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

Proceeding	92053501
Party	Defendant Del Taco, LLC
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Submission	Motion for Sanctions
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Attachments	Motion for Sanctions.pdf (9 pages)(333784 bytes) Exhibit 1 to Motion for SanctionsA.pdf (15 pages)(2378538 bytes) Exhibit 1 to Motion for SanctionsB.pdf (15 pages)(2368456 bytes) Exhibit 1 to Motion for SanctionsC.pdf (15 pages)(2418076 bytes) Exhibit 1 to Motion for SanctionsD.pdf (12 pages)(1874825 bytes) Exhibit 2 to Motion for SanctionsA.pdf (15 pages)(213268 bytes) Exhibit 2 to Motion for SanctionsB.pdf (15 pages)(191756 bytes) Exhibit 2 to Motion for SanctionsC.pdf (15 pages)(191364 bytes) Exhibit 2 to Motion for SanctionsD.pdf (15 pages)(192541 bytes) Exhibit 2 to Motion for SanctionsE.pdf (15 pages)(192017 bytes) Exhibit 2 to Motion for SanctionsF.pdf (15 pages)(191354 bytes) Exhibit 2 to Motion for SanctionsG.pdf (14 pages)(190219 bytes) Exhibit 2 to Motion for SanctionsH.pdf (16 pages)(232695 bytes)

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

CHRISTIAN M. ZIEBARTH, **Petitioner,** **vs.** **DEL TACO LLC** **Respondent.**	**Reg. No. 1,043,729** **Cancellation No. 92053501**

RESPONDENT DEL TACO LLC'S MOTION FOR SANCTIONS

Pursuant to Rule 527.01(a) of the Trademark Rules of Practice, Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby moves for an order entering judgment against Petitioner Christian Ziebarth ("Petitioner") for failure to comply with the Trademark Rules and the Board Order of January 21, 2012. Alternatively, Del Taco seeks an order precluding Petitioner from offering any evidence on the subjects on which full discovery has been denied including: (1) Petitioner's alleged *bona fide* intent to use his application for NAUGLES, and (2) Petitioner's alleged standing based on this same application.

The grounds for this motion are set forth below.

BRIEF IN SUPPORT

I. INTRODUCTION AND BACKGROUND

This is a cancellation proceeding involving Respondent Del Taco's U.S. Registration No. 1,043,729 for the mark NAUGLES for "*restaurant services*." Petitioner claims standing based on his ownership of U.S. Application Serial No. 85/040746 for NAUGLES for "*cafeteria and restaurant services*," filed on May 17, 2010, based upon his alleged *bona fide* intent to use the mark.

On April 20, 2011, Del Taco served Petitioner with Interrogatories, Document Requests, and Requests for Admission generally seeking information and documents regarding Petitioner's *bona fide* intent to use Petitioner's application and his alleged standing to bring this proceeding. Indeed, these requests solicited information regarding, among other things, basic information as to Petitioner's intended usage of the NAUGLES mark including planned locations, channels of trade, consumers, products, services, and other items documenting Petitioner's *bona fide* intent to use the mark. Petitioner's responses were due on May 20, 2011, however Petitioner later requested and was granted by Del Taco a three-week extension on the discovery requests on May 3, 2011, thus extending the due date for Petitioner's responses to June 10, 2011. However, on the day they were due, Petitioner again requested an additional 30-days to respond to the discovery requests. Del Taco once again agreed to Petitioner's request making the responses due on July 11, 2011.

After two extensions, Petitioner finally responded to the outstanding discovery requests on July 11, 2011, nearly two months after the original due date. However, instead of providing responsive answers, Petitioner objected to every single discovery request propounded by Del Taco and only produced a handful of documents relating to Del Taco's NAUGLES mark printed from the US Trademark Office website but nothing evidencing or relating to Petitioner's *bona fide* intent to use or standing in this matter. Petitioner's objections consisted of a myriad of numerous boilerplate objections to every request propounded by Del Taco. Petitioner further stated that in light of these objections, Petitioner was not required to respond at all. Petitioner clearly did not need the two requested extensions if the only intended response was to object to all of the discovery requests in toto.

After a careful review of the responses and documents produced, Del Taco determined that the responses were deficient. On August 11, 2011, Del Taco sent a letter to Petitioner requesting that Petitioner reconsider its responses and comply fully with the requests. Counsel for Petitioner responded on August 21, 2011 refusing to respond further. Shortly thereafter, Petitioner approached Del Taco regarding potential settlement of the proceeding. These discussions were ultimately unsuccessful and with no documents produced, no information provided, and Petitioner's staunch refusal to reconsider his stance, Del Taco had no choice but to file a Motion to Compel on September 22, 2011. *See* TTABVUE Filing # 9.

The Board ultimately issued a decision on the Motion to Compel on January 21, 2012 ordering Petitioner to produce supplemental written responses and produce responsive documents to Del Taco's responses, specifically, Interrogatory Nos. 1-15, Requests for Admission nos. 1-67, and Document Request Nos. 1-26. *See* TTABVUE Filing #16 (hereinafter "Board Order"). These responses were due by February 20, 2012, within thirty days of the Order. *Id.*

Shortly thereafter, Petitioner's former counsel filed a Motion to Withdraw as Counsel for Petitioner on February 2, 2012 requesting another extension to respond to Del Taco's discovery requests so Petitioner could find new counsel. *See* TTABVUE Filing #18. The Board deemed the Motion deficient on February 16, 2012 and an order to file a proper response was issued. *See* TTABVUE Filings #19. The next day, new counsel for Petitioner made an appearance. *See* TTABVUE Filings #20. The Board accepted the new counsel and granted Petitioner an ***additional*** 20 days to serve the supplemental responses and documents, now due on March 14, 2012, nearly two months after the Board Order granting the Motion to Compel and almost ***a full year*** after Del Taco propounded the original discovery requests on Petitioner. *See* TTABVUE Filing #23.

