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

Proceeding	92053501
Party	Defendant Del Taco, LLC
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Submission	Other Motions/Papers
Filer's Name	April L Besl
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Signature	/april l besl/
Date	01/15/2014
Attachments	Cross Exam Testimony - Ziebarth.pdf(9229 bytes) 6239 - Vol I. - Christian Ziebarth - Full.pdf(427888 bytes) Ziebarth Verification Page 11-26-13.pdf(425213 bytes) 1.pdf(548472 bytes) 2.pdf(1088923 bytes) 3.pdf(5986753 bytes) 4.pdf(640766 bytes) 5.pdf(1092703 bytes) 6.pdf(1043863 bytes) 7.pdf(1075321 bytes) 8.pdf(1094078 bytes) 9.pdf(1111845 bytes) 10.pdf(1073378 bytes) 11.pdf(546570 bytes) A.pdf(2203900 bytes) B-1.pdf(4302122 bytes) B-2.pdf(3364458 bytes) B-3.pdf(3364458 bytes) D.pdf(1490121 bytes) E.pdf(440334 bytes) F.pdf(1586701 bytes) G.pdf(684929 bytes) H.pdf(4845420 bytes) I.pdf(1396319 bytes) J.pdf(1463397 bytes) L.pdf(1907827 bytes) M.pdf(1106637 bytes) N.pdf(2592762 bytes) P.pdf(429543 bytes) Q.pdf(1616085 bytes)

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

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

RESPONDENT DEL TACO LLC'S NOTICE OF FILING
CROSS-EXAMINATION TESTIMONY OF CHRISTIAN ZIEBARTH AND EXHIBITS

Pursuant to Rule 703.01 of the Trademark Trial and Appeal Board Manual of Procedure and Trademark Rules 2.123(h), Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby files the cross-examination testimony of Christian Ziebarth and accompanying Exhibits 1-11, A-B, D-J, L-N, and P-R.

Please note that Exhibit R has been marked as CONFIDENTIAL, and therefore has been filed separately under seal in accordance with the Stipulated Protective Order filed with the Board on June 12, 2012 and Trademark Rule 2.126(c). In addition, the portion of the testimony of Mr. Ziebarth set forth below has been marked CONFIDENTIAL and is also being separately filed under seal pursuant to the Stipulated Protective Order and Trademark Rule 2.126(c).

CONFIDENTIAL Deposition Testimony:

- 140:19 to 158:1

Respectfully Submitted,

Dated: **January 15, 2014**

/ April L Besl /

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 15th 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 /
April L Besl

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

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

CROSS-EXAMINATION DEPOSITION OF:

CHRISTIAN M. ZIEBARTH

Monday, October 28, 2013

Reported by:

Stephanie Leslie

CSR No. 12893

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 TRADEMARK TRIAL AND APPEAL BOARD
3
4
5 CHRISTIAN M. ZIEBARTH,)
)
6 Petitioner,)
)
7 vs.) Reg. No. 1,043,729
)
8) Cancellation No. 92053501
DEL TACO LLC,)
9)
Respondent.)
10 _____)
11
12
13
14
15 The Cross-Examination Deposition of CHRISTIAN
16 M. ZIEBARTH, taken on behalf of the Respondent, before
17 Stephanie Leslie, Certified Shorthand Reporter 12893,
18 for the State of California, commencing at 10:09 a.m.,
19 Monday, October 28, 2013, at 128 East Katella Avenue,
20 Suite 260, Orange, California.
21
22
23
24
25

1 APPEARANCES:

2

3 For Petitioner:

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9 For Respondent (appearing via video conference):

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1 Monday, October 28, 2013, 10:09 a.m.
2 Orange, California
3
4 CHRISTIAN M. ZIEBARTH,
5 was called as a witness by and on behalf of the
6 Respondent, and having been first duly sworn by the
7 Certified Shorthand Reporter, was examined and
8 testified as follows:
9
10 EXAMINATION
11 BY MS. BESL:
12 Q Could you state your name for the record.
13 A Christian Ziebarth.
14 Q "Ziebarth"?
15 A Yeah. I understand people say "Ziebarth," and
16 that's fine.
17 Q Okay. I will make sure to use "Ziebarth." We
18 have been introduced, but my name is April Besl, and
19 I'm counsel for Del Taco. I will be taking your
20 cross-examination deposition today. Have you ever been
21 deposed before or given live testimony?
22 A No.
23 Q Okay. If you have any questions as we go
24 through -- if I ask something that you don't
25 understand, ask me to repeat the question or clarify.

1 This is all being taken down by the court reporter.
2 This is all going to be written. There's no video
3 recording to be made; so if you could, refrain from
4 shrugging shoulders, nodding your head, always making
5 sure you have a verbal response. That would be much
6 appreciated so she can take it down. And as we go
7 through, if your attorney makes any objections -- she
8 might occasionally make an objection. Wait until she's
9 done speaking before you answer; and then we can go
10 forward, if that works for you.
11 A Yes.
12 Q Excellent. Thank you very much.
13 MS. BESL: Could the court reporter or
14 Kelly -- one of you handed -- request we have what's in
15 Folder No. 1 marked as Exhibit No. 1 for the
16 Respondent.
17 (Whereupon, Respondent's Exhibit 1 was
18 marked for identification.)
19 THE WITNESS: Okay. I have it.
20 BY MS. BESL:
21 Q And have you ever seen this document before?
22 A Yes.
23 Q And can you identify what it is for the
24 record.
25 A It's a notice of cross-examine deposition.

1 Q And you received this before today about the
2 live cross-examination of your affidavit testimony?
3 A Yes.
4 Q And in preparation for today's deposition, did
5 you review any documents? Did you meet with anyone?
6 How did you prepare?
7 A I reviewed documents, and I've had
8 communications with my attorney.
9 Q Okay. And without going into anything you
10 discussed with your attorney, what kind of documents
11 did you review?
12 A What kind? Different papers that have come
13 about because of the case and things that were, like,
14 copies of e-mails and such, and various filings.
15 Q Sorry. What was that again?
16 A And various trademark board filings.
17 Q And what kind of e-mails were you reviewing?
18 Who were they between?
19 A Some to Barbara Caruso, some to Jeff Naugle,
20 some to Rob Hallstrom, possibly others.
21 Q And were these all the e-mails that were
22 attached to your affidavit; or were these others as
23 well, to your knowledge?
24 A You're asking what e-mails were -- are in the
25 exhibits?

1 Q The e-mails you reviewed -- were these the
2 ones that were in the exhibits, or were these other
3 e-mails?
4 A Oh. They were in the exhibits.
5 Q Did you do anything else to prepare for today?
6 A That's -- what I've told is a good summation
7 of my preparation.
8 Q What do you mean you were told that's a good
9 summation?
10 A No. I didn't say I was told. I'm just saying
11 what I have said so far is a good summation of my
12 preparation.
13 Q Okay. Thank you. Have you talked to anyone
14 else besides your attorney about today?
15 A I mentioned very vaguely to a couple people
16 that I had a cross-examination this morning.
17 Q And who were they?
18 A Two business partners and a cousin.
19 Q And who was the -- who were the business
20 partners?
21 A Dan Dvorak and Joshua Maxwell.
22 Q And who was the cousin?
23 A Scott Parks.
24 Q Okay. And that was all the preparation and
25 discussions you've had, basically what you just told

1 me?

2 A Basically, yes.

3 MS. BESL: Okay. All right. If the court

4 reporter could mark what's in Folder No. 2 as Exhibit 2

5 and then hand it to you, I'd appreciate it.

6 (Whereupon, Respondent's Exhibit 2 was

7 marked for identification.)

8 THE WITNESS: Okay. I have Exhibit 2 now.

9 BY MS. BESL:

10 Q Thank you. Have you ever seen this document

11 before?

12 A Yes.

13 Q Okay. And can you identify it for the record,

14 please, the title.

15 A The title simply says "Stipulation" or -- is

16 that the title you were referring to?

17 Q Yes. Thank you.

18 A Okay.

19 Q So have you reviewed this stipulation before?

20 A Yes.

21 Q Okay. And you understand it to involve the

22 right for parties to conduct live cross-examination

23 testimony of affidavits in this case?

24 A Yes.

25 Q Thank you.

1 MS. BESL: And if the court reporter could,
2 please, mark Exhibit 3 and give a copy to the witness,
3 I'd appreciate it.
4 (Whereupon, Respondent's Exhibit 3 was
5 marked for identification.)
6 THE WITNESS: Okay. I have Exhibit 3 now.
7 BY MS. BESL:
8 Q Okay. And can you identify this document for
9 the record, please, the title of it.
10 A "Petitioner's Testimony, Affidavit of
11 Christian Ziebarth."
12 Q And you've seen this document before?
13 A Yes.
14 Q And you've -- you've signed this document as
15 your sworn testimony in this proceeding; is that
16 correct?
17 A Yes.
18 Q Okay. Now, did you draft this document
19 yourself; or did you have help in drafting it?
20 A I had legal help.
21 Q Your counsel hoped you draft it, I'm assuming?
22 A Yes.
23 Q Okay. How much of this was your own words --
24 put into your own words that you personally drafted?
25 A I don't know about a percentage, but I think a

1 lot of it came from my wording and then was kind of put
2 into the format for this affidavit by my legal counsel.
3 Q Okay. Kind of -- I'd like to take you through
4 some of the statements that you made here. Let's kind
5 of start with your background, who you are. It says
6 here in paragraph 2 on page 1 since 2005 you've been an
7 online blogger, focusing mainly on food in Orange
8 County, California. Is that your primary source of
9 employment, or are you employed elsewhere as well?
10 A The blog is mainly a hobby. I have employment
11 elsewhere.
12 Q What is your current employment?
13 A Basically, I'm a Web developer.
14 Q Are you operating on your own, or are you with
15 an organization?
16 A A little of each.
17 Q You do consultant work for an organization, or
18 how does that work?
19 MS. PFEIFFER: April, I'm going to just insert
20 an objection here. This is outside the scope of the
21 direct exam. He doesn't go into any of this in his
22 affidavit, so I have a continuing objection to this
23 line of questioning.
24 MS. BESL: Okay. Understood.
25 MS. NOWELS: You can answer, though.

1 MS. PFEIFFER: Go ahead and answer.
2 THE WITNESS: Yes, I do consulting work, and I
3 do some projects on my own. Some of each.
4 BY MS. BESL:
5 Q And since graduating school, has that
6 primarily been your career, in the Web-development
7 field?
8 A Primar- --
9 MS. PFEIFFER: Objection, outside the scope of
10 his direct testimony. This is really irrelevant.
11 THE COURT REPORTER: And I didn't hear you
12 completely. Can you repeat your question? I'm sorry.
13 MS. PFEIFFER: She needs you to repeat the
14 question.
15 MS. BESL: Oh, yes.
16 BY MS. BESL:
17 Q I was just asking, since graduating from
18 school, would that have been your primary employment,
19 as a Web developer?
20 A Primarily, yes.
21 Q Have you ever worked in the restaurant
22 industry before?
23 A Yes.
24 Q And what was your employment in the restaurant
25 industry previously?

1 MS. PFEIFFER: Objection, outside the scope of
2 the direct exam.
3 THE WITNESS: I have worked with two different
4 fast-food chains before.
5 BY MS. BESL:
6 Q And what as your position at the fast-food
7 chain?
8 MS. PFEIFFER: Ongoing objection. Are you
9 going to go really far down this road, April?
10 MS. BESL: No. Essentially, I'm just trying
11 to figure out -- since part of the issue here is his
12 standing, just what kind of experience he's had in the
13 restaurant industry would contribute to his ability to
14 open up a restaurant at the time of his filing. So I
15 think just in terms of figuring out what kind of
16 experience he's had in the restaurant industry -- I
17 think that's relevant to the standing question, so as
18 far as --
19 MS. PFEIFFER: I'm sorry. Are you saying that
20 you think whether or not he had intent to use the
21 mark -- that equates to you need information about his
22 restaurant history?
23 MS. BESL: I think the extent of the
24 experience in the restaurant industry contributes to a
25 lot of what is said throughout the affidavit, which I'm

1 happy to point out as we go. But I do think the work
2 experience is -- and whether or not he was employed in
3 the restaurant field is relevant.
4 MS. PFEIFFER: Okay. Whether or not you take
5 the position that it's relevant, it's outside the scope
6 of the direct; and if you had wanted that information,
7 I guess a deposition would have been the way to go; but
8 that was not contained in his affidavit, so my
9 objection to this entire line of questioning continues.
10 Go ahead, Christian.
11 Can you repeat?
12 MS. BESL: I think throughout his
13 understanding and his ability -- the affidavit talks
14 about throughout his ability to open up the restaurant,
15 partner his assumptions and his beliefs in terms of Del
16 Taco's intentions to go forward with certain things
17 demonstrate an apparent understanding of the restaurant
18 industry, which I think is duly relevant; and his
19 background in the restaurant industry would be relevant
20 to the assumptions and the opinions that he has leveled
21 throughout his affidavit.
22 So I understand you have an objection that
23 it's outside the scope; but I think it is truly within
24 the scope if there's going to be testimony as to his
25 assumption being correct as to a practice in the

1 restaurant industry by Del Taco; his experience and
2 knowledge for that basis is relevant. And I'm happy to
3 get to one of those points and ask these questions and
4 keep this thing moving.
5 MS. PFEIFFER: I respectfully disagree. The
6 objection that it's outside the scope of the direct
7 stands. He hasn't testified to any of this stuff, so
8 ask your question and let's keep going, please.
9 BY MS. BESL:
10 Q You said that you worked in two fast-food
11 restaurants previously. Were these positions in
12 management, or were you working behind the counter?
13 What were your positions?
14 A I was working behind the counter.
15 Q Okay. And how long did you do that?
16 A Approximately three years.
17 Q Okay. All right. Let's turn back to your
18 affidavit where you say you wrote a blog entry in
19 2008 -- this is in paragraph 2, page 1 -- about the old
20 fast-food chain Naugles which you say "used to exist in
21 the 1970s and 1980s." You say, "At first I intended
22 that blog entry to be a remembrance of the chain; but
23 after I posted it, I noticed the entry got a lot of
24 attention by way of people posting responses indicating
25 how much they liked Naugles food and wished it would

1 return." How did you gauge the interest by the people?
2 Was it by number of hits? What were you using to
3 gauge?
4 A When I analyze Web traffic to my blog, I can
5 see what search terms people are using that lead them
6 to my blog, and I -- back then, five, six years ago, I
7 could see that a lot of people were finding my blog by
8 a search on the term "Naugles." And it was, actually,
9 to me, a surprising amount.
10 Q What do you mean by "a surprising amount"?
11 Are we talking thousands? hundreds? tens of thousands?
12 A As one example, like, in a -- I could view the
13 statistics for the last 100 visits to my blog, and
14 sometimes 20 of those 100 visits were related to
15 Naugles; and I could also see that no other restaurant
16 that I had mentioned on my Web site had as many
17 searches.
18 Q Okay. Have you had any experience in
19 marketing before?
20 MS. PFEIFFER: Objection, outside the scope of
21 direct.
22 MS. NOWELS: You can answer.
23 MS. PFEIFFER: Go ahead.
24 THE WITNESS: Not directly. I have had --
25 worked in things that deal with it indirectly.

1 MS. PFEIFFER: I'd also like to interject a
2 belated objection that it's irrelevant.
3 Go ahead, Christian.
4 BY MS. BESL:
5 Q Now, you had indicated that you had determined
6 that this was a high level of public interest. Have
7 you done any studies to show -- to support that belief
8 that Web hits translate to public interest and
9 purchasing?
10 A I think it might be mostly informal and just
11 the buzz that I've personally been able to perceive on
12 the subject.
13 Q So you've had no training or any kind of
14 previous experience to determine if your belief here
15 was true?
16 MS. PFEIFFER: Objection, irrelevant, outside
17 the scope of direct.
18 THE WITNESS: I never did a formal study.
19 BY MS. BESL:
20 Q Okay. Let's turn now to paragraph 3, page 2
21 of your affidavit.
22 A Okay.
23 Q You said that you learned -- in the middle of
24 that paragraph you say, "When I learned legally Del
25 Taco had, most likely, abandoned its use of the Naugles

1 mark" -- what do you mean you "learned legally"?
2 A Because prior to that point in time I didn't
3 know very much about trademark law. I had a
4 layperson's understanding, which was not much. And
5 then I heard that trademarks could be considered
6 abandoned if they're not used for a certain duration of
7 time.
8 Q And how did you learn that?
9 A The first person that tipped me off to that
10 was Rob Hallstrom; but then when he did tip me off to
11 it, I then did my research on my own and found that to
12 be the case.
13 Q And what kind of research did you do?
14 A Internet searches about trademark abandonment
15 turned up all sorts of sources.
16 Q Did you review the actual trademark act, the
17 Lanham Act?
18 A Can you repeat that?
19 Q Did you review the actual Lanham Act, the
20 trademark act?
21 A I can't remember. That might have been part
22 of my research approximately five years ago, four years
23 ago.
24 Q And did you talk to an attorney who gave you
25 legal opinion?

1 MS. NOWELS: Objection, attorney-client
2 privilege.
3 To the extent that it doesn't breach your
4 privilege, you can answer.
5 THE WITNESS: Yes, actually, I did have brief
6 informal conversations with a couple IP attorneys on
7 the subject, without getting into too much detail on
8 the particular subject, as -- mainly, to get a general
9 overview of the law.
10 BY MS. BESL:
11 Q Let's go on to your application. On May 17,
12 2010, you filed an Intent to Use Trademark Application
13 with the United States Patent and Trademark office for
14 Naugles for cafeteria and restaurant services. If the
15 court examiner -- or the court reporter could hand you
16 Exhibit A, which has previously been marked as
17 Exhibit A by your counsel.
18 (Whereupon, Respondent's Exhibit A was
19 marked for identification.)
20 THE WITNESS: Okay. I have that.
21 BY MS. BESL:
22 Q Okay. And you've seen this application, this
23 document, before?
24 A Yes.
25 Q And you filed this yourself; is that correct?

1 A Yes, with legal help.
2 Q What do you mean "with legal help"?
3 A I retained an attorney who filed it for me,
4 but I was aware of all the proceedings of it.
5 Q Who was the attorney that filed it for you?
6 A It was either Greg or Susan at Knobbe,
7 Martens, Olsen & Bear.
8 Q Why did you not appoint them as the attorney
9 of record on the file?
10 A I did.
11 MS. PFEIFFER: Objection, irrelevant.
12 THE WITNESS: I believe I did, but I'd have to
13 go back in time, and I think -- I'm pretty sure I good
14 at that point in time.
15 BY MS. BESL:
16 Q Now, this application was filed in your name
17 personally; is that correct?
18 A Yes.
19 Q And not by a corporation?
20 A Correct.
21 Q Okay. Not by an LLC?
22 A Correct.
23 Q Okay. At the time of filing this application,
24 May 17, 2010, had you filed -- had you formed a
25 corporation, LLC, or other entity for the purposes of

1 this business?
2 A Not at that point in time.
3 Q So you have formed a corporation or LLC at
4 this time?
5 A No.
6 Q At any time between filing and now, have you
7 had a corporation, LLC, or other entity for purposes of
8 this Naugles business?
9 A No.
10 Q If the court reporter could hand you what was
11 previously marked as Exhibit B by your counsel.
12 MS. NOWELS: April, real quick before we move
13 on, do you want us to have these exhibits with the
14 letter designation that were previously attached to the
15 affidavit as exhibits to the deposition that we're
16 doing right now? because I think that would make for a
17 more complete record.
18 MS. BESL: I think that's a good idea.
19 MS. NOWELS: So maybe we'll mark it as 2-A and
20 -B and letters after 2 so we don't mess up your other
21 numbering. Does that make sense?
22 MS. BESL: Honestly, I figured we were going
23 to keep doing the letters as we go through, so if she
24 wants to keep your designation -- because these are
25 already of record in the proceeding, so I didn't think

1 we'd need to change -- I just thought, for purposes of
2 her reporting, if she wants to go ahead and leave them
3 as A and B, I'm fine with that.
4 MS. NOWELS: Should we put them on in as
5 Exhibits 2 attached to the declaration to the -- I'm
6 sorry. Maybe this could be an off-the-record
7 conversation?
8 MS. BESL: Yes.
9 (A discussion was held off the record.)
10 MS. NOWELS: Back on the record now. Sorry
11 for that brief --
12 MS. BESL: Not a problem. I think I had asked
13 the court reporter to hand what has previously been
14 marked B to the witness.
15 THE WITNESS: We've got a lot of shuffling of
16 files going on.
17 (Whereupon, Respondent's Exhibit B was
18 marked for identification.)
19 THE WITNESS: Okay. I have it now.
20 BY MS. BESL:
21 Q Have you ever seen this document before?
22 A Yes.
23 Q And can you confirm that this is an office
24 action issued on your application for Naugles?
25 A Yes.

1 Q You mentioned in your affidavit in
2 paragraph 4, page 2, that you received an office action
3 containing a final refusal of your application because
4 of Del Taco's registration for Naugles in connection
5 with restaurant services. However, there is a second
6 issue raised in the application, is there not?
7 A Yes, there is.
8 Q You also have "asserting refusal on this
9 application," do you not?
10 A That's correct.
11 Q And you are not a member of the Naugles
12 family?
13 A No.
14 Q And you have not issued a response to the
15 trademark office to date on asserting refusal have you?
16 A Not yet.
17 Q And have you determined how you're going to
18 respond to this refusal at this time, without revealing
19 any attorney-client privilege?
20 MS. PFEIFFER: Yes. Objection, obviously.
21 Attorney-client privilege and irrelevant.
22 Go ahead, Christian.
23 THE WITNESS: We haven't finalized our plans
24 yet.
25

1 BY MS. BESL:
2 Q Turning now to paragraph 5 of your affidavit,
3 you say that prior to filing this application for
4 Naugles, your Intent to Use application, that you
5 shared your ideas with many people. You list the
6 names -- if you could confirm this is correct, I would
7 appreciate it -- Barbara Caruso; is that correct?
8 A Yes.
9 Q And she did not offer an affidavit in this
10 case, did she?
11 A Correct.
12 Q William "Bill" O'Dell -- is he listed on here?
13 A Yes.
14 Q And he did not offer an affidavit in support
15 of your petition?
16 A He was willing to.
17 Q But he did not; is that correct?
18 A He did not.
19 Q You mentioned Rob Hallstrom; is that correct?
20 A Correct.
21 Q You mentioned Jeff Naugle; is that correct?
22 A Correct.
23 Q And he did not offer an affidavit in support
24 of the petition?
25 A Correct.

1 Q You mentioned Josh Maxwell; is that correct?
2 A Correct.
3 Q And he did not offer an affidavit in support
4 of your petition; is that correct?
5 A We never approached him about that.
6 Q Okay. So he did not?
7 A He did not.
8 Q You mentioned Dan Dvorak; is that correct?
9 A Yes.
10 Q Did I say that right?
11 A Yeah. Dvorak, yeah. Say the "D" and the "v"
12 in there.
13 Q And then, finally, you mentioned Nancy Luna;
14 is that correct?
15 A Yes.
16 Q And she did not offer an affidavit in support
17 of your petition; is that correct?
18 A That's correct.
19 Q Can we turn first to paragraph 8, page 4. And
20 you're sharing ideas with Mr. Bill O'Dell. You said
21 you mentioned -- you had a conversation with him in
22 late 2009; is that correct?
23 A Yes.
24 Q And this conversation was about not opening up
25 your own store, but about bringing the idea to Del

1 Taco; is that correct?
2 A Both possibilities were discussed with him.
3 Q And what do you mean by that?
4 A For approximately a year, possibly a little
5 more, I discussed with him that I had brought the idea
6 up to Del Taco. And then at some point in time it
7 shifted to me working with the Naugles concept.
8 Q And do you have any -- and you have no notes
9 or records of these meetings to support their
10 existence; is that correct?
11 A They were mostly oral conversations in person.
12 Q But you took no notes at these meetings; is
13 that correct?
14 A That's correct.
15 Q And Mr. O'Dell has not signed any agreements
16 with you to open up a Naugles restaurant; is that
17 correct?
18 A That's correct.
19 Q And he has not entered into a formal
20 partnership agreement with you; is that correct?
21 A That's correct.
22 Q And Mr. O'Dell has not written any checks to
23 support this arrangement; is that correct?
24 A Very correct.
25 Q So, essentially, you had some conversations

1 with him in 2009 regarding your idea and to discuss
2 with Del Taco a Naugles revival; would that be
3 accurate?
4 A Yes.
5 MS. PFEIFFER: His testimony speaks for
6 itself, so objection to the extent that you're
7 misstating the evidence.
8 MS. BESL: Did you say "misstating the
9 evidence"?
10 MS. PFEIFFER: Yes. I said I believe that his
11 testimony and his answer to your question speak for
12 itself, so to the extent that you just paraphrased
13 something -- I have an objection to the extent that you
14 may be misstating the evidence.
15 MS. BESL: Okay. Understood.
16 BY MS. BESL:
17 Q Let's next talk about Mr. Jeff Naugle. You
18 first talk about him in paragraph 9, page 4 of your
19 affidavit. You say he left a comment on your blog
20 asking you to contact him, about September 8th, 2009.
21 What was this blog post that he responded to?
22 A I -- there's a couple that it could be. It
23 might be the one that I actually wrote about his own
24 restaurant.
25 Q And that would be Naugles?

1 A No.
2 Q That would be Bun & Taco?
3 A Buns & Torts.
4 Q Buns & Torts. Thank you. And you did not
5 submit a copy of this comment from your blog attached
6 to your affidavit, did you not?
7 A I can't remember right now. I don't think I
8 did. I can't remember right now.
9 Q And you do not still possess a copy of this
10 comment from your blog?
11 A I can locate it again on the Internet.
12 Q All right. You say you met with Mr. Naugle
13 personally on February 13th, 2010, in your affidavit;
14 is that correct?
15 A That's correct.
16 Q And the purpose of this meeting was to discuss
17 a Naugles restaurant venture; is that correct?
18 A That's correct.
19 Q Okay. And you stated you were informed to
20 believe that Jeff Naugle is the nephew of Richard J.
21 Naugle. And who informed you of that?
22 A He did.
23 Q Mr. Jeff Naugle informed you of his relation?
24 A Yes, but also an employee of his may have told
25 me first.

1 Q And you say you were informed to believe that
2 Dick Naugle is the individual that founded the old
3 fast-food chain called Naugles, primarily based in
4 Southern California; is that correct?
5 A Yes.
6 Q And who informed you of that?
7 A Public knowledge.
8 Q And where did you obtain this public
9 knowledge?
10 A My knowledge of the Naugles chain back in the
11 '80s and other sources I've read since then.
12 Q So would it be fair to say Internet sources is
13 where you got the information or somewhere else?
14 A Those are secondary, but they are there.
15 Q You say during this meeting on February 13th,
16 2010, going in the same paragraph on page 5 -- you
17 talked about a Naugles revival, including old recipes
18 that you could use. Were these recipes from the
19 original Naugles location?
20 A I believe.
21 Q And how did Mr. Jeff Naugle have these in his
22 possession?
23 A They're in his family's possession by virtue
24 of being Dick Naugle's nephew.
25 Q And you have copies of recipes that were

1 provided to you at this meeting?
2 A I don't have copies, and they've never been
3 provided.
4 MS. PFEIFFER: Objection, you're misstating
5 the evidence. I don't believe he ever testified that
6 Jeff gave him recipes.
7 MS. BESL: Let me rephrase.
8 BY MS. BESL:
9 Q Did he give you copies of the recipes at this
10 meeting?
11 A No.
12 Q Did you write down any recipes at this
13 meeting?
14 A No.
15 Q You say you talked about possible locations.
16 Do you have any specific addresses that he gave you at
17 this meeting?
18 A No. In that meeting locations were not
19 discussed.
20 Q Okay. You said that you discussed many other
21 specifics about starting a restaurant or some type of
22 food establishment under the Naugles name at this
23 meeting; is that correct?
24 A Yes. It was a general discussion to that
25 effect, but --

1 Q What do you mean by that?
2 A -- but just general.
3 Q Did you discuss supply chains for restaurants
4 at this meeting?
5 A None at that meeting.
6 Q Did you discuss any other -- what types of
7 specifics did you discuss at this meeting?
8 A We discussed that we wanted to go ahead with
9 this venture. We discussed that we would use the
10 recipes that we had. I did tell him that Rob Hallstrom
11 and I had looked at locations so that -- I knew -- he
12 knew that I knew of locations, but me and Jeff didn't
13 talk about specific ones.
14 Q Okay.
15 A But he knew that specific locations were in my
16 mind.
17 Q And at this meeting you took no notes; is that
18 correct?
19 A I believe that's correct.
20 Q And at this meeting he did not sign any
21 agreements to enter into this endeavor with you; is
22 that correct?
23 A That's correct. Nothing was signed.
24 Q And he did not sign any formal partnership
25 agreements at this meeting?

1 A That's correct.
2 Q And you say at this meeting you discussed
3 capital, and he volunteered to supply capital; is that
4 correct?
5 A That's correct.
6 Q And did you have anything in writing from
7 Mr. Naugle regarding this agreement to supply capital?
8 A No.
9 Q And has he written you a check since to supply
10 capital for this venture?
11 A No, he has not.
12 Q In the next paragraph of your affidavit, you
13 say since first meeting with him in February of 2010
14 you have exchanged numerous e-mails regarding your
15 efforts to open a Naugles food establishment; is that
16 correct?
17 A That's correct.
18 MS. BESL: Could the court reporter, please,
19 hand the witness Exhibit G, previously marked Exhibit G
20 to the petitioner's affidavit.
21 MS. PFEIFFER: "G," as in girl?
22 MS. BESL: Yes.
23 MS. PFEIFFER: Yes, we can.
24 (Whereupon, Respondent's Exhibit G was
25 marked for identification.)

1 MS. BESL: Okay. I have that now.
2 BY MS. BESL:
3 Q Thank you. And have you seen these documents
4 before?
5 A Yes.
6 Q And these are -- you would confirm that these
7 are e-mails between you and a person named as Jeff
8 Naugle?
9 A Correct.
10 Q And these are the whole of all e-mails
11 exchanged between you and Mr. Naugle since February of
12 2010?
13 A No.
14 Q So there are others?
15 A Yes.
16 Q And have they been subsequently destroyed?
17 A I don't believe so.
18 Q Were they not involving the Naugles project?
19 A They were, but they were pretty general.
20 Q All right. Can you take a minute to review
21 these e-mails and get yourself familiar with them? Or
22 are you already familiar with them that you could speak
23 about their content?
24 A Okay.
25 Q Can you point to me where in these e-mails

1 Mr. Naugle says he will be a part of this Naugles
2 transaction?
3 A It's not specifically said. It's implied.
4 Q And is there anywhere in these e-mails where
5 Mr. Naugle says that he will supply capital for this
6 venture?
7 A Not in this e-mail chain.
8 MS. PFEIFFER: Irrelevant.
9 BY MS. BESL:
10 Q Is there any e-mail chain where he does say he
11 will supply capital for this venture?
12 MS. PFEIFFER: Objection, irrelevant.
13 THE WITNESS: I believe that was only oral
14 conversation.
15 BY MS. BESL:
16 Q On the second page of these e-mails,
17 Mr. Naugle appears to ask you about any potential
18 operators on May 27th, 2010. Are these operators for
19 your restaurant, or is this something else?
20 A I believe he was asking if I knew of any
21 operators for the restaurant, yes.
22 Q And did you identify any operators to him?
23 A I did at some point in time, around the time
24 of this conversation.
25 Q Was this written down, or was that oral?

1 A That was likely an e-mail, but not in this
2 particular exhibit.
3 Q And in these e-mails there is nowhere where
4 Mr. Naugle identifies potential locations for a
5 restaurant; is that correct?
6 A I don't believe Mr. Naugle ever identified
7 locations.
8 Q And then nowhere in these e-mails does he
9 discuss recipes for Naugles food products; is that
10 correct?
11 MS. PFEIFFER: Do you mean specifically in
12 this exhibit?
13 MS. BESL: Yes.
14 THE WITNESS: I don't believe he does in this
15 exhibit.
16 BY MS. BESL:
17 Q Are there any other e-mails where he does?
18 A Yes, I think there are some.
19 Q Have they been subsequently destroyed?
20 A I don't believe so.
21 MS. PFEIFFER: Do you mean -- are you asking
22 him if he destroyed them or if he no longer has them in
23 his possession?
24 MS. BESL: I'm not implying any destruction.
25 I'm just asking -- I figure e-mails get deleted.

