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

Proceeding	91215657
Party	Defendant GoYoGo Frozen Yogurt LLC
Correspondence Address	DENNIS F GLEASON JARDIM MEISNER & SUSSER PC 30B VREELAND RD STE 201 FLORHAM PARK, NJ 07039 UNITED STATES dgleason@jmslawyers.com
Submission	Opposition/Response to Motion
Filer's Name	Dennis F. Gleason
Filer's e-mail	dgleason@jmslawyers.com
Signature	/Dennis F. Gleason/
Date	06/24/2015
Attachments	GYG resp to motion to ext deadline.pdf(398349 bytes) GYG DFG decl opp mot to ext deadlines.pdf(5017341 bytes)

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

In the Matter of Trademark Application Serial No. 86060111
For the mark: GoYoGo FROZEN YOGURT
Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

RESPONSE OF APPLICANT TO OPPOSER'S MOTION FOR EXTENSION OF TIME

GoYoGo Frozen Yogurt LLC ("GoYoGo Frozen Yogurt" or "Applicant") opposes the motion of Goya Foods, Inc. ("Goya Foods" or "Opposer") for an extension of time.

PRELIMINARY STATEMENT

On the very day it was required to make its pretrial disclosures, Opposer asks that the deadlines be reset. This motion is in addition to its request to suspend the proceedings pending resolution of its discovery motion – a discovery motion that was filed three days before the deadline to make pretrial disclosures.[1]

[1] Applicant responds by separate brief to the Opposer's motion to compel discovery.

The not too subtle goal in requesting a reset of the scheduling is a procedural ploy to "buy time" and to further drag out these proceedings. In short, Goya Foods games the rules for inter parte proceedings so that it and not the Board dictates the schedule of proceedings.

By virtue of the last minute sham motion on discovery, Opposer has effectively "extended" the proceedings while the parties await a ruling on the motion to compel discovery.

The Board should not succumb to the gamesmanship of Goya and should deny the motion to extend the deadlines.

STATEMENT OF RELEVANT FACTS

Opposer served initial disclosures dated June 12, 2014. (Declaration of Dennis F. Gleason, dated June 24, 2015 ("Gleason Decl."), Exhibit 1.)

By letter dated June 23, 2014, counsel for Applicant requested a copy of the documents identified in Opposer's initial disclosures. (*Id.*, Exhibit 2.) Opposer's counsel responded by stating that the "demand is rejected." (*Id.*, Exhibit 3.) Counsel for Applicant advised Opposer that production of initial disclosures was encouraged by the Board. (*Id.*, Exhibit 4.) There was no further communication from Opposer on this issue.

Applicant served its responses to Opposer's first set of admissions on July 14 and responses to the first set of interrogatories on July 29, 2014. (*Id.*, Exhibits 5 and 6.) Applicant also produced responsive documents to Opposer.

By letter dated August 18, 2014, counsel for Opposer identified discovery responses with which Goya Foods took issue and requested a "meet and confer" in lieu of a written response to the August 18 letter. (*Id.*, Exhibit 7.)

Once again, Applicant requested that Opposer produce the documents identified in its initial disclosures. (*Id.*, Exhibit 8.) There was no response to this letter and no documents were produced.

On August 27, 2014, counsel for the parties in a conference call addressed various issues in discovery. Also in that conference call, counsel for Goya Foods refused to produce documents identified in Opposer's mandatory disclosure. (*Id.*, Exhibit 9.)

Applicant advised Opposer that certain requests to admit seeking information on "yogurt" were objectionable because Applicant sells "frozen yogurt" which is a product different from "yogurt." (*Id.* at ¶11.) Also in that conference call, counsel for Opposer restated that Opposer did not have to produce the documents identified in Opposer's mandatory disclosures.

As a result of the conference call, counsel for Applicant agreed to revisit various responses.

In its responses to Applicant's first request to produce documents, Opposer objected to each and every single request, including the request to produce documents identified as part of Opposer's initial disclosures. (*Id.*, Exhibit 10.)

Amended responses by GoYoGo Frozen Yogurt to written discovery were served on Opposer on December 10, 2014. (*Id.*, Exhibits 11 and 12.)

By letter dated December 30, 2014, counsel for Opposer identified issues he had with the Applicant's amended responses noting "[a]s a last ditch effort, I can agree to attempt to discuss these matters by phone and to narrow the issues in a motion to compel." (*Id.*, Exhibit 13 at p. 5)(emphasis added.)

A second conference call was held by counsel on January 14, 2015. In that call, the items in the December 30 letter were discussed (but not interrogatory no. 6). Among the topics discussed were the requests to admit, in particular request nos. 17-23. (Gleason Decl. at ¶17.)

Ignoring the August 18 meet and confer telephone call where it was stated that the requests to admit for "yogurt" had nothing to do with the issues in the proceeding because Applicant sells "frozen yogurt" not "yogurt," counsel for Opposer continued to press for responses on whether "yogurt" was "related to" certain other food products. Counsel for Applicant reiterated that given the ambiguous nature of the term "related to" it was open multiple interpretations and Applicant could not respond, putting aside that "yogurt" has no part in this action.

Also in that January 14 conference call, counsel for Applicant repeated that it had made multiple requests for documents identified in mandatory disclosures (both by letter and more formal document request) and Opposer continued to ignore those requests. Counsel for Opposer stated that he would look into that. (Gleason Decl. at ¶18.)

Shortly after the January 14 conference call, Applicant served second amended discovery responses consistent with what was discussed. (*Id.,* Exhibits 14 and 15.) Applicant made a supplemental production of documents as well.

In a letter dated January 28, 2015, the request was renewed and Opposer was asked to produce the requested documents by February 3, 2015 and if not to explain why. (*Id.*, Exhibit 16.) Opposer neither responded to the letter nor produced the documents.

Neither party made expert disclosures which were due March 23, 2015.

Opposer then waited TEN WEEKS before writing to Applicant on April 8, raising the same arguments regarding requests to admit 17-23. (*Id.*, Exhibit 17.) The April 8 letter made no effort to explain why Opposer waited several months before addressing the issues in the letter.

The April 8 letter further observed: "In view of the fact that the deadline to discovery is approaching [on April 22], please provide us your intention of satisfying these requests as originally understood, or state that you will not revise, in which case we shall seek immediate attention from the Board." (*Id.*)(emphasis added.)

Less than a week later, counsel for Applicant responded. First, Applicant once again repeated that Opposer had produced no documents identified in the mandatory disclosures. Indeed, Opposer refused to even acknowledge its shortcomings. Second, Applicant restated that the term "related" in the context of the request was ambiguous and properly objectionable. (*Id.*, Exhibit 18.) Lastly, in response to the statement that interrogatory nos. 19 and 20 were "unanswered," it was pointed out that they had been answered as objectionable.

Discovery closed April 22, 2014.

After the passage of another six weeks and notwithstanding the representation in April that if the responses were not revised that Opposer would "seek immediate attention from the Board," counsel for Opposer repeated almost word for word the same arguments regarding requests to admit 17-23. (*Id.*, Exhibit 19.)

One week later, on June 3, before a response by Applicant could be sent, Opposer filed a motion to compel discovery and suspend proceedings.

By directive of the Board, Opposer was to make pretrial disclosures June 8.[2]

Opposer filed this motion on June 8.

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[2] The actual deadline for Opposer's pretrial disclosures was June 6 which fell on a Saturday.

ARGUMENT

THE MOTION TO EXTEND IS MADE WITHOUT EVIDENCE OF GOOD CAUSE AND IN HASTE ON THE FIRST DAY OPPOSER'S PRETRIAL DISCLOSURES WERE DUE

The request by Opposer to reset deadlines consists of a two paragraph motion. The first describes that Goya Foods filed a motion to compel discovery five days earlier. The second paragraph simply states that Opposer moves to reset deadlines.

Significantly, there is no citation to applicable legal authority and there is no supporting documentation or affidavit as to why the relief should be granted. Moreover, there is no statement as to how much additional time Opposer is seeking as the Board requires. In short, there is nothing for the Board review other than the say so of counsel's two paragraph motion. That does not pass muster, however.

The Rules of the TTAB make plain that a party seeking to reset deadlines must demonstrate "good cause." A motion to extend must state with particularity the grounds for the request, including detailed facts constituting good cause. *Lumme, Inc. v. D.B. Plus, Inc.*, 53 USPQ 2d 1758, 1760 (TTAB 1999)(citations omitted). So too, the requesting party must show the request for additional time is not necessitated by movant's lack of diligence. *Id.* In that regard the Board "will scrutinize carefully any such motions" in determining whether good cause has been shown, including the diligence of the moving party during the discovery period. *See* Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 63 Fed. Reg. at 48086, 1214 TMOG at 149.

There is no record presented to the Board by Goya Foods to warrant "good cause." The mere filing of a request for additional time without more is not the standard. A party seeking an extension of time must not assume that its motion to extend made without consent will be

granted as a matter of course.[3] *Cheesebrough-Pond's, Inc. v. Faberge, Inc.*, 618 F.2d 776, 780 (CCPA 1980).

As described in detail in the statement of facts, Opposer sat on its hands throughout the discovery process. It elected, for whatever purpose, to periodically address (or not) discovery disputes and then wait weeks before communicating again. Opposer attached no urgency to the matter although it has the burden of proof. Opposer allowed the deadline to identify experts pass without identifying a single expert. Opposer allowed the deadline for the close of discovery to pass without taking a single deposition.

Opposer only woke up on the very last day it was required to make pre-trial disclosures to ask for an extension. And, that request is not accompanied by any supporting affidavit.

What is more, the Board should look to whether the movant has acted in a responsible manner with regard to its own discovery obligations. For it would be unjust to grant equitable relief to a party who does not observe the rules.

The Opposer always has the burden of demonstrating why the marks at issue should not be registered. In the case of Goya Foods, as required by the rules, it was obligated to make certain mandatory disclosures under Fed. R. Civ. P. 26(a). In those disclosures, Opposer identified categories of documents that purport to support its challenge to the Applicant's registration. (*Id.*, Exhibit 1) Thereafter, Opposer refused to produce the documents or otherwise make them available for inspection. (*Id.*, Exhibits 2, 3, 4, 7, 10 and 16.) In truth, Opposer resisted producing not only documents identified in mandatory disclosures, but it also refused to

[3] At no time did Opposer communicate to Applicant requesting that it would be seeking to extend deadlines.

produce all documents requested in document requests and balked at providing discovery requested in each and every interrogatory.

Perhaps most telling is Opposer's response to Applicant's request to produce its mandatory disclosure documents:

> **Request No. 1**: To the extent not already produced, all documents identified in the initial disclosures of Goya Foods and subsequent and or amended disclosures, identifying the materials keyed to the categories in the initial disclosure.
>
> **Response**: Opposer objects the Request because it is overly broad, unduly burdensome and intelligible [*sic*] as Opposer cannot produce documents it does not know exist. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

(Gleason Decl., Exhibit 10.)

Incredibly, Opposer objects to producing mandatory disclosure documents because the request is (1) overbroad; (2) unduly burdensome; and (3) the information is somehow available to Applicant.

It is beyond cavil for the *de facto* plaintiff to claim furnishing mandatory discovery identified by Opposer is objectionable in any way. Yet, that is the unabashed position taken by Opposer.

The stance of Opposer, moreover, runs contrary to the Board's own guidance that parties produce copies.[4] *Influence v. Zuker*, 88 USPQ 2d 1859, n.4 (TTAB 2008).

