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

Proceeding	92047162
Party	Plaintiff Fresh Express Incorporated
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Submission	Opposition/Response to Motion
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Signature	/s/
Date	12/11/2008
Attachments	Exhibits.pdf (111 pages)(3481952 bytes) Brief and Cert.pdf (21 pages)(1225572 bytes) Zerounian Dec.pdf (10 pages)(563691 bytes)

Exhibit A
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

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

U.S. Trademark Registration No.1,758,520
Registered Mark: SALAD BAR

Fresh Express Incorporated, Petitioner, vs. Supreme Oil Company, Registrant.	Cancellation No. 92047162

REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and by agreement of counsel, the Registrant, Supreme Oil Company (Registrant) hereby answers and objects to the PETITIONER'S FIRST SET OF INTERROGATORIES, Nos. 1 through 21 as follows.

GENERAL OBJECTIONS

(1) Registrant objects to Petitioner's questions to the extent that they purport to impose any duty on Registrant inconsistent with, or beyond that specified in the Federal Rules and Civil Procedure. This objection is pertinent to each of the Petitioner's Interrogatories.

(2) Registrant further objects to the entire set of Interrogatories on the basis that at times the Petitioner has not limited its request for information to a specified time period covered by the applications being opposed in these proceedings. Some of the

requested information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is further overly broad, burdensome and oppressive in that it is not limited to the U.S. market and requires an accumulation of information potentially on other subject matter and would cause Registrant to peruse virtually all corporate records over a lengthy time period.

(3) Further, Registrant objects to providing any information which is immune from discovery and may be protected by the attorney-client, work-product, or other privilege.

(4) Registrant objects to any Interrogatories requiring or purporting to require the search of the files of others. Registrant is not required to search and provide documents from independent, third parties under the Federal Rules.

(5) Registrant objects to providing information or documents to the extent they contain information regarded as confidential, proprietary or trade secrets. The Registrant will agree to a reasonable Protective Order to maintain the confidentiality of certain requested information.

(6) Registrant bases its responses upon its present knowledge (a) without conceding relevancy or materiality of any requests, (b) without prejudice to Registrant's right to object to further discovery or proof of the subject matter, and (c) incorporates its general objections into each Response.

Registrant reserves the right to change or supplement a response should it appear to be incomplete or incorrect, or if additional information should become available.

INTERROGATORY NO. 1:

Identify and describe all Goods produced and/or Services provided by You under Your Mark, including the Dates of use, and/or anticipated Dates of first use, of Your Mark in connection with each of the Goods and/or Services, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the derivation of the marks occurred many years prior to the Petitioner's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Interrogatory as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Respondent further objects to identifying each corporate person with knowledge of each and every aspect of Petitioner's requests for the lengthy time period that would apply to the response, especially since the time period involving Petitioner's activities at issue is only a relatively recent time period and priority is not at issue in these proceedings. Without waiver of the foregoing objections, Registrant refers Petitioner to the pertinent U.S.

trademark registration which contains the information requested, and also responds by identifying the following employees with the most knowledge of the Registrant's marks during the relevant time period:

Michael Leffler, President

Michael Leffler's Father, Steven Leffler

Jim Smith, Vice President

INTERROGATORY NO. 2:

Describe how You created, conceived, selected, cleared, adopted, acquired, or otherwise made the decision to use the words "SALAD BAR" alone of in connection with other designs or words for Your Goods and identify all Persons with knowledge thereof and all Documents related thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, and is not available in Registrant's records due to the passage of many years, and that such information cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects that this request is not reasonably calculated

to lead to the discovery of admissible evidence. Respondent further objects to identifying each corporate person with knowledge of the Petitioner's requests for the lengthy time period that would apply to the response, especially since the selection of Registrant's mark occurred many years prior to Petitioner's activities at issue. Registrant also objects to this Interrogatory as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. However, without a waiver of any of its objections, the Registrant states that the marks were, apparently selected without limitation, and as example, based upon the view that Registrant's "SALAD BAR" trademark suggests products related to creating a salad including condiments and dressings, and is also inherently distinctive for use with other items, such as mustard; Registrant also refers Petitioner to its Response to Interrogatory No. 1 which lists corporate officers with knowledge of the SALAD BAR.

INTERROGATORY NO. 3:

Identify each Person, including but not limited to, any attorney, investigator, or trademark specialist, who has been involved in the creation, selection, clearance, adoption, application for registration in the U.S. or elsewhere throughout the world, acquisition, sale or abandonment by You of Your mark.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and

cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects that this request is not reasonably calculated to lead to the discovery of admissible evidence, since the creation, selection, adoption and application for Registration for the mark occurred many years prior to the Petitioner's activities at issue. Additionally, Registrant objects to this Interrogatory as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market.

INTERROGATORY NO. 4:

Identify and describe any searches, surveys, investigations, analyses, or studies, including market research, by or on behalf of You relating to any trademark, service mark, trade name, name, word, design, term, or phrase that includes the words "SALAD" and/or "BAR," all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects that this request is not reasonably calculated to lead to the discovery of admissible evidence

since the selection, adoption and first use of the marks occurred many years prior to the Petitioner's activities at issue. Additionally, Registrant objects to the request as being overly broad and unduly burdensome and oppressive in scope on the basis that Petitioner has not limited its request for information to the U.S. market. For instance, the request would require the Registrant to identify and produce all documents relating to any third party trademarks where the word or term "SALAD" or "BAR" appears as an element without regard to time period or the goods or services associated with the third party use or registration, i.e. the use or registration could be for goods or services totally unrelated to items involved in these proceedings. Without waiver of any of its objections, the Registrant states that due to the passage of the many years involved the documents are not known to presently exist and the individuals known to be involved are listed in Registrant's Response to Interrogatory No. 1.

INTERROGATORY NO. 5:

Identify and describe Your first use in commerce of Your Mark, including but not limited to the Date of first use in commerce in the U.S. or elsewhere throughout the world, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent that it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its

current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects that this request is not reasonably calculated to lead to the discovery of admissible evidence since the selection, adoption and first use of the marks occurred many years prior to the Petitioner's activities at issue. Additionally, Registrant objects to the request as being overly broad and unduly burdensome and oppressive in scope on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objection, see dates set forth in the registration plead in these proceedings, and see Registrant's Response to Interrogatory No. 1 for Persons with knowledge.

INTERROGATORY NO. 6:

For each year since 2000, identify and describe Your use of Your Mark in commerce in the U.S., all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects that this

request is not reasonably calculated to lead to the discovery of admissible evidence since the selection, adoption and first use of the marks occurred many years prior to the Petitioner's activities at issue. Without waiver of the foregoing objection, see dates set forth in the registration plead in these proceedings, and see Registrant's Response to Interrogatory No. 1 for Persons with knowledge.

INTERROGATORY NO. 7:

For each year from 1993 through 1999, Identify and describe Your use of Your Mark in commerce in the U.S., all Persons with knowledge thereof, and all Documents related thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory as unduly burdensome and/or impossible to comply with in that it seeks information/records which are from approximately nine to more than sixteen years old, and which are not reasonably available and/or obtainable and/or no longer in existence and that the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is no deceased. Further, Registrant objects that this request is not reasonably calculated to lead to the discovery of admissible evidence since the selection, adoption and first use of the marks occurred many years prior to the Petitioner's activities at issue. Without waiver of the foregoing

objection, see dates set forth in the registration plead in these proceedings, and see Registrant's Response to Interrogatory No. 1 for Persons with knowledge.

INTERROGATORY NO. 8:

For each year since 2000, Identify and describe the manner of advertising, including marketing and promotion efforts, and the advertising media through which You or any Person on Your behalf have advertised, are advertising, or intend to advertise, promote and market services, which include, refer to or are to occur or take place under Your Mark, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory in that it seeks information/records which are more than eight (8) years old and which are not reasonably available or obtainable and/or no longer in existence and that the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant will, upon reasonable inspection, provide representative samples of the requested documents, subject to existence and/or availability.

INTERROGATORY NO. 9:

For each year from 1993 through 1999, Identify and describe the manner of advertising, including marketing and promotion efforts, and the advertising media through which You or any Person on Your behalf have advertised, are advertising, or intend to advertise, promote and market services, which include, refer to or are to occur or take place under Your Mark, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory as unduly burdensome and/or impossible to comply with in that it seeks information/records which are from approximately nine to more than sixteen years old, and which are not reasonably available and/or obtainable and/or no longer in existence and that the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objection, Registrant will, upon reasonable inspection, make available representative samples of the requested documents, subject to existence and availability.

INTERROGATORY NO. 10:

For each year since 2000, identify all market research, surveys, studies, plans and the like, including the specific time period during which such research and the like were made, in which you have studied the demographics of potential consumers of each of the Goods bearing Your Mark, all Persons having knowledge thereof and all Documents related thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory as unduly burdensome and/or impossible to comply with in that it seeks information/records which are more than eight (8) years old and which are not reasonably available or obtainable and/or no longer in existence and that the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market.

INTERROGATORY NO. 11:

For each year from 1993 through 1999, identify all market research, surveys,

studies, plans and the like, including the specific time period during which such research and the like were made, in which you have studied the demographics of potential consumers of each of the Goods bearing Your Mark, all Persons having knowledge thereof and all Documents related thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory as seeking protected confidential business information about marketing information and about even prospective marketing information. Registrant further objects to this Interrogatory in that it seeks information/records which are from approximately nine to more than sixteen years old and which are not reasonably available or obtainable and/or no longer in existence and that the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market.

INTERROGATORY NO. 12:

For each year since 2000, identify all budgetary projections or the like, including the specific time period during which such projections were prepared concerning the revenues which might be expected and the number of persons who

might be expected to purchase each of the Goods bearing Your Mark, all Persons having knowledge thereof and all Documents related thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory as seeking protected confidential business information about budgetary information and about even prospective budgetary information. Registrant further objects to this Interrogatory in that it seeks information/records which are more than eight (8) years old and which are not reasonably available or obtainable and/or no longer in existence. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not specified its exact request, and has not limited its request for information to the U.S. market. Without waiver of the foregoing objection, the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased; see Registrant's Response to Interrogatory No. 1 for Persons with knowledge.

INTERROGATORY NO. 13

For each year since 2000, identify and describe projected budgets and the like for advertising, including marketing and promotion efforts, through which You or any

Person on Your behalf have advertised, are advertising, or intend to advertise, promote and market Goods bearing your Mark, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent it requests attorney-client privileged information and/or attorney work product Registrant also objects to this Interrogatory as seeking protected confidential business information about budgetary information and about even prospective budgetary information. Registrant further objects to this Interrogatory in that it seeks information/records which are more than eight (8) years old and which are not reasonably available or obtainable and/or no longer in existence. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objection, Registrant will, upon reasonable inspection, make available representative samples of the requested documents, subject to existence and availability, and refers Petitioners to Registrant's Response to Interrogatory No. 1 for persons with knowledge.

INTERROGATORY NO. 14

For each year from 1993 through 1999, identify and describe projected budgets and the like for advertising, including marketing and promotion efforts, through which You or any Person on Your behalf have advertised, are advertising, or intend to advertise,

promote and market Goods bearing your Mark, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Interrogatory as seeking protected confidential business information about budgetary information and about even prospective budgetary information. Registrant further objects to this Interrogatory in that it seeks information/records which are from approximately nine (9) to more than sixteen years old and which are not reasonably available or obtainable and/or no longer in existence. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objection, the requested information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased; see Registrant's Response to Interrogatory No. 1 for Persons with knowledge.

INTERROGATORY NO. 15

Identify all applications by or on behalf of You to any state or federal agency, including but not limited to the U.S. Patent and Trademark Office and the U.S. Copyright Office, and including applications or registrations to other government

agencies throughout the world, relating to Your Mark, all Persons with knowledge thereof, and all Documents relating thereto.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent that it seeks attorney-client privileged information and/or attorney work-product. Registrant also objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market, nor has Petitioner limited its request to the U.S. Patent and Trademark Office. Without waiver of the foregoing objections, Registrant refers Petitioner to the U.S. trademark registration at issue in these proceeding for SALAD BAR as no such other documents are known to exist at this time. Further, without waiver of the foregoing objections, Registrant refers Petitioner to Registrant's Response to Interrogatory No. 1 for persons with knowledge.

INTERROGATORY NO. 16:

Identify each and every period of time during which You did not use Your Mark on products or advertising from the date of first use to the present date.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent that it requests attorney-client privileged information and/or attorney work-product. Registrant also objects in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Interrogatory as requesting non-relevant information and as being overly vague and unduly burdensome, as it is not limited to a reasonable time period and Petitioner has not limited its request for information to the U.S. market. Further, as this request involves an extensive time period, Registrant objects that this request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 17:

Identify any and all conveyances, licenses, purported licenses or purported conveyances by Petitioner of any right, title or interest in each of Petitioner's Marks to any third party, and identify the recipient(s) of said right, title, interest or license in Petitioner's Marks.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory to the extent that this request seeks attorney-client privileged

information and/or attorney work-product. Registrant also objects to this request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased, and that it requests "purported licenses or purported conveyances," which terms are undefined and unintelligible, as it cannot be discerned with any accuracy exactly what is being requested. Further, Registrant objects to this interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to this Interrogatory as it seeks information not available to the Registrant.

INTERROGATORY NO. 18

Identify the three persons who are most knowledgeable about Petitioner's use of Your Mark from 1993 through 1999.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to

the U.S. market. Registrant also objects to this Interrogatory as it seeks information not reasonably available to the Registrant, or perhaps not available at all, except that subject to the foregoing objections, Petitioner is directed to Registrant's response to Interrogatory No. 1.

INTERROGATORY NO. 19:

Identify the three persons who are most knowledgeable about Petitioner's use of Your Mark from 2000 to the present.

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this Interrogatory in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to this Interrogatory as it seeks information not reasonably available to the Registrant, or perhaps not available at all, except that subject to the foregoing objections, Petitioner is directed to Registrant's response to Interrogatory No. 1.

INTERROGATORY NO. 20:

Identify all Documents relating to Your allegation, in Paragraph 4 of Your Answer to the Petition for Cancellation, that "Registrant's mark is, and has been, in continuous use in commerce for a period exceeding five-years prior to the filing of this action."

RESPONSE:

Subject to and not withstanding the General Objections, Registrant objects to this interrogatory to the extent it requests attorney-client privileged information and/or attorney work product. Additionally, Registrant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to this Interrogatory as it is redundant as it seeks information already provided pursuant to Registrant's Answers to Interrogatories Nos. 6 and 7.

INTERROGATORY NO. 21:

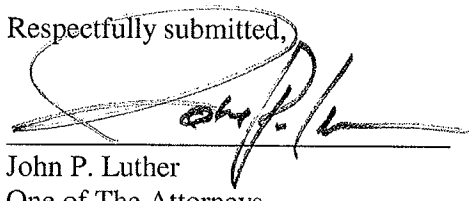
Identify all Persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers and the area of participation of each such person.

RESPONSE:

The Registrant objects to the Interrogatory to the extent it seeks information protected by the attorney-client and work product privileges. Disclosure of such information, including the preparation and assistance between counsel and his client

would disclose the workings of legal counsel with his client and, as such, the requested subject is attorney-client and work-product privileged. However, without a waiver of any of its objections, the persons having the most overall knowledge pertaining to the subject matter for these responses those listed in Registrant's Response to Interrogatory No. 1.

Respectfully submitted,



John P. Luther
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REGISTRANT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES was served upon Petitioner's counsel on this 5th day of November 2008 by email to lperry@perryip.com and deposited with the United States Postal Service on the 5th of November with sufficient postage as First Class Mail in an envelope addressed to:

E. Lynn Perry
Perry IP Group A.L.C.
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111
T 415-398-6300 (F 415-398-6306)
lperry@perryip.com

November 5, 2008

John P. Luther

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

U.S. Trademark Registration No.1,758,520
Registered Mark: SALAD BAR

Fresh Express Incorporated, Petitioner, vs. Supreme Oil Company, Registrant.	Cancellation No. 92047162

REGISTRANT'S RESPONSES TO PETITIONER'S
REQUESTS FOR PRODUCTION OF DOCUMENTS

Registrant, Supreme Oil Company, herein answers and responds to the Petitioner's First Set of Document Requests, pursuant to Rule 34 of the Federal Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Registrant hereby incorporates by reference its General Objections and those objections contained in its RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES.