1 That's all I'm going for.
2 MS. PFEIFFER: Do you understand that,
3 Christian? She's not asking you if you deleted them.
4 She just wants to know if you still have them or if
5 they went by the wayside like e-mails normally do
6 sometimes. Do you still have those e-mails?
7 THE WITNESS: I believe I still have those
8 e-mails, but the content is extremely general and is
9 not divulging any recipes.
10 BY MS. BESL:
11 Q When you say "the content is extremely
12 general," are you just referring to it's not about the
13 Naugles venture or something else?
14 A You were asking about the recipes, and he has
15 never divulged the recipes.
16 Q Either orally or in writing?
17 A In any form of communication.
18 Q And then you say in your affidavit that in the
19 May 27th, 2010, e-mails you informed Mr. Naugle of
20 filing your application, and he wrote, "Great. Keep me
21 posted." Can you confirm that the writing on the
22 May 27th e-mail was not "Great. Keep me posted"; it
23 was something else?
24 A I'm confused here.
25 MS. PFEIFFER: Can you rephrase that question?

1 MS. BESL: Yes.
2 BY MS. BESL:
3 Q On your affidavit you say, "My impression was
4 that Jeff was supportive; he wrote," quote, "'Great!
5 Keep me posted!'" And on the second page of this that
6 is not what he says; correct?
7 A I think he wrote, "Great! Keep me posted" on
8 March 8th, 2010, which seemed to be a general summation
9 of his attitude towards the venture.
10 Q All right. In paragraph 11 of your affidavit,
11 you say that you were informed and believe that he was
12 supportive of you taking this venture and is willing to
13 help you with recipes and anything else he can; is that
14 correct?
15 A That's correct.
16 Q And who informed you of this?
17 A That's just a summation of my general
18 impression from conversations with him.
19 Q And Mr. Naugle -- Jeff Naugle has not said
20 this to you directly?
21 A Oh, he has.
22 Q But not in writing?
23 A I believe there are e-mails to that effect.
24 MS. PFEIFFER: Objection, irrelevant.
25

1 BY MS. BESL:
2 Q So you're saying it's your impression "that
3 Mr. Naugle is basically just waiting for this trademark
4 dispute to be over so we can have the green light to go
5 forward." Who gave you that impression?
6 A General impression from all of my
7 conversations with him.
8 Q And is that contained in the -- anywhere in
9 the e-mails that you attach as Exhibit G to your
10 affidavit?
11 A Just that it had an implication from --
12 MS. PFEIFFER: Wait. Wait. Wait. You're
13 mischaracterizing his response. He told you that he
14 just gave you a general summation, so that is the exact
15 opposite of a verbatim statement in an e-mail.
16 MS. BESL: I'm just asking if there's any
17 written support for his impression.
18 THE WITNESS: The overall impression from
19 Exhibit G. Everything that Jeff Naugle wrote.
20 BY MS. BESL:
21 Q So Mr. Naugle told you explicitly that once
22 this trademark dispute is over, he will support you?
23 A Yes.
24 Q In writing or orally?
25 A Both.

1 Q And is the writing something that was not
2 attached to your affidavit?
3 A It is attached to the affidavit, and there may
4 be other material that's the same thought content.
5 Q You say your last meeting with him was in
6 September 2013. At this meeting what did you discuss?
7 A That was my last in-person meeting with him,
8 and it was -- again, it was just a general conversation
9 that we're still moving forward with this.
10 Q And you have no notes from this meeting?
11 A No written notes.
12 Q And you have no formal agreement signed as of
13 this meeting?
14 A That's correct.
15 Q And you have no formal partnership signed with
16 him as of this meeting; is that correct?
17 MS. PFEIFFER: Objection, irrelevant, outside
18 the scope of direct.
19 Go ahead.
20 THE WITNESS: That's correct.
21 BY MS. BESL:
22 Q Now let's briefly talk about Mr. Rob
23 Hallstrom, who you talk about in paragraph 12 --
24 starting in paragraph 12 on page 6 of your affidavit.
25 You say that Rob Hallstrom is -- the first time he

1 shared with you -- we already talked about him sharing
2 with you the legal concept of abandonment of
3 trademarks. Is Mr. Hallstrom an attorney?
4 A No, I don't believe he is.
5 Q And does Mr. Hallstrom work in marketing?
6 MS. PFEIFFER: Objection, irrelevant, outside
7 the scope of direct.
8 THE WITNESS: Actually, he does, and in the
9 restaurant industry.
10 BY MS. BESL:
11 Q Let's move on to paragraph 13. You say you
12 approached him with your idea because of his experience
13 in the restaurant and food industry. Has Mr. Hallstrom
14 opened up numerous restaurants previously?
15 A Yes.
16 Q And that is his primary employment, I would
17 assume?
18 MS. PFEIFFER: Objection, irrelevant, lacks
19 personal knowledge.
20 To the extent that you know -- you're not
21 him -- go ahead and answer.
22 THE WITNESS: To the extent that I know, he
23 has opened restaurants, and --
24 MS. PFEIFFER: Her question was about his
25 primary employment.

1 THE WITNESS: I believe it is his primary
2 employment, but I believe he also does marketing as
3 secondary employment.
4 BY MS. BESL:
5 Q You say that in approximately January of 2010
6 you first asked him if he would be willing to help you
7 make this idea of opening a Naugles restaurant a
8 reality; is that correct?
9 A Approximately January 2010, yes.
10 Q You said based on your interactions with him,
11 it was your belief he was interested in helping. What
12 supported that belief?
13 A The positive response he sent back to me.
14 Q And that was in an e-mail; is that correct?
15 A That's correct.
16 Q All right. If the court reporter could hand
17 you what's previously been marked as Petitioner's
18 Exhibit H, I would appreciate it.
19 MS. PFEIFFER: Let's slow down for a minute,
20 because I want to make sure she gets G.
21 Are you done with G, April?
22 MS. BESL: Yes, I'm done with G.
23 MS. PFEIFFER: Here's H.
24 (Whereupon, Respondent's Exhibit H was
25 marked for identification.)

1 THE WITNESS: Okay. I have Exhibit H now.
2 BY MS. BESL:
3 Q Okay. And have you seen this document before?
4 A Yes.
5 Q And these are e-mails between you and
6 Mr. Hallstrom; is that correct?
7 A That's correct.
8 Q And they range from, it looks like,
9 January 2010 until February of 2010 as well as March of
10 2010. Do those date ranges seem accurate?
11 A That sounds accurate to me.
12 Q And are these the whole summary of e-mails
13 between you and Mr. Hallstrom to date?
14 A No.
15 Q There has been further correspondence between
16 you regarding this Naugles project; is that correct?
17 A Yes.
18 Q And have those been deleted or lost, or are
19 they still in your possession?
20 A I believe I have everything still in my
21 possession.
22 Q And these -- in your affidavit, page 7,
23 paragraph 14, you say that you had meetings after the
24 e-mail exchange in January of 2010, attached to your
25 affidavit as Exhibit H. You say that you had several

1 meetings in person with Mr. Hallstrom; is that correct?
2 A That's correct.
3 Q And you say that at one or more of these
4 meetings the issue of financial backing was discussed,
5 and Mr. Hallstrom agreed to provide it; is that
6 correct?
7 A Yes.
8 Q And did he put anything in writing regarding
9 the agreement to support the endeavor financially?
10 A No.
11 Q And has he written a check?
12 A No.
13 Q Have you entered into a formal partnership
14 agreement with him?
15 A No.
16 Q Has he signed any agreements agreeing to
17 provide financial backing?
18 A No.
19 Q Is there any written document regarding his
20 financial backing?
21 A No, except -- except that I did recently tell
22 him that -- I pointed out to him that he hasn't
23 provided any. That was the extent of it.
24 Q Was that in a written e-mail or other
25 correspondence?

1 A That was in an e-mail.
2 Q And that was more recent than 2010?
3 A Yes.
4 Q You say you also -- after your meeting in
5 January 2010, Mr. Hallstrom had mentioned to you a
6 building he remembered being an old Naugles location;
7 is that correct?
8 A That's correct.
9 Q And you drove by it and saw a "for lease"
10 sign; is that correct?
11 A That's correct.
12 Q And you had called the number to inquire how
13 much the rent would be; is that correct?
14 A That's correct.
15 Q Did you have at that time any financial
16 backing or funding to begin renting a location?
17 A At that point in time, I just wanted to find
18 out what the leasing company said the price was.
19 Q And was this with the intention of leasing the
20 location?
21 A We were considering it, yes.
22 Q And Mr. Hallstrom agreed to pay rent for such
23 a location?
24 MS. PFEIFFER: Objection, that's not anything
25 he testified to.

1 THE WITNESS: The conversation never went that
2 far because somebody else ended up leasing that
3 building.
4 BY MS. BESL:
5 Q And you have the address of this building?
6 MS. PFEIFFER: Objection, irrelevant.
7 THE WITNESS: I don't know the address. I
8 know it's at Brookhurst and Commonwealth in Fullerton.
9 BY MS. BESL:
10 Q So you can't identify a general location for
11 this building?
12 A Yes, I can.
13 Q You said that you were informed and believe
14 that not too long after, the building was leased by
15 someone else, who made it into a Golden Ox restaurant.
16 Who informed you of this?
17 A I don't remember for sure, but I think it
18 might have been me seeing it as I drove by a week or so
19 later. I am a little fuzzy on that, but I did see it
20 in person at some point in time.
21 Q So you've actually personally observed the
22 location is a Golden Ox?
23 A Yes, and I ate there twice after it became
24 Golden Ox.
25 Q You say that between January and the end of

1 this -- we're on paragraph -- on page 7. Between
2 January 2010 and May 2010 you and Mr. Hallstrom "also
3 had many more discussions about potential locations for
4 my Naugles restaurants, and we looked at a few
5 properties." Did you take any notes of these
6 locations?
7 A I took notes of one of them.
8 Q Do you still have these notes today?
9 A Yes.
10 Q And the other properties -- you have no
11 written record regarding which locations were scouted?
12 A I don't believe I do.
13 Q You said you also did a little research into
14 old Naugles locations. What do you mean by that?
15 A I believe I meant that I -- just in driving
16 around, if I noticed a location that had been a Naugles
17 spot, I tried to see if it might be for lease or sale
18 or whatever.
19 Q And is your only locations located in the
20 general vicinity of Orange, California? Would that be
21 accurate?
22 A Basically, in Orange County, California, yes.
23 Q So you have not researched every single
24 previous Naugles location; is that correct?
25 A That's correct.

1 Q Do you have any notes from this research
2 written down?
3 MS. PFEIFFER: Objection, irrelevant.
4 Go ahead, Christian.
5 THE WITNESS: Just the one other location that
6 me and Rob Hallstrom discussed.
7 BY MS. BESL:
8 Q And is this one location one you are still
9 considering?
10 A Possibly.
11 Q Now, turning back to your e-mails with
12 Mr. Hallstrom on Exhibit H -- could you, please, turn
13 to page 9. I believe it's been marked in black at the
14 bottom.
15 A Oh. Page 9. I'm almost there. Okay.
16 Q And on March 8th, 2010, in the middle of the
17 page, you write, "Finally heard back from Jeff. He
18 didn't have much new to say. He just still seems
19 interested in the project while also being interested
20 in having other people do the majority of the work,
21 which is fine by me and understandable that he would
22 feel that way at his age"; is that correct?
23 A Yes.
24 Q And on Tuesday, March 9th, Mr. Hallstrom
25 writes back to you, "So it seems you want to be

1 associated by name only"; is that correct?
2 A Yes, that's correct.
3 Q And he's referring to Jeff Naugle; is that
4 correct?
5 A That's correct.
6 Q And is this your understanding, that
7 Mr. Naugle only wants to be affiliated in name only
8 with your Naugles venture?
9 A Nothing's been set in stone yet.
10 Q As to the nature of his participation? Is
11 that what you mean?
12 A Correct.
13 Q Mr. Hallstrom next says, "If this is the case,
14 you should be president of the corporation"; is that
15 correct?
16 A Yes, that's correct.
17 Q At the time were you considering entering into
18 a corporation for purposes of this venture?
19 A It was under consideration, yes.
20 Q But you did not enter into a corporation at
21 the time?
22 A That's correct.
23 Q It next says, "Look at it as sort of a
24 licensing of the -- his Naugles name from a credibility
25 standpoint," is that correct, the next line?

1 A That's correct.
2 Q And he's referring again to Jeff Naugles --
3 A That's correct.
4 Q -- and him licensing you the rights to the
5 Naugle name; would that be accurate?
6 MS. PFEIFFER: Objection to the extent you're
7 asking him to give you Rob's state of mind. It lacks
8 personal knowledge.
9 You can answer your understanding of what you
10 thought he was thinking when he wrote that, but go
11 ahead.
12 THE WITNESS: I believe that's correct.
13 BY MS. BESL:
14 Q And to date has Mr. Naugle granted you a
15 license to his name?
16 A That's correct -- no, he has not.
17 Q He has not?
18 A That's correct.
19 Q Either verbally or in writing?
20 A That's correct.
21 Q Turn now to page 11 of this same document, in
22 the black numbering at the bottom.
23 A Uh-huh.
24 Q On March 4th, 2010, you write to
25 Mr. Hallstrom, "Now I have to see if Jeff could front

1 the $10,000 attorney fee"; is that correct?
2 A That's correct.
3 Q And you were referring to Jeff Naugle here?
4 A That's correct.
5 Q And the $10,000 attorney fee is, I assume, a
6 retainer?
7 A I believe that's correct.
8 Q And was this for filing of the Naugle
9 application?
10 MS. NOWELS: Objection, attorney-client
11 privilege.
12 To the extent that it doesn't get into your
13 agreement with your attorney and violate your
14 privilege, you can answer.
15 MS. BESL: Yeah. I don't want any details in
16 that realm.
17 THE WITNESS: I believe it may have been in
18 part. I'd have to -- that's the best I know right now.
19 BY MS. BESL:
20 Q And did Mr. Naugle give you $10,000 for the
21 attorney fee?
22 A No.
23 Q Did anyone else give you the $10,000 for the
24 attorney fee?
25 A No.

1 Q Did you end up paying the $10,000 attorney
2 fee?
3 A Yes.
4 Q And was this from you personally?
5 A Yes.
6 MS. PFEIFFER: Objection, irrelevant.
7 MS. NOWELS: Can we take a short break -- I'm
8 sorry -- for water?
9 MS. BESL: Do you want about ten or 15
10 minutes?
11 THE WITNESS: That's great. My mouth is
12 getting dry.
13 (A short break in the proceedings was
14 taken.)
15 MS. BESL: Back on the record.
16 BY MS. BESL:
17 Q If I could turn you now to page 8 of your
18 affidavit -- I think we're about done with Exhibit H,
19 if you want to set that aside for now. Turning to page
20 8 of your affidavit, you refer to a gentleman by the
21 name of John Joseph, quote, "JJ," end quote, Naugle; is
22 that correct?
23 A That's correct.
24 Q And you exchanged e-mails with this JJ Naugle;
25 is that correct?

1 A Correct.
2 Q Including recipes of the original Naugles
3 recipes; is that correct?
4 A Yes.
5 Q And was this an exchange of the recipes
6 themselves or something else?
7 A It was not an exchange.
8 Q So what was the general discussion?
9 A He had the same thought of running a Naugles,
10 and we discussed it in general. We didn't get into
11 much detail.
12 Q Was this Mr. JJ Naugle associated with the
13 original Naugles restaurant chain before being
14 purchased by Del Taco -- or split into Del Taco?
15 MS. PFEIFFER: Objection, lacks personal
16 knowledge.
17 BY MS. BESL:
18 Q To your knowledge.
19 MS. PFEIFFER: To your knowledge, if you know.
20 THE WITNESS: To my knowledge, he was never an
21 employee.
22 MS. BESL: If the court reporter could,
23 please, hand you what's previously been marked as
24 Exhibit I to your affidavit.
25 MS. PFEIFFER: You said Christian was done

1 with H; is that right?

2 MS. BESL: Yeah. I think I'm about done with

3 that. I might have one more question, if you want to

4 keep it nearby.

5 (Whereupon, Respondent's Exhibit I was

6 marked for identification.)

7 BY MS. BESL:

8 Q Do you have Exhibit I in front of you?

9 A I have it now.

10 Q And have you seen this document before?

11 A Yes.

12 Q And these are a series of e-mails, would it be

13 correct, between you and this Mr. JJ Naugle?

14 A Yes.

15 Q And do these represent the whole of all

16 e-mails between you and Mr. JJ Naugle?

17 A I believe so.

18 Q And were these e-mails also placed, would it

19 be accurate to state, in October of 2010?

20 A I believe so.

21 Q And you had no contact with Mr. JJ Naugle

22 prior to October of 2010; is that right?

23 A I believe it was just those two to three days

24 of e-mailing.

25 Q And you say in your affidavit, "The content of

1 these e-mails discuss how I want to open Naugles
2 restaurants, but I am in the process of trying to get
3 Del Taco's registration for the trademark canceled, and
4 I have been in contact with other members of the Naugle
5 family about doing this"; is that correct?
6 A Yes.
7 Q And Mr. JJ Naugles did not submit an affidavit
8 in support of your position; is that correct?
9 A Yes.
10 Q And he is not a -- he has not signed any type
11 of agreement with you; is that correct?
12 A Yes.
13 Q And he has not written any capital
14 contributions or checks for you; is that correct?
15 A Yes.
16 Q And you have not entered into any kind of oral
17 partnership with him; is that correct?
18 A Yes.
19 Q And he has not provided you with any recipes
20 or other support for a Naugles venture; is that
21 correct?
22 A Yes.
23 Q All right. You can put -- I'm done with
24 Exhibit I, if you want to put that one aside. Turning
25 now to paragraph 16, page 8, of your affidavit, you

1 mentioned an individual named Bill Naugle; is that
2 correct?
3 A Yes.
4 Q And you state that he is -- you are informed
5 and believe that he is JJ Naugle's father and another
6 relative of Dick Naugle; correct?
7 A Yes.
8 Q And who informed you of this?
9 A I believe Bill did himself.
10 Q Mr. Bill Naugle informed you of this?
11 A I believe that's the case.
12 Q And to your knowledge, was Mr. Bill Naugle
13 involved with the original Naugles restaurants prior to
14 their ownership by Del Taco?
15 MS. PFEIFFER: Objection, irrelevant.
16 THE WITNESS: To my knowledge, he had some
17 employment with them.
18 BY MS. BESL:
19 Q To your knowledge, was he an owner of the
20 original Naugles restaurants prior to their ownership
21 by Del Taco?
22 MS. PFEIFFER: Objection, irrelevant.
23 THE WITNESS: To my knowledge, no, he was not.
24 BY MS. BESL:
25 Q You say in your affidavit that you first met

1 his acquaintance when Mr. Bill Naugle left a comment on
2 one of your blog posts and asked you to contact him; is
3 that correct?
4 A Yes.
5 Q And was this -- do you know the blog post
6 specifically he commented on?
7 A Not offhand. It's one of six possible ones.
8 Q And you did not attach a copy of this comment
9 to your affidavit, did you not?
10 A I don't think it's attached.
11 Q And is this comment still available today?
12 A I believe so.
13 Q You say you and Bill talked by e-mail about
14 this proceeding where you were trying to get Del Taco's
15 registration for the trademark canceled because you
16 want to open Naugles restaurants yourself; is that
17 correct?
18 A Yes.
19 Q And I don't know if I already asked you this.
20 I apologize. Are these e-mails -- do you have
21 Exhibit J in front of you?
22 A Not yet.
23 Q Could the court reporter, please, hand you
24 Exhibit J. I'm getting ahead of myself.
25 A That's fine.

1 (Whereupon, Respondent's Exhibit J was
2 marked for identification.)
3 THE WITNESS: Okay. I have Exhibit J now.
4 BY MS. BESL:
5 Q And do you recognize this document?
6 A Yes.
7 Q And these are -- can you confirm these are
8 e-mails between you and Mr. Bill Naugle?
9 A Yes.
10 Q And are these the whole of all e-mails between
11 you and Mr. Bill Naugle?
12 A I believe that's it.
13 Q And if you could, turn to page 1 with the
14 little black number at the bottom of this e-mail chain.
15 In the middle of the page, on December 27, 2011, I
16 believe it is Mr. Bill Naugle who wrote, "You are
17 right. If you are not a Naugle or family member, it
18 would be a major issue." Is that the writing by
19 Mr. Naugle or you?
20 MS. PFEIFFER: What are you asking him? If he
21 wrote that or if Mr. Naugle wrote that?
22 MS. BESL: Yeah. It's been redacted, so I'm
23 trying to look at and confirm that that's Mr. Bill
24 Naugle saying it's not him.
25 THE WITNESS: From what I can tell and from

1 what I remember, it looks like that was Bill Naugle
2 saying that.
3 BY MS. BESL:
4 Q And in response, you write to his comment,
5 "Yes, that could be. I have considered that it would
6 actually help, but it is still a gamble, especially
7 when starting up." Are you referring to not being a
8 member of the Naugle family?
9 A I'd have to look over the conversation again.
10 Q All right. Take your time. Go ahead.
11 A I don't think that was the issue. I don't
12 think it had to do with the surname there.
13 Q Was that involving the trademark, then?
14 A Yes, I believe so.
15 Q Okay. Thank you. If you go on to page 2, on
16 December 27th, 2011 -- can you confirm that Mr. Bill
17 Naugle wrote that e-mail at 12:24 and not you?
18 A I believe that was Bill.
19 Q And he says to you, "You do not need the
20 trademark to open a restaurant"; is that correct?
21 A Correct, that's what he said.
22 Q And if you look at the bottom of that page, on
23 December 27, 2011, Mr. Bill Naugle says, "Yes, I have
24 everything: recipes, manuals, restaurant plans, and
25 over 20 years of restaurant experience running his

1 concept"; is that correct?
2 A Yes.
3 Q And when he says "his," was he referring to
4 Mr. Dick Naugle?
5 MS. PFEIFFER: To your knowledge.
6 THE WITNESS: I believe so.
7 BY MS. BESL:
8 Q And to date, Mr. Bill Naugle has not provided
9 you with any recipes; is that correct?
10 A That's correct.
11 Q And he's not provided you with any manuals?
12 A That's correct.
13 Q And he's not provided you with any restaurant
14 plans?
15 A That's correct.
16 Q And he is not in partnership to your Naugles
17 venture; is that correct?
18 A That's correct.
19 Q And he has not signed any agreement with you?
20 A Also correct.
21 Q And he has not provided any capital
22 contributions; is that correct?
23 MS. PFEIFFER: Objection, irrelevant.
24 Go ahead, Christian.
25 THE WITNESS: That's correct.

1 BY MS. BESL:
2 Q All right. Oh. And one last question on
3 this. These all took place in 2011; is that not
4 correct?
5 A That appears to be correct.
6 Q And this was all after the filing of your
7 Intent to Use application; correct?
8 A That's correct.
9 Q I want to jump back a couple pages in your
10 affidavit, if you don't mind. Page 3 of your
11 affidavit, at paragraph 6, you mention a woman named
12 Barbara Caruso; is that correct?
13 A That's correct.
14 Q And you say you are informed and believe that
15 Ms. Barbara Caruso is or was a long-time public
16 relations representative for Del Taco; is that correct?
17 A Yes.
18 Q And who provided you with that information?
19 A To the best of my memory, she contacted me.
20 Q And she told you she is the long-time public
21 relations representative for Del Taco?
22 A I believe so.
23 Q Was this in writing, or was this orally?
24 A I believe it was e-mail communication.
25 Q You say that you first met her acquaintance

1 when she began sending you information to post on your
2 blog about new Del Taco items; is that correct?
3 A Yes.
4 Q And this is your Mexican food blog, I assume?
5 A Yes.
6 Q And these were promotions for Del Taco items
7 you were featuring; would that be right?
8 A Yes.
9 Q And do you remember when this was, when --
10 approximately the year when she started sending you
11 these?
12 A Probably 2008. It could have been 2006 or '7.
13 Q You say that on July 31st, 2008, you and
14 Ms. Caruso had a lunch meeting; is that correct?
15 A Yes.
16 Q And you say that at this meeting you told her
17 that you thought Del Taco should bring back the food
18 items that used to be served at the old Naugles food
19 chains; is that correct?
20 A Yes.
21 Q And this was not a meeting where you said you
22 wanted to -- can you confirm that this was not a
23 meeting where you were discussing your intentions with
24 the Naugles venture; correct?
25 MS. PFEIFFER: The July 31st, 2008, meeting

1 only?

2 MS. BESL: Correct.

3 THE WITNESS: That's correct.

4 BY MS. BESL:

5 Q You said it was your understanding that

6 Ms. Caruso thought it was a good idea and was going to

7 bring it back to Del Taco's marketing people; is that

8 correct?

9 A Yes.

10 Q And how did you come to that understanding?

11 A Because she said, "That's a good idea. I'm

12 going to take it back to the marketing people."

13 Q Fair enough. You said, Ms. Caruso contacted

14 me shortly after that meeting indicating that Del

15 Taco's marketing people wanted to meet with you; is

16 that correct?

17 A Yes.

18 Q And was this over phone or e-mail?

19 A E-mail.

20 Q And you say that you and she communicated back

21 and forth for several months, "and it seemed to me like

22 she was trying to get a meeting set up, but it never

23 happened"; correct?

24 A Yes.

25 MS. BESL: Could the court reporter, please,

1 hand the witness Exhibit D, previously marked to
2 petitioner's affidavit.
3 (Whereupon, Respondent's Exhibit D was
4 marked for identification.)
5 THE WITNESS: Okay. I have Exhibit D.
6 BY MS. BESL:
7 Q Have you ever seen these documents before?
8 A Yes.
9 Q And do these represent the whole -- can you
10 confirm that these are e-mails between you and
11 Ms. Caruso?
12 A Yes, I can confirm that.
13 Q There are no other e-mails between you and
14 Ms. Caruso?
15 A There are, I believe.
16 Q And are these involving the ideas you had for
17 Del Taco with its Naugles mark, these e-mails that also
18 exist?
19 A Yes, basically. I think it was mainly saying
20 that I was still interested in that meeting going
21 through.
22 Q And these e-mails that are attached to your
23 affidavit as Exhibit D -- these are from only 2009 and
24 then 2011; is that correct?
25 A Let me verify.

1 Q Take your time.
2 A That appears to be the case, yes.
3 Q Now, you said in your affidavit that she
4 contacted you shortly after your July 31st, 2008,
5 meeting. Is that e-mail in this exhibit, or is it
6 somewhere else?
7 MS. PFEIFFER: Objection, misstating the
8 evidence. He never said it was an e-mail. He just
9 said she contacted him.
10 BY MS. BESL:
11 Q When she contacted you after the meeting, was
12 that an oral, or was it in writing?
13 A I believe that was e-mail.
14 Q And that was from 2008 --
15 A Yes.
16 Q -- when she sent that e-mail? Yes?
17 A I'm pretty sure that's the case, yes.
18 Q And this e-mail is not in this exhibit; is
19 that correct?
20 A I think a further part of that conversation is
21 in this exhibit.
22 Q Can you take a look and show me where that
23 conversation is in this exhibit?
24 A On Saturday, May 2nd, 2009, 12:04 p.m. -- or
25 her communication from May 1st, 2009, 10:36 a.m. she

1 said, "I'm trying for next Wednesday or Thursday," so
2 that was following up from our prior conversation to
3 have such a meeting.
4 Q This was about a year later, after your
5 July 31st, 2008, meeting?
6 A Yes, a little short of a year. Yes.
7 Q So you had no other communication with
8 Ms. Caruso between July 31st, 2008, and May 1st, 2009?
9 A I believe there might have been some.
10 Q Your affidavit says that Ms. Caruso contacted
11 you shortly after that meeting, in July 31st, 2008; and
12 you said there was an e-mail. Is that e-mail not in
13 this exhibit?
14 A I don't think it's in this exhibit.
15 Q Okay. Is that e-mail still in existence, or
16 has it been deleted or lost?
17 A It might have been deleted. That's my best
18 guess. I'm not positive.
19 Q If you could, turn to page 2 of that exhibit,
20 based on the markings at the bottom in black. There's
21 an e-mail dated September 28, 2009, from you to
22 Ms. Caruso at the top; is that correct?
23 A September 28th, 2009? Yes.
24 Q And in the middle of the first paragraph you
25 say, "With the nostalgia factor that is driving

1 business so heavily at places like Bob's Big Boy and
2 Farrell's, this could be a huge selling point for Del
3 Taco and would require little in the way of new
4 ingredients needing to be stocked or whatever"; is that
5 correct?
6 A That's correct.
7 Q And this is referring, of course, to your idea
8 to have a Naugles submenu at Del Taco; correct?
9 A That's correct.
10 Q And you made the note that it "would require
11 little in the way of new ingredients needing to be
12 stocked or whatever"; is that correct?
13 A That's correct.
14 Q And how did you come to that understanding?
15 A It was my best evaluation of the situation at
16 that time.
17 Q And how did you come to that evaluation?
18 A It was merely a guess.
19 Q And is this based on discussions you had with
20 Del Taco representatives?
21 A No.
22 Q Is this based on a review of recipes between
23 Del Taco and Naugles items?
24 A No.
25 Q Was it based on your understanding of Del

1 Taco's general food products?
2 A Somewhat, possibly.
3 Q Just a second.
4 MS. BESL: If the court reporter could,
5 please, take out Folder 6 and mark this -- I think
6 we're on, actually, Exhibit 4. If you want to go ahead
7 and mark that 4, that works for me.
8 MS. PFEIFFER: Wait. You want to mark --
9 MS. NOWELS: -- Exhibit 6 as 4.
10 MS. PFEIFFER: So Folder 6?
11 MS. BESL: Yes, please. I know we're going
12 out of order, but it was the best way I could try and
13 guess.
14 MS. PFEIFFER: That's fine.
15 (Whereupon, Respondent's Exhibit 4 was
16 marked for identification.)
17 BY MS. BESL:
18 Q Is Exhibit 4 in front of you?
19 A Yeah.
20 Q And can you identify this for the record, the
21 subject of the e-mail?
22 MS. PFEIFFER: Which e-mail?
23 MS. BESL: The one at the top.
24 MS. PFEIFFER: The one that he didn't write?
25

1 BY MS. BESL:
2 Q Would you identify the subject of your e-mail
3 at the bottom, please.
4 A "Naugles Affidavit."
5 Q Okay. And Ms. Caruso did not submit an
6 affidavit in support of your petition; is that correct?
7 A That's correct.
8 Q And here on Exhibit 4, dated October 8th,
9 2013, you sent an e-mail to Ms. Caruso requesting her
10 to submit an affidavit; is that correct?
11 A I asked if she could, yes.
12 Q Now, in your e-mail, second paragraph, you
13 tell her, "The affidavit would merely be a written
14 submission, not an in-person encounter"; is that
15 correct?
16 A Yes.
17 Q But you are aware, from the stipulation, that
18 in-person trial testimony could be called by the other
19 side; is that correct?
20 A I was aware that was a possibility.
21 Q Now, at the end of your e-mail before your
22 closing, you say, "If we win the case, we would
23 definitely want to talk to you about PR work as we move
24 forward in bringing back the Naugles brand"; is that
25 correct?

1 A That's correct.
2 Q And have you discussed further with Ms. Caruso
3 working with her on potential PR work for your Naugles
4 venture?
5 A No. No.
6 Q Had you discussed it with her prior to asking
7 her to submit an affidavit?
8 A I had the thought in my mind of bringing it up
9 at some point in time, but I hadn't brought it up to
10 her.
11 Q Did you make a similar affidavit request to
12 Mr. JJ Naugle?
13 A No.
14 Q Did you make a similar affidavit request to
15 Mr. Bill Naugle?
16 A No.
17 Q Did you make a similar affidavit request to
18 Mr. Josh Maxwell?
19 A No.
20 Q Did you make a similar affidavit request to
21 Mr. Jeff Naugle?
22 A Yes.
23 Q And Mr. Jeff Naugle declined to submit an
24 affidavit?
25 A Yes.

1 Q Now, at the top -- in your affidavit regarding
2 Ms. Caruso, you state in paragraph 6 that it is your
3 understanding "that Ms. Caruso thought it was a good
4 idea and was going to bring it back to Del Taco's
5 marketing people"; is that correct?
6 A That's correct.
7 Q Now, if you would, take a look at Exhibit 4.
8 The top e-mail is -- can you confirm that the top
9 e-mail is from Ms. Barbara Caruso to a Jack Tang; is
10 that correct?
11 A That appears to be the case, yes.
12 Q And you recognize the e-mail address next to
13 Ms. Caruso's name as being the e-mail address that you
14 used previously with her; is that correct?
15 A Yes.
16 Q And she states in her second paragraph, "Not
17 sure where he got the idea that I endorsed his idea of
18 reviving the chain. I'm going to decline his request,
19 and I certainly would not want to help them launch!";
20 is that correct?
21 MS. PFEIFFER: Are you just asking him to
22 confirm what he's reading?
23 MS. BESL: Yes.
24 MS. PFEIFFER: Is that what you're reading
25 from the paper in front of you, Christian?

