

ESTTA Tracking number: **ESTTA656011**

Filing date: **02/13/2015**

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

Proceeding	91214649
Party	Defendant Benny Hodge
Correspondence Address	BENNY HODGE 122 COUNTRY CLUB DR GREENWOOD, MS 38930-6802 UNITED STATES bennyhodge25@yahoo.com
Submission	Other Motions/Papers
Filer's Name	Benny Hodge
Filer's e-mail	bennyhodge25@yahoo.com
Signature	/Benny Hodge/
Date	02/13/2015
Attachments	responce to sanction.pdf(424734 bytes ) EXHIBIT 1INT - First Set of Interrogatories to Applicant JCM v2 06132014.pdf(139359 bytes ) EXHIBIT 2 INT - First Set of RFPs to Applicant - JCM 06132014.pdf(125350 bytes ) EXHIBIT 3 supplemental responce.pdf(424651 bytes )

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

Mark: BENNY HUNNA

Serial No: 85/920,599

Filing Date: May 01, 2013

NOODLE TIME, INC. vs. BENNY HODGE

Opposition No. 91214649

RESPONSES TO OPPOSER'S MOTION FOR ENTRY OF JUDGMENT  
AS A SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY  
WITH THE BOARD'S ORDER DATED DECEMBER 5, 2014 AND TO  
SUSPEND PROCEEDINGS

RESPONSE TO INTRODUCTION

Applicant, Benny Hodge, respectfully submits these RESPONSES TO OPPOSER'S MOTION FOR ENTRY OF JUDGMENT AS A SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY WITH THE BOARD'S ORDER DATED DECEMBER 5, 2014 AND TO SUSPEND PROCEEDINGS objecting to the Opposer's motion by respectfully submitting the following responses.

RESPONSE TO THE BOARD MAY RULE ON INSTANT  
MOTION DURING PENDENCY OF APPLICANT'S MOTION TO

## SUSPEND FOR CIVIL ACTION AS IT IS POTENTIALLY DISPOSITIVE

### OF THIS CASE

On January 25, 2015, Applicant filed a Motion to Suspend Proceeding for Civil Action based on the pending civil action filed against Benny Hodge by Opposer's related company, Benihana National Corp. in the United States District Court for the Northern District of Mississippi. Applicant denies the accusations made by Opposer's that claim that Applicant is using a "delaying tactic" to avoid complying with the Board's orders and from meaningfully participating in this proceeding. To the best of Applicant's knowledge, ability, and resources Applicant has fully complied with the Board's order. On January 27, 2015 Opposer's related company Benihana National Corp. filed a Notice of Voluntary Dismissal. On February 12, 2015 Applicant filed a Motion to Withdraw Motion to Suspend Proceeding for Civil Action due to Opposer's related company Benihana National Corp.'s filing of Notice of Voluntary Dismissal.

### RESPONSE TO BACKGROUND

Applicant, Benny Hodge, denies Opposer's accusations that the Applicant did not comply with the Board's order dated December 5, 2014 and that Applicant's responses "fail to include ANY documents in response to Opposer's First Set of Document Requests". To the best of Applicant's knowledge documents that were available were served to Opposer. See number 9 on Opposer's First Set of Interrogatories to Applicant "DEFINITIONS AND INSTRUCTIONS" where Opposer clearly states their many meanings of the term "documents". To the best of Applicant's knowledge Opposer was served in Applicant's Supplemental Responses with "documents" meaning "Internet websites, social media accounts, social media profiles" as defined by Opposer's DEFINITIONS AND INSTRUCTIONS.

## RESPONSE TO ARGUMENT

Applicant, Benny Hodge, to the best of Applicant's knowledge complied with the Board's order. Opposer's allegations are false stating that Applicant "fail to include ANY documents" and that "Applicant has failed to fully comply with the substance of the Board's Order dated December 5, 2014. To the best of Applicant's knowledge and resources all documents were given to Opposer that are available to Applicant and/or exist to the best of Applicant's knowledge. Due to Applicant complying with the order from the Board and due to false statements from Opposer such as "fail to include ANY documents" Applicant respectfully request the Board DENY Opposer's Motion For Sanctions.