2. Registrant objects to Petitioner's Requests to the extent that they purport to impose any duty on Registrant inconsistent with, or beyond that specified in the Federal Rules of Civil Procedure. This objection is pertinent to each of Petitioner's Requests and Registrant's Responses.

3. Registrant further objects to the entire set of Requests on the basis that at times the Petitioner has not limited its request for information to the U.S. market or a

specified time period or the goods covered by the application being opposed in these proceedings. Some of the requested information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is further overly broad, burdensome and oppressive in that it requires an accumulation of information potentially on other subject matter and would cause Registrant to peruse virtually all corporate records over an extended time period.

4. Further, Registrant objects to providing any document which is immune from discovery and may be protected by the attorney-client, work product, or other privilege.

5. Registrant objects to any Requests requiring or purporting to require the search of the files of others. Registrant is not required to search and provide documents from independent, third parties under the Federal Rules.

6. Registrant objects to providing documents to the extent that they contain information regarded as confidential, proprietary or trade secrets. The Registrant would agree to a reasonable Protective Order to maintain the confidentiality of certain requested information.

7. Registrant further objects to the extent that the Requests may be construed to require the production of documents in any manner inconsistent with Production Procedures under the Federal Rules.

8. Registrant bases its responses upon the present knowledge (a) without conceding relevancy or materiality of any Requests, (b) without prejudice to Registrant's right to object to further discovery proof of the subject matter, and (c) incorporates its general objections into each Request. Registrant reserves the right to change or

supplement a response should it appear to be incomplete or incorrect, or if additional information or documents should become available.

Request No. 1

Representative documents concerning the creation, design, selection, approval, adoption, display and use of Your Mark.

Response No 1:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without a waiver of any of its objections, the Registrant states that due to the passage of the many years involved the documents are not known to presently exist.

Request No. 2

All documents comprising or relating to any assignments, licenses, permissions, consents or other transfers of any right, title, or interest in Your Mark.

Response No 2:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and that such request for "permissions" and/or "consents" could encompass every sales related document of the Registrant. Further, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records. Without waiver of any of its objections, no such documents are presently known to exist.

Request No. 3

Representative documents concerning use of Your Mark or any confusingly similar mark, by third parties.

Response No. 3:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and that such request for "confusingly similar" is vague and indefinite. Further, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records. Without waiver of any of its objections, no such documents are presently known to exist.

Request No. 4

All documents concerning any application for trademark registration made by Registrant or any other person or entity for Your Mark in the United Stated Patent and Trademark Office.

Response No. 4:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel and overly vague and unduly burdensome as the request would require the Registrant to identify and produce all documents relating to any third party application in the United States Patent and Trademark Office without regard to time period or the goods or services associated with the third party application. Further, such inforrmation is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Also, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records. Furthermore, Registrant objects to the burdensome nature of this request as all U.S. application documents are available for public viewing on the USPTO database.

Request No. 5

All documents concerning or comprising evidence, if any, of Registrant's first use and first use in interstate commerce in the United States of the Mark SALAD BAR.

Response No. 5:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the

discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Without a waiver of any of its objections, the Registrant states that due to the passage of the many years involved the documents are not known to presently exist.

Request No. 6

All documents concerning or comprising evidence of Registrant's use in commerce in the United States of the Mark SALAD BAR since March 16, 1993.

Response No. 6:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further Registrant objects to this Request as being not reasonably calculated to lead to the discovery of admissible evidence and overly vague and unduly burdensome on the basis that it seeks information/records which are more than fifteen (15) years old and which are not available, reasonably available, or obtainable and/or no longer in existence and it would require Registrant to gather each and every document related to its mark that could possibly be described and construed as use in the United States. Without waiver of the

foregoing objections, Registrant, upon reasonable inspection, will provide the requested documents subject to their availability and/or existence.

Request No. 7

Representative documents concerning Registrant's actual and potential market, customers, and users of the Goods intended to be provided under the SALAD BAR Mark.

Response No. 7:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market, requiring Registrant to seek out every possible user of Goods under its mark and hypothesize as to how the Goods could possibly be used by even potential customers. The request is global in scope in requiring that virtually each and every document be produced from Registrant's entire business operations and without regard to time period, or even limited to the products involved or relating to the underlying proceedings. Furthermore, the Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiving the foregoing objections, Registrant, upon

reasonable inspection, will make available representative documents sufficient to illustrate Registrant's customer base, subject to availability and/or existence.

Request No. 8

Representative documents concerning the channels of trade in which Registrant's Goods are intended to be, or are advertised, marketed, or sold.

Response No. 8:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant, upon reasonable inspection, will make available representative documents sufficient to illustrate channels of trade subject to availability and/or existence.

Request No. 9

Representative documents concerning Registrant's actual or planned advertising and promotion of Goods associated with the SALAD BAR mark.

Response No. 9:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and no reference is made to the relevant time period. Without waiver of the foregoing objections, Registrant, upon reasonable inspection, will make available representative documents sufficient to satisfy this request subject to availability and/or existence.

Request No. 10

Examples of copies of each and every advertisement, display and item of promotional material and any and all drafts of the same, whether or not used, in connection with any Goods associated with the SALAD BAR mark.

Response No. 10

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now

deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and Petitioner's request for "each and every" document pertaining to the underlying subject matter is overly broad and oppressive in the scope of the request. This Request is also objected to as seeking non-relevant information as to "drafts" and "non-used" items. Without a waiver of any of its objections, the Registrant, upon reasonable inspection, will make available representative documents sufficient to identify advertising subject to availability and/or existence.

Request No. 11

Documents sufficient to disclose all marketing, advertising and promotional expenditures to be made by Registrant in connection with its use of the SALAD BAR Mark.

Response No. 11:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to hypothesize and produce documents

evidencing "all" promotional expenditures Registrant has yet to make in connection with its mark. Registrant also objects to this Request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings.

Request No. 12

Representative documents concerning communications between Registrant and any third party, including advertising agencies, publishers, sellers, vendors, relating to any advertising, promotion, or marketing in connection with any Goods associated with the SALAD BAR Mark.

Response No. 12

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and as it would require Registrant to seek out every possible third party Registrant has spoken to with regard to its mark. Furthermore, the Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting

documents beyond the scope of the products at issue in these proceedings. The request is also objected to as non-relevant, oppressive and unduly burdensome as it is global in scope in requiring that virtually each and every document be produced from Registrant's entire business operations and without regard to time period, or even limited to the products involved or relating to the underlying proceedings.

Request No. 13

Representative documents concerning the marketing, promotion and sales procedures or methods used by Registrant in connection with any Goods associated with the SALAD BAR Mark.

Response No. 13

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to the Request as being redundant, as Registrant has previously answered in previous responses, that it will, upon reasonable inspection, provide representative samples of advertising and marketing

channels information, subject to availability and/or existence, and subject to the listed objections.

Request No. 14

Representative documents concerning the marketing, promotion and sales procedures or methods to be used by Registrant in connection with any Goods associated with the SALAD BAR Mark.

Response No. 14:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market, and has requested documents which are not yet in existence.

Request No. 15:

Representative documents concerning sales solicitation by Registrant for any Goods associated with the SALAD BAR Mark.

Response No. 15:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. This Request is also objected to as the term "sales solicitation" is undefined and consequently unintelligible, and it cannot be discerned with any accuracy exactly what is being requested. Registrant also objects to this Request in that it appears to ask for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as appearing to request non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has not defined the scope of "sales solicitation" and fails to define any relevant time period.

Request No. 16

All documents concerning actual of planned surveys, market research, consumer perception studies, secondary meaning pilots or surveys or other investigations or studies made by or on behalf of Registrant concerning any Goods associated with the SALAD BAR Mark.

Response No. 16

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it appears to ask for

information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant produce "all" documents pertaining to the underlying subject matter. Registrant also objects to this Request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiving the foregoing objections, no documents are known to exist at this time.

Request No. 17.

All documents concerning any studies of demographics of purchasers or likely purchasers of Registrant's Goods associated with the SALAD BAR Mark.

Response No. 17.

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant produce "all" documents pertaining to the

underlying subject matter. Registrant also objects to this Request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiving the foregoing objections, no documents are known to exist at this time.

Request No. 18

Representative reviews, reports and mentions in any publication or by any third party since March 16, 1993 of Registrant's SALAD BAR Mark.

Response No. 18

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to seek out documented evidence of any and all references made by any party regarding Registrant's mark. Further, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records.

Request No. 19

At least one (1) sample of each Document which describes, advertises, offers, or otherwise refers to any Goods associated with SALAD BAR Mark.

Response No. 19:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to this Request as being redundant, as Registrant has previously agreed to provide, upon reasonable inspection, representative samples of requested documents, subject to availability and/or existence, and/or has already provided some in its earlier Responses, subject to the relevant objections.

Request No. 20

All documents which project or discuss expected revenues for Goods sold under the SALAD BAR Mark.

Response No. 20

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which

is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to produce documents containing future information with no relevant time period established. Moreover, Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings.

Request No. 21

All documents concerning Petitioner, excluding documents on file in this Cancellation Proceeding.

Response No. 21:

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to seek out documented evidence of any and all references to the Petitioner. Further, the Registrant objects to being required to produce

documents which are not under its custody, possession or control and would be third party records. Finally, Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiver of the foregoing objections, no such documents are known to exist at this time.

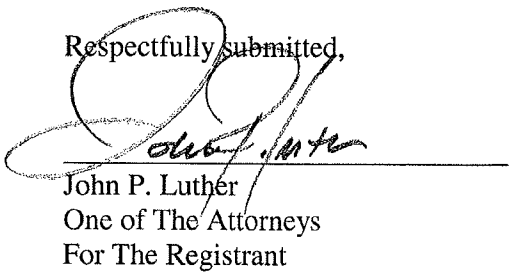
Request No. 22

To the extent not already called for, each and every Document identified in response to Petitioner's First Set of Interrogatories.

Response No. 22

Subject to and not withstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiving the foregoing objections, Registrant refers Petitioner to its Responses to Petitioner's First Set of Interrogatories.

Respectfully submitted,



John P. Luther
One of The Attorneys
For The Registrant

Frederick W. Meyers
Burton S. Ehrlich
John P. Luther
Tanya H. Miari
LADAS & PARRY LLP
224 South Michigan Avenue
Suite 1600
Chicago, Illinois 60604
(312) 427-1300

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REGISTRANT'S RESPONSES TO PETITIONER'S REQUESTS FOR PRODUCTION TO REGISTRANT was served upon Petitioner's counsel on this 5th day of November 2008 by email to lperry@perryip.com and deposited with the United States Postal Service on the 5th of November with sufficient postage as First Class Mail in an envelope addressed to:

E. Lynn Perry
Perry IP Group ALC
4 Embarcadero Center, 39th Floor,
San Francisco, CA 94111

November 5, 2008

John P. Luther

Exhibit B
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

HARVEY ▪ SISKIND LLP

November 6, 2008

Raffi V. Zerounian

VIA HAND DELIVERY

Frederick W. Meyers, Esq.
Ladas & Parry LLP
224 South Michigan Avenue, Suite 1600
Chicago, IL 60604

Re: SALAD BAR
Registration No. 1758520 in the U.S.
Cancellation Action No. 92047162

Mr. Meyers:

I write concerning Respondent Supreme Oil Company's ("Supreme Oil") inadequate responses to Petitioner's Interrogatories 1-21 and Requests for Production 1-22 (collectively, "Petitioner's Discovery") served by Fresh Express Incorporated ("Fresh Express") on September 10, 2007.

As you know, the Board expects parties to cooperate with one another in the discovery process, "and looks with extreme disfavor on those who do not." TBMP § 408.01. Furthermore, "A party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request." TBMP § 408.02. Pursuant to the meet and confer obligation of 37 CFR § 2.120(e), I hope we can resolve our differences. We trust that you will reciprocate our efforts in good faith in remedying your client's inadequate discovery responses.

Preliminarily, we note that Supreme Oil has failed to have its client verify its responses to Fresh Express's interrogatories. *See* TBMP § 405.04(b) ("If an interrogatory is answered, the

answer must be made separately and fully, in writing under oath."). Please also produce a privilege log for any documents withheld because Supreme Oil claims that they are subject to the attorney/client privilege and/or attorney work product doctrine.

Interrogatory Responses

Supreme Oil's responses to Fresh Express's interrogatories consist entirely of boilerplate objections, with perhaps one exception.

In response to Interrogatory Nos. 1, 2, 4, 5, 6, 7, 12, 13, 14, 15, 18, 19, and 21, you offered the testimony of three individuals in lieu of a written response. Federal Rule of Civil Procedure 33 provides that "Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." Although Rule 33 contains an "option to produce business records," the Federal Rules of Civil Procedure contain no option to produce a witness in lieu of a written response or business records. We therefore request that you provide complete and substantive responses to each of the above interrogatories.

You also objected to Interrogatory Nos. 3, 9, 10, 11, 16, 17, and 20 on the grounds of relevance, amongst other reasons. Each of these interrogatories is reasonably calculated to lead to the discovery of admissible evidence. This is an abandonment proceeding. Evidence concerning Supreme Oil's use or nonuse of the SALAD BAR mark is certainly relevant to establish whether the mark has been abandoned. We are therefore entitled to discovery regarding whether Supreme Oil has any such evidence, and the extent to which it has such evidence.

Document Request Responses

Similar to its objections to Fresh Express's interrogatories relating to evidence concerning the use or nonuse of Supreme Oil's SALAD BAR mark, Supreme Oil objected to Documents Request Nos. 11, 12, 14, 15, 18, and 20 on the same grounds. As described above,

all of these document requests are reasonably calculated to lead to the discovery of admissible evidence. Please confirm that you will amend your responses and will produce relevant documents accordingly.

Your client agreed to produce documents responsive to Document Request Nos. 6, 7, 8, 9, 10, 13, 19, and 22. Please confirm that you will produce any such documents within the next two weeks.

I hope that we can reach an amicable resolution concerning the inadequate discovery responses discussed above and avoid the need for a motion to compel. We can discuss Supreme Oil's inadequate discovery responses during the conference that we plan to schedule next week, should that conference go forward.

Sincerely,

Raffi V. Zerounian

cc: E. Lynn Perry

RVZ:cl

Exhibit C
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

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Exhibit D
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

HARVEY ▪ SISKIND LLP

November 6, 2008

Raffi V. Zerounian

VIA HAND DELIVERY

Frederick W. Meyers, Esq.
Ladas & Parry LLP
224 South Michigan Avenue, Suite 1600
Chicago, IL 60604

Re: SALAD BAR
Registration No. 1758520 in the U.S.
Cancellation Action No. 92047162

Mr. Meyers:

As a courtesy to your client, we write to check the availability upon which Supreme Oil, Inc.'s 30(b)(6) deponent is available to testify about the issues germane to this abandonment proceeding. The topics of the 30(b)(6) deposition will generally concern evidence of use of the SALAD BAR mark that is the subject of the instant opposition proceeding and whether the mark has been abandoned.

We are available to conduct the deposition on Thursday, December 4, 2008, Friday, December 5, 2008, and Monday, December 8, 2008. Please let me know what date is best for your client.

Furthermore, please let me know if your client is willing to stipulate to taking the deposition by telephone.

Sincerely,

Raffi V. Zerounian

cc: E. Lynn Perry
RVZ:lp

FOUR EMBARCADERO CENTER 39TH FLOOR SAN FRANCISCO CALIFORNIA 94111
TELEPHONE 415.354.0100 FACSIMILE 415.391.7124 WWW.HARVEYSISKIND.COM

Exhibit E
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Miari, Tanya [TMiari@ladas.net]
Sent: Monday, November 10, 2008 1:31 PM
To: Raffi Zerounian; Lynn Perry - PerryIP
Cc: Luther, John; Ehrlich, Burton; Meyers, Fred
Subject: RE: Discovery Conference for SALAD BAR Cancellation No. 92047162

Attachments: 11-10 Ltr to Opp Csl.pdf; Registrant's Roggs to Petitioner.pdf

11-10 Ltr to Opp Csl.pdf (886 ...

Registrant's Roggs to Petition...

Dear Raffi,

Please see our attached letter of today's date, along with another copy of our previously-served Interrogatories. A hard copy of same will follow via regular mail.

Sincerely,

Tanya Miari
Ladas & Parry LLP

-----Original Message-----
From: Miari, Tanya
Sent: Wednesday, November 05, 2008 5:08 PM
To: 'Raffi Zerounian'; 'Lynn Perry - PerryIP'
Cc: Luther, John; Ehrlich, Burton; Meyers, Fred
Subject: RE: Discovery Conference for SALAD BAR Cancellation No. 92047162

Dear Raffi,

Please see the attached letter regarding our discovery conference of today's date. A hard copy will follow via regular mail.