Petitioner finally served supplemental responses to Del Taco on March 14, 2012. *See* Exhibits 1 and 2 attached hereto. In keeping with Petitioner's conduct throughout, the responses again are highly deficient in that they consist mostly of voluminous objections and unresponsive narrative and again do not provide any information as to Petitioner's standing or *bona fide* intent to use. *Id.* Further, the responses incorporate the same objections Petitioner stated previously and to which the Board had already found lacking merit in the Board Order. *Id.* For the majority of Petitioner's responses, the only portion that could feasibly be deemed responsive is a vague statement as to certain alleged activities, unsubstantiated in the document production that are wholly irrelevant to the actual request. *See e.g.* Exhibit 1 pg. 7. Petitioner repeats this exact response in the majority of the discovery requests and this apparent "mantra" is repeated by Petitioner as a substitute for giving any kind of a concise or relevant response as to Petitioner's standing or *bona fide* intent to use.

The remaining responses are incomplete and inconsistent when read together. For example, in response to Interrogatory No. 3 asking for identification of individuals with information as to Petitioner's selection of the NAUGLES mark, Petitioner identified five names with only a single email address as contact information for four of the names. *See* Exhibit 1, pgs. 9-10. Not only is this a deliberately incomplete response, but it appears highly inconsistent with persons who appear in the few documents actually later produced by Petitioner.

Further, in Interrogatory No. 7, Petitioner states that Petitioner's NAUGLES branded products are not currently offered to the public. *See* Exhibit 1 pgs. 14-15. Yet in response to Request for Admission No. 1 asking for admission of the exact same thing, Petitioner denies the admission and again repeats his vague, repetitive, and unresponsive "mantra" that is wholly irrelevant to the actual request. *See* Exhibit 2 pgs. 3-5. As a whole, the

written supplemental responses clearly indicate a willful and deliberate intent to evade any substantive response at all on the part of Petitioner, despite the Board Order, as to basic information regarding Petitioner's standing or *bona fide* intent to use.

The document production is similarly woefully deficient. Produced two days ***after*** the Board mandated deadline for response, Petitioner improperly served seven documents to Del Taco via email at almost midnight on March 16, 2012. The parties had never agreed to service via email nor had Petitioner requested particular permission from Del Taco for such service. The documents themselves do not include a privilege log; yet include inconsistent redactions including redactions of information which does not appear to be subject to any claim of privilege and visible references to communications with an attorney, including the information that was conveyed by said attorney, but not redacted from the document. These documents again indicate an intent to deliberately withhold certain chosen information from the document production by Petitioner, without any valid basis for doing so.

This willful evasiveness was demonstrated once again during a second round of settlement negotiations between the parties that began in late March 2012. Through the course of these negotiations, Petitioner offered and produced two new documents to Del Taco for consideration in the discussions. These documents were ***not*** included in the documents that Petitioner ultimately produced pursuant to the Board Order, though they appeared to have been created or based on documents that existed prior to the January 21, 2012 Board Order but not before the filing of Petitioner's NAUGLES application. Moreover, the content of these documents indicates that additional documentation and information was within the control and custody of Petitioner, yet deliberately withheld by Petitioner in the supplemental production.

The settlement negotiations concluded once again unsuccessfully on August 20, 2012 leading to the filing of this Motion for Sanctions in light of the willful and deliberate failure of Petitioner to comply with the Board Order. Del Taco has been more than diligent in its attempts to obtain relevant information through discovery from Petitioner and now respectfully urges the Board to impose sanctions on Petitioner in the form of final judgment and dismissal of this proceeding for Petitioner's repeated, willful, evasive and obstructionist conduct throughout discovery.

II. ARGUMENT

Petitioner has knowingly and willfully refused to comply with the clear language of the Board Order. The supplemental responses provided by Petitioner are at best inconsistent and incomplete and at worst, consist only of repeated objections (and objections ***already*** found by the Board to not be well taken) and irrelevant and nonresponsive narrative having nothing to do with the actual request as to Petitioner's standing and *bona fide* intent to use. *See* Exhibits 1-2. Moreover, it is clear from Petitioner's negotiations with Del Taco that additional information and documents were deliberately and willfully withheld from the March 14 and March 16, 2012 productions by Petitioner.

Where a party fails to comply with an order of the Board relating to discovery, the Board has authority to impose sanctions against that party for such noncompliance. Trademark Rule 2.120(g)(1); *see also M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1047 (TTAB 2008); *Highbeam Marketing LLC v. Highbeam Research LLC*, 85 USPQ2d 1902, 1904 (TTAB 2008). No good faith efforts to resolve the dispute are required of the moving party. *See* Trademark Rule 2.210(g). The sanctions that may be imposed by the Board include prohibiting the disobedient party from introducing designated matters in evidence and entering judgment against the disobedient party. *See* Trademark Board Manual of

Procedure ("TBMP") § 527.01(a). Judgment against the disobedient party is a justified sanction "where no less drastic remedy would be effective and there is a strong showing of willful evasion." TBMP § 521.01(a); *see also Baron Philippe de Rothchild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (holding that pattern of dilatory conduct indicated willful disregard of Board order and resulted in entry of judgment).

In this case, dismissal of the cancellation proceeding is the appropriate remedy. Petitioner has repeatedly demonstrated a willful pattern of evasive and deliberately uncooperative conduct throughout the course of this proceeding. Petitioner has been afforded multiple opportunities and extensions to comply with the Trademark Rules governing discovery and the Board Order to no avail. Del Taco served its discovery requests over 16 months ago and has yet to see any substantive responses or production to its requests.

Petitioner's refusal to comply with the Board Order is further compounded by the fact that Del Taco's discovery requests are not directed to an unrelated subject in the cancellation proceeding, but rather to a critical element that Petitioner itself is required to prove, namely, ***Petitioner's standing to bring this action***. As recognized in the Board Order, "[s]tanding is an essential elements (sic) of the prima facie case which petitioner must establish. That is, petitioner must prove its standing as a threshold matter in order to be heard on its substantive claims." *See* TTABVUE Filing # 16, pgs. 4-5, note. 1. Despite this, Petitioner has willfully refused to comply with the Board Order by submitting intentionally evasive, inconsistent, improper, and irrelevant responses, as well as deliberately withholding relevant documents and information from the production. There is no reason to assume that, given additional opportunities, Petitioner will fulfill his obligations in this proceeding, and dismissal of the cancellation proceeding is therefore justified.

III. CONCLUSION

Petitioner's willful and deliberate refusal to obey the Board Order and Petitioner's repeated and ongoing pattern of evasive and nonresponsive conduct most certainly justifies dismissal of this cancellation proceeding. However, if the Board declines to impose sanctions on Petitioner in the form of an outright dismissal, at a minimum, Petitioner should be precluded from offering any evidence on its standing and its alleged *bona fide* intent to use the NAUGLES mark that is the subject of Application No. 85/040746, since these are the very issues on which Del Taco has repeatedly requested discovery on in its discovery requests and this is the very information Petitioner has refused to produce.