## RESPONSE TO THE BOARD SHOULD SUSPEND PROCEEDINGS

Applicant opposes Opposer's request for the Board to suspend proceedings due to Applicant's compliance with the Board's order and Opposer's false statements of no documents being produced. Opposer states in DECLARATION OF STEPHANIE C. ALVAREZ ESQ. number 5, "No documents were produced with Applicant's Supplemental Responses.", but in Opposer's First Set of Interrogatories to Applicant "DEFINITIONS AND INSTRUCTIONS" number 9 Opposer clearly states meaning of the term "documents" which included "Internet websites, social media accounts, social media profiles", that were served to Opposer in Applicant's Supplemental Responses. Applicant respectfully request that the Board continue with the proceeding as set by the Board

## RESPONSE TO CONCLUSION

Applicant respectfully request that the Board DENY Opposer's Motion to Sanction and continue with these proceedings with dates as set by the Board.

DATE: February 13,2015

**X** BENNY HODGE

---

Benny Hodge  
Defendant

Benny Hodge

122 Country Club Dr.

Greenwood, Ms 38930

Tel: (662)897-8525

E-mail: [bennyhodge25@yahoo.com](mailto:bennyhodge25@yahoo.com)

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing RESPONSES TO MOTION FOR ENTRY OF JUDGMENT AS A SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY WITH THE BOARD'S ORDER DATED DECEMBER 5, 2014 AND TO SUSPEND PROCEEDINGS has been served on Opposers in the following manner:

By E-Mail

Janet C. Moreira

MAVEN INTELLECTUAL PROPERTY

5801 Biscayne Blvd.

Miami, Florida 33137

[janet@maveniplaw.com](mailto:janet@maveniplaw.com)

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

**NOODLE TIME, INC.,**  
Opposer,

v.

**BENNY HODGE,**  
Applicant.

**Opposition No.: 91214649**

Mark: **BENNY HUNNA**

Serial No.: 85/920,599

Filing date: May 01, 2013

Publication Date: October 08, 2013

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**OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to Rules 26, 33 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer NOODLE TIME, INC. ("Opposer") respectfully requests that Applicant BENNY HODGE answer the following interrogatories under oath within thirty (30) days after service hereof, with said responses to be made electronically, as agreed to by the parties.

**DEFINITIONS AND INSTRUCTIONS**

The following Definitions and Instructions apply to this First Set of Interrogatories:

1. The term "Applicant" refers to BENNY HODGE, an individual, with a principal address of 122 Country Club Drive, Greenwood, MS 38930, including all partnerships, corporations, divisions, departments, subsidiaries, affiliates, and predecessors, in which Applicant has any interest, as well as its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf.

2. The phrase "Subject Mark" refers to the mark BENNY HUNNA, subject of U.S. Trademark Application Serial No. 85/920,599, as detailed below:

<u>Trademark</u>	<u>Application No.</u>	<u>Goods/Services</u>
BENNY HUNNA	85/920,599	Entertainment services in the nature of live musical performances. IC 041

3. The term “Opposer” refers to NOODLE TIME INC., a Florida corporation, with a principal address of 8750 NW 36<sup>th</sup> Street, Suite 300, Doral, Florida 33166, including all partnerships, corporations, divisions, departments, subsidiaries, affiliates, and predecessors, in which NOODLE TIME, INC., has any interest, as well as its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf.

4. The phrase “Opposer’s Registrations” refers to the following U.S. Trademark Registrations, individually and collectively:

<u>TRADEMARK</u>	<u>REGISTRATION</u>	<u>GOODS/SERVICES</u>
<b>BENIHANA</b>	US 1,230,609	Restaurant services.
<b>BENIHANA</b>	US 1,371,624	Sake.
<b>BENIHANA</b>	US 1,412,570	Wines, namely, plum wine; and spirits, namely, sake.
	US 2,029,115	Edible oils and fats.
<b>BENIHANA</b> <i>Grill</i>	US 2,119,770	Restaurant services.
	US 2,058,184	Restaurant services.

	<p>US 2,983,575</p>	<p>Restaurant services.</p>
<p><b>BENIHANA</b></p>	<p>US 3,784,161</p>	<p>Drinking mugs.</p>
<p><b>BENIHANA</b></p>	<p>US 3,928,737</p>	<p>Franchise services, namely, offering business management assistance in the establishment and operation of restaurant and bar services.</p>

5. The phrase “Opposer’s Marks” refers to the marks depicted in Opposer’s Registrations.

6. The term “trademark(s)” as used herein shall include trademarks, service marks, whether registered or common law, trade names, or any word, symbol, and/or logo, used in connection with business activities, and as that term is defined in 15 U.S.C. § 1127. The term “trademark(s)” shall include all forms in which any such trademark is presented.

7. When knowledge or information is requested of Applicant, such request includes knowledge of Applicant’s employees, officers, directors, agents, servants, representatives, attorneys, and accountants.

