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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
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Submission	Testimony For Plaintiff
Filer's Name	Kelly K. Pfeiffer
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Signature	/Kelly K. Pfeiffer/
Date	10/17/2013
Attachments	Affidavit of D. Dvorak.pdf(289731 bytes)

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

In the Matter of Registration No. 1043729
Date of Registration: July 13, 1976

CHRISTIAN M. ZIEBARTH
Petitioner,

Cancellation No.: 92053501

v.

DEL TACO, LLC
Registrant.

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

PETITIONER'S TESTIMONY AFFIDAVIT OF DANIEL DVORAK

I, Daniel Dvorak, swear as follows:

1. My name is Daniel Dvorak. I am the Lead Industrial Designer/Product Designer for Alco Designs, located at 407 East Redondo Beach Blvd., Gardena, CA 90248. I also own Protodraft Designs, my own design consulting business. In addition, I am a partner with Petitioner CHRISTIAN M. ZIEBARTH ("Mr. Ziebarth") and Josh Maxwell in a business venture to use the trademark NAUGLES in connection with restaurant and cafeteria services. I have personal knowledge of the facts stated herein.

2. In or about February or March of 2010, Mr. Ziebarth first shared with me his idea to use the NAUGLES trademark in association with restaurant and cafeteria services. During these months, Mr. Ziebarth and I were collaborating on two, unrelated business projects and, as such, we had occasion to meet regularly. During those meetings, Mr. Ziebarth shared with me the

backstory on how this idea of his came to fruition, namely, his initial attempts to bring the idea to Del Taco and, when he was met with no interest, his decision to pursue a venture using the mark NAUGLES on his own.

3. From approximately February 2010 through September 2010, I met regularly with Mr. Ziebarth. Each time we would meet, he would update me on his progress in establishing restaurant and cafeteria services under the NAUGLES mark. I was informed and believe that, beginning prior to May of 2010, Mr. Ziebarth was actively seeking financial backing for his NAUGLES venture, as well as scouting locations for potential NAUGLES restaurants.

4. In or about May of 2010, I offered to handle the marketing for Mr. Ziebarth's NAUGLES venture, as my professional background is primarily in marketing. In or about August or September of 2010, I reiterated to Mr. Ziebarth my desire to work with him on his NAUGLES venture.

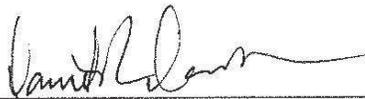
5. On December 8, 2010, Mr. Ziebarth shared with me pictures of specific properties where he was considering opening NAUGLES restaurants in the future. Mr. Ziebarth also shared with me the results of some research he had conducted on vintage NAUGLES memorabilia.

6. Subsequent to Mr. Ziebarth filing his intent to use application for the mark NAUGLES with the USPTO, he took me on as a partner in his NAUGLES venture, along with Josh Maxwell. We have sought and obtained investors, created detailed business plans, scoped out locations, and much more. I helped to create the document previously submitted as Petitioner's Exhibit R (filed as CONFIDENTIAL), which is a detailed summary of our intended operations. As can be seen from the contents of this document, Mr. Maxwell, Mr. Ziebarth and I have scoped out and have already planned for at least 5 initial locations in Southern California, as

page 1 of this document illustrates. We have spoken with investors at length about their willingness to hit the ground running on this venture as soon as this proceeding is concluded.

I, Daniel Dvorak, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 35 U.S.C. 25 and 18 U.S.C. 1001 of the United States Code, and that such willful false statements may jeopardize the validity of the foregoing statements, declare that all statements are made of my own knowledge and are true, and all statements made on information and belief are believed to be true.

Executed on October 17, 2013 in Orange County California

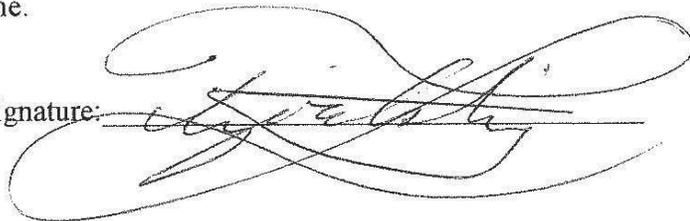


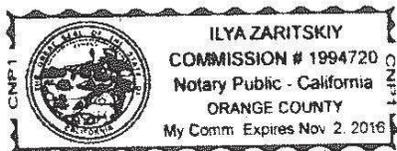
Daniel Dvorak

State of California
County of Orange

Subscribed and sworn to (or affirmed) before me on this 17th day of October, 2013, by Daniel Dvorak, who provided to me on the basis of satisfactory evidence to be the person who appeared before me.

(seal)

Signature: 



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **PETITIONER'S TESTIMONY AFFIDAVIT OF DANIEL DVORAK** was served upon April L. Besl, DINSMORE & SHOHL, LLP, attorney of record for the Registrant in this action by depositing one copy thereof in the United States mail, first-class postage prepaid on October 17, 2013 and addressed as follows:

April L. Besl, Esq.
DINSMORE & SHOHL, LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

/Kelly K. Pfeiffer/ _____
Kelly K. Pfeiffer
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Attorney for Petitioner CHRISTIAN M. ZIEBARTH