Sincerely,

Tanya Miari
Ladas & Parry LLP

-----Original Message-----
From: Miari, Tanya
Sent: Monday, November 03, 2008 3:04 PM
To: 'Raffi Zerounian'; 'Lynn Perry - PerryIP'
Cc: Luther, John; Ehrlich, Burton; Meyers, Fred
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Ms. Perry and Mr. Zerounian,

Please see attached our letter of today. A hard copy will follow via regular mail.

Sincerely,

Tanya Miari
Ladas & Parry LLP

LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

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**** Member Colorado Bar, not admitted in Illinois
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November 10, 2008

Raffi Zerounian
Harvey Siskind
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111

VIA EMAIL &
FIRST CLASS MAIL

Re: SALAD BAR, Registration No. 1758520 in the U.S.
Cancellation Action No. 92047784

Dear Raffi:

As promised during our November 5, 2008 telephone conversation, enclosed is a copy of Registrant's First Set of Interrogatories to Petitioner, which were previously served upon you. Our interrogatory count comes to no more than sixty-one and possibly even less – well within the Board's mandate of no more than seventy-five.

Please advise if we can expect your answers to interrogatories and responses to our discovery requests within one week, or of your proposed schedule for answering. We look forward to hearing from you at your earliest convenience.

Further to your e-mail correspondence of November 6, 2008, we shall also look forward to receiving your proposed settlement papers at your earliest convenience. Until we have a viable settlement offer, however, we see no other option but to proceed with discovery. In this respect, we remind you of our upcoming discovery conference currently scheduled for Wednesday November 12, 2008 at 3 p.m. CST, unless we hear from you otherwise.

We look forward to speaking with you on Wednesday, and to receiving your answers to interrogatories and discovery responses in this matter.

Sincerely,

Frederick W. Meyers
Ladas & Parry LLP

cc: John P. Luther
E. Lynn Perry

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

U.S. Trademark Registration No.1,758,520
Registered Mark: SALAD BAR

Fresh Express Incorporated, Petitioner, vs. Supreme Oil Company, Registrant.	Cancellation No. 92047162 **REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER (Nos. 1-29)**

REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITONER

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Registrant Supreme Oil Company ("Registrant" or "Supreme"), by its attorneys, requests that Petitioner, Fresh Express Incorporated ("Petitioner" or "Fresh Express") answer the following interrogatories.

INSTRUCTIONS AND DEFINITIONS

A. These Interrogatories are to be regarded as continuing and Petitioner is requested to provide promptly, by way of supplementary answers thereto, such additional information as may hereafter be obtained by Petitioner or any Person or entity acting on Petitioner's behalf which will augment or otherwise modify any answers given to the following interrogatories.

B. Reference to the term "Registrant" refers to Supreme Oil Company, its employees and agents, and all other persons acting on its behalf or under its direction or control, including

its representatives or any person acting on its behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.

C. Reference to the term "Petitioner," "You" or "Your" refers to Fresh Express Incorporated in the manner which will provide a full response by Petitioner, its employees and agents, and any and all other persons acting on its behalf or under its direction or control, including its representatives or any person acting on its behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.

D. The term "Registrant's Mark" as used herein refers to the mark SALAD BAR shown in Registrant's Registration No. 1,758,520 registered March 16, 1993.

E. The term "Petitioner's Mark" as used herein refers to the mark SALAD BAR EXPRESS shown in Petitioner's Application No. 78/719,905 filed September 23, 2005.

F. In all Interrogatories requesting identification of documents and things, Petitioner should state whether it will make such document or thing available to Registrant for inspection and copying by stating "available"; if Petitioner is unwilling or unable to produce such document or thing for inspection and copying, Petitioner should so indicate by stating "not available" and giving all reasons therefor.

G. The term "document" as used herein utilizes the full meaning of that term as defined in the Federal Rules of Civil Procedure Rule 34 and includes all original writings and all non-identical copies and, without limitations, minutes, correspondence, electronic mail, voice

mail, video tapes, audio tapes, memoranda, agreements, licenses, sketches, diagrams, schematics, handwritten or stenographic notes, periodicals or other publications, purchase orders, sales invoices, bills of sales, advertising or sales literature, pamphlets, reports, records, studies, service manuals, operator manuals, instruction sheets, log sheets, data sheets, diaries, drawings, blueprints, photographs (prints as well as negatives), charts, papers, graphs, indexes, labels, tapes, computer printouts and other materials which are written, printed, typewritten, reproduced or recorded, and from which information can be obtained. Where originals or non-identical copies are not available, "document" also means copies of such originals or non-identical copies.

H. "Communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

I. The terms "specify," "identify" or "give the identification of" with respect to a document or thing is defined to mean a demand for a detailed description of each specific item identification of which is requested, whether or not it may be privileged or subject to an immunity and whether or not it is in Petitioner's possession, custody or control, by setting forth:

(a) a description of its type and nature,

(b) its date,

(c) the present location and custodian for the original and all copies,

(d) the names of the writer and recipients of the original and all copies and

(e) the title or subject matter.

For any individual named as a writer or a recipient of such an item, the individual's full name and address should be stated, together with his present or last position and business affiliation; for any firm or corporation named, its full address should be stated, together with the name, address, and title of the official responsible for preparing or having custody of any such item. A copy of a

document may be provided in lieu of identification to the extent the information called for is clearly available from the face of the copy.

J. The term "identify" or "give the identification of" with respect to a person requires Petitioner to state:

(a) in the case of a natural person, that persons (i) full name; (ii) last known home and business address; (iii) responsibilities with respect to the subject matter of the interrogatory and the periods of time that person had such responsibilities; and (iv) relevant knowledge or participation; or

(b) in the case of corporations, partnerships, proprietorships, unincorporated associations and the like, the (i) full name, including any additional name it does business under; (ii) form and place of organization or incorporation; and (iii) principal place of business.

K. "Date" means the exact day, month and year, if ascertainable and, if not, Petitioner's best approximation thereof.

L. The use of male, female or neutral gender in these interrogatories incorporates all genders and should not be construed to limit the information requested in any way. The use of the singular form of any word includes the plural and vice-versa.

M. If any information is withheld from the answer due to an objection or privilege, state the nature of the information withheld and the basis for the objection or privilege.

INTERROGATORIES

INTERROGATORY NO. 1

Identify: (a) any other business entity(ies) which fully or partly owns or controls Petitioner; and (b) identify any other business entity(ies) which is fully or partly owned by Petitioner.

INTERROGATORY NO. 2

Describe in detail Petitioner's business from its inception to date, including significant developments in the progress and expansion of its business.

INTERROGATORY NO. 3

Identify all of the responsible individuals, including officers, directors and other managerial employees of Petitioner, who have any responsibility with regard to the marketing, promotion, advertising and sale of Petitioner's goods which use the Petitioner's mark.

INTERROGATORY NO. 4

Identify each affiliate of Petitioner, including, but not limited to, division, parent, subsidiary, controlling shareholder(s) and/or other related company.

INTERROGATORY NO. 5

Identify each different facility, including without limitation headquarters, factory, warehouse, distribution center, that Petitioner uses, including those owned, leased or contracted for by Petitioner, in connection with the production and marketing, distribution and sale of products which use Petitioner's mark, including the role of each such facility therein.

INTERROGATORY NO. 6

Describe in detail each different meaning(s), including connotations and suggestions, of Petitioner's mark in the context of each of the goods with which that mark is used or has been proposed to be used.

INTERROGATORY NO. 7

Describe in detail all surrounding circumstances of the adoption, including the derivation and selection of Petitioner's mark and any documents referring or relating thereto. This description should include without limitation any alternatives considered, the intended meaning and/or connotations discussed, any specific reasons for the selection and adoption of Petitioner's mark, including any connections in meaning between parts of the mark and product characteristics, a specific identification of the persons involved, and the particular person(s) who made the decision(s) on Petitioner's behalf to adopt or select Petitioner's mark.

INTERROGATORY NO. 8

Identify all principal, including distinguishing, characteristics of each different product with which Petitioner uses Petitioner's mark, including the specific intended applications for each of the goods offered by Petitioner under Petitioner's mark and any documents related thereto.

INTERROGATORY NO. 9

Identify each different product description, including without limitation product lists and feature descriptions, which Petitioner has used or intends to use for products under Petitioner's mark.

INTERROGATORY NO. 10

Identify the suggested retail price(s) in the United States for each different product which Petitioner has used in the United States with Petitioner's mark.

INTERROGATORY NO. 11.

If you contend that Registrant's mark has been abandoned, describe in detail all evidence that Registrant's mark has been abandoned, including documents that refer or relate thereto.

INTERROGATORY NO. 12

Identify each different trademark use or proposed use of Petitioner's mark, including of such mark on the goods, their containers, packaging, labels or tags applied thereto, or point of sale displays, including documents, specimens and facsimiles relating to the foregoing.

INTERROGARORY NO. 13

Identify the individual contents within each product sold or proposed to be sold under Petitioner's mark, including but not limited to, any individually packaged containers found within Petitioner's product bearing Petitioner's mark.

INTERROGATORY NO. 14

With respect to the products sold using the Petitioner's mark, describe in detail each different channel of trade by which Petitioner's goods sold under the mark travel from the producer to the end-purchaser, including but not limited to all wholesalers, retails, and distributors and any documents related thereto.

INTERROGATORY NO. 15

Identify the Petitioner's resellers, including without limitation distributors, wholesalers and retailers, and provide a representative list of retail establishments in the U.S. that sell or will sell the products bearing the Petitioner's mark and any documents related thereto.

INTERROGATORY NO. 16

Identify each document relating to, describing or summarizing the demographics of Petitioner's average purchasers for each of the products sold under Petitioner's mark.

INTERROGATORY NO. 17

Identify the geographic extent of sales of the products under Petitioner's mark in the United States, including without limitation the inclusion of each affected State in the United States.

INTERROGATORY NO. 18

Identify the annual sales of the products under Petitioner's marks sold in the United States since their inception, including in dollar value and units of each such product sold.

INTERROGATORY NO. 19

Identify fully each different promotional, advertising, publicity or marketing piece Petitioner has ever published or distributed for products under Petitioner's mark, including without limitation any press releases, publicity releases, trade releases, new product releases, direct mailers, email advertisements, other notices to the trade, directory pages, catalogs, catalog sheets, sales literature, reprints, advertising or other printed matter and any documents referring or relating thereto.

INTERROGATORY NO. 20

Identify and describe all publications by unsolicited third party(ies) relating to Petitioner or Petitioner's mark, including but not limited to print, broadcast and Internet media, third party reviews, informational articles, news and trade reports.

INTERROGATORY NO. 21

Identify all inter-party proceedings involving Petitioner's mark, including but not limited to court or administrative litigation, interference, conflicts, oppositions, cancellation proceedings participated in by Petitioner, and any documents referring or relating thereto.

INTERROGATORY NO. 22

Identify and describe any objections or demands sent or received by Petitioner relating or referring to Petitioner's mark, including the person most knowledgeable of each, the outcome thereof, and any documents referring or relating thereto.

INTERROGATORY NO. 23

Describe in detail the circumstances surrounding Petitioner's first awareness of Registrant's mark, and identify any documents referring or relating thereto.

INTERROGATORY NO. 24

Describe in detail any overlapping geographic areas of concurrent use of Petitioner's products under Petitioner's mark with Registrant's products under Registrant's mark, and any documents relating thereto.

INTERROGATORY NO. 25

Identify whether there has ever been a period during which Petitioner or any other party having rights from Petitioner discontinued use of Petitioner's mark for any of the goods identified in Petitioner's application asserted in these proceedings, including without limitation the inclusive dates of the discontinuance for the goods discontinued, the reason(s) therefor, and the persons most knowledgeable about such use and non-use.

INTERROGATORY NO. 26

Identify each expert witness who may be used at "trial" by Applicant to present evidence under F.R.E. Rules 702, 703 or 705, including the providing of the information for an expert's written report under FRCP 26(a)(2).

INTERROGATORY NO. 27

Identify each transfer of rights, including assignment, license or consents to use of Petitioner's mark, and all documents referring or relating thereto.

INTERROGATORY NO. 28

Describe in detail the circumstances of each instance of actual/potential confusion of source, sponsorship or affiliation regarding Petitioner and Registrant, regarding their respective marks or products under their respective marks, and identify all documents which refer or relate in any way to such confusion or mistake.

INTERROGATORY NO. 29

State whether any trademark searches, including surveys, investigations, research, or availability assessment and/or opinion, with respect to each and any of Petitioner's mark have been conducted and/or obtained, and identify all documents constituting, referring or relating to each.

By: _____
One of Registrant's Attorneys

Burton S. Ehrlich
Ladas & Parry LLP
224 South Michigan Avenue
Suite 1600
Chicago, Illinois 60604
(312) 427-1300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER was served upon Petitioner's counsel on this 14th day of April, 2008 by deposit with the U.S. Postal Service as first class mail, postage prepaid, addressed to counsel for Petitioner, as follows:

E. Lynn Perry
Perry IP Group A.L.C.
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111
T 415-398-6300 (F 415-398-6307)
lperry@perryip.com

By: _____
Burton S. Ehrlich
One Of Registrant's Attorneys

Exhibit F
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Monday, November 17, 2008 12:49 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

Please be advised that we are prepared today to discuss what we feel are Fresh Express's failures to answer our interrogatories and respond to our requests for production. Should you wish to discuss any issues you may have with Supreme Oil's discovery responses, you may do so in a separate meet and confer conference at a different date and time.

Sincerely,

Tanya Miari
Ladas & Parry LLP

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
Sent: Monday, November 17, 2008 2:07 PM
To: Miari, Tanya; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162

Tanya,

We can proceed at 3:00 p.m. CST.

Please note that we will also be discussing Supreme Oil's inadequate discovery requests, as described in my letter of November 6, 2008. In addition, please be prepared to let me know your client's availability for a deposition, as requested in my letter of November 6, 2008.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Monday, November 17, 2008 12:03 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

Thank you for your email of today. However, as we have counted our interrogatories and feel that there are outstanding documents which we are due, we would like to proceed with the meet and confer conference today at 3 p.m. CST as scheduled.

In addition, we would like to conduct a settlement conference regarding this matter on Friday, November 21. Please confirm your availability for that day, or propose an alternative date so that we may schedule the conference at a mutually convenient time.

We look forward to your response, and to speaking with you today at 3 p.m. CST.

Sincerely,

Tanya Miari
Ladas & Parry LLP

Exhibit G
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Raffi Zerounian
Sent: Monday, November 17, 2008 4:14 PM
To: 'Miari, Tanya'; Meyers, Fred; Luther, John
Cc: Ehrlich, Burton; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162

Tanya and John,

I agreed to respond after I had the opportunity to confirm that Supreme Oil's revised set of interrogatories does not contain more than 75 interrogatories. I made clear that I need to see Supreme Oil's revised set of interrogatories first before agreeing to provide a response.

Of course, I agree that interrogatories requesting "all relevant facts and circumstances," for one subject, without additional subparts, are counted as one interrogatory, as set forth in TBMP 405.03(d).

I look forward to seeing your revised set of interrogatory requests. Based upon our discussion, I am confident that the revised set will contain fewer than 75 interrogatories. I just need to confirm first.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Monday, November 17, 2008 3:00 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

This is to confirm our discussion today that we will revise certain of our interrogatories, which you feel have multiple parts, to employ language from Section 405.03(d) of the TBMP, namely, "all relevant facts and circumstances" and which you agreed would bring the count of each of these multiple part questions to one (1).

We look forward to speaking with you tomorrow at 3 p.m. CST.

Sincerely,

Tanya Miari

Ladas & Parry LLP

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]

Exhibit H
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Raffi Zerounian
Sent: Monday, November 17, 2008 4:08 PM
To: 'Miari, Tanya'; Meyers, Fred; Luther, John
Cc: Ehrlich, Burton; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Tanya and John,

I held the meet and confer conference today for an hour and a half based upon your promise to hold a meet and confer conference tomorrow regarding Fresh Express's concerns with Supreme Oil's discovery responses. You originally agreed to hold the conference at 3:00 p.m. We moved the conference to 1:00 p.m. to give the parties sufficient time to both continue our discussion and to discuss Fresh Express's concerns with Supreme Oil's discovery requests. I expect you to follow-through with your agreement

We made significant progress during our conference today. I must insist—based upon your promise and Mr. Luther's promise—that we Fresh Express's concerns with Supreme Oil's discovery requests as well. I also do not believe that it will take much time to go through Fresh Express's concerns with Supreme Oil's discovery requests.

