ESTTA Tracking number: **ESTTA562053**

Filing date: **09/30/2013**

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

| | |
|---|---|
| Proceeding | 92053501 |
| Party | Plaintiff<br>Christian M. Ziebarth |
| Correspondence Address | KELLY K PFEIFFER<br>AMEZCUA-MOLL ASSOCIATES PC<br>LINCOLN PROFESSIONAL CENTER, 1122 E LINCOLN AVE SUITE 203<br>ORANGE, CA 92865<br>UNITED STATES<br>kelly@amalaw.net, kelpfeiffer@aol.com |
| Submission | Plaintiff's Notice of Reliance |
| Filer's Name | Kelly K. Pfeiffer |
| Filer's e-mail | kelly@amalaw.net |
| Signature | /Kelly K. Pfeiffer/ |
| Date | 09/30/2013 |
| Attachments | P's Notice of Reliance - Disc Rsps CW (3 of 6).pdf(3761878 bytes )<br>P's Notice of Reliance - Disc Rsps (4 of 6).pdf(5391012 bytes ) |

*Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2001, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 8:

Provide the physical address for all restaurants open to the public as of December 31, 2002 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2002, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 9:

Provide the physical address for all restaurants open to the public as of December 31, 2003 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2003, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 10:

Provide the physical address for all restaurants open to the public as of December 31, 2004 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive.

Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2004, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 11:

Provide the physical address for all restaurants open to the public as of December 31, 2005 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211

(TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2005, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 12:

Provide the physical address for all restaurants open to the public as of December 31, 2006 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2006, Respondent did not itself own a

restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 13:

Provide the physical address for all restaurants open to the public as of December 31, 2007 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2007, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 14:

Provide the physical address for all restaurants open to the public as of December 31, 2008 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2008, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 15:

Provide the physical address for all restaurants open to the public as of December 31, 2009 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2009, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 16:

Provide the physical address for all restaurants open to the public as of December 31, 2010 that were named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on

behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2010, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 17:

Provide the physical address for all restaurants currently open to the public that are named "Naugles" and owned by Respondent.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re*

*Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states it does not itself currently own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" is currently being made in connection with restaurant services.

Dated: **October 21, 2011**

April L. Besl
Joshua A. Lorentz
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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 overnight mail, on this 21st day of October, 2011, to Susan M. Natland and Gregory Phillips, Knobbe Martens Olson & Bear LLP, 2040 Main Street, 14th Floor, Irvine, California 92614, Susan.Natland@kmob.com and Gregory.Phillips@kmob.com.

April L Besl

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

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

**PETITIONER'S SECOND SET OF REQUESTS FOR INTERROGATORIES NOS. (18 - 37)**

Pursuant to the Rules Practice of the U.S. Patent and Trademark Office's ("PTO") Trademark Rules of Practice and the applicable Federal Rules of Civil Procedure ("FRCP"), Del Taco, LLC ("Del Taco"), is hereby required to answer separately and fully, in writing and under oath, each of the following interrogatories.

**DEFINITIONS**

The following definitions and instructions shall apply to each of the Interrogatories herein:

1. The terms or words "Del Taco" and "Respondent" shall mean Del Taco, LLC, and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company either within the United States or a foreign country.

**INTERROGATORY NO. 18:**

Describe in detail all activities undertaken by Del Taco to provide restaurant services in connection with the "NAUGLES" trademark during the period 1995-2006.

**INTERROGATORY NO. 19:**

Describe in detail all activities undertaken by Del Taco to provide restaurant services in connection with the "NAUGLES" trademark after renewing this trademark in 2006 to the present time.

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**INTERROGATORY NO. 24:**

Describe in detail how Del Taco used the name "NAUGLES" in connection with restaurant services between 1995-2006.

**INTERROGATORY NO. 25:**

Describe in detail how Del Taco used the name "NAUGLES" in connection with restaurant services between 2006 and the present.

DATED this 22nd day of August, 2012.

Respectfully submitted,

RICHARD F CHRISTESEN, ESQ.
ATTORNEY AT LAW

Richard F Christesen
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **PETITIONER'S SECOND SET OF REQUESTS FOR INTERROGATORIES NOS. (18 - 37)** was sent by email, on this 22nd day of August, 2012, to the party below:

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*Attorneys for Respondent*
*Del Taco LLC*

/s Venus Griffith Trunnel/

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

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

**DEL TACO LLC'S SUPPLEMENTAL RESPONSES TO PETITIONER'S SECOND SET OF REQUESTS FOR INTERROGATORIES NOS. 18-37**

In accordance with Rule 33 of Federal Rules of Civil Procedure and Rule 405.04 of the Trademark Rules of Practice, Respondent Del Taco LLC ("Respondent" or "Del Taco") hereby submits the following supplemental responses to Petitioner Christian M. Ziebarth's ("Petitioner" or "Ziebarth") Second Set of Requests for Interrogatories Nos. 18-37.

**PRELIMINARY STATEMENTS AND GENERAL OBJECTIONS**

1. These responses are based upon the best information presently available but without prejudice to the right to make modified or additional answers should better or further information become available.

2. Except for the explicit facts stated herein, no incidental admissions are intended hereby. The fact that Respondent responded to any of the Interrogatories is not an admission that it accepts or admits the existence of facts set forth or assumed by any Interrogatory, or that such responses constituted admissible evidence.

3. In light of the pending Motion for Sanctions based on Petitioner's deficient discovery responses, Respondent anticipates other facts, documents or witnesses may be

Interrogatory No. 18.

Describe in detail all activities undertaken by Del Taco to provide restaurant services in connection with the "NAUGLES" trademark during the period 1995-2006.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that during the specified time period the NAUGLES mark was used on

signage for restaurants, on point of sale advertising for the restaurants, in marketing for the restaurant on Respondent's website, and in merchandising of NAUGLES goods featuring the mark and iconic NAUGLES brand.

Interrogatory No. 19.

Describe in detail all activities undertaken by Del Taco to provide restaurant services in connection with the "NAUGLES" trademark after renewing this trademark in 2006 to the present.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that during the specified time period, the mark has been used in marketing for the restaurant on Respondent's website, in merchandising of NAUGLES goods featuring the mark and iconic NAUGLES brand, and is part of a planned marketing campaign to be run throughout all Del Taco locations entitled "Naugles Secret Menu" that is

currently postponed in light of this proceeding but had been in planning stages long before this proceeding was filed.

Interrogatory No. 24.

Describe in detail how Del Taco used the name "NAUGLES" in connection with restaurant services between 1995-2006.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Further, Respondent objects as this question is essentially a duplicate of Interrogatory No. 18. Without waiving the foregoing, see response to Interrogatory No. 18.

Interrogatory No. 25.

Describe in detail how Del Taco used the name "NAUGLES" in connection with restaurant services between 2006 and the present.

**ANSWER:**

Respondent reiterates its General Objections and Respondent specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive.

Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. *See e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken* Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Further, Respondent objects as this question is essentially a duplicate of Interrogatory No. 19. Without waiving the foregoing, see response to Interrogatory No. 19.

Dated: **October 26, 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 26th of October, 2012, to Richard F. Christesen, 6905 S 1300, E #233, Midvale, Utah, 84047.

April L Besl