8. The term "person" means any natural person, individual, proprietorship, partnership, corporation, division, agency, association, organization, joint venture, firm, or other business enterprise, governmental body, group of natural persons or other entity.

9. The term "documents" means any written or graphic matter or other means of preserving thought or expression, and all tangible things from which information can be

processed or transcribed, including the originals and all non-identical copies and drafts and both sides thereof, whether different from the original by reason of any notation made on such copy or otherwise, and including, but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletypes, telefaxes, bulletins, notices, announcements, charts, manuals, brochures, pamphlets, schedules, notes, reports, studies, surveys, books, transcripts, minutes, evaluations, analyses, summaries, records and recordings of telephone or other conversations, statements, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing input or output, ledgers, invoices, worksheets, receipts, prospectuses, financial statements, accounting records, tax returns, canceled checks, search reports, clearance opinions, opinions or reports of consultants, records or summaries of negotiations, contracts, magazine or newspaper articles, press releases, advertisements (as later defined), Internet websites, social media accounts, social media profiles, and all drafts, alterations and modifications, changes and amendments of any of the foregoing, graphic or aural records or representations of any kind, including, without limitation, photographs, photographic negatives, charts, graphs, microfiche, microfilm, videotape recordings, motion pictures, video recordings, and electronic, mechanical or electrical recordings, or representations of any kind (including, without limitation tapes, cassettes, discs, and recordings). The term "documents" also includes all writings as defined in Rule 1001 of the Federal Rules of Evidence.

10. The phrase "all documents" means every document, as defined above, known to Applicant and every such document that can be located or discovered by reasonably diligent efforts undertaken by or on behalf of Applicant.

11. The term “advertisement(s)” shall be interpreted in the broadest sense and includes and means without limitation, any means employed in promoting or publicizing any products, goods/services, or business, including, without limitation, signs, labels, displays, tags, containers, television and/or radio commercials, leaflets, brochures, billboards, publications, catalogs, direct mail circulars, and promotional materials of every kind and/or in any and all media, including without limitation, print, broadcast, and/or the Internet. It shall also mean all notes, drafts, alterations, modifications, changes, amendments and non-identical copies of documents by whatever means made.

12. The terms "relating" or "referring" to any given subject means disclosing, concerning, describing, confirming, supporting, evidencing, representing, constituting, comprising, containing, embodying, reflecting, identifying, stating, showing, pertaining directly or indirectly to, dealing with, connected with, regarding, discussing, analyzing, or in any way relevant within the meaning of Rule 26, Fed.R.Civ.P.

13. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary to make the request inclusive rather than exclusive.

14. As used herein, unless otherwise indicated, the single shall always include the plural, and the present tense shall always include the past tense, and vice versa.

15. A masculine, feminine, or neutral pronoun shall not exclude the other genders.

16. When an Interrogatory calls for an answer or identification which will include the name of a person who is an individual proprietorship, partnership, corporation, association, organization, or other entity, this person should be identified as follows:

(a) by name;

- (b) current business address;
- (c) type of entity; and
- (d) jurisdiction of organization

17. When an Interrogatory calls for the identification of a document, the term "document" shall include any tangible item whatsoever including, without limitation, all correspondence, books, memoranda, reports, records, invoices, labels, writings, displays, photographs, drawings, sketches, mockups, art work, specimens, advertisements, illustrative materials, magnetic recording tapes, microfilms, other storage means by which information is retained in retrievable form, and other materials, documents, and things, whether printed, typewritten, handwritten, recorded, or reproduced by any mechanical process. The response shall include the following:

- (a) the type of document;
- (b) its date;
- (c) its subject matter;
- (d) the identity of each person who originated the document or had any input into the document;
- (e) the identity of each person who received copies; and
- (f) the identity of the person who now has custody of such document.

18. Whenever an Interrogatory calls for the identification of any litigation or proceeding, the response should set forth following:

- (a) the court or other forum;
- (b) the Civil Action Number or other means of identifying the litigation or proceeding;
- (c) the parties and attorneys involved in the litigation or proceeding;
- (d) the date of commencement of the litigation or proceeding;

- (e) a brief summary and characterization of issues involved in the litigation or proceeding;
- (f) the mark(s) involved in the litigation or proceeding;
- (g) the current status of such litigation or proceeding;
- (h) the resolution, if any, of such litigation or proceeding;
- (i) a complete citation of all reported and unreported decisions resulting from the litigation or proceeding; and
- (j) if any such litigation or proceeding was not fully prosecuted, the reason why.