I look forward to our conference tomorrow.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Monday, November 17, 2008 3:50 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP
Subject: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Dear Raffi,

As you know, we have a substantial number of issues to discuss and resolve, one way or the other tomorrow, regarding your responses to our document requests, as required by the meet and confer rules of the TTAB. Therefore, we will only have time tomorrow to resolve your responses to our discovery requests, and as such, we must reschedule the meet and confer regarding our responses to your discovery requests at a later date.

As you also know, we have repeatedly attempted to schedule our discovery conference with you, which you unexpectedly cut short today. Our discovery conference as required by the TTAB is not, under the rules, required to be contingent with your requested discovery conference, and therefore, we must resolve all our issues regarding your discovery responses tomorrow.

Sincerely,

Tanya Miari
Ladas & Parry LLP

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]

Sent: Monday, November 17, 2008 2:07 PM
To: Miari, Tanya; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162

Tanya,

We can proceed at 3:00 p.m. CST.

Please note that we will also be discussing Supreme Oil's inadequate discovery requests, as described in my letter of November 6, 2008. In addition, please be prepared to let me know your client's availability for a deposition, as requested in my letter of November 6, 2008.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Monday, November 17, 2008 12:03 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

Thank you for your email of today. However, as we have counted our interrogatories and feel that there are outstanding documents which we are due, we would like to proceed with the meet and confer conference today at 3 p.m. CST as scheduled.

In addition, we would like to conduct a settlement conference regarding this matter on Friday, November 21. Please confirm your availability for that day, or propose an alternative date so that we may schedule the conference at a mutually convenient time.

We look forward to your response, and to speaking with you today at 3 p.m. CST.

Sincerely,

Tanya Miari
Ladas & Parry LLP

> -----Original Message-----
> **From:** Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
> **Sent:** Monday, November 17, 2008 12:10 PM
> **To:** Meyers, Fred
> **Cc:** Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP; Raffi Zerounian
> **Subject:** RE: SALAD BAR Cancellation No. 92047162
>
> Mr. Meyers,
>
> I hope you are enjoying your conference in Miami.
>
> Please let me know if you want to put off our meet and confer conference tentatively scheduled for today until Thursday, to give the parties more time to consider an amicable resolution of this matter.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Meyers, Fred [mailto:FredM@ladas.net]
Sent: Wednesday, November 12, 2008 5:26 AM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Your understanding is correct.

From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
Sent: Wednesday, November 12, 2008 12:18 AM
To: Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162

Mr. Meyers,

This confirms that the parties agreed to reschedule the discovery conference tentatively scheduled for Wednesday to Monday. Please let me know immediately if my understanding is incorrect.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

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Exhibit I
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

From: Luther, John [mailto:JLuther@ladas.net]
Sent: Tuesday, November 18, 2008 8:21 AM
To: Raffi Zerounian
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Raffi:

I do not agree with your statements set out in your November 17, 2008, 8:08 PM e-mail. Circumstances and facts do not agree with your e-mail statements either.

To clarify, after several weeks of requesting a meet and confer conference to address Petitioner's non-responsive answers to Registrant's document requests and complete failing to answer any of Registrant's interrogatories, all of which have been served on Petitioner long ago, we have now conducted *two* meet and confer conferences still without resolving Petitioner's deficient answers, as you have unexpectedly, without prior warning, cut short our second conference, which now requires a *third conference.*

As you must know, our meet and confer conference as required by the TTAB to address your deficient/non-answers is not contingent on scheduling a same day conference to address your discovery requests. Since we have many issues with your non-responsiveness covering multiple requests, and since you cut short yesterday's conference, we probably will have to schedule your requested meet and confer conference to address Registrant's alleged deficient answers at a later mutually agreeable date and time.

We shall look forward to finally concluding Registrant's meet and confer conference today.

Sincerely, John Luther

> -----Original Message-----
> **From:** Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
> **Sent:** Monday, November 17, 2008 8:08 PM
> **To:** Luther, John
> **Cc:** Ehrlich, Burton; Miari, Tanya; Meyers, Fred; Raffi Zerounian
> **Subject:** RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162
>
> John,
>
> To clarify the record, both parties voluntarily agreed to cut our first discovery conference short in light of settlement discussions.
>
> Second, we were not non-responsive in our discovery requests. We filed timely responses to Supreme Oil's discovery requests. Your client takes issue with the propriety of our objections to your client's discovery requests. In addition, we produced documents in June of this year. In

contrast, we have not received documents responsive to our client's discovery requests, despite the fact that we served them on **September 10, 2007**-over fourteen months ago.

Third, we sent you a letter on November 6, 2008, letting you know that we planned on discussing Fresh Express's issues with Supreme Oil's inadequate discovery responses when the parties had a meet and confer conference regarding Supreme Oil's issues with Fresh Express's discovery responses. You sent us an email 10 minutes before our scheduled call to let us know that you are unwilling to discuss Fresh Express's issues with Supreme Oil's inadequate discovery responses. You had 11 days to let us know about your refusal to meet and confer, but chose not to do so.

During our call, you refused to discuss Fresh Express's concerns with Supreme Oil's discovery responses. We struck a compromise during our call. You promised to hold a meet and confer conference tomorrow (Tuesday, November 17th), if I agreed to hold the meet and confer conference today.

I understand that our call went longer than expected, but I expect you to follow through with your agreement.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Luther, John [mailto:JLuther@ladas.net]
Sent: Monday, November 17, 2008 5:06 PM
To: Raffi Zerounian
Cc: Luther, John; Ehrlich, Burton; Miari, Tanya; Meyers, Fred
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Dear Raffi,

We have been, for several weeks now, attempting to resolve issues of your non-responsiveness to our discovery requests. We have already had two telephonic conferences with you, the second of which was today, which you unexpectedly cut short, leaving essentially all of the issues of non-responsiveness pertaining to numerous document requests unresolved. We must resolve these issues tomorrow by our meet and confer

conference, as required by the TTAB, which will be our third conference in this matter. Unless time allows, we may not have time for both conferences tomorrow.

J.P. Luther

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
Sent: Monday, November 17, 2008 6:08 PM
To: Miari, Tanya; Meyers, Fred; Luther, John
Cc: Ehrlich, Burton; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Tanya and John,

I held the meet and confer conference today for an hour and a half based upon your promise to hold a meet and confer conference tomorrow regarding Fresh Express's concerns with Supreme Oil's discovery responses. You originally agreed to hold the conference at 3:00 p.m. We moved the conference to 1:00 p.m. to give the parties sufficient time to both continue our discussion and to discuss Fresh Express's concerns with Supreme Oil's discovery requests. I expect you to follow-through with your agreement

We made significant progress during our conference today. I must insist-based upon your promise and Mr. Luther's promise-that we Fresh Express's concerns with Supreme Oil's discovery requests as well. I also do not believe that it will take much time to go through Fresh Express's concerns with Supreme Oil's discovery requests.

I look forward to our conference tomorrow.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP

Exhibit J
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

From: Raffi Zerounian
Sent: Tuesday, November 18, 2008 11:46 AM
To: 'Luther, John'
Cc: Raffi Zerounian; Lynn Perry - PerryIP; Meyers, Fred; Miari, Tanya; Ehrlich, Burton
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

John,

You mention time requirements in your email below ("due to time requirements we cannot reasonably be expected to conduct your conference on the same day.") Please let me know how much time you have today to meet and confer. It appears that you are unwilling to state this for the record because it is your intention to avoid a discussion of your client's inadequate discovery responses, even if there is "time" to do so today. It also appears that you are now refusing to schedule a meet and confer conference regarding your client's inadequate discovery until we complete our discussion regarding our client's discovery responses to your satisfaction ("We can schedule your requested meet and confer conference at a mutually agreed upon time and date after we have resolved Registrant's discovery issues." (emphasis added)) You do this despite your promise of yesterday to discuss your client's inadequate discovery responses today.

In addition, in my email below, I asked you about your availability to meet and confer tomorrow. Again, you avoid stating for the record whether you are available to hold such a meet and confer conference tomorrow. You also failed to give me an alternative date and time. Again, please let me know your availability to discuss your client's inadequate discovery responses, if we are unable to complete our discussion regarding them today.

Yesterday, we "met and conferred" for an hour and a half. TTAB discovery conferences do not typically go on for that long. I had another meeting scheduled beforehand. My apologies.

Again, please note that my unwillingness to respond to your misstatements below does not constitute agreement therewith.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Luther, John [mailto:JLuther@ladas.net]
Sent: Tuesday, November 18, 2008 11:25 AM
To: Raffi Zerounian
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Raffi:

This is our *third* meet and and confer conference today regarding Petitioner's deficient and/or non-existent responses to Registrant's discovery requests. Due to the enormity of your deficient responses to Registrant's discovery requests, and your unexpected cut off of yesterday's meet and confer conference, we will probably only have time today to resolve such deficiencies which are expected to take some time. Thus, due to time requirements we cannot reasonably be expected to conduct your conference on the same day, especially after it has taken *three* conferences to get this far with respect to only our interrogatories of which you have not answered one.

We can schedule your requested meet and confer conference at a mutually agreed upon time and date after we have resolved Registrant's discovery issues which we have, in good faith, been trying to do for several weeks now. What we did agree to yesterday was to address your concerns upon resolution of our concerns, and which are far from complete. You now appear to intend to cut off today's Registrant's meet and confer conference, which we will not agree to.

Sincerely, John Luther

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
Sent: Tuesday, November 18, 2008 11:00 AM
To: Luther, John
Cc: Raffi Zerounian; Lynn Perry - PerryIP
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

John,

Please let me know exactly how much time you have today to meet and confer.

Please also let me know when you are available tomorrow to meet and confer for any remaining issues that are not resolved today.

Yesterday, you agreed to discuss our client's concerns with your client's discovery responses today. I expect you to follow through with your agreement.

Please note that my unwillingness to respond to your misstatements below does not constitute agreement therewith.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Luther, John [mailto:JLuther@ladas.net]
Sent: Tuesday, November 18, 2008 8:21 AM
To: Raffi Zerounian
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Raffi:

I do not agree with your statements set out in your November 17, 2008, 8:08 PM e-mail. Circumstances and facts do not agree with your e-mail statements either.

To clarify, after several weeks of requesting a meet and confer conference to address Petitioner's non-responsive answers to Registrant's document requests and complete failing to answer any of Registrant's interrogatories, all of which have been served on Petitioner long ago, we have now conducted *two* meet and confer conferences still without resolving Petitioner's deficient answers, as you have unexpectedly, without prior warning, cut short our second conference, which now requires a *third conference.*

As you must know, our meet and confer conference as required by the TTAB to address your deficient/non-answers is not contingent on scheduling a same day conference to address your discovery requests. Since we have many issues with your non-responsiveness covering multiple requests, and since you cut short yesterday's conference, we probably will have to schedule your requested meet and confer conference to address Registrant's alleged deficient answers at a later mutually agreeable date and time.

We shall look forward to finally concluding Registrant's meet and confer conference today.

Sincerely, John Luther

Exhibit K
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Raffi Zerounian
Sent: Wednesday, November 19, 2008 3:28 PM
To: 'Luther, John'
Cc: Miari, Tanya; Meyers, Fred; Lynn Perry - PerryIP; Raffi Zerounian
Subject: 30(b)(6) Deposition

John,

This follows up to our letter of November 6, 2008, in which we requested a date for your client's availability for a 30(b)(6) deposition. Thus far, you have not informed us of your client's availability, despite my letter, and my requests during our conferences on November 17th and November 18th. Again, we make this request as a courtesy to your client.

If we do not hear back from you with a date by the close of business tomorrow, I will assume that your client is available on all dates listed in our letter.

You have also not responded to our request that you stipulate to the taking of the deposition by telephone. Please let me know by tomorrow if you are willing to such a stipulation.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
4 Embarcadero Center, Suite 3950
San Francisco, CA 94111

Tel: 415.354.0100
Fax: 415.391.7124
email: rzerounian@harveysiskind.com

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Exhibit L
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Raffi Zerounian
Sent: Thursday, November 20, 2008 4:44 PM
To: 'Miari, Tanya'; Luther, John
Cc: Meyers, Fred; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: SALAD BAR Discovery Conference

Tanya and John,

This is disappointing. As explained in more detail in previous emails, on Monday, November 17th, I held a meet and confer conference for an hour and a half based upon your promise to hold a meet and confer conference on Tuesday, November 18th, regarding Supreme Oil's inadequate discovery responses. Shortly after we finished our conference on Monday, you wrote to me and stated that you and John no longer had time on Tuesday to discuss Supreme Oil's inadequate discovery responses, but you did have time to discuss your concerns with Fresh Express's. We repeatedly asked how much "time" you had for a discussion on Tuesday, both before the conference in various emails and at the beginning of our conference. You and John, however, refused to respond. Presumably, you wanted to leave an out to enable you and John not to discuss Supreme Oil's inadequate discovery conference if the call went faster than planned.

During our conference on Tuesday, after we finished discussing Fresh Express's discovery responses, you and John refused to respond to my questions regarding Supreme Oil's inadequate discovery responses. You said you had "no time," yet you were willing to stay on the phone for at least an additional 15 minutes. This would have been sufficient time to discuss our concerns. You also refused to schedule a conference on Wednesday. We scheduled a conference for today. Unsurprisingly, you send the email below, further putting off the meet and confer conference. You do this, despite the fact that we sent you a letter regarding Supreme Oil's inadequate discovery responses on November 6, 2008, and despite the fact that we served our discovery requests in September of 2007—over 14 months ago. You still refuse to even discuss when your client plans on producing documents responsive to Fresh Express's discovery requests.

In a show of good faith, we are willing to hold a meet and confer conference after our settlement conference tomorrow.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Thursday, November 20, 2008 12:09 PM
To: Raffi Zerounian; Luther, John
Cc: Meyers, Fred; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Discovery Conference

Raffi,

We understand your conference will not take long, however Fred is still out of town, and tied up in meetings and conferences all day. I am not lead counsel on this matter and not authorized to hold the discovery conference on my own. We would be happy to reschedule the conference tomorrow or Monday the 24th. Please let us know what time

works for you.

Sincerely,

Tanya Miari
Ladas & Parry LLP

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
Sent: Thursday, November 20, 2008 1:59 PM
To: Miari, Tanya; Luther, John
Cc: Meyers, Fred; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: SALAD BAR Discovery Conference

Tanya,

Are you or Fred available to hold the conference? On Monday, Fred mentioned that he was at a "working conference." I don't believe that this second meet and confer conference will take more than 30 minutes. I am basically available all afternoon today, if that makes it easier to reschedule today.

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Thursday, November 20, 2008 11:53 AM
To: Raffi Zerounian; Luther, John
Cc: Meyers, Fred; Lynn Perry - PerryIP
Subject: SALAD BAR Discovery Conference

Dear Raffi,

Mr. Luther has asked me to contact you to request we reschedule our discovery conference, as he has unexpectedly been detained by another matter. We would like to reschedule the conference tomorrow at a mutually convenient time, or otherwise Monday, November 24, 2008. Please let us know of your availability.

Sincerely,

Tanya Miari
Ladas & Parry LLP

-----Original Message-----
From: Raffi Zerounian [mailto:RZerounian@harveysiskind.com]
Sent: Wednesday, November 19, 2008 5:28 PM
To: Luther, John
Cc: Miari, Tanya; Meyers, Fred; Lynn Perry - PerryIP; Raffi Zerounian
Subject: 30(b)(6) Deposition

John,

This follows up to our letter of November 6, 2008, in which we requested a date for your client's availability for a 30(b)(6) deposition. Thus far, you have not informed us of your client's availability, despite my letter, and my requests during our conferences on November 17th and November 18th. Again, we make this request as a courtesy to your client.

If we do not hear back from you with a date by the close of business tomorrow, I will assume that your client is available on all dates listed in our letter.

