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

Proceeding	92053703
Party	Plaintiff Royal Oak Enterprises, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No.: 3,221,991
Mark: NATURE’S MESQUITE (& design)
Registered: March 27, 2007

In re Registration No. 3,925,901
Mark: NATURE’S GRILLING (& design)
Registered: March 1, 2011

ROYAL OAK ENTERPRISES, LLC)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92053703
)	
NATURE'S GRILLING PRODUCTS LLC,)	
dba NRG INTERNATIONAL LLC)	
)	
Registrant.)	
)	

OPPOSITION TO MOTION FOR SUSPENSION OF PROCEEDINGS

Petitioner Royal Oak Enterprises, LLC (“Royal Oak” or “Petitioner”) respectfully submits this memorandum in opposition to the Motion for Stay of Proceedings filed by Registrant Nature’s Grilling Products, LLC (“Registrant”). Royal Oak respectfully requests that the Board deny Registrant’s motion because (1) the civil action brought by Royal Oak in the Northern District of Georgia does not seek cancellation of either registration that is the subject of this proceeding and does not involve in any way the NATURE’S MESQUITE mark that is the subject of Registration 3,221,991 and (2) allowing the Board to make the initial determination on likely confusion will save the parties significant time and money and be of significant value to the district court in the civil action. In the alternative, Royal Oak requests that the Board delay

consideration of Registrant's motion until after the district court has ruled on Royal Oak's motion to stay proceedings in the civil action.

I. Introduction and Factual Background

Royal Oak is the owner by assignment of United States Trademark Registration 1,450,298, issued August 4, 1987, for the mark NATURE-GLO covering charcoal briquets, wood chips, grill wood and fire starting fiberboard. Royal Oak, itself and through its predecessors in interest, has used the NATURE-GLO mark in commerce in connection with the sale of charcoal briquets and other grilling products since 1985. On August 10, 2010, Royal Oak filed a complaint against Registrant in the United States District Court for the Northern District of Georgia, Civil Action No. 1:10-CV-02494, to stop Registrant's infringing use of the trademarks NATURE'S GRILLING and NATURE'S GRILLING PRODUCTS in connection with the sale of grilling products. *See* Exhibit A, Complaint, Civ. Action No. 1:10-cv-2494 N.D. Ga. The only trademarks owned by Registrant that are at issue in the civil action are the common law NATURE'S GRILLING and NATURE'S GRILLING PRODUCTS marks. *See id.* The civil action does not involve Registrant's NATURE'S MESQUITE mark or its registration, U.S. Registration No. 3,221,991, for that mark. *See id.*

At the time Royal Oak filed its complaint, Registrant owned a pending application, Serial No. 77/404,743, for the NATURE'S GRILLING mark covering charcoal briquets, but did not own a registration for that mark. On March 1, 2011, the Patent and Trademark Office issued United States Registration No. 3,925,901 to Registrant for its NATURE'S GRILLING mark. That same day, Royal Oak filed its Petition to Cancel Registration No. 3,925,901, as well as Registration No. 3,221,991.

Discovery in the civil action opened on January 24, 2011 and was scheduled to last until May 24, 2011. Although Royal Oak served its initial rounds of discovery requests on the

opening day of discovery, Registrant has not provided substantive responses to those requests. Instead, Registrant filed a motion for summary judgment and a motion for a stay of all discovery pending the court's decision on Registrant's motion for summary judgment. *See* Exhibit B, Docket Sheet for Civil Action No. 1:10-CV-02494, at Doc Nos. 21, 23. Registrant has since conceded that Royal Oak is entitled to at least limited discovery so that it may fully address Registrant's summary judgment motion and has asked the district court for a discovery conference to schedule limited discovery.¹ *See id.* at Doc. No. 38.

Also currently pending before the district court in the civil action is Royal Oak's motion to stay proceedings in that action pending the outcome of this cancellation proceeding. *See* Exhibit C, Royal Oak's Motion for Stay of Proceedings Pending Resolution of Cancellation Proceeding No. 92043703. In its motion, Royal Oak has asked the court to make use of the Board's experience and expertise in deciding likelihood of confusion issues by allowing the Board to make the initial determination as to whether Registrant's NATURE'S GRILLING mark is likely to be confused with Royal Oak's NATURE-GLO mark. *See id.* The motion has been fully briefed and is currently pending before the Court.

II. Because The Civil Action Does Not Involve Either Registration at Issue in The Cancellation Proceeding, It Will Not Dispose of The Issues in the Cancellation

Although Trademark Rule 2.117(a) provides the Board with the discretion to suspend proceedings pending termination of a civil action, "suspension is not the necessary result in all cases." *Boyd's Collection Ltd. v. Herrington & Company*, 65 USPQ2d 2017, 2018 (TTAB 2003). The Board suspends *inter partes* proceedings when "[a] review of the complaint in the civil action indicate[s] that a decision by the district court will be dispositive of the issues" in the

¹ Registrant's proposal essentially is a request that the Court bifurcate discovery, allowing initially only discovery related to Registrant's premature summary judgment motion. As the presence of numerous factual disputes makes denial of that motion highly likely, the parties will then have to restart discovery, including taking second depositions of numerous witnesses, to prepare for trial.

Board proceeding. *General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 USPQ2d 1933, 1936 (TTAB 1992). Although Registrant would have the Board believe that its case presents just such a situation, it does not. The facts in this case are much more complicated.

The sole issue in the civil action is whether Registrant's use of its NATURE'S GRILLING and NATURE'S GRILLING PRODUCT marks infringes upon Royal Oak's NATURE-GLO trademark. Because Registration No. 3,925,901 had not yet issued when Royal Oak filed its complaint, Registrant's right to maintain that registration is not at issue in the civil action. The civil action will not determine whether Registrant may maintain that registration.

More significant is the fact that Registrant's use and registration of the NATURE'S MESQUITE mark are not in any way at issue in the civil action. The civil action will not determine whether Registrant may maintain Registration No. 3,221,991. Nor will it determine whether the NATURE'S MESQUITE mark is likely to be confused with Royal Oak's NATURE-GLO mark. The Board will still have to make those determinations in this proceeding. As a result, no economy of resources will be achieved by suspending the Cancellation until the civil action is resolved.

III. The Likelihood of Confusion Issue Can Be Determined More Quickly And Less Expensively By The Board

Indeed, economy of resources and judicial efficiency can best be achieved by deciding the likelihood of confusion issue first in this proceeding. As shown in the Board's March 2, 2011 Scheduling Order, this case will be submitted to the Board on May 20, 2012. *See* Exhibit D, Notice and Trial Dates Communication from TTAB at 2. According to the online TTAB Facts and Questions, Status Information, the Board presently issues its decisions approximately 10 weeks after submission. *See* <http://www.uspto.gov/trademarks/process/appeal/guidelines>

[/ttabfaq.jsp#stainfo](#). As a result, the parties can expect the Board's decision in this matter on or around July 21, 2012.

Notably, that date is at least *seven months* earlier than the parties can expect to go to trial in the civil action. Royal Oak attaches hereto as Exhibit E a copy of the current online U.S. District Court - Judicial Caseload Profile for the Northern District of Georgia. The profile discloses that in the Northern District, the *median* time from the filing of a complaint to trial in civil actions is 26.1 months. *See* Exhibit E. Royal Oak filed its Complaint on August 10, 2010. Under normal circumstances, the parties could therefore expect to go to trial no earlier than mid-October, 2012.