19. Whenever an Interrogatory inquires about documents, the following information should be furnished:

- (a) the date of the document;
- (b) a general description of the document (e.g., letter, report, memorandum);
- (c) the number of pages in the document;
- (d) the author(s) of the document;
- (e) a general description of the subject matter to which it pertains;
- (f) the names and addresses of the recipient(s) of the document, including but not limited to, all persons receiving or shown the document or copies thereof; and
- (g) the names and addresses of the person in whose custody, possession, or control the document is currently maintained.

20. If a privilege is claimed with respect to any information requested, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for the purposes of a motion to compel a response or production of each item of information, or thing, separately, with respect to which you claim a privilege, and furnish all information requested in paragraph 19 above.

21. This request is a continuing request for all documents and things described below which may hereafter come into Applicant's possession, custody, or control.

**INTERROGATORIES**

1. Identify with particularity each specific product or service (not just the general description as set forth by Applicant in its federal application) which Applicant's Subject Mark is used, intended to be used, associated with or alluded to be associated with.

**Response:**

2. State the date Applicant claims is the date of first use of the Subject Mark for each product or service identified in Interrogatory No. 1.

**Response:**

3. Describe in full and complete detail what efforts, if any, Applicant, or anyone connected to Applicant, has made use of the Subject Mark.

**Response:**

4. Describe the meaning or commercial impression of Applicant's Subject Mark.

**Response:**

5. State Applicant's yearly dollar volume of sales for every year since first use for each product or service identified in Interrogatory No. 1.

**Response:**

6. State Applicant's yearly expenditures for every year within the last five years with respect to the advertising and marketing of products and services identified in Interrogatory No. 1.

**Response:**

7. Identify all types of media (including, but not limited to, newspapers, magazines, trade journals, direct mail advertising, radio, television, and the Internet) in which Applicant has advertised and intends to advertise each product and service offered or to be offered in connection with the Subject Mark.

**Response:**

8. Identify each person who has, claims to have, or whom you claim or believe may have knowledge, documents, or information pertaining to any fact alleged in the pleadings filed in this matter or any fact underlying the subject matter of this dispute and state the specific nature and substance of the knowledge, documents, or information you believe that each person identified in response to this request has or may have and identify all documents responsive to this interrogatory to this request.

**Response:**

9. Identify any expert witnesses you intend to use in these proceedings. For each witness, please identify:
- (a) The name and business address of the witness;
  - (b) The witness' qualifications as an expert;
  - (c) The subject matter upon which the witness is expected to testify;
  - (d) The substance of the facts and opinions to which the witness is expected to testify;
  - (e) A summary of the grounds for each opinion;
  - (f) The identity of each educational institution the witness attended and a description of each degree awarded to the witness; and

- (g) A list of all cases in which the witness has previously testified in the last ten (10) years, including the name and style of each case, the proceeding and/or case number, the Court and/or administrative tribunal, and whether the witness testified on behalf of the plaintiff, defendant, applicant, opposer, and/or petitioner.

**Response:**

10. Identify each person, company, or other entity to whom Applicant has licensed, franchised, assigned, or in any way authorized the use of the Subject Mark.

**Response:**

11. Identify each geographic area and location in the United States in which Applicant, or others under the authority of Applicant, has advertised or promoted the products and services connected with the Subject Mark. With respect to each advertisement or promotion, identify:
- (a) the date of the advertisement;
  - (b) if a printed advertisement, the name of the publication in which the advertisement appeared;
  - (c) if a billboard, the street address at which the billboard appeared;
  - (d) if a broadcast television or radio advertisement, the name of the station, whether radio or television, upon which the advertisement was broadcast; and
  - (e) identify all documents relating to such advertising or promotion.

**Response:**

12. Identify each person who prepared, assisted in the preparation of, provided information, who was consulted, or whose documents or files were consulted for the answers to the foregoing and following Interrogatories, stating each Interrogatory that each such

individual prepared, assisted in the preparation of, provided information, who was consulted, or whose documents or files were consulted for the answer thereto.

**Response:**

Date: June 13, 2014

**MAVEN Intellectual Property**

/S/ Janet C. Moreira

Janet C. Moreira, Esq.

**MAVEN Intellectual Property**

333 S.E. 2nd Avenue, Suite 2000

Miami, FL 33131

E-mail: [janet@maveniplaw.com](mailto:janet@maveniplaw.com)

Local: 305.967.7450

Toll Free: 855.63MAVEN (636.2836)

Counsel for Opposer Noodle Time, Inc.

