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

Proceeding	92049013
Party	Defendant Garten Food Corporation
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Signature	/Michael Chiappetta/
Date	06/23/2008
Attachments	080623 - Supplement to Reply Brief (F0308474).PDF (34 pages)(1049215 bytes)

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

In the Matter of Trademark Registration No. 2,892,226

Mark: BAREFOOT CONTESSA

Registered: October 12, 2004

CONTESSA PREMIUM FOODS, INC.,

Petitioner,

-against-

INA GARTEN LLC,

Registrant.

Cancellation No. 92049013

**REGISTRANT'S EVIDENCE SUPPLEMENT TO ITS REPLY IN SUPPORT OF MOTION
TO DISMISS FOR FAILURE TO STATE A CLAIM, OR ALTERNATIVELY, FOR A MORE
DEFINITE STATEMENT AND MOTION FOR SUSPENSION**

Registrant respectfully submits this evidence supplement to its reply in further support of its motion to dismiss, or for a more definite statement. Registrant is mindful that there is no right of reply or of submitting supplemental evidence, but we ask that the Board take this submission under consideration as Registrant believes it will assist in determination of Registrant's motion.

In its reply brief, Registrant argued that Petitioner may have deliberately withheld the factual basis of its fraud claim (e.g., which of the 35 items in Registrant's registration were allegedly not in use during the four-year prosecution of the registration) so that Petitioner can harass Registrant with burdensome discovery requests. Proving the point is Petitioner's recent set of discovery requests served on Registrant,¹ consisting of 36 document requests, 28

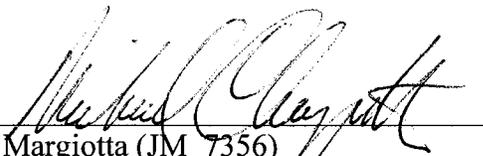
¹ Petitioner served its discovery requests on June 9, 2008, more than two weeks after Registrant filed its reply brief. Thus, Registrant submits this as a supplement to Registrant's reply brief.

interrogatories and 36 requests for admission asking for “all documents” and “all facts” concerning a wide range of topics, most of which would not be relevant to a properly tailored fraud claim, and many of which are not even relevant to *any* articulation of a fraud claim. True and correct copies of Petitioner’s discovery requests are annexed hereto as Exhibit A.

Avoiding such a fishing expedition is what drives the need for a particularly pled fraud claim. Accordingly, and for the reasons set forth in Registrant’s prior submissions, Petitioner’s fraud claim should be dismissed or Petitioner should be required to provide a more definite statement of its fraud claim.

Dated: New York, New York
June 23, 2008

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
John Margiotta (JM 7356)
Michael Chiappetta (MC 7644)
866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900

Attorneys for Respondent Ina Garten LLC

EXHIBIT A

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

Contessa Premium Foods, Inc.,

Petitioner,

v.
Ina Garten LLC
(assigned by Garten Food Corporation),

Registrant.

Cancellation No. 92049013

**CONTESSA PREMIUM FOODS, INC.'S FIRST SET OF REQUESTS FOR
DOCUMENTS AND THINGS**

Petitioner Contessa Premium Foods, Inc. requests that Registrant Ina Garten LLC respond and produce for inspection and copying each document and tangible thing in its possession, custody or control requested below, within thirty-five days after service hereof, pursuant to and in accordance with Rule 34 of the Federal Rules of Civil Procedure and Rules 2.119(c) and 2.120 of the Trademark Rules of Practice

INSTRUCTIONS AND DEFINITIONS

- A. "Garten," "Registrant," "you," or "your" means Ina Garten LLC, Garten Food Corporation and includes, without limitation, each of Ina Garten LLC's or Garten Food Corporation's past or current parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, salespersons, sales representatives, and all other persons acting or purporting to act on its behalf or under its control.
- B. "Contessa" or "Petitioner" shall mean Contessa Premium Foods, Inc. and any entity acting for or on behalf of Contessa Premium Foods, Inc.
- C. The term "document" means without limitation, all documents of the types designated in

Rule 34(a) of the Federal Rules of Civil Procedure and all writings and recordings as those terms are defined by Rule 1001 of the Federal Rules of Evidence, including all correspondence, letters, e-mail, memoranda, handwritten notes, reports, proposals, presentation materials, diagrams, graphs, charts, photographs, drafts, diaries, calendars, contracts, checks, invoices, accounts, accounting records, notes of meetings or telephone conversations, recordings and all handwritten, typed, printed, photocopies, faxed, telexed or otherwise visually, mechanically or electronically reproduced materials, whether copies or originals, in the possession, custody or control of Garten or its officers, agents, employees, consultants or attorneys.