You have also not responded to our request that you stipulate to the taking of the deposition by telephone. Please let me know by tomorrow if you are willing to such a stipulation.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
4 Embarcadero Center, Suite 3950
San Francisco, CA 94111

Tel: 415.354.0100
Fax: 415.391.7124
email: rzerounian@harveysiskind.com

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For more information please visit http://www.messagelabs.com/email

Exhibit M
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Raffi Zerounian
Sent: Thursday, November 20, 2008 5:26 PM
To: 'Miari, Tanya'; Luther, John
Cc: Ehrlich, Burton; Meyers, Fred; Lynn Perry - PerryIP; Raffi Zerounian
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Dear Tanya and John,

Thank you for the attached revised interrogatories.

As we explained in our letter dated October 29, 2008, we do not believe that Supreme Oil is entitled to the discovery that it is requesting at this juncture. Again, we are willing to hold a telephone conference with the Board's interlocutory attorney to discuss whether this is permitted given the Board's Order and the TBMP.

Second, your revised interrogatories still contain over 75 interrogatories, including subparts. Again, using the counting method in TBMP Section 405.03(d), your laundry lists of specific information following broad explanatory phrases are counted as interrogatory subparts. In pertinent part, Section 405.03(d) provides: "Similarly, if an interrogatory begins with a broad introductory clause ("Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:") followed by several subparts ("Applicant's date of first use of the mark on the goods listed in the application," "Applicant's date of first use of the mark on such goods in commerce," etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated." Therefore, your revised set of interrogatories are still improper, and we generally object.

Please let me know if you have any questions.

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Tuesday, November 18, 2008 3:15 PM
To: Lynn Perry - PerryIP; Raffi Zerounian
Cc: Ehrlich, Burton; Meyers, Fred; Luther, John
Subject: RE: November 18 Discovery Conference Re: SALAD BAR Cancellation No. 92047162

Dear Lynn and Raffi,

As agreed, attached please find our letter of today's date along with our Revised First Set of Interrogatories to Petitioner. A copy of same was also served by facsimile and first class mail.

Sincerely,

Tanya Miari
Ladas & Parry LLP

Exhibit N
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Raffi Zerounian

From: Raffi Zerounian
Sent: Wednesday, November 26, 2008 2:47 PM
To: Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP; 'Miari, Tanya'; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162
Importance: High
Attachments: Fax Cover Sheet.pdf; Letter and Depo Notice.pdf

Mr. Meyers,

On November 20, 2008, we sent you the attached letter and 30(b)(6) deposition notice both by facsimile and overnight delivery. Please find attached the facsimile transmittal sheet, showing transmission of all 8 pages to your firm. I am surprised that your firm misplaced the deposition notice sent by overnight delivery, as well as the facsimile copy, but somehow did not misplace the letter. Anyway, the letter we sent you on November 20th, to which Ms. Miari refers in her letter, made clear that we noticed a deposition on December 8, 2008.

Our letter dated November 20th clearly stated that we expected an immediate response if your client was not available on December 8th for a deposition: "If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than November 25, 2008, to discuss a mutually acceptable alternative date." Instead of calling us immediately, you waited until 7:00 p.m. Central Standard Time to send us an email with a letter stating that your client is unavailable on that date. You also do not list an alternative date within the discovery period.

We have been trying to clear a date for a deposition with you since November 6th. In a letter sent on that date, we asked your client's availability on certain dates for a deposition, which included December 8th. I repeatedly asked for your client's availability on those dates during telephone conferences. You never provided a date. Under the Board's schedule, we are able to conduct discovery until December 17th. Please let me know your client's availability to hold a 30(b)(6) deposition before December 17th. If you do not give us such a date before Tuesday, December 2, 2008, we will move for an order compelling a deposition.

Have a happy thanksgiving.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Tuesday, November 25, 2008 4:57 PM
To: Raffi Zerounian; Meyers, Fred

Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

Please see our attached letter of today. We look forward to your response.

Sincerely,

Tanya Miari
Ladas & Parry LLP

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	1946
CONNECTION TEL	13124276663pp402010
CONNECTION ID	
ST. TIME	11/20 17:17
USAGE T	03'10
PGS. SENT	8
RESULT	OK

H A R V E Y · S I S K I N D · L L P

FAX TRANSMITTAL

November 20, 2008

To: Frederick W. Meyers

Fax Number: **(312) 427-6663**

From: Raffi V. Zerounian

Re: Notice of Deposition

We are transmitting 8 pages including cover sheet.

Privileged and Confidential – All information transmitted hereby is intended only for the use of the addressee(s) named. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. mail.

HARVEY ▪ SISKIND LLP

November 20, 2008

Raffi V. Zerounian

VIA OVERNIGHT DELIVERY
& FACSIMILE to (312) 427-6663

Frederick W. Meyers, Esq.
Ladas & Parry LLP
224 South Michigan Avenue, Suite 1600
Chicago, IL 60604

Re: SALAD BAR
Registration No. 1758520 in the U.S.
Cancellation Action No. 92047162

Dear Mr. Meyers:

Please find attached a Notice of Deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) for Supreme Oil Company.

On November 6, 2008, we wrote to you, as a courtesy, to request your client's availability for a deposition on various dates. Despite our repeated requests and the passage of two weeks, you never informed us of your client's availability for the dates mentioned in that letter or otherwise. Given that the discovery period is closing in less than a month, we have no choice but to notice the instant 30(b)(6) deposition on a date listed in our letter of November 6th. Although we have noticed the deposition for December 8, 2008, we are willing to reschedule to another date within the discovery period, within reason, and given our availability. Again, we do this as a courtesy to your client.

If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than **November 25, 2008**, to discuss a mutually acceptable alternative date.

Please let me know if you have any questions.

Sincerely,

Raffi V. Zerounian

cc: E. Lynn Perry
RVZ:lp

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRESH EXPRESS INCORPORATED, Petitioner, v. **SUPREME OIL COMPANY,** Registrant.	Cancellation No.: 92047162 Reg. No. 1,758,520 Issued: March 16, 1993 Mark: SALAD BAR

NOTICE OF DEPOSITION PURSUANT TO FRCP 30(b)(6)

TO REGISTRANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Petitioner FRESH EXPRESS INCORPORATED submits the following Notice of Deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) and requests the attendance of the person(s) most knowledgeable of Registrant **SUPREME OIL COMPANY** ("Supreme Oil"), at the offices of Tribler Orpett & Meyer, P.C., 225 West Washington Street, Suite 1300, Chicago, IL 60606-3408, on December 8, 2008, commencing at 10:00 a.m. Central Standard Time, and continuing from day to day thereafter until completed. Said deposition shall be taken upon oral examination before a certified shorthand reporter duly authorized to administer oaths in the State of Illinois and may be recorded through visual display of the testimony.

Supreme Oil is to provide the following witness(es):

1. The person(s) most knowledgeable as to each type of good or service offered by Supreme Oil under the mark "SALAD BAR" listed in U.S. Registration No. 1,758,520, from inception of the mark to the present.

2. The person(s) most knowledgeable as to how Supreme Oil has marketed, advertised

and promoted the mark "SALAD BAR" in the United States, including the costs incurred for such activities, from inception of the mark to the present.

3. The person(s) most knowledgeable as to the demographics of Supreme Oil's target and actual customers of products or services offered under the mark "SALAD BAR" for each good or service listed in U.S. Registration No. 1,758,520 in the United States, including but not limited to their age, residence, education, income, occupation, and other characteristics, from inception of the mark to the present.

4. The person(s) most knowledgeable as to any plans by Supreme Oil to expand its lines of goods and services offered under the mark "SALAD BAR" in the United States, from inception of the mark to the present.

5. The person(s) most knowledgeable as to the dollar amount of Supreme Oil's gross sales and gross profits since it adopted the mark "SALAD BAR" for sales of each good or services listed in U.S. Registration No. 1,758,520 in the United States, from the inception of use to the present.

6. The person(s) most knowledgeable as to Supreme Oil's corporate structure, including the identity of each of its officers, directors and managerial employees that relate to Registrant's use and sales of products and services of the mark "SALAD BAR," from inception of the mark to the present.

7. The person(s) most knowledgeable as to the circumstances under which Supreme Oil's actual customers and any prospective customers came to learn of its products or services offered under the mark "SALAD BAR" for each good or service listed in U.S. Registration No. 1,758,520 in the United States, from inception of the mark to the present..

8. The person(s) most knowledgeable as to the claimed commercial strength and consumer awareness of the "SALAD BAR" mark for each good listed in U.S. Registration No. 1,758,520 in the United States.

9. The person(s) most knowledgeable as to Supreme Oil's communications with any third parties regarding this proceeding.

10. The person(s) most knowledgeable as to any intent to continue or resume use of the mark "SALAD BAR" by Supreme Oil for any goods or services listed in U.S. Registration No. 1,758,520 in the United States.

11. The person(s) most knowledgeable as to the established trade channels of each good or service offered under the mark "SALAD BAR" in the United States, from inception of the mark to the present.

12. The person(s) most knowledgeable as to the conditions under which each good or service listed in U.S. Registration No. 1,758,520 for the mark "SALAD BAR" are purchased, including the buyers to whom sales are made, from inception of the mark to the present.

13. The person(s) most knowledgeable as to any periods of nonuse of the mark "SALAD BAR" by Supreme Oil for any goods listed in U.S. Registration No. 1,758,520.

14. The person(s) most knowledgeable as to any products or services offered under the mark "SALAD BAR" that Supreme Oil has discontinued.

15. The person(s) most knowledgeable as to the chain of title of U.S. Registration No. 1,758,520 for the mark "SALAD BAR."

16. The person(s) most knowledgeable as to the filing of maintenance documents for the registration of U.S. Registration No. 1,758,520 for the mark "SALAD BAR," from inception of the mark to the present.

17. The person(s) most knowledgeable as to any evidence that the mark "SALAD BAR" has been used by Supreme Oil for each good listed in U.S. Registration No. 1,758,520, from the inception of the mark to the present.

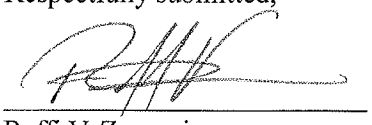
18. The person(s) most knowledgeable as to the licensing of the mark "SALAD BAR" by Supreme Oil, from inception of the mark to the present.

//

19. The person(s) most knowledgeable as to Supreme Oil's document retention policy or policies, from 1993 to the present.

Dated: November 20, 2008

Respectfully submitted,



Raffi V. Zerounian

Perry IP Group ALC
E. Lynn Perry
4 Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 398-6300

Harvey Siskind LLP
Raffi V. Zerounian
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 354-0100
Facsimile: (415) 391-7124

Attorneys for Petitioner Fresh Express Incorporated

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **NOTICE OF DEPOSITION PURSUANT TO FRCP 30(b)(6)**, dated November 20, 2008 (Cancellation No.: 92047162), by mailing a copy thereof to Registrant's counsel via facsimile and overnight delivery, postage prepaid, addressed to Frederick Meyers on November 20, 2008 as follows:

Frederick W. Meyers
Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604

Lee Martinez

Exhibit O
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

Richard J. Streit ▪ Frederick W. Meyers ▪ John E. McKie ▪ Burton S. Ehrlich ▪ Brian W. Hameder ▪ W. William Park
Zareefa Burki Flener, MS ▪ Loren K. Thompson, Ph.D* ▪ John P. Luther** ▪ Anthony E. Anderson
Adam V. Litteken, MS*** ▪ Richard J. Albright, MS ▪ Eric D. Babych**** ▪ Chloe A. Hecht
Tanya H. Miari ▪ Keith S. Van Duyne, MS*****
Of Counsel: Donald P. Reynolds ▪ Valerie Neymeyer-Tynkov
* Member Kansas Bar, member California Bar, not admitted in Illinois
** Member Oklahoma Bar, member Washington Bar, not admitted in Illinois
*** Member Missouri Bar, not admitted in Illinois
**** Member Colorado Bar, not admitted in Illinois
***** Member District of Columbia Bar

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November 25, 2008

Raffi Zerounian
Harvey Siskind
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111

VIA EMAIL

Re: SALAD BAR, Registration No. 1758520 in the U.S.
Cancellation Action No. 92047784

Dear Raffi:

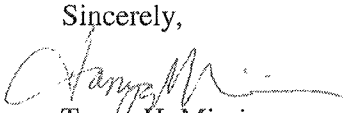
Thank you for your letter to us dated November 20, 2008 which was addressed to Mr. Meyers of our firm. Unfortunately, attached to your letter, we could not find the supposed Notice of Deposition under Rule 30(b)(6) and it would be appreciated if you could send another copy of that document.

You have indicated that if our client is not available on December 8, 2008 then we should discuss a mutually acceptable alternative date that is still within the discovery time period. Our client is not available on that date and our proposal is to set a potential date around the second week in January and as may be appropriate accordingly extend any scheduling. In this manner we will not be interfering with the holidays and you will have enough advance time to consider our client's written settlement proposal in advance of the date for a deposition. Furthermore, this will also allow us sufficient advance time to consider your request and arrangements for a potential telephonic deposition.

If you could provide us with dates tomorrow, Wednesday, November 26, 2008, then I could follow-up with the client on possible availability. These dates should work

for you, since you advised in your letter that you would be willing to reschedule the depositions with dates that are still within the discovery time period and this proposed scheduling is, of course within that time period. We look forward to hearing from you. Thank you.

Sincerely,



Tanya H. Miari
Ladas & Parry LLP

Exhibit P
to Declaration of Raffi V. Zerounian In Support of Opposition to Motion to Compel Discovery

Offered by Petitioner Fresh Express, Incorporated

Fresh Express Incorporated v. Supreme Oil Company

Cancellation No. 92047162
Registration No. 1,758,520

Burt Ehrlich Voicemail
Rec'vd 11/28/2008 (per RVZ)
Transcribed 12/01/2008
Re: FEI/Supreme Oil

Hi Raffi. This is Burt Ehrlich and Tanya at Ladas & Parry in Chicago. John Luther is away for Thanksgiving; won't be back until Tuesday, but your letter was brought to my attention because you asked for an answer before Tuesday – you kinda sent the email out at the end of the day on Wednesday and the only days are today and Friday and Monday. Let me begin by saying that I don't think we were saying we didn't get the Notice of Deposition, we just don't have a copy of it. We weren't suggesting that maybe it didn't come, but in any event, thank you for providing that. We want to talk to you about the scheduling, maybe work something out that makes sense for all of us even if that means rescheduling some other things, but give us a call back when you get an opportunity. We're in the office today, all day, on Friday. Hopefully you are having a great Thanksgiving and maybe taking a leisurely Thanksgiving there in San Francisco, a wonderful place, always good food there. But, in any event, give us a call back on Monday and we'll touch base with you when you get a chance. I'm pretty tied up on a Temporary Restraining Order matter which is out on the West Coast there but I'm not going to be close to San Francisco, unfortunately … but give us a call back on Monday let's see what we can work out on this, or we may want to just wait until Luther gets back on Tuesday, but he won't be back in the office … he's out on the East Coast for Thanksgiving with his father who's , I guess, up there a few years as many of our parents are. So, anyways have a great Thanksgiving if I don't talk to you before Monday. Thanks again, and Tanya and Burt Ehrlich, Ladas & Parry, 312-427-1300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRESH EXPRESS INCORPORATED, Petitioner, v. SUPREME OIL COMPANY, Respondent.	Cancellation No.: 92047162 Reg. No. 1,758,520 Issued: March 16, 1993 Mark: SALAD BAR **OPPOSITION TO REGISTRANT'S COMBINED MOTION TO COMPEL AND MOTION TO RESET TESTIMONY PERIOD, MOTION FOR PROTECTIVE ORDER RE NOTICE OF DEPOSITION ETC., MOTION FOR EXTENSION OF TIME TO ANSWER PETITIONER'S SECOND SET OF REQUEST FOR ADMISSIONS, ETC., AND MOTION FOR PROTECTIVE ORDER RE PETITIONER'S REQUESTS FOR ADMISSION AND RELATED SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS; AND SUPPORTING MEMORANDUM**

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Petitioner Fresh Express Incorporated ("Fresh Express" or "Petitioner"), hereby submits its brief in opposition to Registrant's Combined Motion to Compel and Motion to Reset Testimony Periods ("Motion to Compel") filed by Respondent Supreme Oil Company ("Supreme Oil" or "Respondent").

I. INTRODUCTION

A. Procedural History and Status.

In the order dated October 15, 2008 (the " MSJ Order") denying Petitioner's Motion for Summary Judgment (the "MSJ" Motion) on the issue of abandonment, to give Respondent another opportunity to respond to Petitioner's Requests for Admission ("RFAs") served on September 10, 2007, the Board held as follows:

> [B]y this order, the Board is reopening discovery solely for petitioner to allow petitioner to conduct follow-up discovery in light of the amended responses [by Respondent], thereby mitigating any potential prejudice [to Petitioner].