Respondent Del Taco therefore respectfully requests that the Board impose sanctions on Petitioner Christian Ziebarth and issue an order entering judgment against Petitioner and dismissing this cancellation proceeding it its entirety. In the alternative, Del Taco respectfully requests the Board issue an order precluding Petitioner from offering any evidence during the trial period of this proceeding which purports to establish or prove: (1) Petitioner's alleged *bona fide* intent to use his application for NAUGLES, and (2) Petitioner's alleged standing based on this same application, since Petitioner has completely failed to respond to Del Taco's discovery requests on these issues and therefore has denied Del Taco critical information relative to Petitioner's claims and Del Taco's defenses.

Dated: **August 22, 2012**

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Attorneys for Respondent
Del Taco LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by certified first-class mail, on this 22nd day of August, 2012, to Richard F. Christesen, 6905 S 1300, E #233, Midvale, Utah, 84047.

April L Besl

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

CHRISTIAN M. ZIEBARTH, **Petitioner,** **vs.** **DEL TACO LLC** **Respondent.**	**Reg. No. 1,043,729** **Cancellation No. 92053501**

PETITIONER'S SUPPLEMENTAL RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET NO. ONE

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and Rule 33 of the Federal Rules of Civil Procedure ("FRCP") and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Christian M. Ziebarth ("Petitioner") hereby responds to Del Taco, LLC's ("Respondent") First Set of Interrogatories and Requests for Production of Documents ("Requests" or "Request") as set forth below.

GENERAL OBJECTIONS TO INTERROGATORIES

The following General Objections to Respondent's Interrogatories are incorporated by reference in response to each Interrogatory set forth below and are not waived with respect to any response.

1. Petitioner generally objects to Respondent's Interrogatories to the extent they seek disclosure of any information, document, or thing protected, privileged or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the FRCP, case law, regulations, administrative orders, or any other applicable rules, decisions, or laws including, but

not limited to, information protected by the attorney-client privilege, the work-product doctrine or other applicable privilege.

2. Petitioner generally objects to Respondent's Interrogatories to the extent they purport to impose upon Petitioner obligations greater than those imposed by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

3. Petitioner generally objects to Respondent's Interrogatories to the extent that they seek information that is irrelevant and not calculated to lead to the discovery of admissible evidence or to the extent that Respondent's Interrogatories seek the disclosure of information, documents, or things beyond the scope of discovery as provided by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

4. Petitioner objects to Respondent's Interrogatories to the extent that they request confidential or proprietary information. Petitioner may provide such information, if relevant, not obtainable by less intrusive means, and not privileged, subject to the Trademark Trial and Appeal Board Protective Order in place between the parties.

5. Petitioner reserves the right to object to further inquiry with respect to the subject matter of Respondent's Interrogatories and responses provided thereto.

6. Petitioner objects to each of Respondent's Interrogatories to the extent that they seek information that is a matter of public record or otherwise available to Respondent without imposing undue burden on Respondent.

7. Petitioner objects to Respondent's Interrogatories on the grounds that they are premature in that Petitioner has not yet completed its own discovery and preparation for the testimony or trial periods. Petitioner reserves the right to provide any subsequently discovered information, and to supplement or change its responses based on such information.

8. As to all matters referred to in these responses to Respondent's Interrogatories, investigation and discovery continues. Accordingly, Petitioner reserves its right to modify, amend or change these responses, to present, use or rely on in any proceedings and at trial any supplemental, amended, changed or modified responses and/or further information and documents obtained during discovery and preparation for trial. Further discovery, independent investigation, and legal research and analysis may supply additional facts and documents adding meaning to known facts and documents, as well as establishing entirely new factual conclusions or legal conclusions, all of which may lead to substantial additions to, changes in, and variations from the responses set forth herein. Petitioner reserves the right to produce any subsequently discovered evidence, facts, and/or documents, and to supplement, amend, or change its responses based on such information. The responses given herein are done so in a good faith effort to supply as much information as is presently known, which should in no way lead to the prejudice of Petitioner in connection with further discovery, research or analysis. However, Petitioner reserves the right to supplement, change or amend its responses due to information inadvertently omitted from these responses. No incidental or implied admissions of any kind are intended by the responses here.

9. Petitioner preserves all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose in any proceeding in this or any other action.

10. Petitioner preserves the right to object to the use of any response or document in any proceeding in this or any other action.

11. Petitioner preserves the right to object on any grounds, at any time, to a demand for further response to these or any other Interrogatories.

12. Some of Respondent's Interrogatories contain discrete subparts. To the extent Petitioner considers any Interrogatory having discrete subparts to constitute a single Interrogatory, Petitioner objects to each such Interrogatory as being contrary to FRCP 33(a) and 37 CFR §2.120(d).

13. Only the express and overt meaning of these responses is intended. No response should be construed to contain implied statements, representations, or admissions of any kind. The fact that Petitioner has responded or objected to an Interrogatory, or has produced documents in response to an Interrogatory, should not be understood as an admission that Petitioner accepts or admits the existence of any "fact" set forth in or assumed by that Interrogatory.

14. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations, and shall in no way be interpreted as terms of art or statutorily defined terms used in the trademark or unfair competition laws. Petitioner specifically disavows any such meaning or connotation that might be accorded to such terms. Likewise, Petitioner objects to Respondent's definitions and instructions to the extent that they make individual Interrogatories vague, ambiguous, or unintelligible by attributing a novel meaning to any ordinary word or multiple meanings to a single word.

15. Petitioner generally objects to Respondent's Interrogatories to the extent they seek information concerning "all" or "any" person or entity concerning a particular subject on the grounds that Petitioner would be required to search for information from every person or entity. Petitioner objects to performing searches of such breadth, on the grounds of undue burden and expense. In its search for relevant documents, Petitioner has made, or will make, a reasonable search as required by the FRCP.

16. Petitioner general objects to Respondent's Interrogatories to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control. Petitioner's responses are based upon information and writings presently available to Petitioner.

