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Filing date: **02/17/2015**

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

Proceeding	91214649
Party	Plaintiff Noodle Time, Inc.
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Date	02/17/2015
Attachments	Reply (JCM 02172015).pdf(121090 bytes ) Reply - Binder.pdf(511634 bytes )

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

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

**Opposition No.: 91214649**

v.

Mark: **BENNY HUNNA**

Serial No.: 85/920,599

**BENNY HODGE,**  
Applicant.

Filing date: May 1, 2013

Publication Date: October 8, 2013

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**REPLY IN SUPPORT OF 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**

**I. INTRODUCTION**

Opposer, Noodle Time, Inc. ("NTI" or "Opposer"), by and through undersigned counsel, hereby submits the following Reply Memorandum in support of its Motion For Entry of Judgment As a Sanction for Applicant's Failure to Fully Comply with the Board's Order Dated December 5, 2014 ("Motion"). Applicant filed a Response to Opposer's Motion on February 13, 2015<sup>1</sup>.

**II. APPLICANT HAS FAILED TO SUBSTANTIVELY SUPPLEMENT HIS INITIAL ANSWERS, RESPONSES AND DOCUMENT PRODUCTION AS ORDERED BY THE TTAB**

Applicant's Response focuses solely on the "Definition" of the term "Document" as set forth in Opposer's First Set of Interrogatories. See Exhibit 1 to Response. Specifically, Applicant contends that because said term is defined to include "internet websites, social media

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<sup>1</sup> In his Response (D.E. 14), Applicant states that he filed a Motion to Withdraw (D.E. 13) his prior Motion to Suspend Proceedings Pending Civil Action. Thus, the only motion pending before the Board in this matter is NTI's Motion.

accounts and social profiles,” and Applicant has provided a list of Internet websites in Applicant’s supplemental response to Request No. 4, Applicant has complied with the Board’s Order. Applicant’s supplemental response to Request No. 4 is set forth below:

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.

Answer: 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/UCrTqkOarqZoEXYzwomfJ3dA>, <https://www.facebook.com/benny.hunna1>, <https://www.twitter.com/H2HUNNA>, [https://linkedin.com/profile/view?id=347046776&trk=nav\\_responsive\\_tab\\_profile](https://linkedin.com/profile/view?id=347046776&trk=nav_responsive_tab_profile)

See Applicant’s Supplemental Response attached as Exhibit 3 to Applicant’s Response (emphasis added). The text in bold typeface is the portion of Applicant’s response that provides allegedly new or supplemental information.

Applicant basically contends that by listing four (4) websites in response to Document Request No. 4 that Applicant has fully complied with the Board’s Order dated December 5, 2014. Applicant, however, failed to (once again) provide **any** documents associated with the above listed websites, such as copies of website pages or copies of the videos posted therein. Additionally, Applicant’s supplemental response to Request No. 4 continues to be deficient in that Applicant does not include other websites, such as reverbnation.com and HunnaTV.net, which also “promote” Applicant’s services under the Subject Mark. See Exhibits 1 and 2 attached hereto (print-out from websites at reverbnation.com and HunnaTV.net, respectively).

Moreover, Applicant’s Supplemental Responses continue to conflict with other responses set forth in the same document. For instance, see Interrogatory No. 6 and Applicant’s supplemental response thereto, as set forth below:

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 advertising and marketing of products and services identified in Interrogatory No. 1 are zero dollars.

See Exhibit 3 to Response. Applicant has admitted that he promotes his services online. In fact, Applicant has posted several different music videos, each of which includes different people, settings, etc. Applicant, however, in his answer to Interrogatory No. 6, copied above, continues to allege that he has not incurred any cost or expenditure in creating and distributing his music videos<sup>2</sup>. Simply stated, Applicant has yet to fully comply with the Board's Order dated December 5, 2014.

### **III. DISCOVERY DATES SHOULD BE RESET**

Having withdrawn his Motion to Suspend Proceedings In View of Civil Action (See Motion to Withdraw, D.E. 13), Applicant now requests that the discovery deadlines remain the same, as set forth in the Board's Order dated November 4, 2014. Discovery in this matter closed on December 29, 2014. Yet NTI has no responsive documents and virtually no responses. Applicant has conducted zero discovery in this matter. Without discovery, any deposition of Applicant is essentially meaningless. Further, in the event the Board does not grant the relief sought by Opposer in this motion, NTI cannot realistically proceed to summary judgment or trial until the Board determines an appropriate sanction. If the Board does not enter judgment in the favor of NTI, then NTI requests that the discovery period be reset for NTI only to provide a

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<sup>2</sup> Applicant's Answer to Interrogatory No. 6, as set forth in his Supplemental Responses (and copied above), is exactly the same as Applicant's initial answer to Interrogatory No. 6, except for the term "are" prior to the phrase "zero dollars."

reasonable time (at least 30 days from any deadline for actual receipt of responsive documents or other information) for NTI to take depositions.