- D. These requests seek documents and things (including any information contained in or on any document as that term is defined above) that are known or available to Registrant, including all document and things in possession of or available to Registrant's attorneys, agents, or representatives, or any investigators or any other persons acting on behalf of Registrant or under direction or control of Registrant or its attorneys or agents.
- E. As required by the Rule 34(b) of the Federal Rules of Civil Procedure, please produce all requested documents and things as they are kept in the usual course of business or organize and label them to correspond to the categories in this request.
- F. If Registrant cannot answer any Request fully and completely after exercising due diligence to make inquiry and secure the documents or things necessary to the fullest extent possible, specify the portion of such Request that Registrant claims it is unable to fully and completely produce documents and things, state the facts upon which Registrant relies to support Registrant's contention that it is unable to produce fully and completely documents and things, and state what knowledge, information, and belief Registrant has concerning the unanswered portion of each such Request.
- G. No request for a particular item or category should be construed as a limitation on any

other part of this request.

- H. The terms "person" and "persons" mean both natural persons and legal entities (i.e. corporations or other business entities).
- I. "Identity" with respect to:
- a. an individual, means to state his or her full name and present or last known address, telephone number, and position or business affiliation;
 - b. an organization including without limit any type of corporation, partnership or business entity, means to state its full name, date of organization, state of organization, and present or last known address and telephone number;
 - c. a document, means to state the date, author, sender, recipient, type of document (e.g., a letter, memorandum, book, etc.) or some other means of identifying it and its present location or custodian and, in the case of a document within the possession, custody, or control of Registrant, whether Registrant will make it available to Petitioner for inspection and/or copying. In the case of a document that was, but is no longer, in the possession, custody, or control of Registrant, state what disposition was made of the document, the reason for this disposition, and, if the Registrant knows, the name and address of all persons now having possession, custody, or control of the document; and
 - d. an oral or other communication means to state the date, the communicator, the receiver of the communication, whether any other person was present and the nature and substance of the communication.
- J. References to any person, entity, or party herein includes his, her, or its agents, attorneys, employees, officers, directors, or others acting on behalf of said person, entity, or party.

- K. If Garten withholds from production any of the requested documents or things on the grounds that it is privileged or immune from discovery, then please provide the following information as to each of the documents and things withheld:
- a. the name and title or capacity of its author or originator;
 - b. the name and title of capacity of every person who received it;
 - c. the relationship between the author or originator and each person who received the withheld document or thing;
 - d. whether the primary purpose of the withheld document or thing or any underlying communication was to seek or provide legal advice or services;
 - e. the date of the withheld document or thing;
 - f. each subject matter addressed in the withheld document or thing;
 - g. whether the withheld document or thing was transmitted in confidence; and
 - h. all privileges or other objections asserted as to the withheld document or thing.
- L. "And" and "or" shall be interpreted in their broadest sense and shall include both the disjunctive and the conjunctive, so as to include all information that a stricter construction might exclude.
- M. As used in these Requests, the singular shall include the plural, and the plural shall include the singular, so as to include all information that a stricter construction might exclude.
- N. As used in these Request, the present tense includes the past tense and the past tense includes the present tense, so as to include all information that a stricter construction might exclude.
- O. "State" when used with reference to a particular subject matter means to declare and

describe all facts that are known to you which refer or relate to that subject matter, to specify each such event, occurrence, or instance which refers or relates to that subject matter and to identify all persons having knowledge of that subject matter.

- P. "Refers or relates" or "referring or relating" means embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, mentioning, or having any logical or factual connection with the subject matter in question.
- Q. "Communication" means any transmission of information by one or more persons and/or between two or more persons by any means including, but not limited to, telephone conversations, letters, telegrams, telexes, fax, electronic mail messages, computer linkups, written memoranda, and face-to-face conversations.
- R. "Date" means the exact day, month, and year, if ascertainable; if not ascertainable, the closest approximation that can be made by means of relationship to other events, locations, or matters.
- S. "Commerce" means all commerce which may lawfully be regulated by Congress.
- T. "Registrant's Mark" and "your Mark" shall mean the mark BAREFOOT CONTESSA including the subject mark of U.S. Trademark Registration No. 2,892,226 ("the '226 Registration").

The following Requests are deemed to be continuing pursuant to the Federal Rule of Civil Procedure 26(e) so that with respect to any requests herein, or part thereof, as to which Registrant, after responding, discovers additional responsive information, Petitioner requests that Registrant produce such information within thirty days after acquiring knowledge of such information or advise Petitioner in writing as to why such information cannot be produced within the specified time period.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

All documents and things used in preparing responses to Registrant's First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 2:

All documents and things used in preparing responses to Registrant's First Set of Requests for Admission.

REQUEST FOR PRODUCTION NO. 3:

All documents and things relating to Garten's incorporation, legal organization, and charter (including any amendments thereto).