Unfortunately the civil action has not proceeded normally. Although discovery opened three months ago, and Royal Oak served its initial rounds of discovery requests on the opening day of discovery, Registrant has provided no substantive discovery responses. Moreover, Registrant's premature motion for summary judgment, its companion motion for a stay of all discovery, and its recent modified proposal to allow only limited discovery all serve to guarantee that the parties will not begin to take and provide meaningful discovery until those motions are all resolved by the district court. *See* Exhibit B, Doc. Nos. 21, 23, 26, 27, & 34. As a result, the parties are already *at least* four months behind schedule and therefore will not get to trial until mid-February 2013, at the earliest.² Clearly, the issue of likely confusion can therefore be decided quicker and more efficiently in this proceeding than it can in the civil action.

Having the Board determine the likelihood of confusion issue first also will greatly reduce expenses for both parties. Defendant has in the civil action greatly bemoaned the costs of district court litigation and has cited AIPLA survey evidence as support. *See e.g.*, Exhibit F,

² Registrant's proposal to bifurcate discovery in the civil action would push the parties even further behind schedule because it would require another round of discovery after the court denies Registrant's summary judgment motion.

Defendant's Emergency Motion for Scheduling Conference to Amend Scheduling Order at ¶¶ 12-15. However, proceeding before the Board will be much less expensive for both parties than proceeding in district court.

Attached hereto as Exhibit G are excerpts from the AIPLA's 2009 Report of the Economic Survey. The report discloses that the median total cost for certain types of district court trademark litigation in the Metro Southeast is \$700,000. *See* Exhibit G, page I-133. By contrast however, the median total litigation cost for an *inter partes* Board proceeding is only **\$75,000** for respondents from the Metro Southeast region, where Petitioner is based. *See id.*, page I-136 (emphasis added). Moreover, for respondents from the "Other West" region, where Defendant is located, the median total litigation cost for cancellation proceedings is only **\$50,000**. *See id.* As a result, this proceeding will cost each party roughly 10%, *or even less*, of what it the civil action will cost.

Finally, courts in the Eleventh Circuit give great deference to decisions of the Board. *See Freedom Savings and Loan Ass'n v. Way*, 757 F.2d 1176, 1180 (1985) ("In cases involving trademark disputes ruled upon by the TTAB, however, the courts must give proper deference to the decision reached by the Board"). The respect for the Board's expertise is such that "Fifth and Eleventh Circuit precedent established that the findings of the TTAB will control in a subsequent infringement suit unless the contrary is established by evidence that, in character and amount, carries a 'thorough conviction.'" *Id.* at 1181 (citing to *American Heritage Life Ins. Co. v. Heritage Life Ins. Co.*, 494 F.2d 3, 10 (5th Cir. 1974)).³ Because of that deference, the Board's determination on likely confusion is likely to be adopted by the district court in the civil action, thereby reducing greatly the time and resources the parties will have to devote to the civil action.

³ Decisions of the United States Court of Appeals for the Fifth Circuit issued prior to October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Pritchard*, 661 F.2d 1206 (11th Cir. 1981).

IV. The Board Should Not Suspend Proceedings in Light of Royal Oak's Pending Motion to Stay The Civil Action

Because it would be more efficient and much less expensive for both parties and because the Board's experience and expertise in deciding likelihood of confusion issues would materially aid the district court in making its own likelihood of confusion determination in the civil action, Royal Oak has moved the court to stay the civil action while the Board first determines whether Registrant's NATURE'S GRILLING mark is likely to be confused with Royal Oak's NATURE-GLO mark. *See* Exhibit C. If the court grants Royal Oak's motion, then the Board would have no reason to suspend this proceeding. As Royal Oak's motion already has been fully briefed and submitted to the court, Royal Oak requests that, to the extent the Board is inclined to grant Registrant's suspension motion, the Board delay ruling on that motion until the court rules on Royal Oak's motion.

V. Conclusion

For the foregoing reasons, Royal Oak respectfully requests the Board to deny Registrant's motion to suspend proceedings. In the alternative, Royal Oak requests that the Board delay ruling on the motion until the court has ruled on Royal Oak's motion to stay the civil action.

This 25th day of April, 2011.

Respectfully submitted,

/N. Andrew Crain/

N. Andrew Crain

USPTO Registration No. 45,442

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Opposition has been served by first class mail, postage prepaid, this 25th day of April, 2011 upon Registrant at the following addresses:

Nature's Grilling Products, LLC
D/B/A: NRG International, LLC
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Westminster, CO 80027-1887

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1355 Peachtree Street NE, Ste 300
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/N. Andrew Crain/
N. Andrew Crain
Attorney for Petitioner,
Royal Oak Enterprises, LLC

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROYAL OAK ENTERPRISES, LLC
Plaintiff

vs.

NATURE’S GRILLING
PRODUCTS, LLC
Defendant

Civil Action No.: _____

COMPLAINT

Plaintiff, Royal Oak Enterprises, LLC (“Royal Oak”), a Delaware Limited Liability Corporation, states its Complaint against Defendant Nature’s Grilling Products, LLC. (“Defendant”), as follows:

INTRODUCTION

1. This is an action for federal trademark infringement under 15 U.S.C. § 1114(1); federal unfair competition, and false designation of origin arising under Section 43 of the Lanham Act of 1946, 15 U.S.C. § 1125; common-law trademark infringement; and deceptive trade practices. In this action, Royal Oak seeks preliminary and permanent equitable injunctive relief, compensatory or general damages, attorney’s fees, costs, and Defendant’s profits from the infringement.

JURISDICTION

2. This Court has subject matter jurisdiction over all causes of action set forth herein based upon 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a) and 1338(b), and pursuant to the supplemental jurisdiction of this Court under 28 U.S.C. §1367.

3. This Court has personal jurisdiction over Defendant arising from Defendant regularly and continuously conducting business, including the acts referenced herein, in the State of Georgia and within this judicial district and division.

4. Venue is proper in this judicial district and division pursuant to 28 U.S.C. 1391(b) and (c).

THE PARTIES

5. Plaintiff, Royal Oak, is a Delaware Limited Liability Corporation in good standing, having its principal place of business at 1 Royal Oak Avenue, Roswell, Georgia 30076.

6. Upon information and belief, Defendant is a Colorado Limited Liability Company.

7. Upon information and belief, Defendant has a main corporate office at 706 Front Street, #2, Louisville, Colorado 80027.

THE CONTROVERSY

8. In the year 1985, Hickory Specialties, Inc. adopted and began use of the mark “Nature-Glo” in connection with grilling products, including charcoal briquets.

9. On December 3, 1986, a trademark application was filed for registration on the Federal Register of the United States Patent and Trademark Office (USPTO) by Hickory Specialties, Inc. for the mark NATURE-GLO for charcoal briquets, wood briquets, wood chips, grill wood and fire starting fiberboard.

10. On August 4, 1987, the USPTO issued Reg. No. 1,450,298 (“the ‘298 registration”) for the mark NATURE-GLO. *See* Exhibit A, ‘298 Registration.

11. In order to maintain the registration of the mark, the owners of the mark filed a declaration of use of the mark with the USPTO pursuant to 15 U.S.C. § 1058 on or about March 12, 1993.

12. Also on or about March 12, 1993, the owner of the mark filed an affidavit of incontestability of right to use the NATURE-GLO mark pursuant to 15 U.S.C. §§ 1065.

