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

Proceeding	91214649
Party	Plaintiff Noodle Time, Inc.
Correspondence Address	JANET C MOREIRA MAVEN INTELLECTUAL PROPERTY 5801 BISCAYNE BLVD MIAMI, FL 33137 UNITED STATES trademarks@maveniplaw.com, janet@maveniplaw.com
Submission	Motion to Compel Discovery
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Signature	/Stephanie C. Alvarez/
Date	09/04/2014
Attachments	MOT - Motion to Compel Better Responses - FINAL.pdf(135873 bytes ) Exhibits 1 thru 7.pdf(2174677 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

Filing date: May 1, 2013

Publication Date: October 8, 2013

**BENNY HODGE,**

Applicant.

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**OPPOSER NOODLE TIME INC.'S MOTION TO COMPEL**

**I. INTRODUCTION**

Pursuant to 37 CFR Section 2.120(e) and TBMP Sections 523.01 and 523.02, Opposer, Noodle Time, Inc. (NTI), by and through undersigned counsel, respectfully submits the following Motion to Compel with attached Exhibits, all of which are incorporated herein. For the reasons set forth below, NTI respectfully requests the Board to enter an Order compelling the Applicant to supplement and/or amend his responses to NTI's First Set of Interrogatories and First Request for Production of Documents, respectively.

**II. BACKGROUND**

NTI operates approximately 100 **BENIHANA®** restaurants in the United States, South America, Central America and the Caribbean. NTI has continuously, exclusively, and extensively used the **BENIHANA®** trademarks in interstate commerce since as early as 1964 in connection with its restaurant services. NTI advertises, promotes, and markets its goods/services through television, radio, print, Internet advertising, and its website located at [www.benihana.com](http://www.benihana.com). Due to its presence and extensive advertising and promotion, the

**BENIHANA®** trademarks have acquired enormous value and have become distinctive and well-known to the consuming public and the trade as identifying and distinguishing NTI's goods/services.

**III. NTI HAS MADE A GOOD FAITH EFFORT TO RESOLVE THE ISSUES RAISED IN THIS MOTION**

NTI served its First Set of Interrogatories and First Request for Production of Documents on Applicant (hereinafter, "First Set of Written Discovery") on June 13, 2014, respectively. A copy of NTI's First Set of Written Discovery is attached hereto as *Exhibits 1* and *2*, respectively. Applicant responded to NTI's First Set of Written Discovery on July 13, 2014. A copy of Applicant's Answers to Interrogatories is attached as *Exhibit 3* and a copy of Applicant's Answers to Request for Production of Documents is attached as *Exhibit 4*.

Applicant did not produce or make ANY documents available for copying/ inspection in response to NTI's First Set of Written Discovery. Applicant also failed to completely and/or accurately answer several interrogatories set forth in NTI's First Set of Written Discovery. NTI detailed Applicant's deficiencies in a letter dated July 29, 2014 and requested that Applicant supplement/amend his discovery responses on or before August 14, 2014. This letter also notified Applicant that NTI would proceed with a Motion to Compel in the event Applicant did not comply with NTI's request. A copy of undersigned counsel's July 29, 2014 letter is attached as *Exhibit 5*.

Having received no response to its July 29, 2014 correspondence, undersigned counsel emailed Applicant on August 19, 2014 attaching a copy of NTI's July 29, 2014 correspondence and requested a response thereto by the close of business on Monday, August 25, 2014.

Applicant did not respond to undersigned counsel's email dated July 29, 2014. A copy of undersigned counsel's email communication dated August 19, 2014 is attached as ***Exhibit 6***. Since Applicant did not respond to undersigned counsel's communications, NTI was forced to file the instant motion.

**IV. LEGAL STANDARDS**

"Parties" may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense..." *Fed. R.Civ.P.* 26(b)(1); 37 C.F.R. §2.120(b)(1). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Fed. R. Civ. P.* 26(b)(1).

