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

Proceeding	92052657
Party	Plaintiff Frost King Inc.
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Submission	Motion to Compel Discovery
Filer's Name	James M. Duncan
Filer's e-mail	JDuncan@kleinlaw.com
Signature	/James M. Duncan/
Date	02/01/2011
Attachments	FrostyKing-Notice.pdf (5 pages)(179458 bytes) FrostyKing-MTC.pdf (28 pages)(1212982 bytes) Frosty King-DecJMD.pdf (50 pages)(2256211 bytes)

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Attorneys for Petitioner
Frosty King Inc., a Nevada Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FROSTY KING INC., a Nevada corporation Petitioner v. FROSTY KING INC., a Florida corporation Respondent	Cancellation No. 92052657 Registration No. 3537613 **PETITIONER'S MOTION TO COMPEL RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

MOTION TO COMPEL RESPONSES TO PETITIONER'S FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

NOW COMES Petitioner, Frosty King Inc., by and through its attorneys, Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Section 523.01 of the Trademark Trial and Appeal Board Manual of Procedure, hereby moves the Trademark Trial and Appeal Board for an order compelling Respondent Frosty King Inc. to provide complete and non-evasive responses to Petitioner's First Set of Special Interrogatories and First Set of Requests for Production of Documents. In so moving, Petitioner files and serves herewith the Declaration of James M. Duncan and the Supporting Brief in Support of Petitioner's Motion to Compel, and states as follows:

1. Petitioner's First Set of Special Interrogatories and First Set of Requests for Production of Documents were served on November 30, 2010, and were required to be

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answered within 30 days pursuant to Fed. R. Civ. P. 33 and 36 together with Sub-Chapters 405 and 407 of the Trademark Trial and Appeal Board Manual of Procedure.

2. On January 3, 2011, Respondent served an unresponsive and incomplete Response to the Discovery Requests, as detailed in the accompanying brief in support of the present motion.

3. On January 13, 2011, Counsel for Petitioner requested that Counsel for Respondent remedy the unresponsive and incomplete Response, but said request has gone unanswered.

4. Fed. R. Civ. P. 37 provides that Respondent is entitled to an order compelling discovery.

WHEREFORE, Petitioner moves for an entry of order:

1. Compelling full and complete responses to the Discovery Requests directed to Respondent, FROSTY KING INC., a Florida corporation; and

2. Awarding Petitioner such other relief as may be appropriate under the circumstances.

Date: February 1, 2011

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP

By: _____
JAMES M. DUNCAN
Attorneys for Petitioner
Frosty King, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I am employed in the county of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 California Avenue, Bakersfield, California 93309. My e-mail address is kratekin@kleinlaw.com.

On **February 1, 2011**, I served the foregoing document described as follows: **PETITIONER'S MOTION TO COMPEL RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

[X] by placing the true copies thereof

[ ] by placing the original

addressed as stated on the attached Service List.

[X] **BY MAIL** I enclosed such document in sealed envelope(s) with the name(s) and address(s) of the person(s) served as shown on the envelope(s) and caused such envelope(s) to be deposited in the mail at Bakersfield, California. The envelope(s) was/were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **BY FACSIMILE** I placed such document in a facsimile machine with the fax number of (661)326-0418 on _____, at _____ .m. Upon facsimile transmission of the document, I obtained a report from the transmitting facsimile machine stating that the facsimile transmission was complete and without error. A copy of the transmission report is attached to this Proof of Service. The person served consented in writing to being served by facsimile under FRCP, Rule 5, and Federal Rules of Bankruptcy Procedure, Rule 7005.

[ ] **BY ELECTRONIC MAIL** Pursuant to U.S. Bankruptcy Court, Eastern Division Local Rule 7005-1(d) Method of Service. (1) Upon those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to FRCivP 5(b)(2)(D) shall be accomplished by transmitting an e-mail which includes as a .PDF attachment to the document(s) served. The subject line of the e-mail shall include the words "Service Pursuant to FRCivP 5", along with the case or proceeding number and the title(s) of the document(s) served.

[ ] **BY OVERNIGHT MAIL SERVICE** I am readily familiar with the business practice at my place of business for collection and processing of documents and correspondence for overnight delivery by _____. Documents and correspondence so collected and processed is deposited with this overnight courier service on the same day in the ordinary course of business. On the below date, the said envelope was collected for this overnight courier service, following ordinary business practices and deposited at this overnight courier service drop/pickup location in Bakersfield, California by _____ P.M.

☐ **BY PERSONAL SERVICE** I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1, 2011, at Bakersfield, California.

KRISTI RATEKIN
Type or Print Name

Signature

SERVICE LIST

	Attorneys for
Christopher J. Dugger, Esq. Michael Hurey, Esq. KLEINBERG & LERNER, LLP 1875 Century Park East, Suite 1150 Los Angeles, California 90067-3112	Respondent, FROSTY KING, INC. a Florida Corporation

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Attorneys for Petitioner
Frosty King Inc., a Nevada Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FROSTY KING INC., a Nevada corporation Petitioner v. FROSTY KING INC., a Florida corporation Respondent	Cancellation No. 92052657 Registration No. 3537613 **PETITIONER'S MOTION TO COMPEL RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

BRIEF IN SUPPORT OF PETITIONER'S MOTION TO COMPEL RESPONSES TO PETITIONER'S FIRST SETOF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

DISCOVERY REQUESTS/RESPONSES

On November 30, 2010, counsel for Petitioner served a set of Special Interrogatories and Requests for Production of Documents on counsel for Respondent (See Exhibits 1 and 2 submitted herewith). On January 3, 2011, counsel for Respondent served an unresponsive and incomplete response to the Special Interrogatories and Requests for Production of Documents (See Exhibits 3 and 4 submitted herewith). On January 13, 2011, counsel for Petitioner requested that counsel for Respondent remedy the unresponsive and incomplete responses, but said request has gone unanswered.

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1. SPECIAL INTERROGATORIES

Respondent's responses to the following interrogatories are incomplete or otherwise deficient:

SPECIAL INTERROGATORY NO. 1:

DESCRIBE YOUR contention that "Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted" as alleged in the First Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

SPECIAL INTERROGATORY NO. 2:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of laches" as alleged in the Second Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 2:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

SPECIAL INTERROGATORY NO. 3:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of estoppel" as alleged in the Third Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 3:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

SPECIAL INTERROGATORY NO. 4:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613" as alleged in the Fourth Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 4:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

SPECIAL INTERROGATORY NO. 5:

DESCRIBE the date upon which YOU first used the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 5:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague and ambiguous. Without waiving the foregoing, Respondent responds, at least as early as February 1, 2008.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory fails to provide a response to the specific inquiry and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response to this interrogatory is ambiguous regarding the date of first use of the trademark in commerce.

SPECIAL INTERROGATORY NO. 6:

DESCRIBE the location where YOU first used the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 6:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague and ambiguous. Without waiving the foregoing, Respondent responds, Florida.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory fails to provide a response to the specific inquiry and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The

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response to this interrogatory is vague and overly broad in that the response fails to identify a particular location.