13. On or about August 3, 2007, the owner of the registration filed a declaration of use and application for renewal of the ‘298 registration pursuant to

15 U.S.C. §§ 1058 and 1059, respectively, both of which were accepted by the USPTO on or about August 21, 2007.

14. The mark NATURE-GLO has been registered as a federal trademark on the Federal Register of trademark continuously since 1987.

15. On or about April 23, 1999, Hickory Specialties, Inc. assigned the mark NATURE-GLO to Royal Oak Sales, Inc., who subsequently assigned the mark to Plaintiff, Royal Oak Enterprises, LLC, on September 12, 2008. Both assignments are recorded with the USPTO.

16. The mark NATURE-GLO has been used by its owners since at least 1985, including Royal Oak since obtaining the above-referenced assignments. As a result, Royal Oak's long, continuous and widespread use and advertising and sale of its products to the public in interstate commerce under the mark NATURE-GLO has become an asset of substantial value as a symbol of Royal Oak and the quality products that it has advertised.

17. Upon information and belief, Defendant was formed in 2004 to market and sell grilling products.

18. Defendant markets, sells, and/or distributes in the United States several lines of grilling products under the mark NATURE'S GRILLING PRODUCTS.

19. Defendant also markets and sells and/or distributes grilling products in the United States under the mark NATURE'S GRILLING.

20. Exhibit B attached herewith comprises images of Defendant's Nature's Grilling hardwood briquette grilling products, including images of the NATURE'S GRILLING PRODUCTS and NATURE'S GRILLING marks.

21. Exhibit C attached herewith comprises select portions of Defendant's Internet web site at www.naturesgrilling.com, which depicts instances of the NATURE'S GRILLING PRODUCTS and NATURE'S GRILLING marks in association with its charcoal briquets and related products.

22. Defendant's sale of its grilling products under the marks NATURE'S GRILLING PRODUCTS and NATURE'S GRILLING was and is without the consent, sponsorship, authorization of, or authorized affiliation with Royal Oak.

COUNT ONE:
FEDERAL TRADEMARK INFRINGEMENT

23 Each of the preceding paragraphs is realleged and incorporated herein by reference.

24. Royal Oak is the federal registrant of Trademark Reg. No. 1,450,298 ("the '298 registration") for NATURE-GLO for charcoal briquets, wood chips, grill wood, and fire starting fiberboard. *See* Exhibit A.

25. Royal Oak's '298 registration is *prima facie* evidence of the validity of Royal Oak's federal trademark registration, Royal Oak's ownership of the mark, and of Royal Oak's exclusive right to use the mark in connection with goods specified in the trademark registration certificate (*see* Exhibit A) pursuant to 15 U.S.C. § 1057(b).

26. Royal Oak's NATURE-GLO mark, which, as indicated in the '298 trademark registration, was first used in 1985 and long before Defendant began using the marks NATURE'S GRILLING PRODUCTS and/or NATURE'S GRILLING.

27. Royal Oak has developed a reputation and a high degree of goodwill associated with its mark, NATURE-GLO, throughout the United States.

28. Defendant's acts, as set forth above, violate Royal Oak's right in its registered mark NATURE-GLO pursuant to 15 U.S.C. § 1114(1).

29. Because it is not known whether Defendant will, if not enjoined by this Court, continue their acts of trademark infringement as set forth above, which acts have caused and will continue to cause Royal Oak immediate and irreparable harm pursuant to 15 U.S.C. § 1116 and FED. R. CIV. P. 65(a), Royal Oak is entitled to an Order of this Court preliminarily and permanently enjoining Defendant's

unlawful activities. Royal Oak is also entitled to the profits that Defendant has made from this infringement.

**COUNT TWO:
FEDERAL UNFAIR COMPETITION –
FALSE DESIGNATION OF ORIGIN/TRADEMARK INFRINGEMENT**

30. Each of the preceding paragraphs is realleged and incorporated herein by reference.

31. Royal Oak and its predecessor first used the mark NATURE-GLO in respect to charcoal briquets and related grilling products, including charcoal briquets, wood chips, grill wood, fire starting fiberboard, natural lump charcoal, wood chunks, and fire starter long before Defendant first created or used its NATURE'S GRILLING PRODUCTS and NATURE'S GRILLING marks that Defendant now uses in association with charcoal briquets and related products.

32. Defendant has used in connection with its goods, a false designation of origin, false representation, and/or false description, including using a confusingly similar mark to Royal Oak's NATURE-GLO mark tending to falsely describe or represent the same goods provided by, sponsored by, approved by or affiliated with Royal Oak. It is not known whether Defendant concedes acknowledgement of false designation or origin, representation or description for its services to be offered in interstate commerce, but this can be ascertained during

discovery. Royal Oak has been irreparably damaged by the use of such false designation and misrepresentation.

33. Defendant's acts, as set forth above, constitute unfair competition, false designation of origin, and false description in violation of 15 U.S.C. § 1125(a).

34. Defendant will, if not enjoined by this Court, continue its acts of unfair competition by the use of the false designations and false representations set forth above, which acts have caused, and will continue to cause, Royal Oak immediate and irreparable harm. Pursuant to 15 U.S.C. § 1116 and FED. R. CIV. P. 65(a), Royal Oak is entitled to an Order of this Court preliminarily and permanently enjoining Defendant's unlawful activities. Pursuant to 15 U.S.C. § 1117, Royal Oak is also entitled to the profits that Defendant has made from this infringement and damages sustained by Royal Oak.

**COUNT THREE:
COMMON-LAW TRADEMARK INFRINGEMENT
OF NATURE-GLO**

35. Each of the preceding paragraphs is realleged and incorporated herein by reference.

36. Royal Oak and its predecessors have established common-law rights to the common law mark NATURE-GLO by use of the mark in commerce in Georgia in connection with grilling products, including charcoal briquets, wood

chips, grill wood, fire starting fiberboard, natural lump charcoal, wood chunks, fire starter, and related products.

37. The unauthorized use by Defendant of the marks NATURE'S GRILLING and NATURE'S GRILLING PRODUCTS in respect to the sale of charcoal briquets and related products:

- (a) is likely to cause confusion, or to cause mistake or to deceive;
- (b) will lead others to believe that Defendant has a sponsorship, approval, status, affiliation or connection with NATURE-GLO which they do not have; and
- (c) is a reproduction, counterfeit or copy of Royal Oak's mark NATURE-GLO in connection with charcoal briquets and related products and as such is likely to cause confusion or to cause mistake or to deceive.

38. The establishment of Royal Oak's common law rights to the mark NATURE-GLO precede Defendant's unauthorized use of the marks NATURE'S GRILLING and NATURE'S GRILLING PRODUCTS.

39. Defendant will, if not preliminarily and permanently enjoined by this Court, continue its acts of trademark infringement as set forth above, thereby deceiving the public, trading on Royal Oak's goodwill and causing Royal Oak immediate and irreparable harm, damage and injury. Royal Oak is entitled to an

Order of this Court enjoining Defendant's unlawful activities. Royal Oak is also entitled to the profits that Defendant has made from this infringement.

COUNT FOUR:
DECEPTIVE TRADE PRACTICES IN GEORGIA

40. Each of the preceding paragraphs is realleged and incorporated herein by reference.

41. Defendant, by the aforesaid acts, has engaged in conduct which creates confusion and misunderstanding, which acts constitute unfair and deceptive trade practices in Georgia.

42. Defendant's aforesaid acts are in violation of Sections 10-1-370 *et seq.*, including Section 10-1-372 of the Official Code of Georgia Annotated (hereinafter "O.C.G.A.") and the common law.