Rule 33 requires a party to answer an interrogatory "separately and fully..., unless it is objected to, in which event the objecting party . . . shall answer to the extent the interrogatory is not objectionable." *Fed. R. Civ. P.* 33(b)(1). Likewise, Rule 34 requires a party on whom a request for production is served to "state . . . that inspection and related activities will be permitted as requested, unless the request is objected to. . . . If an objection is made to part of an item or category, that part shall be specified and inspection permitted of the remaining parts." *Fed. R. Civ. P.* 34(b). A motion to compel may be filed when a party fails to answer an interrogatory or fails to produce requested documents. 37 CFR 2.120(e)(1). An "evasive or incomplete" answer or response "must be treated as failure to" answer or respond. *Fed. R. Civ. P.* 37(a)(4).

**V. APPLICANT'S ANSWERS TO INTERROGATORIES**

As set forth below, NTI's interrogatories are relevant to the issue of likelihood of confusion as they request the Applicant to identify, among other things, uses of the Subject

Mark, promotional activities relating to the Subject Mark and sales information relating to the Subject Mark. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). NTI's interrogatories also asked Applicant to identify any individuals that may possess information relevant to this Opposition proceeding. Applicant failed to completely and/or accurately answer NTI's Interrogatories.

***Interrogatories Nos. 1 and 2***

Interrogatory Nos. 1 and 2 asked Applicant to identify with particularity each intended use and current use (not limited to description set forth by Applicant in his federal trademark application), if any, of the mark BENNY HUNNA ("Subject Mark"), describe efforts to make use, and the first dates of such use. In response, Applicant stated that he had not yet made any use of the BENNY HUNNA mark in commerce. Applicant's response, however, is not accurate as it directly contradicts information that is publicly available and that Applicant provided in another answer to NTI's First Set of Written Discovery. *See Answer to Interrogatory No. 11, Exhibit 3*. For instance, NTI is aware that Applicant has used the mark BENNY HUNNA online to promote Applicant's music videos. In fact, Applicant has posted his online music videos on several sites such as *reverbnation.com*, *youtube.com* and *Facebook*. As such, Applicant should be compelled to amend/supplement his answers to Interrogatory Nos. 1 and 2.

***Interrogatories Nos. 3 and 7***

Interrogatories Nos. 3 and 7 asked Applicant to detail every effort made by him or on his behalf to use the mark BENNY HUNNA in commerce and to identify all types of media in which Applicant has advertised and intends to advertise each product and service offered or to be offered in connection with the Subject Mark. Applicant answered by stating that he has not used

the mark in commerce but that he now advertises and intends to advertise each product and services offered or to be offered in connection with the Subject Mark via the Internet. Absent from Applicant's answer, however, was the identification of specific websites that Applicant advertised on or different types of media that Applicant has advertised or currently advertises on. As such, Applicant should be compelled to supplement his answers to Interrogatory Nos. 3 and 7.

***Interrogatories Nos. 5 and 6***

Interrogatory Nos. 5 and 6 asked Applicant to detail the expenditures relating to his promotion of the Subject Mark and music-related services as well as the amount of income generated by Applicant as an artist under the Subject Mark. Applicant answered that he has not used the Subject Mark and therefore has not generated any sales. Applicant failed, however, to mention any costs relating to the advertising/promotion of services offered under the Subject Mark. Further, Applicant's Answer to Interrogatory No. 6 contradicts Applicant's answer to Interrogatory No. 7, which stated that Applicant had already advertised his activities online. *See* Exhibit 3. Accordingly, Applicant should have costs relating to said advertising activities and should be obligated to fully answer Interrogatory No. 6.

***Interrogatory No. 8.***

Interrogatory No. 8 asked Applicant to identify any person that may have information pertaining to any fact alleged in the pleadings, etc. Applicant answered that all persons were identified in Applicant's Initial Disclosures. A copy of Applicant's Initial Disclosures is attached as ***Exhibit 7***. This answer is not accurate since Applicant's Initial Disclosures identify two large companies and not specific individuals. For instance, Applicant failed to identify his

manager, marketing personnel, agents and/or anyone else that assists him in developing, producing, marketing, and/or managing the **BENNY HUNNA** entertainment services. Accordingly, Applicant should be compelled to fully answer Interrogatory No. 8.