REQUEST FOR PRODUCTION NO. 4:

All documents and things which evidence each of the goods or services used, sold, marketed, offered for sale, displayed, distributed, licensed, made available, provided and/or rendered in connection with your Mark.

REQUEST FOR PRODUCTION NO. 5:

All documents and things referring or relating to the conception, development, selection, or adoption of Registrant's Mark.

REQUEST FOR PRODUCTION NO. 6:

All documents and things referring or relating to the validity, enforceability, and registrability of Registrant's Mark.

REQUEST FOR PRODUCTION NO. 7:

All documents and things referring or relating to applications to register Registrant's Mark in any state of the United States or in the United States Patent and Trademark Office.

REQUEST FOR PRODUCTION NO. 8:

All documents and things referring or relating to the specimens you provided to the

United States Patent and Trademark Office.

REQUEST FOR PRODUCTION NO. 9:

All documents evidencing the geographic scope of use or intended use of Registrant's Mark.

REQUEST FOR PRODUCTION NO. 10:

All agreements including without limit licenses related to Registrant's Mark.

REQUEST FOR PRODUCTION NO. 11:

All documents and things referring or relating to any grant from Registrant to any other person or entity giving that person or entity the right to use Registrant's Mark, or to market products or services under Registrant's Mark.

REQUEST FOR PRODUCTION NO. 12:

Copies of the complete U.S. Patent and Trademark Office ("PTO") file history for your Mark.

REQUEST FOR PRODUCTION NO. 13:

To the extent not otherwise produced, all documents and things sufficient to show how Registrant's Mark is currently being used.

REQUEST FOR PRODUCTION NO. 14:

All publications, whether printed or electronic, in which your goods or services in connection with or under your Mark have been used in commerce.

REQUEST FOR PRODUCTION NO. 15:

All documents, including advertisements, which relate to how you market, promote and advertise your Mark.

REQUEST FOR PRODUCTION NO. 16:

For each of the products identified in response to Interrogatory No. 3, provide invoices of all sales and sales reports or the like of each such product including invoices indicating date of

first sale.

REQUEST FOR PRODUCTION NO. 17:

For each of the products identified in response to Interrogatory No. 3, provide all advertisements in any media whether electronic, paper or otherwise and dates of those advertisements.

REQUEST FOR PRODUCTION NO. 18:

For each of the products identified in response to Interrogatory No. 9, provide invoices of all sales and sales reports or the like of each such product including invoices indicating date of first sale.

REQUEST FOR PRODUCTION NO. 19:

For each of the products identified in response to Interrogatory No. 9, provide all advertisements in any media whether electronic, paper or otherwise and dates of those advertisements.

REQUEST FOR PRODUCTION NO. 20:

All documents which relate to your date of first use of your Mark in commerce in the United States on each and every product identified in response to Interrogatory Nos. 3 and 9.

REQUEST FOR PRODUCTION NO. 21:

Representative labels and packaging sufficient to show how Registrant's Mark is used on Registrant's goods or services.

REQUEST FOR PRODUCTION NO. 22:

All documents and things sufficient to show how Registrant's Mark has been used in the past, if different from how the mark is currently being used, and sufficient to establish the time periods during which these previous uses took place.

REQUEST FOR PRODUCTION NO. 23:

All documents and things evidencing any plans by Registrant to expand its use of

Registrant's Mark, including but not limited to expansion of marketing lines, kinds of goods or services provided, consumer base, or geographic areas served.

REQUEST FOR PRODUCTION NO. 24:

Specimens showing how Registrant's Mark is used in connection with each of the goods identified in the '226 Registration.

REQUEST FOR PRODUCTION NO. 25:

Specimens from the date of first use for each and every product identified in response to Interrogatory Nos. 3 and 9.

REQUEST FOR PRODUCTION NO. 26:

All documents and things evidencing the channels of distribution of the goods and services with which Registrant uses or intends to use Registrant's Mark, including the channels of trade through which Registrant offers, has offered, or intends to offer products and services for sale under Registrant's Mark.

REQUEST FOR PRODUCTION NO. 27:

All documents and things referring or relating to the types or classes of consumers and/or ultimate users of products and services sold under Registrant's Mark.

REQUEST FOR PRODUCTION NO. 28:

All documents and things referring or relating to the dollar volume Registrant has expended promoting and/or advertising Registrant's Mark.

REQUEST FOR PRODUCTION NO. 29:

All documents and things referring or relating to the dollar volume of sales of each of the goods and services for which Registrant has been using Registrant's Mark.

REQUEST FOR PRODUCTION NO. 30:

All documents and things referring or relating to the number of units sold for each of the goods and services for which Registrant has been using Registrant's Mark.

REQUEST FOR PRODUCTION NO. 31:

All documents and things referring or relating to the sale price for each of the goods and services for which Registrant has been using Registrant's Mark.