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[4] Apart from the Board's preference, Fed. R. Civ. P. 37(c)(1) provides for a self-executing sanction barring the use of documents or testimony not properly disclosed in the mandatory disclosures. See *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 USPQ 2d 1890, 1892 (TTAB 2011)("evidence that was not provided ... generally and automatically is excluded under Fed. R. Civ. P. 37(c)"). Stated differently, where the disclosures are not timely supplied by the proponent during the course of discovery, they cannot be used in the action, and no motion is necessary to enforce this provision. As applies in this matter, the

The Board should not countenance the procedural game playing employed by Opposer. For if it does, the Board would no doubt encourage the filing of similarly manipulative, strategic motions to extend deadlines, which is a tactic the Board seeks to prevent in its rulemaking. See *Lumme*, 53 USPQ 2d at 1760, citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 63 Fed. Reg. at 48086 and 48091, 1214 TMOG at 149 and 154.

To be sure, the tactics of Opposer to deny Applicant the documents in the Opposer's mandatory disclosures, which is an affront to the opposition protocol, provides a further basis to deny the motion for an extension. The Board, instead, should leave the current dates. This will serve as notice that the Board's directives cannot be contorted by parties to gain leverage where a party abuses the privilege of an extension.

CONCLUSION

For all of the reasons stated more fully above, the motion of Goya Foods for an extension of time should be denied.

Respectfully submitted,

June 24, 2015

By: s/Dennis F. Gleason
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

---

failure of Oppposer to produce the information in identified its mandatory disclosures, results in a complete bar of such documents.

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on June 24, 2015, a copy of the applicant's response to the opposer's motion for an extension of time was served by first class mail on

Stephen L. Baker
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

June 24, 2015

s/Dennis F. Gleason
Dennis F. Gleason

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

In the Matter of Trademark Application Serial No. 86060111
For the mark: GoYoGo FROZEN YOGURT
Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

DECLARATION OF DENNIS F. GLEASON IN SUPPORT OF
RESPONSE OF APPLICANT TO OPPOSER'S MOTION FOR EXTENSION OF TIME

I, Dennis F. Gleason, declare:

1. I am an attorney at law admitted to practice in New Jersey and a partner in the firm Jardim, Meisner & Susser, PC, counsel for Applicant GoYoGo Frozen Yogurt LLC.

2. I make this declaration on behalf of Applicant in response to Opposer Goya Foods, Inc.'s motion for extension of time.

3. Attached as Exhibit 1 is a copy of Opposer's initial disclosures, dated June 12, 2015.

4. Attached as Exhibit 2 is a copy of letter Dennis F. Gleason to Stephen L. Baker, dated June 23, 2014.

5. Attached as Exhibit 3 is a copy of an email string between Dennis F. Gleason and Baker, the most recent dated July 3, 2014.

6. Attached as Exhibit 4 is a copy of 9 letter Dennis F. Gleason to Stephen L. Baker, dated July 9, 2014.

7. Attached as Exhibit 5 is a copy of Applicant's responses to the first requests for admissions of Opposer, dated July 14, 2014.

8. Attached as Exhibit 6 is a copy of Applicant's responses to the first set of interrogatories of Opposer, dated July 28, 2014.

9. Attached as Exhibit 7 is copy of a letter Stephen L Baker to Dennis F. Gleason, dated August 18, 2014.

10. Attached as Exhibit 8 is a letter Dennis F. Gleason to Stephen L. Baker, dated August 21, 2014.

11. The parties conducted a meet and confer concerning discovery issues by telephone on August 27, 2014. I advised counsel for Opposer that certain requests asking for discovery on "yogurt" were objectionable because Applicant sells "frozen yogurt" which is a product different from "yogurt."

12. Attached as Exhibit 9 is copy of a chain email between Jason DeFrancesco and Dennis F. Gleason, with the most recent date August 28.

13. Attached as Exhibit 10 is a copy of Opposer's response to Applicant's request for production of documents, dated September 5, 2014.

14. Attached as Exhibit 11 is copy of Applicant's amended responses to the first set of interrogatories of Opposer, dated December 10, 2014.

15. Attached as Exhibit 12 is copy of Applicant's amended responses to the first requests to admit of Opposer, dated December 10, 2014.

16. Attached as Exhibit 13 is a copy of a letter Jason DeFrancesco to Dennis F. Gleason, dated December 30, 2014.

17. The parties convened a second meet and confer telephone conference regarding discovery on January 14, 2015. As part of that conference, I reiterated that the term "related" in the context of the requests to admit of Opposer is subject to multiple interpretations and Applicant could not reasonably respond to requests 17-23, notwithstanding the fact that Applicant sells frozen yogurt and does not sell, a different product.

18. In that same conference call, I again pointed out that Opposer had failed to produce any documents, especially those identified in Opposer's mandatory disclosures. Counsel for Opposer said he would follow up on my comment. No documents were ever produced and I received no further communications from counsel for Opposer on that subject.

19. Attached as Exhibit 14 is copy Applicant's second amended responses to the first set of interrogatories of Opposer, dated January 23, 2015.

20. Attached as Exhibit 15 is copy of Applicant's second amended responses to the first set of requests to admit of Opposer, dated January 23, 2015.

21. Attached as Exhibit 16 is copy of a letter Dennis F. Gleason to Jason DeFrancesco, dated January 28, 2015.

22. Attached as Exhibit 17 is a copy of a letter from Jason DeFrancesco to Dennis F. Gleason, dated April 8, 2015.

23. Attached as Exhibit 18 is copy of a letter Dennis F. Gleason to Jason DeFrancesco, dated April 13, 2015.

24. Attached as Exhibit 19 is copy of a letter Jason DeFrancesco to Dennis F. Gleason, dated May 27, 2015.

I declare that the statements made by me above are true. I understand that if any statement is willfully false, I may be subject to punishment.

June 24, 2015

By: s/Dennis F. Gleason
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

EXHIBIT 1

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

----------X

Goya Foods, Inc.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant,

----------X

Opposition No. 91215657

Mark:

Serial No. 86060111

Mark: GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION

Serial No. 86037364

INITIAL DISCLOSURES

Opposer, Goya Foods, Inc. ("Goya"), by and through its attorneys, Baker and Rannells, PA, hereby makes its Initial Disclosures as required by Trademark Rule §2.120.

GENERAL MATTERS

By identifying certain individuals and categories of documents, Goya does not waive or intend to waive, but on the contrary preserves and intends to preserve, all privileges concerning information and documents that are subject to the attorney-client privilege, the work product doctrine and any other privilege available under federal or state statutory, constitutional or common law.

These disclosures are made subject to Goya's continuing investigation of facts underlying its defenses and assertions in this Opposition proceeding and, therefore, Goya expressly reserves its right to supplement, amend, correct, or modify these Initial Disclosures as its ongoing investigatory or discovery efforts reveal further information or documents.

All references to the mark and name GOYA include, without limitation all marks and names as set forth in paragraph 10 of the Notice of Opposition in this proceeding and are referred to herein as the "GOYA Marks and/or Names".

OPPOSER'S INITIAL DISCLOSURES

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information:

The following list identifies those individuals likely to have discoverable information that Goya may use to support its claims (and defenses, if any) as alleged in the Notice of Opposition or in other pleadings in this proceeding. Goya's response is based on information presently available to it, and it reserves the right to supplement this list as discovery progresses.

Subject to these qualifications, Goya discloses the following:

Conrad Colon
c/o Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869

Subjects of information:

- Opposer's GOYA and variation brand product line and services and the sale of products and the offering of services under the GOYA Marks and/or Names.
- The fame and notoriety of Goya and of the GOYA Marks and/or Names.
- Adoption and use of the GOYA Marks and/or Names by Goya.
- Opposer's product lines in general, including without limitation, a description of the products and services of Goya.
- Opposer's products and products distributed by Goya.
- The GOYA Marks and/or Names and variations trademark registrations owned by Goya.
- Marketing, advertising and promotion of products and services bearing the GOYA Marks and/or Names.
- Annual sales figures and advertising expenditures concerning products and services bearing the GOYA Marks and/or Names.

Joseph Perez
c/o Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869

Subjects of information:

- Opposer's GOYA and variation brand product line and services and the sale of products and the offering of services under the GOYA Marks and/or Names.
- The fame and notoriety of Goya and of the GOYA Marks and/or Names.
- Adoption and use of the GOYA Marks and/or Names by Goya.
- Opposer's product lines in general, including without limitation, a description of the products and services of Goya.
- Opposer's products and products distributed by Goya.
- The GOYA Marks and/or Names and variations trademark registrations owned by Goya.
- Marketing, advertising and promotion of products and services bearing the GOYA Marks and/or Names.
- Annual sales figures and advertising expenditures concerning products bearing the GOYA Marks and/or Names.

B. A copy of, or a description by category and location of, all documents, data compilations and tangible things that are in the possession custody or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment:

The following list identifies the documents in Goya's possession custody or control that Goya may use to support its claims and/or defenses. Goya reserves the right to supplement this list as discovery progresses.

- Trademark registration records.
- Photographic images of Goya's products and services bearing the GOYA Marks and/or Names.
- Advertising and promotional materials showing product and services bearing the GOYA Marks and/or Names.
- Documents evidencing Goya's sales of products and services bearing the GOYA Marks and/or Names.
- Sales and advertising reports of Goya as they relate to products and services bearing the GOYA Marks and/or Names.
- Applicant's corporate business and historical records as they relate to products bearing the GOYA Marks and/or Names.
- Third party articles and other documents showing the fame and notoriety of the GOYA Marks and Names.
- Business documents concerning Applicant's products and services.

Dated: June 12, 2014

Stephen L. Baker
BAKER and RANNELLS, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640
Attorneys for Opposer
Goya Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 12th day of June, 2014 to counsel for Applicant at the following address:

DENNIS F GLEASON
JARDIM MEISNER & SUSSER PC
30B VREELAND RD STE 201
FLORHAM PARK, NJ 07039

Stephen L. Baker

EXHIBIT 2

Jardim, Meisner & Susser, P.C.
ATTORNEYS AT LAW

30B Vreeland Road, Suite 201
Florham Park, NJ 07932
office: (973) 845-7640
fax: (973) 845-7645
web: jmslawyers.com

June 23, 2014

VIA EMAIL AND FIRST CLASS MAIL

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt LLC
Opposition No. 91215657

Dear Steve:

On behalf of GoYoGo Frozen Yogurt, LLC, kindly produce within the next ten days a copy all documents identified in the initial disclosures of Goya Foods, Inc., dated June 12, 2014.

When providing the documents, kindly include an identification of the materials keyed to the categories in the initial disclosure.

If you should have any questions, please feel free to contact me.

Very truly yours,

DENNIS F. GLEASON

EXHIBIT 3

Dennis Gleason

From: Steve Baker <S.Baker@br-tmlaw.com>
Sent: Thursday, July 3, 2014 10:08 AM
To: Margaret Davis-Engel
Cc: Dennis Gleason; R. McGonigle; K. Hnasko
Subject: RE: Goya Foods, Inc. v. GoYoGo Frozen Yogurt

I am unaware of any TTAB or FRE rule that requires a substantive response to your letter of June 23, 2014. Accordingly, you demand is rejected.

Steve

Stephen L. Baker

Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869
Telephone: (908) 722-5640
Facsimile: (908) 725-7088
E-mail: s.baker@br-tmlaw.com
www.tmlawworldwide.com

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

From: Margaret Davis-Engel [mailto:Margaret@jmslawyers.com]
Sent: Monday, June 23, 2014 3:45 PM
To: Steve Baker
Cc: Dennis Gleason
Subject: Goya Foods, Inc. v. GoYoGo Frozen Yogurt

Please see attached correspondence with regard to the above matter. Original to follow via U.S. Mail.

Margaret Davis-Engel
Legal Assistant
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07932
Phone: 973-845-7640
Fax: 973-845-7645
Margaret@JMSLawyers.com
www.jmslawyers.com

EXHIBIT 4

Jardim, Meisner & Susser, P.C.
ATTORNEYS AT LAW

30B Vreeland Road, Suite 201
Florham Park, NJ 07932
office: (973) 845-7640
fax: (973) 845-7645
web: jmslawyers.com

July 9, 2014

VIA EMAIL AND FIRST CLASS MAIL

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt LLC
Opposition No. 91215657

Dear Steve:

I am replying to your email dated July 3, 2014.