17. In response to Respondent's Interrogatories, Petitioner may exercise its option to produce documents from which the answers to the Interrogatories may be derived or ascertained, in accordance with FRCP 33(d).

RESPONSE TO RESPONDENT'S FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail the nature of the present business of Petitioner in connection with Petitioner's NAUGLES Mark.

RESPONSE TO INTERROGATORY NO. 1:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in

framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles fast food chain as a viable business, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants.

INTERROGATORY NO. 2:

Describe in detail all activities undertaken by Petitioner to utilize Petitioner's NAUGLES Mark prior to the filing of Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.

RESPONSE TO INTERROGATORY NO. 2:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence

because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles fast food chain as a viable business, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has

scouted potential locations for restaurants and met with potential investors and restaurant consultants.

INTERROGATORY NO. 3:

Identify each person with any information concerning Petitioner's selection of Petitioner's NAUGLES Mark.

RESPONSE TO INTERROGATORY NO. 3:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner responses as follows:

Christian Ziebarth, ChristianZ@netscape.net

Josh Maxwell, josh@cacheits.com

Daniel Dvorak, daniel.r.dvorak@gmail.com

Barbara Caruso, APR Caruso Communications

Jeff Naugle, jeff.naugle@att.net

INTERROGATORY NO. 4:

Describe in detail the circumstances under which Petitioner decided to select Petitioner's NAUGLES Mark for use in conjunction with Petitioner's business.

RESPONSE TO INTERROGATORY NO. 4:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,*

2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner selected the NAUGLES Mark because Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Petitioner decided to register the NAUGLES mark for use in business after discussing a NAUGLES revival with an employee of the Respondent. Petitioner had reason to believe the Respondent could act on the suggestion. After waiting over a year for action to be taken Petitioner learned that trademark registrations are not held inviolate ad infinitum but must be kept in continuous use and that three consecutive years of disuse legally constituted abandonment. Del Taco had abandoned the NAUGLES mark approximately fifteen years earlier. Approximately a year and a half after broaching the topic with Respondent and finally surmising that they would not act on Petitioner's suggestion and after obtaining expert legal advice which confirmed Respondent's abandonment of said mark Petitioner went ahead with registering the NAUGLES mark.

INTERROGATORY NO. 5:

Identify all products or services planned to be offered by Petitioner under Petitioner's NAUGLES Mark.

RESPONSE TO INTERROGATORY NO. 5:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark based on original Naugles menu items and reviving the Naugles fast food chain as a viable business.

INTERROGATORY NO. 6:

Identify all transfers of rights in Petitioner's NAUGLES Mark granted by or to Petitioner.

RESPONSE TO INTERROGATORY NO. 6:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel on or about December 20, 2010 based on Respondent's abandonment and non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles." Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746 and adopted an abandoned mark to offer restaurant and cafeteria services. Petitioner is partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand and recreating and testing original Naugles menu items.

INTERROGATORY NO. 7:

State whether Petitioner's NAUGLES Products are currently offered to the public.

RESPONSE TO INTERROGATORY NO. 7:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly

burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, No.

INTERROGATORY NO. 8:

Identify the territorial areas in the United States where Petitioner plans to offer Petitioner's NAUGLES Products.

RESPONSE TO INTERROGATORY NO. 8:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information

that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and the territorial areas in the United States where Petitioner plans to offer Petitioner's NAUGLES Products is still in the planning stages.

INTERROGATORY NO. 9:

Identify the territorial areas in the United States where Petitioner plans to manufacture Petitioner's NAUGLES Products.

RESPONSE TO INTERROGATORY NO. 9:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein.

Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and the territorial areas in the United States where Petitioner plans to manufacture Petitioner's NAUGLES Products is still in the planning stages but will be limited to the United States.

INTERROGATORY NO. 10:

Identify the channels of trade through which Petitioner plans to offer Petitioner's NAUGLES Products.

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RESPONSE TO INTERROGATORY NO. 10:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and the channels of trade through which Petitioner plans to offer Petitioner's NAUGLES Products is still in the planning stages but will be limited to retail food outlets.

INTERROGATORY NO. 11:

Identify the representative outlets through which Petitioner plans to offer Petitioner's NAUGLES Products.

RESPONSE TO INTERROGATORY NO. 11:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

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Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and the representative outlets where Petitioner plans to offer Petitioner's NAUGLES Products is still in the planning stages but will be limited to retail food outlets.

INTERROGATORY NO.12:

Identify the target market to which Petitioner plans to offer Petitioner's NAUGLES Products.

RESPONSE TO INTERROGATORY NO. 12:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of

abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark, and the target market Petitioner plans to offer Petitioner's NAUGLES Products is still in the planning stages but will offer products to those who remember the original Naugles restaurants and those who want a quality fast casual meal.

INTERROGATORY NO. 13:

Identify the target customer base to which Petitioner plans to offer Petitioner's NAUGLES Products.

RESPONSE TO INTERROGATORY NO. 13:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in

framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and the target customer base to which Petitioner plans to offer Petitioner's NAUGLES Products is still in the planning stage but will offer products to those who remember the original Naugles restaurants and those who want a quality fast casual meal s .

INTERROGATORY NO. 14:

Identify all sources of funding to finance Petitioner's NAUGLES Products.

RESPONSE TO INTERROGATORY NO. 14:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim

or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and is pursuing all sources of funding, including private and commercial sources.

INTERROGATORY NO. 15:

Identify the marketing channels through which Petitioner plans to promote Petitioner's NAUGLES Mark.

RESPONSE TO INTERROGATORY NO. 15:

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatory as if set forth fully herein. Petitioner maintains any and all Objections to this Interrogatory stated in its original response to this Interrogatory as if set forth fully herein. Petitioner further objects to this Interrogatory on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1)

("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Interrogatory is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and the marketing channels through which Petitioner plans to promote Petitioner's NAUGLES Products is through word of mouth, the Internet and print and television marketing channels.

GENERAL OBJECTIONS TO RESPONDENT'S REQUESTS FOR PRODUCTION OF DOCUMENTS

The following General Objections to Respondent's Requests for Production of Documents are incorporated by reference in response to each and every request set forth below and are not waived with respect to any response. The following responses are based upon information and writings presently available to Petitioner.

1. Petitioner objects generally to the instructions and definitions in the Requests to the extent that those instructions and definitions fail to comply with or impose obligations in excess of Rule 34 of the Federal Rules of Civil Procedure.