REQUEST FOR PRODUCTION NO. 32:

All documents and things supporting or refuting the alleged dates of first use in the '226 Registration.

REQUEST FOR PRODUCTION NO. 33:

All documents and things referring or relating to any objection made by Registrant of any kind relating to another's use or attempt to register Registrant's Mark, or any other mark that includes any phonetically similar terms, or any other mark alleged by you to be confusingly similar to Registrant's Mark.

REQUEST FOR PRODUCTION NO. 34:

All documents and things referring or relating to any objection made by any person regarding Registrant's use of or attempt to register Registrant's Mark, or any other similar mark.

REQUEST FOR PRODUCTION NO. 35:

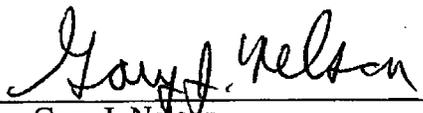
All correspondence between Registrant and any third party regarding this proceeding.

REQUEST FOR PRODUCTION NO. 36:

To the extent not otherwise produced, all documents and things on which you intend to rely in this proceeding.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By 
Gary J. Nelson
Attorneys for Petitioner

DATED: June 9, 2008

Cancellation No. 92049013

P.O. Box 7068
Pasadena, California 91109-7068
626/795-9900

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CERTIFICATE OF SERVICE

I certify that on June 9, 2008, the foregoing CONTESSA PREMIUM FOODS, INC.'S FIRST SET OF REQUESTS FOR REQUESTS FOR DOCUMENTS AND THINGS is being served by mailing a copy thereof by first-class mail addressed to:

Mr. John Margiotta
FROSS ZELNICK LEHRMAN
& ZISSU, P.C.
866 United Nations Plaza
New York, NY 10017

By: Betty L. Venuti
Betty L. Venuti
CHRISTIE, PARKER & HALE, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

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

Contessa Premium Foods, Inc.,

Petitioner,

v.

Ina Garten LLC

(assigned by Garten Food Corporation),

Registrant.

Cancellation No. 92049013

**CONTESSA PREMIUM FOODS, INC.'S FIRST SET OF INTERROGATORIES TO INA
GARTEN LLC**

Petitioner Contessa Premium Foods, Inc. requests that Registrant Ina Garten LLC answer each of the following interrogatories, separately and fully, in writing, under oath, within thirty-five days after service hereof, pursuant to and in accordance with Rule 33 of the Federal Rules of Civil Procedure and Rules 2.119(c) and 2.120 of the Trademark Rules of Practice.

DEFINITIONS AND INSTRUCTIONS

- A. "Garten," "Registrant," "you," or "your" means Ina Garten LLC, Garten Food Corporation and includes, without limitation, each of Ina Garten LLC's or Garten Food Corporation's past or current parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, salespersons, sales representatives, and all other persons acting or purporting to act on its behalf or under its control.
- B. "Contessa" or "Petitioner" shall mean Contessa Premium Foods, Inc. and any entity acting for or on behalf of Contessa Premium Foods, Inc.
- C. The term "document" means without limitation, all correspondence, letters, e-mail, memoranda, handwritten notes, reports, proposals, presentation materials, diagrams,

graphs, charts, photographs, drafts, diaries, calendars, contracts, checks, invoices, accounts, accounting records, notes of meetings or telephone conversations, recordings and all handwritten, typed, printed, photocopies, faxed, telexed or otherwise visually, mechanically or electronically reproduced materials, whether copies or originals, in the possession, custody or control of Garten or its officers, agents, employees, consultants or attorneys.

- D. These interrogatories call for information (including any information contained in or on any document as that terms is defined above) that is known or available to Registrant, including all information in the possession of or available to Registrant's attorneys, agents, or representatives, or any investigators or any other person acting on behalf of Registrant or under the direction or control of Registrant or Registrant's attorneys or agents.
- E. If Registrant cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information necessary to the fullest extent possible, specify the portion of such interrogatory that Registrant claims it is unable to answer fully and completely, state the facts upon which Registrant relies to support Registrant's contention that it is unable to answer the interrogatory fully and completely, and state what knowledge, information, and belief Registrant has concerning the unanswered portion of each such interrogatory.
- F. The terms "person" and "persons" mean both natural persons and legal entities (i.e. corporations or other business entities).
- G. "Identity" with respect to:
- a. an individual, means to state his or her full name and present or last known address, telephone number, and position or business affiliation;
 - b. an organization including without limit any type of corporation,

