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

Proceeding	91218523
Party	Plaintiff Oakhurst Industries, Inc. DBA Freund Baking Co.
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OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO.,	)	Opposition No. 91218523
Opposer,	)	Application Serial No. 86/139,432 Mark: FREUND'S FAMOUS Filing Date: December 10, 2013
v.	)	Application Serial No. 86/139,577 Mark: Filing Date: December 10, 2013
13TH AVE FISH MARKET INC. DBA FREUND'S FISH,	)	
Applicant	)	

OPPOSER OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO.'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND TO RESET ALL DATES

Opposer, Oakhurst Industries, Inc. DBA Freund Baking Co. ("**Opposer**"), hereby opposes Applicant 13th Ave Fish Market Inc. DBA Freund's Fish's ("**Applicant**") Motion to Compel Discovery Responses and to Reset All Dates ("**Motion**"). The Motion should be denied because Applicant filed its Motion prematurely in light of Opposer's indication that supplemental responses were forthcoming. Indeed, Opposer (shortly after Applicant's unannounced preparation and filing of its Motion) supplemented almost all of its discovery responses and served them on November 9, 2015 rendering the Motion moot. Applicant acknowledges reviewing Opposer's supplemental responses, however, Applicant refuses to acknowledge that any issues have been resolved by Opposer's supplemental responses and refuses to withdraw any portion of the Motion. The Motion should also be denied because it is unclear if Applicant is moving to compel all discovery responses or some, making it impossible for Opposer to substantively respond to the Motion. Moreover, the Motion should be denied as to every supplemented discovery response because the Motion is based upon Opposer's initial

responses which have been superseded by Opposer's supplemental responses served after the filing of the Motion. In this manner, Applicant's Motion is procedurally infirm as to those supplemented responses served after the filing of the Motion and Opposer's due process rights are affected by Applicant's failure to provide requisite notice to move to compel regarding supplemental responses served after the filing of the Motion. This Opposition to the Motion is further supported by the attached Declaration of Steven A. Freund, Esq. ("**Freund Decl.**") and enclosed exhibits.

I. APPLICANT FILED ITS MOTION PREMATURELY AND OPPOSER HAS SINCE SUPPLEMENTED VIRTUALLY ALL OF ITS DISCOVERY RESPONSES.

As detailed more fully below, Applicant filed the instant Motion despite Opposer's indications that supplemental responses would be served and without ascertaining if such supplemental responses would be forthcoming. (Freund Decl., ¶6.) In fact, Opposer agreed to a one month extension of all deadlines in this proceeding. (Motion, Grossberg Decl., Ex. N, 10-29-15 email from Opposer's counsel.) Instead of responding to Opposer's extension agreement, Applicant without any indication to Opposer prepared and filed the instant Motion on November 3, 2015. (Freund Decl., ¶6.)

A. Opposer Served Supplemental Responses On November 9, 2015.

Preliminarily, the Motion should be denied because Opposer supplemented virtually all of its discovery responses on November 9, rendering the Motion moot. Freund Decl., ¶7, Ex. 4, Opposer's Supplemental Responses to Applicant's First Set of Document Requests, Ex. 5, Opposer's Supplemental Responses to Applicant's First Set of Interrogatories.) Opposer's supplemental responses resolve almost all of the issues raised by the Motion. (Freund Decl., Ex. 4, Ex. 5) In this manner, Applicant's Motion is procedurally infirm and should be denied on those grounds. Applicant's Motion seeks an order to overrule Opposer's specified objections in general to each discovery request where the specified objection was raised. The basis for Opposer's objections are not universal to each discovery request in which the specified objection was raised. Throughout Applicant's Motion it prefaces mentioned Discovery Requests with "See, e.g." In light of the fact that Applicant did not specifically address the objection to each such discovery request the requested order should be denied because

Applicant has not carried its burden. Because it is difficult to figure out exactly what Applicant is moving to compel, Opposer will address the Discovery Requests mentioned in each of the Motion's subsections below in Section II.

B. **The Motion Arose Out of Applicant's Slipshod Discovery.**

Applicant's Interrogatories ("**Interrogatories**") and Document Requests ("**Requests**") (collectively "**Discovery Requests**") were sloppily written, rife with typos, run-on sentences and more importantly, an inaccurate definition of "Opposer's Marks." Much of the Discovery Requests were composed of boilerplate derived from infringement actions and thus not applicable to this proceeding. These boilerplate discovery requests could have been tailored to be relevant to the issues in this proceeding. At times, Applicant's Discovery Requests were challenging to understand and respond to because their typos rendered such Discovery Requests with multiple possible meanings. (See, e.g. Freund Decl., Ex. 1, pg. 8, Request No. 2.) Consequently, Opposer raised objections to preserve its rights to such poorly crafted Discovery Requests.

Applicant directed Opposer to answer the Discovery Requests using a definition of "Opposer's Marks" that included marks that Opposer never claimed rights to. (Freund Decl., Ex. 1, Requests, pg. 3, and Ex. 2, Interrogatories, pg. 2.) Applicant's counsel later reiterated this incorrect definition, sending replacement pages for the pages with the definitions for "Opposer's Marks" and adding a new mark that Opposer had never claimed rights to. (Freund Decl, Ex. 3, 8-10-15 email from Applicant's Counsel with replacement pages for Discovery Requests.) This incorrect definition for "Opposer's Marks" permeated almost all the Discovery Requests, rendering them objectionable. If Applicant would have invested minimal time and effort to craft proper discovery (or even inform itself of the marks at issue) versus mindlessly generating boilerplate discovery forms, then a majority of the discovery issues in the Motion would have never arisen. Upon clarification Opposer agreed to correct all the incorrect references to Opposer's Marks in its supplemental responses. (Motion, Grossberg Decl., Ex. H, 10-7-15 Letter from Opposer's Counsel to Applicant's Counsel, pg. 2.)

Opposer in its October 7, 2015 response meet and confer letter to Applicant's counsel, explained its difficulty in responding to the Discovery Requests with suggestions for resolving these problems that involved narrowing their scope to make them more focused to the actual

information Applicant was seeking.[1] (Motion, Grossberg Decl., Ex. H, 10-7-15 Letter.) Though Opposer's October 7 letter was mentioned in the Motion, Applicant's counsel, as evidenced in its Motion, unbendingly refuses to narrow or curtail its discovery.

C. Much of Applicant's Discovery Is Objectionable Under the New Federal Rules of Civil Procedure Effective December 1, 2015.

Effective December 1, 2015 (which will be prior to when a decision is rendered on the instant Motion), Rule 26(b) of the Federal Rules of Civil Procedure will be amended to delete the provision that information "reasonably calculated to lead to the discovery of admissible evidence" may be discovered. Fed. R. Civ. P. 26(b)(1)(December 1, 2015). The foregoing deleted provision had been used as an excuse for propounding overbroad discovery not narrowed to the relevance of the parties' claims or defenses, as Applicant's counsel did in her October 15, 2015 email to Opposer's counsel. (Motion, Grossberg Decl., Ex. L, 10-15-15 email from Applicant's counsel to Opposer's counsel.) Quite notably, the amendment limits discovery based on proportionality, by stating that parties may obtain discovery that is "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." (Id.) The discovery that Applicant propounded violates this proportionality requirement by being overbroad in time and scope. Applicant seeks all documents from 1856, as well as, over the space of thirty-four (34) years regarding Opposer's pricing of each baked good produced (Request No. 11), identification of each baked good produced (Request No.42), sales (Request Nos.7 and 34), and its personnel (Request No.47) is not "proportional to the needs of the case" and its burden and expense to

[1] Applicant's attempt to paint Opposer as uncooperative by not agreeing to a same-day meet and confer phone call on September 18, 2015 or agreeing to a later requested phone call is misleading. (Mot. at pgs. 3-4.) Opposer wished to resolve the discovery issues by written correspondence because of a inaccurate statement Applicant's counsel had put in its November 5, 2014 Motion to Enlarge Time by One Day to Answer Notice of Opposition, whereby he stated that he telephoned Opposer's counsel to get his consent to the motion but the call was unreturned. (Dkt. entry no. 5 at pg. 2.) In fact, Applicant's counsel did not call Opposer's counsel until the day the Motion to Enlarge was filed, which was one day after the deadline for filing the Answer had passed. (Freund Decl., ¶2.) Applicant's counsel filed the Motion to Enlarge right after leaving the voicemail for Opposer's counsel, not leaving any time for Opposer's counsel to return the call. (Id.) Because of this experience with Applicant's counsel, Opposer desired to resolve the discovery issues by written correspondence instead of leaving them to Applicant's unreliable recitation of events.

Opposer in attempting to respond to such overbroad discovery significantly outweighs any benefit. Though Opposer has asked that Applicant narrow the scope of its discovery to be more in line with the claims and defense at issue (which would bring such discovery in compliance with the new Rule 26(b)), Applicant refuses. Opposer has satisfied its discovery obligations under the current Rule 26, as well as, the amended Rule 26 effective December 1, 2015 which will be the controlling authority when a decision on the instant Motion is rendered.

II. ARGUMENT

A. Opposer's Objections.

Conspicuously absent from Applicant's Motion is any analysis of the requested discovery to the issues at stake in this proceeding, the proportion of the actual needs of the requested discovery to those issues, the importance of the discovery to resolving the issues in this proceeding and whether the burden and expense of the proposed discovery outweighs its likely benefit. Applicant cannot articulate any of these matters because although the requested discovery is marginally relevant it has no bearing to the afore-mentioned factors. Primarily, this case is about Opposer's attempt to block Applicant's two Applications to register its marks. In response, Applicant has propounded discovery to lay bare all of Opposer's most sensitive financial and trade secret documents (Requests Nos.4 and 11 – pricing of Opposer's marked goods or services, Request No.34 – representative purchase orders, invoices and correspondence for the marked goods or services and Request No.7 – sales figures for the marked goods or services). Nonetheless, before a decision is rendered on this Motion Opposer will have filed its Motion to Amend to withdraw its dilution claim.

Opposer provided a supplemental response in regard to Request No.4 containing a price range of the marked goods or services for the last 5 years. Such a compromise is reasonable to the needs of this case and the insignificant importance of such discovery to resolving the issues in this case. Applicant has not and cannot state why such response is not sufficient. In regard to Request No.34 Opposer provided the requested samples for the past 5 years. In regard to Request No.7 Opposer provided sales figures. Again, Applicant has not and cannot state why such responses are not sufficient.

It should be noted that in its supplemental responses Opposer withdrew various objections raised in Applicant's Motion. Consequently, it is impossible to constructively respond to Applicant's Motion because it discusses the specified objections universally without any connection (except for a few examples) to specific discovery requests.

1. **Applicant's Discovery Requests Are Patently Overbroad.**

Opposer's counsel pointed out in its response meet and confer letter that the Discovery Requests contain a definition of Opposer that includes "Oakhurst Industries, Inc., its subsidiaries, ... *present or former officers, predecessors* ..." [Emphasis added.] (Motion, Grossberg Decl., Ex. H, 10-7-15 Letter, pg. 2.) This overbroad definition of Opposer would require Opposer to go back all the way to **1856** in answering the Discovery Requests. This overbroad definition pervades most of the Discovery Requests. Applicant's counsel has failed to respond to Opposer's raising the issue of the overbroad definition of Opposer. (Freund Decl., ¶10.) In any event, as Opposer explained in its letter, the Discovery Requests that include the time period from 1981 to the present are likewise overbroad in time and scope. (Id.) For example, Request No. 52 seeks "[a]ll documents concerning, reflecting ... the use of any of Opposer's marks in connection with private label baking services since 1981 ..." does not adequately describe the category of documents sought, seeks documents over the past 34 years and is overbroad in scope because it would require Opposer to produce almost every single document it has. (Id.) Request No.42 requires Opposer to produce "[d]ocuments sufficient to identify every baked good Opposer has sold or transported, and every service rendered, since 1981" – again which time period encompasses 34 years. (Id.) As Opposer explained in its letter to Applicant's counsel, "Opposer makes several thousand units of bread products per hour seven (7) days a week and has produced, sold, transported etc. hundreds of varieties of bread products since 1981."[2] (Id.) For example, such an overbroad request would include "all order forms, sales invoices, inventory records, production and transportation records over a period of 34 years." (Id.)

[2] It should be noted that Applicant in its responses to the discovery Opposer served, asserted the same objection regarding requests with "all documents." (Freund Decl., ¶11.) Applicant even stated that (similar to what Opposer stated as to the too-numerous-to-count products it has produced over the years) it has made "200 products in connection with the marks", rendering it difficult to respond to Opposer's discovery. (Freund Decl., ¶12.)