1 THE WITNESS: That's what I'm reading.
2 BY MS. BESL:
3 Q Thank you.
4 A So this would appear to be contradictory to
5 your understanding of Ms. Caruso's idea, Ms. Caruso's
6 appreciation for your idea; correct?
7 MS. PFEIFFER: Objection, conclusory. You're
8 summarizing the evidence. I think the evidence speaks
9 for itself.
10 To your best knowledge, Christian, you can go
11 ahead and answer.
12 THE WITNESS: I'm still going off of the
13 conversation I remember having with her, so --
14 BY MS. BESL:
15 Q All right. Going now to paragraph 7 of your
16 affidavit --
17 MS. PFEIFFER: Are you done with what is now
18 Exhibit 4?
19 MS. BESL: Yes, I am.
20 BY MS. BESL:
21 Q Turning now to paragraph 7 of page 3 of your
22 affidavit, you reference a man named Noah, and you say
23 that his last name is Chillingworth; is that correct?
24 A Yes.
25 Q And you believe this is Del Taco's marketing

1 vice president; is that correct?
2 A I believe it is or was.
3 Q And how did you come to that belief?
4 A I believe it was stated or implied in an
5 e-mail conversation I had with Ms. Caruso.
6 Q And is that an e-mail that's contained in
7 Exhibit D, your e-mail chain with Ms. Caruso? Feel
8 free to take a look.
9 MS. PFEIFFER: He doesn't have it anymore.
10 THE WITNESS: I have to get that exhibit
11 again.
12 BY MS. BESL:
13 Q Sure. That's not a problem.
14 A I believe it might have been stated elsewhere,
15 but she does mention a "Noah."
16 Q And so that's an e-mail that still exists
17 today, or has it been since deleted?
18 MS. PFEIFFER: Was it an e-mail?
19 THE WITNESS: I believe it was an e-mail.
20 MS. PFEIFFER: If you don't know --
21 BY MS. BESL:
22 Q Okay. You say in your affidavit that you made
23 one attempt yourself to reach out to Mr. Chillingworth
24 to set up a meeting. You sent him a LinkedIn request,
25 which he accepted, and then you sent him a private

1 message; is that correct?
2 A Yes.
3 Q And if the court reporter could hand you
4 what's previously been marked as Exhibit E to your
5 petition, I would appreciate it.
6 (Whereupon, Respondent's Exhibit E was
7 marked for identification.)
8 MS. PFEIFFER: Are you done with D again?
9 MS. BESL: I think so.
10 THE WITNESS: Okay. We're putting D back.
11 MS. PFEIFFER: Tell me which one you want
12 again.
13 MS. NOWELS: E.
14 MS. BESL: Exhibit E, as in Edward.
15 MS. PFEIFFER: We are juggling folders.
16 BY MS. BESL:
17 Q Have you seen this document before?
18 A Yes.
19 Q And could you identify this document for the
20 record?
21 A It's just a one-time communication through the
22 LinkedIn Web site to Noah Chillingworth.
23 Q And this was dated December 22nd, 2009?
24 A Correct.
25 Q And in this e-mail you state that you have

1 some ideas that you think would be great for Del Taco's
2 marketing; is that correct?
3 A Yes.
4 Q And this was referring only to your proposed
5 Naugles campaign; is that correct?
6 MS. PFEIFFER: Objection, misstates the
7 testimony and the evidence. I don't think Christian
8 ever testified about a Naugles campaign.
9 What are you referring to here, Christian?
10 THE WITNESS: My -- it was the same idea that
11 I brought up to Barbara Caruso.
12 BY MS. BESL:
13 Q So that was to having Naugles revival at
14 Del Taco; is that correct?
15 A Yes.
16 Q So in December 2009 you were still reaching
17 out to Del Taco; is that correct?
18 A Yes.
19 Q And you said at the time -- in your affidavit,
20 paragraph 7, page 3, you said, "At the time, I thought
21 Del Taco was passing up a great opportunity by not
22 capitalizing on the public's interest in Naugles food
23 items which I was witnessing firsthand in response to
24 my blogs"; is that correct?
25 A I'm trying to find the spot.

1 Q Bottom of the paragraph, page 3, paragraph 7.
2 A Okay. Yes.
3 Q Now, this public interest you say you were
4 witnessing -- is this, once again, the blog response
5 you saw at your blog where you discussed in
6 paragraph 2, I believe, of your affidavit?
7 A In part, yes.
8 Q Were there other blog posts that you made
9 where you saw such a response?
10 A I had a few.
11 Q You say that Mr. Chillingworth never responded
12 to you; is that correct?
13 A That's correct. I had never got a response.
14 Q Did you make any other efforts to reach out to
15 him?
16 A That, I believe, was the only one.
17 Q All right. I'm done with Exhibit E, if you
18 want to put that one aside.
19 I want to go back to some of the research that
20 you did on abandonment in preparation for your Naugles
21 venture. When you researched abandonment, did you
22 research also the concept of intent to resume use?
23 A I believe I saw some material to that effect.
24 Q And did you also research the concept of
25 goodwill?

1 A I don't believe that was a prominent aspect of
2 the research.
3 Q And what is your understanding of the effect
4 of an abandonment?
5 MS. NOWELS: Objection, calls for a legal
6 conclusion.
7 To the extent that you understand something,
8 you can answer to your layperson knowledge.
9 MS. PFEIFFER: I also want to interject a
10 belated objection that other than abandonment, to which
11 he testified to in his affidavit, everything else is
12 outside the scope of direct.
13 Go ahead, Christian.
14 BY MS. BESL:
15 Q What do you understand to be abandonment?
16 A What do I understand to be abandonment?
17 Q Yes.
18 A Disuse of a trademark for at least three
19 consecutive years in the category it's in.
20 Q Now, you say -- in your research regarding
21 abandonment, did you research any case law?
22 MS. PFEIFFER: Objection, outside the scope of
23 direct.
24 THE WITNESS: I believe that came up somewhat
25 in my research.

1 BY MS. BESL:
2 Q And you reviewed cases on abandonment as part
3 of your research?
4 A I think I did.
5 Q Now, if you'll turn to page 6 of your
6 affidavit. Going back to your research, you say in
7 paragraph 12 that you did your own research and you
8 learned that because Del Taco had not used the Naugles
9 mark in connection with restaurant services since about
10 1994, and, clearly, as you experienced yourself, from
11 the lack of response from Ms. Caruso and
12 Mr. Chillingworth, Del Taco had no interest in using
13 the mark again for restaurant services; is that
14 correct?
15 A Yes, I said that.
16 Q But you based your determination as to a lack
17 of interest in restaurant services based on your two
18 experiences with Ms. Caruso and Mr. Chillingworth?
19 MS. PFEIFFER: I'm sorry. Did you say his
20 "two experiences," the number "two"?
21 MS. BESL: Yes, "two."
22 MS. PFEIFFER: I don't remember him testifying
23 to only two.
24 THE WITNESS: At least those two facts.
25 MS. PFEIFFER: She said "experiences," not

1 "facts."
2 THE WITNESS: Yeah. At least those two
3 experiences.
4 MS. PFEIFFER: What -- do you know what she
5 means by "experience"?
6 THE WITNESS: I think.
7 MS. PFEIFFER: Well, don't think. Tell her
8 what you think she means.
9 THE WITNESS: Do you -- do we want a
10 clarification?
11 MS. PFEIFFER: Yeah.
12 THE WITNESS: Can you clarify the question?
13 BY MS. BESL:
14 Q Okay. So I can't hear sometimes what they're
15 saying in the background.
16 A No problem.
17 Q Essentially, what I'm asking is: You based
18 your determination as to Del Taco's lack of interest in
19 using the mark based on your experiences with
20 Ms. Caruso and your one e-mail to Mr. Chillingworth; is
21 that correct?
22 A At least on those two things.
23 Q But those are the only two things you
24 reference in your affidavit; correct?
25 A Yes, I believe. Maybe.

1 MS. PFEIFFER: April, you're talking over him.
2 He's still testifying. Can you slow down, please?
3 MS. BESL: I'm sorry. I didn't know he was --
4 BY MS. BESL:
5 Q I'm sorry. Do you want to finish your
6 response?
7 MS. PFEIFFER: Well, what question were you
8 answering?
9 THE WITNESS: Well, I'm wondering -- well, I'm
10 trying to remember everything that's in the affidavit
11 when answering this one question.
12 MS. PFEIFFER: You can read it. Go ahead.
13 BY MS. BESL:
14 Q To review paragraph 12? I'm happy to let you
15 take a quick look.
16 A Okay based on paragraph 12, it's correct that
17 it only mentions those two experiences.
18 Q And your experience with Mr. Chillingworth
19 was, essentially, an unsolicited communication through
20 LinkedIn; is that correct?
21 MS. PFEIFFER: Objection, conclusory. It
22 speaks for itself.
23 If you want to give your opinion, Christian.
24 Is that what you think it means?
25 THE WITNESS: Yes, I think that means that.

1 BY MS. BESL:
2 Q And you are -- to your knowledge, Ms. Caruso
3 is not an employee of Del Taco; correct?
4 A I have been told that.
5 Q By who?
6 A I think I'm basing that partly on the fact
7 that her e-mails to me were not coming from a
8 DelTaco.com e-mail address.
9 Q So it was your understanding that Ms. Caruso
10 is an outside vendor of Del Taco; is that correct?
11 A Yes, but with some connection.
12 Q Did Ms. Caruso ever tell you, verbally or in
13 writing, that Del Taco had no interest in using Naugles
14 restaurant services?
15 A No. It was implied by lack of response.
16 Q So she never said they had no interest?
17 A That's correct.
18 Q And you had never talked to a Del Taco
19 employee regarding their interest in using the mark for
20 restaurant services, is that correct, the mark of
21 Naugles?
22 MS. PFEIFFER: Objection, outside the scope of
23 direct, irrelevant.
24 THE WITNESS: I -- apart from my attempt to
25 contact Noah Chillingworth, no, I haven't.

1 BY MS. BESL:
2 Q And Mr. Chillingworth, because he did not
3 respond, never told you Del Taco had no interest in
4 using Naugles for restaurant services; is that correct?
5 A That appears to be correct.
6 Q And Ms. Caruso had never told you that Naugles
7 has ceased all -- or, excuse me, Del Taco has ceased
8 all usage of Naugles for restaurant services; is that
9 correct?
10 A Ms. Caruso didn't, but she might not be
11 authorized to say that.
12 Q I'm sorry. Can you repeat the answer?
13 A Ms. Caruso never told me that, but what I
14 learned in the e-mail today makes it sound like that.
15 Q What do you mean by that?
16 A Where she said she doesn't know where I got
17 the idea that she was for such a thing.
18 Q No. I'm sorry. Maybe I'm not clear. I'm
19 asking: Did Ms. Caruso ever tell you that Del Taco had
20 ceased all usage of the Naugles mark for restaurant
21 services?
22 MS. PFEIFFER: Objection, irrelevant.
23 THE WITNESS: I never received any
24 communication from her to that effect.
25

1 BY MS. BESL:
2 Q Either orally or in writing?
3 A Correct.
4 Q And, obviously, since Mr. Chillingworth did
5 not respond, he never told you that Del Taco had ceased
6 all usage of the Naugles mark for restaurant services;
7 is that correct?
8 A That's correct.
9 Q Have you ever had an employee of Del Taco tell
10 you that Del Taco had ceased all usage of the Naugles
11 mark for restaurant services?
12 MS. PFEIFFER: Objection, irrelevant.
13 THE WITNESS: I've never had a Del Taco
14 employee tell me that.
15 BY MS. BESL:
16 Q I'm going to go forward to page 8 of your
17 affidavit, paragraph 17. You state that you have taken
18 other concrete steps to further your intentions to use
19 the trademark "Naugles" in connection with cafeteria
20 and restaurant services; correct?
21 A Correct.
22 Q And your application was filed in connection
23 with just cafeteria and restaurant services; is that
24 correct?
25 A Correct.

1 Q You state that on January 15th, 2010, you
2 registered the domain name www.nauglestacos.com;
3 correct?
4 A Correct.
5 Q And when you registered the domain name, were
6 you advertising cafeteria and restaurant services at
7 the domain name?
8 MS. PFEIFFER: At what point?
9 MS. BESL: When he registered it.
10 MS. PFEIFFER: So on January 13th, 2010?
11 MS. BESL: Correct.
12 THE WITNESS: It might not have been that very
13 day. It might have been shortly thereafter.
14 BY MS. BESL:
15 Q And would that -- by the time of your filing
16 of your application on May 17th, 2010, were you
17 advertising restaurant services at
18 www.nauglestacos.com?
19 A Can you repeat or rephrase that?
20 Q Sure. As of the filing date of your
21 application, May 17th, 2010, for the Naugles trademark,
22 were you advertising services at www.nauglestacos.com?
23 A Oh, okay. I believe I probably was.
24 Q And how were you doing that?
25 A Announcing the intent to use on that Web site.

1 Q If the court reporter could hand you
2 Exhibit L, as in Lynn, to your affidavit.
3 (Whereupon, Respondent's Exhibit L was
4 marked for identification.)
5 BY MS. BESL:
6 Q Do you recognize this document in front of
7 you?
8 A Yes.
9 Q And this is a screen shot of your
10 nauglestacos.com domain; is that correct?
11 A Yes.
12 Q And is this how your Web site appeared as of
13 the filing date of your trademark application on
14 May 17th, 2010?
15 A Similar, but not exact.
16 Q And how is it different?
17 A I can't remember back to then. I think it may
18 have had only the introductory paragraph and a little
19 information below that, and maybe some of those YouTube
20 videos.
21 Q So by "the introductory paragraph," are you
22 referring to the paragraph that states, "The Naugles
23 fast food restaurant chain was founded by Dick Naugle
24 in 1970... Plans are being made to bring the chain
25 back"?

1 A I believe that paragraph was the same on the
2 filing date as it is in the screen shot.
3 Q And this was the sole amount of your
4 advertising on this Web site for your restaurant
5 services?
6 MS. PFEIFFER: You're misstating his testimony
7 and his evidence.
8 BY MS. BESL:
9 Q Okay. As of the filing date of your
10 application, that paragraph and some YouTube videos was
11 all that was at your domain name; is that correct?
12 A And I believe the motto from Dick Naugles was
13 there and a link from some Facebook and Twitter pages
14 and a Wikipedia page were there as well.
15 Q As of the filing date of your application, you
16 were not offering restaurant services to the public;
17 correct?
18 A Correct.
19 Q You did not have a restaurant open?
20 A Correct.
21 Q You still do not have a restaurant open to
22 date?
23 A Correct.
24 Q You do not have any taco trucks you are
25 operating or food trucks you are operating?

1 A No food trucks.
2 Q As of the filing date of your application, no
3 food trucks?
4 A Correct.
5 Q Aside from this Web site, was there any other
6 advertising being made to promote a Naugles restaurant?
7 MS. PFEIFFER: When?
8 MS. BESL: As of the filing date of the
9 application.
10 THE WITNESS: I also have the Twitter account.
11 BY MS. BESL:
12 Q All right. Going now to your Twitter account
13 on paragraph 18, page 9, you reference your Señor
14 Naugles Twitter account located @Naugles; is that
15 correct?
16 A Correct.
17 Q And you say that you've been offering
18 advertising through this Twitter account; is that
19 correct?
20 A Correct.
21 MS. BESL: All right. If the court reporter
22 could go to Folder 7. I think we're on Exhibit 5,
23 technically.
24 (Whereupon, Respondent's Exhibit 5 was
25 marked for identification.)

1 BY MS. BESL:
2 Q Do you have Exhibit 5 in front of you now?
3 A Is this Exhibit 5?
4 MS. PFEIFFER: Yes.
5 MS. NOWELS: Yes.
6 THE WITNESS: I think that's what I have in
7 front of me.
8 BY MS. BESL:
9 Q Could you identify this for the record?
10 A A screen shot from my Twitter account.
11 Q So this is your Twitter account, @Naugles?
12 A Correct.
13 Q If the court reporter could hand you what's in
14 Folder No. 8, I think that will be marked Exhibit 6.
15 (Whereupon, Respondent's Exhibit 6 was
16 marked for identification.)
17 MS. PFEIFFER: Hang on. Are you going to
18 question him on 5, or can he give it back to the court
19 reporter?
20 MS. BESL: Oh. 5 is done. I was just using
21 that to make sure I had the right account.
22 BY MS. BESL:
23 Q Do you have Exhibit 6 in front of you now?
24 A This is Exhibit 6?
25 MS. PFEIFFER: Yes.

1 THE WITNESS: Okay. Yes, I do.
2 BY MS. BESL:
3 Q And can you identify this for the record?
4 A Certain tweets from and to my Naugles Twitter
5 account.
6 Q And on September 4th you respond to a user
7 named @Seanny, S-e-a-n-n-y, Rotten, and you say,
8 "Thanks for remembering us"; is that correct?
9 A Yes.
10 Q When you say, "Thanks for remembering us,"
11 you're referring to yourself as being the old Naugles
12 restaurant; is that correct?
13 MS. PFEIFFER: Misstates the evidence. He
14 didn't testify to that either.
15 BY MS. BESL:
16 Q All right. What do you refer to when you say,
17 "Thanks for remembering us"?
18 A It doesn't specify, and it just means whatever
19 this person might have thought of as Naugles.
20 Q So when you say "us," are you referring to
21 yourself as being Naugles?
22 A Me and whoever else I might be in this venture
23 with.
24 Q And when you say, "Thanks for remembering us,"
25 are you intending people to think of you as the prior

1 Naugles incarnation?
2 MS. PFEIFFER: Do you understand the question?
3 THE WITNESS: Maybe.
4 MS. PFEIFFER: Can you rephrase, please?
5 MS. BESL: Sure.
6 BY MS. BESL:
7 Q The prior -- you stated in your affidavit that
8 Naugles closed and is now being used by Del Taco. Is
9 that an accurate assessment?
10 A Yes, roughly.
11 Q So in your opinion, Naugles no longer exists;
12 would that be a fair statement?
13 MS. PFEIFFER: As a restaurant?
14 THE WITNESS: That's very broad.
15 BY MS. BESL:
16 Q Restaurant, yes.
17 A Correct, there's no Naugles restaurants that
18 exist.
19 Q So there was a prior entity that existed
20 separate from Del Taco, is that correct, in your mind?
21 A There was a prior entity that was owned by
22 different entities at different times.
23 Q And when you say, "Thanks for remembering us,"
24 are you intending for people to think of you as that
25 prior entity?

1 A I'm intending people to think of it as
2 whatever they remember Naugles as.
3 Q And you want them to associate that with you;
4 is that correct?
5 A I'm trying to not make it about me as a
6 person.
7 Q But you are the owner of the Naugles trademark
8 application, are you not?
9 A One more time.
10 Q You are the owner of the Naugles trademark
11 application filed on May 17, 2010, are you not?
12 A Yes, I am.
13 Q So when you say you are not trying to make it
14 known by you personally, who do you want it to be
15 affiliated with?
16 A I believe it's bigger than a person.
17 Q The trademark is bigger than a person?
18 A Just the overall concept of Naugles.
19 Q So you do not want people to associate Naugles
20 with you?
21 A Not as a one-to-one thing.
22 MS. PFEIFFER: He didn't testify to that.
23 That's misstating his testimony, mischaracterizing the
24 evidence.
25 MS. BESL: All right. I'm done with

1 Exhibit 6. If the court reporter could hand you what's
2 been marked -- what's in Folder No. 9, which I believe
3 will be now Exhibit 7.
4 (Whereupon, Respondent's Exhibit 7 was
5 marked for identification.)
6 THE WITNESS: Okay. I have that.
7 BY MS. BESL:
8 Q All right. And can you identify this for the
9 record?
10 A More tweets from and to and related to my
11 Naugles Twitter account.
12 Q Okay. And in the middle of this page a
13 Twitter user -- you write in response to a Twitter user
14 by the name @drewbreese, b-r-e-e-s-e, "We still are";
15 correct?
16 A Correct.
17 Q And the Twitter user says, "Egg Burritos, and
18 not even from Del Taco. Naugles was fantastic though";
19 correct?
20 A That's what that person said, yes.
21 MS. PFEIFFER: I'm inserting a -- it looks
22 like you're going to go down a road about Twitter
23 posts. I'm just going to insert an ongoing objection
24 to this entire line of questioning as completely
25 irrelevant to the issues in this trademark proceeding

1 concerning abandonment and Christian's intent to use
2 prior to filing his application. This has no bearing
3 on that, so I have an ongoing objection to this entire
4 line of questioning.
5 MS. BESL: All right. Noted.
6 BY MS. BESL:
7 Q In your post back you say, "We still are"
8 fantastic, essentially. Is that what you were trying
9 to say?
10 A Yes, basically.
11 Q And when you say "we," you were referring to
12 yourself as being Naugles; correct?
13 A It would be the same type of answer I gave
14 before, where I'm not trying to make a one-to-one
15 correlation between me and Naugles.
16 Q Let me ask you a question. Have you licensed
17 use of your Naugles application to any third party?
18 A No.
19 Q Have you licensed it to your partners Rob
20 Hallstrom or Dan Dvorak?
21 A No.
22 Q So you are the sole owner of your Naugles
23 application; is that correct?
24 A Yes.
25 Q Have you transferred that Naugles application

1 to any -- have you assigned or transferred that
2 application to any corporation or LLC or other entity?
3 A No.
4 Q All right. I'm done with Exhibit 7.
5 If you'll turn now to what's in Folder 10,
6 which I believe is now going to be Exhibit 8.
7 (Whereupon, Respondent's Exhibit 8 was
8 marked for identification.)
9 THE WITNESS: Okay.
10 BY MS. BESL:
11 Q All right. Can you identify this for the
12 record.
13 A More tweets from and to my Naugles Twitter
14 account.
15 MS. PFEIFFER: I'm going to -- April, sorry.
16 I'm just trying to insert another objection. Again,
17 this is completely irrelevant. This is kind of
18 borderline -- you're just driving up the cost of
19 litigation. These are all clearly dated after his
20 filing of his Intent to Use application. They have no
21 bearing on this case whatsoever.
22 MS. BESL: All right. I don't think this is
23 driving up any cost of litigation. The way the Naugles
24 mark is being handled is completely relevant, and I can
25 assure you we're going to move through these quickly,

1 so we'll be done shortly.
2 MS. PFEIFFER: I'm sorry. What did you say?
3 You think the way the mark is being handled is relevant
4 to this case?
5 MS. BESL: I think the statements that are
6 being made and the allusions to goodwill and the
7 ownership of the mark and the recognition as an owner
8 is all completely relevant.
9 MS. PFEIFFER: That's relevant -- that's
10 relevant -- you think that's relevant to whether or not
11 Del Taco used the mark and whether or not Christian had
12 intent to use prior to his filing of application.
13 MS. BESL: Well, I think it's completely
14 relevant to ownership and who the proper owner of the
15 mark is and whether or not it's being -- there is a
16 bona fide intent to use and whether or not he had it
17 upon filing. So this all goes back to that.
18 MS. PFEIFFER: This is not going back to that.
19 It's dated over two years later, so my standing
20 objection to this entire line of questioning continues.
21 Can we, please, stay on course?
22 Christian, answer to the best of your ability.
23 BY MS. BESL:
24 Q Now, in the tweet that's highlighted as
25 July 13th, you state to a user named @powdertraitor,

1 "In their mind they don't have a secret Naugles menu,
2 although you can get a couple things there close to how
3 we made them." And when you say "they," are you
4 referring to Del Taco?
5 A I think that's the case there, yes.
6 Q And you were saying "they don't have a secret
7 menu"; is that correct?
8 A That's what I said, correct.
9 Q And have you ever discussed with any Del Taco
10 representatives whether or not they believe they have a
11 secret Naugles menu?
12 MS. PFEIFFER: Objection, irrelevant, outside
13 the scope of direct.
14 THE WITNESS: Should I answer?
15 MS. PFEIFFER: Yep.
16 THE WITNESS: From my in-person conversation
17 with Barbara Caruso on July 31st, 2008, it was heavily
18 implied that they did not -- and that she was going to
19 take my idea of doing such back to them, and she
20 actually said that's a good idea. But if she had known
21 that they had a secret Naugles menu, I'm pretty sure
22 she would have said so at that time.
23 BY MS. BESL:
24 Q Are there any e-mails regarding this statement
25 by Ms. Caruso?

1 A I think we've discussed some of those.
2 Q In those e-mails she explicitly stated that
3 Del Taco did not have a secret Naugles menu?
4 MS. PFEIFFER: Objection, misstates his
5 testimony.
6 BY MS. BESL:
7 Q Is that your testimony?
8 A She never stated that.
9 Q And is it your testimony that in those e-mails
10 she stated that Naugles -- that Del Taco had no
11 interest in having any kind of Naugles menu campaign?
12 A She never stated that in those e-mails, except
13 what I found out today. It sounds like -- that they
14 have no interest.
15 Q And where do you base that from?
16 A Because of the e-mail that I was shown today
17 where she wrote to -- was it Jack Tang?
18 MS. PFEIFFER: I don't know. Ask her.
19 THE WITNESS: Where she said, "I don't know
20 where he got the idea, and I certainly would not want
21 to help them launch."
22 BY MS. BESL:
23 Q And how did that statement feel like on the
24 part of Del Taco with respect to Naugles?
25 MS. PFEIFFER: I couldn't hear you. I'm

1 sorry. What?
2 BY MS. BESL:
3 Q How did that e-mail statement that you just
4 quoted show any intentions on the part of Del Taco?
5 MS. PFEIFFER: To the best of your knowledge.
6 Christian can't speak to the intentions of Del
7 Taco.
8 MS. BESL: He's testifying as to her
9 understanding. I'm just asking how that came to be.
10 THE WITNESS: Me?
11 MS. PFEIFFER: Why do you think that Barbara
12 thought that?
13 THE WITNESS: Why do I think that Barbara
14 thought they didn't have any intention?
15 MS. PFEIFFER: Correct.
16 THE WITNESS: She never told me that they did,
17 when she had ample opportunity to.
18 BY MS. BESL:
19 Q So in the e-mail you're quoting from, she said
20 she does not want to help your Naugles venture launch;
21 is that correct?
22 MS. PFEIFFER: He doesn't have that exhibit in
23 front of him anymore. Do you want me to put it back in
24 front of him?
25 MS. BESL: Yes, please.

1 MS. PFEIFFER: What number?
2 MS. BESL: I believe 4, Exhibit 4.
3 THE WITNESS: Okay. She says, "Not sure where
4 he got that idea that I endorsed his idea of reviving
5 the chain." What I was referring to was when I said,
6 "Barbara, Del Taco should have a Naugles submenu," and
7 she said, "That's a good idea." If she knew that they
8 had a Naugles submenu in existence, she would have
9 said, "There already is one in existence."
10 BY MS. BESL:
11 Q Again, Ms. Caruso is an outside affiliated, is
12 she not?
13 MS. PFEIFFER: Again, this entire line of
14 questioning is irrelevant.
15 THE WITNESS: She's a representative, and she
16 clearly has communication with Del Taco.
17 BY MS. BESL:
18 Q So, again, nowhere in here, in this e-mail
19 does she state that Del Taco does not want to use the
20 Naugles mark; is that correct?
21 MS. PFEIFFER: Objection, irrelevant.
22 THE WITNESS: Not in this e-mail.
23 MS. BESL: You know what, I've still got more,
24 but I know it's about 12:30 your time. Do you want to
25 take a 30-minute break for lunch or --

1 MS. PFEIFFER: It depends on how long you want
2 to keep on going.
3 MS. BESL: It could be an hour; it could be
4 more, depending on how long it goes.
5 MS. PFEIFFER: April, could we go off the
6 record to discuss this?
7 MS. BESL: Yes. Thank you.
8 (A discussion was held off the record.)
9 MS. BESL: Back on the record.
10 If you could go ahead and hand the witness
11 what's been put into Folder No. 14, which I believe is
12 now being marked as Exhibit 9.
13 MS. PFEIFFER: Are you done with new
14 Exhibit 4?
15 MS. BESL: I'm done with 8.
16 MS. PFEIFFER: 4 and 8?
17 MS. BESL: Yes. I'm done with 4 and 8.
18 (Whereupon, Respondent's Exhibit 9 was
19 marked for identification.)
20 BY MS. BESL:
21 Q Now, to kind of keep this moving quickly, can
22 you confirm that Exhibit 9 is another screen shot from
23 your Twitter account?
24 A That is correct.
25 MS. PFEIFFER: I'm just going to insert my

1 ongoing objection to this line of questioning and this
2 evidence and all of it --
3 MS. BESL: So noted.
4 MS. PFEIFFER: -- the whole issue of
5 irrelevant.
6 MS. BESL: So noted. Do you want to keep a
7 continuing objection as to any other question involving
8 the Twitter account?
9 MS. PFEIFFER: No. I'll evaluate it as it
10 goes.
11 MS. BESL: All right.
12 BY MS. BESL:
13 Q And in the middle of this screen shot, you
14 write that -- this is your Twitter account, and you
15 write back to a user, @FlyingSoccerDad. You write,
16 "Actually, our friends @DelTaco started before us, then
17 we started, then there was a merger, then Naugles went
18 dormant"; is that correct?
19 A That is correct.
20 Q So this is a post where you are telling people
21 that Del Taco and Naugles are separate; correct?
22 MS. PFEIFFER: Objection, misstates the
23 testimony and misstates the evidence.
24 Go ahead. What are you telling people in this
25 post?

1 THE WITNESS: I believe that Del Taco wants
2 that clear that we are not affiliated with them.
3 BY MS. BESL:
4 Q Well, you say that Del Taco wants you
5 personally not to be affiliated with them; is that
6 correct? Is that what you're saying?
7 A Well, my overall Naugles venture.
8 Q And you say, "Del Taco started before us."
9 When you say, "Del Taco started before us," are you
10 referring to your venture or the prior Naugles
11 restaurants?
12 A Loosely, both.
13 Q So when you say, "then we started," are you
14 referring to your venture or the prior Naugles
15 restaurants?
16 A Whatever FlyingSoccerDad thinks of as Naugles.
17 Q And you say, "then there was a merger." Are
18 you referring to your venture in Del Taco or the prior
19 Naugles restaurant in Del Taco?
20 A The prior Naugles and Del Taco restaurant
21 chains.
22 Q So is it an accurate statement to say that you
23 want people to associate your venture with the prior
24 restaurant?
25 MS. PFEIFFER: Objection, misstates his

1 testimony, mischaracterizes the evidence.
2 THE WITNESS: Should I answer?
3 MS. PFEIFFER: If you understand what she's
4 asking of you, go ahead and answer.
5 THE WITNESS: Basically, yes.
6 BY MS. BESL:
7 Q And you are attempting to dispel any notion
8 that Del Taco and Naugles are connected; is that
9 correct?
10 MS. PFEIFFER: Which? Are you talking about
11 old Naugles, or are you talking about his Naugles
12 venture?
13 MS. BESL: Let's start with old Naugles.
14 BY MS. BESL:
15 Q You wanted to dispel the notion that old
16 Naugles and Del Taco were connected; correct?
17 A I affirmed that there had been some connection
18 in the past.
19 Q And that you are now the same old Naugles
20 revived? Would that be a fair statement?
21 A Roughly, yes.
22 Q So when people think of Naugles, you want them
23 to think of your venture; is that correct?
24 A Yes.
25 Q All right. And then one last on the Twitter

1 account. If the court reporter could hand you what's
2 been in Folder 15, which will now be marked Exhibit 10.
3 (Whereupon, Respondent's Exhibit 10 was
4 marked for identification.)
5 THE WITNESS: Okay. I have that.
6 BY MS. BESL:
7 Q Okay. And just to keep this moving, this is a
8 post on your Twitter account; is that correct?
9 MS. PFEIFFER: I'm just going to insert my
10 objection again to this line of questioning and to this
11 particular piece of evidence as irrelevant, outside the
12 scope of direct.
13 MS. BESL: So noted.
14 BY MS. BESL:
15 Q Is this -- can you confirm this is a screen
16 shot of a post on your Twitter account?
17 A Yes.
18 Q And in the middle, on January 4th, you
19 responded to a post -- can you confirm that this view
20 you had posted to @DelTaco, "Remember when you were
21 Naugles? Bam flashback!"; is that correct?
22 MS. PFEIFFER: I just want to clarify that
23 these posts are January 2013.
24 Go ahead, Christian.
25 MS. BESL: Yes. Yes.

