web address?

9 A. Any pictures, character
10 information. You can buy the DVD.
11 Information about me, the story.

12 Q. All right. Understood.

13 What we see as Exhibit --
14 the number that's APP00032. I'll mark
15 that just because I've referenced it.

16 MR. BEHLE: I'll mark that
17 as Trial Exhibit-3. It's just a
18 single sheet there.

19 - - -

20 (Whereupon, Exhibit-3 was
21 marked for identification.)

22 - - -

23 BY MR. BEHLE:

24 Q. The nutrition facts there on

1 the right of that document, are those
2 accurate?

3 A. Yes.

4 Q. Are any of the ingredients
5 that are used in any of the BBK, Inc.,
6 beverage products organic?

7 A. Okay. When you say BBK
8 products, BBK owns the trademark. It
9 doesn't sell the product.

10 Q. Well, are any of the
11 products that are used -- strike that.

12 Are any of the products that
13 are sold under the Boston Tea label made
14 of organic ingredients?

15 A. I'm not sure how to answer
16 that. Because I'm not knowledgeable on
17 the ingredients, so I can't answer that.

18 Q. Have you ever seen my
19 client's product in any store?

20 A. No.

21 Q. Has anybody ever attempted
22 to return one of my client's products to
23 you?

24 A. No.

1 MR. BEHLE: That's all the
2 questions I have.

3 Dina, any questions from
4 your side?

5 MS. LEYTES: No.

6 MR. BEHLE: We can process
7 the transcript any way you want.
8 Frankly, as long as we have it
9 available to submit to the TTAB.

10 - - -

11 (Whereupon, a discussion off
12 the record occurred.)

13 - - -

14 MR. BEHLE: I'll record that
15 I would like the printed
16 transcript and the electronic
17 version.

18 MS. LEYTES: I'll do the
19 same.

20 - - -

21 (Whereupon, the deposition
22 concluded at approximately
23 4:45 P.M.)

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C E R T I F I C A T E

I hereby certify that
the witness was duly sworn by me and that
the deposition is a true record of the
testimony given by the witness.

LISA CAPALDO

Dated:

(The foregoing certification of this
transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying shorthand
reporter.)

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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the
foregoing pages, 1 - 86, and that the
same is a correct transcription of the
answers given by me to the questions
therein propounded, except for the
corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

ALYSIA MALTEPES

DATE

Subscribed and sworn
to before me this
_____ day of _____, 20____.

My commission expires: _____

Notary Public