SPECIAL INTERROGATORY NO. 7:

DESCRIBE any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 7:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 8:

DESCRIBE any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 8:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 9:

IDENTIFY any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 9:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 10:

IDENTIFY any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

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RESPONSE TO SPECIAL INTERROGATORY NO. 10:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 11:

DESCRIBE YOUR contention that "Respondent admits to corresponding with some restaurants operating under the name FROSTY KING" as alleged in Paragraph 12 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 11:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

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SPECIAL INTERROGATORY NO. 12:

IDENTIFY all PERSONS with whom YOU corresponded as alleged within Paragraph 12 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 12:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 18:

DESCRIBE all goods and services which have been offered for sale in connection with the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 18:

Respondent reasserts the foregoing general objections and further objects that the request is vague, ambiguous, overbroad and unduly burdensome.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

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SPECIAL INTERROGATORY NO. 19:

DESCRIBE the circumstances of YOUR first use in commerce of the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 19:

Respondent reasserts the foregoing general objections and further objects that the request is vague, ambiguous, overbroad and unduly burdensome.

GROUNDS FOR COMPELLING FURTHER RESPONSE

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

SPECIAL INTERROGATORY NO. 20:

DESCRIBE every location where YOU have used the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 20:

Respondent reasserts the foregoing general objections and further objects that the request is vague, ambiguous, overbroad and unduly burdensome.

GROUNDS FOR COMPELLING FURTHER RESPONSE

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4).

SPECIAL INTERROGATORY NO. 21:

IDENTIFY all DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

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RESPONSE TO SPECIAL INTERROGATORY NO. 21:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 22:

IDENTIFY all DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 22:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

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SPECIAL INTERROGATORY NO. 23:

DESCRIBE the expansion plans YOU are currently developing as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 23:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 24:

State whether YOU have entered into any franchise agreements as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 24:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret

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protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 25:

DESCRIBE any expansion plans YOU have developed for expanding any use of the REGISTERED MARK into California.

RESPONSE TO SPECIAL INTERROGATORY NO. 25:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

SPECIAL INTERROGATORY NO. 26:

IDENTIFY any PERSONS in California whom YOU have contacted regarding expanding any use of the REGISTERED MARK into CALIFORNIA.

RESPONSE TO SPECIAL INTERROGATORY NO. 26:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

The response to this interrogatory provides no substantive response to the interrogatory, asserts groundless objections, and fails to state the grounds for objection with specificity as required under FRCP 33(b)(4). The response asserts an invalid claim of trade secret protection. Responding party failed to respond to Petitioner's offer to execute a protective order.

2. REQUESTS FOR PRODUCTION

All responses to Petitioner's Request to Produce are inadequate or otherwise deficient.

REQUEST NO. 1:

All DOCUMENTS supporting YOUR contention that "Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted" as alleged in the First Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 1:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

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REQUEST NO. 2:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of laches" as alleged in the Second Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 2:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 3:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of estoppel" as alleged in the Third Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 3:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at

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Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 4:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613" as alleged in the Fourth Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 4:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 5:

DOCUMENTS evidencing the date upon which YOU first used the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 5:

Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 6:

DOCUMENTS evidencing the location where YOU first used the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 6:

Respondent reasserts the foregoing general objections and further objects that the request seeks irrelevant documents and documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 13:

DOCUMENTS evidencing the identity of all PERSONS involved in the decision to use the TRADEMARK.

RESPONSE TO REQUEST NO. 13:

Respondent reasserts the foregoing general objections and further objects that the request calls for irrelevant documents, documents protected by attorney client privilege and work

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product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 14:

DOCUMENTS evidencing the identity of all PERSONS involved in the decision to apply for federal registration of the TRADEMARK.

RESPONSE TO REQUEST NO. 14:

Respondent reasserts the foregoing general objections and further objects that the request calls for irrelevant documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 15:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding YOUR use of the TRADEMARK.

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RESPONSE TO REQUEST NO. 15:

Respondent reasserts the foregoing general objections and further objects that the request calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 16:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 16:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 17, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

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REQUEST NO. 17:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO REQUEST NO. 17:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 16, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 18:

DOCUMENTS evidencing all goods and services which have been offered for sale in connection with the TRADEMARK.

RESPONSE TO REQUEST NO. 18:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 19:

DOCUMENTS evidencing the circumstances of YOUR first use in commerce of the TRADEMARK.

RESPONSE TO REQUEST NO. 19:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 20:

DOCUMENTS evidencing every location where YOU have used the TRADEMARK.

RESPONSE TO REQUEST NO. 20:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege

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and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 21:

All DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO REQUEST NO. 21:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 16, 17 and 22, overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

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REQUEST NO. 22:

All DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 22:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 16, 17 and 21, overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 23:

DOCUMENTS which evidence the expansion plans YOU are currently developing as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO REQUEST NO. 23:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

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GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 24:

DOCUMENTS which evidence whether YOU have entered into any franchise agreements as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO REQUEST NO. 24:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 25:

All DOCUMENTS which evidence any expansion plans YOU have developed for expanding any use of the REGISTERED MARK into California.

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RESPONSE TO REQUEST NO. 25:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

REQUEST NO. 26:

All DOCUMENTS which evidence the identity of any PERSONS in California whom YOU have contacted regarding expanding any use of the REGISTERED MARK into CALIFORNIA.

RESPONSE TO REQUEST NO. 26:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

GROUNDS FOR COMPELLING FURTHER RESPONSE:

Respondent has failed to produce any documents responsive to this request and has failed to respond to Petitioner's request to either produce copies of the documents, at

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Petitioner's expense, or to designate a time and location where the documents would be made available for inspection and copying.

Petitioner seeks an entry of an order pursuant to Fed. R. Civ. P. 37 compelling complete and non-evasive responses to the requested discovery.

Respectfully submitted,

Date: February 1, 2011

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP

By: _____
JAMES M. DUNCAN
Attorneys for Petitioner
FROSTY KING, INC.

KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP
4550 CALIFORNIA AVENUE, SECOND FLOOR
BAKERSFIELD, CALIFORNIA 93309

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I am employed in the county of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 California Avenue, Bakersfield, California 93309. My e-mail address is kratekin@kleinlaw.com.

On **February 1, 2011**, I served the foregoing document described as follows: **PETITIONER'S MOTION TO COMPEL RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

[X] by placing the true copies thereof

[ ] by placing the original

addressed as stated on the attached Service List.

[X] **BY MAIL** I enclosed such document in sealed envelope(s) with the name(s) and address(s) of the person(s) served as shown on the envelope(s) and caused such envelope(s) to be deposited in the mail at Bakersfield, California. The envelope(s) was/were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **BY FACSIMILE** I placed such document in a facsimile machine with the fax number of (661)326-0418 on _____, at _____ .m. Upon facsimile transmission of the document, I obtained a report from the transmitting facsimile machine stating that the facsimile transmission was complete and without error. A copy of the transmission report is attached to this Proof of Service. The person served consented in writing to being served by facsimile under FRCP, Rule 5, and Federal Rules of Bankruptcy Procedure, Rule 7005.