Any of the Discovery Requests that mention "all documents" or the time period since 1981 are overbroad and lack the focus to give them conceivable relevance to the issues raised in these proceedings. There is absolutely no relevance regarding documents related to every baked good Opposer has baked since 1981 nor has Applicant proffered any such relevance. Opposer suggested that Applicant tailor the scope and time period of such Discovery Requests to a reasonable time period and scope of called for information and/or documents that are relevant and necessary to the issues in these proceedings, which would resolve the discovery dispute. (Id.) If Applicant would tailor its Discovery Requests to request exactly what it was looking for, instead of blindly casting a huge net, these discovery issues would have been avoided.

Applicant's counsel ignored Opposer's explanation as to why such Discovery Requests were overbroad and unduly burdensome and ignored Opposer's suggestion to tailor the Discovery Requests more narrowly, instead stating in her email of October 15, 2015 that per 15 U.S.C. § 1125(c), "the duration, extent, and geographic reach of advertising and publicity of the mark" makes the entire history of Opposer's use of its marks discoverable. (Motion, Grossberg Decl., Ex. L, 10-15-15 email from L. Grossberg to S. Freund.) In any case and in order to attempt to resolve the discovery dispute, Opposer has since offered to drop its dilution claim with Applicant's permission, though Applicant's counsel has yet to substantively respond. (Freund Decl., ¶17.) Opposer's Motion to Amend to withdraw its dilution claim will be filed before a ruling on the instant Motion. (Id.) This would render any of Applicant's resting on 15 U.S.C. § 1125(c) with regard to its overbroad discovery irrelevant.

The Board had said that discovery directed to "all documents" and extended of time is objectionable when such discovery would make an attempt to comply unduly burdensome and time consuming. *See The J. B. Williams Company, Inc. v. Pepsodent G.M.B.H.*, 188 U.S.P.Q. 577, 1975 WL 20870 (TTAB 1975*)*. In response to such discovery, Opposer may produce a representative sampling. (*Id.)* Such a sampling was what Opposer proposed to Applicant in its October 7, 2015 letter and produced on November 9, but Applicant remains obstinately against such compromise.

Request No. 11 seeks Opposer's price lists for all of its baked goods from 1981 through to the present. As Opposer explained to Applicant, the request is horribly overbroad and there is no relevance to such pricing over the past thirty-four (34) years to the issues in this proceeding. (Motion, Grossberg Decl., Ex. H, 10-7-15 Letter, pg. 4.) Curiously, Applicant had propounded Request No. 4, which sought the same information but limited to the past five (5) years. The contradiction between Request Nos. 11 and 4 was brought to Applicant's attention by Opposer. (Id.) When discovery requests have involved a protracted period of time, making compliance unduly burdensome [which is the case here], such discovery requests may be answered for a smaller period of time as a sampling, such as five years. *See Neville Chemical Company v. The Lubrizol Corporation,* 184 U.S.P.Q. 689 (TTAB 1975). Opposer stated to Applicant that it was willing to stipulate to a price range of the multitude of varieties of bread products it has sold over the past five (5) years. (Motion, Grossberg Decl., Ex. H, 10-7-15 Letter, pg. 4.) In its Supplemental Responses, for Request No. 4, Opposer provided documentation for such price ranges over the past five years. (Freund Decl., Ex. 4, Opposer's Supplemental Responses to Applicant's First Set of Document Requests, Supplemental Response to Request No. 4.)

Similarly, Opposer also offered to provide a five year representative sampling of the requested information in Request No. 34 (all documents as to sales of goods and services under Opposer's Marks, including, but not limited to, representative purchase orders, invoices, and correspondence), a stipulation as to its sales for the past five years in response to Request No. 7 (all documents regarding Opposer's sales figures on an annual basis for all of Opposer's goods and services from their date of first use to the present). These two discovery requests are particularly onerous for Opposer to comply with as written because they cover a period of time as far back at least as 1981, if not 1856 pursuant to Applicant's definition of Opposer. In this regard, Opposer's overbreadth objection is applicable. Moreover, the overbreadth of such Discovery Requests could mean everything from every purchase order Opposer ever generated to every tax return for Opposer.

In its Supplemental Responses for Request No. 4, Opposer provided documentation for such price ranges over the past five years and for Request No. 34, Opposer provided a sampling

of the requested documentation from a five (5) year period. (Freund Decl., Ex. 4, Opposer's Supplemental Responses to Applicant's First Set of Document Requests, Supplemental Response to Request Nos. 7, 34.) In this regard, Opposer fulfilled its discovery obligations. *See Neville Chemical Company v. The Lubrizol Corporation,* 184 U.S.P.Q. 689 (TTAB 1975).

Applicant's counsel rejected Opposer's compromise in her October 15, 2015 email to Opposer's counsel. (Motion, Grossberg Decl., Ex. L, 10-15-15 email.) Applicant requested in Interrogatory 4 that Opposer "[p]rovide a corporate chart and identify the past and present executives, officers, directors, and managerial employees of Opposer." Opposer reiterated to Applicant its objections to such Interrogatory, explaining that due to its vague terms and definition of Opposer which included "predecessors," the Interrogatory could include hundreds of employees over an extended period of time. (Motion, Grossberg Decl., Ex. H, 10-7-15 Letter, pg. 4.) In response, Applicant's counsel stated that this Interrogatory was "seeking identification of officers, as well as those managerial employees who have or have had trademark related responsibilities." (Motion, Grossberg Decl., Ex. L, 10-15-15 email.) Applicant should have stated this clarification in its original Interrogatory 4, if that is indeed what it meant. If Applicant would narrow other Discovery Requests pursuant to Opposer's suggestions in its counsel's October 7 letter, then this discovery dispute would have been resolved. In its Supplemental Responses for Interrogatory No. 4, Opposer provided a list of its officers for the past five years. (Freund Decl., Ex. 4, Opposer's Supplemental Responses to Applicant's First Set of Document Requests, Supplemental Response to Interrogatory No. 4.)

Opposer supplemented the rest of the Requests mentioned in this subsection.

2. Confidentiality Objection[3]

Opposer substantively responded to two of the Discovery Requests mentioned in this subsection when it initially responded to the Discovery Requests – Request No. 24 and Request No. 30. (Motion, Grossberg Decl., Ex. A, Opposer's Responses to Applicant's First Set of

[3] Applicant made the claim that the parties are not competitors. (Motion at pg. 7.) However, Applicant cannot unilaterally proclaim that the parties are not competitors and have this have any bearing on the Motion. In fact, as part of its Supplemental Responses, Opposer delivered to Applicant information showing that Applicant has been using the marks that are the subject of this proceeding in connection with bakery products, which Applicant had denied in its responses to Opposer's discovery.

Document Requests for Requests 24 and 30.) As such, any mention of them in the Motion is inappropriate. It appears that the Motion's mention of Opposer's responses to Requests Nos. 24-26 is an error in this subsection, because Opposer did not assert a confidentiality objection in response to these Document Requests. (Motion, Grossberg Decl., Ex. A, Opposer's Responses to Applicant's First Set of Document Requests for Requests 24, 25, 26.) Even if Applicant meant to state Requests 34 through 36, it cannot cite them for the first time in its Reply because Opposer will not have a chance to respond regarding these Requests. Besides, Opposer supplemented its responses to these Requests. (Freund Decl., Ex. 4, Opposer's Supplemental Responses to Applicant's First Set of Document Requests, Supplemental Responses to Request Nos. 34-36.)

Applicant has requested documents to lay bare Opposer's most sensitive financial documents and trade secrets (Requests Nos.4, 7, 11, 34 and 42). In Board proceedings, access to a party's confidential, highly confidential or trade secret/commercially sensitive information is not provided as a matter of course, but rather must only be provided in response to a proper and relevant discovery request or when the party chooses to use such information in support of its case at trial. (TBMP § 412.01.) Applicant's Motion sole authority for the discovery of these Requests is that the Board's Standard Protective Order is in place to protect Opposer. (Motion at pg. 6.) Applicant's Motion offers no authority or discussion regarding the relevance of such discovery, whether the discovery is probative of any issues in the proceedings, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Instead, Applicant claims that this discovery is justifiable and thus, Opposer is unable to object on confidentiality grounds because *ipso facto* the Board's Standard Protective Order is in place.

Such circular reasoning does not carte blanche enable Applicant to discovery such sensitive financial and trade secret documents that is objectionable on the basis of confidentiality. If that were true, then in every Board proceeding any party could request the other party's tax returns claiming that they are discoverable because the Board's Standard Protective Order in place. Because Applicant's Motion does not specifically address the Requests at issue, it would be inappropriate to strike Opposer's confidentiality objections.

Opposer provided, as part of its Supplemental Responses a range of pricing for Request No. 4 over the space of five (5) years as best it could, in the face of this Request using the overbroad phrasing "all documents," rendering the Request overbroad. With Request No. 11 (pricing for all of Opposer's products over the past thirty-four (34) years), Opposer is maintaining its objections pursuant to the above discussion of this Request being horribly overbroad. It violates the new Rule 26(b) of the Federal Rules of Civil Procedure and Opposer has supplemented its response as to Request No. 4 regarding its pricing over the past five (5) years which should satisfy Request No. 11, which is redundant of Request No. 4. Opposer supplemented its response to Request No. 7 with information as to sales for the past five (5) years because the overbroad language of this Request violates Rule 26(b). Also, Opposer supplemented its response to Interrogatory No. 4 by providing a list of its officers over the past five (5) years. Finally, Opposer rendered any issues moot with the remainder of Discovery Requests stated in the "Confidentiality" Subsection by supplementing those Discovery Requests as part of its supplemental responses (except Request No.42). (Freund Decl., Ex. 4 Opposer's Supplemental Responses to Applicant's First Set of Document Requests, Supplemental Responses to Request Nos. 8, 9, 29.)

3. Attorney-Client Privilege and Work Product Doctrine Objections[4]

Opposer fully answered Interrogatory No. 16 when it first responded to Applicant's Discovery Requests. Opposer supplemented the rest of the Discovery Requests mentioned in this subsection (except Request No.49) and clarifies that it did not withhold any information or documents when it had asserted these objections and it will thus not to have to produce a privilege log.

4. "Blatantly Impermissible" Discovery Responses

Opposer supplemented its response to Request No. 44. Opposer's objection to Interrogatory No. 14 hinged on the uncertain and vague wording of "...each person whom You *may* use as an expert witness in these proceedings." [Emphasis added.] This brings into the Interrogatory's purview anyone Opposer *may* be thinking about using as an expert witness,

[4] Opposer notes that Applicant asserted this same objection without producing a privilege log in its responses to Opposer's discovery. (Freund Decl. ¶18.)

without having contacted such person. Interrogatory No. 15 deals with the substance of what the expert named in Interrogatory No. 14 would testify on. TBMP § 414(7) discuses that names of expert witnesses that a party *intends* to call on to testify are discoverable. This makes the "may" wording of Interrogatory No. 14 objectionable.

5. **"Legal Conclusion" Objection**

Applicant takes issue with Opposer's assertion of its legal conclusion objection. (Motion at pg. 9)[5]. As Applicant stated, Opposer provided substantive responses for Interrogatory Nos. 8, 10, and 13. Opposer has supplemented it response for Interrogatory No. 12. Opposer's legal conclusion objection is nonetheless valid due to the wording of the indicated Interrogatories that they call for a legal conclusion. Regardless, there is nothing to compel because Opposer has responded to the Interrogatories and Opposer's objections are valid.

6. **Identification of Whether Responsive Documents Exist**

Opposer has supplemented all of its responses in regard to this issue.

B. **Applicant Has Failed to Cooperate in the Meet and Confer Process**[6]

Due to Opposer's principal being out of the country for two (2) weeks and an extensive search being undertaken to find responsive documents to the Discovery Requests, Opposer was unable to have its supplemental responses ready by October 19, 2015. Opposer's counsel notified Applicant's counsel by email on October 19, 2015 that the supplemental responses were not ready and that they would be ready shortly. (Motion, Grossberg Decl., Ex. M, 10-19-15 email.) Opposer's counsel later sent another update email to Applicant's counsel on October 26, 2015 stating that unforeseen personal matters made it necessary for him to be out of the office, but he was continuing to work on the supplemental responses and expected to finish them shortly. (Motion, Grossberg Decl., Ex. N, 10-26-15 email.) Applicant's counsel emailed Opposer's counsel that day to ask for a three (3) month extension of deadlines. (Motion, Grossberg Decl., Ex. O, 10-26-15 email.) In response, on October 29, 2015, Opposer's counsel

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[5] This is yet another objection that Applicant had asserted in its responses to Opposer's discovery. (Freund Decl. ¶13.)