**AS TO RESPONSES:**

**BENNY HODGE**

\_\_\_\_\_  
By:  
Title:

STATE OF )  
 ) SS  
COUNTY OF )

BEFORE ME, the undersigned authority, personally appeared, on this \_\_\_\_ day of \_\_\_\_\_, 2014, BENNY HODGE, to me well known to be the person described herein and who executed the foregoing **RESPONSES TO OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANTS** and stated that such answers are true and correct.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type or Stamp Commissioned  
Name of Notary Public)

\_\_\_\_\_  
COMMISSION NUMBER  
My Commission Expires:

Personally Known  
Produced Identification  
Type of Identification Produced: \_\_\_\_\_  
DID take oath

DID NOT take oath

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing document has been served on all counsel and/or parties of record via electronic mail transmission on June 13, 2014 as follows:

**By Email: [bennyhodge25@yahoo.com](mailto:bennyhodge25@yahoo.com)**

Benny Hodge  
122 Country Club Drive  
Greenwood, MS 38930

/S/ Janet C. Moreira  
Janet C. Moreira, Esq.

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

**NOODLE TIME, INC.,**  
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**BENNY HODGE,**  
Applicant.

**Opposition No.: 91214649**

Mark: **BENNY HUNNA**

Serial No.: 85/920,599

Filing date: May 01, 2013

Publication Date: October 08, 2013

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**OPPOSER’S FIRST REQUEST FOR PRODUCTION TO APPLICANT**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer NOODLE TIME, INC. (“Opposer”) respectfully requests that Applicant BENNY HODGE produce, within thirty (30) days from the date of service of this request, the following documents and things, with said production to be made electronically, as previously agreed to by the parties.

**DEFINITIONS AND INSTRUCTIONS**

The following Definitions and Instructions apply to this First Request for Production:

1. The term “Applicant” refers to BENNY HODGE, an individual, with a principal address of 122 Country Club Drive, Greenwood, MS 38930, including all partnerships, corporations, divisions, departments, subsidiaries, affiliates, and predecessors, in which Applicant has any interest, as well as its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf.

2. The phrase “Subject Mark” refers to the mark BENNY HUNNA, subject of U.S. Trademark Application Serial No. 85/920,599, as detailed below:

<u>Trademark</u>	<u>Application No.</u>	<u>Goods/Services</u>
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<b>BENIHANA</b>	US 1,412,570	Wines, namely, plum wine; and spirits, namely, sake.
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	US 2,058,184	Restaurant services.

	<p>US 2,983,575</p>	<p>Restaurant services.</p>
<p><b>BENIHANA</b></p>	<p>US 3,784,161</p>	<p>Drinking mugs.</p>
<p><b>BENIHANA</b></p>	<p>US 3,928,737</p>	<p>Franchise services, namely, offering business management assistance in the establishment and operation of restaurant and bar services.</p>

5. The phrase “Opposer’s Marks” refers to the marks depicted in Opposer’s Registrations.

6. The term “trademark(s)” as used herein shall include trademarks, service marks, whether registered or common law, trade names, or any word, symbol, and/or logo, used in connection with business activities, and as that term is defined in 15 U.S.C. § 1127. The term “trademark(s)” shall include all forms in which any such trademark is presented.

7. When knowledge or information is requested of Applicant, such request includes knowledge of Applicant’s employees, officers, directors, agents, servants, representatives, attorneys, and accountants.

8. The term "person" means any natural person, individual, proprietorship, partnership, corporation, division, agency, association, organization, joint venture, firm, or other business enterprise, governmental body, group of natural persons or other entity.

9. The term "documents" means any written or graphic matter or other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies and drafts and both sides thereof, whether different from the original by reason of any notation made on such copy or otherwise, and including, but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletypes, telefaxes, bulletins, notices, announcements, charts, manuals, brochures, pamphlets, schedules, notes, reports, studies, surveys, books, transcripts, minutes, evaluations, analyses, summaries, records and recordings of telephone or other conversations, statements, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing input or output, ledgers, invoices, worksheets, receipts, prospectuses, financial statements, accounting records, tax returns, canceled checks, search reports, clearance opinions, opinions or reports of consultants, records or summaries of negotiations, contracts, magazine or newspaper articles, press releases, advertisements (as later defined), Internet websites, social media accounts, social media profiles, and all drafts, alterations and modifications, changes and amendments of any of the foregoing, graphic or aural records or representations of any kind, including, without limitation, photographs, photographic negatives, charts, graphs, microfiche, microfilm, videotape recordings, motion pictures, video recordings, and electronic, mechanical or electrical recordings, or representations of any kind (including, without limitation tapes, cassettes, discs, and recordings). The term "documents" also includes all writings as defined in Rule 1001 of the Federal Rules of Evidence.