[ ] **BY ELECTRONIC MAIL** Pursuant to U.S. Bankruptcy Court, Eastern Division Local Rule 7005-1(d) Method of Service. (1) Upon those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to FRCivP 5(b)(2)(D) shall be accomplished by transmitting an e-mail which includes as a .PDF attachment to the document(s) served. The subject line of the e-mail shall include the words "Service Pursuant to FRCivP 5", along with the case or proceeding number and the title(s) of the document(s) served.

[ ] **BY OVERNIGHT MAIL SERVICE** I am readily familiar with the business practice at my place of business for collection and processing of documents and correspondence for overnight delivery by _____. Documents and correspondence so collected and processed is deposited with this overnight courier service on the same day in the ordinary course of business. On the below date, the said envelope was collected for this overnight courier service, following ordinary business practices and deposited at this overnight courier service drop/pickup location in Bakersfield, California by _____ P.M.

☐ **BY PERSONAL SERVICE** I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1, 2011, at Bakersfield, California.

KRISTI RATEKIN
Type or Print Name

Signature

SERVICE LIST

	Attorneys for
Christopher J. Dugger, Esq. Michael Hurey, Esq. KLEINBERG & LERNER, LLP 1875 Century Park East, Suite 1150 Los Angeles, California 90067-3112	Respondent, FROSTY KING, INC. a Florida Corporation

JAMES M. DUNCAN, Cal. Bar. 161,474
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P.O. Box 11172
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Telephone: (661) 395-1000
Facsimile: (661) 326-0418
Email: jduncan@kleinlaw.com

Attorneys for Petitioner
Frosty King Inc., a Nevada Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FROSTY KING INC., a Nevada corporation Petitioner v. FROSTY KING INC., a Florida corporation Respondent	Cancellation No. 92052657 Registration No. 3537613 **DECLARATION OF JAMES M. DUNCAN IN SUPPORT OF MOTION TO COMPEL RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

I, JAMES M. DUNCAN, declare as follows:

1. I am a member of the Bar of the State of California. I am a partner in the law firm of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, counsel for Petitioner, Frosty King, Inc., a Nevada Corporation. I am personally familiar with the facts set forth herein and if called upon to testify I could and would competently testify to the information set forth in this Declaration.

2. This Declaration is submitted in support of Petitioner's Motion to Compel Responses to First Set of Special Interrogatories and First Set of Requests for Production of Documents.

KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP
4550 CALIFORNIA AVENUE, SECOND FLOOR
BAKERSFIELD, CALIFORNIA 93309

3. Attached hereto as Exhibit 1 is a true and correct copy of Petitioner's First Set of Special Interrogatories propounded to Respondent on November 30, 2010.

4. Attached hereto as Exhibit 2 is a true and correct copy of Respondent's Objections and Responses to Petitioner's First Set of Special Interrogatories received from Respondent on January 3, 2011.

5. Attached hereto as Exhibit 3 is a true and correct copy of Petitioner's First Set of Requests for Production of Documents propounded to Respondent on November 30, 2010.

6. Attached hereto as Exhibit 4 is a true and correct copy of Respondent's Objections and Responses to Petitioner's First Set of Requests for Production of Documents received from Respondent on January 3, 2011.

7. Attached hereto as Exhibit 5 is a true and correct copy of Petitioner's meet and confer letter sent via e-mail and U.S. Mail dated January 13, 2011. No response of any kind has been received from counsel for the Respondent to the January 13, 2011 meet and confer letter.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 1st day of February 2011, at Bakersfield, California.

JAMES M. DUNCAN

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COOPER, ROSENLIEB & KIMBALL, LLP
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EXHIBIT 1

JAMES M. DUNCAN, Cal. Bar. 161,474
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Facsimile: (661) 326-0418
Email: jduncan@kleinlaw.com

Attorneys for Petitioner
Frosty King Inc., a Nevada Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FROSTY KING INC., a Nevada corporation Petitioner v. FROSTY KING INC., a Florida corporation Respondent	Cancellation No. 92052657 Registration No. 3537613 **PETITIONER'S FIRST SET OF SPECIAL INTERROGATORIES**

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BAKERSFIELD, CALIFORNIA 93309

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Sub-chapter 405 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner, Frosty King, Inc., a Nevada corporation, ("PETITIONER") hereby requests that respondent, Frosty King Inc., a Florida corporation ("RESPONDENT") answer the following interrogatories in writing and under oath, and serve said answers upon PETITIONER'S attorneys within thirty (30) days of service hereof.

I.

DEFINITIONS

As used in this request, the following terms mean:

1. "THE REGISTERED MARK" means United States Registered Mark 3,537,613 for the mark FROSTY KING.

2. "THE TRADEMARK" means the name "FROSTY KING" being used in connection with restaurant services, by YOU, the PETITIONER, or any other PERSON.

3. "ANSWER" refers to the answer filed by YOU in the above-entitled Petition to Cancel on or about August 10, 2010.

4. "PETITION" means the Petition to Cancel filed by Petitioner in the above-entitled matter on or about June 25, 2010.

5. "DESCRIBE" means to state all facts regarding the subject, IDENTIFY all PERSONS with knowledge of those facts, and IDENTIFY all DOCUMENTS concerning those facts.

6. "DOCUMENT" includes all written, recorded (electronic or otherwise) or graphic materials of every kind within the scope of Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure and Rule 1001 of the Federal Rules of Evidence.

7. "IDENTIFY" means with respect to a PERSON to provide sufficient identifying information to allow the PERSON to be served and compelled to testify pursuant to a subpoena, including the name, the address including street number and name, city, state and zip code, the telephone number and the relationship to YOU.

8. "IDENTIFY" means with respect to a DOCUMENT to provide sufficient identifying information to allow the DOCUMENT to be identified for purposes of a Request for Production of Documents or a Subpoena, including the identity of the PERSON having possession of the DOCUMENT, including the name, address with street number and name, city, state and zip code, the telephone number and the relationship to YOU.

9. "PERSON" means any individual, firm, entity, corporation, partnership, limited liability company, proprietorship, association, joint venture, other form of organization or arrangement, and government and government agency of every nature and type including, but not limited to, a court, agency, commission, committee, trust, estate, or any similar entity.

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10. "YOU," or "YOUR" means the party to whom these requests are directed and any of its employees, agents, representatives, accountants, investigators, consultants, attorneys, and predecessors or successors in interest; (ii) any other person or entity acting on its behalf or on whose behalf he acted; or (iii) any other person or entity otherwise subject to its control.

II.

INSTRUCTIONS

1. If YOU assert that a response to an interrogatory is, in whole or in part, privileged, specify the nature of the privilege and the factual basis for YOUR claim of privilege and proceed to provide all information responsive to the interrogatory which does not fall within YOUR claim of privilege.

2. If an interrogatory, or portion of an interrogatory, cannot be answered in full, then answer to the fullest extent possible, indicating the reasons for YOUR inability to answer in full and whatever information or knowledge YOU have concerning the unanswered portion, without regard to the nature or source of such knowledge or information. If these interrogatories cannot be answered exactly, then answer approximately, indicating YOUR reasons for providing an approximate answer.

III.

INTERROGATORIES

SPECIAL INTERROGATORY NO. 1:

DESCRIBE YOUR contention that "Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted" as alleged in the First Affirmative Defense of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 2:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of laches" as alleged in the Second Affirmative Defense of YOUR ANSWER.