[6] Applicant's statement that it has "fully and candidly responded to Opposer's discovery requests" and that it "produced 1275 pages of responsive documents" is misleading. (Motion at pg. 3.) In actuality, much of how Applicant responded and the documents produced were non-responsive. (Freund Decl. ¶14.) This is the subject of a meet and confer letter Opposer has sent to Applicant. (Id.) Opposer is awaiting a response to this letter. (Id.)

said he was amenable to a one (1) month extension. (Motion, Grossberg Decl., Ex. O, 10-29-15 email.)

In none of Opposer's counsel's correspondence mentioned was it ever stated that he was not going to serve supplemental responses. The way Opposer's counsel had left the issue of the supplemental responses was that he was working on finishing them and that they would be ready shortly. Applicant's counsel's email on October 29 did not state that she was going to file a Motion to Compel if Opposer's counsel did not agree to a three (3) month extension. Opposer's counsel interpreted the email to state Applicant's counsel was willing to receive Opposer's supplemental responses. Applicant's counsel sent no other communication to Opposer's counsel regarding the requested extension or when Opposer's supplemental responses would be ready, which she easily could have done. (Freund Decl. ¶6.) Four (4) days after Opposer's counsel sent the email stating he was amenable to a one (1) month extension of all deadlines, Applicant filed the Motion. (Id.)

This lack of candor and follow up on Applicant's counsel's part coupled with its above-mentioned refusal to follow Opposer's request to narrow the scope of Applicant's overbroad discovery or even understand Opposer's concerns regarding such discovery does not evince a good faith effort to resolve any discovery issues voiced by Opposer per 37 C.F.R. § 2.120(e). A good faith effort per 37 C.F.R. § 2.120(e) "should be directed to understanding differences and actually investigating ways in which the resolve the dispute." *Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 U.S.P.Q.2d 1080 (TTAB 2014) Applicant did not listen to Opposer's suggestions to resolve the dispute, or even try to understand them. For all of the foregoing reasons, the Motion was premature.

Opposer sent supplemental responses to Applicant on November 9, 2015 along with supplemental document production. (Freund Decl., ¶7, Ex.4-5.) Opposer has, in this Opposition, stated how the supplemental responses resolve a majority of the issues raised in the Motion. On November, 13, 2015 Opposer's counsel sent Applicant's counsel a letter stating that a review of the supplemental responses will show that they "resolve virtually all of Applicant's issues" contained in the Motion. (Freund Decl., Ex. 6.) As a result, Opposer's counsel requested that the Motion be withdrawn, with Opposer's counsel "willing to informally

resolve whatever issues remain." (Id.) This would have relieved having Opposer prepare this needless Opposition to the Motion, since a majority of the issues raised in the Motion were now moot and there was no reason the remaining few issues could not be resolved informally. (Id.) On November 17, 2015, Applicant's counsel sent an email to Opposer's counsel stating that she had reviewed the supplemental responses and that she "disagree[d] that all of the issues presented in the pending motion are resolved by the supplemental discovery responses." (Freund Dec., Ex. 7.) This was ignoring Opposer's counsel's clear statements in the above-mentioned November 13, 2015 letter. Applicant's counsel did not state what issues she did not think were resolved by the supplemental responses, in spite of admitting that she reviewed them. (Freund Dec., ¶16.) Rather, she threw Applicant's counsel's request to resolve the discovery dispute back at him by telling him to tell her what issues he thought had been resolved. ((Freund Dec., Ex. 7.) If issues in the Motion have been resolved, the moving party should inform the Board of which issues no longer require its involvement. *See* 37 C.F.R. § 2.120(e). In spite of this and evident from Applicant's counsel's November 17, 2015 email, though Opposer has served supplemental responses, Applicant refuses to withdraw *anything* from the Motion. Applicant cannot state that nothing has been resolved by Opposer's supplemental responses. Moreover, "[t]he Board expects parties and their attorneys or other authorized representatives) to cooperate with one another in the discovery process...[and] each party and its attorney...has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case." TBMP § 408.01. Applicant's counsel is shirking its duty to cooperate by refusing to withdraw any issues stated in the Motion, let alone the Motion itself.

There are procedural infirmities with letting the Motion proceed though supplemental responses have since been served on Applicant. *See Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 U.S.P.Q.2d 1080 (TTAB 2014). If Applicant puts forth any perceived issues it has with the supplemental responses in its reply brief, Opposer will not have an opportunity to respond to such issues for purposes of the Motion – this is "contrary to the Board's preference that the arguments and authority should be presented thoroughly in the motion or

the opposition brief thereto." *Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 U.S.P.Q.2d 1080 (TTAB 2014).[7] Inasmuch that Opposer served supplemental responses to all the Discovery Requests, the Motion is moot to all such supplemented responses and even to Request No.11 which was satisfied by Supplemental Response to Request No.4. Also, since Opposer will not be able to respond to any issues Applicant may have regarding the supplemental responses, the Motion is improper and should not be considered by the Board.

III. THE MOTION SHOULD BE DENIED BECAUSE IT IS HIGHLY UNCLEAR IF APPLICANT IS MOVING TO COMPEL ALL DISCOVERY RESPONSES OR SOME, MAKING IT UNDULY DIFFICULT FOR OPPOSER TO RESPOND TO THE MOTION.

Applicant has not specifically addressed each Discovery Request upon which it is moving to compel. It seems to be making global general objections to Opposer's initial discovery responses, many times mentioning Discovery Requests by example (by its own admission) through its many uses of "See, e.g., Opposer's Responses Nos. [insert number here]. " (Motion pgs. 7, 8). The global general objections Applicant has asserted do not in any way apply uniformly to each Discovery Request and do not serve to put fourth a clear number of disputed items. *See Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986) (parties must narrow disputed requests for discovery to a reasonable number). This is indicative of Applicant's scattershot discovery approach, which is why Opposer had so much trouble responding to Applicant's discovery in the first place, and is having so much trouble responding to the Motion. Applicant wishes that discovery remain overbroad is indicative in its pending Motion to Amend its Answer (Dkt. entry no. 19), where it would have marks of its own unrelated to the proceeding become relevant and thus needlessly broaden discovery.

A. Applicant Admits That The Motion Is Premature.

Applicant admitted that it is premature in filing the Motion by stating "[i]t is difficult for Applicant to identify at this juncture which responses are or will be deficient..." (Motion at 10; emphasis added.) Consequently, the Motion should be denied in its entirety. It is unknown then how Opposer is expected to respond to the Motion since it is unclear by Applicant's own

[7] It should be noted that the facts are somewhat different in this proceeding than in *Hot Tamale Mama...and More, LLC v. SF Investments, Inc.* because here Opposer served initial responses in response to Applicant's Discovery Requests.

admission which Discovery Requests Applicant is moving to compel. Also, Applicant's refusal to communicate to Opposer regarding any issues it has with the supplemental responses also leaves Opposer in the dark about how to respond to the Motion. It stands to reason that the Board is not able to issue advisory orders – which Applicant's Motion is specifically requesting the Board issue.

B. Applicant's Prayer For Relief Is Inappropriate.

Applicant's request for relief is likewise fatally vague, not identifying which Discovery Requests it is moving on and not acknowledging that Opposer provided substantive responses for some of the Discovery Requests in the first place (though Applicant mentions earlier in the Motion that Opposer had done this). For example, it is unknown to Opposer what Discovery Requests Applicant is moving on when it is asking the Board to "clarify that documents and information relating to Opposer's duration of use of its marks and first use of its marks fall within the scope of permissible discovery." Accordingly, any relief prayed for by the Motion that was not substantively addressed in the Motion should be denied.

IV. CONCLUSION

For all the foregoing reasons, granting the Motion should be denied it its entirety.

Respectfully Submitted,

Dated: November 23, 2015

By: _____

Steven A. Freund, Esq.
Attorney for Opposer
Law Office of Steven A. Freund
A Professional Corporation
P.O. Box 911457
Los Angeles, CA 90091
Phone: 310-284-7929

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO.'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND TO RESET ALL DATES** has been served on Applicant's counsel via First Class U.S. Mail on November 23, 2015, postage prepaid to:

Robert B.G. Horowitz
Baker & Hostetler LLP
45 Rockefeller Plaza, 14th Floor
New York, New York 10111-0100

Lesley McCall Grossberg
Baker & Hostetler LLP
2929 Arch Street
Cira Centre, 12th Floor
Philadelphia, PA 19104-2891

Steven A. Freund, Esq

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

OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO., Opposer,	)	Opposition No. 91218523
	)	Application Serial No. 86/139,432 Mark: FREUND'S FAMOUS Filing Date: December 10, 2013
v.	)	Application Serial No. 86/139,577 Mark: Filing Date: December 10, 2013
13TH AVE FISH MARKET INC. DBA FREUND'S FISH, Applicant	)	

DECLARATION OF STEVEN FREUND IN SUPPORT OF OPPOSER OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO.'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND TO RESET ALL DATES

1. I am an attorney licensed to practice law in the State of California and am counsel for Oakhurst Industries, Inc. DBA Freund Baking Co. ("**Opposer**") in this Opposition Proceeding. I have personal knowledge of the facts set forth herein and am competent to testify thereto. I am submitting this declaration in support of Opposer's Opposition ("**Opposition**") to Applicant 13th Ave Fish Market Inc. DBA Freund's Fish's ("**Applicant**") Motion to Compel Discovery Responses and to Reset All Dates ("**Motion**").

2. Applicant's counsel, Robert Horowitz, did not call me to ask for my consent to file Applicant's Motion to Enlarge until the day the Motion to Enlarge was filed, which was one day after the deadline for filing the Answer had passed. Mr. Horowitz filed the Motion to Enlarge right after leaving the voicemail for me, not leaving any time for me to return the call.

3. A selection from Applicant's First Set of Document Requests to Opposer ("**Document Requests**") is attached as Exhibit 1.

4. A selection from Applicant's First Set of Interrogatories to Opposer (**"Interrogatories"**) is attached as Exhibit 2.

5. Mr. Horowitz's email of August 10, 2015 along with replacement pages for Applicant's Interrogatories and Document Requests are attached as Exhibit 3.

6. Instead of responding to Opposer's extension agreement sent on October 29, 2015 and despite Opposer's indications that supplemental responses would be served and without ascertaining if such supplemental responses would be forthcoming, Applicant without any indication to Opposer prepared and filed the instant Motion on November 3, 2015. Applicant's counsel, Lesley Grossberg, sent no other communication to me regarding the requested extension or when Opposer's supplemental responses would be ready, which she easily could have done.

7. Opposer supplemented virtually all of its discovery responses on November 9, 2015, rendering the Motion moot.

8. Opposer's Supplemental Reponses to Applicant's First Set of Document Requests are attached as Exhibit 4.

9. Opposer's Supplemental Reponses to Applicant's First Set of Interrogatories are attached as Exhibit 5.

10. Applicant's counsel has failed to respond to Opposer's raising the issue of the overbroad definition of Opposer.

11. Applicant in its responses to the discovery Opposer served, asserted the same objection Opposer did regarding requests with "all documents."

12. Applicant stated that (similar to what Opposer stated as to the too-numerous-to-count products it has produced over the years) it has made "200 products in connection with the marks", rendering it difficult to respond to Opposer's discovery.

13. Applicant asserted a "legal conclusion" objection in its responses to Opposer's discovery.

14. Much of how Applicant responded to Opposer's discovery and the documents produced were non-responsive. This is the subject of a meet and confer letter Opposer has sent to Applicant. Opposer is awaiting a response to this letter.

15. My letter of November 13, 2015 to Applicant's counsel requesting that the Motion be withdrawn is attached as Exhibit 6.

16. Ms. Grossberg's response email of November 17, 2015 is attached as Exhibit 7. Ms. Grossberg did not state what issues she did not think were resolved by the supplemental responses, in spite of admitting that she reviewed them.

17. On November 19, 2015, I sent a letter to Ms. Grossberg asking if Applicant would consent to Opposer's dismissal of its dilution claim. As of the date of this filing, I have yet to receive a substantive response to my November 19 letter. Opposer will file a Motion to Amend its Notice of Opposition to drop its dilution claim before a ruling on the instant Motion.