#### IV. CONCLUSION

Opposer respectfully requests that the Board grant its Motion For Entry of Judgment as a Sanction for Applicant's Failure to Comply with the Board's Order Dated December 5, 2014.

Dated: February 17, 2015

/s/ Stephanie C. Alvarez /

Janet C. Moreira, Esq.

Stephanie C. Alvarez, Esq.

**MAVEN Intellectual Property**

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Counsel for Opposer Noodle Time, Inc.

#### **CERTIFICATE OF ELECTRONIC TRANSMISSION**

The undersigned hereby certifies that this document is being transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on **February 17, 2015**

/s/Stephanie C. Alvarez /

Stephanie C. Alvarez

**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 February 17, 2015 as follows:

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

Benny Hodge  
122 Country Club Drive  
Greenwood, MS 38930

*/s/Stephanie C. Alvarez/*  
\_\_\_\_\_  
Stephanie C. Alvarez

*Exhibit 1*

*Print-Outs From [www.reverbnation.com](http://www.reverbnation.com)*

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NATION

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Search ReverbNation

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- [Charts](#)
- [Browse](#)

- [Log In](#)
- [Join For Free](#)

[x](#)

[Rank #7](#)



# BENNY HUNNA

Hip Hop Greenwood, MS



Follow

g+1

- [Share](#)
- [Become A Fan](#)

## Songs

[Play All](#) | [Queue All](#) | [Share All](#)

YEAH BUDDY

- 
- [Share](#)
- [Download](#)

YEAH BUDDY

Like  2

- [Share](#)
- [Download](#)

SLOW

- 
- [Share](#)
- [Download](#)

SLOW

Like  1

- [Share](#)
- [Download](#)

STAY FRESH

- 
- [Share](#)
- [Download](#)

STAY FRESH

Like  2

- [Share](#)
- [Download](#)

IN MY CITY

- 
- [Share](#)

- [Download](#)

## IN MY CITY

Like 5

- [Share](#)
- [Download](#)

[All Songs](#)

## Videos



[All Videos](#)

## Comments

[Add Comment](#)

[All Comments](#)

## Photos



[All Photos](#)

## Members

[Who Is In This Band?](#)

## About

**Sounds Like:** AINT NOBODY LIKE BENNY HUNNA

**Bio:** BENNY HUNNA AKA "EL GUAPO" GOING LIVE S/O OUT GREENWOOD, MS. CHECK OUT MY NEW MUSIC. TO ALL SERIOUS ARTIST FWM WE GOT TO COME TOGETHER TO PUT MS ON THE MAP. MAJOR HITTA 4 LIFE #MH4L.....



[More Info](#)

## Status

Added a new video: "BENNY HUNNA - 5TH TAKE (OFFICIAL VIDEO)"  
<http://www.reverbnation.com/c./poni/194020525> #video

## Recent Blogs

### All Blogs

Like 8

Follow

 +1

- [Share](#)
- [Become A Fan](#)

## Quick Actions

- [Subscribe](#)
- [Get Free Downloads](#)
- [Send Message](#)
- [Book This Band](#)
- [Get Widgets](#)
- [Get Banners](#)

## Questions

Be the first to ask BENNY HUNNA a question!

Ask anything you want to know about BENNY HUNNA, but please be appropriate and


200 characters remaining

[Submit Question](#)

## Stats

- Song Plays 128
- Video Plays 41

- Total Fans 783
- ReverbNation Fans 44
- Facebook Likes 332
- Twitter Followers 279
- YouTube Subscribers 119
- Widget Impressions 13

## Fans



### [All Fans](#)

## Favorite Artists

-   
Family  
Rap, Greenwood, MS
-   
T Biggz  
Hip Hop, Cincinnati, OH
-   
Bo Eazy  
Hip Hop, Greenwood, MS

### [All Favorites](#)

- Tools For:
- [Artists](#)
- [Music Industry](#)
- [Fans](#)
- [Venues](#)

- 
-

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- 
- 
- 
- 

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**Present Yourself**

- [Press Kits](#)
- [Site Builder](#)
- [Widgets & Apps](#)
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**Get & Manage Fans**

- [Promote It](#)
- [Sponsored Artist](#)
- [FanReach](#)
- [Social Sync](#)
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**Find Opportunity**

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- [Sell Direct](#)
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## ReverbNation Channels

### Select a Music Channel to Get Started

[Global Chart Toppers](#) [Local Chart Toppers](#) [Trending Artists](#) [Alt/Rock/Indie](#)  
[Electro/Pop/Dance](#) [HipHop/Rap/R&B](#) [Featured Artists](#) [My Favorites](#) [Custom Channel](#)  
[Show Queue](#)

## Select Genres

[All None](#)

[Cancel Play](#)

[Alternative](#) [Ambient](#) [Americana](#) [Bluegrass](#) [Blues](#) [Bollywood/Tollywood](#) [Celtic](#)  
[Childrens](#) [Christian Rock](#) [Christian/Gospel](#) [Classical](#) [Comedy](#) [Country](#) [DJ](#) [Dance](#)  
[Dubstep](#) [EDM](#) [Electronica](#) [Experimental](#) [Folk](#) [Funk](#) [Hip Hop](#) [Holiday](#) [House](#) [Indie](#)  
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Not listening to anything?