1 THE WITNESS: That's correct that that person
2 said that.
3 BY MS. BESL:
4 Q And you responded, "They were two separate
5 chains that merged and then most of the Naugles got
6 converted to Del Tacos"; correct?
7 A Correct.
8 Q So this is -- do you agree that this is a
9 person who associates Naugles with Del Taco?
10 MS. PFEIFFER: Objection, lacks personal
11 knowledge.
12 Do you know his --
13 THE WITNESS: I don't know his mindset. My
14 guess is that he knows of a Del Taco location that had
15 been a Naugles location that then converted to Del
16 Taco. That's my best guess.
17 BY MS. BESL:
18 Q So why did you choose to respond to this user?
19 A Because I try to be responsive to the users.
20 Q But this user did not comment to your account,
21 did they?
22 A I don't -- not in that first post, but he did
23 subsequently.
24 Q After you commented to him and told him not to
25 associate Del Taco with Naugles; is that correct?

1 A I don't know if that's the best wording of my
2 post.
3 Q But you informed him that Del Taco was
4 separate from Naugles; is that correct?
5 A My tweet is merely giving the historical
6 facts.
7 Q All right. Turning back to your affidavit --
8 I'm done with all the Twitter posts. Page 9 of your
9 affidavit, paragraph 19, you state, "I am informed and
10 believe that in 1989 Del Taco announced its intent to
11 cease use of the Naugles trademark and phase out all
12 Naugles restaurants." Who informed you of that?
13 A It was not -- it's general knowledge and
14 newspaper articles from the Orange County Register, Los
15 Angeles Times, and elsewhere; also, my own personal
16 experience in the late '80s and early '90s with seeing
17 Naugles locations being converted to Del Tacos.
18 Q So is it your testimony that in these articles
19 you cited to, Del Taco expressly stated it had no
20 intention to continue using the Naugles trademark?
21 MS. PFEIFFER: Objection, misstates his
22 testimony.
23 THE WITNESS: That's what I infer when I see
24 the headline saying, "Adios to Naugles," and then a
25 subsequent copy of that newspaper article.

1 BY MS. BESL:
2 Q Okay. You're referring to -- if the court
3 reporter could hand you Exhibit M. I think you're
4 referring to this article with "Adios to Naugles."
5 (Whereupon, Respondent's Exhibit M was
6 marked for identification.)
7 THE WITNESS: Okay. I have that.
8 BY MS. BESL:
9 Q And you've seen this document before?
10 A Yes.
11 Q And this is an e-mail between you and Nancy
12 Luna; is that correct?
13 A Yes.
14 Q And you made the comment you saw "Adios to
15 Naugles." Is that in reference to this article
16 contained in Exhibit M?
17 A That's the headline for that article, the
18 title.
19 Q And it is your belief that this article states
20 Del Taco's intention to cease use of the Naugles
21 trademark; would that be accurate?
22 MS. PFEIFFER: Misstates his testimony.
23 THE WITNESS: That seems -- yes, that's what
24 the article is saying.
25

1 BY MS. BESL:
2 Q Now if you'll turn to page 1 of Exhibit M, in
3 the middle there's a line that starts, "Soliman said an
4 ad campaign focusing on the quality of Del Taco and
5 Naugles food will continue." Is that accurate, the
6 statement in that article?
7 MS. PFEIFFER: Is the statement accurate, or
8 does the article simply state that?
9 BY MS. BESL:
10 Q Does the article state that?
11 A The article does state that.
12 Q And when they say "Soliman," they're referring
13 to Anwar Soliman, who owned those chains; is that
14 correct?
15 MS. PFEIFFER: Objection, lacks personal
16 knowledge.
17 Is that your --
18 BY MS. BESL:
19 Q Based on your reading of the article, would
20 you say that "Soliman" refers to Anwar Soliman, who
21 owns both chains in the article?
22 A Yes, to the best of my knowledge.
23 Q So if an ad campaign focusing on the quality
24 of Del Taco and Naugles food will continue, how does
25 that show Del Taco's intention to cease all use of the

1 Naugles trademark, in your mind?
2 A Do you want me to answer?
3 MS. PFEIFFER: It's kind of borderline calling
4 for a legal conclusion.
5 To the extent that, you know, you can answer
6 as a layperson, give your opinion to what she's asking
7 you.
8 THE WITNESS: As a layperson's opinion, the
9 article states that they're closing Naugles
10 restaurants; and based on other information, they did
11 not continue serving Naugles food not too long after
12 that point.
13 BY MS. BESL:
14 Q Going back to the research that you performed
15 on abandonment, did you also research use of trademarks
16 for restaurant services?
17 MS. PFEIFFER: Objection, outside the scope of
18 direct, irrelevant.
19 THE WITNESS: I believe there may have been
20 some general research.
21 BY MS. BESL:
22 Q As a Mexican food blogger, you cover a variety
23 of Mexican food restaurant; correct?
24 A Yes.
25 Q Would you cover, for example, Del Taco?

1 MS. PFEIFFER: Objection, irrelevant.
2 Go ahead.
3 THE WITNESS: Yes.
4 BY MS. BESL:
5 Q And you would cover maybe, like, a Taco Bell?
6 MS. PFEIFFER: Objection, irrelevant.
7 THE WITNESS: Yes.
8 BY MS. BESL:
9 Q Are you aware of any tag lines that Taco Bell
10 has used in connection with its restaurants, for
11 example, like "Yo Quiero Taco Bell"?
12 A Yes.
13 Q Would the use of a tagline, based on your
14 research and your knowledge, be considered to be in
15 connection with restaurants services?
16 MS. PFEIFFER: Objection, irrelevant, outside
17 the scope of direct.
18 THE WITNESS: I don't believe it would be
19 enough to establish that a corporation is running a
20 restaurant with a certain trademark, named after a
21 certain trademark.
22 BY MS. BESL:
23 Q So is it your belief that a restaurant can
24 only have one trademark for its restaurant services,
25 namely the name of its restaurant?

1 MS. PFEIFFER: Objection, irrelevant, outside
2 the scope of direct.
3 THE WITNESS: If I'm understanding the
4 question correctly, no; but to use -- to continue
5 legitimate use of a trademark, that should be the name
6 of the restaurant, although, there may be other things
7 associated with it.
8 BY MS. BESL:
9 Q So -- I'm sorry -- let me make sure I
10 understand your answer correctly. Basically, what
11 you're saying is: As long as you continue use of a
12 name as the name of a restaurant, that's restaurant
13 services, to your mind?
14 MS. PFEIFFER: Objection, irrelevant, outside
15 the scope of direct.
16 THE WITNESS: If it's the name of the
17 restaurant, I believe that's the case. I can't make a
18 final legal conclusion.
19 BY MS. BESL:
20 Q So let me ask you: You say that you use your
21 Web site to advertise and promote your restaurant
22 services, but your restaurant services are not being
23 offered. How are you offering advertising for those
24 services on a Web site?
25 MS. PFEIFFER: Objection, misstates his

1 testimony. I believe he testified that he was
2 advertising his intent to use.
3 THE WITNESS: That's correct. I'm only
4 intending to use at this point in time, so that's -- my
5 advertising is only to that point.
6 BY MS. BESL:
7 Q Are you aware of the fact that Del Taco sells
8 clothing? You can put away Exhibit M. I'm done with
9 that one. Are you aware that Del Taco sells Naugles
10 clothing in connection with its restaurant?
11 MS. PFEIFFER: Objection, irrelevant, outside
12 the scope of direct.
13 Go ahead.
14 THE WITNESS: Am I aware that Del Taco sells
15 clothing in connection with its restaurants?
16 BY MS. BESL:
17 Q Yes.
18 A I believe I've seen articles of Del Taco
19 clothing being sold.
20 Q And have you seen -- are the clothes of
21 Naugles clothing being sold?
22 MS. PFEIFFER: Objection, irrelevant, outside
23 the scope of direct.
24 THE WITNESS: Yes. I --
25

1 BY MS. BESL:
2 Q And just in regard to the objection there, the
3 comment -- the testimony has been that Naugles was no
4 longer being used for restaurant services, and I just
5 want to explore his knowledge of what's being done in
6 connection with the restaurant by Del Taco.
7 MS. PFEIFFER: Why? He's not --
8 MS. BESL: Just to clarify what that
9 objection -- because I think this is relevant.
10 MS. PFEIFFER: My objection of irrelevance
11 stands because he's not an attorney, and what Del Taco
12 uses its mark for -- his opinion on that has no
13 relevance to this case.
14 Go ahead, Christian. You can answer.
15 THE WITNESS: So what is the current question?
16 BY MS. BESL:
17 Q Are you aware that Del Taco sells
18 Naugle-branded clothing in connection with its
19 restaurants?
20 A I'm aware that Del Taco sells Naugles-branded
21 clothing.
22 Q And are you aware that Del Taco currently
23 holds a registration for the mark "Naugles" for
24 clothing?
25 MS. PFEIFFER: Objection, irrelevant to this

1 proceeding, outside the scope of direct.
2 Go ahead.
3 THE WITNESS: Can you repeat the question?
4 BY MS. BESL:
5 Q Are you aware that Del Taco currently has a
6 trademark registration for the mark "Naugles" in
7 connection with clothing?
8 A I have a lot I could say on that, but yes.
9 Q Let's go forward.
10 A Just "yes."
11 Q What did you mean you had a lot you could say
12 about that?
13 A I have things I could say that I think are
14 extremely outside the scope of this present discussion.
15 Q And is that in regard to your opinion as to
16 Naugles -- the sale of Naugles clothing?
17 MS. PFEIFFER: Objection, this entire line of
18 questioning is irrelevant, outside the scope of direct.
19 MS. BESL: But with that comment, I'm just
20 asking.
21 MS. PFEIFFER: And I'm just saying this entire
22 line of questioning is irrelevant. He's not an
23 attorney. Calls for a legal conclusion as far as the
24 significance of the use of the trademark by Del Taco at
25 all.

1 Go ahead, Christian. You can answer.
2 THE WITNESS: I keep forgetting what the
3 question is.
4 MS. PFEIFFER: Sorry.
5 THE WITNESS: Yes. I'm aware of their
6 registration of that trademark.
7 BY MS. BESL:
8 Q Are you aware that Del Taco has filed a design
9 mark application for the mark "Naugles" and design in
10 connection with the restaurant services?
11 MS. PFEIFFER: Objection, irrelevant, outside
12 the scope of direct.
13 THE WITNESS: From what I can remember, there
14 was a design filed in connection with the clothing and
15 apparel trademark.
16 BY MS. BESL:
17 Q So you were not aware of any applications by
18 Del Taco for Naugles and design?
19 MS. PFEIFFER: Objection, irrelevant.
20 Outside the scope of direct.
21 THE WITNESS: There is one thing I saw, but I
22 can't remember all the details on it. I believe it was
23 Del Taco filing an intent --
24 BY MS. BESL:
25 Q What did you say?

1 A I believe it was Del Taco filing an intent to
2 use the trademark.
3 Q The "trademark" by -- you mean Naugles and
4 design?
5 A To the best of my memory.
6 Q Let's go back to when you filed your
7 application for Naugles on May 17th, 2010.
8 A Okay.
9 Q As of the date of your filing, had you picked
10 a format for your restaurant?
11 MS. PFEIFFER: Objection, vague. What do you
12 mean by "format"?
13 BY MS. BESL:
14 Q Had you decided if it was going to be a food
15 truck?
16 A I think I had the very general idea that it
17 would be fast-food, bordering on fast casual, and that
18 was about it.
19 Q So you had not picked whether it would be a
20 sit-down restaurant or have a drive-through, for
21 example?
22 A I think I generally thought it could have an
23 eat-inn option and a drive-through option.
24 Q Besides picking the name "Naugles," had you
25 picked a logo as of the date of filing May 17, 2010?

1 A I had some in mind, and some had been worked
2 on.
3 Q And do you have any copies of these designs
4 that have been put together?
5 A Yes.
6 Q And are they currently in existence today?
7 A I believe so, yes.
8 MS. PFEIFFER: Objection, this whole line of
9 questioning is outside the scope of direct. This isn't
10 discovery.
11 MS. BESL: I'm not considering it to be
12 discovery. I'm just -- we were going into his claimed
13 intention to use the mark.
14 MS. PFEIFFER: Yeah. This is a cross-exam on
15 what he testified to in his affidavit. It is outside
16 the scope of what he testified to. That's my
17 objection.
18 Go ahead, Christian.
19 THE WITNESS: Oh. I already answered that
20 question.
21 MS. PFEIFFER: That's fine.
22 BY MS. BESL:
23 Q Were these logos in writing, these designs?
24 A They were designed on computer, and some have
25 been printed.

1 Q At the time of filing your application
2 May 17th, 2010, had you determined who would be a chef
3 or cook for your restaurant?
4 MS. PFEIFFER: Objection, outside the scope of
5 direct.
6 THE WITNESS: At that point in time, no final
7 determination had been made.
8 BY MS. BESL:
9 Q Now, you state that you have two partners to
10 your Naugles venture; is that correct?
11 A Yes.
12 Q And those partners are Rob Hallstrom and Dan
13 Dvorak; is that right?
14 A Dan Dvorak and Josh Maxwell.
15 Q Oh. I'm sorry. Thank you for the correction.
16 A That's fine.
17 Q Now, have you entered into any kind of
18 agreements with Mr. Maxwell or Mr. Dvorak?
19 A Yes, I have.
20 Q And these are signed, formal documents?
21 A Yes.
22 Q And does this make you each a third owner in
23 the trademark?
24 A Not exactly.
25 Q How is the partnership structured?

1 MS. PFEIFFER: Objection, irrelevant, outside
2 the scope of direct.
3 THE WITNESS: The agreement was made some time
4 ago, and I don't have the papers in front of me, but
5 there were certain percentages allotted to each of us.
6 BY MS. BESL:
7 Q And as of the date of filing your application
8 May 17th, 2010, had you entered into this agreement
9 with Mr. Maxwell and Mr. Dvorak?
10 MS. PFEIFFER: Just a minute, April. I want
11 to back up and make sure Christian understands your
12 question.
13 You're talking about percentages of the
14 trademark application?
15 THE WITNESS: No.
16 MS. PFEIFFER: Okay. She -- I believe that's
17 what she was asking about.
18 THE WITNESS: Oh. Okay. No. I'm the sole
19 owner of the trademark application.
20 BY MS. BESL:
21 Q Okay. Now, as of the date of filing your
22 application on May 17th, 2010, had you entered into
23 this agreement with Mr. Maxwell and Mr. Dvorak?
24 A No.
25 Q As of the date of filing your application,

1 May 17th, 2013, had they invested any funding into your
2 Naugles venture?
3 MS. PFEIFFER: Objection, irrelevant. Are you
4 asking if he -- if they invested money prior to his
5 filing?
6 MS. BESL: Correct.
7 THE WITNESS: No.
8 BY MS. BESL:
9 Q To date, have they invested money in your
10 Naugles venture?
11 A Yes.
12 Q Turning now to paragraph 23 of page 11 of your
13 affidavit. You refer to an article appearing in the
14 Orange County Register newspaper, dated June 2nd, 2012.
15 Do you see this?
16 A I do.
17 Q I believe you're referring to -- if the court
18 reporter could hand you what is Exhibit P, as in Peter.
19 (Whereupon, Respondent's Exhibit P was
20 marked for identification.)
21 THE WITNESS: Got it. Okay. I have that.
22 BY MS. BESL:
23 Q And this is a June 2nd, 2012, article entitled
24 "Twitter talk suggests comeback for Naugles fast-food
25 brand"; is that correct?

1 A Correct.
2 Q And this article is discussing your Naugles
3 Twitter account; is that correct?
4 A That's correct.
5 Q And this is an article referring to your
6 Naugles venture; is that correct?
7 A That's correct.
8 Q And this article came out almost two years
9 after the filing of your application; is that correct?
10 A That's correct.
11 Q Prior to this article, had there been any
12 other articles referring to your Naugles venture?
13 MS. PFEIFFER: Newspaper articles?
14 MS. BESL: Newspaper or online. I think this
15 might have been Web.
16 THE WITNESS: I can't think of any offhand.
17 BY MS. BESL:
18 Q Prior to your application, had there been any
19 press regarding your Naugles venture?
20 A I don't think so.
21 Q You said in your affidavit, in the middle of
22 the paragraph, "although at the time I did not want to
23 be directly named, and thus I am not referred to by
24 name, the central focus of the article is the Naugles
25 Twitter account that I run." Why did you not want to

1 be directly named?
2 A Because as I said before, I'm not trying to
3 make a one-to-one correlation between me and Naugles.
4 Q What is the correlation you want people to
5 have with Naugles?
6 MS. PFEIFFER: Naugles now?
7 MS. BESL: Well, he said he doesn't want
8 people to make the correlation between him and Naugles.
9 BY MS. BESL:
10 Q So in your understanding of what Naugles is,
11 are you referring to your Naugles venture or the prior
12 Naugles?
13 A Well, in my Naugles venture I don't mind
14 referring to it as my Naugles venture; but I don't want
15 my name to overshadow Naugles itself.
16 Q So you want people to associate Naugles with
17 your venture, not you?
18 A Roughly, that's a decent summation.
19 Q And will your Naugles venture be run by you
20 personally, or will it be run by a corporation, LLC, or
21 other entities?
22 MS. PFEIFFER: Objection, relevant.
23 THE WITNESS: Not by me on my own.
24 BY MS. BESL:
25 Q And the investments that have been made to

1 date by your investors -- you mentioned that Mr. Dvorak
2 and Mr. Maxwell had invested in your Naugles venture.
3 Have those been made in your name personally or into
4 another entity?
5 A I don't know how to answer that, but -- I
6 don't --
7 MS. PFEIFFER: It's also irrelevant. Can you
8 rephrase? What are you asking of him?
9 THE WITNESS: Yeah.
10 BY MS. BESL:
11 Q Sure. You said Mr. Maxwell and Mr. Dvorak had
12 made investments into your venture. Were these
13 monetary investments?
14 A Yes, they were.
15 Q And were they monetary investments made out to
16 you personally --
17 A No.
18 Q -- or to another entity? What entity were
19 they made out to?
20 MS. PFEIFFER: Objection, attorney-client
21 privilege.
22 To the extent you can answer that question
23 without breaching your privilege, you can answer.
24 THE WITNESS: I'm pretty sure that's all
25 attorney-client privilege, but they didn't make any

1 checks out to me personally.
2 BY MS. BESL:
3 Q Okay. I'm not sure I'm understanding -- I
4 don't want to breach the privilege here, but is the
5 issue that the checks were made out to an attorney or
6 by an attorney's recommendation? I just want to make
7 sure I understand, because I don't want to tread on
8 anything.
9 A Okay. I understand. To the best of my
10 knowledge -- and I'd largely leave this up to Joshua
11 and Maxwell -- the checks were made out to an attorney,
12 but that's only to the best of my knowledge.
13 Q Okay. And without going -- I don't want to go
14 deep into the attorney-client privilege.
15 A Or at all.
16 Q Generally, do you have access to the funds
17 that have been invested by Mr. Maxwell and Mr. Dvorak?
18 A One more time. I missed the first part of the
19 question.
20 Q I don't want to go into anything that's
21 attorney-client privilege, but do you personally have
22 access to the funds invested by Mr. Maxwell and
23 Mr. Dvorak that are being withheld by an attorney?
24 MS. PFEIFFER: Objection, irrelevant, outside
25 the scope of direct, and possibly invading

1 attorney-client privilege.
2 MS. NOWELS: When you say you "personally,"
3 are you referring to Christian or to Christian's
4 venture into this Naugles issue?
5 MS. BESL: I'm talking about Christian
6 Ziebarth alone.
7 THE WITNESS: I don't have access to those
8 funds.
9 MS. BESL: All right. I'm done with
10 Exhibit P, if you want to set that aside.
11 Kelly, are you still okay?
12 MS. NOWELS: Yes.
13 MS. PFEIFFER: Yep.
14 MS. BESL: All right.
15 BY MS. BESL:
16 Q Turning now to page 12 of your affidavit. On
17 paragraph 24 you refer to -- actually, why don't we go
18 ahead and pull out Exhibit Q, previously marked
19 Exhibit Q to your affidavit.
20 (Whereupon, Respondent's Exhibit Q was
21 marked for identification.)
22 THE WITNESS: Okay. I have that.
23 BY MS. BESL:
24 Q And you were referring to a July 9th, 2013,
25 article that appeared in the OC Weekly; is that

1 correct?
2 A That's correct.
3 Q And the article is entitled "Naugles,
4 Legendary SoCal Mexican Fast-Food Chain, is Trying to
5 Make a Comeback, and We Have the Proof"; is that
6 correct?
7 A Yes.
8 Q And Exhibit M -- or -- excuse me -- Exhibit Q
9 attached to your affidavit is a copy of this article;
10 is that correct?
11 A Yes.
12 Q And this is referring to your Naugles venture
13 in this article; is that correct?
14 A Yes.
15 Q This article was written by Gustavo Arellano;
16 is that correct?
17 A Gustavo Arellano, correct.
18 Q Now, looking at the bottom of this blog -- or
19 this article, on the second page --
20 A Okay.
21 Q -- before -- above the wording "Get the Dining
22 Newsletter," it says, "Follow Stick a Fork in It on
23 Twitter @ocweeklyfood or on Facebook." Is this a
24 separate Twitter account than the one run by you?
25 MS. PFEIFFER: Objection --

1 BY MS. BESL:
2 Q Ocweeklyfood -- is that run by you or run by
3 someone else?
4 A That's not me.
5 Q Okay. Now, this article refers to a
6 delivery -- or to an ability to taste a certain sauce;
7 is that correct?
8 A That's correct.
9 Q And this is a Naugles taco sauce?
10 A Yes.
11 Q Was this prepared by you personally?
12 A No.
13 Q Who prepared this sauce?
14 A It might have been Jeff Naugle.
15 Q What do you mean "it might have been"?
16 A It could have been him or his wife or an
17 employee of his.
18 Q And this Naugles taco sauce that you dropped
19 off -- is this something that you purchased from Jeff
20 Naugle or he made at your request? How did you get
21 this Naugles taco sauce?
22 A He already had it made, and I asked if I could
23 have some, and he gave me some.
24 Q And is this Naugles taco sauce something that
25 he is serving at his current restaurant, Mr. Naugle, to

1 your knowledge?
2 A Yes, but he doesn't label it "Naugles taco
3 sauce" there.
4 Q And is this a sauce that you intend to serve
5 at your Naugles venture?
6 A I believe that will be the case.
7 Q And have you discussed with Mr. Naugle
8 obtaining the rights to these recipes?
9 A Yes.
10 Q And was this discussion prior to or after the
11 filing of your trademark application on May 17th, 2010?
12 A Prior.
13 Q And do you have any notes from this meeting
14 regarding the recipes?
15 A No notes except for my journal about that
16 visit took place.
17 Q But the journal entry does not reference what
18 was discussed?
19 A Not in detail.
20 Q And you do not have a formal agreement with
21 Mr. Jeff Naugle regarding the recipes?
22 MS. PFEIFFER: April, can you hold on one
23 second?
24 MS. BESL: Sure.
25 THE WITNESS: I do have an agreement. I don't

1 know what counts as "formal" right now, but he has made
2 some agreement to that effect.
3 MS. PFEIFFER: April, I'm going to insert a
4 belated objection, that the question you just asked
5 misstates the evidence that's already been admitted
6 regarding what is in -- what is contained in the
7 calendar entry of Christian's, recording that he
8 visited Jeff Naugle and what was discussed.
9 MS. BESL: Okay. Do you want to -- we can
10 pull that out. It's Exhibit F, and I believe the court
11 reporter has a copy.
12 MS. PFEIFFER: Okay. Pulling out Exhibit F
13 now.
14 (Whereupon, Respondent's Exhibit F was
15 marked for identification.)
16 THE WITNESS: I have that now.
17 BY MS. BESL:
18 Q And this Exhibit F, can you confirm, is a copy
19 of a calendar entry from February 13th, 2010?
20 A That's correct.
21 Q And it says that you drove with Bill up to
22 Visalia to meet with Jeff Naugle to talk about reviving
23 the old Naugles fast-food chain; is that correct?
24 A That's correct.
25 Q And this does not specifically state that

1 recipes were discussed; is that correct?
2 A That's correct.
3 Q And it does not specifically state that any --
4 it does not provide any specifics as to the discussion;
5 is that correct?
6 MS. PFEIFFER: Objection. Other than what the
7 evidence clearly states, that they talked about
8 reviving the old Naugles fast-food chain. Misstates
9 the evidence.
10 Go ahead.
11 THE WITNESS: That's correct. It doesn't get
12 into specifics.
13 MS. BESL: Okay. Thank you. I'm done with
14 Exhibit F.
15 BY MS. BESL:
16 Q Now, you have mentioned that you have entered
17 into an agreement with Mr. Naugle for the recipes. Is
18 this in writing, or is this oral?
19 MS. PFEIFFER: Objection, misstates his
20 testimony. I don't ever remember him using the word --
21 that he entered into an agreement.
22 MS. BESL: He did write, as you said -- I
23 think you were looking for Exhibit F.
24 THE WITNESS: It has been discussed. I just
25 don't know how formal you're talking about. He has

1 said that he would provide those.
2 MS. PFEIFFER: Did you say that it says it in
3 Exhibit F, April?
4 MS. BESL: No. He said it -- he said he had
5 entered into an agreement when you were looking for
6 Exhibit F.
7 MS. PFEIFFER: Oh. I'm sorry. It was hard to
8 hear you.
9 MS. BESL: I know. I'm sorry.
10 BY MS. BESL:
11 Q Do you have anything in writing from
12 Mr. Naugle, saying -- Jeff Naugle -- that he is going
13 to get you recipes from the old Naugles restaurant?
14 A I believe I have e-mails to that effect.
15 Q Can you pull out Exhibit G, please?
16 A Is that the OC Weekly article?
17 Q No. G as in George.
18 A Okay. We have that again.
19 BY MS. BESL:
20 Q Okay. Is there anywhere in Exhibit G which
21 discusses the recipes and Mr. Naugle agreeing to give
22 those to you?
23 A It doesn't look like there is in Exhibit G
24 itself.
25 Q So these e-mails where he agreed to give you

1 the recipes -- do these exist elsewhere, or have they
2 since been deleted or lost or destroyed?
3 A I believe they still exist elsewhere.
4 Q Okay. All right. I'm done with Exhibit Q.
5 A And G?
6 Q And G.
7 MS. BESL: Could the court reporter pull out
8 what's in Folder No. 20. And I think -- I'll
9 double-check. I think we're on Exhibit No. 11.
10 (Whereupon, Respondent's Exhibit 11 was
11 marked for identification.)
12 BY MS. BESL:
13 Q Do you have Exhibit 11 in front of you?
14 A I do.
15 Q Have you ever seen Exhibit 11 before?
16 A I believe I have, yes.
17 Q Where have you seen it before?
18 A I believe it came up in research of prior
19 trademark board filings.
20 Q Did you say "trademark court filings"?
21 A "Trademark board filings."
22 Q Okay. So you might have seen it in discovery?
23 A I believe I actually saw it before that.
24 Q And have you ever seen the phrase "Viva
25 Naugles, Viva Del Taco" before?

1 A Yes.
2 Q And this was a phrase used in connection with
3 Del Taco, to your knowledge, in connection with its
4 restaurant?
5 A At one point in time, yes.
6 Q And when do you remember seeing this phrase
7 used?
8 MS. PFEIFFER: Objection, irrelevant.
9 Go ahead.
10 THE WITNESS: Personally, I don't -- if I ever
11 saw it before seeing this filing, it was in the early
12 '90s; but I don't even know about that. I'm not sure
13 that I personally saw it until I saw this filing.
14 BY MS. BESL:
15 Q So it's possible that this was used throughout
16 the '90s; you just don't remember when?
17 MS. PFEIFFER: Objection, misstates his
18 testimony.
19 BY MS. BESL:
20 Q Is this possible that this was used throughout
21 the '90s?
22 A Anything's possible. Yes, it's possible.
23 Q All right. I'm done with Exhibit 11.
24 Turning back to page 9 of your affidavit,
25 paragraph 19. Sorry. Hold on. I'm on the wrong page.

1 One second. Okay. Sorry. Could you go to page 10 of
2 your affidavit.
3 A Yeah.
4 Q Okay. And paragraph 21 -- this is a very long
5 paragraph. Let's just summarize what it states. This
6 discusses your review of certain filings at the
7 trademark office for the Del Taco-owned Naugles mark?
8 A Yes.
9 Q And you refer to -- if the court reporter
10 could hand you what's previously been marked by your
11 counsel as Exhibit N to your affidavit, N, as in Nancy.
12 (Whereupon, Respondent's Exhibit N was
13 marked for identification.)
14 THE WITNESS: Okay. I have Exhibit N.
15 BY MS. BESL:
16 Q Okay. And to summarize this document, would
17 it be fair to state this is a copy of a renewal
18 application submitted to the trademark office on the
19 Del Taco Naugles application -- or registration?
20 A That's what it appears to be.
21 MS. PFEIFFER: To the extent, you know, it
22 calls for a legal conclusion of what the document is,
23 it's improper.
24 MS. BESL: I'm just trying to identify it.
25 MS. PFEIFFER: Go ahead, Christian. Whatever

1 you think that document is.
2 THE WITNESS: I answered, yeah, it appears to
3 be that.
4 BY MS. BESL:
5 Q Okay. And it's dated May 18, 2006?
6 A Correct.
7 Q Now, your affidavit states that you saw --
8 that Del Taco had renewed its registration in 1996 and
9 again in 2006. And this is all in paragraph 21 of page
10 10. You stated, "I couldn't believe it, because I am
11 informed and believed that the last restaurant closed
12 in 1994 and 1995." Is this an accurate statement from
13 your affidavit?
14 A That's an accurate statement.
15 Q And, again, who specifically informed you that
16 the last restaurant of Naugles closed in 1994 and 1995?
17 A That might have been in discovery documents.
18 Q So no one specifically informed you that the
19 last restaurant closed in 1994 or 1995?
20 MS. PFEIFFER: No one specifically?
21 BY MS. BESL:
22 Q No one person specifically informed you of
23 this fact; is that correct?
24 A I believe that's correct. I have what I
25 learned in discovery and my general knowledge of

1 Naugles closures.
2 Q You go on to state that on pages 3 to 4 of
3 this Exhibit N there's a sworn statement from Del
4 Taco's vice president and general counsel, Michael
5 Annis, that you remember reading when you first saw
6 this document; is that correct?
7 MS. PFEIFFER: Are you on physical page 4 of
8 this exhibit? because the first three pages are marked
9 "page 1."
10 MS. BESL: Oh. I'm sorry. I'm quoting from
11 the affidavit.
12 MS. PFEIFFER: Of Christian's testimony
13 affidavit?
14 MS. BESL: I'm quoting from Christian's
15 affidavit, paragraph 21, page 10, in the center. "On
16 pages 3 to 4, there is a sworn statement from Del
17 Taco's vice president," and so on.
18 MS. PFEIFFER: She's looking at your
19 testimony, Christian. She's not telling you what she
20 sees.
21 THE WITNESS: Are we going back here?
22 MS. PFEIFFER: No. Right here. Right here.
23 She's reading this.
24 THE WITNESS: Oh.
25 MS. PFEIFFER: She's asking you to confirm

1 that that's what your affidavit says.
2 THE WITNESS: Okay. I see now what you mean.
3 BY MS. BESL:
4 Q Yeah. Is that an accurate statement? That is
5 your statement in your affidavit; correct?
6 A That's correct.
7 Q And you stated that Mr. Annis knew that
8 Naugles was currently in use, and he signed it in 2006;
9 is that correct?
10 A Yes. Yes.
11 Q And you state again, "I believe this statement
12 to be untrue, because, again, I am informed and believe
13 that Del Taco closed all of their Naugles restaurants
14 in the early 1990s"; is that correct?
15 A That's correct that that's what the statement
16 says.
17 Q Okay. And, again, no one specifically
18 informed you of Del Taco's closure of Naugles
19 restaurants; is that correct?
20 A I --
21 MS. PFEIFFER: That's a very vague question.
22 THE WITNESS: Yes.
23 BY MS. BESL:
24 Q I asked you previously if anyone specifically
25 informed you of the closure of Del Taco restaurants,

1 and you said "no"; is that correct? You stated it was
2 general public knowledge; correct?
3 A General public knowledge, yes.
4 MS. PFEIFFER: He said he was basing it on
5 what he had received from Del Taco in discovery, and
6 his general knowledge.
7 BY MS. BESL:
8 Q In coming to this conclusion, did you have any
9 conversation with Michael Annis regarding his filing?
10 A You're asking if I had any conversations with
11 him?
12 Q Yes.
13 A I have never had any conversations with him.
14 Q You never discussed the filing with any
15 representative of Del Taco; is that correct?
16 A That's correct.
17 Q You had no part in the renewal of the Naugles
18 trademark registration by Del Taco in 2006; is that
19 correct?
20 A That's correct.
21 Q You have no personal knowledge of Del Taco's
22 renewal in 2006; is that correct?
23 MS. PFEIFFER: No personal knowledge other
24 than what he read on public record?
25 MS. BESL: Correct.