18. Opposer notes that Applicant asserted this same objection without producing a privilege log in its responses to Opposer's discovery.

Respectfully Submitted,

Dated: November 23, 2015

By: _____

Steven A. Freund, Esq.
Attorney for Opposer
Law Office of Steven A. Freund
A Professional Corporation
P.O. Box 911457
Los Angeles, CA 90091
Phone: 310-284-7929

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **DECLARATION OF STEVEN FREUND IN SUPPORT OF OPPOSER OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO.'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND TO RESET ALL DATES** and accompanying exhibits have been served on Applicant's counsel via First Class U.S. Mail on November 23, 2015, postage prepaid to:

Robert B.G. Horowitz
Baker & Hostetler LLP
45 Rockefeller Plaza, 14th Floor
New York, New York 10111-0100

Lesley McCall Grossberg
Baker & Hostetler LLP
2929 Arch Street
Cira Centre, 12th Floor
Philadelphia, PA 19104-2891

Steven A. Freund, Esq

Exhibit 1

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

Oakhurst Industries, Inc. **DBA Freund Baking Co.,** Opposer, v. **13th Ave Fish Mark Inc. DBA Freund's Fish,** Applicant.	Opposition No.: 91218523

APPLICANT 13th AVE FISH MARKET INC. DBA FREUND'S FISH FIRST SET OF DOCUMENT REQUESTS TO OPPOSER (NOS. 1-57)

Pursuant to Fed. R. Civ. P. 34, 37 CFR § 2.120(d), and TBMP § 406, Applicant 13th Ave Fish Market Inc. DBA Freund's Fish ("Applicant"), by and through undersigned counsel, hereby request that Opposer Oakhurst Industries, Inc. DBA Freund Baking Co. ("OII") answer the following interrogatories under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F. R. § 2.120, within thirty (30) days from the date hereof, said answers to be made to the offices of Applicant' counsel, Baker & Hostetler LLC, 45 Rockefeller Plaza, 14th Floor, New York, N.Y. 10111.

DEFINITIONS AND INSTRUCTIONS

The following Definitions and Instructions apply to these Requests:

1. These Requests for Production are continuing in nature and require supplemental production if the responding party obtains further information after responding to this Request for Prodction. Demand for supplementation is hereby made.

2. Documents produced in response to this Request for production must be identified as to the particular Request to which the documents are responsive.

3. Each Interrogatory is to be answered separately and in order.

4. The subject matter covered by these Requests is not limited to the United States unless so specified.

5. The terms "Opposer," "You," or "Your" mean Oakhurst Industries, Inc. DBA Freund Baking Co., , its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of Oakhurst Industries, Inc., including all past or present employees, or any such person or persons individually or in any combination.

6. The terms "Applicant," ", or 13th Ave Fish Market Inc., or "Freund's Fish" means 13th Ave Fish Market Inc. DBA Freund's Fish, its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of 13th Ave Fish Market Inc., including all past or present employees, or any such person or persons individually or in any combination.

7. In responding to the following Requests, You are required to furnish all documents that are available to You, including documents in the possession, custody, or control of Your attorneys, accountants, agents, employees, advertising agencies, advertising consultants, representatives, or any other persons directly or indirectly employed by or connected with You or Your attorneys or anyone else subject to Your control.

8. The phrases "FREUND'S FAMOUS word mark" refers to the FREUND'S FAMOUS word mark, United States Trademark that is the subject of Application No. 86/139,432, and "FREUND'S FAMOUS design mark" refers to Applicant's mark that is the subject of United States Trademark Application No. 86/139/577. The phrase "Applicant's Marks" refers to both of the foregoing marks.

9. The phrase "Opposer's Marks" refer to "SINCE 1856 FREUND'S BAKING CO. design marks that are the subject of U.S. Trademark Registration Nos. 4,304,304 and 4,500,792, the common law mark SINCE 1856 FREUND BAKING CO. in blue and white colors and the common law word mark SINCE 1856 FREUND'S BAKING CO.

10. "Marked Goods or Services" means any and all goods or services offered, advertised, rendered, manufactured, sold, distributed, or otherwise exploited by Opposer in connection with Opposer's Marks.

11. The terms "trademark(s)" or "mark(s)" as used herein shall include trademarks and service marks (whether registered or common law), trade names, or any other word, slogan, tag line, or symbol used in connection with business activities as defined in 15 U.S.C. § 1127, and all forms in which any such marks are presented, such as in the singular or plural, with any design, in any typeface, or otherwise.

12. The term "including" means including but not limited to.

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

14. The phrase "this action" means Opposition Proceeding No. 91218523 before the United States Trademark Trial and Appeal Board.

15. Any reference to instances of "Actual Confusion" includes phone calls or inquiries, facsimiles, letters, emails, donations, purchase orders or any other similar contacts to Opposer in which the contacting party intended to reach a different person and/or said contact implied, inferred, or suggested that Applicant may be connected or associated with Opposer in any way.

16. The term "document" shall be accorded its broadest possible meaning under the Federal Rules of Civil Procedure, and includes any tangible or machine readable item whatsoever including, any written, graphic, or other means of preserving thought or expression, all correspondence, notes, messages, emails, text messages, voice mail messages, letters, charts, telegrams, teletypes, telefaxes, bulletins, notices, announcements, manuals, brochures, pamphlets, schedules, studies, transcripts, minutes, evaluations, analyses, summaries, records, recordings of telephone or other conversations, statements, contracts, agreements, journals, statistical records, desk calendars, appointment books – whether hard copy or electronic diaries, lists, tabulations, sound records, computer printouts, data processing input or output, ledgers, invoices, worksheets, spreadsheets, receipts, prospectuses, financial statements, accounting records, tax returns, cancelled checks, opinions or reports of consultants, records or summaries of negotiations, magazine or newspaper articles, releases, advertisements (as defined below), surveys, investigations, books, memoranda, reports, records, invoices, labels, writings, displays, photographs, drawings, sketches, mockups, art work, specimens, illustrative materials, magnetic recording tapes, microfilms, other storage means by which information is retained in retrievable form, and other materials and things, whether printed, typewritten, handwritten, recorded, or reproduced by any mechanical or electronic process. The term "documents" also includes all writings as defined in Rule 1001, Federal Rules of Evidence.

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

18. The term "advertisement(s)" shall be interpreted in the broadest sense and includes and means without limitation, any means employed in promoting or publicizing any products, services, or business, including, without limitation, web sites, signs, labels, displays,

tags, emails, containers, television, Internet, Internet sales sites, blogs, social media accounts, search engine optimization, and/or radio commercials, leaflets, brochures, billboards, publications, catalogs, direct mail circulars, and promotional materials of every kind and/or in any and all media, including without limitation, print, broadcast, and/or the Internet. It shall also mean all notes, drafts, alterations, modifications, changes, amendments and non-identical copies of documents by whatever means made.

19. As used herein, "and" "and/or,' as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the Interrogatory all responses which otherwise might be construed to be outside its scope.

20. As used herein, "date" shall mean the exact, date, month, and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events. As used herein, the singular shall always include the plural, and the present tense shall always include the past tense, and *vice versa*.

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

22. As used herein, a document "concerning," "related," "relating," "referring," or that "relates" or "refers" to any given subject means any document that constitutes, comprises, contains, embodies, reflects, identifies, describes, mentions, supports, corroborates, demonstrates, proves, evinces, shows, refutes, disputes, rebuts, controverts, contradicts, states, refers to, pertains directly or indirectly to, deals with, or is in any way relevant or pertinent to that subject including, without limitation, documents concerning the preparation of other documents.

23. As used herein, "identify" shall mean determine, find, locate, pick out, place, recognize, spot, check, examine, inspect, investigate, notice, observe, scrutinize, disclose, discover, or reveal.

24. When producing the documents, please keep all documents segregated by

the file in which the documents are contained and indicate the name of the file in which the documents are contained, the person or entity and the location in which or by which such file is kept, and the name of the documents being produced.

25. If You claim any documents are privileged, for each such document please:

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

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

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

27. If production of any requested document is objected to on the ground that it is burdensome and oppressive, identify:

a) the precise reason why production poses a special burden;
b) the approximate number of documents/pages that have been called for; and
c) the location(s) of the document(s) that have been called for.

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

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

29. If any documents responsive to the following Requests have been lost, destroyed, transferred voluntarily or involuntarily to others not subject to Your control, or otherwise disposed of, or if any documents responsive to the following requests exist but are not available, furnish a list identifying each such document, and setting forth the following information with respect to each document: its date, author(s), sender(s), addressee(s) and recipient(s), and the subject matter of the document. In each instance, explain the circumstances surrounding each disposition or why such document is unavailable, including, in the event of such a disposition, the authorization thereof and the date thereof.

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

31. If any portion of a document is responsive to any request, then the entire document shall be produced. Documents produced pursuant to a request shall be produced in the order in which they appear in Your files, and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Under no circumstances are documents from any other file folder to be commingled with documents from any other file folder.

32. If a document is produced in redacted form, state with particularity the reason(s) it was not produced in full, and describe generally those portions of the document that are not being produced in a manner sufficient to identify the document for the purposes of a motion to compel discovery.

33. If there are no documents responsive to any particular Request, You must so indicate in writing.

34. All words, terms, and phrases not specifically defined herein are to be given their normal and customary meaning in the context in which they are used in these

Requests.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST TO PRODUCE NO. 1:

All documents concerning, reflecting or related to the adoption by Opposer of Opposer's Marks for the Marked Goods or Services and first use thereof: a) anywhere; and, b) in interstate commerce.

REQUEST TO PRODUCE NO. 2:

Documents sufficient to identify to target customers for the Marked Goods or Services.

REQUEST TO PRODUCE NO. 3:

All documents concerning, reflecting or related to any instances of actual confusion encountered by Opposer as a result of Applicant's use of Applicant's Marks.

REQUEST TO PRODUCE NO. 4:

All documents concerning, reflecting or related to the wholesale and retail pricing of the Marked Goods or Services sold by Opposer in connection with each of Opposer's Marks during the past five years.

REQUEST TO PRODUCE NO. 5:

All documents concerning, reflecting or related to Opposer's applications to federally Opposer's Marks including but not limited to specimens of use for those marks.

REQUEST TO PRODUCE NO. 6:

All documents concerning, reflecting or related to the duration, extent, and geographic reach of advertising and publicity done by Opposer for each of Opposer's Marks from their date of first use through to the present.

REQUEST TO PRODUCE NO. 7:

All documents concerning, reflecting or related to sales figures on an annualized basis reflecting Opposer's dollar value, unit volume and geographic extent of Marked Goods or Services sold in connection each of Opposer's Marks from their date of first

Exhibit 2

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

Oakhurst Industries, Inc. DBA Freund Baking Co., Opposer, v. **13th Ave Fish Mark Inc. DBA Freund's Fish,** Applicant.	Opposition No.: 91218523

APPLICANT 13TH AVE FREUND'S FISH MARKET INC. DBA FREUND'S FIRSH FIRST SET OF INTERROGATORIES TO OPPOSER (NOS. 1-17)

Pursuant to Fed. R. Civ. P. 33, 37 CFR § 2.120(d), and TBMP § 405, Applicant 13th Ave Fish Market Inc. DBA Freund's Fish ("Applicant"), by and through undersigned counsel, hereby request that OpposerOakhurst Industries, Inc. DBA Freund Baking Co. ("OII") answer the following interrogatories under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F. R. § 2.120, within thirty (30) days from the date hereof, said answers to be made to the offices of Applicants' counsel, Baker & Hostetler LLC, 45 Rockefeller Plaza, 14th Floor, New York, N.Y. 10111.

DEFINITIONS AND INSTRUCTIONS

The following Definitions and Instructions apply to these Interrogatories:

1. These Interrogatories are continuing in nature and require supplemental answers if the responding party obtains further information after responding to this First Set of Interrogatories. Demand for supplementation is hereby made.

2. Each Interrogatory is to be answered separately and fully in writing and under oath. The answers to be signed and sworn to by the person making them. If Opposer refusesto answer any Interrogatory, in whole or in part, Opposer must state each specific ground

for Opposers' refusal. If Opposers objects in part to any Interrogatory, Opposermust answer the remainder completely.

3. The terms "Opposer," "You," or "Your" mean Oakhurst Industries, Inc. DBA Freund Baking Co., , its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of Oakhurst Industries, Inc., including all past or present employees, or any such person or persons individually or in any combination.

