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

Proceeding	92053501
Party	Plaintiff Christian M. Ziebarth
Correspondence Address	KELLY K PFEIFFER AMEZCUA-MOLL ASSOCIATES PC LINCOLN PROFESSIONAL CENTER, 1122 E LINCOLN AVE SUITE 203 ORANGE, CA 92865 UNITED STATES 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 (6 of 6).pdf(4879005 bytes )

Respondent further 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 admits that as of December 31, 2004 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 11:

Admit that as of December 31, 2005, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further 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 admits that as of December 31, 2005 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 12:

Admit that as of December 31, 2006, Respondent did not own a restaurant named "Naugles" in the United States.

**ANSWER:**

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further 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 admits that as of December 31, 2006 Respondent did not itself own a restaurant named "Naugles" in the

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

Req. for Admission. 13:

Admit that as of December 31, 2007, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further 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 admits that as of December 31, 2007 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 14:

Admit that as of December 31, 2008, Respondent did not own a restaurant named "Naugles" in the United States.

**ANSWER:**

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further 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 admits that as of December 31, 2008 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 15:

Admit that as of December 31, 2009, Respondent did not own a restaurant named "Naugles" in the United States.

**ANSWER:**

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

Respondent further 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 admits that as of December 31, 2009 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 16:

Admit that as of December 31, 2010, Respondent did not own a restaurant named "Naugles" in the United States.

**ANSWER:**

Respondent reiterates its General Objections and 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. Without waiving the foregoing, Respondent admits that as of December 31, 2010 Respondent did not itself own a restaurant named

"Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurants.

Req. for Admission. 17:

Admit that Respondent does not currently own a restaurant open to the public named "Naugles."

**ANSWER:**

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further 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 admits that it currently did not itself own a restaurant named "Naugles" 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

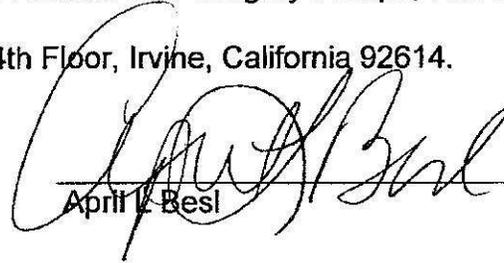


April L. Best  
Joshua A. Lorentz  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.best@dinslaw.com

*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 21<sup>st</sup> day of October, 2011, to Susan M. Natland and Gregory Phillips, Knobbe Martens Olson & Bear LLP, 2040 Main Street, 14th Floor, Irvine, California 92614.



April L. Best

**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 SECOND SET OF REQUESTS  
FOR ADMISSIONS NOS. (18 - 25)**

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 admit or deny, in writing and under oath, each of the following admissions.

**DEFINITIONS**

The following definitions and instructions shall apply to each of the Requests 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.

**REQUEST FOR ADMISSION NO. 21:**

Admit that Del Taco does not currently license the right to use the Naugles trademark to any third party in connection with restaurant services.

**REQUEST FOR ADMISSION NO. 22:**

Admit that Del Taco has not operated a physical restaurant in the United States under the trademark "Naugles" since late 1995.

**REQUEST FOR ADMISSION NO. 23:**

Admit that Del Taco does not plan to operate a physical restaurant in the United States under the trademark "NAUGLES" in the next 5 years.

**REQUEST FOR ADMISSION NO. 24:**

Admit that the sign in the specimen submitted to the PTO regarding the "NAUGLES" trademark in or about October 2007 was not being used by Del Taco to provide a physical restaurant in the United States at the time Del Taco renewed this registration.

**REQUEST FOR ADMISSION NO. 25:**

Admit that the sign in the specimen submitted to the PTO regarding the "NAUGLES" trademark in or about October 2007 was not being used by Del Taco to provide any restaurant services at the time Del Taco renewed this registration.

DATED this 22nd day of August, 2012.

Respectfully submitted,

RICHARD F CHRISTESEN, ESQ.  
ATTORNEY AT LAW



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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 ADMISSIONS NOS. (18 - 25)** was sent by email, on this 22nd day of August, 2012, to the party below:

April L. Besl  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.besl@dinslaw.com  
*Attorneys for Respondent*  
*Del Taco LLC*

/s Venus Griffith Trunnell/

**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**

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**DEL TACO LLC'S SUPPLEMENTAL RESPONSES TO PETITIONER'S SECOND SET  
OF REQUESTS FOR ADMISSION NOS. 18-25**

In accordance with Rule 36 of Federal Rules of Civil Procedure and Rule 407.03 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 Admission Nos. 18-25.

**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. These responses are in accordance with the instructions set forth in Petitioner's Second Set of Requests for Admissions Nos. 18-25, which do not incorporate expressly or by reference, any other instructions previously set-forth in Petitioner's First Set of Requests for Admissions Nos. 1-17.

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

Request No. 22.

Admit that Del Taco has not operated a physical restaurant in the United States under the trademark "Naugles" since late 1995.

**ANSWER:**

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further 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). Furthermore, the definition of "late 1995" is a vague and undefined time-period. For purposes of this response, Respondent shall define "late 1995" as the last day of the year, specifically, December 31, 1995. Without waving the foregoing, Respondent admits that since December 31, 1995 it has not operated a restaurant under the name "Naugles" in the United States but denies that it has not used the NAUGLES trademark in connection with restaurant services during that time period.

Request No. 23.

Admit that Del Taco does not plan to operate a physical restaurant in the United States under the trademark "NAUGLES" in the next 5 years.

**ANSWER:**

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, ~~unduly burdensome, oppressive, and expensive.~~ Respondent further 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 waving the foregoing, Respondent states that its marketing and businesses plans are subject to change over the next five year period and

Respondent has specific plans to use Respondent's NAUGLES mark in connection with its restaurant services on menus and in marketing campaigns, but admits that it currently does not plan to operate a restaurant under the name "Naugles" within the next five years.

1980's. Respondent denies all other facts, statements, and allegations contained in Request No. 25.

Dated: October 26, 2012



April L. Best  
Joshua A. Lorentz  
DINSMORE & SHOHL LLP  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8527-direct  
(513) 977-8141-fax  
april.best@dinslaw.com

*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.