First, I believe in the haste of responding to my earlier letter, you make a reference to the "FRE," which I presume you mean to be the Federal Rules of Evidence. I take that this was an error on your part and you intended to cite to the Federal Rules of Civil Procedure.

That aside, while there is no "rule" that specifically mandates the production of documents disclosed in initial disclosures, I call your attention to the *Influance v. Zuker*, 88 USPQ2d 1859 (TTAB 2008). More particularly footnote 4 which reads:

> The most efficient means of making initial disclosures of documents, and the option the Board encourages parties to use, is to actually exchange copies of disclosed documents, rather than merely identifying their location.

I therefore encourage you to revisit your view and subscribe to the authority of *Influance* and produce all the documents identified in the Rule 26 disclosures of Goya, with an identification of the materials keyed to the categories in the initial disclosures.

If you should have any questions, please feel free to contact me.

Very truly yours,

DENNIS F. GLEASO

EXHIBIT 5

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

In the Matter of Trademark Application Serial No. 86060111

For the mark: GoYoGo FROZEN YOGURT

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

RESPONSES OF APPLICANT TO FIRST
REQUESTS FOR ADMISSION BY OPPOSER

GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") responds to the first request for admissions by Goya Food, Inc. ("Goya Foods" or "Opposer") as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term "GOYOGO trademark" is undefined. Subject to the objections raised, Applicant is unable to respond.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States

RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous and object to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the stylized mark

RESPONSE: GoYoGo Frozen Yogurt objects to the term "GOYOGO formative mark" as vague and ambiguous and the term "Services" as unintelligible. Subject to objections raised, Applicant is unable to respond.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined.

Subject to the objections raised, Applicant is unable to respond.

19. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and " fruit beverages" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "frozen confections" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.

RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.

34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.

35. Admit that the Services offered or sold under _____ Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "consumers" and "restaurants" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

36. Admit that the Services offered or sold under _____

Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "grocery stores" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable to respond.

37. Admit that the Services offered or sold under the

Mark are intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term "intended to be requested orally by potential customers" is vague, ambiguous and undefined; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which

Services can be offered or sold to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "U.S. consumers" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or

restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "unstylized word mark" and "on the way" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the objections raised, Applicant is unable to respond.

40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer sell

Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the "class of customer" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

41. Admit that the applications being opposed place no limitations or restrictions on the channels of trade through which Applicant can promote or offer

Services to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "channels of trade" and "U.S. consumers" as vague, ambiguous and undefined and objects to the term "Services" as unintelligible. Subject to the objections the Application is unable to respond.

42. Admit that the applications being opposed places no limitations or restrictions on

the retail price or intended retail price at which Applicant can sell

Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term "GOYO" as not relevant to this action; objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: GoYoGo Frozen Yogurt objects to the "sale of beverages" as vague, ambiguous and undefined. Subject to objection raised, Applicant is unable to reasonable respond as discovery has only begun.

45. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

46. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

July 14, 2014

By: _____
Dennis F. Gleason

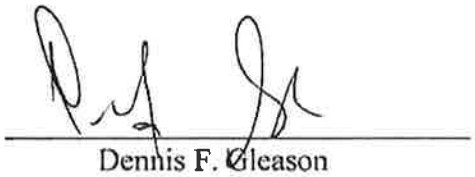
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on July 14, 2014, a copy of the response of applicant was served by email on:

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

EXHIBIT 6

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

In the Matter of Trademark Application Serial No. 86060111

For the mark:

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

RESPONSE OF APPLICANT TO FIRST SET OF INTERROGATORIES OF GOYA FOODS

GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") responds to the first set of interrogatories of Goya Foods, Inc. ("Goya Foods" or "Opposer") as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

RESPONSE: GoYoGo Frozen Yogurt sells frozen yogurt products.

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "Service" as unintelligible. Subject to the objection and as understood by Applicant, it sells frozen yogurt products.

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory are four separate questions as two marks are being opposed; objects to the term "Service" as unintelligible and objects to the term "first use" as ambiguous. Subject to the objections and as understood by Applicant, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory is two separate questions as two marks are being opposed. Subject to the objection raised, there are no licenses.

INTERROGATORY NO. 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

(a) The quantity of yogurt products sold by Applicant under the Mark Being Opposed ;

(b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and

(c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

(a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.

(b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.

(c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

RESPONSE: GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "interrupted" as vague and undefined. Subject to the objections raised and as understood by Applicant, the use of the marks at issue has been continuous.

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions and shall be treated as such. Subject to the objection raised and as understood by Applicant, it has advertised including by way of its website, local newspapers, flyers, word of mouth, Facebook and Twitter.

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

> RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the terms "any other type of search," "relating or referring to" and "identify the person(s) most knowledgeable thereof" as vague and undefined; objects to "all documents" as overly broad. Subject to the objections raised and as understood by Applicant, a search was undertaken by a third party at the direction of counsel for Applicant and a search report was generated by the third party.

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can contacted through counsel for Applicant.

INTERROGATORY NO. 12: State whether you are aware of any instances or

occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

(a) The person(s) confused or mistaken or making an inquiry;

(b) The substance or content of any such confusion, mistake or inquiry;

(c) The date on which any inquiry was made; and

(d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of four separate interrogatories and shall be treated as such. Subject the objections raised, Applicant is not aware of any incidents of confusion.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "class of customer" as vague and ambiguous; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "channels of trade" as vague and ambiguous; and the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents being produced to Goya.

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption, any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least four separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to "all facts" as overly broad; objects to the terms "adoption" and "relating to" as vague and ambiguous. Subject to the objections raised and as understood by Applicant, the GoYoGo portion was chosen as it is an easy phrase to remember which can be associated with frozen yogurt and the "Frozen Yogurt" portion emphasizes the product being offered. The design mark was created by way of a design tournament. The chosen design was later subject to certain changes.

The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third-party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

(a) All identifying information about the party or parties using such mark;

(b) The dates of such use; and

(c) The geographic area(s) of such use; and

(d) All persons with knowledge and all documents relating to or relating to any such use.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous; objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "consumer product or service" as vague and ambiguous; objects to reference to the term "GOYO" as not likely to lead to the discovery of admissible evidence as "GOYO" is not part of the subject matter of the opposition.

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it that has no counterclaims and the cancellation referred to is not likely to lead to admissible evidence.

INTERROGATORY NO. 21: State all facts that you relied on to support the

affirmative defenses set forth in the answer filed by you in these proceedings.

RESPONSE: The GoYoGo Frozen Yogurt Marks are dissimilar in appearance, sound and meaning from the following marks identified in opposition
GO GOYA
GOYA
GOYO
... IF IT IS GOYA IT HAS TO BE GOOD
... IF IT IS GOYA IT HAS TO BE GOOD and design
SI ES GOYA TINE QUE SER BUENO
JOYAS DE GOYA
GOYA LATIN CAFÉ

(collectively the "Goya Marks").

There is are no incidents of confusion between the GoYoGo Frozen Yogurt Marks and the Goya Marks and there is no likelihood of such confusion.

One or more of the Goya Marks are not famous and therefore is not likely to be diluted.

The products sold under the GoYoGo Frozen Yogurt Marks are different from the products sold under the Goya Marks.

The products sold under the GoYoGo Frozen Yogurt Marks are not sold in the same manner as the Goya Marks.

The GoYoGo Frozen Yogurt Marks have been and continue to be used in commerce.

July 29, 2014

By: _____
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATION

I certify that the foregoing statements made by me in the factual information in the foregoing answers to interrogatories are true. I understand that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

Dated: 7/28/14

Joseph Ciolli

CERTIFICATE OF SERVICE

I certify that on July 30, 2104 a copy of the responses of Applicant to the first request for production of documents was sent by email to

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Dennis F. Gleason

EXHIBIT 7

STEPHEN L. BAKER, ESQ.
575 ROUTE 28
RARITAN, NJ 08542
(908) 722-5640
SLB@BR-TMLAW.COM

August 18, 2014

VIA ELECTRONIC DELIVERY and U.S. MAIL
Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.
United States Patent and Trademark Office, Trademark Trial and Appeal Board
Opposition No. 91215657
Request for Meet and Confer regarding Applicant's Objections and Responses to Goya's Initial Discovery Requests

Dear Mr. Gleason:

This letter serves as Goya's request that counsel meet and confer via telephone to address: (I) the failure of GoYoGo Frozen Yogurt, LLC ("Goyogo") to respond to Goya's interrogatories; as well as, (II) -(III) the deficiencies in Goyogo's responses and objections to the Requests for Production and Requests for Admissions.

Our time is likely better served discussing these matters telephonically. In an overabundance of caution, however, I will outline in very broad strokes the issues we need to discuss. The main purpose of this letter is to ask that you provide us with several dates and times when we can conduct a meet and confer, as contemplated under the Trademark Rules of Practice. I am general availability August 26-28.

The deficiencies are outlined below, in broad strokes:

I. Goya's First Set of Interrogatories

Interrogatories were served June 12, 2014 by mail directed to Jardin, Meisner & Susner, P.C. and should have been responded to by mail no later than July 17, 2014.

You did not timely respond to the interrogatories and presumably are unable to show how the failure was based on "excusable neglect." Accordingly, Goyogo must provide complete responses, without objection. See *No Fear, Inc. v. Ruede D. Rule*, 54 USPQ2d 1551 (TTAB 2000) and See TBMP 403.03. At this point, we would rather not litigate the matter and can refrain from seeking an order compelling answers to interrogatories, if and only if you provide us complete responses, without objection, within the next 10-days. The fact that you served responses by email is of no moment unless you can point to a rule or stipulation providing for such service.

II. Applicant's Responses to Goya's First Requests for Admissions

A response to a request for admission must comply with Fed. R. Civ. P. 36(a)(4). The Rule states in relevant part:

> If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

If a response does not comply with the requirements of Rule 36, the Board may order either that the matter is admitted or that an amended answer be served. *Id. See also*, Trademark Rule 2.120(h).

In response to Admission Request ("Admission") No. 1, Goyogo objected alleging that the term "GOYOGO trademark" is undefined. The objection is astounding given that you filed an application to register the mark. Because the term is unequivocal to mean any expression that incorporates "GOYOGO" that is intended to be used as a trademark, the response does not comply with Rule 36. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Admission Nos. 17, 18, 19, 20, 21, 22, and 23 ask Goyogo to admit certain goods are related. The term "related goods" is a recognized term of art in trademark law as anyone who practices in this area knows. Therefore, objections that the term "related" is "vague, ambiguous and undefined" is not responsive. As a seasoned attorney presumably familiar with U.S. Trademark Law, you must know the meaning of term "related goods." If you honestly do not know it meaning, then shame on you. In any event, the TMEP has a section devoted to "Relatedness of Goods." See TMEP 1207(a)(vi). It is settled that relatedness of goods is a factor in the determination of a likelihood of confusion — an issue central to this proceeding. *See Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ 2d 1424 (TTAB 2013). Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Admission Nos. 2, 3, 4, 35, 36, 37, 38, 40, 41, and 42, Applicant objects to the term "Services" as being "unintelligible" (i.e., "impossible to understand"). Because this is a trademark preceding that concerns service marks filed by the Applicant over your signature, the response is not only highly-questionable but disingenuous. You personally filed the applications being opposed and you personally described the services as "Self-serve frozen yogurt shop services." It appears you knew the meaning of "services" when you filed the applications. Are we to believe you do not know now? Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Admission Nos. 35, 36, 38, 40, 41, 43, and 44 Goyogo objects to terms: "consumers," "restaurants," "grocery stores," "U.S. consumers," "class of customer," "channels or trade," and "sale of foods" which it finds to be vague, ambiguous and undefined. The terms

objected to have clear and unequivocal meaning, particularly in the realm of trademarks and especially in the context in which they are used. Applicant must withdraw the objections and respond to the requests or face a motion to compel

Admission No. 37, asks Applicant admit its intent regarding potential-purchaser's vocalization of the Applicant's mark. Contrary to Applicant's response, the request is not vague, ambiguous or undefined as sound of a mark is a factor considered by the TTAB and the courts when considering likelihood of confusion. *See Krim-Ko Corp. v. The Coca-Cola Co.*, 390 F.2d 728, 55 C.C.P.A. 903, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion"). The response does not comply with the requirements of Rule 36. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Admission Nos. 43, 44, and 46 Applicant states that it is "is unable to reasonable [sic.] respond as discovery has only begun." This is an impermissible response as it otherwise allows a party to completely avoid responding to requests for admission. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

III. Applicant's Response to Opposer's Request for Production of Documents

It appears that in many instances Goyogo makes broad unsubstantiated objections and then states that "it will produce representative documents." No documents were provided with Applicant's responses other than a search report that disclosed Opposer's Marks. Please advise when you will produce all responsive documents.