4. The terms "Applicant," ", or 13th Ave Fish Market Inc., or "Freund's Fish" means 13th Ave Fish Market Inc. DBA Freund's Fish, its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of 13th Ave Fish Market Inc., , including all past or present employees, or any such person or persons individually or in any combination.

5. The phrases "FREUND'S FAMOUS word mark" refers to the FREUND'S FAMOUS word mark, United States Trademark that is the subject of Application No. 86/139,432, and "FREUND'S FAMOUS design mark" refers to Applicant's mark that is the subject of United States Trademark Application No. 86/139/577.

6. The phrase "Opposer's Marks" refer to "SINCE 1856 FREUND'S BAKING CO. design marks that are the subject of U.S. Trademark Registration Nos. 4,304,304 and 4,500,792, the common law mark SINCE 1856 FREUND BAKING CO. in blue and white colors and the common law word mark SINCE 1856 FREUND'S BAKING CO.

7. "Marked Goods or Services" means any and all goods or services offered, advertised, rendered, manufactured, sold, distributed, or otherwise exploited by Opposer in connection with Opposer's Marks.

8. The terms "trademark(s)" or "mark(s)" as used herein shall include trademarks and

Exhibit 3

From: Horowitz, Robert B. G. [mailto:rhorowitz@bakerlaw.com]
Sent: Monday, August 10, 2015 8:06 AM
To: sfreund@freundlawfirm.com
Cc: Dos Santos, Ana
Subject: re: FREUND'S FISH opposition proceeding

Dear Steven:

I noticed a typo error in paragraph 6 of the definitions in the interrogatories and paragraph 9 of the definitions in the document requests we served. The common law mark "FREUND'S BAKING CO." obviously should appear.

Replacement pages for the interrogatories and document requests served upon you are attached. Kindly substitute them for the original pages and proceed accordingly.

I apologize for any inconvenience caused.

Yours,

Red

My Bio **Web site** **vCard**

T 212.589.4240
F 212.589.4201
M 917.288.1793

Robert B.G. Horowitz
rhorowitz@bakerlaw.com

BakerHostetler

www.bakerlaw.com 45 Rockefeller Plaza
New York, NY 10111-0100

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Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

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for Opposers' refusal. If Opposers objects in part to any Interrogatory, Opposermust answer the remainder completely.

3. The terms "Opposer," "You," or "Your" mean Oakhurst Industries, Inc. DBA Freund Baking Co., , its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of Oakhurst Industries, Inc., including all past or present employees, or any such person or persons individually or in any combination.

4. The terms "Applicant," ", or 13th Ave Fish Market Inc., or "Freund's Fish" means 13th Ave Fish Market Inc. DBA Freund's Fish, its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of 13th Ave Fish Market Inc., , including all past or present employees, or any such person or persons individually or in any combination.

5. The phrases "FREUND'S FAMOUS word mark" refers to the FREUND'S FAMOUS word mark, United States Trademark that is the subject of Application No. 86/139,432, and "FREUND'S FAMOUS design mark" refers to Applicant's mark that is the subject of United States Trademark Application No. 86/139/577.

6. The phrase "Opposer's Marks" refer to "SINCE 1856 FREUND'S BAKING CO. design marks that are the subject of U.S. Trademark Registration Nos. 4,304,304 and 4,500,792, the common law mark SINCE 1856 FREUND BAKING CO. in blue and white colors and the common law word mark FREUND'S BAKING CO.

7. "Marked Goods or Services" means any and all goods or services offered, advertised, rendered, manufactured, sold, distributed, or otherwise exploited by Opposer in connection with Opposer's Marks.

8. The terms "trademark(s)" or "mark(s)" as used herein shall include trademarks and

9. The phrase "Opposer's Marks" refer to "SINCE 1856 FREUND'S BAKING CO. design marks that are the subject of U.S. Trademark Registration Nos. 4,304,304 and 4,500,792, the common law mark SINCE 1856 FREUND BAKING CO. in blue and white colors and the common law word mark FREUND'S BAKING CO.

10. "Marked Goods or Services" means any and all goods or services offered, advertised, rendered, manufactured, sold, distributed, or otherwise exploited by Opposer in connection with Opposer's Marks.

11. The terms "trademark(s)" or "mark(s)" as used herein shall include trademarks and service marks (whether registered or common law), trade names, or any other word, slogan, tag line, or symbol used in connection with business activities as defined in 15 U.S.C. § 1127, and all forms in which any such marks are presented, such as in the singular or plural, with any design, in any typeface, or otherwise.

12. The term "including" means including but not limited to.

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

14. The phrase "this action" means Opposition Proceeding No. 91218523 before the United States Trademark Trial and Appeal Board.

15. Any reference to instances of "Actual Confusion" includes phone calls or inquiries, facsimiles, letters, emails, donations, purchase orders or any other similar contacts to Opposer in which the contacting party intended to reach a different person and/or said contact implied, inferred, or suggested that Applicant may be connected or associated with Opposer in any way.

Exhibit 4

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

OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO., Opposer,	)	Opposition No. 91218523
	)	Application Serial No. 86/139,432 Mark: FREUND'S FAMOUS Filing Date: December 10, 2013
v.	)	Application Serial No. 86/139,577 Mark: [illegible] Filing Date: December 10, 2013
13TH AVE FISH MARKET INC. DBA FREUND'S FISH, Applicant	)	

OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS

Opposer, Oakhurst Industries, Inc. DBA Freund Baking Co. ("**Opposer**"), based on present information and belief, and following reasonable inquiry, supplements its responses as follows to Applicant's First Set of Document Requests to Opposer. Opposer reserves the right to supplement these responses as appropriate and to correct, amend, or withdraw any responses based on discovery of new information or error.

GENERAL OBJECTIONS

The following general objections apply to each of the definitions, instructions and Document Requests propounded by Applicant ("**Requests**") and are hereby incorporated within each response set forth below. No specific objections are intended to establish, and should not be interpreted as establishing, a waiver of any general objection.

1. Opposer objects to these Requests to the extent they seek the disclosure of information neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

2. Opposer objects to each Request to the extent it seeks information that is available to the public, or is otherwise readily available to Applicant from other sources, and the expense and burden of attaining such information is not greater for Applicant than it is for Opposer.

3. Opposer objects to each Request to the extent that the burden or expense of responding to each Request outweighs the likely benefit, taking into account the needs of the case, the parties' resources, and the importance of the proposed discovery in resolving important issues in this proceeding.

4. Opposer objects to these Requests to the extent they seek documents and information that are in the possession or control of Applicant or third parties.

5. Opposer objects to the Requests to the extent the documents and information sought is not in Opposer's custody, possession, or control.

6. Opposer objects to the Requests (and Definitions and Instructions) which ask for "all," "any," or "any and all" of some category on the grounds that each such Request (and Definition and Instruction) is overly broad, unduly burdensome and oppressive, to the extent it would impose upon Opposer a duty to search for items which would be unreasonable under the circumstances. Opposer acknowledges only a duty to search for information that is reasonable under the circumstances as provided by the Federal Rules of Civil Procedure and applicable case law.

7. Opposer objects to these Requests to the extent they call for confidential trade secret information, including business plans, non-public financial information, and like materials and also confidential third-party information disclosed to Opposer on the condition that, or subject to an obligation that, Opposer keep such information confidential.

8. Opposer objects to these Requests to the extent they seek information that is proprietary to Opposer and/or third parties.

9. Opposer objects to these Requests to the extent they seek production of information prepared in anticipation of litigation, or is protected from disclosure, in whole or in part by the attorney-client privilege, the attorney work product doctrine and/or any other applicable privileges, including but not limited to, joint defense and common interest privileges. Opposer hereby claims such privileges, immunities and protections to the extent implicated by each Request. The inadvertent disclosure of any protected or privileged information will not establish a waiver of any protection or privilege or of any other grounds for objecting to discovery regarding such response.

10. Opposer objects to each Request, and any definition or instruction, to the extent that it is inconsistent with, or seeks to impose requirements and obligations on Opposer beyond those set forth in the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), the Rules of Practice in Trademark Cases, and/or any other applicable rules or law.

11. In addition to these General Objections, Opposer may also state Specific Objections and Responses to the Requests where suitable, including objections and responses that are not generally applicable to each Request. By stating such Specific Objections and Responses, Opposer does not intend to restrict or limit these General Objections.

12. Opposer's responses to the Requests are based on facts currently known, and constitute a good faith and diligent effort to comply with the Requests. Opposer is conducting a reasonable investigation to locate and gather documents responsive to these Requests, with such investigation continuing. Consequently, Opposer reserves the right, where appropriate, to change, supplement and/or alter its responses pursuant to Federal Rule of Civil Procedure 26(e). Where Opposer responds that it will produce documents responsive to a particular Request, Opposer does not assert that it has any responsive documents, but rather that if such documents are located and are otherwise within the scope of discovery and not privileged or protected under the work product doctrine, or other applicable privileges or protections, Opposer has made or will make such documents available to Applicant. Moreover, Opposer reserves the right, at trial or

other proceedings in this action, to rely on documents, things, information, evidence, or other matters in addition to the documents and/or things that are produced in response to the Requests, whether or not such documents, things, information, evidence, or other matters are newly discovered or are currently in existence, but have not been located in spite of good faith and diligent effort.

13. Opposer objects to the Requests as overly broad and irrelevant to the extent they are not limited to the United States. Unless stated otherwise, Opposer's responses apply to the United States.

14. Opposer's responses herein do not in any way establish an adoption of Applicant's supposed Definitions or phrases or words to the extent they allege to define phrases or words to have a meaning different from their commonly understood meanings or to include more than their commonly understood meanings, in particular regarding the terms identified in these objections.

15. Opposer reserves the right to amend these objections and responses, to correct unintentional errors, or otherwise to supplement its objections and responses.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The following objections to definitions and instructions apply to each of Requests that incorporate them and are hereby incorporated within each response set forth below.

1. Opposer objects to the instruction "The subject matter covered by these Requests is not limited to the United States unless so specified" because it is overly broad and irrelevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Unless stated otherwise, Opposer's responses apply to the United States.

2. Opposer objects to the instruction that "You are required to furnish all documents that are available to You, including documents in the possession, custody, or control of Your attorneys, accountants, agents, employees, advertising agencies, advertising consultants, representatives, or any other persons directly or indirectly employed by or connected with You or Your attorneys or anyone else subject to Your

control" on the grounds that they seek production of information prepared in anticipation of litigation, or is protected from disclosure, in whole or in part by the attorney-client privilege, the attorney work product doctrine and/or any other applicable privileges, including but not limited to, joint defense and common interest privileges.

3. Opposer objects to the definitions of the terms "Opposer," "You," and "Your," and to each Request that uses those terms or a variation thereof, on the grounds that it renders the Requests as being unduly burdensome, overly broad, vague, ambiguous and oppressive, because it includes entities other than Opposer, and entities not controlled by Opposer. Opposer has no obligation or duty to produce anything not in the custody, possession or control of Opposer and does not agree to do so. Moreover, this definition is vague and overly broad in its reference to "its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of Oakhurst Industries, Inc., including all past or present employees, or any such person or persons individually or in any combination" as it is unclear whether all such terms refer to Opposer or to an unrelated entity and includes people and entities not in Opposer's control. Moreover, Opposer also objects to such definitions and to each Request that uses those terms or a variation thereof, as being overly broad and unduly burdensome because they would require Opposer to obtain information from any former employee, officer, predecessor, agent or director of Opposer. In responding to any Requests that use this definition, Opposer responds only on its own behalf.

SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER

REQUEST TO PRODUCE NO. 1

All documents concerning, reflecting or related to the adoption by Opposer of Opposer's Marks for the Marked Goods or Services and the first use thereof: a) anywhere; and, b) in interstate commerce.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 1

Opposer objects to the Request on the following grounds: 1) the Request is not reasonably calculated to lead to the discovery of admissible evidence because there is no issue of priority in this proceeding, and further, Opposer has no burden to show priority of use as to each and every product and/or service with which it has used its trademarks; 2) furthermore, the Request is overly broad and unduly burdensome to the extent it seeks documents relating to the "adoption" of Opposer's trademarks; 3) the Request is not reasonably calculated to lead to the discovery of admissible evidence in that the "adoption" of Opposer's trademarks has no bearing on any of the issues raised in this proceeding, including because there is no dispute that Opposer has actual and constructive priority of use in this proceeding; 4) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 5) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00182. [designated Trade Secret/Commercially Sensitive]. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 2

Documents sufficient to identify target customers for the Marked Goods or Services.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 2

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request.