2. Petitioner objects to the Requests to the extent they seek "all documents" concerning a particular subject on the grounds that performing searches of such breadth create an undue burden and expense on Petitioner. Searching for relevant documents, Petitioner has made, and will make, inquiry of all persons who are reasonably likely to have such documents.

3. Petitioner objects to the Requests to the extent it calls for production of information, documents or thing protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discover. Petitioner has stated its privilege objections expressly in its response to each request that would, in its view, reasonably be interpreted to encompass privileged information, documents, or things. Should any other requests encompass privileged information, documents, or things, however, Petitioner hereby asserts this general objection. Moreover, should any such response by Petitioner occur, it was inadvertent and shall not constitute a waiver of privilege or of Petitioner's right to object during this litigation or otherwise to the use of any such information, documents, or things.

4. Petitioner objects to the Requests to the extent that they seek information, documents or things that are not relevant to the cancellation action, or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Petitioner reserves the Requests to the extent that they seek information, documents or things not in Petitioner's possession, custody or control.

6. Petitioner objects to Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. Petitioner will attempt to construe the terms and phrases used by Respondent in ways to give those terms and phrases meanings that will result in the production

of relevant information, documents and things designed to lead to the discovery of admissible evidence.

7. Petitioner objects to the Requests to the extent that they seek private, privileged, and confidential, commercial, financial, trade secret and/or proprietary business information. Petitioner may provide this information, if relevant, not obtainable by less intrusive means, and not privileged, subject to the Trademark Trial and Appeal Board Protective Order in place between the parties. Petitioner further objects to the Requests to the extent that they call for the production of information, documents, or things that Petitioner received or obtained from a third party under a non-disclosure agreement or any other obligation in the nature of a non-disclosure agreement.

8. Petitioner will make, or has made, a good faith, reasonable effort to search for such information, documents and things responsive to the Requests and, subject to its objections, will identify or produce at an appropriate time, or has identified or produced such information documents and things within its possession, custody or control.

9. Petitioner preserves all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose in any proceeding in this or any other action.

10. Petitioner preserves the right to object to the use of any response or document in any proceeding in this or any other action.

11. Petitioner preserves the right to object on any grounds, at any time, to a demand for further response to these or any other Requests.

12. Petitioner has performed a diligent search for information, documents, and things responsive to the Requests. Discovery is ongoing, however, and Petitioner's investigation is

continuing. Therefore, Petitioner reserves its right to supplement its responses herein and its production with any responsive, non-privileged information, documents, or things that may be subsequently discovered.

DOCUMENT REQUEST NO. 1:

All documents and things which refer to Petitioner's creation and selection of Petitioner's NAUGLES Marks.

RESPONSE TO DOCUMENT REQUEST NO. 1:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and

extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 2:

All documents and things which refer to Petitioner's decision to apply to register Petitioner's NAUGLES Mark with the United States Patent and Trademark Office.

RESPONSE TO DOCUMENT REQUEST NO. 2:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act

reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 3:

All documents and things which refer to any clearance searches Petitioner performed for Petitioner's NAUGLES Mark.

RESPONSE TO DOCUMENT REQUEST NO. 3:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant

to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 4:

All documents and things evidencing Petitioner's current use of Petitioner's NAUGLES Mark.

RESPONSE TO DOCUMENT REQUEST NO. 4:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses

submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 5:

All documents and things evidencing Petitioner's intent to use Petitioner's NAUGLES Mark when Petitioner filed its application with the United States Patent and Trademark Office.

RESPONSE TO DOCUMENT REQUEST NO. 5:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 6:

All documents and things which refer to any products or services Petitioner offers for sale and/or plans to offer for sale under Petitioner's NAUGLES Mark.

RESPONSE TO DOCUMENT REQUEST NO. 6:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague,

ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 7:

All documents and things which refer to any licensing agreements Petitioner has entered into with respect to Petitioner's NAUGLES Mark.

RESPONSE TO DOCUMENT REQUEST NO. 7:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this

Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist at this time that are responsive to this request.

DOCUMENT REQUEST NO. 8:

All documents and things which refer to the territorial areas in the United States where Petitioner offers or plans to offer Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 8:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in

its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 9:

All documents and things which refer to the territorial areas in the United States where Petitioner manufacturers or plans to manufacture Petitioner's NAUGLES Products.

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RESPONSE TO DOCUMENT REQUEST NO. 9:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

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DOCUMENT REQUEST NO. 10:

All documents and things which refer to the channels of trade through which Petitioner offers or plans to offer Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 10:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 11:

All documents and things which refer to representative outlets through which Petitioner offers or plans to offer Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 11:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of

abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 12:

All documents and things which refer to representative customers who have or are intended to purchase Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 12:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and

extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 13:

All documents and things which refer to the target market Petitioner has identified for Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 13:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,*

2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 14:

All documents and things which refer to any source of sponsorship, funding, or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 14:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is

therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 15:

All documents and things which refer to Petitioner's present and/or planned marketing plans for Petitioner's NAUGLES Products including, but not limited to specimens of all advertising and promotional materials which relate to or refer Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 15:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ.

P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. At this stage of Petitioner's business plans, the requested documents are premature. Accordingly, there are no documents responsive to this request.

DOCUMENT REQUEST NO. 16:

All documents and things from any promotional outlet, including but not limited to, magazines, blogs, newspapers, social media sites, television, radio, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs, sales displays, posters, and/or other materials in which Petitioner's NAUGLES Products have been promoted and/or may be promoted in the future.

RESPONSE TO DOCUMENT REQUEST NO. 16:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in

its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents, exist at this time that are responsive to this request.

DOCUMENT REQUEST NO. 17:

All documents and things which refer to Petitioner's present and/or planned manufacturing processes and supply chains Petitioner's NAUGLES Products.

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RESPONSE TO DOCUMENT REQUEST NO. 17:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

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DOCUMENT REQUEST NO. 18:

All documents and things which refer to Petitioner's current shipping processes and or planned shipping processes for Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 18:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. At this stage of Petitioner's business plans, the requested documents are premature. Accordingly, there are no documents responsive to this request.