- partnership or business entity, means to state its full name, date of organization, state of organization, and present or last known address and telephone number;
- c. a document, means to state the date, author, sender, recipient, type of document (e.g., a letter, memorandum, book, etc.) or some other means of identifying it and its present location or custodian and, in the case of a document within the possession, custody, or control of Registrant, whether Registrant will make it available to Petitioner for inspection and/or copying. In the case of a document that was, but is no longer, in the possession, custody, or control of Registrant, state what disposition was made of the document, the reason for this disposition, and, if the Registrant knows, the name and address of all persons now having possession, custody, or control of the document; and
- d. an oral or other communication means to state the date, the communicator, the receiver of the communication, whether any other person was present and the nature and substance of the communication.
- H. References to any person, entity, or party herein includes his, her, or its agents, attorneys, employees, officers, directors, or others acting on behalf of said person, entity, or party.
- I. If Registrant withholds information responsive, in whole or in part, to any interrogatory on the basis of privilege or immunity from discovery, please identify: 1) the privilege or immunity asserted; 2) all documents or things which contain or refer to the information; 3) all individuals having knowledge of the information; 4) the subject matter and general nature of the information; and 5) all facts which support the assertion of the privilege or immunity.
- J. "And" and "or" shall be interpreted in their broadest sense and shall include both the

- disjunctive and the conjunctive, so as to include all information that a stricter construction might exclude.
- K. As used in these Interrogatories, the singular shall include the plural, and the plural shall include the singular, so as to include all information that a stricter construction might exclude.
- L. As used in these Interrogatories, the present tense includes the past tense and the past tense includes the present tense, so as to include all information that a stricter construction might exclude.
- M. "State" when used with reference to a particular subject matter means to declare and describe all facts that are known to you which refer or relate to that subject matter, to specify each such event, occurrence, or instance which refers or relates to that subject matter and to identify all persons having knowledge of that subject matter.
- N. "Refers or relates" or "referring or relating" means embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, mentioning, or having any logical or factual connection with the subject matter in question.
- O. "Communication" means any transmission of information by one or more persons and/or between two or more persons by any means including, but not limited to, telephone conversations, letters, telegrams, telexes, fax, electronic mail messages, computer linkups, written memoranda, and face-to-face conversations.
- P. "Date" means the exact day, month, and year, if ascertainable; if not ascertainable, the closest approximation that can be made by means of relationship to other events, locations, or matters.
- Q. "Commerce" means all commerce which may lawfully be regulated by Congress.
- R. "Registrant's Mark" and "your Mark" shall mean the mark BAREFOOT CONTESSA including the subject mark of U.S. Trademark Registration No. 2,892,226 ("the '226

Registration").

The following Interrogatories are deemed to be continuing pursuant to Federal Rule of Civil Procedure 26(e) so that with respect to any requests herein, or part thereof, as to which Registrant, after responding, discovers additional responsive information, Petitioner requests that Registrant produce such information within thirty (30) days after acquiring knowledge of such information or advise Petitioner in writing as to why such information cannot be produced within the specified time period.

INTERROGATORIES

INTERROGATORY NO. 1:

For each of Contessa's First Set of Requests for Admission denied by Garten, state in reasonable detail the basis for such denial.

INTERROGATORY NO. 2:

Identify all persons who had more than a clerical role and participated in any way in the preparation of the answers to these Interrogatories or in any search for documents in connection with these Interrogatories, Contessa's First Set of Requests for Production of Documents and Things, or Contessa's First Set of Requests for Admission, and describe the nature of the participation of each person.

INTERROGATORY NO. 3:

Describe the products or services offered by Garten or any of Garten's affiliates bearing your Mark, and state whether Garten or any of Garten's affiliates offers the following goods or services bearing your Mark: frozen poultry; frozen seafood; frozen prepared dinners, entrees and side dishes consisting primarily of poultry, seafood, meat or vegetables; frozen shrimp; frozen entrees or side dishes consisting primarily of shrimp; frozen prepared dinners consisting primarily of shrimp and vegetables; frozen pizza; frozen prepared dinners, entrees and side dishes consisting primarily of pasta or grains; dips, namely vegetable, yogurt, fish and herb

based dips; hummus; chili; stews; ribollita; soups, namely gazpacho and chowders; salads; cranberry sauce; apple sauce; dried fruits, processed nuts; candied nuts; snack mix consisting primarily of processed nuts or raisins; processed peas with wasabi flavoring; vegetable strudel; vegetable cobblers; spring rolls; coffee; bread crumbs; croutons; granola; cakes namely sour cream coffee cake; candy namely strawberry flavored laces; quesadillas; salsas; fresh vegetables; fresh nuts; orange juice; grapefruit juice; lemonade; non-alcoholic cocktail mixes; and, retail store services.

INTERROGATORY NO. 4:

For each of the products identified in response to Interrogatory No. 3, provide examples of each product and describe the specific product/service in detail.