***Interrogatories No 11***

Lastly, Interrogatory No. 11 asked that Applicant provide details with respect to each advertisement or promotion of products and services associated with the Subject Mark such as the date of the advertisement, location of advertisement and identify all documents relating to so said advertisement. Applicant answered that he “advertised and promoted the product and service connected with the Subject Mark via the internet and social media daily.” *See* Exhibit 3. Applicant failed to identify which websites he has advertised or presently advertises on, the dates of each advertisement and/or any documents associated with said advertisements. Accordingly, Applicant should be compelled to fully answer Interrogatory No. 11.

It is clear from the above that Applicant has not complied with his discovery obligations. Accordingly, NTI respectfully requests that the Board enter an Order granting this motion.

**VI. APPLICANT’S RESPONSES TO DOCUMENT REQUESTS**

Applicant failed to produce or identify a single document in response to NTI’s First Request For Production of Documents (“RFP”). NTI’s requests, as set forth below, are relevant to the issue of likelihood of confusion, as they request documents relating to use of the Subject Mark and the nature of Applicant’s trade channels. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Applicant’s responses also contradict information provided by Applicant in his answers to Interrogatories and/or information that is publicly available. Below are examples of Applicant’s deficient responses to NTI’s First RFP.

***RFP Nos. 1, 2 and 3***

These requests requested documents relating to the first use and sale of the products and services under the Subject Mark, as well as documents sufficient to identify all products and services using the Subject Mark. Applicant's response stated that he intends to use the Subject Mark in connection with entertainment services but failed to mention the past and present "uses" of the Subject Mark in connection with Applicant's admitted online advertising and promotion activities. *See* Exhibit 3, Answer to Interrogatory No. 11. Accordingly, Applicant should be compelled to amend/supplement his responses to RFP Nos. 1-3.

***RFP No. 4***

This Request sought documents sufficient to identify all trade channels through which Applicant sells, advertises, promotes or offers to sell, sell, and advertise any products and/or services using the Subject Mark. In response, Applicant merely listed the URLs at which Applicant "promotes" the Subject Mark. Applicant failed to produce or identify any documents, including video recordings that relate to the promotional activities that Applicant undertook at the listed URLs. Accordingly, Applicant should be compelled to supplement his response to RFP No. 4.

***RFP Nos. 9-12***

These requests sought documents relating to any communication between Applicant and certain entities identified by Applicant in his Initial Disclosures. In response thereto, Applicant stated that all documents were given to Opposer in Applicant's Initial Disclosures. The only document attached to Applicant's Initial Disclosures, however, was a copy of Applicant's Birth

Certificate. *See* Exhibit 5. Accordingly, Applicant should be compelled to supplement his responses to RFP Nos. 9 thru 12.

***Request Nos. 14 and 15***

This Request sought documents referring to the instant Opposition and documents sufficient to identify all persons with knowledge of the instant Opposition. Applicant responded by stating that he is unaware of factual allegations and that Opposer is in possession of all documents relating to the instant matter. NTI clarified the nature of these requests in undersigned counsel's correspondence dated July 29 (*See* Exhibit 5) but Applicant has failed to amend and/or produce any documents in response to RFP Nos. 14 and 15. Accordingly, Applicant should be compelled to supplement his responses to RFP Nos. 14 and 15.

Due to Applicant's failure to produce and/or identify a single document in response to NTI's RFPs, Applicant should be compelled to amend/supplement all of his response to NTI's RFPs.

**VII. CONCLUSION**

In view of the foregoing, NTI respectfully requests that the Board grand its Motion to Compel.

Dated: September 4, 2014

/s/ Stephanie C. Alvarez /

Stephanie C. Alvarez, Esq.  
**MAVEN Intellectual Property**  
333 S.E. 2<sup>nd</sup> Ave, Suite 2000  
Miami, FL 33131  
E-mail: stephanie@maveniplaw.com  
Local: 305.967.7450  
Toll Free: 855.63MAVEN (636.2836)

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 **September 4, 2014**

/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 September 4, 2014 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**

**(NTI's First Set of Interrogatories)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

**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**

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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.

# **EXHIBIT 2**

**(NTI's First Request for Production of Documents)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

**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**

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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>
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.

**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.

# **EXHIBIT 3**

**(Applicant's Answer to Interrogatories)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

**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 ANSWERS TO FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26, 33, and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, The Applicant BENNY HODGE answers the following interrogatories under oath by submitting the following.