43. On information and belief, as a result of Defendant's unfair and deceptive trade practices in Georgia, Defendant has monetarily profited, and Royal Oak has, and continues to be, irreparably damaged by Defendant's aforesaid acts.

44. Unless enjoined and restrained by this Court, Defendant will continue its acts of unfair and deceptive trade practices in Georgia, thereby deceiving and confusing the public and causing Royal Oak immediate and irreparable harm, damage and injury. Royal Oak is entitled to an Order of this Court enjoining

Defendant's unlawful activities pursuant to O.C.G.A. Section 10-1-373(a). Royal Oak has no adequate remedy at law.

45. As a result of Defendant's willful unfair and deceptive trade practices in Georgia, Royal Oak is entitled to recover its costs and attorney fees.

WHEREFORE, ROYAL OAK prays:

(1) That Defendant Nature's Grilling Products, LLC and their officers, agents, servants and employees and those persons in active concert or participation with either of them be preliminarily and permanently enjoined and restrained:

(a) from using the mark NATURE'S GRILLING and/or NATURE'S GRILLING PRODUCTS, or any other designation, or trademark confusingly similar to Royal Oak's mark NATURE-GLO in the United States;

(b) from infringing upon Royal Oak's rights in and to its mark NATURE-GLO, including NATURE GRILLING and NATURE GRILLING PRODUCTS and from otherwise unfairly competing with Royal Oak in any manner whatsoever;

(2) That Defendant be ordered to deliver up for destruction its documents, packaging, signs, forms, advertisements, business cards, letterheads and other representations and means for reproducing the same or any printed material bearing any designation or mark confusingly similar to Royal Oak's mark

NATURE-GLO and to obliterate, destroy or remove all other uses or all confusingly similar marks to Royal Oak's NATURE-GLO mark.

(3) That an accounting be conducted and judgment be rendered against Defendant for:

(a) all profits received by Defendant from its sale of goods associated with the mark NATURE'S GRILLING and/or NATURE'S GRILLING PRODUCTS or any name confusingly similar thereto;

(b) all damages sustained by Royal Oak on account of, *inter alia*, Defendant's trademark infringement, unfair competition, and false designation of origin pursuant to 15 U.S.C. § 1051 *et. seq.*; and

(c) actual and compensatory damages in an amount not presently known, but to be computed during the pendency of this action.

(4) That Royal Oak have and recover its costs in this suit, including reasonable attorney fees and expenses.

(5) That Royal Oak have such other and further relief as the Court may deem just and proper.

(6) That interest be assessed against Defendant for all monies awarded to Royal Oak.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Royal Oak demands a trial by jury of all issues triable of right by a jury.

This 10th day of August, 2010



George M. Thomas
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N. Andrew Crain
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Attorneys for Plaintiff, Royal Oak
Enterprises, LLC

Exhibit B

4months, SUBMDJ

**U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:10-cv-02494-JEC**

Royal Oak Enterprises, LLC v. Nature's Grilling Products, LLC
Assigned to: Judge Julie E. Carnes
Cause: 28:1338 Trademark Infringement

Date Filed: 08/10/2010
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Royal Oak Enterprises, LLC

represented by **George Marshall Thomas**
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V.

Defendant

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Counter Claimant

Nature's Grilling Products, LLC

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ATTORNEY TO BE NOTICED

V.

Counter Defendant

Royal Oak Enterprises, LLC

represented by **George Marshall Thomas**
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/10/2010	1	COMPLAINT with Jury Demand filed and summon(s) issued. Consent form to proceed before U.S. Magistrate and pretrial instructions provided. (Filing fee \$ 350 receipt number 113E-2843044.), filed by Royal Oak Enterprises, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Summons, # 5 Civil Cover Sheet)(mlh) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 08/11/2010)
08/10/2010	2	Corporate Disclosure Statement by Royal Oak Enterprises, LLC identifying Corporate Parent Bernside Corporation for Royal Oak Enterprises, LLC. (mlh) Modified on 8/11/2010 to edit text (mlh). (Entered: 08/11/2010)
08/11/2010	3	AO Form 120 forwarded to Commissioner. (mlh) (Entered: 08/11/2010)
12/07/2010	4	AFFIDAVIT of Service for Summons, and Complaint, as to Nature's Grilling Products, LLC, executed on 12/2/2010. (Crain, Norman) Modified to add service date on 12/28/2010 (bdb). (Entered: 12/07/2010)
12/23/2010	5	<i>Nature's Grilling Products, LLC</i> ANSWER to 1 COMPLAINT <i>filed</i> by Nature's Grilling Products, LLC. Discovery ends on 5/23/2011.(Pardue, David) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 12/23/2010)

01/12/2011	6	MOTION to Strike 5 Answer to Complaint, <i>Particularly the Sixth & Seventh Defenses</i> , with Brief In Support by Royal Oak Enterprises, LLC. (Attachments: # 1 Text of Proposed Order, # 2 Brief)(Crain, Norman) (Entered: 01/12/2011)
01/13/2011	7	AMENDED ANSWER to 1 Complaint,, COUNTERCLAIM against Royal Oak Enterprises, LLC by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 01/13/2011)
01/24/2011	8	Joint PRELIMINARY REPORT AND DISCOVERY PLAN filed by Nature's Grilling Products, LLC, Royal Oak Enterprises, LLC. (Crain, Norman) (Entered: 01/24/2011)
01/24/2011	9	CERTIFICATE OF SERVICE filed by Royal Oak Enterprises, LLC of <i>Plaintiff's Initial Disclosures</i> (Crain, Norman) (Entered: 01/24/2011)
01/24/2011	10	CERTIFICATE OF SERVICE filed by Royal Oak Enterprises, LLC of <i>Plaintiff's First Set of Requests for Production of Documents and Things</i> (Crain, Norman) (Entered: 01/24/2011)
01/24/2011	11	CERTIFICATE OF SERVICE filed by Royal Oak Enterprises, LLC of <i>Plaintiff's First Set of Interrogatories</i> (Crain, Norman) (Entered: 01/24/2011)
01/24/2011	12	ORDER OF RECUSAL. Judge Horace T. Ward recused. Case reassigned to Judge Julie E. Carnes for all further proceedings. Signed by Judge Horace T. Ward on 1/24/2011. (bdb) -- NOTICE TO ALL COUNSEL OF RECORD : The Judge designation in the civil action number assigned to this case has been changed to 1:10-cv-2494- JEC --. Please make note of this change in order to facilitate the docketing of pleadings in this case. (Entered: 01/25/2011)
01/25/2011	13	CERTIFICATE OF SERVICE filed by Nature's Grilling Products, LLC of <i>Defendant's Initial Disclosures</i> (Pardue, David) (Entered: 01/25/2011)
01/31/2011	14	RESPONSE in Opposition re 6 MOTION to Strike 5 Answer to Complaint, <i>Particularly the Sixth & Seventh Defenses</i> , filed by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 01/31/2011)
02/07/2011	15	ANSWER to 7 Counterclaim by Royal Oak Enterprises, LLC.(Crain, Norman) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 02/07/2011)
02/24/2011	16	AFFIDAVIT of Service for Subpoena, as to Nautilus Insurance Company. (Crain, Norman) (Entered: 02/24/2011)
02/28/2011		Submission of 6 MOTION to Strike 5 Answer to Complaint, <i>Particularly the Sixth & Seventh Defenses</i> ,, submitted to District Judge Julie E. Carnes. (fap) (Entered: 02/28/2011)
02/28/2011	17	MOTION to Withdraw 6 Motion to Strike Answer to Complaint <i>Particularly the Sixth & Seventh Defenses</i> , filed by Royal Oak Enterprises, LLC. (Attachments: # 1 Proposed Order)(Crain, Norman) Modified on 2/28/2011 to correct text to accurately reflect e-filed pleading (acm). (Entered: 02/28/2011)
02/28/2011		Submission of 6 MOTION to Strike 5 Answer to Complaint, <i>Particularly the Sixth & Seventh Defenses</i> , submitted to District Judge Julie E. Carnes. (acm) (Entered: 02/28/2011)