10. The phrase "all documents" means every document, as defined above, known to Applicant and every such document that can be located or discovered by reasonably diligent efforts undertaken by or on behalf of Applicant.

11. The term "advertisement(s)" shall be interpreted in the broadest sense and includes and means without limitation, any means employed in promoting or publicizing any products, goods/services, or business, including, without limitation, signs, labels, displays, tags, containers, television and/or radio commercials, leaflets, brochures, billboards, publications, catalogs, direct mail circulars, and promotional materials of every kind and/or in any and all media, including without limitation, print, broadcast, and/or the Internet. It shall also mean all notes, drafts, alterations, modifications, changes, amendments and non-identical copies of documents by whatever means made.

12. The terms "relating" or "referring" to any given subject means disclosing, concerning, describing, confirming, supporting, evidencing, representing, constituting, comprising, containing, embodying, reflecting, identifying, stating, showing, pertaining directly or indirectly to, dealing with, connected with, regarding, discussing, analyzing, or in any way relevant within the meaning of Rule 26, Fed.R.Civ.P.

13. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary to make the request inclusive rather than exclusive.

14. As used herein, unless otherwise indicated, the single shall always include the plural, and the present tense shall always include the past tense, and vice versa.

15. A masculine, feminine, or neutral pronoun shall not exclude the other genders.

**INSTRUCTIONS**

16. This Request for Production is continuing in nature and requires supplemental answers if the responding party obtains further information after responding to this request for production of documents. Demand for supplementation is hereby made.

17. Documents produced in response to this request must be identified as to the particular request to which the documents are responsive.

18. All responses to this request shall include such documents that are in the custody, possession or control of the responding party including documents held by employees, agents, attorneys, accountants, or other representatives acting on the party's behalf.

19. When producing the documents, please keep all documents segregated by the file in which the documents are contained and indicate the name of the file in which the documents are contained and the name of the documents being produced.

20. In the event such file(s) or document(s) has been removed for the purposes of this action or other purpose, please state the name and address of the person who removed the file, the title of the file and each subfile, if any, maintained within the file and the present location of the file.

21. If you claim any documents are privileged, for each such document please:
- a) identify and describe each such document by date, author, and recipient;
  - b) identify each person, and his or her job title, (other than stenographic or clerical assistance) participating in the preparation of the document;
  - c) identify each person to whom the contents of the document have been communicated by copy, exhibition, reading or summarization;
  - d) provide a brief summary of its contents; and
  - e) state the privilege or privileges in sufficient detail so that the Board, or other judicial entity, may adjudicate the validity of the claim.

22. You are required to set forth as to any document for which privilege, attorneys' work product, or trial preparation material is claimed:

- a) the nature of the privilege claimed;
- b) the grounds relied upon for the claim of privilege (with specificity);
- c) the person who claims the privilege and whether there has been any waiver of the privilege;
- d) if there has been a waiver, provide a detailed description of the circumstances surrounding the waiver; and
- e) identify the paragraph of this discovery request to which the document responds.

23. If you refuse to produce any document responsive, in whole or in part, to any request, you must state each specific ground for your refusal. At a minimum, this must include for each document so withheld:

- a) the author(s);
- b) the addressee(s) and person(s) copied;
- c) the general subject matter of the document;
- d) the date of the document; and
- e) the specific grounds for withholding the document.

24. If you object to producing any part of any document, you must produce the portions of the document to which you do not object.

25. If any portion of a document is responsive to any request, then the entire document shall be produced. Documents produced pursuant to a request shall be produced in the order in which they appear in your files, and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form.