**INTERROGATORIES**

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 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 in commerce.

- 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 has made no efforts to use the Subject Mark in commerce.

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

Answer: The meaning of the Subject Mark (BENNY HUNNA) is BENNY the Applicant's birth/personal/legal name and HUNNA meaning 100.

- 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 yearly value 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 identified in interrogatory No. 1 is 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, and is subject to change and or add more media after the opposition is over. Opposer will be notified if more media is used during the discovery period.

- 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: All persons where identified in Application's Rule 21(a)(1) Initial Disclosures and was served on Opposer dated May 7, 2014.

- 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 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.

Answer: At this time Applicant doesn't have an expert witness to use in these proceedings.

If Applicant attains an expert witness during these proceedings opposer will be notified.

**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.

Answer: Applicant is the only person that is authorized to use the Subject Mark, if this changes during the proceedings opposer will be notified.

**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 the product and service connected with the Subject Mark via the internet and social media daily.

**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.

Answer: Applicant prepared all answers to the forgoing and following interrogatories and opposition.

Date: July 13, 2014

7/13/2014

**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 Answer To First Set Of Interrogatories 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)



# **EXHIBIT 4**

**(Applicant's Answer to Request for Documents)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

**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 ANSWERS TO FIRST REQUEST FOR PRODUCTION**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, The Applicant BENNY HODGE answers the following request for production by submitting the following.

**DOCUMENT REQUESTS**

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

ANSWER: 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: 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.

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. The Subject Mark is promoted at URL

<https://www.youtube.com/channel/UCrTqkOarqZoEXYzwomfJ3dA>

<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)

5. All documents, including advertisements, press releases and any and all marketing materials related to the launch of the use of the Subject Mark.

ANSWER: Applicant has no documents, including advertisement, 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.

ANSWER: Applicant has no photograph of products 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.

ANSWER: Subject Mark has not been used in commerce and has no sales.

8. All documents evidencing or relating to any communication between you and any third party regarding the Subject Mark.

ANSWER: No documents available.

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

ANSWER: All documents were given to Opposer in the Applicant's Initial Disclosures.

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

ANSWER: All documents were given to Opposer in the Applicant's Initial Disclosures.

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

ANSWER: All documents were given to Opposer in the Applicant's 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 the Applicant's Initial Disclosures.

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.

ANSWER: Documents are not available. Subject Mark has not been used in commerce.

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 is unaware of any factual allegations made by the Opposer.

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: July 13, 2014

7/13/2014

**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 Answer To First Request of Production 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)



# **EXHIBIT 5**

**(Correspondence dated July 29, 2014)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

# MAVEN

## INTELLECTUAL PROPERTY

[maveniplaw.com](http://maveniplaw.com)

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Stephanie C. Alvarez  
[Stephanie@maveniplaw.com](mailto:Stephanie@maveniplaw.com)  
305.967.7450

July 29, 2014

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

Benny Hodge  
122 Country Club Drive  
Greenwood, Mississippi 38930

Re: Opposition No. 91214649 – NTI v. Benny Hodge  
Our File No. 1000-0008/ BENNY HUNNA

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Dear Mr. Hodge:

We have reviewed your Answers to Opposer's First Set of Interrogatories to Applicant and Responses to Opposer's First Request for Production to Applicant, both which were received by our office via email on July 14, 2014. It is unfortunate to have to bring these matters to your attention but your responses are woefully inadequate. As a result, the following constitutes Noodle Time, Inc.'s ("NTI") attempt to confer in a good faith effort to resolve, by agreement, the issues that will be raised in a motion to compel or a motion to strike.

As you know, NTI filed its Notice of Opposition against you on January 27, 2014, claiming that your **BENNY HUNNA** mark was likely to cause confusion and dilution with the NTI's BENIHANA marks, pursuant to Sections 2(d) and 43(c) of the United States Trademark Act. Your Answer to the Notice of Opposition, dated March 8, 2014, denies the allegations of the Notice of Opposition. According to Rule 34 of the Federal Rules of Civil Procedure, which govern this proceeding:

Any party may serve on another party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served.