02/28/2011		Notification of Docket Correction re 17 : the docket text has been corrected to accurately reflect the e-filed pleading as a MOTION to Withdraw the 6 Motion to Strike Answer to Complaint <i>Particularly the Sixth & Seventh Defenses</i> . The 6 Motion to Strike has been reactivated on the docket and resubmitted to the district judge, as it remains an active motion pending adjudication of either it or the 17 Motion to Withdraw. (acm) (Entered: 02/28/2011)
02/28/2011	18	MEMORANDUM in Support by Royal Oak Enterprises, LLC re 17 MOTION to Withdraw 6 Motion to Strike MOTION to Withdraw 6 Motion to Strike (Crain, Norman) Modified on 3/1/2011 to accurately reflect e-filed pleading (fap). (Entered: 02/28/2011)
02/28/2011	19	CERTIFICATE OF SERVICE of <i>Nature's Grilling's Response to Royal Oak's First Set of Interrogatories</i> by Nature's Grilling Products, LLC.(Pardue, David) (Entered: 02/28/2011)
02/28/2011	20	CERTIFICATE OF SERVICE of <i>Nature's Grilling's Response to Royal Oak's First Set of Requests for Production of Documents</i> by Nature's Grilling Products, LLC.(Pardue, David) (Entered: 02/28/2011)
03/01/2011	21	MOTION for Protective Order MOTION for Immediate Stay of Discovery with Brief In Support by Nature's Grilling Products, LLC. (Attachments: # 1 Brief, # 2 Exhibit A, # 3 Exhibit B)(Pardue, David) . Added MOTION for Immediate Stay of Discovery on 3/3/2011 (fap). (Entered: 03/01/2011)
03/02/2011	22	ORDER withdrawing plaintiff's Motion to Strike Answer to Complaint 6 and granting plaintiff's Motion to Withdraw Motion to Strike 17 . Signed by Judge Julie E. Carnes on 3/2/11. (ddm) (Entered: 03/02/2011)
03/04/2011	23	MOTION for Summary Judgment by Nature's Grilling Products, LLC. (Pardue, David) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 03/04/2011)
03/04/2011	24	Statement of Material Facts re 23 MOTION for Summary Judgment filed by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 03/04/2011)
03/04/2011	25	NOTICE Of Filing by Nature's Grilling Products, LLC re 23 MOTION for Summary Judgment (Attachments: # 1 Brief in Support, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D (1 of 2), # 6 Exhibit D (2 of 2), # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G, # 10 Exhibit H, # 11 Exhibit I, # 12 Exhibit J)(Pardue, David) (Entered: 03/04/2011)
03/11/2011	26	MOTION to Quash Subpoena to Nautilus Insurance Company by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 03/11/2011)
03/11/2011	27	MOTION for Protective Order <i>Prohibiting Discovery of Privileged Documents</i> by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 03/11/2011)
03/18/2011	28	MOTION to Stay <i>Proceedings Pending Resolution of Trademark Trial and Appeal Board Cancellation Proceeding No. 92053703</i> with Brief In Support by Royal Oak Enterprises, LLC. (Attachments: # 1 Text of Proposed Order, # 2 Memorandum in Support, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D-1, # 7 Exhibit D-2)(Crain, Norman) (Entered: 03/18/2011)

03/18/2011	29	RESPONSE in Opposition re 21 MOTION for Protective Order <i>and Immediate Stay of Discovery</i> MOTION to Stay filed by Royal Oak Enterprises, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Crain, Norman) (Entered: 03/18/2011)
03/28/2011	30	RESPONSE in Opposition re 26 MOTION to Quash Subpoena to Nautilus Insurance Company filed by Royal Oak Enterprises, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Crain, Norman) (Entered: 03/28/2011)
03/28/2011	31	RESPONSE in Opposition re 27 MOTION for Protective Order <i>Prohibiting Discovery of Privileged Documents</i> filed by Royal Oak Enterprises, LLC. (Crain, Norman) (Entered: 03/28/2011)
03/28/2011	32	RESPONSE in Opposition re 23 MOTION for Summary Judgment <i>and Brief in Support of Royal Oak's Rule 56(d) Motion</i> filed by Royal Oak Enterprises, LLC. (Attachments: # 1 Exhibit A: Response to Statement of Undisputed Facts, # 2 Exhibit B-1: Section 15 Affidavit, # 3 Exhibit B-2: TARR Record for Reg. No. 1,450,298, # 4 Exhibit C: Trademark ID Manual for Class 004, # 5 Exhibit D: Collection of TARR printouts, # 6 Exhibit E: American Sugar Co. v. Texas Farm Products Co., # 7 Exhibit F: Office Action for Trademark App. No. 77404743, # 8 Exhibit G: Response to Office Action for Trademark App. No. 77404743, # 9 Exhibit H: Gruen Industries, Inc. v. Ray Curran & Co., # 10 Exhibit I-1: Declaration of Michael R. Shore, # 11 Exhibit I-2: Declaration of Michael R. Shore, # 12 Exhibit I-3: Declaration of Michael R. Shore)(Crain, Norman) (Entered: 03/28/2011)
03/28/2011	33	MOTION to Deny Defendant's Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(d) 32 Response in Opposition to Motion,, 23 MOTION for Summary Judgment with Brief In Support by Royal Oak Enterprises, LLC. (Attachments: # 1 Text of Proposed Order, # 2 Brief in Support, # 3 Exhibit A: Declaration of N. Andrew Crain)(Crain, Norman) (Entered: 03/28/2011)
03/31/2011	34	REPLY to Response to Motion re 23 MOTION for Summary Judgment filed by Nature's Grilling Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Pardue, David) (Entered: 03/31/2011)
03/31/2011		Submission of 21 MOTION for Protective Order <i>and Immediate Stay of Discovery</i> MOTION to Stay, 23 MOTION for Summary Judgment, submitted to District Judge Julie E. Carnes. (fap) (Entered: 03/31/2011)
03/31/2011		Submission of 23 MOTION for Summary Judgment, submitted to District Judge Julie E. Carnes. (fap) (Entered: 03/31/2011)
04/04/2011	35	RESPONSE re 28 MOTION to Stay <i>Proceedings Pending Resolution of Trademark Trial and Appeal Board Cancellation Proceeding No. 92053703</i> filed by Nature's Grilling Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Pardue, David) (Entered: 04/04/2011)
04/04/2011	36	REPLY to Response to Motion re 21 MOTION for Protective Order <i>and Immediate Stay of Discovery</i> MOTION to Stay filed by Nature's Grilling Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Pardue, David) (Entered: 04/04/2011)
04/13/2011	37	REPLY BRIEF re 27 MOTION for Protective Order <i>Prohibiting Discovery of Privileged Documents</i> filed by Nature's Grilling Products, LLC. (Attachments: # 1

		Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pardue, David) (Entered: 04/13/2011)
04/14/2011	38	Emergency MOTION Scheduling Conference by Nature's Grilling Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Pardue, David) (Entered: 04/14/2011)
04/14/2011	39	RESPONSE re 33 MOTION to Deny Defendant's Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(d) 32 Response in Opposition to Motion,,, 23 MOTION for Summary Judgment MOTION to Deny Defendant's Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(d) 32 Response in Opposition to Motion,,, 23 MOTION for Summary Judgment filed by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 04/14/2011)
04/15/2011		Submission of 26 MOTION to Quash Subpoena to Nautilus Insurance Company, 27 MOTION for Protective Order <i>Prohibiting Discovery of Privileged Documents</i> , submitted to District Judge Julie E. Carnes. (FILE IN CHAMBERS) (fap) (Entered: 04/15/2011)
04/15/2011	40	Withdrawal of Motion 26 MOTION to Quash Subpoena to Nautilus Insurance Company filed by Nature's Grilling Products, LLC filed by Nature's Grilling Products, LLC. (Pardue, David) (Entered: 04/15/2011)
04/21/2011	41	REPLY BRIEF re 28 MOTION to Stay <i>Proceedings Pending Resolution of Trademark Trial and Appeal Board Cancellation Proceeding No. 92053703</i> filed by Royal Oak Enterprises, LLC. (Attachments: # 1 Exhibit E - 2009 AIPLA Report of Economic Survey Excerpt, # 2 Exhibit F - Declaration of Dale A. Elberg)(Crain, Norman) (Entered: 04/21/2011)

PACER Service Center

Transaction Receipt

04/25/2011 12:04:29

PACER Login:	tk0038	Client Code:	11325-7010
Description:	Docket Report	Search Criteria:	1:10-cv-02494-JEC
Billable Pages:	5	Cost:	0.40

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROYAL OAK ENTERPRISES, LLC
Plaintiff

vs.

NATURE'S GRILLING
PRODUCTS, LLC
Defendant

Civil Action No.: 1:10-cv-2494

**ROYAL OAK ENTERPRISES, LLC'S MOTION FOR A STAY OF
PROCEEDINGS PENDING RESOLUTION OF TRADEMARK TRIAL
AND APPEAL BOARD CANCELLATION PROCEEDING NO. 92053703**

Pursuant to Rule 7(b)(1) of the Federal Rules of Civil Procedure, Plaintiff Royal Oak Enterprises, LLC ("Royal Oak") respectfully requests this Court to stay proceedings in this action pending the conclusion of a related Cancellation Proceeding, Cancellation No. 92053703, filed by Royal Oak with the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trademark Office.

In that proceeding, Royal Oak has petitioned to cancel trademark registrations owned by Defendant Nature's Grilling Products, LLC for the marks NATURE'S GRILLING and NATURE'S MESQUITE. Resolution of the cancellation proceeding will require the TTAB to determine whether those marks

are likely to be confused with Royal Oak's registered NATURE-GLO trademark. For the reasons set forth in the supporting memorandum filed contemporaneously herewith, Royal Oak respectfully requests that the Court stay proceedings in this action until the TTAB has determined whether Defendant's NATURE'S GRILLING mark is likely to be confused with Royal Oak's NATURE-GLO mark.

A Proposed Order is attached herewith.

This 18th day of March, 2011

/s/ N. Andrew Crain

George M. Thomas

Georgia State Bar No. 704900

N. Andrew Crain

Georgia State Bar No. 193081

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, LLP**

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Atlanta, Georgia 30339

Telephone: (770) 933-9500

Facsimile: (770) 951-0933

Attorneys for Plaintiff Royal Oak
Enterprises, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROYAL OAK ENTERPRISES, LLC
Plaintiff

vs.

NATURE'S GRILLING
PRODUCTS, LLC
Defendant

Civil Action No.: 1:10-cv-2494

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2011, the foregoing "ROYAL OAK ENTERPRISES, LLC'S MOTION FOR A STAY OF PROCEEDINGS PENDING RESOLUTION OF TRADEMARK TRIAL AND APPEAL BOARD CANCELLATION PROCEEDING NO. 92053703" was served on all attorneys of record for Defendant via the Court's CM/ECF system:

David L. Pardue – david.pardue@swiftcurrie.com
D. Barton Black - barton.black@swiftcurrie.com

/s/ N. Andrew Crain
N. Andrew Crain,
Attorney for Plaintiff

Exhibit D

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 2, 2011

Cancellation No. 92053703
Registration Nos. 3925901
3221991

NATURES GRILLING PRODUCTS LLC
10855 DOVER STREET, SUITE 400
WESTMINSTER, CO 80021 UNITED STATES

Royal Oak Enterprises, LLC

v.

Nature's Grilling Products LLC
dba NRG International LLC

N ANDREW CRAIN
THOMAS KAYDEN HORSTEMEYER & RISLEY LLP
600 GALLERIA PARKWAY SE, SUITE 1500
ATLANTA, GA 30339 UNITED STATES

Veronica P. White, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system:
<http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise,

if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	4/11/2011
Deadline for Discovery Conference	5/11/2011
Discovery Opens	5/11/2011
Initial Disclosures Due	6/10/2011
Expert Disclosures Due	10/8/2011
Discovery Closes	11/7/2011
Plaintiff's Pretrial Disclosures	12/22/2011
Plaintiff's 30-day Trial Period Ends	2/5/2012
Defendant's Pretrial Disclosures	2/20/2012
Defendant's 30-day Trial Period Ends	4/5/2012
Plaintiff's Rebuttal Disclosures	4/20/2012
Plaintiff's 15-day Rebuttal Period Ends	5/20/2012

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of

whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stdnagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to

participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

CC:

NRG International LLC
706 Front Street, Suite 2
Louisville, CO 80027-1887

David L. Pardue
Swift, Currie, McGhee & Hiers, LLP
1355 Peachtree Street NE, Suite 300
Atlanta, GA 30309-3231

Exhibit E

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
GEORGIA NORTHERN		2010	2009	2008	2007	2006	2005	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	5,648	5,119	5,274	4,487	4,554	4,886	U.S.	Circuit	
	Terminations	5,318	4,891	5,077	4,560	4,898	5,692			
	Pending	4,363	3,936	3,726	3,505	3,574	3,890			
	% Change in Total Filings	Over Last Year		10.3					13	2
Over Earlier Years			7.1	25.9	24.0	15.6	15	2		
Number of Judgeships		11	11	11	11	11	11			
Vacant Judgeship Months**		44.3	25.5	.0	.0	5.1	3.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	514	465	480	408	415	444	27	3
		Civil	451	397	420	355	353	383	14	3
		Criminal Felony	48	49	44	38	51	47	70	8
		Supervised Release Hearings**	15	19	16	15	11	14	73	9
	Pending Cases		397	358	339	319	325	354	47	5
	Weighted Filings**		550	497	509	461	500	541	20	3
	Terminations		483	445	462	415	445	517	32	5
	Trials Completed		21	27	24	23	17	16	48	8
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	11.1	11.5	13.3	11.5	11.0	11.5	69	9
		Civil**	6.7	6.7	6.7	7.7	9.5	10.0	15	3
	From Filing to Trial** (Civil Only)		26.1	29.4	30.5	27.9	31.0	27.0	41	9
OTHER	Civil Cases Over 3 Years Old**	Number	106	63	97	70	83	83		
		Percentage	2.9	1.9	3.2	2.5	2.9	2.6	18	3
	Average Number of Felony Defendants Filed Per Case		1.5	1.5	1.7	1.8	1.7	1.9		
	Jurors	Avg. Present for Jury Selection	40.68	39.90	26.62	34.11	45.86	45.85		
		Percent Not Selected or Challenged	33.9	31.8	35.2	38.6	37.6	37.6		