With respect to Document Request ("Request") Nos. 10, 12, 15, 23, 24, 25, and 28, Applicant objects to the term "Services" as being "unintelligible" (i.e., "impossible to understand"). This is a trademark preceding that concerns service marks filed by the Applicant over your signature. It is impossible for the Applicant not to understand the term "Services" when used in context of its own marks. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Goyogo objects to a number of Requests, namely Nos. 3, 4, 8, 11, 17, 18, 19, 21, on the grounds that the requests are purportedly "not likely to lead to discovery of admissible evidence." Applicant offers no factual basis to support its broad unsubstantiated boiler plate objection. As you must know, boilerplate generalized objections are "tantamount to no objection at all" and are routinely overruled by the TTAB. See, e.g., *Amazon Techs., Inc. v. Wax*, 93 USPQ2d 1702 (TTAB 2009). Goyogo has wholly failed to satisfy its burden of explaining how each discovery request is purportedly not relevant. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Request Nos. 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23, 25, 26, 27, 29, 30, and 31 Goyogo objects to terms which it finds to be either vague, ambiguous, and/or undefined. The terms objected to have clear and unequivocal meaning, particularly in the realm of trademarks, especially in the context in which they are used. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Finally, with regards to Request No. 16, Goyogo objects "to producing documents which are part of objected to interrogatories." In light of the fact that it failed to timely respond to

Opposer's interrogatories, your response is non-responsive. Applicant must withdraw the objections and respond to the interrogatories in full and without objection and produce any identified documents or face a motion to compel.

I do not think it is productive to go through each and every response to address the noted objections or deficiencies. I think our time is better spent discussing these matters by phone and determining what, if anything, that Goyogo is prepared to do to withdraw unsupportable objections and supplement its responses. We look forward to hearing from you in regards to the above and addressing deficiencies thereof as provided for in the trademark rules of practice.

Very truly yours,
Baker and Rannells, P.A.

Stephen L. Baker

Cc: Goya Foods, Inc.

EXHIBIT 8

Jardim, Meisner & Susser, P.C.
ATTORNEYS AT LAW

30B Vreeland Road, Suite 201
Florham Park, NJ 07932
office: (973) 845-7640
fax: (973) 845-7645
web: jmslawyers.com

August 21, 2014

VIA EMAIL AND FIRST CLASS MAIL

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt LLC
Opposition No. 91215657

Dear Steve:

I am responding to your letter dated August 18.

With regard to your request to discuss discovery issues, I am available August 27 between noon and 3:30 p.m.; August 28 between 9:30-11:30 a.m. and 3:00-5:00 p.m. Kindly let me know what works for you.

In addition to the items identified in your letter, I note that by letters dated June 20 and July 9, I had requested production of the documents identified in Goya's initial disclosures. To date, I not received the documents. Accordingly, we will need to discuss the failure of Goya to respond to my requests for those documents.

If you should have any questions, please feel free to contact me.

Very truly yours,

DENNIS F. GLEASON

EXHIBIT 9

Jason L. DeFrancesco

From: Dennis Gleason <dgleason@jmslawyers.com>
Sent: Thursday, August 28, 2014 6:35 PM
To: Jason L. DeFrancesco
Cc: Steve Baker; K. Hnasko
Subject: RE: Goya v Goyogo; Opposition No. 91215657

Jason,

First, I want to make clear that there were no deficiencies in the discovery responses. Indeed, the correctness of the responses is underscored by the fact that based on the discussions, Goya has amended the discovery requests, including better defining the vague and undefined objectionable terms in the requests.

Regarding my multiple written requests for production of documents identified as part of Goya's initial disclosures, which is what I believe you are referring to, I understood from Steve's remarks that Goya did not have to produce the documents or make them available for inspection. That is simply wrong. I am also not sure what you define as "informal requests" or under what authority Goya contends that it does not have to respond to the letter requests. I point out that the letters comply with TBMP 406.03. Nonetheless, Goya has elected to withhold production without good cause.

Based on the context of your email, I presume that you were present during the conference call, although your presence was not noted to either me or my partner Jessica Battaglia. I would expect in the future that you or your colleague would not conceal your presence in conference calls. That is the "professional" thing to do.

As to the remark about raising my voice during the conference call, I will not address your remarks as they do not warrant serious discussion. Suffice it to say, I am entitled to the courtesy to be heard in a conversation when attempts are made to stop me from participating in a conversation.

Lastly, as to available dates because you would like to take my deposition, initially, I am not aware of any reasonable basis in this case to take the deposition of counsel. Consequently, I decline your invitation.

Regards

Dennis

From: Jason L. DeFrancesco [mailto:JLD@br-tmlaw.com]
Sent: Wednesday, August 27, 2014 8:53 PM
To: Dennis Gleason
Cc: Steve Baker; K. Hnasko
Subject: Goya v Goyogo; Opposition No. 91215657

Dear Dennis,

In furtherance of our call today discussing your deficient discovery responses, I want to make sure we are clear on the matters.

First off, do not raise your voice and yell at anyone at B & R. We are professionals, and I expct you to act accordingly. Not only is it a matter of respect and decency, but it is a requirement in the legal profession.

Further, with regards to Goya's Admission Requests: you will revisit the deficient responses and this time understand the terms you objected to as having the usual definition *according to U.S. Trademark Law*. With regards to materials you requested by letter or e-mail, be reminded that we are not required to respond to informal requests. We will respond to properly served discovery requests that you serve to us by regular U.S. mail.

Finally, we would like to take your deposition, and ask for your available dates or we shall arbitrarily choose.

Regards,
Jason

Jason L. DeFrancesco, Esq.
575 Route 28, Ste 102
Raritan, New Jersey 08869
(908) 722-5640
jld@br-tmlaw.com

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

EXHIBIT 10

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

Goya Foods, Inc.,	)	
	)	Opposition No. 91215657
Opposer,	)	
	)	
	)	
	)	Mark:
v.	)	Serial No.: 86060111
	)	
Goyogo Frozen Yogurt, LLC,	)	Mark: GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION
	)	
Applicant.	)	Serial No.: 86037364
	)	

GOYA FOODS, INC.
RESPONSE TO APPLICANT'S REQUEST FOR PRODUCTION

COMES NOW, the Opposer, Goya Foods, Inc., by and through the undersigned and pursuant to 37 CFR §2.120 and Rule 34 of the Federal Rules of Civil Procedure, Opposer hereby objects and responds to Applicant's Request for Production ("Requests") as follows,

PRELIMINARY STATEMENT

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Opposer at the present state of this proceeding. Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in Opposer's response to each and every Request below.

1. The specific responses set forth below and any documents and or things produced are for the purposes of discovery only, and Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, document or thing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects, documents or things covered by such response or production.

2. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information and or documents or things, or information, documents or things omitted from the specific response set forth below or as part of production, as a result of mistake, oversight or inadvertences.

3. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Requests, and reserves its right to amend or to supplement its response in the event Applicant asserts an interpretation that differs from Opposer's interpretation and or serves updated discovery requests with clearer definitions.

4. By making these responses, Opposer does not concede it is in possession of any information, document or thing responsive to any particular Request or that any response given or document or thing produced is relevant to this action.

5. Opposer's failure to object to a particular Requests is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any information, document or thing, nor does it constitute a representation that any such information, document or thing in fact exists.

6. Because Opposer may not have discovered all the information, documents or things that are possibly within the scope of the Requests, it expressly reserves its right to amend or to supplement these Responses and Objections with any additional information, document or thing that emerges through discovery or otherwise.

7. Opposer objects to the Requests to the extent that they require the production of documents or things protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunity. Opposer responds to the Requests on the condition that the inadvertent response or production regarding information, documents or things covered by such privilege, rule, doctrine, or immunity does not waive any of its rights to assert such privilege, rule, doctrine, or immunity and the Opposer may withdraw and request the return of any such response, document or thing inadvertently made or produced as soon as identified.

8. Opposer objects to the Requests to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Requests on the condition that the inadvertent responses or production of documents or things regarding any proprietary, sensitive, or confidential information, document or thing does not waive any of its rights and that it may withdraw and request the return of any such response, document or thing inadvertently made as soon as identified.

9. Opposer objects to the Requests to the extent that they seek information, documents or things that are beyond the United States and or not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to the Requests to the extent that they are confusing, vague, ambiguous and overbroad and therefore not susceptible to a response as propounded.

11. Opposer objects to the Requests to the extent that they exceed the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

12. Opposer objects to the Document Request to the extent that they require Opposer to undertake any investigation to ascertain information, documents or things not presently within its possession, custody or control on the grounds of undue burden and because information, documents and things from other sources are equally available to Applicant.

13. Opposer objects to the Requests to the extent that they require Opposer to undertake such an extensive review that such Requests are unduly burdensome and harassing.

14. Opposer objects to the Requests to the extent that they seek documents concerning matters outside the United States.

15. Opposer object to the demand to produce all documents as it imposes an obligation beyond what is required by the Rules applicable to this proceeding.

16. Opposer objects to the Requests to the extent they are compound or complex sentences, not restricted to a single relevant fact.

17. Opposer objects to the Requests to the extent that they seek information regarding facts or law that is unrelated to the instant case.

OBJECTION TO INSTRUCTIONS AND DEFINITIONS

1. Opposer objects to the instruction that "all definitions and instructions are to be broadly interpreted." This is ambiguous and counter-intuitive. Any definition or instruction should be specific, clear and concise, otherwise it is objectionable.

2. Opposer objects to the instruction that "Goya Foods" means Opposer and any agent, employee or representative as overly broad and unduly burdensome.

3. Opposer objects to the definition of "Goya Marks" to include "variations of those marks" as it is confusing and obscure.

RESPONSES

Request 1 To the extent not already produced, all documents identified in the initial disclosures of Goya Foods and subsequent and or amended disclosures, identifying the materials keyed to the categories in the initial disclosure.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and intelligible as Opposer cannot produce documents it does not know exist. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 2 All documents identified, either specifically or generally, in response to any interrogatories of GoYoGo Frozen Yogurt directed to Goya Foods, including subsequent responses and amended responses, identifying which documents are responsive to which interrogatories.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and intelligible as Opposer cannot produce documents it does not know exist. Furthermore, Opposer incorporates all its answers and objections to the interrogatories therefore.

Request 3 Six samples of each product using the mark **Go Goya,** under registration no. 1774726.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 4 Six samples of each product using the mark **Goya,** under registration no. 2502127.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 5 Six samples of each product using the mark **Goya,** under registration no. 1354559.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 6 Six samples of each product using the mark **Goya,** under registration no. 3532388.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 7 Six samples of each product using the mark **Goya,** under registration no. 0764033.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 8 Six samples of each product using the mark **If it Goya it has to be good**, under registration no. 3001516.

Response: Opposer objects to the identification of the mark. Further, Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 9 Six samples of each product using the mark **If it Goya it has be good (and design)**, under registration no. 0942879.