MSJ Order, p. 6.

Rather than allow Petitioner to take follow-up discovery, Respondent asserts that Petitioner must provide further responses to the discovery that Respondent served on the last day of the discovery period, April 14, 2008. This is despite the fact that Respondent allowed some six months to go by without objecting to Petitioner's responses. Respondent's attorney seeks to justify this delay via argument in its brief. Those justifications are not proper argument and should therefore be stricken. Regardless, Respondent's arguments do not justify this unreasonable delay. Certainly, they do not justify Respondent's keeping Petitioner from taking discovery to which Petitioner is entitled under the MSJ Order.

B. Respondent's Four Motions Are Its Strategy to Avoid Producing a Witness for Deposition or Otherwise Responding to Petitioner's Follow-up Discovery.

As is set forth fully in the Declaration of Raffi V. Zerounian (the "Zerounian Decl."), Respondent began its efforts to file the instant motion before it had even responded to Petitioner's RFAs. During the discovery period and the pendency of the MSJ Motion, Respondent *never* responded to Petitioner's RFAs, Interrogatories and Requests for Production of Documents ("RFPs"), which were propounded September 10, 2007, ***15 months ago***. Petitioner, on the other hand, served timely responses to

Respondent's April 14, 2008 discovery requests on May 16, 2008, *nearly eight months ago*. Before the MSJ Order issued, Respondent voiced no objection whatsoever to Petitioner's responses.

Now, Respondent has filed a motion to compel. In addition, Respondent has filed three subsequent motions, all in violation of the Board's November 24, 2008, suspension order which provides as follows:

> Proceedings herein are suspended pending disposition of the motion to compel, filed November 21, 2008, except ... [t]his suspension order does ***not*** toll the time for either party to respond to discovery requests which had been duly served prior to the filing of the motion to compel.

(Emphasis added). *See, also*, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a).

The Board should not permit Respondent to frustrate Petitioner's ability to obtain discovery (including witness testimony and documents). For the reasons set forth below, Petitioner respectfully requests the Board deny Respondent's motion to compel, order Respondent to produce the 30(b)(6) witnesses for deposition and to respond to Petitioner's follow-up discovery, and not to file meritless motions that violate 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a).

II. BACKGROUND FACTS

Fresh Express filed an application to register SALAD BAR EXPRESS (Ser. No. 78/719,905) for "Garden vegetable and fruit salads; salad kits consisting primarily of lettuce, nuts, berries, fruits, cheese, chicken, bacon bits, nuts, and croutons" on September 23, 2005 ("Petitioner's Mark"). Declaration of E. Lynn Perry in support of Petitioner's Motion for Summary Judgment ("Perry Decl.") ¶3; Exh. A. The application was refused registration in view of Reg. No. 1,758,520 for SALAD BAR covering "salad dressing, salad oils and mayonnaise" and "relish, tartar sauce, vinegars, spices, capers, condiments; namely, marinated mushrooms; mustards, rice and food flavorings," belonging to Respondent ("Respondent's Mark"). Perry Decl. ¶4; Exh. A.

Petitioner hired a professional investigator, who found no evidence that Respondent's Mark had ever been used by Respondent. *See generally* Declaration of DJ Brooks in Support of Petitioner's Motion for Summary Judgment ("Brooks Decl."); Perry Decl. ¶5-6, Exh. B. In light of this, on February 14, 2007, Fresh Express initiated this cancellation proceeding based on abandonment of the SALAD BAR mark.

Petitioner made several attempts to obtain evidence from Respondent showing any use of Respondent's Mark, both through formal discovery and informal means. Perry MSJ Decl. ¶¶4, 8-10. Nevertheless, no such evidence was produced, except for a handful of undated labels, without any evidence indicating that they were in use at any time, let alone in the several years preceding the Petition to Cancel. *Id.*

Petitioner therefore filed its MSJ Motion on the basis of abandonment of the mark in issue. Respondent produced no evidence in response to that motion and failed to respond to Petitioner's RFAs asking Respondent to deny that the subject mark was not in use and abandoned. Nevertheless, the Board denied the MSJ Motion and gave Respondent another chance to respond to the RFAs. Respondent has now responded to the RFAs as of November 4, 2008. Nevertheless, Respondent has resisted all Petitioner's attempts to take follow-up discovery.

A. Respondent's Efforts to File its Motion to Compel and Refusal to Discuss its Discovery Responses

On Saturday, October 25, 2008, Fred Meyers, counsel for Respondent, sent an email to Lynn Perry, counsel for Petitioner. The email attached a letter dated the previous day. Declaration of John P. Luther in Support of Registrant's Combined Motion to Compel and Motion to Reset Testimony Periods ("Luther Decl."), Exh. C; Zerounian Decl. ¶¶3-4. The letter, which was not received until Monday, requested a conference that same day at noon, concerning Petitioner's discovery responses made over seven months prior. *Id.*

Petitioner responded the same day, requesting that Respondent explain its concerns to make the conference more productive, and so that counsel could adequately prepare for it. Believing that Respondent's request was not timely, Petitioner asked Respondent to explain what authority it believed supports its conducting further discovery of Respondent at this late date, particularly considering the Board's MSJ Order limiting discovery to Petitioner. Zerounian Decl. ¶5; Luther Decl., Exh. D (R. Zerounian to F. Meyers, dated Oct. 28).

Respondent refused to provide any authority in support of its request and refused to detail its concerns with Petitioner's discovery responses. Zerounian Decl. ¶6; Luther Decl., Exh. D (F. Meyers to L. Perry, dated Oct. 28). Respondent also threatened to file a motion to compel if Petitioner did

not agree to schedule a meet-and-confer conference by the following Wednesday afternoon, two days hence. *Id.* Respondent did not provide any explanation for why it was imperative to hold a discovery conference with so little notice.

A few days later, Petitioner's counsel responded that Petitioner had timely served responses and documents upon Respondent, contrary to Respondent's assertions, and repeated its request for specificity including Respondent's "interrogatory count using the guidelines set forth in TBMP § 405.03(d)." Zerounian Decl. ¶8; Luther Decl., Exh. D (R. Zerounian to F. Meyers, dated Oct. 29). Respondent did not comply with this request. *See* Luther Decl., Exh. D (F. Meyers to L. Perry, dated Oct. 30).

Petitioner wrote to respondent once more. Zerounian Decl. ¶9; Luther Decl., Exh. D (R. Zerounian to F. Meyers, dated Nov. 3). In this letter, Petitioner suggested that the parties schedule a conference with the Board's interlocutory attorney to discuss whether the Board would consider a motion to compel filed by Respondent at this late date, and requested that Respondent state in writing its concerns regarding Petitioner's discovery responses. Petitioner agreed to confer with Respondent on November 5, 2008, and requested that, at that time, the parties also confer about Respondent's failure to provide any responses whatsoever to Petitioner's discovery requests. *Id.*

On November 5th, shortly after the parties began their meet and confer conference, the parties began to discuss a potential settlement. The parties mutually agreed to stop the meet and confer conference and to postpone the conference tentatively for one week. Zerounian Decl. ¶10.

That day, Respondent served responses to Petitioner's original 14-month-old RFPs and Interrogatories. Respondent has failed to produce any responsive documents, however. Respondent's responses consisted mainly of boilerplate responses, and many were severely inadequate and outright improper. Zerounian Decl. ¶11; Exh. A.

On November 6, 2008, Petitioner sent Respondent a letter that explained its concerns with Respondent's inadequate discovery responses, and requested that the parties confer about Petitioner's concerns at the parties' next scheduled conference. Zerounian Decl. ¶12; Exh. B. As permitted by the Board's MSJ Order, on November 6, 2008, Petitioner also served its second sets of requests for production of documents and requests for admission (the "Second Set of Discovery"). Zerounian

Decl. ¶13; Exh. C. While the Second Set of Discovery may appear voluminous when gauged by the number of requests, the discovery is merely the same requests made repeatedly for each of the 13 separate products identified in the subject registration, by years 1993-1999 and individually for the years 2000 through 2006. In addition, the responses seek to confirm statements in Respondent's responses to Petitioner's RFPs and interrogatories that no evidence existed regarding its use of the SALAD BAR mark during certain years on certain goods listed in the identification of goods and services. These requests are seeking information concerning the very essence of this case alleging abandonment. They are hardly seeking "minutiae" as claimed by Respondent.

On November 6, 2008, Petitioner also sent a letter requesting the availability of Respondent's 30(b)(6) witness for a deposition in December. Zerounian Decl. ¶14; Exh. D. Respondent did not provide its client's availability for a deposition, despite repeated reminders.

On November 10, 2008, Respondent wrote "As promised during our November 5, 2008 telephone conversation, enclosed is a copy of Registrant's First Set of Interrogatories to Petitioner, which were previously served upon you." (Emphasis added.) Zerounian Decl. ¶¶15-16; Exh. E. This was the exact same set of interrogatories that it had already served on Petitioner the preceding April. Respondent requested a response in one week. This was puzzling, since, during the conference the prior week, the parties did not complete their discussion regarding Fresh Express's general objection to Respondent's interrogatories. Petitioner never suggested it would respond to Supreme Oil's interrogatories, (and certainly not within a week). Zerounian Decl. ¶10. It was also unclear why Respondent sent Petitioner the same interrogatories that it had already served on Petitioner.

Petitioner continued to state that it would be necessary to discuss Respondent's inadequate discovery responses in addition to Petitioner's discovery responses. Zerounian Decl. ¶12; Exh. B. Before a conference the parties had scheduled on November 17, Petitioner's counsel again reminded Respondent of its inadequate discovery responses, and, again, requested the availability of Respondent's 30(b)(6) deposition witness. Zerounian Decl. ¶18; Exh. F. In an email sent ten minutes before the scheduled meet and confer conference, Respondent, for the first time, expressed its unwillingness to discuss its own inadequate responses. Zerounian Decl. ¶19.

At the beginning of the November 17th conference, Petitioner's counsel again requested that the parties discuss Respondent's inadequate discovery responses as well. Respondent insisted that this was its conference and it would not do so. A compromise was reached wherein Petitioner agreed to confer that day on Petitioner's responses to Respondent's discovery requests in exchange for Respondent's promise to discuss Respondent's inadequate discovery responses the next day, November 18th. After **one and a half hours**, Petitioner's counsel had to request to continue the conference the next day due to a previously scheduled conference. Zerounian Decl. ¶20.

That day, after the conference, Respondent's attorney Tanya Miari, wrote that Respondent no longer had time to discuss Respondent's discovery requests the next day, despite their promise to the contrary. Zerounian Decl. ¶23; Exh. H. Despite Petitioner's repeated requests, Respondent's counsel refused to state how much time they had for the conference and refused to provide an alternative date for a conference. Zerounian Decl. ¶¶23-27; Exhs. H, I, J.

Also, after the conference on November 17th, Respondent's counsel sent a letter purportedly "confirming": "Further to our email of today, it is our understanding that upon revision of our interrogatories as previously explained, you will respond to all interrogatories (Nos. 1-29) in the revised set which will be propounded upon you, without further objection." Zerounian Decl. ¶21; Exh. G. Counsel had not agreed to this at all, and never waived their objection set forth in Petitioner's earlier correspondence about needing to know from the Board whether further discovery was permitted. Petitioner's counsel responded and stated that this was not the agreement. Zerounian Decl. ¶22; Exh. H. Rather, Petitioner only agreed to respond after reviewing and confirming that the interrogatory count of the revised set did not exceed seventy five. *Id.* On November 18, 2008, Miari sent an email that enclosed the revised set of interrogatories. Zerounian Decl. ¶¶29; 35; Exh. M. Respondent's revised set of interrogatories still exceeded seventy five in number, including sub-parts. Zerounian Decl. ¶22; Exh. H.

At the beginning of the telephone conference the following day, November 18th, Petitioner's counsel repeatedly asked Respondent's counsel how long they had available. While one counsel responded she was available indefinitely, the other refused to respond. After completing the discussion regarding Petitioner's discovery responses, Respondent's counsel refused to discuss

Respondent's discovery responses. After discussion, he reluctantly agreed to discuss Respondent's discovery responses on Thursday, November 20th. Zerounian Decl. ¶28.

Shortly before the scheduled conference on November 20th, Respondent's counsel wrote stating that they could no longer meet on that day because one of the three attorneys working on the matter, had "unexpectedly been detained" by another matter. Zerounian Decl. ¶¶31-34; Exh. L. Respondent's counsel did agree to reschedule the meeting for the following day. *Id.*

The next day, the parties began to discuss Respondent's inadequate discovery responses. In the middle of the conference, Respondent's counsel sent Petitioner's counsel the instant motion to compel, by facsimile. Apparently, although Respondent did not have time to meet and confer regarding its discovery responses, it found the time to draft the instant motion to compel.

After receiving Respondent's motion to compel, the Board issued an order on November 24, 2008, stating that "The parties should not file any paper which is not germane to the motion to compel. See Trademark Rule 2.120(e)(2). Consideration of the motion to extend is deferred."

B. Respondent's Efforts to Avoid a Deposition and Responding to Discovery

Petitioner had propounded discovery and noticed a 30(b)(6) deposition <u>before</u> Respondent filed its motion to compel. Prior to noticing the deposition, Petitioner had made several attempts to secure a mutually agreeable date for almost three weeks, Because Respondent's responses to Petitioner's discovery were not suspended by its Motion to Compel, Respondent filed three subsequent motions attacking that discovery, again endeavoring to frustrate Petitioner's ability to conduct discovery.

On November 20, 2008, Petitioner had sent Respondent its Notice of Deposition by both facsimile and overnight delivery. In the cover letter that accompanied the Notice of Deposition, Petitioner clearly stated that it expected an immediate response if Respondent was not available on December 8th, the noticed date, for a deposition. Zerounian ¶36; Exh. N. Instead of calling Petitioner's counsel immediately, Respondent waited until 7:00 p.m. Central Standard Time on November 25th to write stating that its client is unavailable on that date. Zerounian ¶39; Exh. O. Despite being requested to do so, Respondent never offered any alternate dates for the deposition. Even though Respondent had been aware of the close of discovery since the issuance of the MSJ

Order, Respondent's counsel never before stated that its witness(es) were not available during the discovery period. At no time has Respondent or its witness sworn to unavailability or the reason(s) therefor.

In Respondent's November 25 letter, Respondent's counsel also wrote "Unfortunately, attached to your letter, **we could not find the supposed Notice of Deposition** under Rule 30(b)(6) and it would be appreciated if you could send another copy of that document." (emphasis added). Zerounian ¶39; Exh. O. Nevertheless, in its letter in response, Petitioner attached the facsimile confirmation that established that Respondent had received the Notice of Deposition. In that letter, again, Petitioner requested an alternative date before the close of discovery, which was set to close on December 18, 2008. Zerounian ¶40; Exh. N. Respondent's counsel left Petitioner's counsel a voicemail message when its offices were closed, again requesting that the parties reschedule the deposition to January. Despite its representations in its motion to compel, the voicemail message did not mention the 30(b)(6) deponent's unavailability during the discovery period, or otherwise. Zerounian ¶41 Exh. P.

Instead of responding to Petitioner's requests for admission and document requests, on November 25th, Respondent filed a motion for protective order in violation of the Board's November 24th suspension order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a). Respondent also failed to meet and confer with Petitioner before filing this motion. Zerounian ¶42.

On December 3, 2008, Respondent filed a motion a motion entitled "Registrant's Combined Motion for Protective Order Regarding Petitioner's Notice of Deposition and Request for Extension of Discovery Cut-Off Date". Zerounian ¶43. This was the **second** motion that Respondent filed in violation of the Board's November 24th suspension order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a). Respondent never mentioned its intention to file such a motion before doing so. Respondent's counsel did not represent that its client was unavailable during the discovery period. Petitioner had been trying to clear a deposition date since November 6th. If Respondent's 30(b)(6) witness actually had limited availability, Respondent should have notified Petitioner about this earlier.

On December 4, 2008, Respondent filed its **third** motion in violation of Board's November 24th suspension order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a), entitled "Registrant's Motion for Extension of Time to Answer Petitioner's Second Set of Requests for Admissions Pending Resolution of Registrant's November 25, 2008, Motion for Protective Order." Again, Respondent failed to meet and confer regarding this motion. Zerounian Decl. ¶44.