Rule 26(b)(1), Fed. R. Civ. P. provides for the scope of those discovery requests and interrogatories and states that:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, or condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

*See also* Fed. R. Civ. P. 33(a)(2). Pursuant to these rules, NIT's discovery requests are properly crafted and sufficiently tailored to elicit information that will support or challenge the claims or defenses at issues in this proceeding.

*I. Applicant's Answers to First Set of Interrogatories*

Most of Applicant's Answers are insufficient and/or inaccurate based on information that is contradicted by your own answers to interrogatories or information that is publicly available.

With regard to Interrogatory Nos. 1, 2, and 3, we requested that you identify with particularity each intended use and current use (not limited to description set forth by Applicant in its federal trademark application), if any, of the Subject Mark, describe efforts to make use, and the first dates of such use. Your responses indicate that you have not made any use of the mark in commerce yet. However, we are aware that you have used the mark **BENNY HUNNA** online to promote your music videos. Kindly amend this Answer so that it is accurate.

With respect to Interrogatory Nos. 3 and 7, your answer is also inaccurate. Given the fact that you promote your entertainment services under the mark **BENNY HUNNA** online, you are required to detail every effort you have made in this regard. For instance, you have posted your videos online on several social media sites. Kindly amend this Answer so that it is accurate.

With respect to Interrogatory No. 4, kindly amend this Answer to reflect the aforementioned uses of the mark **BENNY HUNNA**.

With respect to Interrogatory Nos. 5 and 6, please detail how much you have spent to promote your **BENNY HUNNA** mark and music-related entertainment services and also how much income you have generated as an artist, whether through online sales, MP3 downloads, performances etc. All expenses and income related to and/or derived from your use of the **BENNY HUNNA** mark would fall within the scope of these interrogatories. Therefore, we request that you amend this Answer accordingly.

With respect to Interrogatory No. 8, you have failed to identify any person. Instead, you refer to your Initial Disclosure which identify two large companies and not specific individuals. Individuals that would fall within this interrogatory request may include your managers, marketing personnel, agents, and/or anyone else that assists you in developing, producing, marketing, and/or managing the **BENNY HUNNA** entertainment services. We request that you amend this Answer.

It is clear that you have failed to comply with your discovery obligations and/or have purposefully withheld information responsive to NTF's Interrogatories in light of some of your other answers, namely your answers to Interrogatory Nos. 10 and 11.

Please supplement your answers to NTF's First Set of Interrogatories by no later than **5:00 p.m. EST on Friday, August 14, 2014**.

*II. Applicant's Responses to First Request for Production*

Your responses to NTF's First Request for Production are also insufficient and/or inaccurate. This is evident based on contradictory information provided by you and/or information that is publicly available. In fact, you have failed to produce or identify a **single** document in response to Applicant's First RFP. Therefore, we kindly request that you comply with your discovery obligation by reviewing all of your records again and amend and/or supplement each Response as needed. Below are examples of the deficiency of your responses to Opposer's First Request for Production to Applicant.

With respect to Request Nos. 1, 2, 3, the fact that you do not provide any documents conflicts with your use of the mark **BENNY HUNNA** online to advertise your entertainment services. Kindly amend your responses and provide us with the necessary documents.

With respect to Request No. 4, you merely list the URLs at which you "promote" the mark **BENNY HUNNA**. As set forth in the "Definitions" of Applicant's First RFP, "documents" is defined to include video recordings and the like. We would request that you provide us with copies of any and all webpages, advertisements, social media pages, and/or video recordings which use, display, or promote the **BENNY HUNNA** mark as well as copies of any and all documents relating to same. Kindly amend your responses and provide us with the requested documents.

With respect to Request Nos. 9 through 12, you responded as follows: All documents were given to Opposer in Applicant's Initial Disclosures. The only document attached to Applicant's Initial Disclosures, however, is a copy of your Birth Certificate. Kindly amend your responses and provide us with the requested documents.

With respect to Request No. 14, the factual allegations referred to are those in the Notice of Opposition. Kindly amend your responses and provide us with the necessary documents.

With respect to Request No. 15, such request includes any and all correspondence (such as email communications) relating to Opposer, including but not limited to the present Opposition, etc. We would request that you conduct the necessary review of your records and confirm the accuracy of this response and kindly amend your response to provide us with the requested documents.