DOCUMENT REQUEST NO. 19:

All documents and things which refer to Petitioner's monthly expenditures to date and planned future expenditures with respect to Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 19:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act

reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 20:

All documents and things which refer to any consumer or marketing testing Petitioner has received or conducted relating to Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 20:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is

therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 21:

All documents and things which refer to any consumer or market testing Petitioner has received or conducted relating to Petitioner's NAUGLES Mark.

RESPONSE TO DOCUMENT REQUEST NO. 21:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant

to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 22:

All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Del Taco, Del Taco's marks, or Del Taco's goods and services.

RESPONSE TO DOCUMENT REQUEST NO. 22:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, specifically but not limited to, Respondent has not defined the phrases "Del Taco's marks" or "Del Taco's goods or services," not limited the requested communications to

those involving Petitioner, and Respondent can obtain for itself public information regarding third party online discussions. As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has made brief mention on the Internet that the Naugles chain may return, but no such documents exist, at this time that are responsive to this request.

DOCUMENT REQUEST NO. 23:

All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Petitioner's NAUGLES Mark.

RESPONSE TO DOCUMENT REQUEST NO. 23:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act

reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 24:

All documents and things, including but not limited to, communications with third parties, social media pages, and blogs which refer to Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 24:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant

to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DOCUMENT REQUEST NO. 25:

All documents and things, including but not limited to, plans, specifications, proposals, correspondence and memoranda, and samples that refer to the design, specifications, packaging, locations, recipes, format, and ingredients for Petitioner's NAUGLES Products.

RESPONSE TO DOCUMENT REQUEST NO. 25:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use

of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. At this stage of Petitioner's business plans, the requested documents are premature. Accordingly, there are no documents responsive to this request.

DOCUMENT REQUEST NO. 26:

All documents which refer to each and every discussion, correspondence, dispute, controversy, or proceeding of any kind or nature between Petitioner and any third party which involved Petitioner's NAUGLES Mark as applied for or any common law variation thereof.

RESPONSE TO DOCUMENT REQUEST NO. 26:

Petitioner incorporates by this reference its General Objections to Respondent's Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Request stated in

its original response to this Request as if set forth fully herein. Petitioner also objects to this Request to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.*, 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Request is outside the allowable scope of discovery in this proceeding.

No such documents currently exist apart from brief mentions made on the Internet that the NAUGLES chain may return. Before it came to Petitioner's attention that trademarks could be abandoned through disuse Petitioner wrote some blog entries petitioning Respondent to revive the NAUGLES brand. This was done in good faith that Del Taco, an entity which the Petitioner respects, would act on this suggestion. Petitioner, shortly after making this suggestion, received some communication that Respondent would act on this suggestion. Sometime later Respondent ceased responding to Petitioner regarding the subject of a NAUGLES revival. Around the

summer of 2009 Petitioner made one last attempt to discuss the subject through e-mail with Barbara Caruso, PR consultant for Del Taco, with Petitioner receiving no response. Still attempting to give Respondent a final chance beyond that Petitioner attempted to broach the subject via LinkedIn communication with Del Taco Marketing VP Noah Chillingworth. Petitioner also received no response to this communication. Only after all this effort did Petitioner learn that Respondent had actually, in the view of United States trademark law, abandoned the trademark by entirely ceasing its usage of the mark in 1994 or 1995 with no hint of usage since that time. After learning these legal facts and after having made a sincere effort to help Respondent profit from the popular NAUGLES brand and then, and only then, after seeing their apparent disinterest in any sort of a NAUGLES revival did Petitioner move forward with their own registration.

Accordingly and without waiving said objections, Petitioner will produce responsive, non-privileged documents to the extent that any exist and are within Petitioner's possession, custody or control.

DATED this 14th day of March, 2012.

Respectfully submitted,

RICHARD F. CHRISTESEN, ESQ.
ATTORNEY AT LAW

Richard F. Christesen
Attorneys for Petitioner

Christian M. Ziebarth, Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **PETITIONER'S SUPPLEMENTAL RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET NO. ONE** was sent by email, on this 14th day of March, 2012, to the party below:

April L. Besl
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/s Venus Griffith Trunnel/

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

CHRISTIAN M. ZIEBARTH, **Petitioner,** **vs.** **DEL TACO LLC** **Respondent.**	**Reg. No. 1,043,729** **Cancellation No. 92053501**

PETITIONER'S SUPPLEMENTAL RESPONSES TO RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSIONS, SET NO. ONE

The following General Objections are incorporated by reference into each response set forth below and are not waived with respect to any response.

1. Petitioner generally objects to Respondent's Admission Requests to the extent they seek disclosure of any information, document, or thing protected, privileged or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the FRCP, case law, regulations, administrative orders, or any other applicable rules, decisions, or laws including, but not limited to, information protected by the attorney-client privilege, the work-product doctrine or other applicable privilege.

2. Petitioner generally objects to Respondent's Admission Requests to the extent they purport to impose upon Petitioner obligations greater than those imposed by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

3. Petitioner generally objects to Respondent's Admission Requests to the extent that they seek information that is irrelevant and not calculated to lead to the discovery of admissible evidence or to the extent that Respondent's Admission Requests seek the disclosure

of information, documents, or things beyond the scope of discovery as provided by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

4. Petitioner objects to Respondent's Admission Requests to the extent that they request confidential or proprietary information. Petitioner may provide such information, if relevant, not obtainable by less intrusive means, and not privileged, subject to the Trademark Trial and Appeal Board Protective Order in place between the parties.

5. Petitioner reserves the right to object to further inquiry with respect to the subject matter of Respondent's Admission Requests and responses provided thereto.

6. Petitioner objects to each of Respondent's Admission Requests to the extent that they seek information that is a matter of public record or otherwise available to Respondent without imposing undue burden on Respondent.

7. Petitioner objects to Respondent's Admission Requests on the grounds that they are premature in that Petitioner has not yet completed its own discovery and preparation for the testimony or trial periods. Petitioner reserves the right to provide any subsequently discovered information, and to supplement or change its responses based on such information.