1 MS. NOWELS: Can you also clarify what time
2 frame you're asking whether or not he had knowledge of
3 this filing?
4 BY MS. BESL:
5 Q You have no personal knowledge of the basis
6 for Del Taco's renewal application, do you?
7 A Not at the time it occurred.
8 Q You only have what you reviewed on a trademark
9 office Web site; is that correct?
10 A Correct.
11 Q Have you ever requested an official copy of
12 the trademark files for the Naugles registration owned
13 by Del Taco from the trademark office?
14 MS. PFEIFFER: Objection to the extent it
15 invades the attorney-client privilege.
16 You can answer regarding anything you did
17 yourself not concerning attorneys.
18 THE WITNESS: I never requested an official
19 copy.
20 BY MS. BESL:
21 Q You've only reviewed the Web site?
22 A Correct.
23 MS. PFEIFFER: April, I'd like to take a
24 five-minute recess when you're got a good stopping
25 point, maybe when you're done with this exhibit.

1 MS. BESL: Yeah. You know what, I'm done with
2 the exhibit. I was reviewing my next thing. So do you
3 want to take a 5-, 10-minute break? That works for me.
4 MS. PFEIFFER: Thank you.
5 MS. NOWELS: We're off the record, then.
6 (A short break in the proceedings was
7 taken.)
8 MS. BESL: Back on the record.
9 BY MS. BESL:
10 Q Turning now to -- back to your affidavit on
11 page 12, looking at paragraph 26. And I understand
12 that I think -- Kelly, I'm going to assume that you're
13 going to want things discussing this exhibit to be
14 designated confidential on the transcript?
15 MS. PFEIFFER: Correct. If this entire
16 portion of the transcript could be marked confidential,
17 please.
18 MS. BESL: No objection.
19
20 (Whereupon, a portion of the transcript
21 was sealed and bound separately upon
22 request of counsel.)
23
24
25

1 (Whereupon, the nonconfidential portion of
2 the transcript resumed as follows.)
3
4 EXAMINATION
5 BY MS. PFEIFFER:
6 Q Okay, Mr. Ziebarth, I just have a few
7 follow-up redirect questions for you. I want to bring
8 back up the questions that Ms. Besl asked of you
9 regarding your Twitter account and some of the tweets
10 between you and others. My objection that that entire
11 line of questioning and this -- all these issues --
12 MS. BESL: I'm sorry, Kelly. Is it possible
13 for you to get closer to the microphone?
14 MS. PFEIFFER: Is this better, April?
15 MS. BESL: That's much better. Thank you.
16 MS. PFEIFFER: Do you want me to start over?
17 Or where did I lose you?
18 MS. BESL: Yeah, if you don't mind. I
19 apologize. I was trying to hear you as best I could.
20 MS. PFEIFFER: Okay. So I was just telling
21 Mr. Ziebarth that I have a few follow-up questions for
22 him; and the first area I wanted to return to was the
23 line of questioning that you initiated regarding his
24 Señor Naugles Twitter account, some of the exhibits,
25 and the tweets contained therein between him and other

1 individuals. And while I maintain my ongoing objection
2 that this entire line of questioning is irrelevant and
3 has no bearing on this proceeding whatsoever, I do want
4 to clarify a few things that I do not believe were
5 clear and give Mr. Ziebarth the chance to explain.
6 BY MS. PFEIFFER:
7 Q Mr. Ziebarth, how would you characterize any
8 tweets that you have made regarding Del Taco? Would
9 you say you have acted respectfully --
10 A Yes.
11 Q -- of the company in general?
12 A Yes. I would make that a specific point to.
13 MS. BESL: I'm just going to add a last-minute
14 objection as to relevance.
15 BY MS. PFEIFFER:
16 Q And, quickly, regarding both the tweets and,
17 potentially, some of the posts on your Web site, was it
18 ever your intention to lead the public to believe that
19 you are affiliated with Del Taco?
20 A No.
21 Q Was it ever your intention to lead the public
22 to believe that you are the same prior entity that
23 utilized the Naugles trademark back in the '70s, '80s,
24 and possibly a portion of the early '90s?
25 A No.

1 Q Have you ever put any type of statements on
2 your Web site or in association with your Twitter
3 account regarding whether or not you're affiliated with
4 Del Taco?
5 A On my Twitter account -- for a while there was
6 say statement saying "We like Del Taco, but are not
7 affiliated with them." That same type of statement
8 might have been on the Web site. I'm not as clear on
9 that, but I know it was on the Twitter account.
10 Q Okay. I want to turn your attention back to
11 questions that Ms. Besl asked you about e-mails between
12 you and Jeff Naugle. I believe you testified that,
13 quote/unquote, other e-mails exist, and it seemed a
14 little fuzzy. I was wondering if you could explain a
15 little better, because the time frames didn't seem
16 clear to me. When you and Jeff Naugle -- I'll say
17 "Jeff Naugle" because there are a few Naugles --
18 discussed recipes, were there any e-mails between you
19 and Jeff prior to your May 17th, 2010, filing of your
20 Intent to Use application about recipes?
21 A No.
22 Q No?
23 A I don't believe so.
24 Q Anything in writing that memorialized that you
25 and Jeff talked about recipes back prior to your

1 filing?
2 A I think prior to the filing date it was oral
3 conversations on that subject.
4 Q Okay. And with regard to e-mails between you
5 and Jeff Naugle, prior to the close of our discovery
6 period in this proceeding, did you look for all e-mails
7 between you and Jeff Naugle having to do with your
8 Naugles venture?
9 A Yes.
10 Q You made a good faith, thorough search for
11 them?
12 A Oh, yes.
13 Q Did you turn over to either -- well, it
14 wouldn't have been me -- your prior attorneys who
15 handled this proceeding on your behalf during the
16 discovery period -- did you turn over to them --
17 MS. BESL: I'm going to go ahead and object
18 that it goes beyond the scope of cross-examination.
19 MS. PFEIFFER: So noted. I was trying to
20 finish my question.
21 BY MS. PFEIFFER:
22 Q Did you turn over to your attorneys at the
23 time all relevant e-mails between you and Jeff that
24 existed regarding your Naugles venture up until the
25 close of the discovery period in this proceeding?

1 A Yes.
2 Q Thank you. With regard to Barbara Caruso,
3 when asked by your --
4 MS. BESL: Same objection.
5 BY MS. PFEIFFER:
6 Q When asked by your attorneys, did you make a
7 thorough search of all e-mails between you and Barbara
8 Caruso on the issue of your Naugles venture at the time
9 that it was asked of you?
10 A Yes.
11 Q Up until the close of the discovery period in
12 this proceeding, did you turn over all e-mails between
13 you and Barbara Caruso having to do with the Naugles
14 venture?
15 A Yes.
16 Q Thank you.
17 MS. BESL: Same objection.
18 BY MS. PFEIFFER:
19 Q Mr. Ziebarth, I'm going to hand you again
20 Exhibit P, as in Paul, that was attached to your
21 affidavit testimony that was discussed here today.
22 A Okay.
23 Q That is the article from the OC Weekly?
24 A This is the Orange County Register.
25 Q Oh. I'm sorry. Orange County Register. Can

1 you, please, read for me the sentence beginning, "I
2 messaged the Naugles Twitter account." Please read for
3 me that sentence and the one following.
4 A Okay. "I messaged the Naugles Twitter
5 account, asking if the comeback was legitimate. The
6 response: 'We are a group of Naugles fans working to
7 bring the beloved chain back; this is a serious, bona
8 fide business venture, nothing less.'"
9 MS. BESL: I'm going to object to the extent
10 it's used as a legal conclusion as to "bona fide,"
11 intent to use.
12 MS. PFEIFFER: Noted.
13 BY MS. PFEIFFER:
14 Q Did you make that comment? Is that quote from
15 you, the "We are a group of Naugles fans working to
16 bring back the chain"?
17 A I believe the emphasis was on "We are a group
18 of Naugles fans working to bring the beloved chain
19 back."
20 Q Did you give that quote to them?
21 A Yes. That's from me.
22 Q Is that an accurate assessment of your group?
23 A Yes.
24 Q Are you a group of fans?
25 A Yes.

1 Q Thank you. In paragraph 27 of your affidavit,
2 page 13, you state, "We have also made it a point to
3 research and experiment on menu items." When you use
4 the word, open quote, "we," closed quote, were you
5 acting as an individual, or were you acting -- even
6 though you, as a person, were the only one doing the
7 work, were you acting on behalf of your partnership at
8 the time?
9 A I was acting on behalf of the partnership.
10 Q So it's fair to say that the entire
11 partnership can be attributed to have been researching
12 and experimenting --
13 A Yes.
14 Q -- as indicated in paragraph 27? Yes?
15 A Yes.
16 Q And then finally, I just want to go back to
17 the questioning that Ms. Besl asked about vendors. You
18 gave a qualified "no" --
19 A Yeah. Yeah.
20 Q -- when asked what had been done as far as
21 looking into potential vendors. Why did you give a
22 qualified "no"?
23 A Because we have a fairly good idea of who
24 those vendors will be, but they haven't been formally
25 approached.

1 Q Have you had discussions with anybody about
2 potential vendors you could use?
3 A Yes.
4 Q Who?
5 A Primarily, Jeff Naugle.
6 Q And what was the gist of that conversation?
7 A The gist of it is -- was that we could
8 probably continue using his same vendors. It was a
9 loose, informal discussion to that effect.
10 Q And Jeff Naugle -- was it his idea for you to
11 continue using his vendors?
12 A I believe it was his.
13 Q So would it be fair to say that Jeff Naugle
14 supported your use of his vendors when the time comes
15 for you to go forward with your Naugles venture?
16 MS. BESL: Objection. I'm going to object
17 that that's highly speculative as to Jeff Naugles
18 opinion.
19 MS. PFEIFFER: Could you, kindly, let me
20 finish my question? It's hard for the court reporter
21 to take down both of our competing voices.
22 MS. BESL: Sure. No problem.
23 BY MS. PFEIFFER:
24 Q You can answer my question to the best of your
25 understanding, even though she interjected the

1 interjection.
2 MS. PFEIFFER: Could you read back my
3 question, please.
4 (Whereupon, the question was read by the
5 court reporter as follows:
6 "Q So would it be fair to say that
7 Jeff Naugle supported your use of his
8 vendors when the time comes for you to go
9 forward with your Naugles venture?")
10 THE WITNESS: Yes.
11 BY MS. PFEIFFER:
12 Q Does he support it now?
13 A Yes.
14 MS. PFEIFFER: That's all the questions I
15 have. Thank you, Mr. Ziebarth.
16 MS. BESL: All right.
17 MS. PFEIFFER: Are we done?
18 MS. BESL: I think so. Are you guys going to
19 read the transcript later on?
20 MS. PFEIFFER: Can we go off the record,
21 April?
22 MS. BESL: Yes. I thought we were off.
23 Sorry.
24 (A discussion was held off the record.)
25 MS. NOWELS: Back on the record. So we've

1 agreed off record to a stipulation that the court
2 reporter will be relieved of her duties under the Code.
3 The transcript will be released to the offices of
4 Amezcua-Moll & Associates at 1122 East Lincoln Avenue,
5 Suite 203, in Orange, California 92865, for purposes of
6 review by the witness; and Amezcua-Moll & Associates
7 will agree to maintain the copy of the original and
8 produce it if it's ever needed for any future
9 proceedings. We'll also agree that a certified copy or
10 copies of the transcript may be used in proceedings, so
11 long as they're redacted to the extent that they're
12 confidential. And we're also stipulating that the
13 transcript will be produced and reviewed along normal
14 time frames so the witness will review it within 30
15 days of receipt. So stipulated?
16 MS. BESL: Agreed.
17
18 (Whereupon, the deposition was concluded at 2:15 p.m.)
19
20
21
22
23
24
25

PENALTY OF PERJURY

I, _____, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, 20____, at _____, _____.
(City) (State)

_____
CHRISTIAN M. ZIEBARTH

CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

* * * *

The undersigned Certified Shorthand Reporter of the State of California does hereby certify:

That the foregoing Proceeding was taken before me at the time and place therein set forth.

That the testimony and all objections made at the time of the Proceeding were recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy of the proceedings thereof.

In witness whereof, I have subscribed my name, this date: NOVEMBER 11, 2013.

STEPHANIE LESLIE, CSR No. 12893

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PENALTY OF PERJURY

I, Christian Ziebarth, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 26th day of November, 2013, at Huntington Beach, California.

(City) (State)

CHRISTIAN M. ZIEBARTH

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**

NOTICE OF CROSS-EXAMINATION DEPOSITION

Pursuant to the Stipulation Entered into by the Parties and Filed with the Board on October 4, 2013 (Doc No. 56) (hereinafter "Stipulation"), Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby gives Notice that it will take live cross-examination of Christian Ziebarth for use as authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice in response to his affidavit filed with the Board on October 4, 2013 (Doc Nos. 57 and 58). Such live cross-examination shall be conducted before a Notary Public or some other officer authorized by law to administer an oath at a date and time via phone or video as mutually agreed upon by the parties within ten (10) days of this Notice of Cross-Examination Deposition pursuant to the Stipulation.

Dated: **October 17, 2013**

/ April L Besl /

April L. Besl
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EXHIBIT
1 SL
10-28-13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by first-class mail, with courtesy copy via email, on this 17th day of October, 2013, to Kelly K. Pfeiffer, Amezcua-Moll Associations PC, Lincoln Professional Center, 1122 E. Lincoln Ave. Suite 203, Orange, CA 92865.

/ April L Besl /
April L Besl

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,

v.

DEL TACO, LLC
Registrant.

Cancellation No.: 92053501

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

STIPULATION

Petitioner CHRISTIAN M. ZIEBARTH and Registrant DEL TACO, LLC hereby stipulate to the following:

1. The testimony of any witness or witnesses of either party, and exhibits thereto, may be submitted in the form of an affidavit by such witness or witnesses pursuant to 37 C.F.R. §2.123(b). The non-submitting party reserves the right to conduct live cross-examination of the affiant, and the submitting party reserves the right to conduct live redirect examination in the event the adverse party exercises his option to conduct cross-examination. If the non-submitting party would like to exercise his option to conduct live cross-examination of the affiant, the non-examining party shall serve a Notice of Cross-Examination Testimony Deposition ("Notice of

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EXHIBIT
2 SC
10-28-13

Cross-Examination") within 15 days after being served with the affidavit. Any live cross-examination or redirect-examination may be conducted via telephone or video. The Notice of Cross-Examination must be served in accordance with the applicable Trademark Rules and the Federal Rules of Civil Procedure, and shall state whether the noticing party elects to conduct the deposition in person, by telephone or by video. Nothing herein shall preclude any party from objecting to the Notice of Cross-Examination on procedural grounds, such as inadequate or improper notice, or on substantive grounds, such as relevancy or burdensome, under the Trademark Rules and the Federal Rules of Civil Procedure. The parties will work together in good faith to promptly schedule any noticed depositions within ten (10) days on a mutually agreeable date. Any redirect examination will be taken during the same session. The party offering direct testimony via affidavit will not be allowed to offer redirect testimony by affidavit for that witness if a cross-examination deposition is conducted. Both parties reserve the right to make any and all objections to the submitted affidavit testimony, and both parties reserve the right to file any Motions in Limine based upon the submitted affidavit testimony.

2. If the receiving party does not timely serve a Notice of Cross-Examination, the receiving party must serve, in writing, within twenty (20) days of the date of service of the affidavit testimony any and all objections to the affidavit testimony as required by TBMP Section 707 ("Written Objections"). This procedure will not preclude the parties though from the filing of any Motions to Strike or Motions in Limine on grounds related to testimony in the affidavit but not specifically objected to in the Written Objections.

3. The parties agree that they will jointly move the Board to extend or suspend the testimony periods, as necessary, in order to accommodate the cross-examination and any redirect-examination by deposition.

Date: 9-19-13

Attorney for Registrant Del Taco, LLC
April L. Besl
DINSMORE & SHOHL, LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

Date: 9-20-13

Attorney for Petitioner Christian M. Ziebarth
Kelly K. Pfeiffer
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1122 E. Lincoln Ave., Suite 203
Orange, CA 92865

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **STIPULATION** 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 4, 2013 and addressed as follows:

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

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

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,

v.

DEL TACO, LLC
Registrant.

Cancellation No.: 92053501

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

PETITIONER'S TESTIMONY AFFIDAVIT OF CHRISTIAN ZIEBARTH

I, Christian M. Ziebarth, swear as follows:

1. I am the Petitioner in this proceeding against Registrant DEL TACO, LLC ("Del Taco") wherein I am seeking the cancellation of Del Taco's registration no. 1043729 for the mark NAUGLES in connection with restaurant services. I have personal knowledge of the facts stated herein.

2. Since approximately 2005, I have been an online blogger, focusing mainly on food in Orange County, California. In a blog entry in 2008, I wrote about the old fast-food chain NAUGLES, which used to exist in the 1970's and 1980's and originated in Southern California. At first, I intended that blog entry solely to be a remembrance of the chain, but after I posted it, I noticed the entry got a lot of attention by way of people posting responses, indicating how much

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10-28-13

they liked NAUGLES food and wished it would return. I also analyzed the web traffic to this blog which also indicated a high level of public interest.

3. At that time in 2008, I was under the misconception that Del Taco was the only one who could use the mark NAUGLES in connection with food and restaurants, so I thought Del Taco should capitalize on the interest I was seeing through my blogs from people who truly wanted to see NAUGLES food return. When I learned that, legally, Del Taco had most likely abandoned its use of the NAUGLES mark because all NAUGLES restaurants disappeared by the early to mid-1990's and it became very clear to me that they had no interest in using it again, I had the idea to open either a chain of restaurants or some kind of food establishment myself and name it NAUGLES.

4. On May 17, 2010, I filed an intent-to-use ("ITU") trademark application with the United States Patent and Trademark Office ("USPTO") for the mark NAUGLES in International Class 43 for cafeteria and restaurant services. Attached hereto as Petitioner's Exhibit A is a true and correct copy of my application. On January 10, 2011, I received an Office Action from the USPTO containing a final refusal of my application because of the existence of Del Taco's registration no. 1043729 for the mark NAUGLES in connection with restaurant services. Attached hereto as Petitioner's Exhibit B is a true and correct copy of that Office Action.

5. Prior to filing my ITU application, I shared with many people my ideas to use the mark NAUGLES in connection with cafeteria and restaurant services. A few of the people that I spoke with include Barbara Caruso, William "Bill" O'Dell, Rob Hallstrom, Jeff Naugle, Josh Maxwell, Dan Dvorak, and Nancy Luna, a writer at the Orange County Register Newspaper.

6. I am informed and believe that Barbara Caruso is (or was) the long-time public relations representative for Del Taco. I first made her acquaintance when she began sending me information to post on my blog about new Del Taco items. On July 31, 2008, Ms. Caruso and I had a lunch meeting. Attached hereto as Petitioner's Exhibit C is a true and correct copy of a page out of my personal appointment calendar wherein I recorded that I had a lunch meeting with Barbara Caruso scheduled for July 31, 2008 at 12:30pm. At this meeting, I told Ms. Caruso that I thought Del Taco should bring back the food items that used to be served at the old NAUGLES fast-food chains. It was my understanding that Ms. Caruso thought it was a good idea and was going to bring it back to Del Taco's marketing people. Ms. Caruso contacted me shortly after that meeting, indicating that Del Taco's marketing people wanted to meet with me. Ms. Caruso and I communicated back and forth for several months, and it seemed to me like she was trying to get a meeting set up, but it never happened. Attached hereto as Petitioner's Exhibit D are true and correct copies of a series of emails between Ms. Caruso and me. We exchanged these emails between between May 2009 and January 2011. These emails illustrate some of our exchanges and verify that Ms. Caruso told me she trying to set up a meeting between Del Taco, herself and me.

7. On page 1 of Exhibit D, Ms. Caruso and I both refer to a man named "Noah," who I believe is or was Del Taco's Marketing Vice President. I believe his last name is Chillingworth. I wanted a meeting with Mr. Chillingworth because I wanted to talk to him about Del Taco creating some type of sub-menu based on food items from the old NAUGLES fast-food chain. At the time, I thought Del Taco was passing up a great opportunity by not capitalizing on the public's interest in NAUGLES food items which I was witnessing firsthand in response to my blogs. I made one attempt, myself, to reach out to Mr. Chillingworth to set up a meeting. I sent

him a LinkedIn connection request, which he accepted, then I sent him a private message. Attached hereto as Petitioner's Exhibit E is a true and correct copy of the message I sent to Mr. Chillingworth via LinkedIn on December 22, 2009. I never received a response to this message.

8. I shared with a friend of mine, Bill Odell, that I had made attempts to discuss a NAUGLES revival with Del Taco. In late 2009, after more than a year of attempting to bring this idea to Del Taco, I believed that Del Taco had no interest in my idea and shared as much with Mr. Odell. I also told Mr. Odell that I had recently learned that trademarks are considered abandoned after three consecutive years of non-use with no intent to resume use and that I was thinking of using the trademark myself. In 2009, I had at least 5 conversations with Mr. Odell regarding my desire to use the mark NAUGLES myself in connection with cafeteria and restaurant services. I had mentioned these same general points to others back in 2009, but Mr. Odell stands out among them because he accompanied me to my first meeting with a gentleman named Jeff Naugle.

9. I first became acquainted with Jeff Naugle after he left a comment on my blog asking me to contact him on or about September 8, 2009; I subsequently contacted him. We exchanged e-mails sporadically for a few months before my first in-person meeting with him in 2010. On February 13, 2010, I drove with Mr. Odell to Visalia, California to meet with Jeff Naugle to discuss the fact that I wanted to use the mark NAUGLES in connection with cafeteria and restaurant services. Attached hereto at Petitioner's Exhibit F is a true and correct copy of a page out of my personal calendar wherein I recorded that I drove to Visalia with Mr. Odell to meet with Jeff Naugle on February 13, 2010. I am informed and believe that Jeff Naugle is the nephew of Richard ("Dick") Naugle. I am informed and believe that Dick Naugle is the individual who founded the old fast-food chain called NAUGLES that was primarily based in

Southern California in the 1970's and 1980's. To my knowledge, Mr. Naugle runs a restaurant in Visalia, California called Buns & Torts that utilizes the recipes from the original NAUGLES menu. During this meeting on February 13, 2010, we talked about a NAUGLES revival, old recipes that we could use, possible locations and many other specifics about starting a restaurant or some type of food establishment under the NAUGLES name. At this meeting, we also discussed capital to get this idea off the ground, and Mr. Naugle volunteered that he would supply capital.

10. Since my first meeting with Mr. Naugle in February of 2010, I have kept in touch with him. I have exchanged numerous emails with him regarding my efforts to to open NAUGLES food establishments. Attached hereto as Petitioner's Exhibit G are true and correct copies of a few email exchanges between me and Mr. Naugle regarding my efforts to open a food establishment under the name NAUGLES. These emails are dated March 8, 2010 and May 27, 2010. In the March 8, 2010 emails, we discussed that I had already registered the www.nauglestacos.com domain name for use in connection with my intended NAUGLES venture. In the May 27, 2010 emails, I was simply keeping Mr. Naugle in the loop by informing him that I had filed my ITU application with the USPTO and was working to establish rights in the NAUGLES trademark. My impression was that Jeff was supportive; he wrote "great! Keep me posted!"

11. I am informed and believe that Mr. Naugle is supportive of me taking this venture and is willing to help me with recipes and anything else he can. It is my impression that Mr. Naugle is basically just waiting for this trademark dispute to be over so we can have the green light to go forward. Mr. Naugle has explained to me that he is interested in seeing his family's legacy preserved and preserved well. I have had approximately 6 more in-person visits with Mr. Naugle

at his place of business in Visalia, California. My last meeting with him about my efforts to start up a NAUGLES food business took place in September 2013.

12. Rob Hallstrom is another person I spoke to and conferred with about my intent to start up a food business of some kind using the mark NAUGLES prior to filing my ITU application. Mr. Hallstrom is the one who first shared with me the legal concept of abandonment of trademarks. Subsequently, I did my own research on the subject. I learned that, because Del Taco had not used the NAUGLES mark in connection with restaurant services since about 1994 and, clearly, as I experienced myself through the lack of response from Ms. Caruso and and Mr. Chillingworth, Del Taco had no interest in using the mark again for restaurant services, my ability to get Del Taco's trademark registration cancelled looked promising.

13. I approached Mr. Hallstrom with my idea to start up a NAUGLES food business because of his experience in the restaurant and food industry. In approximately January of 2010, I first asked Mr. Hallstrom if he would be willing to help me make this idea of opening restaurants under the NAUGLES name a reality. It is my recollection that Mr. Hallstrom remembered NAUGLES very well, because he grew up up right by the original location in Riverside, California. Based on my interactions with Mr. Hallstrom, it was my belief that he was interested in helping. Attached hereto as Petitioner's Exhibit H are true and correct copies of email exchanges between Mr. Hallstrom and me, reflecting a few of our numerous discussions about opening up restaurants under the NAUGLES mark. These emails date back to December 9, 2009. On pages 1, 2 and 3 of Exhibit H, I wrote to Mr. Hallstrom on January 4, 2010 and asked, "Rob, does your group have any interest in helping a new restaurant open? I stumbled into something like an opportunity that I am quite sure would be very profitable and am trying to find the right people to help pull it off. I'll give more details if interest is shown. For now I will stay

that it's actually kind of a fast-food concept or maybe a blend between fast food and fast casual." On the same date, January 4, 2010, Mr. Hallstrom replied, "There is always an interest. Please let me know when you can share more info and we can discuss further." I, once again, wrote to Mr. Hallstrom on that date, stating, "Do you remember the old Naugles chain?"

14. After this email exchange with Mr. Hallstrom in January 2010, I had meetings in person with him about opening NAUGLES restaurants. We first talked about it in person at his Matador Cantina restaurant in Fullerton, California. During the initial, in-person meeting at Matador Cantina, Mr. Hallstrom mentioned to me a building not too far from there that he thought he remembered being an old NAUGLES location. On my way back home that day, I drove by that location and saw that it indeed appeared to have been a NAUGLES before. The building had a "For Lease" sign out front. I called the number shortly thereafter to inquire how much the rent would be, with the idea in mind of making it a NAUGLES again. I am informed and believe that, not too long after that, the building was leased by someone else who made it into a Golden Ox restaurant. Mr. Hallstrom and I had a subsequent meeting at the Golden Ox restaurant in Fullerton, California. I am informed and believe that customers of the Golden Ox often comment how the restaurant used to be a place called NAUGLES. At one or more of these meetings, the issue of financial backing was discussed, and Mr. Hallstrom agreed to provide it. Both of these meetings took place prior to the filing of my ITU application with the USPTO on May 17, 2010. Between January 2010 and May 2010, Mr. Hallstrom and I also had many more discussions about potential locations for my NAUGLES restaurants, and we looked at a few properties. We also did a little research into old NAUGLES locations.

15. In addition to Jeff Naugle, I have had contact with multiple members of the Naugle family regarding my efforts to use the NAUGLES trademark in connection with food services of some kind. As outlined above, I have emailed, spoken with and had multiple meetings with Jeff Naugle. I have also exchanged emails with John Joseph ("JJ") Naugle regarding a revival of NAUGLES, including discussions of recipes from the original NAUGLES menus. Attached hereto as Petitioner's Exhibit I are true and correct copies of some of the emails I exchanged with JJ Naugle. The content of these emails discuss how I want to open NAUGLES restaurants, that I am in the process of trying to get Del Taco's registration for the trademark cancelled, and that I have been in contact with other members of the Naugle family about doing this.

16. I have also exchanged emails with Bill Naugle, who I am informed and believe is JJ's father and another relative of Dick Naugle, the founder of the original NAUGLES restaurants, regarding my intent to use the NAUGLES mark for restaurant services. I first made Bill's acquaintance when he left a comment on one of my blog posts and asked me to contact him, so I did. Bill and I talked, via email, about this proceeding where I am trying to get Del Taco's registration for the trademark cancelled because I wanted to open NAUGLES restaurants myself. Attached hereto as Petitioner's Exhibit J are true and correct copies of some of those emails.

17. In addition to everything testified to above, I have taken other concrete steps to further my intentions to use the trademark NAUGLES in connection with cafeteria and restaurant services. On January 13, 2010, I registered the domain name www.nauglestacos.com and still keep it active to date. Attached hereto as Petitioner's Exhibit K is a true and correct copy of the confirmation I received from www.godaddy.com for said registration. I maintain sole control over this website. Currently, the website shares information about how NAUGLES restaurants began in 1970 and lasted until 1988. It explains that the last NAUGLES restaurant closed in

1994 or 1995, and that I am currently involved in this proceeding before the TTAB to get Del Taco's registration for NAUGLES cancelled so I can open NAUGLES restaurants myself. Attached hereto as Petitioner's Exhibit L is a true and correct copy of my website as of the date I executed this affidavit. In the future, I intend to use the website to advertise and promote my own NAUGLES restaurants once I get Del Taco's registration cancelled

18. Prior to filing my ITU application, I created the "Señor Naugles" twitter account "@Naugles," which I still operate today. I also have some involvement with the NAUGLES Facebook page. I am not the creator of it but the creator has made me a moderator.

19. I am informed and believe that, in 1989, Del Taco announced its intent to cease use of the NAUGLES trademark and phase out all NAUGLES restaurants. I am informed and believe that Del Taco intended to turn all of the remaining NAUGLES restaurants into Del Tacos. I know this because Jeff Rowe wrote an article that was published in the Orange County Register Newspaper on the subject on May 17, 1989. It quoted the owner, who stated that they were phasing the restaurants out. The article was called "Adios to Naugles," and I do believe I remember seeing this article in the paper when it was originally published. On January 18, 2010, I asked a friend of mine who is a writer at the Orange County Register, Nancy Luna, to look in the newspaper's archives and find the article for me, and she did. Attached hereto as Petitioner's Exhibit M is a true and correct copy of the emails exchanged between Ms. Luna and me, evidencing how I asked her to retrieve this article and her response to me, complying. In the body of her email response, the "Adios to Naugles" article that was published in the Orange County Register in 1989 is reproduced in its entirety.

20. I can also personally testify to the fact that, in the early 1990's, the NAUGLES locations I had personally been to before in Orange County, California were now only known as "Del Taco." I believe the very last NAUGLES restaurant closed in 1994 or 1995.

21. Prior to filing my ITU application, I, myself, did some research into what type of evidence Del Taco had supplied to the Trademark Office to prove its alleged ongoing use of the NAUGLES mark. I went onto the USPTO website and started looking at the documents that were on file for Del Taco's registration for NAUGLES in connection with restaurant services. I saw that Del Taco had renewed its registration in 1996 and again in 2006. I couldn't believe it, because I am informed and believe that the last restaurant closed in 1994 or 1995. Attached hereto as Petitioner's Exhibit N is a true and correct copy of one of the documents I saw on the USPTO website in Del Taco's file for the NAUGLES mark. It appears to be a renewal application and/or declaration of use. On pages 3 to 4, there is a sworn statement from Del Taco's Vice President and General Counsel, Michael Annis, which I remember reading when I first saw this document. Mr. Annis swore that NAUGLES was currently in use and he signed it in 2006. I believe this statement to be untrue, because, again, I am informed and believe that Del Taco closed all of their NAUGLES restaurants in the early 1990's. The last 2 pages of the document appear to be the specimen that Del Taco submitted, but it is nothing more than a printout from Del Taco's "History" section on its website. On the specimen, the only place I even see the word 'Naugles" is in a graphic at the top of page 5 that says "Viva Naugles; Via Del Taco," and then again in a short explanation of the history of how Naugles and Del Taco merged in 1988. This specimen does not contain anything remotely relating to any NAUGLES restaurants that were in existence back in 2006 when this was signed and filed.