Try one of the [ReverbNation Channels](#)

Initializing the player...

[Tastemaker](#)

[What's This?](#)

[Wat](#) [Rabbit Hole](#) [Go deeper](#)  
[What's This?](#)

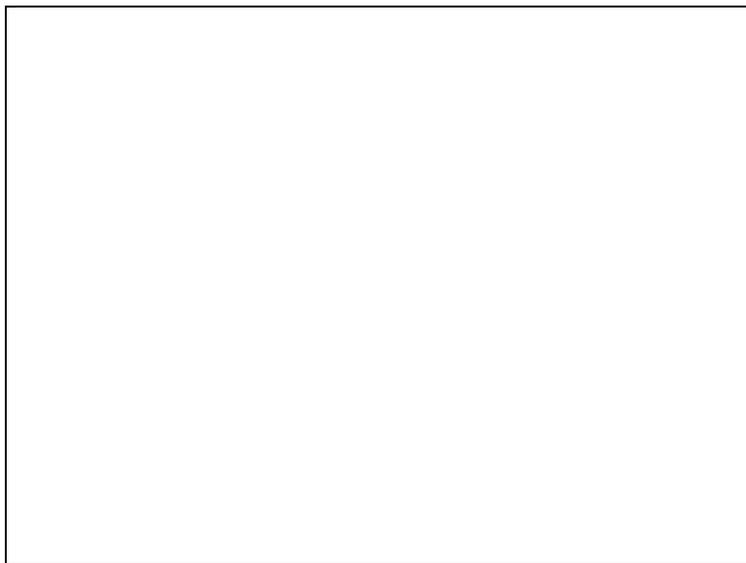
*Exhibit 2*

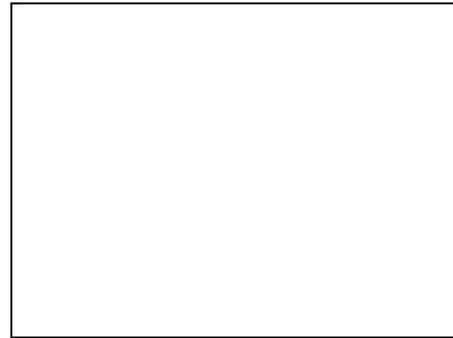
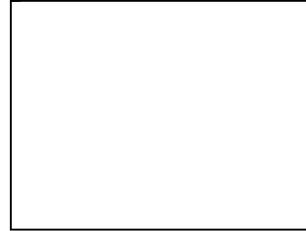
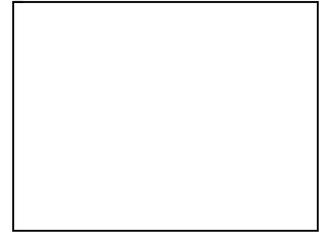
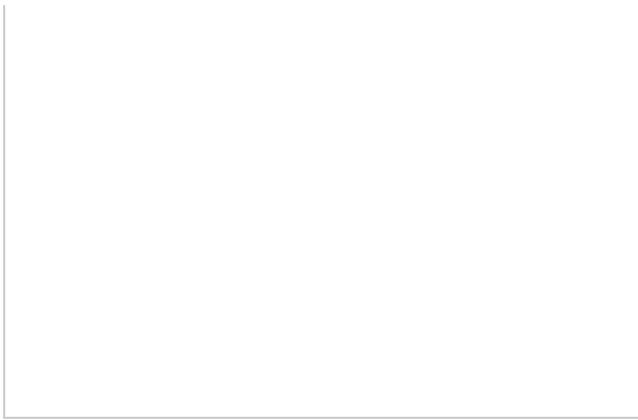
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Like 49 Tweet 50 2 [18](#)

**HUNNA TV**  
Like

332 people like HUNNA TV.

Facebook social plugin

Follow @H2HUNNA 278 followers

Tweets

Follow

- 
**BENNY HUNNA** @H2HUNNA 13h   
 SETTING A GOAL TO ONE DAY BE IN THE DOG SHOW  
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 Expand
- 
**BENNY HUNNA** @H2HUNNA 27 Jan   
 @DrDrewHNL if pot is legalized rehabs will be the next big business  
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