2010 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4957	193	137	989	96	562	241	603	447	194	792	17	686
Criminal*	517	3	76	126	94	114	22	31	6	14	6	15	10

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "[Explanation of Selected Terms.](#)"

Exhibit F

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROYAL OAK ENTERPRISES, LLC, :
 :
 :
 Plaintiff/Counterclaim-Defendant, :
 : CIVIL ACTION
 vs. :
 : FILE NO. 1:10-CV-02494-JEC
 NATURE'S GRILLING :
 PRODUCTS, LLC, :
 :
 :
 Defendant/Counterclaim-Plaintiff. :

**EMERGENCY MOTION FOR SCHEDULING CONFERENCE TO
AMEND SCHEDULING ORDER**

Defendant Nature's Grilling Products, LLC ("NGP") hereby moves this Court for the setting of an expedited Scheduling Conference in this case on a date and time as soon as practicable and convenient for the Court. In support of this Motion, NGP shows as follows:

1.

The emergency in this situation is simple, as set forth below, even though the merits of the case are weak. NGP simply cannot afford a long, protracted, garden variety trademark lawsuit to happen due to its finances and the reality of its small, growing, size.

2.

This lawsuit involves claims for Federal Trademark Infringement, Federal Unfair Competition - False Designation of Origin/Trademark Infringement, Georgia Common Law Trademark Infringement, and Deceptive Trade Practices in Georgia.

3.

The Parties filed a Joint Preliminary Report and Discovery Plan on January 24, 2011.

4.

Discovery was served by Royal Oak on January 24, 2011, consisting of interrogatories and document requests.

5.

On March 1 and 4, 2011, respectively, NGP filed a Motion for Protective Order and Stay of Discovery pertaining to the issue of likelihood of confusion pending ruling on the impending Motion for Summary Judgment, and NGP filed a Motion for Summary Judgment on the issue of likelihood of confusion that relates to all of Royal Oak Enterprises, LLC's ("Royal Oak") claims in the case.

6.

On March 1, 2011, Royal Oak filed a Petition to Cancel the mark in question with the Trademark Trial and Appeal Board (“TTAB”).

7.

On March 18, 2011, following NGP’s filing of its Motion for Summary Judgment, Royal Oak filed a Motion to stay this pending civil case in lieu of the TTAB cancellation proceedings.

8.

On April 4, 2011, NGP filed a response in opposition to Royal Oak’s Motion to stay this case and also filed a Motion to suspend the TTAB proceedings pending the final disposition of this case because this case will be binding and will have a bearing upon the TTAB proceedings. NGP contends that settled law mandates the denial of the Motion to stay this case. *See* Nature’s Grilling’s Response in Opposition to Plaintiff’s Motion to Stay, Doc. 35, citing *Goya Foods, Inc. v. Tropicana Prods., Inc.*, 846 F.2d 848 (2nd Cir. 1988).

9.

On March 28, 2011, Royal Oak filed a Motion under Rule 56(d) complaining about not having certain discovery in this case.

10.

In its Reply Brief in Support of the Motion for Summary Judgment, filed on March 31, 2011, NGP offered that it would allow certain limited depositions and discovery with respect to the declarations that were filed in support of the Motion for Summary Judgment as to certain issues that are allegedly in dispute with respect to the likelihood of confusion factors that are dispositive of the claims in the case. These depositions would be of Brad Natrass, Jon Letness, and Tom Mahowald, who were the persons involved in the creation, research, design, and registration of the NGP marks. Mr. Natrass is the CEO of NGP and has run the company at all times relevant hereto. Likewise, NGP seeks the deposition of Royal Oak's declarant, Michael Shore, and a 30(b)(6) representative as to the issues in question regarding likelihood of confusion. Namely, these issues are similarity of customers/sales, channels/retail outlets, strength of the mark, intent, and actual confusion.

11.

NGP has submitted the Second Declaration of Brad Natrass in its Response in Opposition to Plaintiff's Motion to Stay, which spells out why this is an emergency. While respectful of the Court's workload and schedule, NGP is too small, young, and fast growing of a company to handle a long drawn out case and

survive. It has to have financing to survive, and it has to get rid of this case in order to obtain financing. NGP is a small and growing young company, especially compared to Royal Oak, with revenues growing from zero to approximately \$6 million per year since its founding in 2004. Although private, Royal Oak is generally believed to generate more than \$200 million per year in revenue. In any case, Royal Oak is a much bigger company than NGP. *See* Second Declaration of Brad Natrass, ¶13, attached to Doc. 36 as Ex. A (“Second Natrass Decl.”).

12.

Almost all small, young and growing companies constantly need fresh influxes of capital to survive and continue growing. NGP certainly falls into such a category. With this lawsuit hanging over the head of the company, putting the brand at stake and other liabilities, even with insurance coverage and the large likelihood of success on the merits, it is impossible currently to borrow money or attract equity investors to grow the business. *Id. at* ¶14.

13.

Without insurance, most small, young companies do not have revenue margins or cash reserves available to pay exorbitant attorneys’ fees for protracted and burdensome litigation. NGP certainly falls into such a category. *Id. at* ¶15.

14.

NGP would not be able to fund attorneys fees and costs of anywhere near \$700,000 over a two year period, and might very well have to go out of business or shut down the brand if it did. *Id. at* ¶16.

15.

The record in the case amply illustrates the fact that the case has primarily been filed in an exercise in trademark bullying to try to put NGP out of business. *Id. at* ¶¶7-12; [Doc. 36, pp. 3-6 (Section A)]. Given the weakness of Royal Oak's claims, it would be a manifest injustice for NGP's survival to be threatened simply because of the length of time it takes to handle a trademark case, much less the fact that as the AIPLA has determined through its 2007 survey, the average trademark litigation costs each party \$700,000 in litigation costs to resolve, absent any damages or other award. *See* "Intellectual Property Litigation Rising: How to Protect Your Company's Financial Health," attached to Doc. 36 as Ex. A. to Ex. C. Therefore, this Court should exercise its discretion and hold an Emergency Scheduling Conference to set a tight and limited time frame and amount of documentary and deposition discovery that may be taken in order to get the Motion for Summary Judgment resolved.

16.

NGP conferred with counsel for Royal Oak, but in light of its Motion to Stay this case pending the TTAB proceedings, Royal Oak has declined to join in this Emergency Motion for a Scheduling Conference. *See* E-mail from David Pardue to Andrew Crain dated April 7, 2011, attached hereto as Exhibit A; Email from Andrew Crain to David Pardue dated April 12, 2011, attached hereto as Exhibit B.

17.

NGP believes that an expedited schedule allowing for the limited depositions and document discovery within a 30 day period would allow for the parties to supplement, if necessary, the briefing on the Motion for Summary Judgment within 45 days, and allow for the expeditious consideration of the Motion for Summary Judgment.

WHEREFORE, Defendant Nature's Grilling moves this Court for the setting of an expedited scheduling conference in this case on a date and time as soon as practicable and convenient for the Court.

(signature on following page)

This 14th day of April, 2011.