22. In my research, another specimen was brought to my attention which was in Del Taco's file at the PTO; my understanding is that this "specimen" is supposed to supposed to show how Del Taco uses the trademark in connection to restaurant services. Attached hereto as Petitioner's Exhibit O is a true and correct copy of the specimen I came across online on the USPTO's website under Del Taco's registration. This is a really old picture of an old Naugles restaurant sign. I, personally, have not seen this sign on display anywhere in at least 17 years or more. The USPTO's website lists a filing date of 2007 for this specimen. It was unclear to me whether this image existed in the NAUGLES file prior to 2007 and was simply uploaded digitally in 2007, or whether this specimen was newly submitted in 2007.

23. I have received media attention in relation to my efforts to use the mark NAUGLES. On June 2, 2012, an article appeared in the Orange County Register Newspaper, a newspaper of general circulation published in Orange County, California, entitled "Twitter Talk Suggests Comeback for Naugles Fast-Food Brand" which discussed my efforts to use the NAUGLES mark in connection with restaurant services. Although, at the time, I did not want to be directly named, and thus I am not referred to by name, the central focus of the article is the @Naugles Twitter account that I run. Attached hereto as Petitioner's Exhibit P is a true and correct copy of that article. I am the source who spoke with the author of this article prior to it being printed in the newspaper. This article talks about the buzz amongst fans of NAUGLES restaurants who are excited to hear that I might be able to open NAUGLES restaurants myself.

24. On July 9, 2013, an articles appeared in The OC Weekly, a publication of general circulation in Orange County, California, entitled "Naugles, Legendary SoCal Mexican Fast-Food Chain, is Trying to Make a Comeback, and We Have the Proof." I am not sure whether this article ever made it to print or was only published in The OC Weekly online newspaper. Attached hereto as Petitioner's Exhibit Q is a true and correct copy of this article.

I was the source who spoke with the author of this article, who also happens to be the Editor, about getting NAUGLES off the ground. I dropped off some NAUGLES taco sauce in the hopes that the author/editor might give it a brief mention in his paper or on the associated website. I had talked with him a few times before about my NAUGLES plan. As can been seen from the contents of the article, the author claimed to like the sauce.

25. Since filing my ITU application for the mark NAUGLES, I have taken many other steps to make opening NAUGLES restaurants a reality. I have taken partners in my venture, Josh Maxwell and Dan Dvorak, and we have sought and obtained investors, created detailed business plans, scoped locations, and much more.

26. Attached hereto as Petitioner's Exhibit R (filed as CONFIDENTIAL) is a detailed summary of our intended operations. This document was created by Josh Maxwell, Dan Dvorak and myself and was given to Del Taco in relation to this proceeding in or about June of 2012. As can be seen from the contents of this document, Mr. Maxwell, Mr. Dvorak 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.

27. We have also made it a point to research and experiment extensively on menu items, and I have provided preview meals under the NAUGLES mark. On or around March 20, 2012, I catered a lunch serving NAUGLES menu items and created a NAUGLES menu for the lunch. On or around July 25, 2012, I served burritos to the Gringo Bandito Hot Sauce Company as a potential vendor in connection with NAUGLES products. I and my partners continue to prepare preview meals, scout locations, develop our menu, ingredients, products, and marketing, and continue to hold regular meetings, all in an effort to develop the NAUGLES Restaurant concept as outlined in Petitioner's Exhibit R.

I, Christian M. Ziebarth, 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 3, 2013 in Orange, California

Christian Ziebarth

State of California
County of ORANGE

Subscribed and sworn to (or affirmed) before me on this 03 day of OCTOBER, 2013, by CHRISTIAN ZIEBARTH, who provided to me on the basis of satisfactory evidence to be the person who appeared before me.

(seal) Signature:

EDWARD NICHOLLS
Commission # 2039210
Notary Public - California
Orange County
My Comm. Expires Aug 27, 2017

PETITIONER'S EXHIBITS

Petitioner's ITU Application for NAUGLES mark	Exhibit A
January 10, 2011 Office Action: Final Refusal of Petitioner's Application	Exhibit B
Petitioner's Calendar Entry dated July 31, 2008	Exhibit C
Emails between Petitioner and B. Caruso	Exhibit D
LinkedIn Message from Petitioner to N. Chillingworth	Exhibit E
Petitioner's Calendar Entry dated February 13, 2010.	Exhibit F
Emails between Petitioner and Jeff Naugle	Exhibit G
Emails between Petitioner and R. Hallstrom	Exhibit H
Emails between Petitioner and JJ Naugle	Exhibit I
Emails between Petitioner and Bill Naugle	Exhibit J
Confirmation of nauglestacos.com domain registration	Exhibit K
Nauglestacos.com printout	Exhibit L
Emails between Petitioner and Nancy Luna, OC Register writer	Exhibit M
Del Taco's 2006 renewal application	Exhibit N
Del Taco's 2007 specimen	Exhibit O
OC Register Article "Twitter Talk Suggests Comeback for Naugles"	Exhibit P
OC Weekly Article "Naugles . . . Trying to Make a Comeback"	Exhibit Q
Confidential Business Plans **(FILED AS CONFIDENTIAL)**	Exhibit R

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **PETITIONER'S TESTIMONY AFFIDAVIT OF CHRISTIAN ZIEBARTH** 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 4, 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
AMEZCUA-MOLL & ASSOCIATES, P.C.
Lincoln Professional Center
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865
Attorney for Petitioner CHRISTIAN M. ZIEBARTH

Besl, April L.

From: Caruso, Barbara (Public Relations) [carusocom@aol.com]
Sent: Tuesday, October 08, 2013 7:01 PM
To: Tang, Jack
Cc: cobeycom@aol.com; Cappasola, John
Subject: Fwd: Naugles Affidavit

Hey, Jack!
Nice to see you this morning! Thanks for coming down to say hello.

Seems this is still a thorn in your side. Not sure where he got the idea that I endorsed his idea of reviving the chain. I'm going to decline his request, and I certainly would not want to help them launch!

No need to respond to this note, just wanted to let you know about this.

Thanks,
Barbara

Barbara Caruso, APR
Caruso Communications
714.841.6777 office
714.328-3273 cell
www.carusocommunications.net

-----Original Message-----
From: Christian Ziebarth <christianz@netscape.net>
To: CarusoCom <CarusoCom@aol.com>
Cc: kelly <kelly@amalaw.net>
Sent: Tue, Oct 8, 2013 3:35 pm
Subject: Naugles Affidavit

PENGAD 800-631-6989
EXHIBIT
4 SC
10-28-13

Hi Barbara,

This may seem totally unexpected but we are wondering if you wouldn't mind submitting an affidavit relating to your knowledge of Del Taco's intent to use or to not use the NAUGLES trademark. It seemed to me that you genuinely liked the idea of a Naugles revival but that the inertia was more on Del Taco's part. Or perhaps they had some sort of limited revival in mind but even then it had been two years and four months from the time I initially brought up the idea to the time I petitioned to cancel their registration and in all that time I never heard back on meeting with their marketing people and, by that point, I didn't feel like it was wise to wait any longer. I moved on the basis that they truly seemed disinterested in doing anything with it. When they finally responded to the petition to cancel over three months later I had already been working on my own plans for a revival of the chain and nothing Del Taco brought up seemed like it would serve Naugles fans in the way they deserve.

We aren't asking anyone to say bad things about Del Taco or to put anyone in an awkward situation. We always felt that the case was simply about their abandonment of the trademark and no other inferrals beyond that and with no acrimony on our part. We are only looking for the truth/facts here. Plus, this is not a high intensity court situation, just a case in front of the Trademark Board. The affidavit would merely be a written submission, not an in-person encounter.

You can reply by hitting "Reply All" on this message to correspond with me and the current lawyer, Kelly Pfeiffer, or just respond to one or the other. Kelly will help to make the process easy. You can also talk to either one or both of us first to discuss any concerns before agreeing to complete the affidavit. We are hoping to get everyone's affidavits completed and turned in by October 16th.

If we win the case we would definitely want to talk to you about PR work as we move forward in bringing back the Naugles brand.

Thank you for considering this request.

Sincerely,

Christian Ziebarth

[US] https://twitter.com/naugles

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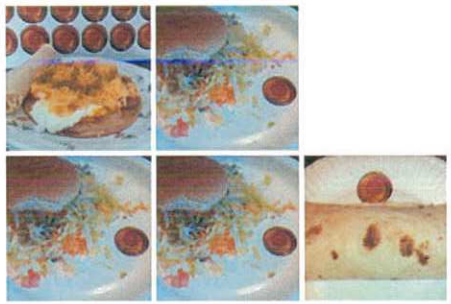
Tweets
Following
Followers
Favorites
Lists

Tweet to Señor Naugles

@naugles

Photos and videos



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cookingwithcaitlin @cookingwc...
Followed by LaurenKellum and ot...
Follow

Andrea Mitchell @mitchellre...
Follow

David Gregory @davidgregory
Follow

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Trends · Change
#BadGrandpaMovie Promoted
#KATYonGMA

Señor Naugles

@naugles

Popular food chain from the 70's & 80's getting ready to come back.
(Quasi-official account for now.)
Southwestern United States · nauglestacos.com

393 TWEETS | 1,560 FOLLOWING | 682 FOLLOWERS | Follow

Tweets

Señor Naugles @naugles 14 Oct
@bitmaelstrom Give us a follow.
View conversation

Randy Myers @Randy_Myers 11 Oct
#ff @portilloshotdogs @pinkshotdogs @innoutburger @philippetheog @TacoSurfCantina @Johnny_Rebs @RubysDiner @Naugles @DunkinDonutsLA @
Retweeted by Señor Naugles
Expand · Reply · Retweet · Favorite · More

Señor Naugles @naugles 5 Oct
@Boski93 Nice meeting you two. Hope I get another follower soon so the number will change...
Expand

Brian Wahby @bwahby 13 Sep
@Jonaconda I must be old - I'm nostalgic for Naugles
Retweeted by Señor Naugles
View conversation

Señor Naugles @naugles 14 Sep
@bwahby Nah, you're one of the young fans. @Jonaconda
View conversation

Señor Naugles @naugles 14 Sep

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10-28-13
28

[US] https://twitter.com/naugles

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Señor Naugles @naugles 6 Sep
@JacksonGrl402 Wow.
View conversation

Seanny Rotten @SeannyRotten 3 Sep
@AdamCarollaShow @drdrew I'm listening to the #naugles episode. My favorite fries from mid 80's, Port Hueneme!
Expand

Señor Naugles @naugles 4 Sep
@SeannyRotten Thanks for remembering us. @AdamCarollaShow @drdrew
Expand

Seanny Rotten @SeannyRotten 5 Sep
@naugles you're welcome. If u guys do come back, I hope your fries are the perfect mix of greasy & crunchy @AdamCarollaShow @drdrew
Expand

Señor Naugles @naugles 5 Sep
@SeannyRotten we've got good things planned for the fries; nice name, by the way; going to think of you formally as Sean Lydon
Hide conversation | Reply | Retweet | Favorite | More

1
FAVORITE

1:58 AM - 5 Sep 13 · Details

Reply to @naugles @SeannyRotten

Seanny Rotten @SeannyRotten 5 Sep
@naugles you're welcome. If u guys do come back, I hope your fries are the perfect mix of greasy & crunchy @AdamCarollaShow @drdrew
Retweeted by Señor Naugles
View conversation

Señor Naugles @naugles 4 Sep
@SeannyRotten Thanks for remembering us. @AdamCarollaShow @drdrew

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EXHIBIT
6
10-28-13

US] https://twitter.com/naugles

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Tucker Calkins @TCalkins36 22 Aug
Can't believe they are trying to being back Naugles, Mexican fast food chain. Best late-night food other than Steak 'n Shake. #naugleburger
Retweeted by Señor Naugles
Expand | Reply | Retweet | Favorite | More

Drew Breese @drewbreese 21 Aug
@TheVinceNeil Egg Burritos, and not even from Del Taco. Naugles was fantastic though.
Expand

Señor Naugles @naugles 22 Aug
@drewbreese We still are.
Hide conversation | Reply | Retweet | Favorite | More

3:14 PM - 22 Aug 13 · Details

Reply to @naugles @drewbreese

Drew Breese @drewbreese 22 Aug
@naugles SWEET!
Expand

Drew Breese @drewbreese 21 Aug
@TheVinceNeil Egg Burritos, and not even from Del Taco. Naugles was fantastic though.
Retweeted by Señor Naugles
Expand

Señor Naugles @naugles 22 Aug
@deslogetown @JeremyKCMO not yet, but there will be
View conversation

Iceberg @Stan_Cherry 22 Aug
@quincyfrisco @Stickamania They're trying to make a comeback. I'd love to see a @naugles in Raleigh, North Carolina. #begging actually.
Retweeted by Señor Naugles
View conversation

Señor Naugles @naugles 13 Aug
@sputnikmoss @BitofButter @alamodern @SIlabStudios @bellaceti is @citroendork a big #Naugles fan?

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EXHIBIT
7
10-28-13

[US] https://twitter.com/naugles

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Home | Connect | Discover | Me | Search

get you some real Naugles food soon
View conversation

Señor Naugles @naugles 29 Jul
@SOLDSHORT @jay_bentley @brianXbaker rumble rumble blogs.ocweekly.com/stickaforkinit...
View conversation

Señor Naugles @naugles 27 Jul
@PunkityBrewster Maybe so: blogs.ocweekly.com/stickaforkinit...
View conversation

Señor Naugles @naugles 22 Jul
@Vyxri We like everyone, but, yeah, we also like our nachos.
View conversation

Señor Naugles @naugles 20 Jul
@mrjerz @Chad_Hartley @ScottWalquist "is Naugles some Midwest Mexican food thing?" Started in CA then spread to a number of other states.
View conversation

Señor Naugles @naugles 13 Jul
@powdertraitor in their mind they don't have a secret Naugles menu although you can get a couple things there close to how we made them
Collapse | Reply | Retweet | Favorite | More

5:55 PM - 13 Jul 13 - Details

Reply to @naugles @powdertraitor

Señor Naugles @naugles 13 Jul
@ForkReporter Do you want to do a story on Naugles ramping up to come back? @Taxberg214
Expand

Randy Myers @Randy_Myers 12 Jul
#ff @WahoosFishTaco @portilloshotdogs @pinkshotdogs @tsontheshore @PUPNTACO @Naugles @MonsterEnergyCa @DunkinDonutsLA @theslidebar
Retweeted by Señor Naugles
Expand

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8
10-28-13

[US] https://twitter.com/naugles

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When I lived on Figueroa in downtown LA there was a burger place called Naugles,great burgers Hockey burger East LA.& Ricks in Inglwood.wow

Retweeted by Señor Naugles

Expand | Reply | Retweet | Favorite | More

Señor Naugles @naugles 5 Feb

@manicsocratic @brag naugles invented the Macho items starting with Macho Nachos

View conversation

Señor Naugles @naugles 31 Jan

@FlyingSoccerDad now working on coming back; if Del Taco can help it and not hurt it then great; otherwise it'll be separate from them

Expand

Señor Naugles @naugles 31 Jan

@FlyingSoccerDad actually our friends @DelTaco started before us, then we started, then there was a merger, then Naugles went dormant

Collapse | Reply | Retweet | Favorite | More

3:20 PM - 31 Jan 13 · Details

Reply to @naugles @FlyingSoccerDad @DelTaco

Kristian @comoinis 26 Jan

@richard_demoss @TacoBell No Naugles or Del Taco? I'm hurt.

Retweeted by Señor Naugles

View conversation

Señor Naugles @naugles 28 Jan

@nojoegexcellent; let us know if we'd be able to see it

Expand

Señor Naugles @naugles 28 Jan

@nojoego @richard_demoss we remember those burritos!

View conversation

Chris Walters. @chriswaltershey 24 Jan

@naugles please mail me a burrito

Retweeted by Señor Naugles

Expand

Kevin Smith @kinkykontrol 18 Jan

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@SocialInebriate it's not like Del Taco came into existence when Naugles closed

Hide conversation | Reply | Retweet | Favorite | More

3:52 PM - 4 Jan 13 · Details

Reply to @naugles @SocialInebriate

Social Inebriate @SocialInebriate 4 Jan

@DelTaco remember when you were Naugles? BAM FLASHBACK!

Expand

Señor Naugles @naugles 4 Jan

@SocialInebriate they were two separate chains that merged and then most of the Naugles got converted to Del Tacos

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3:51 PM - 4 Jan 13 · Details

Reply to @naugles @SocialInebriate

Social Inebriate @SocialInebriate 4 Jan

@naugles still miss Naugles mine was in temecula bring it back!

Expand

Señor Naugles @naugles 4 Jan

@SocialInebriate nauglestacos.com

Expand

Social Inebriate @SocialInebriate 4 Jan

@naugles waiting with great anticipation!

Expand

Señor Naugles @naugles 3 Jan

@MikeHolladay1 give us a follow so we can direct message you

View conversation

Señor Naugles @naugles 1 Jan

@sweettoothmattc excellent; somebody had to pull out some Twinkies in 2013

View conversation

Scott Nixon @ScottNixon61 31 Dec

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EXHIBIT 10 SC 10-28-13

OUR MENU KEEPS IMPROVING.
JUST SOME OF THE NEW THINGS YOU'LL NOTICE.

HAMBURGERS

Hamburger - *The traditional burger. Hamburger patty, pickles, ketchup and mustard on our custom knot bun.*

Del Burger - *Crisp lettuce and tomato, pickles, onions, mayonnaise, ketchup, mustard and a specially seasoned hamburger patty on our custom knot bun.*

Double Del Burger - *Add another hamburger patty and two slices of cheese to our Del Burger.*

SIDE ORDERS

Fries—Small/Regular - *Extra thick crinkle cut french fries.*

Chips & Dips - *Corn tortilla chips served with your choice of salsa, guacamole, spicy cheese sauce or salsa dressing.*

Beans & Cheese - *A jumbo cup of refried beans topped with Monterey Jack and Cheddar cheeses.*

Mexican Rice - *A jumbo cup of seasoned rice.*

Fresh Guacamole - *Prepared daily with fresh avocados.*

Salsa - *Homemade with fresh tomatoes, scallions and cilantro in our special sauce.*

BREAKFAST

Served until 11:00 a.m.

Egg & Cheese Soft Taco - *A grilled flour tortilla with an egg scrambled in real butter and Monterey Jack and Cheddar cheeses.*

Egg & Cheese Burrito - *A grilled flour tortilla with scrambled eggs, grated Monterey Jack and Cheddar cheeses and Mexican meat sauce.*

Egg & Bean Burrito - *A grilled flour tortilla with scrambled eggs, grated Monterey Jack and Cheddar cheeses, refried beans and Mexican meat sauce.*

Beef & Egg Burrito - *A grilled flour tortilla with scrambled eggs, grated Monterey Jack and Cheddar cheeses, seasoned ground beef and Mexican meat sauce.*

Chicken & Egg Burrito - *A grilled flour tortilla with marinated, grilled chicken, scrambled eggs, grated Monterey Jack and Cheddar cheeses topped with Mexican meat sauce.*

Steak & Egg Burrito - *A grilled flour tortilla with marinated, grilled steak, scrambled eggs, grated Monterey Jack and Cheddar cheeses topped with Mexican meat sauce.*

VIVA NAUGLES VIVA DEL TACO™

FOOD WORTH FIGHTING FOR.

These items available at Del Taco and Naugles restaurants

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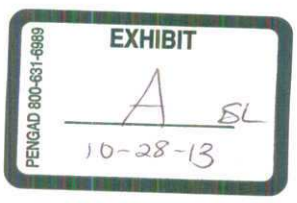
EXHIBIT

11 sc

10-28-13

EXHIBIT A

to Petitioner's Testimony Affidavit of Christian Ziebarth



PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85040746
Filing Date: 05/17/2010

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	**YES**
MARK INFORMATION	
***MARK**	NAUGLES
***STANDARD CHARACTERS**	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	NAUGLES
***MARK STATEMENT**	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	Ziebarth, Christian M.
***STREET**	183 Alicante Aisle
***CITY**	Irvine
***STATE (Required for U.S. applicants)**	California
***COUNTRY**	United States
***ZIP/POSTAL CODE (Required for U.S. applicants only)**	92614
PHONE	(949) 387-1457
EMAIL ADDRESS	ChristianZ@netscape.net

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
***TYPE**	SOLE PROPRIETORSHIP
*** STATE/COUNTRY WHERE LEGALLY ORGANIZED**	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	
***INTERNATIONAL CLASS**	043
IDENTIFICATION	Cafeteria and restaurant services
***FILING BASIS**	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
***NAME**	Ziebarth, Christian M.
FIRM NAME	Ziebarth, Christian M.
***STREET**	183 Alicante Aisle
***CITY**	Irvine
***STATE (Required for U.S. applicants)**	California
***COUNTRY**	United States
***ZIP/POSTAL CODE**	92614
PHONE	(949) 387-1457
***EMAIL ADDRESS**	ChristianZ@netscape.net
***AUTHORIZED TO COMMUNICATE VIA EMAIL**	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1

FEE PER CLASS	275
***TOTAL FEE PAID**	275
SIGNATURE INFORMATION	
*** SIGNATURE**	/christian m. ziebarth/
*** SIGNATORY'S NAME**	Christian M. Ziebarth
*** SIGNATORY'S POSITION**	Owner
*** DATE SIGNED**	05/17/2010

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85040746
Filing Date: 05/17/2010

To the Commissioner for Trademarks:

MARK: NAUGLES (Standard Characters, see mark)
The literal element of the mark consists of NAUGLES.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Ziebarth, Christian M., a sole proprietorship legally organized under the laws of California, having an address of

183 Alicante Aisle
Irvine, California 92614
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 043: Cafeteria and restaurant services
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Correspondence Information:

Ziebarth, Christian M.
Ziebarth, Christian M.
183 Alicante Aisle
Irvine, California 92614
(949) 387-1457(phone)
ChristianZ@netscape.net (authorized)

A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /christian m. ziebarth/ Date Signed: 05/17/2010
Signatory's Name: Christian M. Ziebarth
Signatory's Position: Owner

RAM Sale Number: 5829
RAM Accounting Date: 05/18/2010

Serial Number: 85040746
Internet Transmission Date: Mon May 17 18:37:59 EDT 2010
TEAS Stamp: USPTO/FTK-98.164.215.102-201005171837594
45437-85040746-460b3e1fe8a21aa3caa7b7d84
912f8675e0-CC-5829-20100517174917533084

NAUGLES

EXHIBIT B

to Petitioner's Testimony Affidavit of Christian Ziebarth

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EXHIBIT
B SC
10-28-13

To:	Ziebarth, Christian M. (efiling@kmob.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 85040746 - NAUGLES - CZIEB.000GEN
Sent:	1/10/2011 6:17:05 PM
Sent As:	ECOM105@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15 Attachment - 16 Attachment - 17 Attachment - 18 Attachment - 19 Attachment - 20 Attachment - 21 Attachment - 22 Attachment - 23 Attachment - 24

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85040746

MARK: NAUGLES

85040746

CORRESPONDENT ADDRESS:
Gregory B. Phillips
Knobbe, Martens, Olson & Bear, LLP
14th Floor
2040 Main Street
Irvine CA 92614

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/teas/eTEASpageD.htm

APPLICANT: Ziebarth, Christian M.

CORRESPONDENT'S REFERENCE/DOCKET NO:
CZIEB.000GEN

CORRESPONDENT E-MAIL ADDRESS:
efiling@kmob.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 1/10/2011

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on December 20, 2010. Applicant has clarified its entity for the record. TMEP §§713.02, 714.04. The communication did not address the remaining refusals therefore the examining attorney is issuing this final action. TMEP §718.03.

The following refusals are made FINAL: likelihood of confusion refusal under Trademark Act Section 2(d) with respect to U.S. Registration No. 1043729; and (2) surname refusal under Trademark Act Section 2(e)(4). *See* 15 U.S.C. §§1052(d), (e)(4); TMEP §§1207.01, 1211; 37 C.F.R. §2.64(a).

SUMMARY OF ISSUES that applicant must address:

- Likelihood of Confusion Refusal
- Surname Refusal

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Applicant is seeking registration of the mark NAUGLES in connection with cafeteria and restaurant services. The cited registration, Reg. No. 1043729, is for the identical mark NAUGLES and covers restaurant services. Registration has been refused under Trademark Act Section 2(d) on the grounds that the marks are likely to be confused.

Comparison of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476

F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

In the present case, applicant's mark is NAUGLES and the registrant's mark is NAUGLES. The marks are identical in appearance, sound, meaning and commercial impression.

Applicant has not made any attempt to distinguish the marks. In fact, because the marks consist of the same word spelled in the same way, they are not distinguishable.

Comparison of the Services

Where the marks of the respective parties are identical or virtually identical, there need be only a viable relationship between the relevant goods and/or services to support a finding of likelihood of confusion. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); *In re Wilson*, 57 USPQ2d 1863, 1867 (TTAB 2001); *see also In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

In the present circumstances, the services are also identical. The application covers cafeteria and restaurant services. A cafeteria is a type of restaurant. Please see attached definition. The registration covers restaurant services. Because the services and the marks are identical, consumers are likely to believe that applicant's and registrant's services are being provided by the same entity.

The Trademark Act not only guards against the misimpression that the senior user is the source of the junior user's goods and/or services, but it also protects against "reverse confusion," that is, the junior user is the source of the senior user's goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Fisons Horticulture, Inc. v. Vigoro Indust., Inc.*, 30 F.3d 466, 474-75, 31 USPQ2d 1592, 1597-98 (3d Cir. 1994); *Banff, Ltd. v. Federated Dep't Stores , Inc.*, 841 F.2d 486, 490-91, 6 USPQ2d 1187, 1190-91 (2d Cir. 1988).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Because the marks and the services are identical, consumer confusion is likely and registration is refused under Section 2(d) of the Trademark Act.

If the mark in the cited registration has been assigned to applicant, applicant can provide evidence of ownership of the mark by satisfying one of the following:

(1) Record the assignment with the Office's Assignment Services Branch (ownership transfer documents such as assignments can be filed online at http://etas.uspto.gov) and promptly notify the trademark examining attorney that the assignment has been duly recorded;

(2) Submit copies of documents evidencing the chain of title; or

(3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"Applicant is the owner of U.S. Registration No. 1043729."**

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73; TMEP §502.02(a).

Merely recording a document with the Assignment Services Branch does not constitute a response to an Office action. TMEP §503.01(d).

Applicant should note the following additional ground for refusal.

SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME

Registration is also refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); *see* TMEP §1211. The primary significance of the mark to the purchasing public determines whether a term is primarily merely a surname. *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 832, 184 USPQ 421, 422 (C.C.P.A. 1975); *In re Binion*, 93 USPQ2d 1531, 1537 (TTAB 2009); *see* TMEP §§1211, 1211.01.

Evidence of the surname significance of the term NAUGLES was included with the original Office Action. Additional evidence consisting of a representative sample of excerpts from a database of news articles showing that the surname NAUGLES appears to be used throughout the United States is also attached, alon with printouts from an online directory of names showing that the name appears 62 times in a nationwide directory of names.

There is no rule as to the kind or amount of evidence necessary to make out a prima facie showing that a term is primarily merely a surname. This question must be resolved on a case-by-case basis. TMEP §1211.02(a); *see, e.g., In re Monotype Corp. PLC*, 14 USPQ2d 1070 (TTAB 1989); *In re Pohang Iron & Steel Co.*, 230 USPQ 79 (TTAB 1986). The entire record is examined to determine the surname significance of a term. The following are examples of evidence that is generally considered to be relevant: telephone directory listings, excerpted articles from computerized research databases, evidence in the record that the term is a surname, the manner of use on specimens, dictionary definitions of the term and evidence from dictionaries showing no definition of the term. TMEP §1211.02(a).

Because the term NAUGLES appears to be primarily merely a surname, registration on the Principal Register is refused under Section 2(e)(4) of the Trademark Act.

Although an amendment to the Supplemental Register would normally be an appropriate response to this refusal, such a response is not appropriate in the present case. The instant application was filed under Trademark Act Section 1(b) and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use meeting the requirements of 37 C.F.R. §2.76(b), (c) has been timely filed. 37 C.F.R. §2.47(d); TMEP §§816.02, 1102.03.

If applicant files an acceptable allegation of use and also amends to the Supplemental Register, the effective filing date of the application will be the date on which applicant met the minimum filing requirements of 37 C.F.R. §2.76(e) for the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§816.02, 1102.03. In addition, the undersigned trademark examining attorney will conduct a new search of the Office records for conflicting marks based on the later application filing date. TMEP §§206.01, 1102.03.

To amend the application filing basis from an intent-to-use application under Trademark Act Section 1(b) to a use in commerce basis under Section 1(a), applicant must file, prior to approval of the mark for

publication, an amendment to allege use that satisfies the requirements of 37 C.F.R. §2.76. *See* 15 U.S.C. §1051(c); 37 C.F.R. §2.35(b)(8); TMEP §§806.01(b), 1103.

The following must be submitted in an amendment to allege use in order to amend an application to use in commerce under Section 1(a):

(1) The following statement: " **Applicant is believed to be the owner of the mark and that the mark is in use in commerce**;"

(2) The date of first use of the mark anywhere on or in connection with the goods and/or services;

(3) The date of first use of the mark in commerce as a trademark or service mark;

(4) A specimen showing actual use of the mark in commerce for each class of goods and/or services for which use is being asserted. If a single specimen supports multiple classes, applicant should indicate which classes the specimen supports rather than providing multiple copies of the same specimen;

(5) A filing fee of $100 per class for each international class of goods and/or services for which use is being asserted (current fee information should be confirmed at http://www.uspto.gov/); and

(6) Verification of the above (1) through (3) requirements in an affidavit or signed declaration under 37 C.F.R. §2.20.

See 37 C.F.R. §§2.6(a)(2), 2.56, 2.76(b), 2.193(e)(1); TMEP §§1104.08, 1104.09(e).

Amendments to allege use can be filed online at http://www.uspto.gov/teas/index.html. Filing an amendment to allege use does not extend the deadline for filing a response to an outstanding Office action. TMEP §1104.

Please note, an amendment to the Supplemental Register will not overcome the refusal under Section 2(d).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

RESPONSE GUIDELINES FOR FINAL ACTIONS

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of $50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment

will not incur this additional fee.

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

(1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or

(2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of $100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is $100. 37 C.F.R. §2.6(a)(15).

If applicant has questions about the application or this Office action, please telephone the assigned trademark examining attorney at the telephone number below.

/Kate DuBray/
Trademark Examining Attorney, Law Office 105
Tel: 571-272-4815
Email: katherine.dubray@uspto.gov

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at http://teasroa.uspto.gov/roa/. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at http://tarr.uspto.gov/. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/teas/eTEASpageE.htm.

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café latte

cafeteria

cafeteria

caf·e·te·ri·a [kàffə téeree ə] (*plural* caf·e·te·ri·as)

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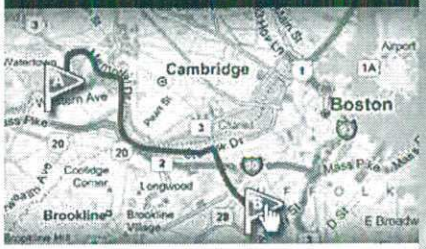

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caffè corretto

noun

Definition:

self-service restaurant: a self-service restaurant or coffee shop, especially one in a workplace or school

[Mid-19th century. < American Spanish< *café* "coffee"]

Also available:

World English Dictionary
Dictionnaire Français

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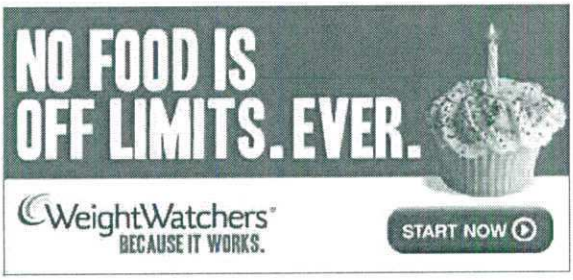

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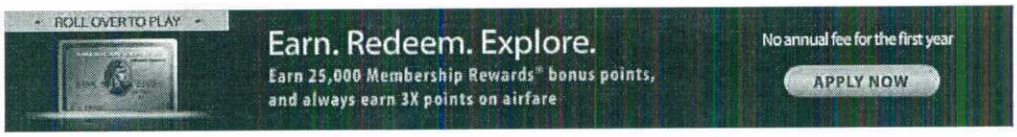

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Eastern Express Times (Pennsylvania)

June 16, 2010 Wednesday

SECTION: NEWS; Pg. B3

LENGTH: 224 words

HEADLINE: Death threat made on chief, police say BELVIDERE POLICE SAY SLATE BELT WOMAN called 12 times after her pickup truck was impounded.