**DOCUMENT REQUESTS**

1. All documents referring to or evidencing the date you first used the Subject Mark.
2. All documents referring to or evidencing the date of your first sale of any items containing the Subject Mark.
3. All documents sufficient to identify all products and/or services using the Subject Mark.
4. All documents sufficient to identify all trade channels through which you sell, advertise, promote or offer to sell, advertise or promote any products and/or services using the Subject Mark.
5. All documents, including advertisements, press releases and any and all marketing materials related to the launch of the use of the Subject Mark.
6. A photograph of every product on which the Subject Mark is displayed.
7. From the first date of use, all documents relating to gross sales, gross profits, revenues and all related financial information derived from them.
8. All documents evidencing or relating to any communication between you and any third party regarding the Subject Mark.
9. All documents evidencing or relating to any communication between you and ABC News.
10. All documents evidencing or relating to any communication between you and Interscope Records.
11. All documents evidencing or relating to any communication between you and “Chief Keef.”
12. All documents evidencing or relating to the copyright registration of “3Hunna by Chief Keef of Interscope Records.”
13. All documents evidencing or relating to any market, market survey, forecast, demand, business plan or other marketing analysis for any use or potential use of the Subject Mark.
14. All documents sufficient to identify all person with knowledge of information and/or documents supporting or contradicting the factual allegations of the Opposition.
15. All documents referring or relating to Opposer and/or Opposer’s Marks.

Date: June 13, 2014

**MAVEN Intellectual Property**

/S/ Janet C. Moreira

Janet C. Moreira, Esq.

**MAVEN Intellectual Property**

333 S.E. 2nd Avenue, Suite 2000

Miami, FL 33131

E-mail: [janet@maveniplaw.com](mailto:janet@maveniplaw.com)

Local: 305.967.7450

Toll Free: 855.63MAVEN (636.2836)

Counsel for Opposer Noodle Time, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing document has been served on all counsel and/or parties of record via electronic mail transmission on June 13, 2014 as follows:

**By Email: [bennyhodge25@yahoo.com](mailto:bennyhodge25@yahoo.com)**

Benny Hodge

122 Country Club Drive

Greenwood, MS 38930

/S/ Janet C. Moreira

Janet C. Moreira, Esq.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Mark: BENNY HUNNA

Serial No: 85/920,599

Filing date: May 01, 2013

Publication Date: October 08, 2013

NOODLE TIME, INC. vs. BENNY HODGE

Opposition No. 91214649

**APPLICANT'S SUPPLEMENTAL ANSWERS TO FIRST SET OF INTERROGATORIES**

**AND PRODUCTION OF DOCUMENT REQUEST**

Pursuant to Rule 26, Rule 33 and Rule 37 CFR Section 2.120, Applicant, BENNY HODGE respectfully submits the following Supplemental Answers To First Set Of Interrogatories And Production Of Document Request.

**INTERROGATORIES AND SUPPLEMENTAL ANSWERS**

1. Identify with particularity each specific product of service (not just the general description as set forth by Applicant in its federal application) which Applicant's Subject Mark is used, intended to be used, associated with or alluded to be associated with or alluded to be associated with.

Answer: The Applicant's Subject Mark has not been used. The Applicant's Subject Mark is intended to be used for Entertainment services in the nature of live musical performances, International Class Code: 041, US Class Code: 100, 101, and 107, Primary Class: Education; providing of training; entertainment; sporting and cultural activities.



**2.** State the date Applicant claims the date of first use of the Subject Mark for each product or service identified in Interrogatory No. 1.

Answer: Applicant has not made first use of Subject Mark anywhere or made first use of Subject Mark in commerce for each product or service identified In Interrogatory No. 1.

**3.** Describe in full and complete detail what efforts, if any, Applicant, or anyone connected to Applicant, has made use of the Subject Mark.

Answer: Applicant or anyone connected to Applicant has made no efforts to use the Subject Mark in commerce.

**5.** State Applicant's yearly dollar volume of sales for every year since first use of each product of service identified in Interrogatory No. 1.

Answer: Applicant has not made first use of Subject Mark in commerce. Applicant states that Applicant's yearly dollar volume of sales is zero dollars.

**6.** State Applicant's yearly expenditures for every year within the last five years with respect to the advertising and marketing of products and services identified in Interrogatory No. 1.

Answer: Applicant's yearly expenditures with respect to the advertising and marketing of products and services indented in interrogatory No. 1 are zero dollars.

**7.** Identify all types of media (including, but not limited to, newspapers, magazines, trade journals, direct mail advertising, radio, television, and the Internet) in which Applicant has advertised and intends to advertise each product and service offered or to be offered in connection with the Subject Mark.

Answer: Applicant as of now advertised and intends to advertise each product and services offered or to be offered in connection with the Subject Mark via internet.

**8.** Identify each person who has, claims to have, or whom you claim or believe may have knowledge, documents, or information pertaining to any fact alleged in the pleadings filed in this matter or any fact underlying the subject matter of this dispute and state the specific nature and substance of the knowledge, documents, or information you believe that each person identified in response to this request has or may have and identify all documents responsive to this interrogatory to this request.