Response: Opposer objects to the identification of the mark. Further, Opposer objects to the Request because it is overly broad, unduly burdensome and

harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 10 Six samples of each product using the mark **Si es Goya Tiene que ser bueno**, under registration no. 1122501.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 11 Six samples of each product using the mark **Si es Goya tiene que ser bueno**, under registration no. 4210054.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 12 Six samples of each product using the mark **Joyas de Goya**, under registration no. 1859228.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 13 Six samples of each product using the mark **Joyas de Goya**, under registration no. 1860499.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 14 Six samples of each product using the mark **Goya**, under registration no. 1689199.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 15 Six samples of each product using the mark **Goya**, under registration no. 3640777.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 16 Six samples of each product using the mark **Goya** Latin cafe, under registration no. 3654004.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 17 Six samples of each product using the mark **Goya**, under registration no. 3570054.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 18 Six samples of each product using the mark **Goya**, under registration no. 3825092.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 19 Six samples of each product using the mark **Goya**, under registration no. 1695011.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 20 Six samples of each product using the mark **Goya,** under registration no. 0962193.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are

readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 21 Six samples of each product using the mark **Goya,** under registration no. 1283430.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 22 Six samples of each product using the mark **Goya,** under registration no. 2653723.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome and harassing. Applicant seeks products and or goods that are readily available to Applicant that can be purchased publically by Applicant without restriction.

Request 23 For the period January 1, 2004 to present, documents that identify with specificity all persons or entities to whom Goya Foods has sold products bearing any GOYO trademark.

Response: Opposer objects to the terms "all persons or entities" and "bearing any GOYO trademark" as the terms are overly broad and therefore the Request is overly broad, not likely to lead to the discovery of admissible evidence, unduly burdensome and harassing.

Request 24 Documents that identify with particularity the "goods ... which are substantially identical to" GoYoGo Frozen Yogurt's products and services, as stated in paragraph 6 of the Opposition.

Response: Opposer objects to the Request because it calls for documents and or materials readily available to the Applicant, of which has already been identified by Opposer in paragraph 6 of the Opposition as "the Opposer's Mark".

Request 25 Documents that identify with particularity the "wide variety of food and beverage goods, which are substantially identical to and generally related to" GoYoGo Frozen Yogurt's products and services, as stated in paragraph 7 of the Opposition.

Response: Opposer objects to the Request because it calls for documents and or materials readily available to the Applicant, of which has already been identified by Opposer in paragraph 7 of the Opposition as "the Opposer's Mark".

Request 26 Documents that specifically detail the "substantial sums in establishing, maintaining, and policing the GOYA mark and trade name," as stated in paragraph 14 of the Opposition, that Goya Foods has expended.

Response: Opposer objects because the request is overly broad.

Request 27 Documents sufficient to identify with specificity any opposition filed by Goya Foods in the PTO for any of the Goya Marks.

Response: Opposer objects to the terms "Goya Marks" and "any opposition," wherefore, the Request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 28 Other than oppositions filed in the PTO, documents sufficient to identify with specificity lawsuits filed by Goya Foods alleging infringement of any of the Goya Marks.

Response: Opposer objects to the terms "Goya Marks." The Request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome. Furthermore, the Request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 29 Communications between Goya Foods and any individual and or entity, where Goya Foods has alleged or stated that such individual and or entity infringes one or more of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, the Request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 30 All documents between Goya Foods and any individual or entity which discuss or describe an unauthorized use or infringement of any of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, the Request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 31 Documents that discuss or describe statements from any person or entity of any confusion, suspicion, belief or doubt on the part of said person or entity as to the relationship or affiliation between Goya Foods and GoYoGo Frozen Yogurt and or their respective goods or services.

Response: Opposer objects to the Request as overly broad and further that the Request seeks information subject to the attorney client privilege and/or work product doctrine.

Request 32 Documents of market research conducted by or on behalf of Goya Foods since January 1, 2004 that discuss or describe purchasers or potential purchasers of products Goya Foods.

Response: Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 33 Representative documents of each media through which Goya Foods has advertised the Goya Marks since January 1, 2009.

Response: Opposer objects to the term "Goya Marks." Furthermore, Opposer objects to the Request as not likely to lead to the discovery of admissible evidence, overly broad, unduly burdensome and harassing.

Request 34 For the period January 1, 2004 to present, documents sufficient to identify annual gross dollar sales by Goya Foods to other than through wholesalers or retailers.

Response: Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 35 For the period January 1, 2004 to present and for the Goya Marks, documents sufficient to identify the persons or entities to whom Goya Foods has provided goods or services other than wholesalers or retailers.

Response: Opposer objects to the term "Goya Marks." Opposer further objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 36 For the period January 1, 2004 to present, documents, including studies, surveys, market research or memoranda prepared by or on behalf of Goya Foods, discussing or describing consumer recognition of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Opposer further objects as the Request seeks information subject to the attorney client privilege

and/or work product doctrine. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 37 For the period January 1, 2004 to present documents, including studies, surveys market research or memoranda prepared by or on behalf of Goya Foods discussing or describing confusion or likelihood of confusion of any trademark with any the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Opposer further objects as the Request seeks information subject to the attorney client privilege and work product doctrine. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 37[sic] For the period January 1, 2004 to present, all documents, including studies, surveys, market research or memoranda, prepared by or on behalf of Goya Foods that discuss or describe the sale of frozen foods, yogurt or frozen yogurt by Goya Foods.

Response: Opposer objects to the Request because it is overly broad, not likely to lead to the discovery of admissible evidence, and seeks confidential proprietary information or information subject to the attorney client privilege and/or work product doctrine.

Request 38[sic] All documents in the possession, custody or control of Goya Foods that discuss or describe in any way GoYoGo Frozen Yogurt.

Response: Opposer objects to the Request because it is overly broad, not likely to lead to the discovery of admissible evidence, and seeks information subject to the attorney client privilege and/or work product doctrine.

Request 40 For the period January 1, 2004 to present, all marketing plans of Goya Foods that discuss or describe the sale of frozen food, yogurt or frozen yogurt.

Response: Opposer objects to the Request because it is overly broad, not likely to lead to the discovery of admissible evidence, and seeks confidential proprietary information or information subject to the attorney client privilege and/or work product doctrine.

Request 41 For the period January 1, 2004 to present, documents that evidence the annual gross dollar sales for frozen foods sold under any of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is overly broad, not likely to lead to the discovery of admissible evidence, and unduly burdensome.

Request 42 For the period January 1, 2004 to present, documents that evidence the annual gross dollar sales for yogurt sold under any of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is overly broad, not likely to lead to the discovery of admissible evidence, and unduly burdensome.

Request 43 For the period January 1, 2004 to present, documents that evidence the annual gross dollar sales for frozen yogurt sold under any of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is overly broad, not likely to lead to the discovery of admissible evidence, and unduly burdensome.

Request 44 All applications for trademarks filed with the PTO by Goya Foods but not yet issued for the categories of frozen foods, yogurt or frozen yogurt.

Response: The request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 45 All applications for trademarks filed by Goya Foods with the PTO for

Go Goya
Goya
Goyo
If it is Goya it has to be good
Si es Goya tiene que ser bueno
Joy as de Goya
Goya Latin Café

which have not resulted in the issuance of a federal trademark registration.

Response: The request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 46 All documents evidencing communications with third parties whom Goya Foods has alleged or charged misuse of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, the request is not likely to lead to the discovery of admissible evidence, overly broad, and harassing.

Request 47 All documents submitted to the PTO for trademark application for all of the Goya Marks.

Response: Opposer objects to the term "the Goya Marks." Opposer objects because the Request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome. Furthermore, the request is harassing as it seeks documents and/or information publically and readily available to Applicant.

Request 48 All licensing agreements of Goya Foods for use of any Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, the Request is not likely to lead to the discovery of admissible evidence, overly broad, and harassing.

Request 49 All documents showing the consent, authorization or permission given by Goya Foods to any individual and or entity to use the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 50 All assignments of ownership of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 51 All settlement agreements between Goya Foods and any individual or entity where it was Goya Foods position that use of a Goya Mark had been unauthorized by the individual or entity.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 52 For the Goya Marks, all documents that evidence that Goya Foods covenants not to sue a person or entity.

Response: Opposer objects to the term "Goya Marks." Further, the request calls for information that is confidential. And, the request is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 53 For the period January 1, 2004 to present, documents that sufficiently evidence annual gross dollar advertising and promotional expenses for each of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Further, Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, overly broad and unduly burdensome.

Request 54 For the period January 1, 2004 to present, documents that show the division of English language versus non-English language annual gross dollar advertising expenses of Goya Foods.

Response: Opposer objects to the Request because it is not likely to lead to the discovery of admissible evidence, unduly burdensome and harassing.

Request 55 For the period January 1, 2004 to present, documents that show the annual gross dollar sales for products sold under the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Opposer further objects to the Request because it is not likely to lead to the discovery of admissible evidence, unduly burdensome and harassing.

Request 56 Representative samples of the advertising for any goods or services of the Goya Marks.

Response: Opposer objects to the term "Goya Marks." Opposer further objects to the Request because it is not likely to lead to the discovery of admissible evidence, unduly burdensome and harassing.

Request 57 Documents that identify with specificity "the channels of trade" of Goya Foods, as stated in paragraph 16 of the Opposition.

Response: Opposer objects to the Request because it calls for a definition of a well-known term, "the channels of trade" and the allegation of paragraph 16 of the Opposition speaks for itself. Further, the Request is harassing, as Applicant already denied it promotes "[s]ervices through the same channels of trade as Opposer" (*see Goya's Notice of Opposition,* ¶16 and Applicant's *Answer to Notice of Opposition,* ¶16). As previously stated by Opposer, the channels of trade are unrestricted.

Request 58 Documents that identify with specificity "the relevant purchasing public" as stated in paragraph 20 of the Opposition.

Response: Opposer objects to the Request because it calls for a definition of a well-known, trademark term, "the relevant purchasing public" and the allegation of paragraph 20 of the Opposition speaks for itself. Further, the Request is harassing, as Applicant already denied its mark will among other things confuse "the relevant purchasing public" (*see Goya's Notice of Opposition,* ¶20 and Applicant's *Answer to Notice of Opposition,* ¶20).

Request 59 Documents that identify with specificity "the general consuming public" as stated in paragraph 22 of the Opposition.

Response: Opposer objects to the Request because it calls for a definition of a well-known, trademark term, "the general consuming public" and the allegation of paragraph 22 of the Opposition speaks for itself. Further, the Request is harassing, as Applicant already denied Opposer's Mark is "widely recognized by the general consuming public" (*see Goya's Notice of Opposition,* ¶22 and Applicant's *Answer to Notice of Opposition,* ¶22).

Request 60 For the period January 1, 2004 to present, documents that sufficiently identify all persons or entities to whom Goya Foods has its products.

Response: Opposer objects to the Request because it is intelligible and confusing and therefore incapable of a Response.

Request 61 Documents in the possession, custody or control of Goya Foods, that discuss or describe GoYoGo Frozen Yogurt, its products or services.

Response: Opposer objects to the Request because it calls for work product materials and/or information subject to the attorney client privilege. Furthermore, the Opposer objects to the request as overly broad, unduly burdensome and harassing, because requested documents are otherwise publically available or more readily available to the Applicant than Opposer.

Request 62 Documents in the possession, custody or control of Goya Foods that discuss or describe frozen yogurt.

Response: Opposer objects to the Request because it is overly broad, unduly burdensome, harassing and not likely to lead to the discovery of admissible evidence. Opposer further objects to the Request because it calls for work product materials and/or information subject to the attorney client privilege as something which discusses or describes frozen yogurt includes GoYoGo Frozen Yogurt.

Request 63 Documents that identify the person or persons who authorized the filing of the Opposition.