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SPECIAL INTERROGATORY NO. 3:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of estoppel" as alleged in the Third Affirmative Defense of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 4:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613" as alleged in the Fourth Affirmative Defense of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 5:

DESCRIBE the date upon which YOU first used the TRADEMARK in commerce.

SPECIAL INTERROGATORY NO. 6:

DESCRIBE the location where YOU first used the TRADEMARK in commerce.

SPECIAL INTERROGATORY NO. 7:

DESCRIBE any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

SPECIAL INTERROGATORY NO. 8:

DESCRIBE any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

SPECIAL INTERROGATORY NO. 9:

IDENTIFY any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

SPECIAL INTERROGATORY NO. 10:

IDENTIFY any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

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SPECIAL INTERROGATORY NO. 11:

DESCRIBE YOUR contention that "Respondent admits to corresponding with some restaurants operating under the name FROSTY KING" as alleged in Paragraph 12 of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 12:

IDENTIFY all PERSONS with whom YOU corresponded as alleged within Paragraph 12 of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 13:

IDENTIFY all PERSONS involved in the decision to use the TRADEMARK.

SPECIAL INTERROGATORY NO. 14:

IDENTIFY all PERSONS involved in the decision to apply for federal registration of the TRADEMARK.

SPECIAL INTERROGATORY NO. 15:

IDENTIFY the PERSON most knowledgeable regarding YOUR use of the TRADEMARK.

SPECIAL INTERROGATORY NO. 16:

IDENTIFY the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

SPECIAL INTERROGATORY NO. 17:

IDENTIFY the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED TRADEMARK.

SPECIAL INTERROGATORY NO. 18:

DESCRIBE all goods and services which have been offered for sale in connection with the TRADEMARK.

SPECIAL INTERROGATORY NO. 19:

DESCRIBE the circumstances of YOUR first use in commerce of the TRADEMARK.

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BAKERSFIELD, CALIFORNIA 93309

SPECIAL INTERROGATORY NO. 20:

DESCRIBE every location where YOU have used the TRADEMARK.

SPECIAL INTERROGATORY NO. 21:

IDENTIFY all DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

SPECIAL INTERROGATORY NO. 22:

IDENTIFY all DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

SPECIAL INTERROGATORY NO. 23:

DESCRIBE the expansion plans YOU are currently developing as alleged within Paragraph 13 of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 24:

State whether YOU have entered into any franchise agreements as alleged within Paragraph 13 of YOUR ANSWER.

SPECIAL INTERROGATORY NO. 25:

DESCRIBE any expansion plans YOU have developed for expanding any use of the REGISTERED MARK into California.

SPECIAL INTERROGATORY NO. 26:

IDENTIFY any PERSONS in California whom YOU have contacted regarding expanding any use of the REGISTERED MARK into CALIFORNIA.

Date: November 30, 2010

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP

By: _____
JAMES M. DUNCAN
Attorneys for Petitioner
Frosty King, Inc.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EXHIBIT 2

Frosty King Inc., a Nevada Corporation, Petitioner, v. Frosty King, Inc., a Florida Corporation, Respondent.	Cancellation No. 92052657 **Mark: Frosty King** Registration No. 3,537,613

RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF SPECIAL INTERROGATORIES

Respondent, FROSTY KING, INC., ("Respondent") hereby objects and responds to Petitioner's First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

Specific objections to each separate interrogatory are made on an individual basis in Respondent's responses below. In addition to these specific objections, Respondent makes certain "General Objections" to each of the interrogatories. These General Objections are hereby incorporated by reference into each response to each separate interrogatory. For particular emphasis, Respondent may from time to time restate one or more of the General Objections in the responses below. Respondent's responses to each individual interrogatory are made without prejudice to, and without waiving or limiting, any General Objections not expressly set forth or restated in that response. Accordingly, the restatement of any specific objection to an interrogatory in any response herein is neither intended as, nor shall in any way be deemed, a waiver or limitation of any General Objections or of any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any General Objections or

Specific Objections to an interrogatory is neither intended as, nor shall in any way be deemed, a waiver or limitation of Respondent's right to assert that or any other objection at a later date.

These responses are made solely for the purpose of this action. Each response and each document produced is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds that would require the exclusion of any information at trial. All such objections and grounds are reserved and may be interposed at the time of trial.

Investigation and discovery in this action are continuing. Respondent may acquire further responsive information or documents through formal or informal discovery. Respondent expressly reserves its right to amend, supplement, modify or clarify these responses at any time and produce such further information or documents. Respondent reserves its right to use such information or documents for any purpose whatsoever, including without limitation at any trial or hearing in this case, irrespective of the discovery date of such information.

GENERAL OBJECTIONS

1. Respondent objects to the interrogatories to the extent that they seek the production of information protected by the attorney client privilege and/or work product doctrine or any other privilege or doctrine. Respondent will not disclose such privileged or immune information. Any inadvertent disclosure of privileged or immune information shall not be deemed a waiver of any privilege or immunity with respect to such information.

2. Respondent objects to the interrogatories to the extent that they seek production or identification of documents not in the possession, custody or control of Respondent or refer to persons, entities, or events not known to Respondent, on the grounds that such interrogatories seek to require more of Respondent than any obligation imposed by law and would subject Respondent to unreasonable and undue annoyance, oppression, burden and expense.

3. Respondent objects to the interrogatories to the extent that they call for material or information which is neither relevant to the subject matter of the instant action nor reasonably calculated to lead to the discovery of admissible evidence.

4. Respondent objects to the interrogatories to the extent that they call for material or information which is cumulative or duplicative or that they require Respondent to incur unreasonable or undue burden or expense in ascertaining information or providing documents.

5. Respondent objects to each interrogatory to the extent it seeks documents obtainable from some other source that is more convenient, less burdensome, or less expensive.

6. Respondent objects to each interrogatory to the extent the burden or expense of responding to the interrogatory outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in this action, and the importance of the interrogatory in resolving the issues.

7. Respondent objects to the "Definitions" and "Instructions" to the extent that they purport to impose on Respondent any obligation greater than that imposed by

Federal Rules of Civil Procedure or the Local Rules of the Trademark Trial and Appeal Board.

8. Respondent objects to the "Definitions" to the extent that they purport to enlarge, expand, or alter in any way the plain meaning and scope of any interrogatory on the ground that such enlargement, expansion or alteration renders the interrogatory vague, ambiguous, unintelligible, and overly broad.

Subject in each instance to the foregoing Preliminary Statement and General Objections, Respondent responds as follows.

INTERROGATORIES

SPECIAL INTERROGATORY NO. 1:

DESCRIBE YOUR contention that "Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted" as alleged in the First Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

SPECIAL INTERROGATORY NO. 2:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of laches" as alleged in the Second Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 2:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

SPECIAL INTERROGATORY NO. 3:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of estoppels" as alleged in the Third Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO.3:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

SPECIAL INTERROGATORY NO. 4:

DESCRIBE YOUR contention that "Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613" as alleged in the Fourth Affirmative Defense of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 4:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

SPECIAL INTERROGATORY NO. 5:

DESCRIBE the date upon which YOU first used the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 5:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague and ambiguous. Without waiving the foregoing, Respondent responds, at least as early as February 1, 2008.