INTERROGATORY NO. 5:

For each of the products identified in response to Interrogatory No. 3, provide the date of first use in the United States for that product or service, and explain the rationale behind that date.

INTERROGATORY NO. 6:

Describe all rights, if any, Garten, or any of Garten's affiliates, has in the mark described in the '226 Registration, including the geographic extent where any such rights may extend and the time period when any such rights exist.

INTERROGATORY NO. 7:

Identify all geographic areas in which Garten currently uses or intends to use Registrant's Mark.

INTERROGATORY NO. 8:

State whether any trademark search or investigation has ever been conducted for Registrant's Mark, and if so, state the name of the search or report, the person responsible for conducting and preparing such survey or report, and the results obtained.

INTERROGATORY NO. 9:

Identify with particularity each type of good or service Garten or any Garten affiliate has sold, is currently selling, or intends to sell under Registrant's Mark in the United States.

INTERROGATORY NO. 10:

For each good or service identified in response to Interrogatory No. 9, provide the date of first use of Garten's Mark anywhere in the United States, the date of first use in commerce in the United States, and the factual basis for these dates.

INTERROGATORY NO. 11:

For each good or service identified in response to Interrogatory No. 9, describe the classes or types of customers to whom Garten sells or intends to sell each product or service, and describe the purpose for which such customers typically use or will use such products or services.

INTERROGATORY NO. 12:

For each of the products identified in response to Interrogatory No. 9, provide examples of each product and describe the specific product/service in detail.

INTERROGATORY NO. 13:

For each good or service identified in response to Interrogatory No. 9, explain in reasonable detail how, in which media, the good or service is advertised or promoted in association with Registrant's Mark in the United States.

INTERROGATORY NO. 14:

For each good or service identified in response to Interrogatory No. 9, state the dollar volume of sales in the United States.

INTERROGATORY NO. 15:

For each good or service identified in response to Interrogatory No. 9, state the amount of units sold or provided in the United States.

INTERROGATORY NO. 16:

Identify and describe all goods and services which Garten plans to or may provide in the future in addition to or in substitution for the goods and services identified in response to Interrogatory No. 9.

INTERROGATORY NO. 17:

For each of the products identified in response to Interrogatory No. 9, provide the date of first use in the United States for that product or service, and explain the rationale behind that date.

INTERROGATORY NO. 18:

Provide the factual basis for any priority date Garten claims for Registrant's Mark.

INTERROGATORY NO. 19:

Identify the person(s) most knowledgeable about your use or proposed use of your Mark, including use on or in connection with products, services, advertisements, and promotional materials.

INTERROGATORY NO. 20:

Identify the person(s) most knowledgeable about the products and services sold under Registrant's Mark, including their manufacture, packaging, marketing, advertising, promotion, sale, distribution, and channels of trade.

INTERROGATORY NO. 21:

State whether you have ever received any objection of any kind relating to your use or registration of your Mark, or any other marks that are similar. If so, describe in reasonable detail the circumstances relating to each such objection, and identify each person(s) having knowledge of such objection and documents relating to such objection.

INTERROGATORY NO. 22:

Identify all channels of trade, including all distributors and retail outlets, for all products

or services bearing your Mark.

INTERROGATORY NO. 23:

Identify all documents upon which Garten intends to rely in this proceeding.

INTERROGATORY NO. 24:

Identify all witnesses from whom Garten intends to present testimony in this proceeding.

INTERROGATORY NO. 25:

Identify any and all agreements entered into by you in relation to your Mark.

INTERROGATORY NO. 26:

Identify all facts supporting or refuting the denial in paragraph 4 of your answer.

INTERROGATORY NO. 27:

Identify all facts supporting or refuting the denial in paragraph 6 of your answer.

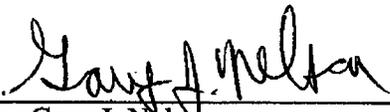
INTERROGATORY NO. 28:

Identify all facts refuting the allegations of fraud, inequitable conduct upon the USPTO and unclean hands in connection with applications leading to your Mark.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

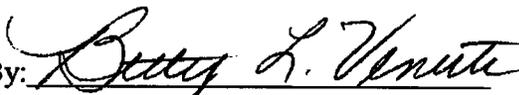
DATED: June 9, 2008

By 
Gary J. Nelson
Attorneys for Petitioner
P.O. Box 7068
Pasadena, California 91109-7068
626/795-9900

CERTIFICATE OF SERVICE

I certify that on June 9, 2008, the foregoing CONTESSA PREMIUM FOODS, INC.'S FIRST SET OF INTERROGATORIES TO INA GARTEN LLC is being served by mailing a copy thereof by first-class mail addressed to:

Mr. John Margiotta
FROSS ZELNICK LEHRMAN
& ZISSU, P.C.
866 United Nations Plaza
New York, NY 10017