Response: Opposer objects to Request because it is not likely to lead to the discovery of admissible evidence, harassing, and requests work product materials and/or information subject to the attorney client privilege. Notwithstanding, the instant Opposition was authorized by Opposer.

Respectfully submitted,

Dated: September 5th, 2014

By: /Jason DeFrancesco/

Jason DeFrancesco
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575 Route 28, Ste. 102
Raritan, New Jersey 08869-1354
(908)722-5640

Attorneys for Opposer Goya Foods Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Response to Applicant's Request for Production* was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 5th day of September, 2014 to counsel for Applicant, Dennis F. Gleason, Esq. at the following address:

JARDIM MEISNER & SUSSER PC
30b Vreeland Rd, Suite 201
Florham Park, NJ 07039

/Jason DeFrancesco/
Jason DeFrancesco

EXHIBIT 11

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

In the Matter of Trademark Application Serial No. 86060111

For the mark: GoYoGo FROZEN YOGURT

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

AMENDED RESPONSES OF APPLICANT TO FIRST SET OF INTERROGATORIES OF GOYA FOODS

GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") amends its responses to the first set of interrogatories of Goya Foods, Inc. ("Goya Foods" or "Opposer") based on communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

RESPONSE: GoYoGo Frozen Yogurt sells frozen yogurt products.

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "Service" as unintelligible. Subject to the objection and as understood by Applicant, it sells frozen yogurt products.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, Applicant sells frozen yogurt.

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory are four separate questions as two marks are being opposed; objects to the term "Service" as unintelligible and objects to the term "first use" as ambiguous. Subject to the objections and as understood by Applicant, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory is two separate questions as two marks are being opposed. Subject to the objection raised, there are no licenses.

INTERROGATORY NO. 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

(a) The quantity of yogurt products sold by Applicant under the Mark Being Opposed ;

(b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and

(c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

(a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.

(b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.

(c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

AMENDED RESPONSE:

(c) Applicant will provide the amount of annual sales subject to a protective order.

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

RESPONSE: GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the

term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.

AMENDED RESPONSE: Subject to a protective order, Applicant will provide such information to the extent that it is maintained.

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "interrupted" as vague and undefined. Subject to the objections raised and as understood by Applicant, the use of the marks at issue has been continuous.

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions and shall be treated as such. Subject to the objection raised and as understood by Applicant, it has advertised including by way of its website, local newspapers, flyers, word of mouth, Facebook and Twitter.

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the terms "any other type of search," "relating or referring to" and "identify the person(s) most knowledgeable thereof" as vague and undefined; objects to "all documents" as overly broad. Subject to the objections raised and as understood by Applicant, a search was undertaken by a third party at the direction of counsel for Applicant and a search report was generated by the third party.

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding

the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.
>
> **AMENDED RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed.

> **AMENDED RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 12: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

(a) The person(s) confused or mistaken or making an inquiry;

(b) The substance or content of any such confusion, mistake or inquiry;

(c) The date on which any inquiry was made; and

(d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of four separate interrogatories and shall be treated as such. Subject to the objection raised, Applicant is not aware of any incidents of confusion.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "class of customer" as vague and ambiguous; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objection raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "channels of trade" as vague and ambiguous; and the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on

the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents being produced to Goya.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents produced to Goya.

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption, any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least four separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to "all facts" as overly broad; objects to the terms "adoption" and "relating to" as vague and ambiguous. Subject to the objections raised and as understood by Applicant, the GoYoGo portion was chosen as it is an easy phrase to remember which can be associated with frozen yogurt and the "Frozen Yogurt" portion emphasizes the product being offered. The design mark was created by way of a design tournament. The chosen design was later subject to certain changes.

The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third- party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If

so, identify:

(a) All identifying information about the party or parties using such mark;

(b) The dates of such use; and

(c) The geographic area(s) of such use; and

(d) All persons with knowledge and all documents relating to or relating to any such use.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous; objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "consumer product or service" as vague and ambiguous; objects to reference to the term "GOYO" as not likely to lead to the discovery of admissible evidence as "GOYO" is not part of the subject matter of the opposition.

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it that has no counterclaims and the cancellation referred to is not likely to lead to admissible evidence.

INTERROGATORY NO. 21: State all facts that you relied on to support the affirmative defenses set forth in the answer filed by you in these proceedings.

> **RESPONSE:** The GoYoGo Frozen Yogurt Marks are dissimilar in appearance, sound and meaning from the following marks identified in opposition
> GO GOYA
> GOYA
> GOYO
> ... IF IT IS GOYA IT HAS TO BE GOOD
> ... IF IT IS GOYA IT HAS TO BE GOOD and design
> SI ES GOYA TINE QUE SER BUENO
> JOYAS DE GOYA
> GOYA LATIN CAFÉ
>
> (collectively the "Goya Marks").

There are no incidents of confusion between the GoYoGo Frozen Yogurt Marks and the Goya Marks and there is no likelihood of such confusion.

One or more of the Goya Marks are not famous and therefore is not likely to be diluted.

The products sold under the GoYoGo Frozen Yogurt Marks are different from the products sold under the Goya Marks.

The products sold under the GoYoGo Frozen Yogurt Marks are not sold in the same manner as the Goya Marks.

The GoYoGo Frozen Yogurt Marks have been and continue to be used in commerce.

December 10, 2014

By:_____
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATION

I certify that the foregoing statements made by me in the factual information in the foregoing answers to interrogatories are true. I understand that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

Dated: 12/16/14

Joseph Cioffi

CERTIFICATE OF SERVICE

I certify that on December 10, 2104 a copy of the amended responses of Applicant to the first request for production of documents was sent by first class mail to

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Dennis F. Gleason

EXHIBIT 12

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

In the Matter of Trademark Application Serial No. 86060111

For the mark: GoYoGo FROZEN YOGURT

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

AMENDED RESPONSES OF APPLICANT TO FIRST REQUESTS FOR ADMISSION BY OPPOSER

GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") responds to the first request for admissions by Goya Food, Inc. ("Goya Foods" or "Opposer") based on communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term "GOYOGO trademark" is undefined. Subject to the objections raised, Applicant is unable to respond.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objections raised, Applicant is unable to respond.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous and object to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, Applicant is unable to respond.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the stylized mark

.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "GOYOGO formative mark" as vague and ambiguous and the term "Services" as unintelligible. Subject to objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "GOYOGO formative mark" as vague and ambiguous. Based on the definitions subsequently provided by counsel for Goya, subject to objections raised, and as understood by Applicant denied.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

19. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and " fruit beverages" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "frozen confections" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.

RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.

34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.

35. Admit that the Services offered or sold under the GoYoGo FROZEN YOGURT Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "consumers" and "restaurants" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of a request to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold in restaurants.

36. Admit that the Services offered or sold under the GoYoGo FROZEN YOGURT Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "grocery stores" as vague, ambiguous and undefined. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold to consumers in grocery stores.

37. Admit that the Services offered or sold under the GoYoGo FROZEN YOGURT Mark are intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term "intended to be requested orally by potential customers" is vague, ambiguous and undefined; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "intended to be requested orally by potential customers" as vague, ambiguous and undefined. Subject to the objection raised and as understood by Applicant, the request is denied.

38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which GoYoGo FROZEN YOGURT -Services can be offered or sold to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "U.S. consumers" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "unstylized word mark" and "on the way" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the objections raised, Applicant is unable to respond.

40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer sell GoYoGo FROZEN YOGURT Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the "class of customer" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by

counsel for Goya, Admitted.

41. Admit that the applications being opposed place no limitations or restrictions on the channels of trade through which Applicant can promote or offer GoYoGo FROZEN YOGURT Services to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "channels of trade" and "U.S. consumers" as vague, ambiguous and undefined and objects to the term "Services" as unintelligible. Subject to the objections the Application is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

42. Admit that the applications being opposed places no limitations or restrictions on the retail price or intended retail price at which Applicant can sell GoYoGo FROZEN YOGURT Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

AMENDED RESPONSE: Admitted.

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with

the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term "GOYO" as not relevant to this action; objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: Admitted.

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objections raised, and as understood by Applicant, admitted that GoYoGo Frozen Yogurt admits that is was a aware of one or more of Opposer's marks prior to applying to register.

47. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as not likely to lead to admissible evidence as incontestability of Opposer's marks is not a consideration in the opposition proceeding. Subject to the objection, GoYoGo denies the following:
"SI ES GOYA TIENE QUE SER BUENO" Registration No. 4210054
"GOYA" Registration No. 3825092
"GOYA" Registration No. 1283430

December 10, 2014

By: _____
Dennis E. Gleason

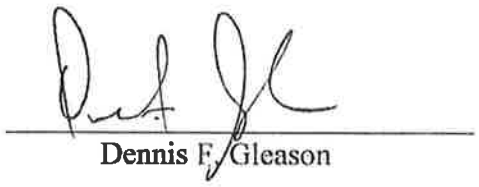
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on December 10, 2014, a copy of the amended response of applicant was served by first class mail on:

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

EXHIBIT 13

JASON DEFRANCESCO, ESQ.
575 ROUTE 28
RARITAN, NJ 08542
(908) 722-5640
JLD@BR-TMLAW.COM

December 30, 2014

VIA ELECTRONIC DELIVERY and U.S. MAIL
Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.
United States Patent and Trademark Office, Trademark Trial and Appeal Board
Opposition No. 91215657; **SECOND DEFICIENCY NOTICE**
Request for Meet and Confer regarding Applicant's Objections and Responses to Goya's Initial Discovery Requests

Dear Mr. Gleason:

Although I acknowledge the amended responses you provided, they were not only served upon us several months after our first deficiency notice to you, but also, the amended responses still are deficient. Accordingly, this letter serves as Goya's request that counsel meet and confer via telephone to address the continued failure of Applicant ("Goyogo") to fully participate in discovery. At this point, it is uncertain if our time is better served discussing these matters telephonically, or merely resorting to a motion. In an overabundance of caution, however, the following outlines most issues previously discussed and highlights how you and or your client continues to exhaust efforts to seek compliance with meaningful discovery.

Deficiencies include the following:

I. Applicant's Amended Responses to Goya's First Set of Interrogatories

As an initial matter and as previously stated, you did not timely respond to the interrogatories when first served and you have not shown how the failure was based on "excusable neglect." Therefore, all asserted objections not limited to those in Interrogatory Nos. 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are waived. Applicant must amend its responses. See *No Fear, Inc. v. Ruede D. Rule*, 54 USPQ2d 1551 (TTAB 2000).

With regards to Interrogatory No. 3, it was requested that you identify all documents relating to or evidencing first use. Although you provided an approximate date, you did not identify the documents. Notwithstanding, in addition to attending to the misplaced objections, please amend the answer.

Interrogatory No. 5 requests for each Service identified in response to Interrogatory No. 2, certain information. Because you have previously identified the Service in response to interrogatory No. 2 as "Applicant... sells frozen yogurt products" and have amended the response to be that "Applicant sells frozen yogurt" you must be able to answer Interrogatory No. 5 (a) which requests you state the quantity of yogurt products sold as well as the (b) dollar amount of those products sold. Stating that "yogurt" is not a product sold by Applicant is nonsensical. Further, while you state you will respond to Interrogatory No. 5, sub. (c) "subject to a protective order" the Standard Protective Order is in place and you have not lodged any specific objection in this regard - and have waived any objection therefore. Notwithstanding, in addition to attending to the misplaced objections, it is demanded you respond to Interrogatory No. 5 (a), (b) and (c).

Interrogatory No. 9 requests you identify searches, among other things. The Interrogatory also requests you identify the persons with most knowledge thereof. You have not identified any person. In addition to attending to the misplaced objections, completely respond.

Interrogatory No. 14 requests you identify "channels of trade" however you responded by identifying "persons who are seeking frozen yogurt products." In addition to attending to the misplaced objections, properly respond to the interrogatory.