8. As to all matters referred to in these responses to Respondent's Admission Requests, investigation and discovery continues. Accordingly, Petitioner reserves its right to modify, amend or change these responses, to present, use or rely on in any proceedings and at trial any supplemental, amended, changed or modified responses and/or further information and documents obtained during discovery and preparation for trial. Further discovery, independent investigation, and legal research and analysis may supply additional facts and documents adding meaning to known facts and documents, as well as establishing entirely new factual conclusions or legal conclusions, all of which may lead to substantial additions to, changes in, and variations

from the responses set forth herein. Petitioner reserves the right to produce any subsequently discovered evidence, facts, and/or documents, and to supplement, amend, or change its responses based on such information. The responses given herein are done so in a good faith effort to supply as much information as is presently known, which should in no way lead to the prejudice of Petitioner in connection with further discovery, research or analysis. However, Petitioner reserves the right to supplement, change or amend its responses due to information inadvertently omitted from these responses. No incidental or implied admissions of any kind are intended by the responses here.

9. Petitioner preserves all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose in any proceeding in this or any other action.

10. Petitioner preserves the right to object to the use of any response or document in any proceeding in this or any other action.

11. Petitioner preserves the right to object on any grounds, at any time, to a demand for further response to these or any other Admission Requests.

REQUEST FOR ADMISSION NO. 1:

Petitioner is not currently offering any products under Petitioner's NAUGLES Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission

Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some

16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 2:

Petitioner has not previously offered any products under Petitioner's NAUGLES Mark.

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RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com."

Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 3:

Petitioner has not previously offered any services under Petitioner's NAUGLES Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting

with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 4:

Petitioner has not previously offered any services under Petitioner's NAUGLES Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health*

Inc., 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 5:

Petitioner was not offering cafeteria and restaurant services under Petitioner's NAUGLES Mark as of May 17, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or

intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1;

file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 6:

Petitioner is not currently offering cafeteria and restaurant services under Petitioner's NAUGLES Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to

this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15

Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

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REQUEST FOR ADMISSION NO. 7:

Petitioner has not entered into any licensing agreements with third parties in connection with Petitioner's NAUGLES Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following

steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in

discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 8:

Petitioner has not obtained any loans necessary to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature

and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services

as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 9:

Petitioner has not entered into a partnership to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark.

Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13

"Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 10:

Petitioner has not raised any funds to finance the manufacturing, sale and distribution of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague,

ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the

registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 11:

Petitioner has not created any marketing plans for Petitioner's NAUGLES Products.

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RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com."

Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO.12:

Petitioner has not made any monthly expenditures to date for the purpose of manufacturing or preparing to manufacture Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting

with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 13:

Petitioner has not conducted any consumer testing with respect to Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must

act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 14:

Petitioner has not conducted any market testing with respect to Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or

intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1;

file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Petitioner is informally aware that there is an interest in the Naugles brand in the populace. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 15:

Petitioner has not conducted any consumer testing with respect to Petitioner's NAUGLES Mark.

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RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com."

Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 16:

Petitioner has not conducted any market testing with respect to Petitioner's NAUGLES Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting

with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 17:

Petitioner has not entered into any contracts with third parties for manufacturing of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must

act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 18:

Petitioner has not entered into any contracts with third parties for ingredients to be used in Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or

intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1;

file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 19:

Petitioner has not entered into any contracts with third parties for shipping of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to

this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15

Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

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REQUEST FOR ADMISSION NO. 20:

Petitioner has not entered into any contracts with third parties for the sale of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following

steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in

discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 21:

Petitioner has not entered into any contracts with third parties to operate cafeterias offering Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature

and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services

as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 22:

Petitioner has not entered into any contracts with third parties for operate restaurants offering Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark.

Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13

"Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 23:

Petitioner has not entered into any contracts with third parties for locations where Petitioner's NAUGLES Products will be offered.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague,

ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the

registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 24:

Petitioner has not entered into any contracts with third parties for marketing of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com."

Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 25:

Petitioner has not entered into any negotiations with third parties for manufacturing of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting

with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 26:

Petitioner has not entered into any negotiations with third parties for ingredients to be used in Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must

act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 27:

Petitioner has not entered into any negotiations with third parties for shipping of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or

intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1;

file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 28:

Petitioner has not entered into any negotiations with third parties for the sale of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to

this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15

Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

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REQUEST FOR ADMISSION NO. 29:

Petitioner has not entered into any negotiations with third parties to operate cafeterias offering Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following

steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in

discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 30:

Petitioner has not entered into any negotiations with third parties to operate restaurants offering Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature

and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services

as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 31:

Petitioner has not entered into any negotiations with third parties for locations where Petitioner's NAUGLES Products will be offered.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark.

Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13

"Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 32:

Petitioner has not entered into any negotiations with third parties for marketing of Petitioner's NAUGLES Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague,

ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the

registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner filed an intent-to-use trademark application on or about May 17, 2010, Serial No. 85040746; therefore, Petitioner is not required to offer any products or services as of the filing of this trademark application, but must have only a bona fide intention to do so. Since 2009, Petitioner has engaged in extensive research on reviving the Naugles chain, including meeting with attorneys regarding adopting and using the Naugles trademark; meeting with Del Tacos' PR Representative Barbara Caruso, APR Caruso Communications in or around September 2009 to discuss reviving the brand; partnering with Jeff Naugle and engaging in discussions with other Naugle family members regarding the brand; recreating and testing original Naugles menu items; marketing and surveying revival of Naugles Restaurant through online blogs, facebook and Twitter pages; and securing the domain name "nauglestacos.com." Moreover, Petitioner has scouted potential locations for restaurants and met with potential investors and restaurant consultants. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 33:

The website located at the domain name http://www.mexfoodla.com/ is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 34:

The website located at the domain name http://www.mexfoodla.com/ is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 35:

All posts by "ChristianZ" at the domain name http://www.mexfoodla.com/ are by Petitioner.

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RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, deny.

REQUEST FOR ADMISSION NO. 36:

Petitioner has not discussed Petitioner's NAUGLES Products on http://www.mexfoodla.com/.

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RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 37:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://www.mexfoodla.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to

this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15

Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 38:

The website located at the domain name http://ocfoodblogs.blogspot.com/ is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission

Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, deny.

REQUEST FOR ADMISSION NO. 39:

The website located at the domain name http://ocfoodblogs.blogspot.com/ is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, deny.

REQUEST FOR ADMISSION NO. 40:

All posts by "ChristianZ" at the domain name http://ocfoodblogs.blogspot.com/ are by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or

intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, deny.