By: 
Betty L. Venuti
CHRISTIE, PARKER & HALE, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

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

Contessa Premium Foods, Inc., Petitioner, v. Ina Garten LLC (assigned by Garten Food Corporation), Registrant.	Cancellation No. 92049013
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**PETITIONER CONTESSA PREMIUM FOODS, INC.'S FIRST SET OF REQUESTS
FOR ADMISSIONS FROM REGISTRANT INA GARTEN LLC**

Petitioner Contessa Premium Foods, Inc. requests that Registrant In Garten LLC admit the truth of each of the following matters, in accordance with Trademark Rules 2.119(c) and 2.120 and Rule 36 of the Federal Rules of Civil Procedure, within thirty-five days after the service of this request.

DEFINITIONS AND INSTRUCTIONS

- A. "Garten," "Registrant," "you," or "your" means Ina Garten LLC, Garten Food Corporation and includes, without limitation, each of Ina Garten LLC's or Garten Food Corporation's past or current parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, salespersons, sales representatives, and all other persons acting or purporting to act on its behalf or under its control.
- B. "Contessa" or "Petitioner" shall mean Contessa Premium Foods, Inc. and any entity acting for or on behalf of Contessa Premium Foods, Inc.
- C. "Registrant's Mark" and "your Mark" shall mean the mark BAREFOOT CONTESSA including the subject mark of U.S. Trademark Registration No. 2,892,226 ("the '226

Registration").

- D. The terms "person" and "persons" mean both natural persons and legal entities (i.e. corporations or other business entities).
- E. References to any person, entity, or party herein includes his, her, or its agents, attorneys, employees, officers, directors, or others acting on behalf of said person, entity, or party.
- F. "And" and "or" shall be interpreted in their broadest sense and shall include both the disjunctive and the conjunctive, so as to include all information that a stricter construction might exclude.

REQUEST FOR ADMISSION NO. 1:

Admit that Garten owns U.S. Trademark Registration No. 2,892,226.

REQUEST FOR ADMISSION NO. 2:

Admit that Garten Food Corporation executed an assignment on March 19, 2008, assigning the '226 Registration to Ina Garten LLC.

REQUEST FOR ADMISSION NO. 3:

Admit that product line expansions are common in the prepared food industry.

REQUEST FOR ADMISSION NO. 4:

Admit that Garten did not use the BAREFOOT CONTESSA mark on vegetable, yogurt, fish and herb based dips before November 23, 2000.

REQUEST FOR ADMISSION NO. 5:

Admit that Garten did not use the BAREFOOT CONTESSA mark on hummus before November 23, 2000.

REQUEST FOR ADMISSION NO. 6:

Admit that Garten did not use the BAREFOOT CONTESSA mark on chili before November 23, 2000.

REQUEST FOR ADMISSION NO. 7:

Admit that Garten did not use the BAREFOOT CONTESSA mark on stews before November 23, 2000.

REQUEST FOR ADMISSION NO. 8:

Admit that Garten did not use the BAREFOOT CONTESSA mark on ribollita before November 23, 2000.

REQUEST FOR ADMISSION NO. 9:

Admit that Garten did not use the BAREFOOT CONTESSA mark on gazpacho before November 23, 2000.

REQUEST FOR ADMISSION NO. 10:

Admit that Garten did not use the BAREFOOT CONTESSA mark on chowders before November 23, 2000.

REQUEST FOR ADMISSION NO. 11:

Admit that Garten did not use the BAREFOOT CONTESSA mark on salads before November 23, 2000.

REQUEST FOR ADMISSION NO. 12:

Admit that Garten did not use the BAREFOOT CONTESSA mark on cranberry sauce before November 23, 2000.

REQUEST FOR ADMISSION NO. 13:

Admit that Garten did not use the BAREFOOT CONTESSA mark on apple sauce before November 23, 2000.

REQUEST FOR ADMISSION NO. 14:

Admit that Garten did not use the BAREFOOT CONTESSA mark on dried fruits before November 23, 2000.

REQUEST FOR ADMISSION NO. 15:

Admit that Garten did not use the BAREFOOT CONTESSA mark on processed nuts before November 23, 2000.

REQUEST FOR ADMISSION NO. 16:

Admit that Garten did not use the BAREFOOT CONTESSA mark on candied nuts before November 23, 2000.

REQUEST FOR ADMISSION NO. 17:

Admit that Garten did not use the BAREFOOT CONTESSA mark on snack mix before November 23, 2000.

REQUEST FOR ADMISSION NO. 18:

Admit that Garten did not use the BAREFOOT CONTESSA mark on processed peas before November 23, 2000.

REQUEST FOR ADMISSION NO. 19:

Admit that Garten did not use the BAREFOOT CONTESSA mark on vegetable strudel before November 23, 2000.