SPECIAL INTERROGATORY NO. 6:

DESCRIBE the location where YOU first used the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 6:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague and ambiguous. Without waiving the foregoing, Respondent responds, Florida.

SPECIAL INTERROGATORY NO.7:

DESCRIBE any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 7:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 8:

DESCRIBE any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 8:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 9:

IDENTIFY any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 9:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 10:

IDENTIFY any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 10:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 11:

DESCRIBE YOUR contention that "Respondent admits to corresponding with some restaurants operating under the name of FROSTY KING" as alleged in Paragraph 12 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 11:

Respondent reasserts the foregoing general objections and further objects that the propounding of contention interrogatories is improper at the present time. Respondent will not respond to contention interrogatories until the end of discovery.

SPECIAL INTERROGATORY NO. 12:

IDENTIFY all PERSONS with whom YOU corresponded as alleged within Paragraph 12 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 12:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 13:

IDENTIFY all PERSONS involved in the decision to use the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 13:

Rocky Dorcy.

SPECIAL INTERROGATORY NO. 14:

IDENTIFY all PERSONS involved in the decision to apply for federal registration of the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 14:

Rocky Dorcy.

SPECIAL INTERROGATORY NO. 15:

IDENTIFY the PERSON most knowledgeable regarding YOUR use of the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 15:

Rocky Dorcy.

SPECIAL INTERROGATORY NO. 16:

IDENTIFY the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 16:

Rocky Dorcy.

SPECIAL INTERROGATORY NO. 17:

IDENTIFY the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 17:

Rocky Dorcy.

SPECIAL INTERROGATORY NO. 18:

DESCRIBE all goods and services which have been offered for sale in connection with the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 18:

Respondent reasserts the foregoing general objections and further objects that the request is vague, ambiguous, overbroad and unduly burdensome.

SPECIAL INTERROGATORY NO. 19:

DESCRIBE the circumstances of YOUR first use in commerce of the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 19:

Respondent reasserts the foregoing general objections and further objects that the request is vague, ambiguous, overbroad and unduly burdensome.

SPECIAL INTERROGATORY NO. 20:

DESCRIBE every location where YOU have used the TRADEMARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 20:

Respondent reasserts the foregoing general objections and further objects that the request is vague, ambiguous, overbroad and unduly burdensome.

SPECIAL INTERROGATORY NO. 21:

IDENTIFY all DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO SPECIAL INTERROGATORY NO. 21:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 22:

IDENTIFY all DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO SPECIAL INTERROGATORY NO. 22:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 23:

DESCRIBE the expansion plans YOU are currently developing as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 23:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 24:

State whether YOU have entered into any franchise agreements as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO SPECIAL INTERROGATORY NO. 24:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets.

Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 25:

DESCRIBE any expansion plans YOU have developed for expanding any use of the REGISTERED MARK into California.

RESPONSE TO SPECIAL INTERROGATORY NO. 25:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

SPECIAL INTERROGATORY NO. 26:

IDENTIFY any PERSONS in California whom YOU have contacted regarding expanding any use of the REGISTERED MARK into California.

RESPONSE TO SPECIAL INTERROGATORY NO. 26:

Respondent reasserts the foregoing general objections and further objects that the interrogatory is vague, ambiguous and calls for the revelation of trade secrets. Respondent will not respond to this interrogatory without the entry of a suitable protective order.

KLEINBERG & LERNER, LLP

Dated: January 3, 2011

By: _____

Marvin H. Kleinberg
Christopher J. Dugger
Attorney for Respondent
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Attorneys for Petitioner
Frosty King Inc., a Nevada Corporation

EXHIBIT 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FROSTY KING INC., a Nevada corporation Petitioner v. FROSTY KING INC., a Florida corporation Respondent	Cancellation No. 92052657 Registration No. 3537613 **PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Sub-chapter 406 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner, Frosty King, Inc., a Nevada corporation, ("PETITIONER") hereby requests that respondent, Frosty King Inc., a Florida corporation ("RESPONDENT") respond to the following document requests and make originals of the following documents available for inspection within 30 days of service at the offices of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, 4550 California Avenue, Second Floor, Bakersfield, California, 93309.

I.

DEFINITIONS

As used in this request, the following terms mean:

1. "THE REGISTERED MARK" means United States Registered Mark 3,537,613 for the mark FROSTY KING.

2. "THE TRADEMARK" means the name "FROSTY KING" being used in connection with restaurant services, by YOU, the PETITIONER, or any other PERSON.

3. "ANSWER" refers to the answer filed by YOU in the above-entitled Petition to Cancel on or about August 10, 2010.

4. "PETITION" means the Petition to Cancel filed by Petitioner in the above-entitled matter on or about June 25, 2010.

5. "DESCRIBE" means to state all facts regarding the subject, IDENTIFY all PERSONS with knowledge of those facts, and IDENTIFY all DOCUMENTS concerning those facts.

6. "DOCUMENT" includes all written, recorded (electronic or otherwise) or graphic materials of every kind within the scope of Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure and Rule 1001 of the Federal Rules of Evidence.

7. "IDENTIFY" means with respect to a PERSON to provide sufficient identifying information to allow the PERSON to be served and compelled to testify pursuant to a subpoena, including the name, the address including street number and name, city, state and zip code, the telephone number and the relationship to YOU.

8. "IDENTIFY" means with respect to a DOCUMENT to provide sufficient identifying information to allow the DOCUMENT to be identified for purposes of a Request for Production of Documents or a Subpoena, including the identity of the PERSON having possession of the DOCUMENT, including the name, address with street number and name, city, state and zip code, the telephone number and the relationship to YOU.

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BAKERSFIELD, CALIFORNIA 93309

9. "PERSON" means any individual, firm, entity, corporation, partnership, limited liability company, proprietorship, association, joint venture, other form of organization or arrangement, and government and government agency of every nature and type including, but not limited to, a court, agency, commission, committee, trust, estate, or any similar entity.

10. "YOU," or "YOUR" means the party to whom these requests are directed and any of its employees, agents, representatives, accountants, investigators, consultants, attorneys, and predecessors or successors in interest; (ii) any other person or entity acting on its behalf or on whose behalf he acted; or (iii) any other person or entity otherwise subject to its control.

II.

INSTRUCTIONS

1. Manner of Production: YOU are directed to produce all of the DOCUMENTS responsive to the requests below as they are kept in the usual course of business, or, in the alternative, to organize and label them to correspond to the requests. YOU are further directed to produce all of the DOCUMENTS responsive to the request which are in YOUR possession, custody, or control as defined below.

2. Possession, Custody, or Control: YOU are required to produce all responsive DOCUMENTS in YOUR possession, custody, or control. "Possession, custody, or control" extends to any document in the possession, custody, or control of YOU or any of YOUR agents, employees, accountants, brokers, attorneys, subsidiaries, officers, or directors. A DOCUMENT is deemed to be in YOUR possession if it is in YOUR physical custody or if it is in the physical custody of any other person or entity and YOU (i) own the DOCUMENT in whole or in part, (ii) have a right by contract, statute or otherwise to use, inspect, examine, or copy such DOCUMENTS on any terms, (iii) have an understanding, express or implied, that YOU may use, inspect, examine, or copy the DOCUMENT on any terms, or (iv) are, as a practical matter, able to use, inspect, examine, or copy the DOCUMENT.