Interrogatory No. 18 asks you to identify marks "containing" GOYO for any consumer product and service that you are aware of, among other things. In response you object to the term "consumer product and service" and allege that GOYO is not relevant or subject to the instant opposition. Be advised that it is unacceptable to deny Applicant's mark contains GOYO. Therefore, in addition to attending to the misplaced objections, properly respond to the interrogatory.

It should further go without saying that upon amending the responses to remove the objections and properly respond, Applicant must certify the answers to the interrogatories.

II. Applicant's Amended Responses to Goya's First Requests for Admissions

As previously provided to you in the last deficiency letter, a response to a request for admission must comply with Fed. R. Civ. P. 36(a)(4). The Rule states in relevant part:

> If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it...The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. If a response does not comply with the requirements of Rule 36, the Board may order either that the matter is admitted or that an amended answer be served. *Id. See also*, Trademark Rule 2.120(h).

In response to Admission Request ("Admission") No. 1, Goyogo objected alleging that the term "GOYOGO trademark" is undefined. While we have previously stated the objection is misplaced, and note that the response does not comply with Rule 36, be aware that Applicant itself coined the term the "GoYoGo Marks" in its Separated Defenses at the onset of this proceeding. Applicant must withdraw the objections and respond to the requests or face a motion testing sufficiency thereof.

Admission Nos. 2 and 3, Goyogo objected alleging that the term "unstylized" is vague and ambiguous; the objection is unfounded and harassing. While the response was discussed during our phone meeting, be advised that the term "unstylized" has specific meaning in Trademark Law when regarding a trademark. See for example, *In re Benthin Mgmt. GmbH*, 1995 TTAB LEXIS 10 (Trademark Trial & App. Bd. Sept. 13, 1995) and *Car[x] Serv. Sys. v. Exxon Corp.*, 1982 TTAB LEXIS 207 (Trademark Trial & App. Bd. Aug. 30, 1982) or merely conduct a search of the term "unstylized" with the public records of US Trademark Trial & Appeal Board Decisions. Even though response does not comply with Rule 36, Applicant must withdraw the objections and respond to the requests or face a motion testing sufficiency thereof.

Admission No. 4, GoYoGo objects to the term "GOYOGO formative mark" as vague and ambiguous. It is reiterated that Applicant itself coined the term the "GoYoGo Marks" in its Separated Defenses. Therefore, it is unclear if Applicant does not understand the term of art "formative mark" or if it does not understand the term it coined. The response does not comply with Rule 36. Applicant must withdraw the objections and respond to the request.

With regards to Admission Nos. 17, 18, 19, 20, 21, 22, and 23, Applicant objects to the term "related" as being undefined, among other things. It is concerning that Applicant does not understand the term "related" in particular with regards to goods identified as "yogurt" and "milk" or "flan". Furthermore, it is concerning that Applicant does not believe the request is relevant. See generally, In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993)(It is not necessary that the parties' goods be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the goods are *related* in some manner or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, in light of the similarity of the marks, give rise to the mistaken belief that the goods come from or are associated with the same source).

Applicant further objects to use of the following terms:

- "Fruit beverages" (Admission No. 22) which is identified in the Trademark ID Manual in Class 032; and
- "Frozen confections" (Admission No. 23) which is identified in the Trademark ID Manual in Class 030.

Accordingly, Applicant's objections are misplaced and harassing. Applicant must withdraw the objections and respond completely.

III. Applicant's Amended Response to Opposer's Request for Production of Documents

It appears that in many instances Goyogo asserts in response to Request Nos. 1, 2, 6, 10, 13, 14, 28, 31 and 32 that it has produced responsive documents. Please be aware that no documents other than a search report that disclosed Opposer's Marks has ever been produced. Is it your position that the search report is the single responsive document to all the requests above, or was this a misleading statement, in which case, please advise when you will produce all responsive documents.

Regarding Response Nos. 3, 7, 9, 15, 16, 17, 21, 23, and 24, Goyogo alleges that it will produce documents or will do so subject to a protective order. Please be advised that the standard protective order is in place. The standard protective order can be viewed by accessing <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>. Please advise when you will produce all responsive documents.

Regarding Request No. 5, Applicant objects to the term "sample of invoices" as vague and ambiguous and therefore alleges that it is unable to respond. The term "sample of invoices" in context of evidencing the offering of services is not subject to objection and is a well-known term that is not only obvious on its face, but also known and used in Trademark Law (see for example, *Byk-Gulden, Inc. v. Trimen Labs., Inc.*, 1981 TTAB LEXIS 67 (Trademark Trial & App. Bd. May 1, 1981). Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Regarding Request No. 18 (see above remarks regarding Interrogatory No. 18). Furthermore, Applicant objects to the term "that relate to" as vague and ambiguous. The objection is improper. The term is used in Definition No. 5 attached to Opposer's served Interrogatories to define "concerning" and "concern." While the definition is provided by Goya it is noted that Applicant's own instructions and definitions (in its own discovery) instruct Goya to broadly interpret "all definitions...consistent with the... applicable authority." Applicant should use Goya's provided definition or broadly interpret "that relate to" consistent with its own instructions.

Regarding Request No. 19, Applicant is asked to provide certain documents in its possession that regard Goya's consent to use the mark being opposed. Contrary to Applicant's position, the request is relevant, because if Applicant has responsive information, this shows Applicant's knowledge of Goya's ownership of the mark. But, the reasoning does not matter, as it Applicant is not the arbiter as to what is relevant or not. If Applicant has no responsive documents, then amend the response and state accordingly, otherwise produce responsive documents or face a motion to compel.

Regarding Request No. 22, Applicant objects to the terms "annual sales volume" and "in association with" as vague and ambiguous. While it is believed the objection is harassing, and already settled on the phone previously, Applicant is advised that "annual sales volume" is a common term and has well-known use in Trademark Law (see a basic search of the TTAB decisions, including for example *Lever Bros. Co. v. Epic Chems., Inc.*, 1982 TTAB LEXIS 22 (Trademark Trial & App. Bd. Nov. 29, 1982)(Likewise, "in association with" should be searched or broadly interpreted consistent with its own instructions). Applicant must withdraw the objections and respond to the requests or face a motion to compel.

We have waited several months for the amended responses which appear to be time wasted. In good faith, it was understood that you would respond properly as opposed to delay the proceedings, but that was a misinterpretation of your intent. Even though this letter appears thorough, we did not go through each and every response to address the unfounded objections or deficiencies. As a last ditch effort, I can agree to attempt to discuss these matters by phone and to narrow the issues in a motion to compel.

Kindly provide me with several dates and times when we can conduct a meet and confer, as contemplated under the Trademark Rules of Practice. I am general availability January 5-8, 2015.

Sincerely,
Baker and Rannells, P.A.

Jason L. DeFrancesco

Cc: Goya Foods, Inc.

EXHIBIT 14

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

In the Matter of Trademark Application Serial No. 86060111

For the mark:

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

SECOND AMENDED RESPONSES OF APPLICANT TO FIRST SET OF INTERROGATORIES OF GOYA FOODS

GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") amends its responses to the first set of interrogatories of Goya Foods, Inc. ("Goya Foods" or "Opposer") based on January 14, 2015 communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

RESPONSE: GoYoGo Frozen Yogurt sells frozen yogurt products.

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "Service" as unintelligible. Subject to the objection and as understood by Applicant, it sells frozen yogurt products.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, Applicant sells frozen yogurt products.

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory are four separate questions as two marks are being opposed; objects to the term "Service" as unintelligible and objects to the term "first use" as ambiguous. Subject to the objections and as understood by Applicant, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, GoYoGo Frozen Yogurt refers to documents already produced.

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory is two

separate questions as two marks are being opposed. Subject to the objection raised, there are no licenses.

INTERROGATORY NO. 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

(a) The quantity of yogurt products sold by Applicant under the Mark being opposed;

(b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and

(c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

(a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.

(b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.

(c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

AMENDED RESPONSE:

(c) Applicant will provide the amount of annual sales subject to a protective order.

SECOND AMENDED RESPONSE: Based on January 14 discussions with counsel for Goya, the following information is provided under the provisions for protecting confidentiality of information revealed during Board proceedings, under the designation as "Trade Secret/Commercially Sensitive." Subject to the objections raised and under terms of the standard protective order: (c)Annual dollar gross sales for 2013 Redacted

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

> **RESPONSE:** GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.
>
> **AMENDED RESPONSE:** Subject to a protective order, Applicant will provide such information to the extent that it is maintained.

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "interrupted" as vague and undefined. Subject to the objections raised and as understood by Applicant, the use of the marks at issue has been continuous.

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions and shall be treated as such. Subject to the objection raised and as understood by Applicant, it has advertised including by way of its website, local newspapers, flyers, word of mouth, Facebook and Twitter.

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable

thereof.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the terms "any other type of search," "relating or referring to" and "identify the person(s) most knowledgeable thereof" as vague and undefined; objects to "all documents" as overly broad. Subject to the objections raised and as understood by Applicant, a search was undertaken by a third party at the direction of counsel for Applicant and a search report was generated by the third party.

SECOND AMENDED RESPONSE: The person most knowledgeable regarding the search is Joe Cioffi. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can contacted through counsel for Applicant.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection

raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 12: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

(a) The person(s) confused or mistaken or making an inquiry;

(b) The substance or content of any such confusion, mistake or inquiry;

(c) The date on which any inquiry was made; and

(d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of four separate interrogatories and shall be treated as such. Subject to the objection raised, Applicant is not aware of any incidents of confusion.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "class of customer" as vague and ambiguous; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objection raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "channels of trade" as vague and ambiguous; and the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the channels of trade include stores operated by GoYoGo Frozen Yogurt from which GoYoGo Frozen Yogurt sells its product directly to consumers.

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents being produced to Goya.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents produced to Goya.

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption, any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least four separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to "all facts" as overly broad; objects to the terms "adoption" and "relating to" as vague and ambiguous. Subject to the objections raised and as understood by Applicant, the GoYoGo portion was chosen as it is an easy phrase to remember which can be associated with frozen yogurt and the "Frozen Yogurt" portion emphasizes the product being offered. The design mark was created by way of a design tournament. The chosen design was later subject to certain changes.
>
> The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third- party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

(a) All identifying information about the party or parties using such mark;

(b) The dates of such use; and

(c) The geographic area(s) of such use; and

(d) All persons with knowledge and all documents relating to or relating to any such use.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous;

objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

(a) Not applicable
(b) Not applicable
(c) Not applicable
(d) Not applicable

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "consumer product or service" as vague and ambiguous; objects to reference to the term "GOYO" as not likely to lead to the discovery of admissible evidence as "GOYO" is not part of the subject matter of the opposition.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, GoYoGo Frozen Yogurt refers to the trademark search conducted by its counsel.

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

> **RESPONSE:** GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it that has no counterclaims and the cancellation referred to is not likely to lead to admissible evidence.

INTERROGATORY NO. 21: State all facts that you relied on to support the affirmative defenses set forth in the answer filed by you in these proceedings.

RESPONSE: The GoYoGo Frozen Yogurt Marks are dissimilar in appearance, sound and meaning from the following marks identified in opposition
GO GOYA
GOYA
GOYO
... IF IT IS GOYA IT HAS TO BE GOOD
... IF IT IS GOYA IT HAS TO BE GOOD and design
SI ES GOYA TINE QUE SER BUENO
JOYAS DE GOYA
GOYA LATIN CAFÉ

(collectively the "Goya Marks").

There are no incidents of confusion between the GoYoGo Frozen Yogurt Marks and the Goya Marks and there is no likelihood of such confusion.

One or more of the Goya Marks are not famous and therefore is not likely to be diluted.

The products sold under the GoYoGo Frozen Yogurt Marks are different from the products sold under the Goya Marks.

The products sold under the GoYoGo Frozen Yogurt Marks are not sold in the same manner as the Goya Marks.