# MAVEN

INTELLECTUAL PROPERTY

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[maveniplaw.com](http://maveniplaw.com)

Please provide us with your supplemental objections, responses, and documents by no later than **5:00 p.m. EST on Friday, August 14, 2014**. Although unfortunate that we are compelled to bring these issues to your attention, we hope to resolve this matter without involving the Board.

Sincerely yours,

/s/ Stephanie C. Alvarez

Stephanie C. Alvarez

cc: Noodle Time, Inc.  
Janet C. Moreira. Esq.

# **EXHIBIT 6**

**(Email correspondence dated August 19, 2014)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

## Stephanie C. Alvarez

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**From:** Stephanie C. Alvarez  
**Sent:** Tuesday, August 19, 2014 2:46 PM  
**To:** 'bennyhodge25@yahoo.com'  
**Cc:** Janet C. Moreira  
**Subject:** RE: Opposition No. 91214649 - NTI v. Benny Hodge  
**Attachments:** Final Ltr - Inadquate Discovery Responses.pdf

**Importance:** High

Dear Mr. Hodge:

We have received no response to our below email. We attach another copy of our letter dated July 29, 2014 for your convenience. Please understand that if we do not receive the requested information/documents by **5:00 p.m. EST on Monday, Aug. 25, 2014**, we will be forced to prepare and file a Motion to Compel in the referenced proceeding.

We look forward to receiving the requested information.

Stephanie

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**From:** Stephanie C. Alvarez  
**Sent:** Tuesday, July 29, 2014 2:08 PM  
**To:** 'bennyhodge25@yahoo.com'  
**Cc:** Janet C. Moreira  
**Subject:** Opposition No. 91214649 - NTI v. Benny Hodge  
**Importance:** High

Dear Mr. Hodge:

Please see the attached correspondence and respond by 5:00 p.m. EST on Friday, August 14, 2014.

Regards,  
Stephanie

*Stephanie C. Alvarez, Esq.*

Of Counsel to Maven

**MAVEN Intellectual Property**

333 S.E. 2nd Avenue, Suite 2000

Miami, FL 33131

Web: [www.maveniplaw.com](http://www.maveniplaw.com)

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

Local: 305.967.7450

Toll Free: 855.63MAVEN

# **EXHIBIT 7**

**(Applicant's Initial Disclosures)**

Noodle Time Inc.'s Motion to Compel

Opposition No.:91214649

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

**APPLICANT'S RULE 26(A)(1) INITIAL DISCLOSURES**

Applicant, Benny Hodge, an individual, hereby submits its initial disclosures as required by Rule 26(a)(1) of Federal Rules of Civil Procedures 37 C.F.R. 2.120(a)(1).

In accordance with Rule 26(a)(1)(A), the following is a list of persons who are likely to have discoverable non-privileged information that Applicant may use to support its claims and defense.

1. ABC NEWS  
47 W 66<sup>TH</sup> ST (btwn Columbus Ave. & CPW)  
New York, NY 10023  
(212)456-2700

Subject of information: AN ARTICLE ON ABC NEWS WEBSITE, (URL)  
<http://abcnews.go.com/US/chicagos-gang-violence-fueled-social-media/story?id=17464743>,  
written by Lauren Effron and Kinga Janik via NIGHTLINE on Oct. 19, 2012, reports that  
"3HUNNA" is the same as 300.

2. INTERSCOPE RECORDS  
2220 Colorado Ave.  
Santa Monica, CA 90404  
(310)865-1000

Subject of information: 3Hunna appears in Finally Rich recorded by Chief Keef on Interscope Records, no. 1783802, 12/18/2012. 3Hunna copyright registration number/date: PA0001839368/2013-05-15. The copyright information is available on (URL)  
<http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?vi=2&ti=1,2&Search%5FArg=3HUNNA&Search%5FCode=TALL&CNT=25&PID=UpytWHuunzecfoBzbO-cmuyMLs8j&SEQ=20140503162228&SID=1>

In accordance to Rule 26(a)(1)(b), the following is a list of documents that are likely to have discoverable non-privileged information that Applicant may use to support it claim and defense.