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3. Privilege: If and to the extent YOU decline to identify and produce DOCUMENTS described below on a claim of privilege, identify all foundational facts upon which YOU based such claim of privilege, including without limitation (a) the privilege claimed, (b) the date of the DOCUMENT, (c) the identify of the person sending the DOCUMENT, (d) the identity of all persons to whom the DOCUMENT was sent, and (e) a description of the DOCUMENT's content sufficient to establish the privilege. In addition, please identify the Bates number(s) of any document for which you claim a privilege.

III.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All DOCUMENTS supporting YOUR contention that "Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted" as alleged in the First Affirmative Defense of YOUR ANSWER.

REQUEST NO. 2:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of laches" as alleged in the Second Affirmative Defense of YOUR ANSWER.

REQUEST NO. 3:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of estoppel" as alleged in the Third Affirmative Defense of YOUR ANSWER.

REQUEST NO. 4:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613" as alleged in the Fourth Affirmative Defense of YOUR ANSWER.

REQUEST NO. 5:

DOCUMENTS evidencing the date upon which YOU first used the TRADEMARK in commerce.

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BAKERSFIELD, CALIFORNIA 93309

REQUEST NO. 6:

DOCUMENTS evidencing the location where YOU first used the TRADEMARK in commerce.

REQUEST NO. 7:

DOCUMENTS evidencing any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

REQUEST NO. 8:

DOCUMENTS evidencing any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

REQUEST NO. 9:

Any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

REQUEST NO. 10:

Any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

REQUEST NO. 11:

Any DOCUMENTS evidencing YOUR contention that "Respondent admits to corresponding with some restaurants operating under the name FROSTY KING" as alleged in Paragraph 12 of YOUR ANSWER.

REQUEST NO. 12:

DOCUMENTS evidencing the identity of all PERSONS with whom YOU corresponded as alleged within Paragraph 12 of YOUR ANSWER.

REQUEST NO. 13:

DOCUMENTS evidencing the identity of all PERSONS involved in the decision to use the TRADEMARK.

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REQUEST NO. 14:

DOCUMENTS evidencing the identity of all PERSONS involved in the decision to apply for federal registration of the TRADEMARK.

REQUEST NO. 15:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding YOUR use of the TRADEMARK.

REQUEST NO. 16:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

REQUEST NO. 17:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK. .

REQUEST NO. 18:

DOCUMENTS evidencing all goods and services which have been offered for sale in connection with the TRADEMARK.

REQUEST NO. 19:

DOCUMENTS evidencing the circumstances of YOUR first use in commerce of the TRADEMARK.

REQUEST NO. 20:

DOCUMENTS evidencing every location where YOU have used the TRADEMARK.

REQUEST NO. 21:

All DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

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COOPER, ROSENLIEB & KIMBALL, LLP
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BAKERSFIELD, CALIFORNIA 93309

REQUEST NO. 22:

All DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

REQUEST NO. 23:

DOCUMENTS which evidence the expansion plans YOU are currently developing as alleged within Paragraph 13 of YOUR ANSWER.

REQUEST NO. 24:

DOCUMENTS which evidence whether YOU have entered into any franchise agreements as alleged within Paragraph 13 of YOUR ANSWER.

REQUEST NO. 25:

All DOCUMENTS which evidence any expansion plans YOU have developed for expanding any use of the REGISTERED MARK into California.

REQUEST NO. 26:

All DOCUMENTS which evidence the identity of any PERSONS in California whom YOU have contacted regarding expanding any use of the REGISTERED MARK into CALIFORNIA.

Date: November 30, 2010

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP

By: _____
JAMES M. DUNCAN
Attorneys for Petitioner
Frosty King, Inc.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Frosty King Inc., a Nevada Corporation, Petitioner, v. Frosty King, Inc., a Florida Corporation, Respondent.	Cancellation No. 92052657 **Mark: Frosty King** Registration No. 3,537,613

EXHIBIT 4

Respondent'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil procedure, Respondent, FROSTY KING, INC., ("Respondent") submits the following objections and responses to Petitioner's First Set of Requests for Production of Documents as follows:

Respondent objects to the command to produce documents as unreasonable, unduly burdensome and to the extent it purports to impose an obligation on Respondent greater than allowed under the Federal Rules of Civil Procedure. Respondent will produce documents as kept in the ordinary course of business, at a time and place mutually agreeable to the parties.

PRELIMINARY STATEMENT

Specific objections to each separate request are made on an individual basis in Respondent responses hereinbelow. In addition to these specific objections, Respondent makes certain "General Objections" to each of the requests. These General Objections are hereby incorporated by reference into each response to each separate request. For particular emphasis, Respondent may from time to time restate one or more

of the General Objections in the responses hereinbelow. Respondent' responses to each individual request are made without prejudice to, and without waiving or limiting, any General Objections not expressly set forth or restated in that response. Accordingly, the restatement of any specific objection to a request in any response herein is neither intended as, nor shall in any way be deemed, a waiver or limitation of any General Objections or of any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any General Objections or specific objections to a request is neither intended as, nor shall in any way be deemed, a waiver or limitation of Respondent' right to assert that or any other objection at a later date.

These responses are made solely for the purpose of this action. Each response and each document produced is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections or grounds that require the exclusion of any information or document at trial. All such objections and grounds are reserved and may be interposed at the time of trial.

Investigation and discovery in this action are continuing. Respondent may acquire further responsive information or documents through formal or informal discovery. Respondent expressly reserves its right to amend, supplement, modify or clarify these responses at any time and produce further information or documents. Respondent reserves its right to use such information or documents for any purpose whatsoever, including without limitation any trial or hearing in this case, irrespective of the discovery date of such information.

GENERAL OBJECTIONS

1. Respondent objects to the requests to extent that they seek the production of documents protected by the attorney client privilege and/or work product doctrine or any other privilege, doctrine, or immunity. Respondent will not disclose such privileged or immune information or documents and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege or immunity with respect to such information or documents.

2. Respondent objects to the requests to the extent that they seek production or identification of documents not in the possession, custody or control of Respondent or refer to persons, entities, or events not known to Respondent, on the grounds that such requests seek to require more of Respondent than any obligation imposed by law and would subject Respondent to undue burden, expense, annoyance, and oppression.

3. Respondent objects to the requests to the extent that they call for material or information which is neither relevant to the subject matter of the instant action nor reasonably calculated to lead to the discovery of admissible evidence.

4. To the extent that Respondent indicates that documents will be produced in response to a request, such indication is only to the extent that relevant, responsive, non-privileged, non-immune documents exist and are in the possession, custody or control of Respondent and is not intended to be a representation that some documents do in fact exist.

5. Respondent objects to the requests to the extent that they seek proprietary and/or confidential information or documents including without limitation confidential

research, development, commercial or financial information or other competitively sensitive information or documents.