REQUEST FOR ADMISSION NO. 20:

Admit that Garten did not use the BAREFOOT CONTESSA mark on vegetable cobblers before November 23, 2000.

REQUEST FOR ADMISSION NO. 21:

Admit that Garten did not use the BAREFOOT CONTESSA mark on spring rolls before November 23, 2000.

REQUEST FOR ADMISSION NO. 22:

Admit that Garten did not use the BAREFOOT CONTESSA mark on coffee before November 23, 2000.

REQUEST FOR ADMISSION NO. 23:

Admit that Garten did not use the BAREFOOT CONTESSA mark on bread crumbs before November 23, 2000.

REQUEST FOR ADMISSION NO. 24:

Admit that Garten did not use the BAREFOOT CONTESSA mark on croutons before November 23, 2000.

REQUEST FOR ADMISSION NO. 25:

Admit that Garten did not use the BAREFOOT CONTESSA mark on granola before November 23, 2000.

REQUEST FOR ADMISSION NO. 26:

Admit that Garten did not use the BAREFOOT CONTESSA mark on cakes before November 23, 2000.

REQUEST FOR ADMISSION NO. 27:

Admit that Garten did not use the BAREFOOT CONTESSA mark on candy before November 23, 2000.

REQUEST FOR ADMISSION NO. 28:

Admit that Garten did not use the BAREFOOT CONTESSA mark on quesadillas before November 23, 2000.

REQUEST FOR ADMISSION NO. 29:

Admit that Garten did not use the BAREFOOT CONTESSA mark on salsa before November 23, 2000.

REQUEST FOR ADMISSION NO. 30:

Admit that Garten did not use the BAREFOOT CONTESSA mark on fresh vegetables before November 23, 2000.

REQUEST FOR ADMISSION NO. 31:

Admit that Garten did not use the BAREFOOT CONTESSA mark on fresh nuts before November 23, 2000.

REQUEST FOR ADMISSION NO. 32:

Admit that Garten did not use the BAREFOOT CONTESSA mark on orange juice before November 23, 2000.

REQUEST FOR ADMISSION NO. 33:

Admit that Garten did not use the BAREFOOT CONTESSA mark on grapefruit juice before November 23, 2000.

REQUEST FOR ADMISSION NO. 34:

Admit that Garten did not use the BAREFOOT CONTESSA mark on lemonade before November 23, 2000.

REQUEST FOR ADMISSION NO. 35:

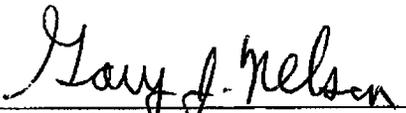
Admit that Garten did not use the BAREFOOT CONTESSA mark on non-alcoholic cocktail mixes before November 23, 2000.

REQUEST FOR ADMISSION NO. 36:

Admit that Garten did not use the BAREFOOT CONTESSA mark on retail store services before November 23, 2000.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By 
Gary J. Nelson

Attorneys for Petitioner
P.O. Box 7068
Pasadena, California 91109-7068

DATED: June 9, 2008

Cancellation No. 92049013

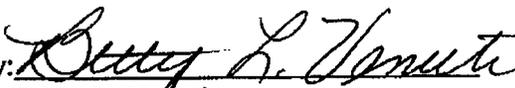
626/795-9900

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CERTIFICATE OF SERVICE

I certify that on June 9, 2008, the foregoing PETITIONER CONTESSA PREMIUM FOODS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS FROM REGISTRANT INAGARTEN LLC is being served by mailing a copy thereof by first-class mail addressed to:

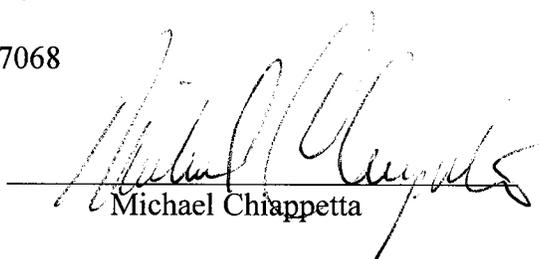
Mr. John Margiotta
FROSS ZELNICK LEHRMAN
& ZISSU, P.C.
866 United Nations Plaza
New York, NY 10017

By: 
Betty L. Venuti
CHRISTIE, PARKER & HALE, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

CERTIFICATE OF SERVICE

I hereby certify that a copy of REGISTRANT'S EVIDENCE SUPPLEMENT TO ITS REPLY IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, OR ALTERNATIVELY, FOR A MORE DEFINITE STATEMENT AND MOTION FOR SUSPENSION, filed June 23, 2008, was sent by prepaid first-class mail this 23rd of June, 2008 to:

Gary J. Nelson, Esq.
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068


Michael Chiappetta