BYLINE: BILL WICHERT The Express-Times

BODY:

...left the area as Castles arrived but was later stopped heading toward the Riverton bridge, police said.

Naugle received a summons for driving an unregistered vehicle and the car was impounded, police said. The car is registered to Naugle's husband, Todd, according to Sweigert.

For leaving the messages, Naugle faces disorderly conduct and harassment charges, police said.

No one picked up the phone at the **Naugles'** home Tuesday afternoon or early evening.

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Arizona Daily Star (Tucson)

December 23, 2009 Wednesday
Final Edition

SECTION: TUCSON/REGION; Pg. A2

LENGTH: 473 words

HEADLINE: Struggling couple sees glimmer

BYLINE: STEPHANIE INNES, STEPHANIE INNES, ARIZONA DAILY STAR

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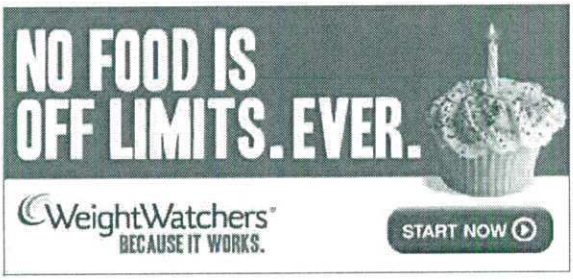

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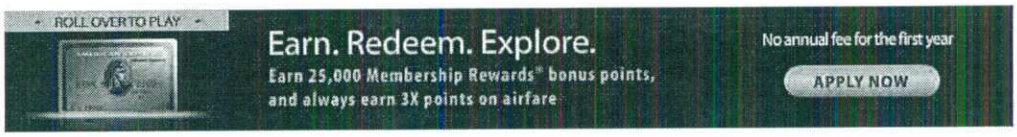

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2 of 472 DOCUMENTS

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Eastern Express Times (Pennsylvania)

June 16, 2010 Wednesday

SECTION: NEWS; Pg. B3

LENGTH: 224 words

HEADLINE: Death threat made on chief, police say BELVIDERE POLICE SAY SLATE BELT WOMAN called 12 times after her pickup truck was impounded.

BYLINE: BILL WICHERT The Express-Times

BODY:

...left the area as Castles arrived but was later stopped heading toward the Riverton bridge, police said.

Naugle received a summons for driving an unregistered vehicle and the car was impounded, police said. The car is registered to Naugle's husband, Todd, according to Sweigert.

For leaving the messages, Naugle faces disorderly conduct and harassment charges, police said.

No one picked up the phone at the **Naugles'** home Tuesday afternoon or early evening.

4 of 472 DOCUMENTS

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Arizona Daily Star (Tucson)

December 23, 2009 Wednesday
Final Edition

SECTION: TUCSON/REGION; Pg. A2

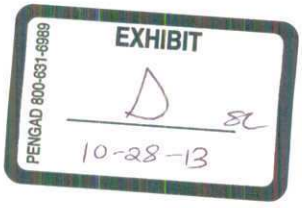
LENGTH: 473 words

HEADLINE: Struggling couple sees glimmer

BYLINE: STEPHANIE INNES, STEPHANIE INNES, ARIZONA DAILY STAR

EXHIBIT D

to Petitioner's Testimony Affidavit of Christian Ziebarth



From: christianz <[redacted]>
To: carusocom <[redacted]>
Subject: Re: Lunch
Date: Sat, May 2, 2009 12:04 pm

That's fine. Thursday's likely to be a little better than Wednesday but just let me know what works for you and Noah. Thanks.

Christian

-----Original Message-----
From: Barbara Caruso <[redacted]>
To: [redacted]
Sent: Fri, 1 May 2009 10:36 am
Subject: Lunch

Hi, Christian,
Thanks for the call!
Noah's been pretty busy, so hard to pin down for a day but I'm trying for next Wed/Thursday.... Will get back to you as soon as I know.
Thanks,
Barbara

Barbara Caruso, APR
Caruso Communications
[redacted]

Can't afford a new spring wardrobe? Go shopping in your closet instead!

From: christianz <[redacted]>
To: carusocom <[redacted]>
Subject: Re: Twitter
Date: Mon, Sep 28, 2009 1:14 pm

Hi Barbara,

I don't know if you ever presented the idea of bringing a Naugles sub-menu back to the Del Taco marketing team but people are still very interested in it. I normally get 30 - 40 hits a day from people looking for Naugles info but at this point today it has already well exceeded that amount due to links in comments left on an entry at Nancy's blog. With the nostalgia factor that is driving business so heavily at places like Bob's Big Boy and Farrell's this could be a *huge* selling point for Del Taco and would require little in the way of new ingredients needing to be stocked or whatever. Nancy's story on Jack in the Box bringing back a 30-yr. old burger has itself been getting a ton of traffic and was the #1 most viewed story on the Register website for a while

Trying not to be a pest over this but my blog is the one spot where interest in Naugles can be gaged and I can tell that it is high. If it's out of the question then it's out of the question but I'd hate to see Del Taco miss an easy and profitable opportunity with public interest already so acute in a property Del already owns.

Christian

-----Original Message-----
From: Barbara Caruso <[redacted]
To [redacted]
Sent: Fri, Sep 11, 2009 11:41 am
Subject: Re: Twitter

I'll have to check... last time I talked about this with the marketing dept. there wasn't an account open...
Hope all is well your way!

Barbara Caruso, APR
Caruso Communications
[redacted]

-----Original Message-----
From: [redacted]
To: [redacted]
Sent: Fri, Sep 11, 2009 11:04 am
Subject: Twitter

Is this Del's official Twitter account? http://twitter.com/deltaco

From: Barbara Caruso <[redacted]
To: ChristianZ <[redacted]
Subject: Re: Models?

Date: Fri, Jan 14, 2011 3:48 pm

Hey, Christian,
I was actually just curious as to what this is about and why you might be interested in seeing the Naugles trademark become public domain. And of course, you can imagine I would want to know if you will be blogging about the petition! :) Certainly don't want to cause any issues for you or your attorneys!

Take care,
Barbara

Barbara Caruso, APR
Caruso Communications
[redacted]

-----Original Message-----
From: Christian Ziebarth <[redacted]>
To: Barbara Caruso <[redacted]
Sent: Fri, Jan 14, 2011 3:37 pm
Subject: Re: Models?

Received the following e-mail from my lawyer

> Were you planning on responding or do you think you can wait until sometime after Feb 21st?
>
> So you know, we (Knobbe) won't be able to communicate with a Del Taco employee without Del Taco's attorneys on the phone as well. This falls under ethical rules of conduct for attorneys.

In anything I do I try my best to create a positive outcome for everyone involved (I don't have a "there has to be losers so there can be winners" mentality) so I don't want *anybody* here zinged for "breach of ethics" or whatever. There may be a gray area if you are not technically considered a Del Taco employee, although I'm guessing you're close to enough to being one to count as one in this particular case . . . I guess. So the best I can say now is if you still have a few questions and are okay with e-mailing them I will see what I can do, but am not in the position to guarantee anything.

Christian

On 1/14/2011 2:26 PM, Barbara Caruso wrote:

> Hey, Christian,
> Small world - Brooke was my kids instructor at junior lifeguards and we all adore her! one of my favorite parts of fb is the baby pictures and can't wait to see her little own grow. I only met her husband Joe once but seems like a great guy.
> No problem if you need your attorneys to get on the phone, too - just have some questions!
> Thanks,
> Barbara
>
> Barbara Caruso, APR
> Caruso Communications
> [redacted]

3

[redacted]

-----Original Message-----
From: Christian Ziebarth [redacted]
To: Barbara Caruso [redacted]
Sent: Fri, Jan 14, 2011 2:20 pm
Subject: Re: Models?

Hey Barbara,

Been really busy. Have attorneys handling Naugles so they may want to be involved.

Hope all is well.

Christian

p.s. saw that you also recently became friends with Brooke on Facebook, i've known her for a long time (and we share the same birthday) and am also friends with her husband Joe

On 1/13/2011 3:23 PM, Barbara Caruso wrote:

Hey, Christian,
Do you have some time to talk soon? I'm very curious about your Naugles petition!
Let me know
cheers,
barbara

Barbara Caruso, APR
Caruso Communications
[redacted]

-----Original Message-----
From: Christian Ziebarth [redacted]
To: Barbara Caruso [redacted]
Sent: Wed, Jan 12, 2011 3:17 pm
Subject: Re: Models?

Still doing my web development and blog writing. Have had a number of people lately tell me they've been going to Del Taco and that they took advantage of the gift card promotion over Christmas

On 1/12/2011 11:50 AM, Barbara Caruso wrote:

Thanks, Christian!
We've already hired some experienced trade show models, but thanks!
What's new your way?

Barbara Caruso, APR
Caruso Communications
[redacted]

4

-----Original Message-----
From: Christian Ziebarth [redacted]
To: Barbara Caruso [redacted]
Sent: Wed, Jan 12, 2011 11:28 am
Subject: Models?

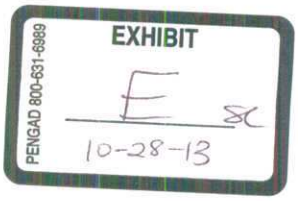
Hi Barbara,

I accepted your friend request on Facebook but when I did I think it erased a message you had sent along with it about needing models for some trade show. I might be able to put out a tweet about it if I got more details.

Christian

EXHIBIT E

to Petitioner's Testimony Affidavit of Christian Ziebarth



LinkedIn Account Type: Basic

Chr

Home Profile Contacts Groups Jobs Inbox 81 Companies News More

Inbox Search...

Search Inbox

Compose Message

Inbox

Sent

Message detail

Archived

Trash

Sent Messages | Sent Invitations

Reply All | Forward | Archive | Delete

Congratulations on your new position at Del Taco!

Christian Ziebarth - Web Developer at Page One Priority
To: **Noah Chillingworth**
Date: December 22, 2009

Hi Noah,

Barbara Caruso one time said I was supposed to meet with you over lunch. If that has changed that is fine but if it's still open then I'm still willing to come in. I have some ideas that I think would be great for Del Taco's marketing. I am contacting you directly because neither me nor Nancy Luna at The Orange County Register has heard from Barbara in a while.

Sincerely,

Christian Ziebarth

Reply All

EXHIBIT F

to Petitioner's Testimony Affidavit of Christian Ziebarth

PENGAD 800-631-6989
EXHIBIT
F SC
10-28-13

Life is raw material. We are artisans. We can sculpt our existence into something beautiful, or debase it into ugliness. It's in our hands.
—Cathy Better

13
Saturday
February 2010

Daily Notes

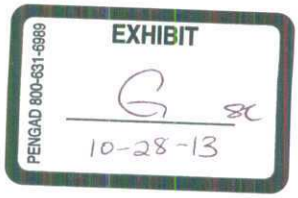
44th Day 321 Left Week 6

Mar

drove w/ Bill up to Visalia to meet w/ Jeff Naugle to talk about reviving the old Naugles fast food chain

EXHIBIT G

to Petitioner's Testimony Affidavit of Christian Ziebarth



From: Jeff Naugle <[redacted]>
To: christianz <[redacted]>
Subject: Re: NAUGLES.COM - Domain Not Available for Sale
Date: Mon, Mar 8, 2010 9:37 am

Great...keep me posted

From: "[redacted]" <christianz[redacted]>
To: jeff.naugle[redacted]
Sent: Mon, March 8, 2010 8:57:07 AM
Subject: Re: NAUGLES.COM - Domain Not Available for Sale

It is funny because a while after I forwarded this to you I got a new e-mail from GoDaddy basically saying, "Oh, wait, we still might be able to get you this domain." So, we'll see. But I actually already have nauglestacos.com registered so we are covered there.

Also, getting closer to getting the "Naugles" trademark. Have a trademark lawyer friend who is about to take it on. I have talked briefly with three trademark lawyers now and every one of them thinks it's fairly clear cut that Del Taco should not be owning the mark anymore. One even thinks Del Taco committed fraud by sending a 1970's image of a Naugles storefront to the trademark office in 2006 to "prove" their continuing usage.

-----Original Message-----
From: Jeff Naugle <[redacted]>
To: christianz[redacted]
Sent: Mon, Mar 8, 2010 8:46 am
Subject: Re: Fwd: NAUGLES.COM - Domain Not Available for Sale

Sorry for the delay getting back to you. Bill probably is waiting for a bigger payday. Do I need to reg nauglestacos? Let me know.

From: "christianz[redacted] <[redacted]>
To: jeff.naugle[redacted]
Sent: Thu, March 4, 2010 11:33:27 AM
Subject: Fwd: NAUGLES.COM - Domain Not Available for Sale

Still don't know what Bill wants to do with the domain but if he does nothing with it and our nauglestacos.com actually gets used, as it likely will, then nauglestacos.com is what will come up when people search on "Naugles."

[redacted]

From: Jeff Naugle <[redacted]>
To: Christian Ziebarth <[redacted]>
Subject: Re: Naugles Trademark Update
Date: Thu, May 27, 2010 7:48 am

Good luck! Sounds like you are making progress. Any potential operators?

Keep me posted.

Jeff

From: Christian Ziebarth <[redacted]>
To: Jeff Naugle <[redacted]>
Sent: Wed, May 26, 2010 1:33:03 PM
Subject: Naugles Trademark Update

Just letting you know I have recently filled out an Intent to Use application for the Naugles trademark and am getting ready to take the next legal step.

Christian

2

EXHIBIT H

to Petitioner's Testimony Affidavit of Christian Ziebarth

PENGAD 800-631-6989
EXHIBIT
H SC
10-28-13

Christian Ziebarth <[redacted]>

naugles

2 messages

Rob Hallstrom <[redacted]> Tue, Jan 12, 2010 at 9:22 AM
To: Christian Ziebarth <reviews@comexfood.com>

Best to hire a trademark or paten attorney or consult with one. They will tell you everything you need to know and where to look to find expiration status, etc. I believe the way it works is if they are not actively using the trademark or patent it is up for grabs after a certain length of time.

On 1/12/10 9:16 AM, "Christian Ziebarth" <[redacted]> wrote:

"Or better yet see when they are set to expire... "

Hmm, that's an angle I never thought of. I always just assumed they owned it from here on out. But maybe they don't. I'll ask Jeff Naugle about that.

On Tue, Jan 12, 2010 at 8:32 AM, Rob Hallstrom <[redacted]> wrote:

Your last email to naugles nephew? Still think it's good idea, but I would see about buying rights to the name from del taco. Or better yet see when they are set to expire.

On 1/11/10 10:07 PM, "Christian Ziebarth" <[redacted]> wrote:

Either my last e-mail didn't go through or the whole Naugles thing was a bad idea. I think I will work with some people who have some taco trucks then because it might be best to try the concept out with a food truck first.

On Mon, Jan 4, 2010 at 2:54 PM, Rob Hallstrom <[redacted]> wrote:

Yea. I practically grew up there having lived a mile or so from the one in Riverside at Brockton and 14th. Loved the green burritos and fries. We were always broke so we often ordered the all-cheese burritos. Otherwise, you got the double wrap macho burrito or the naugleburger. Oh, and the chocolate shakes rocked! The receipts had a little cartoon character brief message at the bottom that read "Dick Naugles says" and then there would be a little note about the food or something related. It was open late night, as was the one on the other end of town so it became the popular cruise night hang and "turnaround" spot. It would be great timing to resurrect the brand. In this economy people are all about eating cheap, especially if it's good. Also, there's the historical factor that would resonate with many generations of past customers. Great idea!

On 1/4/10 2:24 PM, "Christian Ziebarth" <[redacted]> wrote:

I don't want to act all "top secret" about it except that I

think it would be wise if we shared information with others when it's necessary to bring it up to others. Do you remember the old Naugles chain?

On Mon, Jan 4, 2010 at 1:02 PM, Rob Hallstrom
<[redacted] <[redacted]>
<[redacted]>> wrote:

Hello Christian,
There is always interest. Please let me know when you can share more info and we can discuss further. Thank you.
Rob.

Rob Hallstrom
[redacted]
111 n. harbor, 2nd fl
fullerton, ca 92832
facebook/
Twitter @

On 1/4/10 12:57 PM, "Christian Ziebarth"
<[redacted]>
wrote:

Rob, does your group have any interest in helping a new restaurant open? I stumbled into something like an opportunity that I am quite sure would be *very* profitable and am trying to find the right people to help pull it off. I'll give more details if any interest is shown. For now I will say that it's actually kind of a fast food concept, or maybe more of a blend

between fast food and fast casual.

On Wed, Dec 30, 2009 at 10:04 AM, Rob Hallstrom [redacted] > wrote:

Tkx! Happy new year!

On 12/29/09 11:20 PM, "Christian Ziebarth" [redacted] > > wrote

Getting an entry put together here.

On Wed, Dec 9, 2009 at 7:13 PM, Rob Hallstrom [redacted] > wrote

Christian,
Can you pls post this on your site? Tkx.
Rob.

Rob Hallstrom
[redacted]
111 n. harbor, 2nd fl
fullerton, ca 92832
[redacted]

facebook/ [redacted]
Twitter @ [redacted]

3

Christian Ziebarth <reviews@ocmexfood.com> Tue, Jan 12, 2010 at 9:28 AM
To: Rob Hallstrom <[redacted]>

Thanks. That's an excellent point. Should've realized that on my own but it's good that you brought it up.
[Quoted text hidden]

4

Christian Ziebarth <[redacted]>

Naugles

Rob Hallstrom <[redacted]> Thu, May 27, 2010 at 12:52 PM
To: Christian Ziebarth <reviews@ocmexfood.com>

Great! Let's meet up to discuss my official involvement.
Rob.

On 5/27/10 11:30 AM, "Christian Ziebarth" < > wrote:

Just letting you know I have recently filled out an Intent to Use application for the Naugles trademark and am getting ready to take the next legal step.

On Thu, Apr 22, 2010 at 10:27 AM, Rob Hallstrom <[redacted]> wrote:

Great, what are his terms?

On 4/21/10 9:29 PM, "Christian Ziebarth" <
< > > wrote:

Finally got a lawyer on the case...

On Wed, Apr 21, 2010 at 7:20 PM, Rob Hallstrom <[redacted]> > wrote:

Yea, great location. Too bad it was made into a del taco. They'll be there forever...

On 4/21/10 7:16 PM, "Christian Ziebarth" <
< > < > > wrote:

Here's a picture of the Brookhurst and Hamilton location with flags in place of lanterns:

Somehow I lost a much better quality version of this. This is one of the most mentioned former Naugles locations there is.

On Tue, Apr 13, 2010 at 10:03 PM, Rob Hallstrom <[redacted]> > wrote:

Can u post something on the matador anniversary next thurs? And naturally cinco?

5

On 4/5/10 11:38 AM, "Christian Ziebarth"
<[redacted]>
<[redacted]>
<[redacted]>
<[redacted]>>
wrote:

Ended up making a very unexpected trip out to Riverside on Friday night for reasons unrelated to Del Taco/Naugles and ended up stopping by the 14th and Brockton spot. They had very clearly done everything they could to thoroughly and deliberately sweep away any possible remembrance of Naugles there. But interestingly enough the friend I rode out there with asked one of the employees if she knew what it used to be before it was a Del Taco and she said, "Yeah, I get a bunch of people coming through the drive-thru every single day telling me it used to be a place called 'Naugles.' I'm getting kind of tired of them talking about it." They also didn't know what the combo cup was there and didn't know that the bun taco was originally a Naugles item.

I know you wanted to go but it was kind of a bummer to see that they had stripped away every single hint that it had ever been anything other than a Del Taco. Not even a plaque on the wall or a photo of what it used to look like, which in a way is good for our case and further proof of the abandonment of the trademark, but still disappointing.

On Mon, Mar 29, 2010 at 4:41 PM, Rob Hallstrom
<[redacted]
<[redacted]
<[redacted]
<[redacted]

6

> wrote:

Next sat may be good. Let's touch base later in week.

On 3/29/10 4:29 PM, "Christian Ziebarth" <[redacted]> wrote:

Tell me what times are generally good for you. Saturdays are best for me although this Saturday would be bad but the next one should be fine. Sundays tend to not work at all for me and weekdays are hard too but every once in a while things change and I find I have some free time on a weekday.

On Mon, Mar 29, 2010 at 3:24 PM, Rob Hallstrom <[redacted]> wrote:

Let me know if you want me to join you for the ride to riverside.

On 3/29/10 3:01 PM, "Christian Ziebarth" <[redacted]> wrote:

Well, I'm thinking that any location that used that architecture probably did have the lanterns when it was a Naugles. The location at Brookhurst and Hamilton has little orange flags in their place now, or at least it did. But the lawyers want to find *every* possible use that Del Taco makes of the name "Naugles" so we can have a very clear cut idea of the complete extent of their usage. They realize we would never be able to go to every Del Taco location but if somebody could make it to the original Naugles location and see if perhaps they have hanging on a wall inside a picture of what it used to look like as Naugles then we would know that that is one instance of their usage, even if it's only a small one. But if I get there and see, as I suspect to be the case, that that they have completely abandoned anything Naugles-related at even the original flagship Naugles location then that will be a good indicator that it is the same at every other location and leave their usage at the one bare-bones mention of Naugles on their website, which would then strengthen the case to move ahead with a cancellation of trademark proceeding.

On Mon, Mar 29, 2010 at 2:07 PM, Rob Hallstrom <[redacted]> wrote:

The only location that still has the lanterns in place is the one at brookhurst and malvern. I wonder if they were only at select locations?

On 3/29/10 12:58 PM, "Christian Ziebarth" <[redacted]> wrote:

So you were right there at the beginning of Naugles. Going to try to make it there soon and see if there is any vestige of Naugleshess remaining. Here's a Jack in the Box at Warner and Harbor near the Fountain Valley/Santa Ana border that used to be a Naugles.

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On Sat, Mar 27, 2010 at 7:26 PM, Rob Hallstrom <[redacted]> wrote:

Yup. That's the one on 14th and Brockton. I went to the elementry school across the street. The 1st vans shoe store was up the street too.

Sent from my iPhone

On Mar 27, 2010, at 10:52 AM, Christian Ziebarth <[redacted]> wrote:

Is this the Naugles you used to go to in Riverside?

<[redacted]>

The trademark lawyers have advised me to go there and see if they possibly have anything on display that could be related to Naugles.

On Wed, Mar 17, 2010 at 6:20 PM, Rob Hallstrom <[redacted]> wrote:

Really? That's surprising. I thought it would have sat empty or much longer in this economy. Expensive rent too! See how long they last. How are things going with Naugles?

On 3/17/10 1:03 PM, "Christian Ziebarth" <[redacted]>

8

< > < > > wrote:

Stopped at the Matador today and on the way back I drove by Bob's Burgers again. Didn't really expect to see anything different but it was different. It was being worked on and repainted. Oddly enough, its "new" colors are more in line with the Naugles color scheme. But they still had the "For Lease" signs out front. I called the property people when I got back and they said, "Oh, somebody started leasing it about a week ago."

On Tue, Mar 9, 2010 at 9:19 AM, Rob Hallstrom < [redacted] > > wrote:

So it seems he wants to be associated by name only. If this is the case, you should be president of the corporation. Look at it as sort of a licensing of the "his" naugles names from a credibility standpoint. Same as when wolfgang puck lends his name to the many offshoots of "puck" restaurants. After creating the corp, the next step is to obtain operating capitol. This would normally be fairly easy given the popularity and renewed interest in the naugles brand, but institutional lending is not what it once was due to the global economic economy. However, providing the legal collateral for the naugles name will standup in court I feel strongly that we can obtain the funding to at least open the first restaurant. Let me know how things progress.

On 3/8/10 9:34 PM, "Christian Ziebarth" < < > < > < > < > < > < > > wrote:

Finally heard back from Jeff. He didn't have much new to say. He just still seems interested in the project while also being interested in having other people do the majority of the work, which is fine with me and understandable that he would feel that way at his age. A trademark lawyer friend of mine seems to want to take the case on but just has to verify that nobody else at his firm represents Del Taco in any capacity. I found out that I can contest their ownership online by myself but also feel it'd be wise to have a trademark lawyer making sure I'm doing it right

On Fri, Mar 5, 2010 at 9:14 AM, Rob Hallstrom < [redacted] > < > < > < > < > < > > wrote:

Still seems high for area. That's nearly downtown rent. Would have to do comps in the area to be certain. Either way, if it's not being leased that will have to consider lower offers. Does jeff not often return your calls? 3 weeks is a long time. I would proceed without him and continue compiling legal collateral for the case.

On 3/4/10 9:51 PM, "Christian Ziebarth" <
< >
< > <

9

> wrote:

I think she said 2100 sq. ft. Does that sound like it might be about right? Can't imagine they are getting a lot of interested parties for that spot. Kind of concerned because I haven't heard from Jeff in almost three weeks.

On Thu, Mar 4, 2010 at 1:19 PM, Rob Hallstrom <
> wrote:
That seems high. What is sq ft? I'm sure it is highly negotiable. I don't see anyone going in there anytime soon. Yea, I don't recall when or if it ever went all the way through, but it certainly appears that way. I know they started building on the property in-between only a few years back. Regardless, it would be cool to kick it off again at an original location. With the type of cult following it has, people may seek it out no matter where.

On 3/4/10 12:57 PM, "Christian Ziebarth" <
> wrote:

Yes, you are #3. Just called about the Brookhurst and Commonwealth spot. They said it is $6250 a month ("includes tax, title, license, etc.. etc..") to lease. Almost wonder if that spot died down because of Naugles leaving. But I guess you said Brookhurst used to continue through until the train tracks were put there?

On Thu, Mar 4, 2010 at 12:31 PM, Rob Hallstrom <
> wrote:

10

Wow! That's vey cool. I figured it was. Looked exactly the way I remembered it. A bit surprised it was one of the top performers though...
I like the idea of jeff being named as plaintiff. Have you looked into drawing up corp paperwork yet? Maybe Naugles, Inc. ask the attorney if proceeding with a corp name like this is smart idea when representing jeff as plaintiff or if it really matters. The new corp can have a board of directors, maybe listing jeff as president, you as vp, etc. for the record, i'm obviously interested in being on board as well.

On 3/4/10 12:03 PM, "Christian Ziebarth" < < [illegible] > > wrote:

Now I have to see if Jeff could front the $10,000 attorney fee. This trademark attorney has suggested that Jeff be listed as the plaintiff. It'll make the case stronger if a "Naugle" is on it.

Last night I saw the friend that rode with me out to Visalia. I said, "Rob was wondering if the Bob's Burgers on Brookhurst and Commonwealth used to be a Naugles ... ' and before I could say much more my friend goes, "Yes, it was. Jeff told us it was and that it was one of their best locations."

On Thu, Mar 4, 2010 at 11:53 AM, Rob Hallstrom < [redacted] > [redacted] < [redacted] > < [redacted] > < [redacted] >

"continued use" statements, which are due every few years to keep a mark alive. WRONG WRONG WRONG. *This appears to be fraud on the Trademark office.* I stand corrected in light of that evidence.

On Mon, Mar 1, 2010 at 6:27 PM, Rob Hallstrom < [redacted] > wrote:

> Good news! Continue compiling as much legal collateral as possible to build the case. I would not contact del taco any more at this point. Best to get everything in your court by registering as much as possible under a new corporate name such as Naugles, Inc. once all the legal bases are covered, we simply supply business plan using original Naugles model to investor and put plans forward to opening first store. Eventually, Del Taco legal department will likely issue a cease and desist order, but they will have to prove they have legal ground to take further action. Let me know when you would like to meet again to further discuss taking the next step.
>
> On 3/1/10 5:37 PM, "Christian Ziebarth" < [redacted] > wrote:
>
> > Found this image recently after doing a deep, deep search on the US Trademark Office website. This is the image Del Taco had on their website a while back to "prove" that they were still doing business with the Naugles name. Confirmed my suspicion that that was the *only* thing they were going off of, even though I thought my suspicion was almost too silly to really consider. But I have been talking with a trademark attorney, and though he is reluctant to guarantee anything, he seems *very* confident that that instance of Del Taco's usage of "Naugles" is far from enough to prove that they are still conducting a restaurant business with the Naugles name. He says, "The bottom line is if a trademark applicant has 'restaurant' on their goods and services, and they are no longer using any restaurants using that name, that would be a good basis to move forward with a cancellation."
> >
> > On Thu, Feb 25, 2010 at 9:09 PM, Rob Hallstrom <

12

[redacted] wrote:
That's so cool! I knew I remembered they all had lanterns. So there you go, that particular location IS one of the original naugles...

On 2/25/10 8:53 PM, "Christian Ziebarth" <[redacted]
> wrote:

Thanks for the correction on the mija wrap. Always want to make sure I'm portraying things accurately. Sent out a new tweet on it.

Checked out the Bob's Burgers and took a picture from the side and I think it probably had been a Naugles. Check out this photo:

[redacted]

then this one:

[redacted]

and also this one of the Del Taco at Brookhurst and Hamilton that I know was a Naugles:

[redacted] (this picture doesn't show the lanterns, but oddly enough, I think they might've added the

13

lanterns back in recently, at least I'm pretty sure I saw them on top when I drove by it a couple days ago when I wasn't even thinking to look for lantern-style attachments)

On Thu, Feb 25, 2010 at 12:02 PM, Rob Hallstrom <
[redacted] > wrote:

K. text me at when u arrive.

On 2/25/10 11:42 AM, "Christian Ziebarth" < [redacted] > wrote:

leaving my place here in Irvine in about two minutes

On Thu, Feb 25, 2010 at 11:39 AM, Rob Hallstrom < [redacted] > wrote:

cool

14

On 2/25/10 10:04 AM, "Christian Ziebarth" <[illegible]> wrote:

Great. I'll probably be there just after noon.

On Thu, Feb 25, 2010 at 8:49 AM, Rob Hallstrom <[redacted]> wrote:

Today around noonish is fine.

On 2/24/10 10:16 PM, "Christian Ziebarth" <[illegible]> wrote:

Yep, we should aim for some kind of lunchy time tomorrow and if it doesn't work we can still go for Friday.

On Wed, Feb 24, 2010 at 10:04 PM, Rob Hallstrom <
[redacted] wrote:

Are you free tomorrow or fri?

On 2/23/10 10:38 AM, "Christian Ziebarth" <
[redacted]
> wrote:

Let me know when it'd be a good time to stop by this week.

On Thu, Feb 18, 2010 at 3:16 PM, Rob Hallstrom <
[redacted]

16

[redacted] > > wrote:

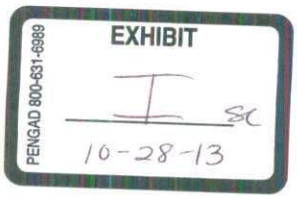
Arrgg. Wait! Call me. Just got an emergency.

On 2/18/10 3:03 PM, "Christian Ziebarth" < < [redacted] > > wrote:

Leaving my place in Irvine in about 10-15 minutes and heading over.

EXHIBIT I

to Petitioner's Testimony Affidavit of Christian Ziebarth



Christian Ziebarth <[redacted]>

Naugles coming back?

6 messages

Christian Ziebarth <[redacted]> Wed, Oct 13, 2010 at 12:18 AM
To: [redacted]

Are you bringing Naugles back?

JJ <[redacted]> Wed, Oct 13, 2010 at 1:12 AM
To: Christian Ziebarth <[redacted]>

Well it has been in my plans since birth. I have been working on other goals but NAUGLES is something I hope to pass on! I'm going to start on a website .. The idea came from I believe your blog .. Bring back Naugles donation campaign.
[Quoted text hidden]

Christian Ziebarth <[redacted]> Wed, Oct 13, 2010 at 7:50 AM
To: JJ [redacted]

Do you ever go to Buns and Torts? I don't know how old you are; did you used to eat at Naugles before it shut down? I can't mention this on my blog but I am already working on bringing Naugles back, including getting the trademark and having a website: http://www.nauglestacos.com. Your uncle Jeff knows about this. You can see some pictures here:

http://www.flickr.com/photos/c2ebarth/sets/72157623305316285/with/4565947350/

I will need all the help I can get. Especially from people in the family. So... keep in touch.