Respondent places great emphasis on "meaningful settlement discussions," however, "meaningful" and "discussions" are not quite accurate. Petitioner made a settlement offer to Respondent on November 11, 2008. One month has since passed, and Respondent has failed to respond to Petitioner's settlement offer, despite Petitioner's numerous requests for a response. Zerounian ¶45. Respondent has provided no credible reason for its failure to respond. Respondent cannot use this settlement offer as a shield against Petitioner's efforts to conduct discovery.

III. ARGUMENT

A. Respondent's Motion to Compel is Untimely

A motion to compel "should be filed **within a reasonable time** after the failure to respond to a request for discovery or after service of the response believed to be inadequate and must, in any event, be filed before the first testimony period begins." TBMP § 523.03 (Emphasis added). Respondent served its discovery requests on April 14, 2008, the last day of the discovery period. Petitioner served its timely responses on May 16, 2008. The testimony period was to open on June 14, 2008, but Respondent filed its motion for summary judgment on June 13, 2008. Respondent's motion to compel here, filed six months after Petitioner served its responses—was not brought within a reasonable time. *Suntrust Bank v. Blue Water Fiber, L.P.*, 210 F.R.D. 196, 200-01 (E.D. Mich. 2002) (collecting cases where courts denied tardy discovery motions where the moving party had all information it needed to file a timely motion). Respondent did not complain about Petitioner's responses to its discovery requests until the Board ordered Respondent to respond to Petitioner's requests for admissions and opened the discovery period solely for Petitioner.

Petitioner attempted to resolve the issue of the timeliness of Respondent's requests for supplemental responses in light of the Board's Order short of filing a motion to compel. Petitioner's counsel repeatedly requested that the parties schedule a telephone conference with the Board's

interlocutory attorney. Zerounian Decl. ¶¶5, 8, 9; Luther Decl. Exh. D. Respondent ignored these requests, and never explained why it refused to hold such a conference. Petitioner also repeatedly asked Respondent for authority in support of this request, which Petitioner would have considered. Again, Respondent refused to do so. Zerounian Decl. ¶¶5-9.

Petitioner therefore respectfully requests that the Board deny Respondent's motion to compel for not being brought within a reasonable time. *Suntrust Bank*, 210 F.R.D. at 200-01.

B. General Objection to Respondent's Interrogatories

If the Board believes that Respondent's Motion to Compel was brought within a reasonable amount of time, Respondent has propounded more than seventy-five interrogatories in both its initial and revised sets of interrogatories.

"If a party on which interrogatories have been served, in a proceeding before the Board, believes that the number of interrogatories served exceeds the limit specified in 37 CFR § 2.120(d)(1), and wishes to object to the interrogatories on this basis, the party must, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number." TBMP § 405.03(e). Using the using the guidelines set forth in TBMP § 405.03(d), Respondent propounded over 75 interrogatories, including subparts, and Petitioner therefore submitted a general objection on this basis. In fact, by Petitioner's count, Respondent submitted over 150 interrogatory subparts. If Respondent's onerous "instructions" are included, this number further increases.

During the meet and confer process, Respondent refused to provide in writing its counting method showing its belief that it propounded seventy-five or fewer interrogatories. Zerounian Decl. ¶¶ 5, 8, 9. Respondent also failed to do so with its motion to compel, notwithstanding TBMP § 405.03(e). ("It is further recommended that the moving party set out its counting method showing that the number of interrogatories does not exceed seventy-five.").

It is apparent from even a brief review of Respondent's interrogatories that the interrogatory count exceeds seventy five. Many of the interrogatories "begin[] with a broad introductory clause ("Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:") followed by several subparts ("Applicant's date of first use of the mark on the goods listed in

the application," "Applicant's date of first use of the mark on such goods in commerce," etc.)," each of which are counted as separate interrogatories. TBMP § 405.03(d). Many "contain[] both an initial question, and follow-up questions to be answered if the first is answered in the affirmative," each of which are counted as separate interrogatories. *Id.* Furthermore, many interrogatories "request[] information concerning more than one issue, such as information concerning both "sales and advertising figures," or both "adoption and use,"), each of which is counted as a separate interrogatory. *Id.*

During the meet and confer conference, Petitioner's counsel made clear that it would be willing to respond to a revised set of interrogatories once the Board determined whether Respondent was permitted to take discovery at this juncture. Zerounian Decl. ¶20. Again, Petitioner recommended that the parties schedule a telephone conference with the Board's interlocutory attorney to quickly resolve this issue (which request Respondent ignored). Zerounian Decl. ¶¶5, 8, 9, 20.

Petitioner's counsel attempted to explain its concerns with the long laundry lists contained in Respondent's interrogatories, and recommended that Respondent amend its interrogatories along the lines of the guidance contained in TBMP § 405.03(d). Zerounian Decl. ¶20. That section of the TBMP provides "if an interrogatory requests "all relevant facts and circumstances" concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single interrogatory."

Although Respondent's revised interrogatories eliminated subparts through using "all relevant facts and circumstances" language, Respondent failed to remove its lists of items contained after this broad introductory clause. Therefore, Respondent's statement that the interrogatories were revised "as agreed" is not accurate. Petitioner's counsel insisted upon seeing a draft of the revised interrogatories before stating that they were acceptable under the rules. Zerounian Decl. ¶¶20, 22, Exh. H. The interrogatory count of the revised set, although not as high as the original set, still exceeds seventy-five. Zerounian Decl. ¶¶29, 35; Exh. M.

C. Responses to Respondent's Document Requests

Even if the Board finds that Respondent's Motion to Compel was brought within a reasonable amount of time, Petitioner's responses to Respondent's document requests are nonetheless proper.

1. Requested Documents Relating to Petitioner's Use or Nonuse of Petitioner's Mark are Not Relevant

This is an abandonment proceeding. The dispute turns upon Respondent's use or nonuse of the mark SALAD BAR for each good listed in its registration. Petitioner's intent-to-use application has not been cited against Respondent. Notwithstanding Respondent's arguments to the contrary, "Petitioner's bona fide intent-to-use its mark" and "the validity of Petitioner's trademark rights" and "damages" are not relevant to this dispute. "Laches, acquiescence, estoppel, Petitioner's intent, alleged good faith" are not relevant to this dispute. Moreover, likelihood of confusion is not at issue. Although Petitioner must establish its standing, doing so is not a difficult matter. *See Cerveceria Modelo, S.A. de C.V. v. R.B. Marco & Sons, Inc.*, 55 USPQ2d 1298 (T.T.A.B. 2000) (holding that the USPTO's ex parte citation of a registration as a bar is sufficient to establish standing); *see also* 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §20:46, 20:48 (4th ed. 2004) (discussing liberal policy of finding standing). Petitioner brought this cancellation proceeding because Registrant's mark blocked Petitioner's intent-to-use application for SALAD BAR EXPRESS. This is a matter of public record. Respondent cannot seriously argue that it must review all of the multiplicity of documents requested to determine whether Petitioner has established its standing.

Documents Request Nos. 8, 9, 16, 17, 18, 20, 22, 23, 26, 27, 28, 29, 30, 31, 47, 52, 54, 59, 63, and 64 all relate to Petitioner's use or planned use of the mark SALAD BAR EXPRESS. Document Request Nos. 5, 6, 7, and 53 relate to Petitioner's adoption and selection of or application to register the mark SALAD BAR EXPRESS. None of these requests seek documents relevant to the subject matter of this proceeding. Moreover, many of these requests are overbroad, vague, and unduly burdensome, as they request "All documents and things" that relate to each particular category of information. For example, Document Request No. 23 requests "All documents including, but not limited to, records, memoranda, and correspondence pertaining to the creation, selection, searching, adoption, and earliest use of the Petitioner's mark by or with Petitioner or by any person acting or purporting to act for or on behalf of Petitioner, including all correspondence with design firms, advertising agencies, advertising media and suppliers." Such a request is improper.

2. **Respondent's Other Document Requests**

Petitioner's responses to Respondent's other document requests are similarly proper, for the below reasons.

a. Cumulative Requests

Respondent has propounded numerous cumulative document requests. In response to Petitioner's objections that particular document requests are cumulative of other requests (and specifying the requests with which each particular request is cumulative), Respondent does not explain why any particular request is not cumulative. Rather, Respondent simply responds with the boilerplate phrase that "Petitioner fails to explain why it finds this request cumulative, and Registrant states that it is not, as a different request is being propounded."

Document Request No. 12 requests: "All documents and things that relate to any contacts by Petitioner with the United States Patent and Trademark Office relating to Registrant's mark or to Petitioner's mark or any of Petitioner's applications to register Petitioner's mark." Petitioner agreed to produce all nonprivileged documents responsive to Document Request No. 11, which requests "All documents and things that relate to any state or United States Federal application to register any trademark, service mark or trade name that includes Petitioner's mark or any similar marks, including, but not limited to all File Wrappers and Contents thereof pertaining to any applications." These requests are cumulative. Furthermore, all of these documents are on the USPTO's website, and therefore the burden for obtaining such documents is substantially the same for Petitioner and Registrant.

Document Request No. 42 requests: "All documents and things reflecting any confusion between Petitioner's goods and services and Registrant's goods and services." Document Request No. 33 requests: "All documents and things relating to a likelihood of confusion of Petitioner's mark with any other mark." Petitioner agreed to produce all nonprivileged documents responsive to Document Request No. 24, which requests: "All documents including, but not limited to, records, memoranda, and correspondence relating to statements, inquiries, comments or other communications by or from Petitioner's customers, suppliers or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of such customer, supplier or other third party, or lack

thereof, as to the relationship between the marks of Petitioner and those of the Registrant." Document Requests 33 and 42 are cumulative of Document Request No. 24. To the extent that Document Request No. 33 might not be (in particular, to the extent it seeks information concerning marks not at issue in this proceeding), Respondent seeks documents that are irrelevant to this abandonment proceeding.

Document Request No. 41 requests: "Any documents which refer or relate to Petitioner's awareness of Registrant or of the marks in use, registered or pending by Registrant." Petitioner agreed to produce all nonprivileged documents responsive to Document Request Nos. 38, 38, and 40, which respectively request: "All documents and things that relate to Petitioner's first awareness of Registrant's mark"; "All documents and things that relate to Petitioner's first awareness of Registrant"; and "All documents which refer or relate to any communications with Registrant." Document Request Nos. 38, 38, and 40 requests are cumulative of Document Request No. 41. To the extent that the documents are not cumulative, Petitioner's awareness of any other of Respondent's registered or pending trademarks are not relevant to this proceeding, because it involves marks not at issue in this proceeding. Nevertheless, Petitioner is not aware of any documents responsive to this request.

Document Request No. 19 requests "All documents which refer to or relate to Registrant and/or Registrant's mark." Petitioner agreed to produce all documents that are responsive to this request. Document Request No. 50 ("All correspondence between Petitioner and any third-party concerning or mentioning Registrant") and Document Request No. 51 ("All correspondence between Petitioner and any third-party concerning Registrant's mark") are therefore cumulative of that request.

b. Other Documents Requests that are Overbroad and Seek Irrelevant Information

Respondent propounded additional improper document requests, as discussed below. Petitioner's responses to these document requests were proper.

Document Request No. 2 requests: "Documents and things sufficient to determine Petitioner's corporate structure." During the meet and confer conference, Respondent's counsel was not willing to narrow this request to Petitioner's employees that were involved with the selection, adoption, or use of Petitioner's mark. Respondent's request is overbroad and seeks information that is not relevant to this proceeding.

Document Request No. 4 requests: "Documents and things sufficient to determine the principal places of business of each parent, subsidiary or affiliate of Petitioner." Respondent's request is overbroad and seeks information that is in no way relevant to this proceeding, since the request is not related to Petitioner's use or plans to use the SALAD BAR EXPRESS mark.

Document Request No. 61 is the very definition of an overbroad, unintelligible, and cumulative request: "All documents and things which support, refer or relate to the allegations of the Petitioner in its Cancellation Petition filed against the Registrant in these proceedings." Petitioner is not sure what documents would be responsive here which have not already been produced. The Board should deny Respondent's request to compel production of this request. Furthermore, the Board has previously held that such an interrogatory is improper. *See Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1657 (TTAB 2002) (interrogatory requesting that opposer "identify each and every fact, document and witness in support of its pleaded allegations" was equivalent to a request for identification of fact witnesses and trial evidence prior to trial, and therefore improper).

Document Request No. 59 requests "All documents produced by Petitioner in any legal proceedings or Trademark Office proceedings where Petitioner sought to enforce rights in any of the Petitioner's mark." This request is overbroad under the TBMP, which provides that "the only information which must be provided with respect to a legal proceeding is the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision (if published)." TBMP § 414.

c. Petitioner Already Produced Responsive Documents

Petitioner agreed to produce and has produced documents responsive to Document Request Nos. 6, 20, 49, 53, and 54. The Board therefore need not order Petitioner to produce such documents, as none exist.

In addition, regarding Document Request Nos. 58 and 60, Petitioner will produce responsive documents if the Board holds that Respondent's motion to compel is timely and Petitioner propounds another set of interrogatories that do not exceed seventy five interrogatory subparts.

For the foregoing reasons, Petitioner respectfully requests that the Board deny Respondent's motion to compel.

IV. RESPONDENT'S IMPROPER MOTIONS SHOULD BE DENIED

The three motions that Respondent filed after its motion to compel should be denied for several reasons. First, they violate the Board's November 24th Order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a). The Board's suspension order made clear that "Proceedings herein are suspended pending disposition of the motion to compel, **... The parties should not file any paper which is not germane to the motion to compel**. *See* Trademark Rule 2.120(e)(2)." (Emphasis added). We respectfully request that the Board not condone the violation of its order and the above rules. Respondent's motion to compel concerns *Petitioner's* discovery responses. The three subsequent motions brought by Respondent concern *Respondent's* discovery responses. These subsequent motions are therefore not "germane to the motion to compel."

Moreover, Respondent brought these motions without first meeting and conferring in good faith with Petitioner (or even attempting to do so). Finally, these motions are procedurally improper. *See e.g.*, TBMP 526 ("It is generally inappropriate for a party to respond to a request for discovery by filing a motion attacking it, such as a motion to strike, or a motion for a protective order. Rather, the party ordinarily should respond by providing the information sought in those portions of the request that it believes to be proper, and stating its objections to those which it believes to be improper."); TBMP § 521.

V. PETITIONER REQUESTS A TELEPHONE CONFERENCE WITH THE BOARD

Petitioner requests a telephone conference with the Board to help resolve the numerous discovery requests that are the subject of Respondent's motion to compel, and to resolve the issues relating to the motions filed in violation of the Board's November 24th order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a). "Whenever it appears to the Trademark Trial and Appeal Board that a motion filed in an inter partes proceeding is of such nature that its resolution by correspondence is not practical, the Board may, upon its own initiative or upon request made by one or both of the parties, resolve the motion by telephone conference." 37 C.F.R. § 2.120(i)(1); *see* TBMP 502.06.

VI. CONCLUSION

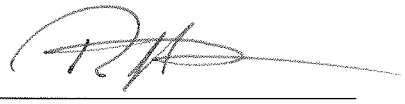
Respondent's untimely request for further discovery of irrelevant matters—and subsequent three motions—are an attempt to burden Petitioner and to avoid producing a witness for a deposition or otherwise responding to discovery.

The Board is now faced with a motion to compel regarding numerous issues. To facilitate a narrowing of the number of issues in dispute, Petitioner requests that the board schedule a telephone conference.

Accordingly, respectfully requests the Board deny Respondent's motion to compel, order Respondent to produce the 30(b)(6) witnesses for deposition and to respond to Petitioner's follow-up discovery, and not to file motions that violate 37 C.F.R. § 2.120(e)(2) and TBMP 510.03(a).