REQUEST TO PRODUCE NO. 3

All documents concerning, reflecting or related to any instances of actual confusion encountered by Opposer as a result of Applicant's use of Applicant's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 3

Opposer objects to the Request on the following grounds: 1) the Request is vague, ambiguous and overly broad as to the terms "encountered" and "actual confusion" and the phrase "as a result of Applicant's use of Applicant's Marks"; 2) the Request is unintelligible as written; 3) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence; 4) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 5) as worded, the Request seeks production of documents protected by the attorney-client and attorney-work product privileges.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00174. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 4

All documents concerning, reflecting or related to the wholesale and retail pricing of the Marked Goods or Services sold by Opposer in connection with each of Opposer's Marks during the past five years.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 4

This response is designated "TRADE SECRET/COMMERCIALLY SENSITIVE."

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence; 3) the Request seeks production of competitive and highly-sensitive customer information; 4) the Request seeks trade secret and highly-confidential documents; and 5) the Request is compound in form.

Subject to and without waiving the foregoing General and Specific Objections, Opposer responds as follows: See File No. O-00233. [designated Trade Secret/Commercially Sensitive]. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 5

All documents concerning, reflecting or related to Opposer's applications to federally register Opposer's Marks including but not limited to specimens of use for those marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 5

Opposer objects to the Request on the following grounds: 1) the Request is vague, ambiguous and overly broad as to the following phrase and the individual terms that comprise it: "Opposer's applications to federally register Opposer's Marks including but not limited to specimens of use for those marks"; 2) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 3) the Request is unintelligible as written; and 4) as worded, the Request seeks production of documents protected by the attorney-client and attorney-work product privileges.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00001, O-00076. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 6

All documents concerning, reflecting or related to the duration, extent, and geographic reach of advertising and publicity done by Opposer for each of Opposer's Marks from their date of first use through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 6

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, as it seeks production of advertising over an extensive period of time; 2) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00150, O-00170. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 7

All documents concerning, reflecting or related to sales figures on an annualized basis reflecting Opposer's dollar value, unit volume and geographic extent of Marked Goods or Services sold in connection each of Opposer's Marks from their date of first use through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 7

This response is designated "TRADE SECRET/COMMERCIALLY SENSITIVE."

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request seeks trade secret and highly-confidential documents; and 3) the Request constitutes an impermissible invasion of Opposer's right of financial privacy.

Subject to and without waiving the foregoing General and Specific Objections,

Opposer responds as follows: See File No. O-00233. [designated Trade Secret/Commercially Sensitive]. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 8

All documents concerning, reflecting or related to Opposer's sales outlets where Marked Goods or Services have been, and are, sold, for each of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 8

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request seeks trade secret and highly-confidential documents; and 3) the Request seeks production of competitive and highly-sensitive customer information.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 9

All documents concerning, reflecting or related to the appearances at wholesale and retail locations of each of Opposer's Marks where Marked Goods or Services been sold.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 9

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request seeks trade secret and highly-confidential documents; and 3) the Request seeks production of competitive and highly-sensitive customer information.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. 00200. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 10

Documents sufficient to show each type of baked good advertised and sold in connection with each of Opposer's Marks from their date of first use to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 10

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome in that it seeks documents identifying "each type of baked good", as well as documents that are publicly available, and therefore, easily accessible by Applicant; 2) the Request is overly broad and unduly burdensome in that it seeks documents from the date of first use of "each baked good"; and 3) the Request is not reasonably calculated to lead to the discovery of admissible evidence because there is no issue of priority in this proceeding, and further, Opposer has no burden to show priority of use as to each and every baked good with which it has used its trademarks.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 11

Price lists for all baked goods offered by Opposer for the Marked Goods or Services from 1981 through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 11

Opposer objects to the Request on the following grounds: 1) the Request seeks production of competitive and highly-sensitive customer information; 2) the Request seeks trade secret and highly-confidential documents; 3) the Request is not reasonably

calculated to lead to discovery of admissible evidence in that it seeks documents relating to identification of customers; 4) the Request is also overly broad and calls for irrelevant information, as pricing is not relevant to this proceeding; and 5) the Request is overbroad in time and scope and due to its overbreadth it sweeps within its purview documents that are irrelevant to the proof of any matter at issue in this matter and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST TO PRODUCE NO. 12

All documents concerning, reflecting or related to each or all of Opposer's Marks becoming a household name.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 12

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute and 2) the Request does not describe the documents sought with reasonable particularity such that this Request can be responded to.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00200, O-00214. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 13

All documents concerning, reflection or related to histories of Opposer.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 13

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00222. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 14

All documents concerning, reflecting or related to advertising, promotional and marketing expenditures for each of Opposer's Marks for Marked Goods or Services from their dates of first use through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 14

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is overly broad and unduly burdensome, as it seeks production of expenditures over an extensive period of time.

REQUEST TO PRODUCE NO. 15

All documents concerning, reflecting or related to domain names owned by Opposer.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 15

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00200. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 16

All documents concerning, reflecting or related to websites and traffic generated by the websites where Opposer's Marks are advertised and promoted by Opposer, from their inception through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 16

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 17

All documents concerning, reflecting or related to the types of and reach of each type of advertising Opposer has done for each of Opposer's Marks from their dates of first use through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 17

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00150, O-00170. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 18

All documents concerning, reflecting or related to third-party advertising of each of Opposer's Marks from their dates of first use through to the present, including but not limited to the geographic reach of such advertising.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 18

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 19

All documents concerning, reflecting or related to the geographic territories in which each of Opposer's Marks have been used from their dates of first use through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 19

This response is designated "TRADE SECRET/COMMERCIALLY SENSITIVE."

Opposer objects to the Request on the following grounds: 1) The Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Subject to and without waiving the foregoing General and Specific Objections, Opposer responds as follows: See File No. O-00185 [designated Trade Secret/Commercially Sensitive]. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 20

All documents concerning, reflecting or related to celebrity endorsements of the Marked Goods or Services, or, Opposer's Marks per se.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 20

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 21

All documents concerning, reflecting or related to the amount of times each of Opposer's Marks have been searched on the Internet.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 21

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 22

All documents concerning, reflecting or related to industry awards Opposer has received for its goods and/or services.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 22

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession,

and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00150. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 23

All documents concerning, reflecting or related to museum exhibitions involving Opposer or the Marked Goods or Services.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 23

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No O-00214. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 24

All documents concerning, reflecting or related to Opposer and/or the Marked Goods being the subject of books.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 24

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 25

All documents concerning, reflecting or related to Opposer and/or the Marked Goods being mentioned in the press.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 25

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; and 3) the Request is compound in form.

REQUEST TO PRODUCE NO. 26

All documents concerning, reflecting or related to Opposer and/or the Marked Goods being mentioned in broadcast media.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 26

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly

broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 27

All documents concerning, reflecting or related to Opposer and/or the Marked Goods being mentioned in electronic media.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 27

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00214, O-00222. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 28

All documents concerning, reflecting or related to requests Opposer received from third-parties to reference any of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 28

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 29

All documents concerning, reflecting or related to internal or external consumer recognition surveys involving any of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 29

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request seeks highly confidential and trade secret documents; 3) as worded, the Request seeks production of documents protected by the attorney-client and attorney-work product privileges; and 4) the Request is premature to the extent it seeks production of documents that are of the type that would be produced in connection with expert disclosures.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 30

All documents concerning, reflecting or related to Annual Reports by Opposer referring to any of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 30

Opposer objects to the Request on the following grounds: 1) the Request is vague, ambiguous and overly broad as to the following phrase and the individual terms that comprise it: "Annual Reports referring to any of Opposer's Marks"; 2) the Request is unintelligible as written; 3) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 4) the Request seeks highly confidential and trade secret documents; and 5) the Request seeks production of competitive and highly-sensitive customer information.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 31

All documents concerning, reflecting or related to listings in dictionaries, directories or encyclopedias referring or relating to Opposer or any of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 31

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession,

and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 32

All documents concerning, reflecting or related to the extent of recognition by the general public of each of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 32

Opposer objects to the Request on the following grounds: 1) the Request is vague, ambiguous and overly broad as to the following phrase and the individual terms that comprise it: "the extent of recognition by the general public of each of Opposer's Marks"; and 2) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

REQUEST TO PRODUCE NO. 33

All documents concerning, reflecting or related to when each of Opposer's Marks allegedly became famous.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 33

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 34

All documents that refer or relate to the sale of Marked Goods or Services for each of Opposer's Marks, by or on behalf of Opposer, including, but not limited to, representative purchase orders, invoices, and correspondence.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 34

This response is designated "TRADE SECRET/COMMERCIALLY SENSITIVE."

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 3) the Request is not reasonably calculated to lead to discovery of admissible evidence in that it seeks documents relating to identification of customers; 4) the Request seeks highly confidential and trade secret documents; 5) the Request seeks production of competitive and highly-sensitive customer information; and 6) the Request is overbroad in time and scope.

Subject to and without waiving the foregoing General and Specific Objections, Opposer responds as follows: See File No. O-00190. [designated Trade Secret/Commercially Sensitive]. Discovery and investigation are continuing and as such, Opposer reserves the right to supplement its response.

REQUEST TO PRODUCE NO. 35

Documents sufficient to show all third-parties with whom Opposer has previously had, and/or currently has, any affiliation, partnership, and/or licensing or

product placement agreements in connection with the use of any of Opposer's Marks, and copies of all such agreements.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 35

Opposer objects to the Request on the following grounds: 1) the Request, as worded, seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 2) the Request is not reasonably calculated to lead to discovery of admissible evidence in that it seeks documents relating to identification of customers; 3) the Request seeks production of competitive and highly-sensitive customer information; 4) the Request seeks trade secret and highly-confidential documents; and 5) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 36

All affiliation, partnership, assignments, and/or licensing or product placement agreements between Opposer and anyone else, in connection with the use any of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 36

Opposer objects to the Request on the following grounds: 1) the Request is unintelligible as written; 2) the Request, as worded, seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 3) the Request seeks production of competitive and highly-sensitive customer information; 4) the Request seeks trade secret and highly-confidential documents; 5) the Request is not reasonably calculated to lead to discovery of admissible evidence in that it seeks documents relating to identification of customers; and 6) the Request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible

evidence in that it seeks "all documents," including documents that are not related to this dispute.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 37

Documents sufficient to identify all of Opposer's employees responsible for advertising and promotion of any of Opposer's Marks since 1981.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 37

Opposer objects to the Request on the following grounds: 1) the Request, as worded, seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 2) the Request violates the privacy rights of third parties; and 3) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 38

Representative examples of each and every advertisement, display, and item of promotional material used, published, or disseminated in connection with all of the Marked Goods and Services.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 38

Opposer objects to the Request on the following grounds: 1) the Request is overbroad in time and scope and due to its overbreadth it sweeps within its purview documents that are irrelevant to the proof of any matter at issue in this matter and not

reasonably calculated to lead to the discovery of admissible evidence; and 2) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00170. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 39

All documents related to every trademark and service mark application that Opposer has filed in the United States Patent and Trademark Office, since 1981.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 39

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and irrelevant because it seeks documents in connection with trademarks not related to this proceeding; 2) the Request is overly broad and unduly burdensome in that it seeks documents that are publicly available, and therefore, easily accessible by Applicant; 3) as worded, the Request calls for documents protected by the attorney-client and attorney-work product privileges, and such documents will not be produced; and 4) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No O-00001, O-00076. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 40

All documents related to every trademark and service mark that Opposer has asserted rights or claims to, since 1981.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 40

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and irrelevant because it seeks documents in connection with trademarks

not related to this proceeding; 2) the Request is overly broad and unduly burdensome in that it seeks documents that are publicly available, and therefore, easily accessible by Applicant; 3) as worded, the Request calls for documents protected by the attorney-client and attorney-work product privileges, and such documents will not be produced; 4) the Request is compound in form; and 5) the Request does not describe the category of documents with reasonable particularity such that this Request can be responded to.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No O-00001, O-00076. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 41

All advertisements as defined, since 1981 featuring any of Opposer's Marks, regardless of the person or entity responsible for placing and/or creating such advertisement.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 41

Opposer objects to the Request on the following grounds: 1) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 2) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all advertisements," including documents that are not related to this dispute; and 3) the Request is overbroad in time and scope.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00150, O-000170. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 42

Documents sufficient to identify every baked good Opposer has sold or transported, and every service rendered, since 1981.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 42

Opposer objects to the Request on the following grounds: 1) the Request is overly broad and unduly burdensome in that it seeks documents identifying "every baked good Opposer has sold or transported, and every service rendered, since 1981", which would include baked goods and services not related to this disputed; 2) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 3) the Request is overbroad in time and scope and due to its overbreadth it sweeps within its purview documents that are irrelevant to the proof of any matter at issue in this matter and not reasonably calculated to lead to the discovery of admissible evidence; 4) the Request is compound in form; 5) the Request violates Opposer's right of financial privacy; 6) the Request seeks production of competitive and highly-sensitive customer information; and 7) the Request seeks trade secret and highly-confidential documents.