6. Respondent objects to the requests to the extent that they call for material or information which is cumulative or duplicative or require Respondent to incur unreasonable burden or expense in ascertaining information or providing documents.

7. Respondent objects to each request to the extent it seeks information or documents obtainable from some other source that is more convenient, less burdensome, or less expensive.

8. Respondent objects to each request to the extent that Plaintiff has had ample opportunity by discovery in this action to obtain the information sought.

9. Respondent objects to each request to the extent the burden or expense of responding to the request outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in this action, and the importance of the request in resolving the issues.

10. Respondent objects to producing documents at any location other than its office or the offices of its counsel on the ground that such production is unreasonable. Respondent also objects to the specified date of production on the ground that it is unreasonable. Respondent will produce the documents identified in its responses herein at a mutually agreeable time.

11. Respondent objects to the requests and the definitions to the extent that they purport to impose on Respondent any obligation greater than that imposed by F. R. Civ. P. 26 and 34 or the Rules of the Trademark Trial and Appeal Board.

12. Respondent objects to the definitions to the extent that they purport to enlarge, expand, or alter in any way the plain meaning and scope of any request on the ground that such enlargement, expansion or alteration renders the request vague, ambiguous, unintelligible, and overly broad.

Subject in each instance to the foregoing Preliminary Statement and General Objections, Respondent responds as set forth hereinbelow.

OBJECTIONS TO DEFINITIONS

Respondent objects to the definition of "Describe" in Definition 5 as overbroad, unreasonable, unduly burdensome and to the extent it purports to impose an obligation on Respondent greater than allowed by the Federal Rules of Civil Procedure.

Respondent objects to the definition of "Identify" in Definition 8 to the extent it purports to impose an obligation on Respondent greater than allowed by the Federal Rules of Civil Procedure.

OBJECTIONS TO INSTRUCTIONS

Respondent objects to Instruction 2 to the extent it calls for attorney client privileged communications or attorney work product.

OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All DOCUMENTS supporting YOUR contention that "Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted" as alleged in the First Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 1:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 2:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of laches" as alleged in the Second Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 2:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 3:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of estoppel" as alleged in the Third Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO.3:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney

client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 4:

All DOCUMENTS supporting YOUR contention that "Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613" as alleged in the Fourth Affirmative Defense of YOUR ANSWER.

RESPONSE TO REQUEST NO. 4:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 5:

DOCUMENTS evidencing the date upon which YOU first used the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 5:

Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 6:

DOCUMENTS evidencing the location where YOU first used the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 6:

Respondent reasserts the foregoing general objections and further objects that the request seeks irrelevant documents and documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO.7:

DOCUMENTS evidencing any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 7:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 8, 9, 10, 16, 17, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent has no responsive documents.

REQUEST NO. 8:

DOCUMENTS evidencing any efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO REQUEST NO. 8:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 9, 10, 16, 17, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent has no responsive documents.

REQUEST NO. 9:

Any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 9:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 10, 16, 17, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent has no responsive documents.

REQUEST NO. 10:

Any DOCUMENTS YOU discovered regarding whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO REQUEST NO. 10:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 16, 17, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent has no responsive documents.

REQUEST NO. 11:

Any DOCUMENTS evidencing the identity of all PERSONS with whom YOU corresponded as alleged within Paragraph 12 of YOUR ANSWER.

RESPONSE TO REQUEST NO. 11:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Request 12, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent has no responsive documents.

REQUEST NO. 12:

DOCUMENTS evidencing the identity of all PERSONS with whom YOU corresponded as alleged within Paragraph 12 of YOUR ANSWER.

RESPONSE TO REQUEST NO. 12:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Request 11, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent has no responsive documents.

REQUEST NO. 13:

DOCUMENTS evidencing the identity of all PERSONS involved in the decision to use the TRADEMARK.

RESPONSE TO REQUEST NO. 13:

Respondent reasserts the foregoing general objections and further objects that the request calls for irrelevant documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 14:

DOCUMENTS evidencing the identity of all PERSONS involved in the decision to apply for federal registration of the TRADEMARK.

RESPONSE TO REQUEST NO. 14:

Respondent reasserts the foregoing general objections and further objects that the request calls for irrelevant documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 15:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding YOUR use of the TRADEMARK.

RESPONSE TO REQUEST NO. 15:

Respondent reasserts the foregoing general objections and further objects that the request calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 16:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 16:

16. Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 17, 21 and 22, calls for documents

protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 17:

DOCUMENTS evidencing the identity of the PERSON most knowledgeable regarding the efforts YOU took to ascertain whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED TRADEMARK.

RESPONSE TO REQUEST NO. 17:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 16, 21 and 22, calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 18:

DOCUMENTS evidencing all goods and services which have been offered for sale in connection with the TRADEMARK.

RESPONSE TO REQUEST NO. 18:

18. Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 19:

DOCUMENTS evidencing the circumstances of YOUR first use in commerce of the TRADEMARK.

RESPONSE TO REQUEST NO. 19:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 20:

DOCUMENTS evidencing every location where YOU have used the TRADEMARK.

RESPONSE TO REQUEST NO. 20:

Respondent reasserts the foregoing general objections and further objects that the request is overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 21:

All DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU filed the application to register the REGISTERED MARK.

RESPONSE TO REQUEST NO. 21:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 16, 17, and 22, overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 22:

All DOCUMENTS which evidence any effort by YOU to determine whether the TRADEMARK was in use by any other PERSON before YOU first started using the TRADEMARK in commerce.

RESPONSE TO REQUEST NO. 22:

Respondent reasserts the foregoing general objections and further objects that the request is duplicative of Requests 7, 8, 9, 10, 16, 17 and 21, overbroad, unduly burdensome and calls for documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 23:

DOCUMENTS which evidence the expansion plans YOU are currently developing as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO REQUEST NO. 23:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections,

Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 24:

DOCUMENTS which evidence whether YOU have entered into any franchise agreements as alleged within Paragraph 13 of YOUR ANSWER.

RESPONSE TO REQUEST NO. 24:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 25:

All DOCUMENTS which evidence any expansion plans YOU have developed for expanding any use of the REGISTERED MARK into California.

RESPONSE TO REQUEST NO. 25:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

REQUEST NO. 26:

All DOCUMENTS which evidence the identity of any PERSONS in California whom YOU have contacted regarding expanding any use of the REGISTERED MARK into California.

RESPONSE TO REQUEST NO. 26:

Respondent reasserts the foregoing general objections and further objects to the extent that the request calls for trade secret documents, documents protected by attorney client privilege and work product immunity. Subject to the foregoing objections, Respondent will produce non-trade secret, non-privileged, non-immune documents in its possession, custody or control.