The GoYoGo Frozen Yogurt Marks have been and continue to be used in commerce.

January 23, 2015

By: _____
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I certify that on January 23, 2015, a copy of the second amended responses of Applicant to the first request for production of documents was sent by first class mail to

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Dennis F. Gleason

EXHIBIT 15

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

In the Matter of Trademark Application Serial No. 86060111

For the mark: GoYoGo FROZEN YOGURT

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364
For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation
Filed August 14, 2013

GOYA FOODS, INC., Opposer, v. GOYOGO FROZEN YOGURT LLC, Applicant.	Opposition No. 91215657

SECOND AMENDED RESPONSES OF APPLICANT TO FIRST REQUESTS FOR ADMISSION BY OPPOSER

GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") responds to the first request for admissions by Goya Food, Inc. ("Goya Foods" or "Opposer") based on January 14, 2015, communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term "GOYOGO trademark" is undefined. Subject to the objections raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya that "the GOYOGO trademark" refers to the two applications referenced in the opposition, the statement is admitted.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objections raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the statement is denied.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous and object to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "unstylized" as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the statement is denied.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the stylized mark

.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "GOYOGO formative mark" as vague and ambiguous and the term "Services" as unintelligible. Subject to objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "GOYOGO formative mark" as vague and ambiguous. Based on the definitions subsequently provided by counsel for Goya, subject to objections raised, and as understood by Applicant denied.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, which now delete the words "GOYOGO formative," the statement is denied.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

19. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and " fruit beverages" as vague, ambiguous and

undefined. Subject to the objections raised, Applicant is unable to respond.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "frozen confections" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.

RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.

34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.

35. Admit that the Services offered or sold under the GoYoGo FROZEN YOGURT Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "consumers" and "restaurants" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of a request to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold in restaurants.

36. Admit that the Services offered or sold under the GoYoGo FROZEN YOGURT Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "grocery stores" as vague, ambiguous and undefined. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold to consumers in grocery stores.

37. Admit that the Services offered or sold under the GoYoGo FROZEN YOGURT Mark are

intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term "intended to be requested orally by potential customers" is vague, ambiguous and undefined; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term "intended to be requested orally by potential customers" as vague, ambiguous and undefined. Subject to the objection raised and as understood by Applicant, the request is denied.

38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which GoYoGo FROZEN YOGURT -Services can be offered or sold to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "U.S. consumers" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "unstylized word mark" and "on the way" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the

objections raised, Applicant is unable to respond.

40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer sell GoYoGo FROZEN YOGURT Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the "class of customer" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

41. Admit that the applications being opposed place no limitations or restrictions on the channels of trade through which Applicant can promote or offer GoYoGo FROZEN YOGURT Services to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "channels of trade" and "U.S. consumers" as vague, ambiguous and undefined and objects to the term "Services" as unintelligible. Subject to the objections the Application is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

42. Admit that the applications being opposed places no limitations or restrictions on the retail price or intended retail price at which Applicant can sell GoYoGo FROZEN YOGURT Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

AMENDED RESPONSE: Admitted.

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term "GOYO" as not relevant to this action; objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: Admitted.

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objections raised, and as understood by Applicant, admitted that GoYoGo Frozen Yogurt admits that is

was a aware of one or more of Opposer's marks prior to applying to register.

47. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as not likely to lead to admissible evidence as incontestability of Opposer's marks is not a consideration in the opposition proceeding. Subject to the objection, GoYoGo denies the following:
"SI ES GOYA TIENE QUE SER BUENO" Registration No. 4210054
"GOYA" Registration No. 3825092
"GOYA" Registration No. 1283430

January 23, 2015

By: _____
Dennis F. Gleason

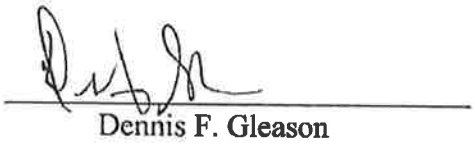
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on January 23, 2015, a copy of the second amended response of applicant was served by first class mail on:

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

EXHIBIT 16

Jardim, Meisner & Susser, P.C.
ATTORNEYS AT LAW

30B Vreeland Road, Suite 201
Florham Park, NJ 07932
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fax: (973) 845-7645
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January 28, 2015

VIA EMAIL AND FIRST CLASS MAIL

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt LLC
Opposition No. 91215657

Dear Jason:

Following up our January 14 telephone conversation, as I restated, Goya has not produced any documents to GoYoGo Frozen Yogurt.

In particular, I note that no documents identified in Goya's mandatory disclosures have been produced, notwithstanding (a) the requirement to produce under Rule 26 and (b) the materials have been requested in Applicant's request to produce documents (Req. no. 1).

Please advise if Goya will produce the documents not later than February 3 and, if not, why not.

If you should have any questions, please feel free to contact me.

Very truly yours,

DENNIS F. GLEASON

EXHIBIT 17

JASON DEFRANCESCO, ESQ.
575 ROUTE 28
RARITAN, NJ 08542
(908) 722-5640
JLD@BR-TMLAW.COM

April 8, 2015

VIA ELECTRONIC DELIVERY AND US MAIL

Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.
United States Patent and Trademark Office, Trademark Trial and Appeal Board
Opposition No. 91215657; **THIRD DEFICIENCY NOTICE**

Dear Mr. Gleason:

In furtherance of our past, Second Deficiency letter, and follow-up good faith phone conference, we discussed certain issues with your client's responses to Goya's discovery requests. While it is appreciated that you have amended and or updated some response, it appears that our receipt of your supplemental responses fell short of the expectations we discussed. In particular,

- With specific regards to Admission Nos. 17, 18, 19, 20, 21, 22, and 23, Applicant objected to the term "related" as being undefined, among other things, and the requests not being relevant.

We previously noted our concern with the fact that you as a trademark attorney do not understand the term "related" with regards to specific goods identified as "yogurt" and "milk" or "flan". Furthermore, we noted additional concern with the fact that you do not believe the requests are relevant. See generally, *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993)(It is not necessary that the parties' goods be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the goods are *related* in some manner or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, in light of the similarity of the marks, give rise to the mistaken belief that the goods come from or are associated with the same source).

Based on our phone conversation, it was understood that you now knew what the term "related" meant and that you understood the relevancy of the requests, yet still did not amend these responses. In view of the fact that the deadline to discovery is approaching, please provide us your intention of satisfying these requests as originally understood, or state that you will not revise, in which case we shall seek immediate attention from the Board.

Furthermore, with regards to the interrogatories you personally answered, Nos. 19 and 20 remain unanswered and the remainder requires addition information. It should be noted in respect to the foregoing, answers to interrogatories are often followed by the taking of the oral deposition of the person who signed the answers. In light of the fact we would be going on a third supplemental response from you (under reasonable despair) we rather request your personal knowledge of the facts set forth in the answers to now, more appropriately be taken by deposition. Please let us know when you are available in the next two weeks.

Sincerely,
Baker and Rannells, P.A.

Jason L. DeFrancesco

Cc: Goya Foods, Inc.

EXHIBIT 18

Jardim, Meisner & Susser, P.C.

30B Vreeland Road, Suite 201
Florham Park, NJ 07932
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fax: (973) 845-7645
web: jmslawyers.com

April 13, 2015

VIA EMAIL AND FIRST CLASS MAIL

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt LLC
Opposition No. 91215657

Dear Jason:

I am responding to your letter dated April 8, 2015.

First, I note that your letter comes more than ten weeks after our conference call and my letter supplementing the issues that we discussed in our telephone conversation. Until your April 8 letter, there was no communication from you regarding our call or the additional discovery that was provided. Certainly you have made no effort to explain why your waited so long.

Next, at no time since our last telephone conversation, have you responded to my multiple requests for the materials identified in Goya's Rule 26(a) mandatory disclosures. Indeed, my most recent letter to you dated January 28 has gone without either a response from Goya or the production of documents. Stated differently, GoYoGo Frozen Yogurt has produced discovery, while Goya has not. I therefore renew – again – that all the materials identified in the Rule 26(a) disclosures be produced immediately.

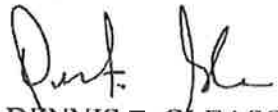
Turning to the particular issues in your letter, I disagree with your assessment regarding requests to admit 17-23. Your letter merely repeats the same arguments stated in your December 30, 2014 letter, all of which were addressed in our telephone conversation. For example, I reiterated that Goya's use of the word "related" in the context of the requests to admit at issue was open to multiple interpretations, which you did nothing to clarify. To be sure, your citation to case law does nothing to provide any greater understanding of what Goya intends to mean and therefore the requests are properly objectionable, under the circumstances.

With regard to interrogatory nos. 19 and 20, I take issue with you characterization that I "personally answered" the interrogatories. Any fair reading of the responses makes plain that the interrogatories are objected to and accordingly no factual information is provided based on the objections.

As to your related inquiry regarding my availability to take my deposition, because I am neither an appropriate nor an eligible fact witness, there are no sustainable grounds to even suggest that I should be deposed.

If you should have any questions, please feel free to contact me.

Very truly yours,



DENNIS F. GLEASON

EXHIBIT 19

JASON DEFRANCESCO, ESQ.
575 ROUTE 28
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(908) 722-5640
JLD@BR-TMLAW.COM

May 27, 2015

VIA E-MAIL and U.S. MAIL
Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.

Dear Mr. Gleason:

With regards to outstanding Request for Admissions, it is again requested that you amend Applicant's responses to nos. 18, 19, 20, 21, 22 and 23. The requests are all straightforward and merely seek your client admit that certain, specific goods are related to goods your client deals in.

In particular, Request Nos. 18, 19, 20 and 21 seek Applicant,

18. Admit that yogurt and flan are related.
19. Admit that yogurt and milk are related.
20. Admit that yogurt and custard are related.
21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

In response, Applicant evades answering the request based on its objection to the term "related."

> **RESPONSE:** GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

When using the term "related" in trademark matters, it is commonly understood to mean of a type which may emanate from a single source and logically related to the basic substantive issues in the case. See for e.g., *Slim N' Trim, Inc. v. Mehadrin Dairy Corp.*, 2000 TTAB LEXIS 777 (TTAB 2000)("...yogurt and non-fat milk are closely related products and that customers would be likely to assume that both products emanate from a single source, if a similar mark is used thereon.") Accordingly, yhe allegation that your client lacks ability to respond to these requests is rejected.

In response to Request Nos. 22 and 23, in addition to objecting to "related," Applicant further alleges a lack of ability to answer if certain, specific goods – *all of which are identified in the Trademark ID manual* – are related to yogurt.

For example, Request No. 22 seeks Applicant,

22. Admit that yogurt and fruit beverages are related.

032	Fruit beverages	A	01 Oct 05	G	N

In response to Request No. 22, Applicant is unable to answer based on the term "fruit beverages."

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "fruit beverages" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

And, Request No. 23 seeks Applicant,

23. Admit that yogurt and frozen confections are related.

030	Frozen confections	A	02 Apr 91	G	N

In response to Request No. 23, Applicant is unable to answer based on the term "frozen confections."

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "frozen confections" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

While we have already urged you by phone and by letter to supplement your answers, you and or your client still refuse to do so. Although it would seem we exhausted efforts to get Applicant to cooperate, we again make this good-faith attempt. Please let us know if your client will reconsider responding, and if so, when we can expect same.

If your client does not relent, we shall move to test sufficiency of its responses and in doing so highlight to the Board that Applicant lacks ability to understand goods it alleges to trade in and refuses to answer admission particularly when,

- "frozen confections" are identified in the Trademark ID manual (IC 030)
- "fruit beverages" are identified in the Trademark ID manual (IC 032)
- "related" is a common term used in trademark law.

Based on my count, this is at least the third time we have requested your cooperation. The fourth time will be to the Board. Please let us know your client's intentions.

Very truly yours,
Baker and Rannells, P.A.

Jason DeFrancesco