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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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Filer's Name	April L Besl
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Date	01/15/2014
Attachments	Notice of Reliance - 1st Interrogs.pdf(8080 bytes ) 2011-07-11 Petitioner_s Response to Respondent_s First Set of Interrogatories and Requests for Produ.PDF(1882137 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**

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**RESPONDENT DEL TACO LLC'S NOTICE OF RELIANCE**

Pursuant to Rule 704.09 of the Trademark Trial and Appeal Board Manual of Procedure and 37 CFR § 2.120(j), Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby gives notice that Del Taco offers into evidence and will rely on the attached Petitioner's Response to Respondent's First Set of Interrogatories and Requests for Production of Documents.

Respectfully Submitted,

Dated: **January 15, 2014**

*/ April L Besl /*

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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, with courtesy copy via email, on this 15<sup>th</sup> day of January, 2014, to Kelly K. Pfeiffer, Amezcua-Moll Associations PC, Lincoln Professional Center, 1122 E. Lincoln Ave. Suite 203, Orange, CA 92865.

*/ April L Besl /*  
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April L Besl

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

Christian M. Ziebarth,  
Petitioner,

v.

Del Taco, LLC,  
Respondent.

Cancellation No.  
92053501

**PETITIONER'S RESPONSE TO RESPONDENT'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

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 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 that they seek the disclosure of information that is not relevant to any party's claim or defense.

3. Petitioner generally objects to Respondent's Interrogatories, including the instructions and definitions, 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.

4. Petitioner generally objects to Respondent's Interrogatories to the extent that they seek information that is 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.

5. 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).

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 Petitioner.

7. 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.

8. 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 an ordinary word or multiple meanings to a single word.

9. 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.

10. Petitioner generally 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.

11. 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).

12. As to all matters referred to in these responses to Respondent's Interrogatories, investigation and discovery continues. Accordingly, Petitioner reserves his right to modify these responses and to present in any proceedings and at trial any further information and documents obtained during discovery as well as during the testimony and trial periods and preparation for the testimony and trial periods. Further discovery, independent investigation, and legal research and

analysis may supply additional facts adding meaning to known facts, as well as establish 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 or change its responses based on such information. Moreover, certain of Respondent's Interrogatories are premature in that they seek contentions or other information that Petitioner cannot provide at this stage of the case. Finally, certain of Respondent's Interrogatories are subject to specific objections and are therefore not the subject of legitimate discovery. 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.

**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 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”) (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 also objects to this Interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. 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”) (emphasis added); 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.*,

2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 also objects to this Interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 also objects to this Interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. Petitioner further objects to this interrogatory to the extent that it requests information protected by the attorney-client privilege or work product doctrine. 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**INTERROGATORY NO. 10:**

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

**RESPONSE TO INTERROGATORY NO. 10:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**INTERROGATORY NO. 15:**

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

**RESPONSE TO INTERROGATORY NO. 15:**

Petitioner incorporates by this reference its General Objections to Respondent's Interrogatories 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 that it calls for the production of information, documents or things protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. 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 request 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 objects to the Requests to the extent that they seek information, documents or things not in Petitioner's possession, custody or control.

6. Petitioner objects to the 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 objects to each request to the extent that each request calls for the production or identification of attorney-client privilege and/or work product documents generated by Petitioner's counsel or its agents for internal use and/or privileged communications between or among Petitioner and its counsel since the commencement of this action. The applicability of the attorney-client privilege and/or work product doctrine to such documents is so clear and the burden of identifying each such document is so great that requiring Petitioner to do so would be so burdensome as to result in injustice and would be oppressive in that the burden imposed thereby would be incommensurate with the result sought by Respondent.

10. 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.

**RESPONSE TO RESPONDENT'S FIRST REQUESTS**  
**FOR PRODUCTION OF DOCUMENTS**

**DOCUMENT REQUEST NO. 1:**

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

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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”) (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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”) (emphasis added); 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.*, 2010 WL 5099662, f.4

(T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**DOCUMENT REQUEST NO. 9:**

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

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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”) (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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”) (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 to 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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**DOCUMENT REQUEST NO. 17:**

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

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**DOCUMENT REQUEST NO. 20:**

All documents and things which refer to any consumer or market 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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 or 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 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, overly broad and seeks documents and things that are 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.

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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") (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**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 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”) (emphasis added); 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.*, 2010 WL 5099662, f.4 (T.T.A.B., Dec. 1, 2010) (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).

**DOCUMENT REQUEST NO. 27:**

All documents and things on which Petitioner relied in making its allegations contained in Petitioner's PETITION FOR CANCELLATION.

**RESPONSE TO DOCUMENT REQUEST NO. 27:**

Petitioner incorporates by this reference its General Objections to Respondent's Requests 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 to this Request to the extent that it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

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

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 11, 2011

By: \_\_\_\_\_

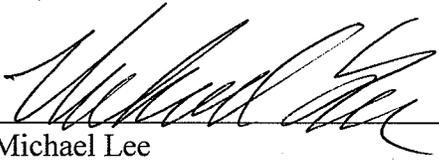
  
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Attorneys for Christian M. Ziebarth, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITIONER'S RESPONSE TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on July 11, 2011, addressed as follows:

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

  
Michael Lee