Answer: Applicant/Benny Hodge and Opposer/Noodle Time Inc., to the best of Applicants knowledge, has knowledge, documents, or information pertaining to any fact alleged in the pleadings filed in this matter. All other persons with knowledge which are not specific individuals are named with address, phone numbers and subject information which was served to Opposer in Applicant's Initial Disclosure.

**11.** Identify each geographic area and location in the United States in which Applicant, or others under the authority of applicant has advertised or promoted the products and services connected with the Subject Mark. With respect to each advertisement or promotion identify:

(a) The date of the advertisement;

(b) If a printed advertisement, the name of the publication in which the advertisement appeared;

(c) If a billboard, the street address at which the billboard appeared;

(d) If a broadcast television or radio advertisement, the name of the station, whether radio or television, upon which the advertisement was broadcast, and

(e) Identify all documents relating to such advertising or promotion.

Answer: Applicant has advertised and promoted “Benny Hunna” by sharing and posting Youtube videos of Benny Hunna via the internet and social media daily.

### **DOCUMENT REQUESTS ANSWERS AND REASON TO RECONSIDER**

1. All documents referring to or evidencing the date you first used the Subject Mark.

ANSWER: Applicant does not have documents referring to or evidencing the date of first use.

The Subject Mark has not been used in commerce.

2. All document referring to or evidencing the date of your first sale of any items containing the Subject Mark.

ANSWER: Applicant does not have documents referring to or evidencing the date of Applicant’s first sale of any items containing the Subject Mark. The Subject Mark has no sales.

3. All documents sufficient to identify all products and/or services using the Subject Mark.

ANSWERS: The Subject Mark is intended to be used for Entertainment services in the nature of live musical performance. Opposer's has documents of Applicants intent to use application.

4. All documents sufficient to identify all trade channels through which you sell, advertise, promote or offer to sell, advertise or promote any products and/or services using the Subject Mark.

ANSWERS: The Subject Mark has no sales and is not offered to be sold. The Subject Mark is promoted and advertised at URL

<https://www.youtube.com/channel/UCrTqkOargZoEXYzwomfJ3dA>

<https://www.facebook.com/benny.hunna1>

<https://www.twitter.com/H2HUNNA>

[https://www.linkedin.com/profile/view?id=347046776&trk=nav\\_responsive\\_tab\\_profile](https://www.linkedin.com/profile/view?id=347046776&trk=nav_responsive_tab_profile)

9. All documents evidencing or relating to any communication between you and ABC News.

ANSWER: There are no documents evidencing or relating to any "communication" between Applicant and ABC News. All documents were given to Opposer pertaining to ABC News that were available to Applicant in a URL in Initial Disclosures.

10. All documents evidencing or relating to any communication between you and Interscope Records.

ANSWER: There are no documents evidencing or relating to any “communication” between Applicant and Interscope Records. All documents were given to Opposer pertaining to Interscope Records that were available to Applicant in a URL in Initial Disclosures.

11. All documents evidencing or relating to any communication between you and “Chief Keef”.

ANSWER: There are no documents evidencing or relating to any “communication” between Applicant and “Chief Keef”. All document were given to Opposer pertaining to Chief Keef that were available to Applicant in a URL in Initial Disclosures.

12. All documents evidencing or relating to the copyright registration of “3Hunna by Chief Keef of Interscope Records.”

ANSWER: All documents were given to Opposer in a URL in the Applicant’s Initial Disclosures.

14. All documents sufficient to identify all persons with knowledge of information and/or document supporting or contradicting the factual allegations of the Opposition.

ANSWER: Applicant has no documents sufficient to identify all persons with knowledge of information and/or documents supporting or contradicting any allegations of the Opposition..

15. All documents referring or relating to Opposer and/or Opposer’s Marks.

ANSWER: To the best of Applicant’s knowledge Opposer is in possession of all document’s referring or relating to Opposer’s Mark and Applicant only possesses documents Opposer has made available in the foregoing Opposition.

Date: December 25, 2014

12/25/2014

**X** BENNY HODGE

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Benny Hodge  
Defendant

Benny Hodge

122 Country Club Dr.

Greenwood, MS 38930

Tel: (662)897-8525

E-mail: [bennyhodge25@yahoo.com](mailto:bennyhodge25@yahoo.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Applicant's Supplemental Answers to First Set of Interrogatories and Production of Document Requests has been served on Opposer in the following manner:

By E-Mail

Janet C. Moreira

MAVEN INTELLECTUAL PROPERTY

5801 Biscayne Blvd.

Miami, Florida 33137

[janet@maveniplaw.com](mailto:janet@maveniplaw.com)