1. Birth certificate of Benny Hodge shown in Exhibit 1.

Location: Benny Hodge  
122 Country Club Dr.  
Greenwood, MS 38930  
(662)897-8525

2. Copyright registration of 3Hunna by Chief Keef on Interscope Records.

Location: (URL) <http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?vi=2&ti=1,2&Search%5FArg=3HUNNA&Search%5FCode=TALL&CNT=25&PID=UpytWHuunzecfoBzbO-cmuyMLs8j&SEQ=20140503162228&SID=1>

2. What is 3hunna on Ask.com confirms Hunna means hundred.

Location: (URL) <http://www.ask.com/web?q=what+is+3hunna&qsrc=0&o=2746&l=dir&qo=homepageSearchBox>

Dated: May 7, 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 Defendant Rule 26(a)(!) Initial Disclosure 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)

# EXHIBIT 1

STATE OF FLORIDA

OFFICE of VITAL STATISTICS

CERTIFICATE OF LIVE BIRTH  
FLORIDA 109

LOCAL FILE NO. 87-1436

CHILD NAME FIRST: <u>Benny</u> MIDDLE: <u>Hodge</u> LAST: <u>Hodge</u>		SEX <u>Male</u>	DATE OF BIRTH (Mo., Day, Year) <u>June 10, 1987</u>	HOUR <u>11:50a</u>
HOSPITAL NAME (If not in hospital, give street and number) <u>Tallahassee Mem. Reg. Med. Center</u>		CITY-TOWN OR LOCATION OF BIRTH <u>Tallahassee</u>		COUNTY OF BIRTH <u>Leon</u>
CERTIFY that the statements made concerning this child's true to the best of my knowledge and belief. By Signature: <u>Pat Dentham, RPH</u> Name and Title of Certifier (Type or Print): <u>Pat Dentham, Ass't Dir. of Med. Records</u>		DATE SIGNED (Mo., Day, Year) <u>June 11, 1987</u>	NAME AND TITLE OF ATTENDANT AT BIRTH (If other than certifier) (Type or Print) <u>A. S. Clements, M.D.</u>	
REGISTRAR By Signature: <u>Dorlene W. Quinn, CRP</u>	DATE RECEIVED BY REGISTRAR (Mo., Day, Year) <u>June 15, 1987</u>			
MOTHER'S MAIDEN NAME FIRST: <u>Miranda</u> MIDDLE: <u>Richards</u> LAST: <u>Richards</u>		AGE at time of birth (Mo., Day, Year) <u>30</u>	STATE OF BIRTH (If other than State of Florida) <u>Georgia</u>	
RESIDENCE - STATE: <u>Florida</u> COUNTY: <u>Leon</u> CITY-TOWN OR LOCATION: <u>Tallahassee</u>		STREET AND NUMBER OF RESIDENCE <u>655 Okaloosa Sc.</u>		INSIDE CITY LIMITS (Type or Print) <u>Yes</u>
MOTHER'S MAILING ADDRESS (If different from residence) (Type or Print) <u>32304</u>				
FATHER'S NAME FIRST: <u>Sheldon</u> MIDDLE: <u>Hodge</u> LAST: <u>Hodge</u>		AGE at time of birth (Mo., Day, Year) <u>31</u>	STATE OF BIRTH (If other than State of Florida) <u>Florida</u>	
MOTHER'S SOCIAL SECURITY NUMBER (If provided on this certificate is correct to the best of my knowledge and belief) <u>254-98-4174</u>		SOCIAL SECURITY NUMBER <u>269-19-7693</u>		

INFORMATION FOR MEDICAL AND HEALTH USE ONLY

CERTIFIED COPY

THIS IS A CERTIFIED TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE

BY Kelma Mowrey  
July 13, 1987

OLIVER H. BOORDE  
State Registrar  
Office of Vital Statistics



**WARNING:**

ANY REPRODUCTION OF THIS DOCUMENT IS PROHIBITED BY LAW. DO NOT ACCEPT UNLESS ON SECURITY PAPER WITH EMBOSSED GREAT SEAL OF THE STATE OF FLORIDA. ALTERATION OR ERASURE VOIDS THIS CERTIFICATION.



CERTIFICATION OF VITAL RECORD