Dated: December 11, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing:

- OPPOSITION TO REGISTRANT'S COMBINED MOTION TO COMPEL AND MOTION TO RESET TESTIMONY PERIOD, MOTION FOR PROTECTIVE ORDER RE NOTICE OF DEPOSITION ETC., MOTION FOR EXTENSION OF TIME TO ANSWER PETITIONER'S SECOND SET OF REQUEST FOR ADMISSIONS, ETC., AND MOTION FOR PROTECTIVE ORDER RE PETITIONER'S REQUESTS FOR ADMISSION AND RELATED SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS; AND SUPPORTING MEMORANDUM;

- DECLARATION OF RAFFI V. ZEROUNIAN IN SUPPORT OF OPPOSITION TO REGISTRANT'S COMBINED MOTION TO COMPEL AND MOTION TO RESET TESTIMONY PERIOD, MOTION FOR PROTECTIVE ORDER RE NOTICE OF DEPOSITION ETC., MOTION FOR EXTENSION OF TIME TO ANSWER PETITIONER'S SECOND SET OF REQUEST FOR ADMISSIONS, ETC., AND MOTION FOR PROTECTIVE ORDER RE PETITIONER'S REQUESTS FOR ADMISSION AND RELATED SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

was served by delivering a true and correct copy of same via First Class Mail on the date indicated below, upon the following:

Frederick W. Meyers
John Luther
Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604

December 11, 2008

Raffi V. Zerounian

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRESH EXPRESS INCORPORATED, Petitioner, v. SUPREME OIL COMPANY, Respondent.	Cancellation No.: 92047162 Reg. No. 1,758,520 Issued: March 16, 1993 Mark: SALAD BAR **DECLARATION OF RAFFI V. ZEROUNIAN IN SUPPORT OF OPPOSITION TO REGISTRANT'S COMBINED MOTION TO COMPEL AND MOTION TO RESET TESTIMONY PERIOD, MOTION FOR PROTECTIVE ORDER RE NOTICE OF DEPOSITION ETC., MOTION FOR EXTENSION OF TIME TO ANSWER PETITIONER'S SECOND SET OF REQUEST FOR ADMISSIONS, ETC., AND MOTION FOR PROTECTIVE ORDER RE PETITIONER'S REQUESTS FOR ADMISSION AND RELATED SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. I am an attorney at the law firm Harvey Siskind LLP, and am counsel of record for Petitioner Fresh Express Incorporated (hereinafter "Petitioner").

2. I have personal knowledge of the matters stated herein, and, if called as a witness, I could and would testify competently thereto. I make this declaration in support of Petitioner's Opposition to Respondent's Motion to Compel.

3. On Saturday, October 25, 2008, Fred Meyers, lead counsel for Respondent ("Meyers"), sent an email to Lynn Perry, lead counsel for Petitioner, with a letter attached. A copy of that email and letter is attached to the Declaration of John P. Luther in Support of Registrant's Combined Motion to Compel and Motion to Reset Testimony Periods ("Luther Decl."), Exh. C. The letter was dated the preceding day, a Friday, and requested a conference on Monday, October 28th, at noon. Our offices are closed during the weekend, and we did not receive the email until Monday, October 28th.

4. Mr. Meyers's letter stated the following:

> We would like to speak to you ... to discuss what we feel are deficiencies in your responses to our Interrogatories and Request for Production of Documents, and to attempt to resolve same. .... As you know, this meeting is required prior to our filing of a motion to compel, should we not be able to reach a resolution on these issues.

5. That same day, I sent a letter to Mr. Meyers. To help facilitate a more productive conference, and to adequately prepare, the letter requested that he explain his concerns, given that Respondent had expressed no objections to Petitioner's discovery responses when they were filed, over five months prior. Because I believe that Respondent had not brought its concerns regarding Petitioner's discovery requests within a reasonable time, in this letter I asked Mr. Meyers to explain what authority he believed supported what essentially amounted to Respondent taking further discovery, despite the Board's Summary Judgment Order dated October 15, 2008 (the "MSJ Order") restricting discovery to Petitioner. A copy of that letter is Exh. D to the Luther Decl.

6. On October 28, 2008, Mr. Meyers sent his reply A copy of this letter is attached to Exh. D to the Luther Decl. Instead of providing authority to support his request for discovery or detailing his concerns with Petitioner's discovery responses, he wrote: "To date, Registrant has not received any responses to its already-served Requests for Production Nos. 1-64, many of which were promised and some wrongly outright refused, and Petitioner has refused – wrongly – to answer any of Registrant's interrogatories." Respondent also threatened to file a motion to compel if Petitioner did not agree to schedule a meet-and-confer conference by Wednesday at 3:00 p.m. Pacific time to be

held that very week. He wrote, "please contact us before 5:00 p.m. central time on Wednesday, October 29, 2008 with your availability for the remainder of this week … Should we receive no response by the set date, we shall proceed with our motion."

7. As of October 29, 2008, Respondent had not submitted any responses whatsoever to Petitioner's discovery requests, which had been served on September 10, 2007, almost 14 months earlier.

8. On October 29, 2008, I wrote a letter to Fred Meyers in response. A copy of that letter is attached in Exh. D to the Luther Decl. In the letter, I clarified that Petitioner had timely served responses and documents upon Respondent, contrary to his assertions. I also requested, again, for the sake of clarity and to adequately prepare for the meet and confer conference, "which document request responses you believe are inadequate, and why" and also "which documents you believe your client is owed." I also requested that Respondent "send us your interrogatory count using the guidelines set forth in TBMP § 405.03(d)." Based upon our interrogatory count, Respondent propounded over one hundred fifty interrogatory subparts.

9. On November 3, 2008, I sent an email with a letter attached to Mr. Meyers, and again suggested that the parties schedule a conference with the Board's interlocutory attorney to discuss whether the Board would consider a motion to compel filed by Respondent, and requested that Respondent state in writing its concerns regarding Petitioner's discovery requests. I also agreed hold a meet and confer conference on November 5, 2008, and requested that the parties also meet and confer about Supreme Oil's failure to provide any responses whatsoever to Petitioner's discovery requests. *Id.* A copy of that letter is attached in Exh. D to the Luther Decl.

10. On November 5, 2008, shortly after the parties began their meet and confer conference, the topic of a potential settlement arose. The parties mutually agreed to stop the meet and confer conference and to postpone the conference tentatively for one week. During the conference on November 5, 2008, the parties did not complete their discussion regarding Fresh Express's general objection to Supreme Oil's interrogatories. I never suggested that Petitioner would

respond to Supreme Oil's interrogatories, and certainly not within a week, as requested by Respondent.

11. On November 5, 2008, Respondent served its responses to Petitioner's document requests and interrogatories served on September 10, 2007. A copy of Respondent's responses to Petitioner's document requests and interrogatories are attached as Exhibit A.

12. On November 6, 2008, I sent Respondent's counsel a letter that explained our concerns with Respondent's inadequate discovery requests, and requested that the parties meet and confer about Petitioner's concerns at the parties' next meet and confer conference. A copy of that letter is attached hereto as Exhibit B.

13. On November 6, 2008, Petitioner served its second set of requests for production of documents and requests for admission.

14. On November 6, 2008, I sent a letter to Respondent's counsel requesting the availability of Respondent's 30(b)(6) witness for a deposition on December 4, December 5, and December 8. A copy of this letter is attached as Exhibit D. I never received a response.

15. On November 10, 2008, Tanya Miari, an associate at Ladas & Parry that represents Respondent, sent me a letter which stated "As promised during our November 5, 2008 telephone conversation, enclosed is a copy of Registrant's First Set of Interrogatories to Petitioner, which were previously served upon you."

16. A copy of this letter and the attached interrogatories, which are identical to the ones served in April of 2008, is attached as Exhibit E. I had not requested these.

17. On November 11, 2008, the parties agreed to reschedule the meet and confer conference tentatively scheduled for November 12, 2008 until November 17, 2008.

18. On November 17, 2008, before the scheduled conference, I sent an email to Respondent's counsel reminding them that we intend to discuss Respondent's inadequate discovery responses. I also again requested the availability of Respondent's 30(b)(6) deposition witness. A copy of the email is attached as Exhibit F.

19. On November 17, 2008, I received an email from Tanya Miari approximately ten minutes before our scheduled conference stating that Respondent was unwilling to discuss its discovery responses. A copy of the email is attached as Exhibit F.

20. On November 17, 2008, the parties held a meet and confer conference with Tanya Miari and John Luther, another Ladas & Parry associate that represents Respondent. At the beginning of the conference, I again requested that the parties discuss Respondent's inadequate discovery responses after discussing Petitioner's discovery responses. The parties reached a compromise. We agreed to hold a meet and confer conference that day if John Luther and Tanya Miari promised to discuss Respondent's inadequate discovery responses the next day, Tuesday, November 18th. We began the meet and confer conference regarding Petitioner's discovery responses, but it moved more slowly than I could have imagined. During the meet and confer conference, the parties discussed the potential service of a revised set of interrogatories. I again suggested that the parties schedule a conference with the Board's interlocutory attorney to determine if Respondent was permitted to take discovery at that juncture. I attempted to explain Petitioner's concerns with the long lists contained in Respondent's interrogatories, and recommended that Respondent amend its interrogatories along the lines of the guidance contained in TBMP § 405.03(d). I did not agree to respond to a revised set of interrogatories without first having the opportunity to confirm that Supreme Oil's revised set of interrogatories does not contain more than seventy-five interrogatories. We never waived our objection set forth in our earlier correspondence about needing to know from the Board whether further discovery was permitted. I had to request to postpone the conference the next day after being on the phone for one and a half hours, due to a previously scheduled conference.

21. On November 17, 2008, after the meet and confer conference, Tanya Miari sent me an email that stated: "Further to our email of today, it is our understanding that upon revision of our interrogatories as previously explained, you will respond to all interrogatories (Nos. 1-29) in the

revised set which will be propounded upon you, without further objection." A copy of the email is attached as Exhibit G.

22. That same day, I sent an email to Tanya Miari refuting this purported "understanding."

23. On November 17, 2008, after the parties completed the telephone conference that day, Tanya Miari sent me an email stating that Respondent no longer had time to discuss Respondent's discovery requests at the conference scheduled for the next day. A copy of the email is attached as Exhibit H.

24. That day, I exchanged emails with Respondent's counsel and again requested that they follow through with their agreement to discuss Respondent's discovery responses. Copies of two such emails are attached as Exhibit H and I.

25. Respondent refused, but wrote "Unless time allows, we may not have time for both conferences tomorrow." A copy of the email is attached as Exhibit I.

26. On November 18, 2008, I wrote to Respondent's counsel: "Please let me know exactly how much time you have today to meet and confer. Please also let me know when you are available [Wednesday, November 19th] to meet and confer for any remaining issues that are not resolved today." A copy of the email is attached as Exhibit J.

27. On November 18, 2008, John Luther sent me an email in response. His letter did not state how much time he had to hold a conference. He also did not provide an alternative date for a meet and confer conference regarding Respondent's discovery responses. A copy of the email is attached as Exhibit J.

28. On November 18, 2008, at the beginning of our telephone conference, Lynn Perry and I repeatedly asked Tanya Miari and John Luther how much time they were available to hold a meet and confer conference that day. Respondent's counsel refused to provide a specific or even approximate amount of time. After counsel completed their discussion regarding Petitioner's discovery responses, Respondent's counsel refused to discuss Respondent's discovery responses. They said they had "no time" to discuss them, yet Respondent's counsel kept me on the phone for at

least an additional 15 minutes. Eventually, Respondent's counsel begrudgingly agreed to discuss Respondent's discovery responses on Thursday, November 20th. Respondent's counsel stated the reason for refusing to meet until Thursday was that none of Respondent's counsel had the time to hold a conference.

29. On November 18, 2008, Tanya Miari sent Petitioner's counsel a letter enclosing a revised set of interrogatories. The revised set still had many lists of subparts contained in the first set, and therefore the interrogatory count of the revised set still exceeded seventy five, in my opinion. A copy of this letter and the revised set of interrogatories are attached as Exhibit G to Luther Decl.

30. On November 19, 2008, I sent Respondent's counsel an email that followed up to my letter of November 6, 2008, and again requested the availability of Respondent's 30(b)(6) witness for a deposition in December. A copy of the email is attached as Exhibit K. Again, there was no response.

31. On November 20, 2008, shortly before the conference scheduled for that day, Tanya Miari sent me an email stating John Luther could no longer meet because he had "unexpectedly been detained" by another matter. A copy of the email is attached as Exhibit L.

32. On November 20, 2008, I sent Tanya Miari an email in response asking if either she or Fred Meyers, the partner-in-charge of the matter, were available to hold the conference. A copy of the email is attached as Exhibit L.

33. On November 20, 2008, Tanya Miari sent me an email stating that Mr. Meyers was not available, and that she was not authorized to hold the meet and confer because she was not "lead counsel." A copy of the email is attached as Exhibit L.

34. On November 20, 2008, I sent Respondent's counsel an email agreeing to reschedule the meet and confer conference to Friday, November 21, 2008. A copy of the email is attached as Exhibit L.

35. On November 20, 2008, I sent Respondent's counsel an email responding to Respondent's letter of November 18, 2008, regarding its revised set of interrogatories. I stated that

the revised interrogatories still contain more than seventy five interrogatories, including subparts. A copy of the email is attached as Exhibit M.

36. On November 20, 2008, I sent Respondent a Notice of Deposition by both facsimile and overnight delivery. In the cover letter that accompanied the Notice of Deposition, I clearly stated that we expected an immediate response if Respondent's deponent was not available on December 8th, the date upon which the deposition was noticed: "If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than November 25, 2008, to discuss a mutually acceptable alternative date." A copy of the letter and Notice of Deposition are attached as Exhibit N.

37. On November 21, 2008, the parties held a meet and confer conference about Respondent's inadequate discovery responses. In the middle of the conference, Respondent's counsel sent us the instant motion to compel by facsimile.

38. On November 24, 2008, the Board issued an order, stating that "The parties should not file any paper which is not germane to the motion to compel. See Trademark Rule 2.120(e)(2). Consideration of the motion to extend is deferred."

39. On November 25, 2008, Respondent sent Petitioner a letter by email at approximately 7:00 p.m. Central Standard Time stating that its client was unavailable for a deposition on the date set forth in the Notice of Deposition. Respondent's counsel did not represent that its client was not available during the discovery period. Nor did he suggest specific alternative dates. Rather, Respondent stated that "our proposal is to set a potential date around the second week of January and as may be appropriate accordingly extend any scheduling." Respondent's counsel also wrote "Unfortunately, attached to your letter, we could not find the supposed Notice of Deposition under Rule 30(b)(6) and it would be appreciated if you could send another copy of that document." (Emphasis added). A copy of this letter is attached as Exhibit O.

40. On November 26, 2008, I sent an email to Respondent's counsel. Attached to the email was the facsimile confirmation that established that Respondent had received the Notice of

Deposition. The email again requested that Respondent provide an alternative date for a deposition before the close of discovery, which was set to close on December 18, 2008, under the Board's most current scheduling order. A copy of the letter, Notice of Deposition, and facsimile confirmation are attached as Exhibit N.

41. On November 28, 2008, the day after Thanksgiving, when our offices were closed, Burt Ehrlich, a partner at Ladas & Parry, left me a voicemail, stating "Let me begin by saying that I don't think we were saying we didn't get the Notice of Deposition, we just don't have a copy of it." He requested that the parties reschedule the deposition in January. In his voicemail Mr. Ehrlich does not state that Respondent's 30(b)(6) witness will be unavailable during the discovery period, nor does he suggest specific alternative dates. A transcription of the voicemail message is attached as Exhibit P.

42. On November 25, 2008, Respondent filed a motion entitled "Registrant's Motion for Protective Order with respect to Petitioner's Requests for Admission and Related Second Set of Requests for Production of Documents" in violation of the Board's November 24th suspension order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a). Respondent also failed to meet and confer with Petitioner before filing this motion.

43. On December 3, 2008, Respondent filed a motion entitled "Registrant's Combined Motion for Protective Order Regarding Petitioner's Notice of Deposition and Request for Extension of Discovery Cut-Off Date" in violation of the Board's November 24th suspension order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a). Respondent never mentioned its intention to file such a motion, and did not fulfill its obligation to meet and confer. Respondent's counsel also never represented that Respondent's 30(b)(6) witness was unavailable during the discovery period (ending December 18, 2008).

44. On December 4, 2008, Respondent filed a motion entitled "Registrant's Motion for Extension of Time to Answer Petitioner's Second Set of Requests for Admissions Pending

Resolution of Registrant's November 25, 2008, Motion for Protective Order" in violation of the Board's November 24th suspension order, 37 C.F.R. § 2.120(e)(2), and TBMP 510.03(a).

45. Petitioner made a settlement offer to Respondent on November 11, 2008. One month has passed, and Respondent has failed to respond to it, despite our numerous requests for a response.

Being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of Petitioner's application or any registration therefrom, I declare that the foregoing statements made of my own knowledge are true, and all statements made on information and belief are believed to be true.

Executed in San Francisco, California on December 11, 2008.

By:_____

Raffi V. Zerounian

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