REQUEST TO PRODUCE NO. 43

All advertisements, media kits, social media posts, and press releases that refer to Opposer and/or any of Opposer's Marks from their date of first use through to the present.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 43

Opposer objects to the Request on the following grounds: 1) the Request is unduly burdensome and overly broad in that it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence; 2) the Request is overbroad in time and scope and due to its overbreadth it sweeps within its purview documents that are irrelevant to the proof of any matter at issue in this matter and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 44

For all witnesses on which Opposer' intend to rely in this proceeding, documents sufficient to identify all prior criminal convictions that, in the convicting jurisdiction, were punishable by death or by imprisonment for more than one year.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 44

Opposer objects to the Request on the following grounds: the Request is improper and irrelevant because it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence because criminal convictions of witnesses are not related to this dispute

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 46

All documents and things identified in response to Applicant's First Set of Interrogatories to Opposer, or referred to or relied upon in the course of Opposer's preparation of responses to the First Set of Interrogatories.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 46

Opposer objects to the Request on the following grounds: 1) the Request is unduly burdensome and overly broad in that it seeks "all" responsive documents and things that that were "identified" in responding to Applicant's discovery requests; 2) as worded, the Request seeks production of documents protected by the attorney-client

and attorney-work product privileges and such documents will not be produced; 3) Opposer incorporates by reference its specific objections to Applicant's various interrogatories; and 4) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 47

Documents sufficient to identify all members, officers, and/or shareholders of Opposer, since 2005.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 47

Opposer objects to the Request on the following grounds: 1) the Request is improper and irrelevant because it seeks documents outside of Opposer's control, custody, and possession, and also because, as worded, it seeks documents not reasonably calculated to lead to the discovery of admissible evidence because identity of all members, officers, and/or shareholders of Opposer are not related to this dispute; 2) the Request is vague, ambiguous and overly broad as to what documents would be "sufficient to identify all members, officers, and/or shareholders of Opposer, since 2005."; and 3) the Request is unintelligible as written.

REQUEST TO PRODUCE NO. 48

All documents concerning, reflecting or relating to when Opposer first learned of Applicant's use of any of Applicant's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 48

Opposer objects to the Request on the following grounds: 1) the Request is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, in that it calls for "all documents concerning, reflecting or relating to" and the definition of "Opposer" could require production of documents as to when any number of people, including former employees, might have

heard of Applicant or seen Applicant's marks; 2) as worded, the Request calls for documents protected by the attorney-client and attorney-work product privileges.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. 174. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 50

All documents concerning, reflecting or relating to Opposer's policing of Opposer's Marks including but not limited to cease and desist letters sent, and responses to such letters.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 50

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; and 2) as worded, the Request calls for production of documents protected by the attorney-client and attorney-work product privileges.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 51 (Erroneously Numbered 52)

All documents concerning, reflecting or relating to Opposer's awareness of the use of "FREUND" or "FREUND'S" in connection with baked goods that do not, or did not, emanate from Opposer and/or are not, or were not, authorized by Opposer.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 51

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence, in that it calls for "all documents relating to referring to..." and the definition of "Opposer" could require production of documents as to when any number of people, including former employees, might have heard of or seen "FREUND" or "FREUND'S"; 2) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 3) as worded, the Request calls for documents protected by the attorney-client and attorney-work product privileges; and 5) the Request is compound in form.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00174. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 52

All documents concerning, reflecting or relating to the use of any of Opposer's marks in connection with private label bakery services since 1981 including but not limited to advertising and promotional materials therefor.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 52

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request does not describe the category of documents with reasonable particularity such that this Request can be responded to; and 3) the Request is overbroad in time and scope.

REQUEST TO PRODUCE NO. 53

Documents sufficient to identify: a) three customers annually since 1981 for whom Opposer has rendered private label bakery services since 1981; b) the packaging for baked goods for such customers; and, c) each and very brand that appeared or is to appear on such packaging.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 53

Opposer objects to the Request on the following grounds: 1) the Request is not reasonably calculated to lead to discovery of admissible evidence in that it seeks documents relating to identification of customers; 2) the Request, as worded, seeks documents not reasonably calculated to lead to the discovery of admissible evidence in that it is worded to cover trademarks outside this proceeding and therefore has no bearing on the issued raised in this proceeding; and 4) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

REQUEST TO PRODUCE NO. 54

All documents concerning, reflecting or relating to trade shows attended by Opposer at which Opposer's Marks have been promoted, and the expenses paid therefor.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 54

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) the Request does not describe the category of documents with reasonable particularity such that this Request can be responded to; and 3) the Request is overbroad in time and scope and due to its overbreadth it sweeps within its purview documents that are irrelevant to the proof of any matter at issue in this matter and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00150, O-00170. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 55

All documents concerning, reflecting or relating to advertising agencies and public relations firms which Opposer has utilized since 1981 for the advertising and promotion of each of Opposer's Marks, and its expenses therefor.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 55

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 56

All documents concerning, reflecting or related to brand rankings by others for each of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 56

Opposer objects to the Request on the following grounds: 1) the Request is unintelligible as written; and 2) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

Responding Party will produce all responsive, non-privileged documents which are in Responding Party's possession, custody, or control. See File No. O-00150. Discovery and investigation are continuing.

REQUEST TO PRODUCE NO. 57:

All documents concerning, reflecting or related to likelihood of confusion studies and/or surveys conducted or commissioned by Opposer for this action.

SUPPLEMENTAL RESPONSE TO REQUEST TO PRODUCE NO. 57

Opposer objects to the Request on the following grounds: 1) the Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks "all documents," including documents that are not related to this dispute; 2) as worded, the Request seeks production of documents protected by the attorney-client and attorney-work product privileges; and 3) the Request is premature to the extent it seeks production of documents that are of the type that would be produced in connection with expert disclosures.

Without waiving any of the foregoing general or specific objections, Responding Party responds as follows:

After a diligent search and reasonable inquiry has been made, Responding Party is unaware of any documents responsive to this Request. Discovery and investigation are continuing.

Respectfully Submitted,

Dated: November 9, 2015

By: _____

Steven A. Freund, Esq.
Attorney for Opposer
Law Office of Steven A. Freund
A Professional Corporation
P.O. Box 911457
Los Angeles, CA 90091
Phone: 310-284-7929

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS** has been served on Applicant's counsel via First Class U.S. Mail on November 9, 2015, postage prepaid to:

Robert B.G. Horowitz
Baker & Hostetler LLP
45 Rockefeller Plaza, 14th Floor
New York, New York 10111-0100

Lesley McCall Grossberg
Baker & Hostetler LLP
2929 Arch Street
Cira Centre, 12th Floor
Philadelphia, PA 19104-2891

Steven A. Freund, Esq.

Exhibit 5

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

OAKHURST INDUSTRIES, INC. DBA FREUND BAKING CO., Opposer,	)	Opposition No. 91218523
	)	Application Serial No. 86/139,432 Mark: FREUND'S FAMOUS Filing Date: December 10, 2013
v.	)	Application Serial No. 86/139,577 Mark: Filing Date: December 10, 2013
13TH AVE FISH MARKET INC. DBA FREUND'S FISH, Applicant	)	

OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposer, Oakhurst Industries, Inc. DBA Freund Baking Co. (**"Opposer"**), based on present information and belief, and following reasonable inquiry, supplements its responses as follows to Applicant's First Set of Interrogatories to Opposer. Opposer reserves the right to supplement these responses as appropriate and to correct, amend, or withdraw any responses based on discovery of new information or error.

GENERAL OBJECTIONS

The following general objections apply to each of the definitions, instructions and Interrogatories propounded by Applicant (**"Interrogatories"**) and are hereby incorporated within each response set forth below. No specific objections are intended to establish, and should not be interpreted as establishing, a waiver of any general objection.

1. Opposer objects to these Interrogatories to the extent they seek the disclosure of information neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

2. Opposer objects to each Interrogatory to the extent it seeks information that is available to the public, or is otherwise readily available to Applicant from other sources, and the expense and burden of attaining such information is not greater for Applicant than it is for Opposer.

3. Opposer objects to each Interrogatory to the extent that the burden or expense of responding to each Interrogatory outweighs the likely benefit, taking into account the needs of the case, the parties' resources, and the importance of the proposed discovery in resolving important issues in this proceeding.

4. Opposer objects to these Interrogatories to the extent they seek documents and information that are in the possession or control of Applicant or third parties.

5. Opposer objects to the Interrogatories to the extent the documents and information sought is not Opposer's custody, possession, or control.

6. Opposer objects to the Interrogatories (and Definitions and Instructions) which ask for "all," "any," or "any and all" of some category on the grounds that each such Request (and Definition and Instruction) is overly broad, unduly burdensome and oppressive, to the extent it would impose upon Opposer a duty to search for items which would be unreasonable under the circumstances. Opposer acknowledges only a duty to search for information that is reasonable under the circumstances as provided by the Federal Rules of Civil Procedure and applicable case law.

7. Opposer objects to these Interrogatories to the extent they call for confidential trade secret information, including business plans, non-public financial information, and like materials and also confidential third-party information disclosed to Opposer on the condition that, or subject to an obligation that, Opposer keep such information confidential.

8. Opposer objects to these Interrogatories to the extent they seek information that is proprietary to Opposer and/or third parties.

9. Opposer objects to these Interrogatories to the extent they seek production of information prepared in anticipation of litigation, or is protected from

disclosure, in whole or in part by the attorney-client privilege, the attorney work product doctrine and/or any other applicable privileges, including but not limited to, joint defense and common interest privileges. Opposer hereby claims such privileges, immunities and protections to the extent implicated by each Interrogatory. The inadvertent disclosure of any protected or privileged information will not establish a waiver of any protection or privilege or of any other grounds for objecting to discovery regarding such response.

10. Opposer objects to each Interrogatory, and any definition or instruction, to the extent that it is inconsistent with, or seeks to impose requirements and obligations on Opposer beyond those set forth in the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), the Rules of Practice in Trademark Cases, and/or any other applicable rules or law.

11. In addition to these General Objections, Opposer may also state Specific Objections and Responses to the Interrogatories where suitable, including objections and responses that are not generally applicable to each Interrogatory. By stating such Specific Objections and Responses, Opposer does not intend to restrict or limit these General Objections.

12. Opposer's responses to the Interrogatories are based on facts currently known, and constitute a good faith and diligent effort to comply with the Interrogatories. Opposer is conducting a reasonable investigation to locate and gather documents responsive to these Interrogatories, with such investigation continuing. Consequently, Opposer reserves the right, where appropriate, to change, supplement and/or alter its responses pursuant to Federal Rule of Civil Procedure 26(e). Where Opposer responds that it will produce documents responsive to a particular Interrogatory, Opposer does not assert that it has any responsive documents, but rather that if such documents are located and are otherwise within the scope of discovery and not privileged or protected under the work product doctrine, or other applicable privileges or protections, Opposer has made or will make such documents available to Applicant. Moreover, Opposer reserves the right, at trial or other proceedings in this

action, to rely on documents, things, information, evidence, or other matters in addition to the documents and/or things that are produced in response to the Interrogatories, whether or not such documents, things, information, evidence, or other matters are newly discovered or are currently in existence, but have not been located in spite of good faith and diligent effort.

13. Opposer's responses herein do not in any way establish an adoption of Applicant's supposed Definitions or phrases or words to the extent they allege to define phrases or words to have a meaning different from their commonly understood meanings or to include more than their commonly understood meanings, in particular regarding the terms identified in these objections.

14. Opposer reserves the right to amend these objections and responses, to correct unintentional errors, or otherwise to supplement its objections and responses.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The following objections to definitions and instructions apply to each of Interrogatories that incorporate them and are hereby incorporated within each response set forth below.