Christian
[Quoted text hidden]

Christian Ziebarth <[redacted]> Thu, Oct 14, 2010 at 12:37 PM
To: JJ <[redacted]>

Trying to find out more about you and you haven't responded and Jeff doesn't know who you are; not that you aren't real but just that I need to confirm things first. Anyways, I am working on getting the "Naugles" trademark, not because of any hostile intent towards Del Taco (heck, I eat there all the time) but simply because they aren't using something that so many people want to see return.

Christian

On Wed, Oct 13, 2010 at 1:12 AM, JJ <[redacted]> wrote:
[Quoted text hidden]

JJ <[redacted]> Thu, Oct 14, 2010 at 2:26 PM
To: Christian Ziebarth <[redacted]>

Well I am 24 and Jeff I have never met. My father Bill Naugle has always talked about getting the business up in running so since it's a family trademark I was looking into it. I use to live in Riverside and now reside in Arizona. My dad was raised by g-pa Dick after my grandpa which I never met had passed before I was born He was married to Mary Naugle who now lives in AZ also after nevada! I have been doing research on my family because I was never introduced to what looks like a large family I do have! I ate at Naugles many times

and Great grandpa Dick and my father have taught me and gave me a book with most of the original menu items and extras not included! In Dick Naugles irrevocable trust Im listed as a beneficiary to it I you would like to verify me that way! I also receive monthly income statements from merrill also! Joseph John Naugle or JJ Naugle is how it's listed! I have never been to Jeffs restaurant due to the fact I never knew about it until just a few says ago when I was doing research that is why I contacted him so I could get a firm grasp on my family history, it saddens me that I don't know much of my family and I know it's a hard thing to establish after being in the dark for so long! I have pictures of myself and Grandpa Dick at his place before he past with Vera also have pictures of when he came to Arizona when we moved If you need more info let me know! It's a pleasure to have the chance to speak with you and I hope and look forward to meeting the rest of my family in the near future ! JJ Naugle [redacted]

[Quoted text hidden]

Christian Ziebarth <[redacted]> Thu, Oct 14, 2010 at 2:32 PM
To: JJ <[redacted]>

Excellent. Do you have those pictures scanned in of you and Dick? Or of your recipe book? Me and Jeff are in the middle of getting the trademark back. We realize there's enough interest in a Naugles revival. I think you contacted him too but from a different e-mail address. You must've only ate there when you were very young since it closed in 1988 . . although I think a very small handful continued until 1995, then it was completely gone. Any pictures would be very awesome.

[Quoted text hidden]

Christian Ziebarth <[redacted]>

(no subject)

7 messages

JJ Naugle <[redacted]> Thu, Oct 14, 2010 at 3:05 PM
To: Christian [redacted]

Most of the stuff is locked in my safebox but what I have here.

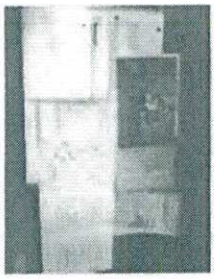


photo.JPG
1207K

Christian Ziebarth <[redacted]> Thu, Oct 14, 2010 at 3:14 PM
To: JJ Naugle [redacted]

Thanks. Very cool. Are there times that are good or bad to call?
[Quoted text hidden]

Christian Ziebarth <[redacted]> Fri, Oct 15, 2010 at 10:00 AM
To: JJ Naugle <[redacted]>

I'm seeing that a Bill Naugle owns naugles.com. Is that a Bill Naugle you know? Also, have you heard anything from Jeff yet?

On Thu, Oct 14, 2010 at 3:05 PM, JJ Naugle <[redacted]> wrote:
> Most of the stuff is locked in my safebox but what I have here.

3

JJ Naugle <[redacted]> Fri, Oct 15, 2010 at 4:56 PM
To: Christian Ziebarth <[redacted]>

I haven't heard from jeff

[Quoted text hidden]

Christian Ziebarth <[redacted]> Fri, Oct 15, 2010 at 5:20 PM
To: JJ Naugle <[redacted]>

hopefully i'll be able to get the trademark soon, then we can start putting stuff together; do you know how you might want to help out? is it okay if I call sometime?
[Quoted text hidden]

JJ Naugle <[redacted]> Sat, Oct 16, 2010 at 6:49 AM
To: Christian Ziebarth <[redacted]>

Let me ask you how you are related to the naugles family

[Quoted text hidden]

Christian Ziebarth <[redacted]> Sat, Oct 16, 2010 at 8:58 AM
To: JJ Naugle <[redacted]>

I'm not, at least not by blood. It's a long story but the short version is that in 2008 I approached Del Taco about bringing Naugles items back to their menu. The one person I talked to thought it was a great idea and i believe took it back to the Del Taco marketing people but it seems nothing ever came from it. Later on one of Jeff's daughters saw my blog and the entries i have about hoping Naugles would come back and told her dad (Jeff) about it then me and Jeff eventually got in contact. After some e-mail exchange with him I finally took a 222 mile trip to meet him at his Buns and Torts restaurant in Visalia in February and had a long conversation with him. He told me that some other people had talked with him about bringing Naugles back but that he felt like I would be the right person to do it. After some legal proceedings i am now close to getting the trademark back.

Christian
[Quoted text hidden]

4

From: Christian Ziebarth <[redacted]>
To: nauglebill <[redacted]>
Subject: Re: Naugles Revival
Date: Tue, Dec 27, 2011 3:56 pm

Thanks, Bill. We will be getting back to you at the right time. We are interested in making sure everything we do connects properly with the Naugle family legacy.

Christian

On 12/27/2011 12:56 PM, [redacted] wrote:

> If you want to give me a call-- please feel free
> Bill Naugle ([redacted]1

> -----Original Message-----
> From: Christian Ziebarth <[redacted]>
> To: nauglebill <[redacted]>
> Sent: Tue, Dec 27, 2011 2:53 pm
> Subject: Re: Naugles Revival
>
> I'm wondering why nobody tried to bring Naugles back years ago. Tons of people want to see it come back.

> On 12/27/2011 12:34 PM, [redacted] wrote:

> > you are right-- if you are not a Naugle or Family Member-- it would be a major issue--
>
> > -----Original Message-----
> > From: Christian Ziebarth <[redacted]>
> > To: nauglebill <[redacted]>
> > Sent: Tue, Dec 27, 2011 2:31 pm
> > Subject: Re: Naugles Revival
> >
> > Yes, that could be. I have considered that it would actually help but it is still a gamble, especially when starting up. It's like a raindrop hitting a roof: it could go down one side or . . . it could go down the other, and you don't really know which until it happens.
>
> > On 12/27/2011 12:28 PM, [redacted] wrote:
>
> > > That is not even an issue--it would be a blessing!
> >
> > > -----Original Message-----
> > > From: Christian Ziebarth <[redacted]>
> > > To: nauglebill <[redacted]>
> > > Sent: Tue, Dec 27, 2011 2:27 pm
> > > Subject: Re: Naugles Revival
> > >
> > > Might give you a call soon. It is true that you don't need the trademark to open the restaurant but if you open the restaurant without the trademark then you can get sued by the people who own the trademark.

On 12/27/2011 12:24 PM, [redacted] wrote:

[redacted]

You do not need the trademark to open a restaurant-- what you need is a complete understanding of the concept.

I have always said that if I could not do it EXACTLY the way my grandfather did--I would not jump back into it. Like with IN-N-OUT there are certain things needed to make it work.

If you wanted to talk by phone, I would be happy to chat with you!

-----Original Message-----
From: Christian Ziebarth <[redacted]
To: nauglebill [redacted]
Sent: Tue, Dec 27, 2011 2:10 pm
Subject: Re: Naugles Revival

I am in legal proceedings to get the trademark back from Del Taco. They keep renewing the trademark even though they are not using the trademark. Each time they renew it they send in outdated info as proof of current usage. My legal action is showing that they abandoned the trademark years ago and therefore forfeited their right to it. I have put an *enormous* amount of blood, sweat, tears and money into this. I tried getting your naugles.com domain before because I could tell that there was nothing up that was actually about the chain. I then started a site at http://www.nauglestacos.com. I have also been in touch with Jeff Naugle who might be your cousin and he is willing to help. I understand there might be some rift in the extended family (or maybe not?) so I don't know whose toes I might be stepping on but I am doing the best I can to bring this much loved concept back. And we do have potential investors lined up. My intent-to-use application for the trademark is in ahead of everyone else, including Del Taco.

Christian

On 12/27/2011 12:03 PM, [redacted] wrote:

Yes, I have everything-- recipes, manuals, restaurant plans and over 20 years of restaurant experience running his concept--
I have the naugles.com web address already and I have worked a way around the trademark issue--they keep renewing it--does not even matter!

Tell me more about you?

Bill Naugle

-----Original Message-----

From: Christian Ziebarth <[redacted]
To: nauglebill [redacted]
Sent: Tue, Dec 27, 2011 1:59 pm
Subject: Re: Naugles Revival

Oh, son. Got it. I am working on a Naugles revival. I am trying to get the trademark back from Del Taco. Do you have the recipes?

On 12/27/2011 11:57 AM, [redacted] wrote:

He is my son--yes

([redacted]

Call anytime!

There is alot of miss information concerning Naugles! I would love to start another restaurant using the old recipes--but need to find one solid investor without losing my shorts

Happy Holidays!
Bill

-----Original Message-----
From: Christian Ziebarth <[redacted]>
To: nauglebill <[redacted]>
Sent: Tue, Dec 27, 2011 1:53 pm
Subject: Naugles Revival

Hi Bill,

Just got the comment you left on my blog. Am very interested in talking with you more. I had some contact a while back with a JJ Naugle. He might be a nephew of yours?

Christian

EXHIBIT L

to Petitioner's Testimony Affidavit of Christian Ziebarth

PENGAD 800-631-6989
EXHIBIT
L
10-28-13

Naugles Tacos and Burgers - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Naugles Tacos and Burgers
naugletacos.com
Most Visited Getting Started Latest Headlines Customize Links Windows Marketplace Free Hotmail RealPlayer Windows Media Windows
Search Norton Safe Web Share Vault Closed Login Assistant

Naugles Tacos Burgers

The Naugles fast food restaurant chain was founded by Dick Naugle in 1970 and lasted until 1988. It had an American and a Mexican kitchen. Popular items included the cheese burrito, the bun taco, the combo cup w/ chips, the Naugleburger, the Ortega burger and more. Plans are being made for bringing the chain back.

Comeback Progress

23rd August 2012

From the @naugles Twitter feed:

> To the many devoted fans of Naugles: We are working hard on bringing the beloved chain and its food back to you. We are currently involved in a legal case to procure the Naugles trademark. However, a prior owner of the trademark is asserting current ownership while failing to substantiate claims of their continued, current and publicly recognized usage. Their last usage of the trademark was circa 1994-95. Their final usage at this time fulfilled their pledge made in 1989 to phase out the Naugles chain. United States trademark law clarifies that three consecutive years of non-use of a trademark constitutes abandonment of that trademark, so in this case there has been approximately 17 years of abandonment. Since we respect their prior affiliation with the Naugles trademark and since we believe in creating win-win solutions that benefit all we have made them an offer that they would financially profit from and that would also allow Naugles to return but they have turned down our offer and proposed one that would allow Naugles to return but only in an extremely limited fashion that would severely curtail our ability to provide Naugles food to its devoted fans as well as to a new generation. Their counteroffer would not even financially profit them as our initial offer would. Since little benefit would be created for any party by their counteroffer it was an offer which we could not in good faith accept, so the legal case continues.

http://www.twitlonger.com/show/108dh4

Commercials:

Naugles Tacos and Burgers - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Naugles Tacos and Burgers
naoglestacos.com
Most Visited Getting Started Latest Headlines Customize Links Windows Marketplace Free Hotmail RealPlayer Windows Media Windows
Search Norton Safe Web Share Vault Closed Login Assistant

Buns & Torts

If you're looking for Naugles food right now it can be found at Buns & Torts in Visalia, CA, which serves the same menu Naugles used to serve using the same recipes from the Naugles family.

Motto:

Dick Naugle Says:

- Prepare Food Fresh
- Serve Customer Fast
- Keep Place Clean

Links:

- Naugles Facebook Fan Page - Fan Page #2
- Naugles on Twitter
- Wikipedia Entry

Contact Us:

Please fill out the following contact form with your questions or comments for us:

Name

E-mail

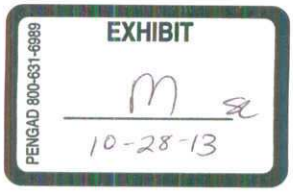
Phone #

Questions/Comments

Submit

EXHIBIT M

to Petitioner's Testimony Affidavit of Christian Ziebarth



Christian Ziebarth <[redacted]>

taco bell comment

Nancy Luna <[redacted]> Mon, Jan 18, 2010 at 5:12 PM
To: Christian Ziebarth <[redacted]>

Please make sure you quote OC Register if you use. What a sad day. I remember this

Adios to Naugles Fast-food chain to switch to Del Taco

Jeff Rowe
Published: 5/17/1989

Hola Del Taco, adios Naugles.

Restaurant magnate Anwar Soliman, who owns both chains, said Tuesday he will convert most of the 171 Naugles restaurants into Del Tacos by the end of the summer.

Soliman said the Del Taco name has a stronger Mexican food connotation than Naugles, which was named for its founder, Richard Naugle.

Soliman's company, AWR II Acquisition Corp., converted two Naugles, at 2300 N. Tustin Avenue in Santa Ana and in Long Beach, about two months ago as a test.

Conversion of the other Naugles restaurants is under way, said Soliman. He is chairman and chief executive of both AWR II and American Restaurant Group, which operates about 360 other restaurants, including the Velvet Turtle, Black Angus, Spoons and Grandy's chains.

AWR II has not quite figured out what to do with the approximately 20 Naugles that are near Del Taco outlets. For the immediate future, those will remain Naugles, Soliman said.

Menus from the two restaurants already have been combined, and thus the egg burrito, Naugles' breakfast staple, will continue at Del Taco.

Many other items from Naugles' menu will either survive or be reformulated for the Del Taco menu.

Soliman said an ad campaign focusing on the quality of Del Taco and Naugles food will continue. A strategy for announcing the change has not been decided.

AWR II purchased Naugles and the 202 Del Taco outlets in February 1988.

"The first thing we worked on was the combination of the menu, and that is done," Soliman said.

Next, the company formed its management team, naming Wayne Armstrong, president of Del Taco, as president of the combined company, which operates out of Del Taco headquarters in Costa Mesa.

Soliman declined to discuss how much it will cost to renovate the Naugles restaurants, which will include new signs and seating.

In the fast-food world of burgers, tacos and chicken nuggets, Del Taco will have one of the largest menus.

The new Del Taco menu has several varieties of tacos, burritos, fajitas, quesadillas, nachos, salads and burgers. In addition, there are complete meal platters, designed to lure customers for supper, and a self-service drink bar, popularized in recent years at Carl's Jr. restaurants.

Coming up with all these menu concoctions was a difficult task, Soliman insisted.

"It took almost eight months to make the menu adjustments," he said. "For example, with the fajitas, you keep tasting and testing. You put in a little more of this, a little more of that, then another item. By the time you are finished, you have tried nine of them. I gained 30 pounds in the test kitchen.

"But I lost it all," he added.

Soliman was president of the W.R. Grace Restaurant Group in 1977 when it bought the rights to expand Del Taco outside of California. Del Taco was founded in the early 1960s and, like Naugles, its outlets are concentrated in California.

Grace also owned Naugles -- which was founded in the early 1970s -- but sold it in 1980. Naugles then went public but foundered when it expanded too rapidly. Collins Foods International purchased a majority stake in the company in 1985 and bought the remaining shares in 1987.

Del Taco will still be a distant second in the Mexican fast-food business behind Taco Bell, which has about 2,700 restaurants and an estimated 57 percent of the nation's $2.3 billion Mexican fast-food market.

As both Naugles and Del Taco did, the reborn Del Taco will focus on its larger menu and what it describes as better-quality food.

In discussing his prime competition, Soliman did not mention Taco Bell by name but rather referred to the taco giant as "the elephant."

"We're not in the business of price discounting," Soliman said. "Have you ever had their 59-cent taco?" he asked, referring to Taco Bell's recent campaign for the low-priced taco. "It's worth 59 cents, believe me."

Taco Bell did not return phone calls.

Nancy Luna

Staff writer/Orange County Register

Restaurants, Food, Supermarkets

Life, Food, Business sections

[redacted]

Follow me on Twitter and Facebook

[illegible]

[illegible]

Send snail mail to 625 N. Grand Ave. Santa Ana, CA 92701

From: [redacted] [mailto: [redacted]] **On Behalf Of** Christian Ziebarth
Sent: Monday, January 18, 2010 4:54 PM

To: Nancy Luna
Subject: Re: taco bell comment

If you can . . . at your convenience only . . . see if you can find one from May 17, 1989, called "Adios to Naugles." I always get a lot of Naugles-related traffic but I'm getting an unusually high amount today and there's something I want to check.

Let me know when you want to do lunch. Might have Eric join us.

On Mon, Jan 18, 2010 at 4:25 PM, Nancy Luna <[redacted]> wrote:

Yes. I think so. I looked in our archive today for Glen stuff, but we didn't have much. I think it goes back to 1984, but I could be wrong.

Why?

Nancy Luna

Staff writer/Orange County Register

Restaurants, Food, Supermarkets

Life, Food, Business sections

[redacted]

Follow me on Twitter and Facebook

http://www.facebook.com/profile.php?id=[illegible]

http://twitter.com/LunaNancy

Send snail mail to: 625 N. Grand Ave, Santa Ana, CA 92701

From: [illegible]@[redacted] [mailto:[redacted]] **On Behalf Of** Christian Ziebarth
Sent: Monday, January 18, 2010 4:14 PM

To: Nancy Luna
Subject: Re: taco bell comment

Are you able to locate Register stories from 1989?

On Mon, Jan 18, 2010 at 10:33 AM, Nancy Luna <[redacted]> wrote:

EXHIBIT N

to Petitioner's Testimony Affidavit of Christian Ziebarth

PENGAD 800-631-6989
EXHIBIT
N SC
10-28-13

SERVICE MARK
Docket No. 25457/D226

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
COMBINED RENEWAL APPLICATION
AND DECLARATION OF USE TRANSMITTAL

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on May 18, 2006.

Kristen M. Geraci

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

May 18, 2006

Commissioner:

Enclosed for filing are:

1. A combined renewal application and declaration of use for the following registration:

Mark	:	**NAUGLES**
Reg. No.	:	1,043,729
Registered	:	July 13, 1976
Class(es)	:	35
Registrant	:	Del Taco LLC

2. One specimen of the mark as used.

3. A check for $500 for the filing fee.

Any deficiency in or overpayment of fees for this transaction should be charged or credited to Deposit Account No. 03-1728. Please show our docket number with any Deposit Account transaction. **A copy of this letter is enclosed.**

Please address all correspondence to **CHRISTIE, PARKER & HALE, LLP, P.O. Box 7068, Pasadena, California 91109-7068.**

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By William P. Christie
William P. Christie
626/795-9900

WPC/kmg
KMG IRV1096287.1-*-05/18/06 11:14 AM

05-22-2006
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

SERVICE MARK
Docket No. 25457/D226

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
COMBINED RENEWAL APPLICATION
AND DECLARATION OF USE TRANSMITTAL

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on May 18, 2006.

Kristen M. Geraci

Kristen M. Geraci

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

May 18, 2006

Commissioner:

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Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By William P. Christie
William P. Christie
626/795-9900

WPC/kmg
KMG IRV1096287.1-*-05/18/06 11:14 AM

SERVICE MARK
Docket No. 25457/D226

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COMBINED APPLICATION FOR RENEWAL OF REGISTRATION UNDER SECTION 9, AND DECLARATION OF USE UNDER SECTION 8

Mark	:	NAUGLES
Registration No.	:	1,043,729
Registered	:	July 13, 1976
Class(es)	:	35

COMMISSIONER FOR TRADEMARKS:

The applicant for renewal of the above-identified registration is Del Taco LLC, a California limited liability company, with offices at 25521 Commercentre Drive, Lake Forest, California 92630. The applicant requests that the above-identified registration, granted on July 13, 1976, and renewed for ten years as of July 13, 1996 which applicant now owns, as shown by records in the U.S. Patent and Trademark Office by means of an Assignment from Naugles, Inc. (California Corporation) to DTI Acquisition Corporation (California Corporation) recorded on May 6, 1988 (Reel 0604, Frame 0858), Change of Name from DTI Acquisition Corporation to AWR II, Inc. (California Corporation) recorded on December 21, 1993 (Reel 1081, Frame 0396), Change of Name from AWR II, Inc. to Del Taco, Inc. (California Corporation) recorded on December 22, 1993 (Reel 1084, Frame 0316), and Change of Name from Del Taco, Inc. (California Corporation) to Del Taco LLC (California Limited Liability Company) on April 25, 2006 (Reel 3296, Frame 0898), be renewed in accordance with the provisions of Section 9 of the Act of July 5, 1946.

I, Michael L. Annis, the undersigned, declare that I am Vice President and General Counsel of renewal applicant and am authorized to make this declaration for and on behalf of said applicant; and that the mark shown in the registration is still in use in commerce in connection with the following services identified in the registration: RESTAURANT SERVICES, the attached specimen (Attachment 1) is a web page showing the mark as currently used.

Registration No. 1,043,729

POWER OF ATTORNEY

Applicant hereby appoints the following members of the Bar and attorneys of the law firm Christie, Parker & Hale, LLP, with full power of substitution and revocation, to transact all business in the Patent and Trademark Office in connection with this Registration, including the electronic filing of this document, the facts stated in this document, or any other document, on registrant's behalf:

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Walter G. Maxwell	Richard A. Wallen	Stephen D. Burbach	Deidra D. Ritcherson
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Mark Garscia	Joel A. Kauth	Michael S. Guntersdorfer	Richard D. Seibel
Syed A. Hasan	Raymond R. Tabandeh	Richard T. Jackson	Richard J. Paciulan

The authority under this Power of Attorney of each person named above shall automatically terminate and be revoked upon such person ceasing to be a member or associate of or of counsel to that law firm.

Please address all correspondence and the renewal certificate to **CHRISTIE, PARKER & HALE, LLP, P.O. Box 7068, Pasadena, CA 91109-7068**.

DECLARATION

I, the undersigned, declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the aforesaid registration and this renewal application.

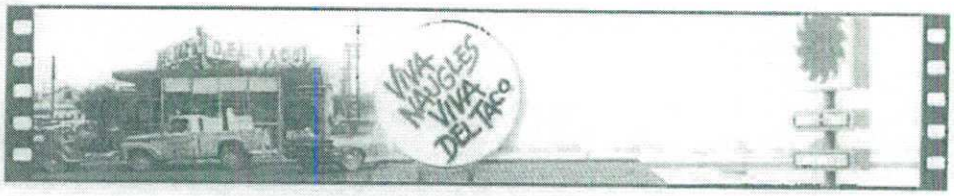
Del Taco LLC

Date 5/15/06

By _____
Michael L. Annis
Vice President and General Counsel

WPC/kmg
KMG IRV1096035.1-*-05/11/06 2:57 PM

HISTORY



The first Del Taco opened in 1964 in Barstow, California with a concept that caught on quickly -- freshly prepared, made to order Mexican/American food, fast service and value. In more than 36 years, Del Taco has grown to become a major player in the Mexican-style quick-service category. With over 400 restaurants across the country, Del Taco is the second largest Mexican/American chain in the United States.

Building the Concept

The success of the first restaurant, in 1964, quickly led to expansion. Months after the first, a second restaurant opened in Corona, California with a significant addition -- a drive-thru window which was to become an enduring feature of the Del Taco chain. Two years later, Red-E-Foods Systems, Inc. was formed and Del Taco became a hot Southern California franchise. In 1972, a modernized, 28-seat restaurant opened in Newport Beach, the largest Del Taco at that time. This updated Del Taco was the epitome of the modern, efficient fast-food outlet and became the design prototype for Del Taco restaurants to come.

In 1973 Red-E-Foods Systems, Inc. officially changed its name to Del Taco, Inc. and it also marked the first year that Del Taco opened units at an average rate of one per month.

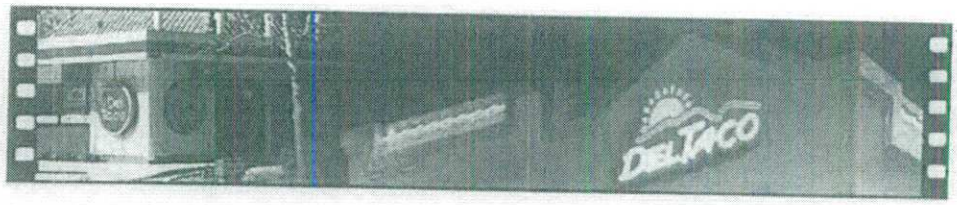
Three years after changing the name to Del Taco, Inc. founders Ed Hackbarth and David Jameson sold their stock to an independently held firm. The new management team set their sights on further expansion throughout Southern California. The 50th Del Taco restaurant opened in February, 1977 with the 100th restaurant opening just 19 months later.

Naugles, another quality Mexican fast-food chain, was established in 1970 and quickly gained in popularity. In 1971, Harold Butler bought the three Naugles restaurants and began rapid expansion, growing the chain to 225 restaurants. In December 1985, Butler sold Naugles to Collins Food International.

In March 1988, Del Taco and Naugles, two of the most successful Mexican fast-food restaurant chains, combined to become one of the strongest competitors in

ATTACHMENT 1

the then $60 billion fast-food industry.



Strengthening the Concept

In 1990, Kevin K. Moriarty joined the company as Chief Executive Officer and it proved to be a watershed year for Del Taco. In the ensuing years, the chain redoubled its efforts to ensure customer value and operator opportunity. CEO Kevin K. Moriarty and his management team became owners of the company and took the necessary measures to ensure their concept continued its growth momentum. They launched an aggressive program of brand marketing and promotions; improved operating efficiencies for better and faster customer service; re-acquired out-of-state trademark rights to the Del Taco name; reorganized and strengthened the company's balance sheet.

Particularly significant to the chain was the unveiling of Del Taco's new Concept 2000 restaurant design. The Concept 2000 design provided a unique, fun, festive, experience at a fast-food value that the whole family could enjoy.

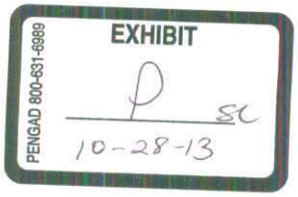
The Road to Expansion

In an industry pervasive with speed, Del Taco has successfully positioned itself for accelerated expansion nationwide. Spreading its advantageous concept and growth momentum across the nation, Del Taco recently has signed 50+ development agreements that will increase the Del Taco chain by an additional 300+ franchised restaurants over the next few years. These new agreements represent the largest franchise growth in the history of the company and will expand Del Taco's presence to over 14 states.

The Lake Forest, CA - based chain offers menu items that appeal to a broad range of tastes with a strong emphasis on quality and value. The menu includes tacos, burritos, quesadillas, nachos, world famous crinkle cut fries, Double Del Cheeseburgers, shakes and breakfast burritos with new tastes introduced regularly. Each item is made to order only when the customer orders it with many quality ingredients including lard-free beans made from scratch daily, real cheddar cheese grated on site, chicken grilled fresh every hour, and fresh produce. Del Taco, Inc. is a privately held company.

EXHIBIT P

to Petitioner's Testimony Affidavit of Christian Ziebarth



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Orange County Register (California)

June 2, 2012 Saturday

SECTION: BUSINESS; Pg. D

LENGTH: 162 words

HEADLINE: Twitter talk suggests comeback for Naugles fast-food brand

BYLINE: Nancy Luna Register writer, The Orange County Register

BODY:

Does anyone remember **Naugles**? The Mexican fast-food chain - famous for its bun taco and Naugleburger - disappeared years ago after it merged with Del Taco in 1988.

Well, it appears Naugles might be making a comeback. One of my Twitter followers alerted me late Wednesday to say she stumbled upon a Twitter account called Naugles. The active site describes itself as a "quasi-unofficial" social-media account for the popular food chain from the 1970s and '80s.

The Twitter site, and its companion Naugles website, declares that the brand is "getting ready" for a comeback.

I messaged the Naugles Twitter account, asking if the comeback was legitimate.

The response: "We are a group of Naugles fans working to bring the beloved chain back; this is a serious, bona fide business venture, nothing less."

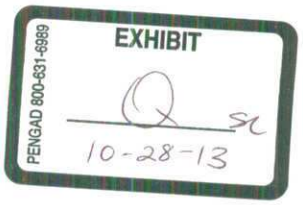
No other disclosures were provided, including names of the parties involved.

A year after the merger, Del Taco announced plans to convert 171 Naugles restaurants into Del Tacos.

LOAD-DATE: June 3, 2012

EXHIBIT Q

to Petitioner's Testimony Affidavit of Christian Ziebarth



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stick a fork in it

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Mexi Meals

Naugles, Legendary SoCal Mexican Fast-Food Chain, is Trying to Make a Comeback, and We Have the Proof

By Gustavo Arellano Tue., Jul. 9 2013 at 11:30 AM 54 Comments

Categories: Mexi Meals

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The sauce in all its thick, spicy, sweet glory...

As I've gone around Southern California lecturing about *Taco USA: How Mexican Food Conquered America*, one name that always comes up is Naugles, a former fast-food chain that at its height numbered around 250 outposts but was bought out by Del Taco in the 1980s and disappeared. I never had a chance to eat there, but fans speak of it in mythical terms, rave about their taco sandwich (still available via Del Taco's secret menu as a "bun taco"), their taco sauce, their superior quality to the dreck that passes as fast-food Mexican nowadays, their everything.

May those fans start drooling anew now: a mysterious consortium is trying to bring Naugles back, and they gave me some of the chain's legendary taco sauce to prove it.

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From the Vault

A couple weeks back, some Naugles taco sauce was dropped off at the offices of this infernal rag. A paper slip referred me to this website, and I made contact with the people. Let's just say for right now that this effort isn't sponsored by Del Taco (which still owns the trademark to the Naugles name and hawks Naugles T-shirts and caps) but is a fascinating effort in nostalgia, consumer demand, and damn good cooking. I'll have more on the effort to bring back Naugles in September in a cover story, *insha'allah*, so other reporters: LAY OFF. This one's mine, and I've sworn the parties involved to secrecy under penalty of a lifetime of *chinga tu madres* directed at them.

As for the sauce, prepared according to the specifications of founder Dick Naugle? For what it is--not a salsa, but a taco sauce--it's spectacular. Thick, sweet, a bit like Del Taco's Del Scorcho but with an actual scorch-o. Objectively, it's also great: would be like a Cal-Mex Sriracha. You can't buy it anywhere right now, so if you want to try some, let's just say you should root for these Naugles fans to succeed in bringing the chain back. I have seen the light, and I want Naugles NOW!

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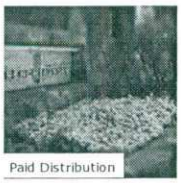
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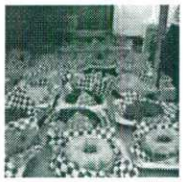
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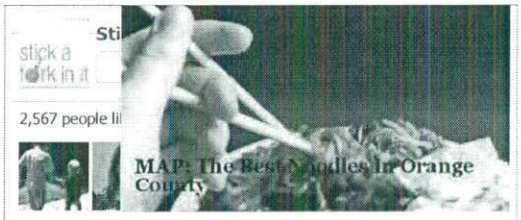

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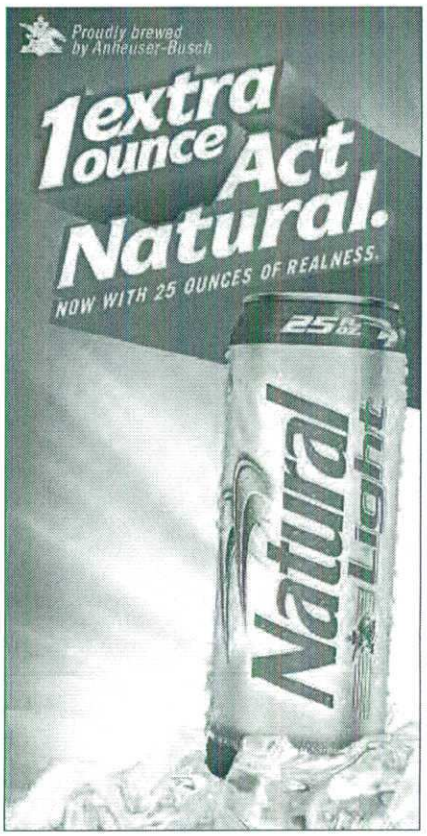
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