REQUEST FOR ADMISSION NO. 41:

Petitioner has not discussed Petitioner's NAUGLES Products on http://ocfoodblogs.blogspot.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims

and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary

Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 42:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://ocfoodblogs.blogspot.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of

discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named

"Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 43:

The website located at the domain name http://warmth-of-the-sun.blogspot.com/ is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health*

Inc., 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 44:

The website located at the domain name http://warmth-of-the-sun.blogspot.com/ is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature

and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 45:

All posts by "ChristianZ" at the domain name http://warmth-of-the-sun.blogspot.com/ are by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of

abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 46:

Petitioner has not discussed Petitioner's NAUGLES Products on http://warmth-of-the-sun.blogspot.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of

abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to

abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 47:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://warmth-of-the-sun.blogspot.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

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REQUEST FOR ADMISSION NO. 48:

The website located at the domain name http://ocmexfood.blogspot.com/ is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

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REQUEST FOR ADMISSION NO. 49:

The website located at the domain name http://ocmexfood.blogspot.com/ is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

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REQUEST FOR ADMISSION NO. 50:

All posts by "ChristianZ" at the domain name http://ocmexfood.blogspot.com/ are by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

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REQUEST FOR ADMISSION NO. 51:

Petitioner has not discussed Petitioner's NAUGLES Products on http://ocmexfood.blogspot.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following

steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner has left some responses to commenters letting them know that Naugles may return. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 52:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://ocmexfood.blogspot.com/.

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RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner has left responses to commenters letting them know that Naugles may return.

REQUEST FOR ADMISSION NO. 53:

The website located at the domain name http://christianziebarth.com/ is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague,

ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 54:

The website located at the domain name http://christianziebarth.com/ is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission

Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 55:

All the information posted at the domain name http://christianziebarth.com/ is posted by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 56:

Petitioner has not discussed Petitioner's NAUGLES Products on http://christianziebarth.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or

intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 57:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://christianziebarth.com/.

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims

and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary

Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 58:

The Facebook page located at http://www.facebook.com/ocmexfood?v=wall is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of

discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 59:

The Facebook page located at http://www.facebook.com/ocmexfood?v=wall is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must

act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 60:

All posts under the name "OC Mex Food" on the Facebook page located at http://www.facebook.com/ocmexfood?v=wall are by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health*

Inc., 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, deny.

REQUEST FOR ADMISSION NO. 61:

Petitioner has not discussed Petitioner's NAUGLES Products on http://www.facebook.com/ocmexfood?v=wall.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature

and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to

abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Except for expressly stated herein, deny.

REQUEST FOR ADMISSION NO. 62:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://www.facebook.com/ocmexfood?v=wall.

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

REQUEST FOR ADMISSION NO. 63:

The Twitter page located at http://twitter.com/#!/cmziebarth is owned by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

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REQUEST FOR ADMISSION NO. 64:

The Twitter page located at http://twitter.com/#!/cmziebarth is operated by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

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///

REQUEST FOR ADMISSION NO. 65:

All posts under the name "cmziebarth" on http://twitter.com/#!/cmziebarth are by Petitioner.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, admit.

///

REQUEST FOR ADMISSION NO. 66:

Petitioner has not discussed Petitioner's NAUGLES Products on http://twitter.com/#!/cmziebarth.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following

steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Admit.

REQUEST FOR ADMISSION NO. 67:

Petitioner has not discussed Petitioner's NAUGLES Mark on http://twitter.com/#!/cmziebarth.

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Petitioner incorporates by this reference its General Objections to Respondent's Admission Requests as if set forth fully herein. Petitioner maintains any and all Objections to this Admission Request stated in its original response to this Admission Request as if set forth fully herein. Petitioner further objects to this Admission Request on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Petitioner also objects that this Admission Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because information and materials regarding Petitioner's use or intended use of the mark NAUGLES is irrelevant in a cancellation action based on the claims and defenses submitted in connection with Respondent's abandonment of the NAUGLES mark. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"); T.B.M.P. § 402.01 ("While the scope of discovery is therefore somewhat broad, parties may not engage in 'fishing expeditions' and must act reasonably in framing discovery requests."); *see also Nirvana, Inc. v. Nirvana for Health Inc.,* 2010WL5099662, f.4 (T.T.A.B., Dec. 1, 2010) (non precedential) (stating that the nature and extent of petitioner's use of its mark is irrelevant in connection with petitioner's claim of abandonment of respondent's mark). As set forth in these objections, Petitioner maintains that this Admission Request is outside the allowable scope of discovery in this proceeding.

Accordingly and without waiving said objections, Petitioner has a bona fide intention to offer restaurant and cafeteria services under the NAUGLES mark and has taken the following steps in support of said intention in addition to filing the instant Petition to Cancel, on or about December 20, 2010 based on Respondent's non-use of the mark in commerce since 1995. Respondent closed the last Naugles Restaurant in 1995 in connection with their business scheme

to convert Naugles Restaurants to Del Tacos. Respondent has not used the mark in commerce on the services identified in Registration No. 1,043,729, namely, restaurant services since this time; however, Respondent filed a renewal of this registration on July 8, 1996 and Section 8 & 15 Affidavits on May 18, 2006 presenting a photo of an old Naugles Restaurant sign that no longer exists. Respondent declared that they are still using the mark on the goods identified in the registration, even though no restaurant services were offered since closing the last Naugles some 16 years earlier, and even though Respondent expressly stated in a document named "Franchise Offering Circular," "We no longer offer restaurants under the name of Naugles." (Item 1, Page 1; file name UFOC 3/2004). Del Tacos also identifies and lists what it categorizes as "Primary Trademarks" and the Naugles trademark is NOT listed as a Primary Trademark. (Item 13 "Trademarks", Page 20; file name UFOC 3/2004). Further, in a document named "Marketing Meeting – Reno, September 15, 1995" it states "Flyers to hand out announcing the closure of Naugles."

Additionally, Petitioner's account is separate and apart from his planned revival of the Naugles Restaurant and is not relevant to cancellation of Respondent's trademark due to abandonment based on non-use of the mark in connection with restaurant services for over 16 years. Admit.

DATED this 14th day of March, 2012.

Respectfully submitted,

RICHARD F. CHRISTESEN, ESQ.
ATTORNEY AT LAW

Richard F. Christesen
Attorneys for Petitioner

Christian M. Ziebarth, Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **PETITIONER'S SUPPLEMENTAL RESPONSES TO RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSIONS, SET NO. ONE** was sent by email, on this 14th day of March, 2012, to the party below:

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