1. Opposer objects to the definitions of the terms "Opposer," "You," and "Your," and to each Interrogatory that uses those terms or a variation thereof, on the grounds that it renders the Interrogatories as being unduly burdensome, overly broad, vague, ambiguous and oppressive, because it includes entities other than Opposer, and entities not controlled by Opposer. Opposer has no obligation or duty to produce any information not in the custody, possession or control of Opposer and does not agree to do so. Moreover, this definition is vague and overly broad in its reference to "its subsidiaries, owners, joint venture partners, present and former officers, predecessors, agents, directors and all other persons acting or purporting to act on behalf of Oakhurst Industries, Inc., including all past or present employees, or any such person or persons individually or in any combination" as it is unclear whether all such terms refer to Opposer or to an unrelated entity and includes people and entities not in Opposer's control. Moreover, Opposer also objects to such definitions and to each Interrogatory

that uses those terms or a variation thereof, on the grounds that they would require Opposer to obtain information from any former employee, officer, predecessor, agent or director of Opposer. In responding to any Interrogatories that use this definition, Opposer responds only on its own behalf.

2. Opposer objects to the instruction "describe in detail" on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and misleading.

SUPPLMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

For each of Opposer's Marks, describe in detail each good or service that You have provided, or presently provide or offer to the public, including the history of Your having offered such product or service from the date when it was first made available, including any periods during which it was not so offered and the geographic location of the offering.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Opposer objects to the Interrogatory on the grounds that the Interrogatory is compound and includes multiple and distinct sub-parts.

Without waiving any of the foregoing general or specific objections, Opposer responds as follows:

For each of Opposer's Marks, since 1981, throughout the Western United States, Opposer has and is providing baking services. Since 1981, Opposer has produced and is producing bakery products such as hamburger buns and hot dog buns. Discovery and investigation are continuing.

INTERROGATORY NO. 2:

Describe in detail Your advertising and promotion of each of Opposer's Marks and/or products and/or services identified each of said marks, including any and all advertisements published, where each was published or placed, and Your total annual expenditures for the advertising and promotion of each of Opposer's Marks; identify the person(s) with the most knowledge in response to this Interrogatory.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:

Opposer objects to the Interrogatory on the following grounds: 1) the Interrogatory is compound and includes multiple and distinct sub-parts; 2) the request is unintelligible as written; and 3) the Interrogatory is overly broad and unduly burdensome, as it seeks information regarding expenditures over an extensive period of time.

Without waiving any of the foregoing general or specific objections, Opposer responds as follows:

For Opposer's Marks, Opposer has advertised its goods and services at trade shows across the country, on banners at such trade shows, on thousands of accessories given to present and potential customers, on raffle prizes given to its customers, on public sponsorship listings of its customers, and on the uniforms of its employees. The person with the most knowledge in response to this interrogatory is James Freund. Discovery and investigation are continuing.

The following portion of the response is designated "TRADE SECRET/COMMERCIALLY SENSITIVE."

INTERROGATORY NO. 3:

For each of Opposer's Marks, describe in detail the advertising, trade channels and class of customer for each good or service that You have provided, or presently provide or offer to the public in connection with each of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3

Opposer objects to the Interrogatory on the following grounds: 1) the Interrogatory is compound and includes multiple and distinct sub-parts; and 2) the request is unintelligible as written.

Without waiving any of the foregoing general or specific objections, Opposer responds as follows:

For advertising of Opposer's Marks, see Supplemental Response to Interrogatory No. 2. For the goods and services under Opposer's Marks, the trade channels are fast food restaurants, distributors, schools districts, food manufacturing plants, professional sports venues and amusement parks and other bakeries. For the goods and services under Opposer's Marks, the class of customers are fast food restaurants, schools, distributors, bakeries, food manufacturing plants, professional sports venues and amusement parks and the consumers who frequent all of the foregoing.

INTERROGATORY NO. 4:

Provide a corporate chart and identify the past and present executives, officers, directors, and managerial employees of Opposer.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

This response is designated "TRADE SECRET/COMMERCIALLY SENSITIVE."

Opposer objects to the Interrogatory on the following grounds: 1) the Interrogatory is vague, ambiguous and overly broad as to the following terms: "corporate chart" and "managerial employees"; 2) the Interrogatory is compound and includes multiple and distinct sub-parts; 3) the Interrogatory calls for irrelevant information, as identity of Opposer's past and present executives, officers, directors, and managerial employees are not relevant to this proceeding; and 4) the Interrogatory seeks trade secret and highly-confidential information.

INTERROGATORY NO. 5:

Describe in detail all circumstances surrounding Opposers' first knowledge of Applicant and of Applicants' use of each of the FREUND'S FAMOUS word mark and design Mark that are the subjects of this proceeding.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:

Opposer objects to the Interrogatory on the grounds that the Interrogatory is compound and includes multiple and distinct sub-parts.

Without waiving any of the foregoing general or specific objections, Opposer responds as follows:

See documents which show Applicant and Applicant's products at Kosherfest which were discovered in 2014. Discovery and investigation are continuing.

INTERROGATORY NO. 9:

Describe in detail the similar design components between Opposer's Marks and Applicants FREUND'S FAMOUS word mark and FREUND'S FAMOUS design mark as alleged in paragraph 23 of the Notice of Opposition.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Without waiving any of the foregoing general or specific objections, Opposer responds as follows:

All marks incorporate the word "FREUND," using it in highly similar fonts with the ends of the "F" cut at the same angle. All marks use "FREUND" centered in white lettering on a blue signage background. Discovery and investigation are continuing.

INTERROGATORY NO. 11:

Describe in detail the basis for Opposer's allegation that "Applicant has already produced and sold products that incorporate bread and bakery products similar or the same as Opposer's Goods and Services under the same marks that comprise Applicant's Marks alongside and separate from Applicant's Goods, such

as tempura batter mix, muffins, cakes and cookies" as alleged in paragraph 24 of the Notice of Opposition and the dates of each alleged use.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:

Opposer objects to the Interrogatory on the following grounds: 1) Opposer never stated the allegation as stated in the Interrogatory in paragraph 24 of the Notice of Opposition; and 2) the Interrogatory is compound and includes multiple and distinct sub-parts.

Without waiving any of the foregoing general or specific objections, Opposer responds as follows: Applicant's online menu using Applicant's Marks includes muffins, cakes and cookies. Applicant's menu also has sandwiches, which uses bread and bakery products. Applicant has also produced, distributed and sold tempura batter mix bearing Applicant's Marks, which incorporates bread. Discovery and investigation are continuing.

INTERROGATORY NO. 12:

Describe in detail the allegation that Opposer's Marks "are famous as defined under Section 43(c)(1) of the Trademark Act, through Opposer's extensive use and promotion of Opposer's Marks in connection with Opposer's Goods and Services" as alleged in paragraph 33 of the Notice of Opposition.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:

Opposer objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion as to what would support the legal concept of "famous as defined under Section 43(c)(1) of the Trademark Act."

Without waiving any of the foregoing general or specific objections, Opposer responds as follows: Opposer is a multi-generational business which has become synonymous with bread, bakery products and baking services through its numerous successful decades-long relationships with the customers across the country it has been serving. The public has enjoyed consuming Opposer's products for many decades. Opposer's products and baking services and its promotion thereof have reached across

the country throughout Opposer's existence. Discovery and investigation are continuing and as such, Opposer reserves the right to supplement its response.

INTERROGATORY NO. 17:

Describe in detail each instance of "Actual Confusion" Opposer has experienced in connection with Applicant's Marks.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:

Without waiving any of the foregoing general or specific objections Opposer responds as follows:

Opposer was contacted on September 19, 2015 by a person who mistook the billboard produced in Opposer's document production located in Orange County, New York, 1.4 miles east of the Sullivan County/Orange County line on the southwest side of New York State Route 17, to be an advertisement for Opposer, especially because it contains a product incorporating bread on it. Discovery and investigation are continuing.

Respectfully Submitted,

Dated: November 9, 2015

By: _____

Steven A. Freund, Esq.
Attorney for Opposer
Law Office of Steven A. Freund
A Professional Corporation
P.O. Box 911457
Los Angeles, CA 90091
Phone: 310-284-7929

VERIFICATION

I have read the foregoing **OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** and know its contents. I am President of Oakhurst Industries, Inc. DBA Freund Baking Co., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on November 9, 2015, at City of Commerce, California.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

James Freund

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** has been served on Applicant's counsel via First Class U.S. Mail on November 9, 2015, postage prepaid to:

Robert B.G. Horowitz
Baker & Hostetler LLP
45 Rockefeller Plaza, 14th Floor
New York, New York 10111-0100

Lesley McCall Grossberg
Baker & Hostetler LLP
2929 Arch Street
Cira Centre, 12th Floor
Philadelphia, PA 19104-2891

Steven A. Freund, Esq.

Exhibit 6

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FACSIMILE (310) 284-8341
www.freundlawfirm.com

November 13, 2015

VIA FIRST CLASS MAIL AND
ELECTRONIC MAIL (LGrossberg@bakerlaw.com)

Lesley M. Grossberg, Esq.
Baker & Hostetler LLP
2929 Arch Street
Cira Center, 12th Floor
Philadelphia, PA 19104-2891

Re: **Oakhurst Industries, Inc. dba Freund Baking Co. v. 13th Ave Fish Market Inc. dba Freund's Fish**
Opposition No.: **91218523**

Dear Ms. Grossberg:

I am writing to follow-up Opposer's Supplemental Responses to Applicant's First Set of Interrogatories and Document Requests (collectively "Supplemental Responses") and supplemental document production served upon you (and Mr. Horowitz) by e-mail and First Class Mail on November 9. Upon your review of the Supplemental Responses, you will readily see that the Supplemental Responses resolve virtually all of Applicant's issues contained in its Motion to Compel ("Motion") served upon Opposer on November 3.

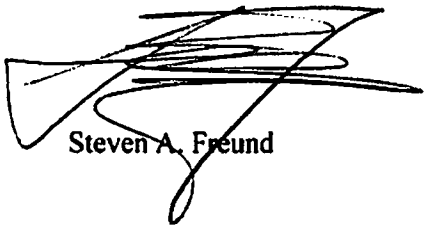
In light of the fact that almost all of the issues raised in Applicant's Motion have been rendered moot by the Supplemental Responses and that Applicant filed its Motion prematurely without having engaged in good faith in the meet and confer process, I request that you take off calendar Applicant's Motion. *See* Trademark Rule 2.120(e)(1); *Hot Tamale Mama ... And More, LLC v. SF Investments, Inc.*, 110 U.S.P.Q.2d 1080 (TTAB 2014). Nevertheless, I remain willing to informally resolve whatever issues remain.

I look forward to your prompt reply in order to avoid wasting further time and resources unnecessarily preparing Opposer's Opposition to the Motion.

Thank you for your time and attention to this matter.

Respectfully yours,

Law Office of Steven A. Freund



Steven A. Freund

SAF:rd

Exhibit 7

From: "Grossberg, Lesley" <LGrossberg@bakerlaw.com>
To: "Steven Freund" <sfreund@freundlawfirm.com>
Cc: "Horowitz, Robert B. G." <rhorowitz@bakerlaw.com>, "Mahoney, Cynthia" <cmahoney@bakerlaw.com>
Subject: FREUND'S FAMOUS opposition proceeding No. 91218523
Date: Tue, Nov 17, 2015 9:10 AM

Mr. Freund,

I received Opposer's supplemental document production on Friday evening and have now had a chance to review it. I disagree that all of the issues presented in the pending motion are resolved by the supplemental discovery responses.. If you'd like to let me know which issues you think have been addressed by the supplemental discovery responses, I'd be happy to discuss and try to resolve them without Board intervention.

As for your intimation that the motion was filed without having engaged in good faith in the meet and confer process, the parties' meet and confer efforts are fully set forth in the motion and speak for themselves.

With respect to Opposer's supplemental response to Interrogatory No. 17, is Opposer willing to further supplement this response by identifying the individual who contacted Opposer on September 19, 2015, and the nature or content of that communication?

Regards,

Lesley

Lesley McCall Grossberg | **BakerHostetler**
2929 Arch Street | Cira Centre, 12th Floor | Philadelphia, PA 19104-2891
T 215.564.3007 | F 215.568.3439
lgrossberg@bakerlaw.com

From: Steven Freund [mailto:sfreund@freundlawfirm.com]
Sent: Friday, November 13, 2015 6:46 PM
To: Grossberg, Lesley
Cc: Horowitz, Robert B. G.
Subject: FREUND'S FAMOUS opposition proceeding No. 91218523

Dear Ms. Grossberg,

Please find attached my letter of today's date.

Thank you for your time and attention to this matter.

Steven A. Freund, Esq.

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