Respectfully submitted,

/s/ David L. Pardue

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rules 5.1(b) and 7.1, the undersigned counsel hereby certifies that this pleading was prepared in Times New Roman 14 point.

This 14th day of April, 2011.

Respectfully submitted,

/s/ David L. Pardue

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROYAL OAK ENTERPRISES, LLC, :
:
Plaintiff/Counterclaim-Defendant, :
: CIVIL ACTION
vs. :
: FILE NO. 1:10-CV-02494-JEC
NATURE'S GRILLING :
PRODUCTS, LLC, :
:
Defendant/Counterclaim-Plaintiff. :

CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the foregoing ***EMERGENCY MOTION FOR SCHEDULING CONFERENCE TO AMEND SCHEDULING ORDER*** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

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N. Andrew Crain, Esq.
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This 14th day of April, 2011.

/s/ David L. Pardue
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Exhibit G

AIPLA

**Report of the
Economic Survey**

2009

**Prepared Under Direction of
Law Practice Management Committee**

**American Intellectual Property Law Association
241 18th Street South, Suite 700
Arlington, Virginia 22202
www.aipla.org**

Litigation-Trademark Infringement \$1-\$25M Inclusive, all costs (000s) by Location (Q41d)

	Location														
	Total	Boston CMSA	NYC CMSA	Phila CMSA	Wash, DC CMSA	Other East	Metro South-east	Other South-east	Chicago CMSA	Minne.-St. Paul PMSA	Other Central	Texas	L.A. CMSA	S.F. CMSA	Other West
Number of Respondents	190	10	13	7	16	8	10	14	16	4	36	20	8	6	22
Mean (Average)	\$857	\$737	\$985	\$621	\$853	\$732	\$750	\$916	\$1,299	\$1,075	\$609	\$1,135	\$763	\$1,667	\$575
First Quartile 25%	\$415	\$475	\$500	\$300	\$400	\$189	\$488	\$638	\$563	ISD	\$350	\$525	\$313	\$950	\$176
Median (Midpoint)	\$700	\$615	\$750	\$450	\$725	\$600	\$700	\$788	\$1,000	\$1,225	\$500	\$800	\$550	\$1,350	\$400
Third Quartile 75%	\$1,125	\$925	\$1,500	\$850	\$1,150	\$1,188	\$863	\$1,213	\$2,100	ISD	\$750	\$1,188	\$1,375	\$2,375	\$675

Litigation-Trademark Infringement >\$25M End of Discovery (000s) by Location (Q41e)

	Location														
	Total	Boston CMSA	NYC CMSA	Phila CMSA	Wash, DC CMSA	Other East	Metro South-east	Other South-east	Chicago CMSA	Minne.-St. Paul PMSA	Other Central	Texas	L.A. CMSA	S.F. CMSA	Other West
Number of Respondents	155	11	11	7	14	6	8	11	13	3	26	17	5	6	17
Mean (Average)	\$1,008	\$875	\$1,352	\$971	\$814	\$449	\$869	\$1,009	\$1,267	\$1,250	\$728	\$1,535	\$720	\$1,792	\$775
First Quartile 25%	\$400	\$330	\$725	\$400	\$463	\$82	\$425	\$750	\$438	ISD	\$250	\$625	\$225	\$1,000	\$300
Median (Midpoint)	\$750	\$750	\$1,000	\$850	\$650	\$425	\$750	\$1,000	\$1,250	\$1,000	\$700	\$1,200	\$750	\$1,375	\$450
Third Quartile 75%	\$1,250	\$1,000	\$2,500	\$1,000	\$1,050	\$775	\$875	\$1,100	\$2,000	ISD	\$1,000	\$2,000	\$1,200	\$2,750	\$1,000

Litigation-Trademark Infringement >\$25M Inclusive, all costs (000s) by Location (Q41f)

	Location														
	Total	Boston CMSA	NYC CMSA	Phila CMSA	Wash, DC CMSA	Other East	Metro South-east	Other South-east	Chicago CMSA	Minne.-St. Paul PMSA	Other Central	Texas	L.A. CMSA	S.F. CMSA	Other West
Number of Respondents	153	9	11	7	14	6	8	11	13	3	26	17	5	6	17
Mean (Average)	\$1,746	\$1,131	\$2,386	\$1,414	\$1,489	\$1,029	\$1,638	\$1,618	\$2,265	\$1,933	\$1,341	\$2,471	\$1,260	\$3,125	\$1,514
First Quartile 25%	\$1,000	\$550	\$1,250	\$600	\$663	\$94	\$1,000	\$1,250	\$1,000	ISD	\$538	\$1,125	\$750	\$1,688	\$450
Median (Midpoint)	\$1,400	\$1,000	\$2,000	\$1,000	\$1,350	\$750	\$1,500	\$1,500	\$2,000	\$1,500	\$1,200	\$2,000	\$1,000	\$2,750	\$1,000
Third Quartile 75%	\$2,450	\$1,450	\$4,000	\$1,600	\$2,100	\$2,125	\$1,875	\$2,000	\$3,750	ISD	\$1,563	\$3,500	\$1,900	\$5,000	\$2,050

Total Costs: Litigation-Trademark Opposition/Cancellation by Location

Litigation-Trademark Opposition/Cancellation End of Discovery (000s) by Location (Q42a)

	Location														
	Total	Boston CMSA	NYC CMSA	Phila CMSA	Wash, DC CMSA	Other East	Metro South-east	Other South-east	Chicago CMSA	Minne.- St. Paul PMSA	Other Central	Texas	L.A. CMSA	S.F. CMSA	Other West
Number of Respondents	239	11	20	9	31	19	10	15	15	7	45	18	6	4	29
Mean (Average)	\$64	\$65	\$64	\$67	\$55	\$71	\$53	\$67	\$78	\$60	\$45	\$109	\$71	\$169	\$51
First Quartile 25%	\$20	\$40	\$21	\$20	\$12	\$25	\$25	\$9	\$20	\$25	\$10	\$24	\$18	ISD	\$14
Median (Midpoint)	\$50	\$50	\$50	\$75	\$35	\$50	\$50	\$35	\$60	\$40	\$40	\$50	\$78	\$175	\$25
Third Quartile 75%	\$80	\$100	\$96	\$80	\$100	\$75	\$85	\$80	\$100	\$75	\$75	\$200	\$110	ISD	\$55

Litigation-Trademark Opposition/Cancellation Inclusive, all costs (000s) by Location (Q42b)

	Location														
	Total	Boston CMSA	NYC CMSA	Phila CMSA	Wash, DC CMSA	Other East	Metro South-east	Other South-east	Chicago CMSA	Minne.- St. Paul PMSA	Other Central	Texas	L.A. CMSA	S.F. CMSA	Other West
Number of Respondents	229	11	19	8	26	19	10	14	15	7	45	18	6	4	27
Mean (Average)	\$117	\$128	\$115	\$107	\$93	\$115	\$81	\$101	\$153	\$95	\$80	\$235	\$159	\$306	\$95
First Quartile 25%	\$30	\$63	\$32	\$26	\$17	\$40	\$36	\$18	\$40	\$35	\$18	\$34	\$60	ISD	\$30
Median (Midpoint)	\$80	\$75	\$100	\$113	\$60	\$80	\$75	\$75	\$110	\$70	\$65	\$163	\$108	\$288	\$50
Third Quartile 75%	\$150	\$140	\$165	\$125	\$165	\$150	\$113	\$113	\$200	\$150	\$125	\$425	\$230	ISD	\$100