KLEINBERG & LERNER, LLP

Dated: January 3, 2011

By: _____

Marvin H. Kleinberg
Christopher J. Dugger
Attorney for Respondent
1875 Century Park East, Suite 1150
Los Angeles, CA 90067

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EXHIBIT 5

January 13, 2011

VIA EMAIL and U.S. MAIL

Christopher J. Dugger Esq.
Kleinberg & Lerner, LLP
1875 Century Park East, Suite 1150
Los Angeles, CA 90067

Re: TTAB Cancellation No. 92052657
FROSTY KING Reg. No. 3,537,613

Dear Mr. Dugger:

My office is in receipt of your discovery objections and responses. This letter shall constitute our formal effort to meet and confer regarding Respondent's Objections and Responses to Petitioner's First Set of Special Interrogatories, and Respondent's Objections and Responses to Petitioner's First Set of Requests for Production of Documents. Please be advised that unless substantive responses to the below discovery requests are received by January 27, 2011, we will proceed with filing a motion to compel with the Trademark Trial and Appeal Board pursuant to TBMP §523.01.

Production of Documents. At present, your responses to Petitioner's First Set of Requests for Production of Documents consist primarily of extensive objections and the occasional assertion that you will produce non-privileged, non-immune documents. Noticeably lacking from your responses are any actual, responsive documents. Please immediately advise the undersigned of the date and place where the documents will be produced. We are willing to pay copying charges for documents if your client wishes to produce copies of the requested documents. An unfounded objection to the specified place of production is not an adequate

*Registered Patent Attorney
** Certified Specialist – Estate Planning, Trust & Probate Law
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***Board Certified – Consumer and Business Bankruptcy Law
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substitute for producing responsive documents under Federal Rule of Civil Procedure 34 or under the TBMP.

Regarding the objections to the document requests, it appears the objections are made primarily for the purpose of delay and/or harassing the propounding party and/or driving up the expense of this proceeding as suggested as a negotiating tactic within Michael Hurey's October 10, 2010 letter. To the extent that you might be intending to object to the production of some portion of the requested documents, your responses are insufficient in that they fail to describe the nature of the documents, communications, or tangible things not produced or disclosed. (See Fed. Rules Civ.Proc, rule 26, subd. (b)(5)(A)(ii), 28 U.S.C.) To the extent that you are intending to object to all requests in their entirety, such objection cannot be maintained in good faith.

We have provided you document requests which are targeted to the relevant issues of this case and/or which your client has placed in issue. Please identify in writing what portion of each request is unclear, vague, ambiguous, or otherwise objectionable, and I will be happy to clarify any concerns.

Special Interrogatories. Your responses to several of Petitioner's First Set of Special Interrogatories are similarly inadequate and evasive. In particular, the majority of your responses consist entirely of objections which do not appear to have any reasonable basis in the law.

Your responses to Special Interrogatories Nos. 1, 2, 3, 4, and 11 do not contain any substantive response whatsoever. Instead, you assert that "Respondent will not respond to contention interrogatories until the end of discovery." This objection is not well taken and not supported under the law. The fact that an interrogatory solicits information relating to the contentions raised in your pleadings does not afford you, as a matter of right, the ability to refuse to respond until the end of discovery. (See Fed. Rules Civ.Proc, rule 33, subd. (a)(2), 28 U.S.C.) We therefore demand a substantive response to each of these interrogatories.

Similarly, your responses to Special Interrogatories Nos. 7, 8, 9, 10, 12, 21, 22, 23, 24, 25, and 26 also do not contain any substantive response. Instead, you assert that "Respondent will not respond to this interrogatory without the entry of a suitable protective order." Again, this response is inadequate. The information sought by these interrogatories have been placed at issued by your client's answer, and/or are not appropriately subject to protection as a trade secret, and the rules governing discovery in this action do not allow a party to demand a protective order before disclosing non-privileged information. If your preference is to enter into a stipulated protective order regarding the information to be produced in response to these interrogatories, please provide this office with a proposed stipulation and order to this effect.

Your responses to Special Interrogatories Nos. 18, 19, and 20 also consist entirely of objections, with no substantive response. Again, it appears that these objections are made solely for the improper purposes of driving up expense, harassing the propounding party and/or evading the request. We have provided you very narrowly tailored interrogatories that are targeted to

reach very specific information. Please identify in writing what portion of each interrogatory is unclear, vague, or ambiguous, and I will be happy to clarify any concerns.

This letter is written in an effort to informally resolve this dispute without burdening the parties with the expense of filing a motion to compel. To this end, please provide verified, supplemental responses to Special Interrogatories Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 18, 19, 20, 21, 22, 23, 24, 25, and 26, and withdraw any objections which are unfounded or not made in good faith.

Regarding your responses to Requests for Production of Documents, we request that you withdraw any objections that are unfounded or not made in good faith, and either produce copies of the documents or provide notice of a location where the documents will be made available for inspection and copying no later than within the next two weeks.

Please provide this office with the foregoing no later than **TWO WEEKS FROM THE DATE OF THIS LETTER**.

If we do not receive the supplemental responses and materials as requested, we will have no choice but to compel further responses by way of a motion filed with the Trademark Trial and Appeal Board and seek sanctions as authorized under TBMP §523.01.

Very truly yours,

James M. Duncan

JMD/kmr

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I am employed in the county of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 California Avenue, Bakersfield, California 93309. My e-mail address is kratekin@kleinlaw.com.

On **February 1, 2011**, I served the foregoing document described as follows: **DECLARATION OF JAMES M. DUNCAN IN SUPPORT OF MOTION TO COMPEL RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

[X] by placing the true copies thereof

[ ] by placing the original

addressed as stated on the attached Service List.

[X] **BY MAIL** I enclosed such document in sealed envelope(s) with the name(s) and address(s) of the person(s) served as shown on the envelope(s) and caused such envelope(s) to be deposited in the mail at Bakersfield, California. The envelope(s) was/were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **BY FACSIMILE** I placed such document in a facsimile machine with the fax number of (661)326-0418 on _____, at _____ .m. Upon facsimile transmission of the document, I obtained a report from the transmitting facsimile machine stating that the facsimile transmission was complete and without error. A copy of the transmission report is attached to this Proof of Service. The person served consented in writing to being served by facsimile under FRCP, Rule 5, and Federal Rules of Bankruptcy Procedure, Rule 7005.

[ ] **BY ELECTRONIC MAIL** Pursuant to U.S. Bankruptcy Court, Eastern Division Local Rule 7005-1(d) Method of Service. (1) Upon those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to FRCivP 5(b)(2)(D) shall be accomplished by transmitting an e-mail which includes as a .PDF attachment to the document(s) served. The subject line of the e-mail shall include the words "Service Pursuant to FRCivP 5", along with the case or proceeding number and the title(s) of the document(s) served.

[ ] **BY OVERNIGHT MAIL SERVICE** I am readily familiar with the business practice at my place of business for collection and processing of documents and correspondence for overnight delivery by _____. Documents and correspondence so collected and processed is deposited with this overnight courier service on the same day in the ordinary course of business. On the below date, the said envelope was collected for this overnight courier service, following ordinary business practices and deposited at this overnight courier service drop/pickup location in Bakersfield, California by _____ P.M.

☐ **BY PERSONAL SERVICE** I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1, 2011, at Bakersfield, California.

KRISTI RATEKIN
Type or Print Name

Signature

SERVICE LIST

	Attorneys for
Christopher J. Dugger, Esq. Michael Hurey, Esq. KLEINBERG & LERNER, LLP 1875 Century Park East, Suite 1150 Los Angeles, California 90067-3112	Respondent, FROSTY KING, INC. a Florida Corporation