

ESTTA Tracking number: **ESTTA571107**

Filing date: **11/15/2013**

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

Proceeding	92056545
Party	Plaintiff US Foods, Inc.
Correspondence Address	AMY COHEN HELLER SCHIFF HARDIN LLP 233 S WACKER DRIVE, SUITE 6600 CHICAGO, IL 60606 UNITED STATES trademarks@schiffhardin.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Amy Cohen Heller
Filer's e-mail	trademarks@schiffhardin.com
Signature	/amycohenheller/
Date	11/15/2013
Attachments	Petitioner's Notice of Reliance-Val-U Plus Cancellation.pdf(211954 bytes)

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

US FOODS, INC.,)	In the Matter of
)	Registration No. 1,536,352
Petitioner,)	
v.)	For the Mark: VAL-U PLUS
)	
ORCHIDS PAPER PRODUCTS)	Registered:
COMPANY,)	April 25, 1989
Registrant.)	
)	Cancellation No. 92056545

PETITIONER'S NOTICE OF RELIANCE

Petitioner, by its attorneys, hereby submits this Notice of Reliance. Specifically
Petitioner relies on the following, which are attached herewith:

1. Registrant's Initial Disclosures, dated March 22, 2012 (attached as Exhibit 1 hereto) pursuant to 37 CFR § 2.120(j);
2. Registrant's Answers to Petitioner's First Set of Interrogatories, dated July 29, 2013 (attached as Exhibit 2 hereto) pursuant to 37 CFR § 2.120(j);
3. Registrant's Response to Petitioner's First Set of Requests for Admissions, dated July 29, 2013 (attached as Exhibit 3 hereto) pursuant to 37 CFR § 2.120 (j); and
4. The pleadings in this matter.

Dated this 15th day of November, 2013

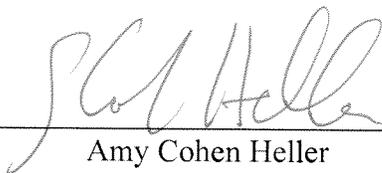
Respectfully submitted,

By  _____

Clay A. Tillack
Amy Cohen Heller
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606
312/258-5500
Attorneys for Petitioner

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Reliance is being electronically filed using the Electronic System for Trademark Trials and Appeals (ESTTA) on this 15th day of November, 2013.



Amy Cohen Heller

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Reliance is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Anthony J. Jorgenson, Hall, Estill, Hardwick, Gable, Golden & Nelson, PC, 100 North Broadway, Chase Tower, Suite 2900, Oklahoma City, OK 73102, on this ____ day of November 2013.

Signature: _____
Amy Cohen Heller

EXHIBIT 1

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

US FOODS, INC.,

Petitioner,

v.

Cancellation No. 92056545

**ORCHIDS PAPER PRODUCTS
COMPANY,**

Registrant.

REGISTRANT'S INITIAL DISCLOSURES

Registrant, Orchids Paper Products Company ("Orchids"), submits its initial disclosures, as required by Fed. R. Civ. P. 26(a) and Trademark Trial and Appeal Board Rule 2.120(a).

A. Name and, if known, the address and telephone number of each person likely to have discoverable information which supports Orchids' defenses:

<u>Name And Address</u>	<u>Subject Of Information</u>
Becky Thomaselli Regional Sales Manager Orchids Paper Products Company c/o Hall Estill 100 N. Broadway Chase Tower, Suite 2900 Oklahoma City, OK 73102 (405) 553-2880	Orchids' use of the VAL-U PLUS mark. Orchids' intent not to abandon the VAL-U PLUS mark. To the extent Orchids has discontinued use of the VAL-U PLUS mark, Orchids' intent to resume use of the VAL-U PLUS mark.

William Keeler
National Sales Director
Orchids Paper Products Company
c/o Hall Estill
100 N. Broadway
Chase Tower, Suite 2900
Oklahoma City, OK 73102
(405) 553-2880

Orchids' use of the VAL-U PLUS mark. Orchids' intent not to abandon the VAL-U PLUS mark. To the extent Orchids has discontinued use of the VAL-U PLUS mark, Orchids' intent to resume use of the VAL-U PLUS mark.

Gary Buchanan
Director of Purchasing
Bargain Barn, Inc.
2924 Lee Highway
Athens, TN 37303
423-746-0746 (x14)

The purchase and retail sales of goods using the VAL-U PLUS mark.

Terri Perian
Bargain Barn, Inc.
2924 Lee Highway
Athens, TN 37303
423-746-0746 (x26)

The purchase and retail sales of goods using the VAL-U PLUS mark.

All witnesses identified by Petitioner
and not objected to by Orchids

All witnesses necessary for rebuttal

All witnesses necessary to
authenticate Orchids' evidence and
documents

Orchids reserves the right to
supplement this witness list to
identify additional witnesses during
the course of litigation

B. A copy or description by category and location of all documents, data compilations and tangible things in the possession, custody or control of the party which are relevant to disputed facts:

The following relevant, unprivileged, non-confidential documents which are currently in Orchids' possession are responsive:

**Exhibit
Number**

Title/Description

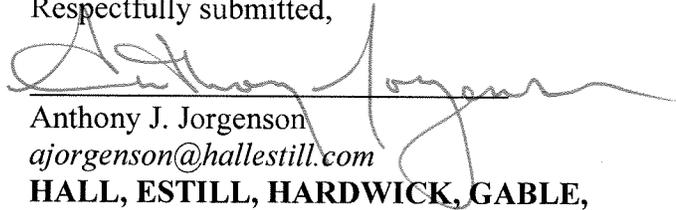
1. The Application and Registration files and file history relating to Registration No. 1536352 for the mark VAL-U PLUS including any and all specimens, drawings, affidavits, and other materials contained therein.
2. The Application and Registration files and file history relating to Registration No. 2045166 for the mark ULTRA VAL-U including any and all specimens, drawings, affidavits, and other materials contained therein.
3. The Application and Registration files and file history relating to Registration No. 2033061 for the mark ULTRA VAL-U including any and all specimens, drawings, affidavits, and other materials contained therein.
4. The Application file and file history relating to Serial No. 85829246 for the mark VAL-U SIZE including any and all specimens, drawings, affidavits, and other materials contained therein.
5. Orchids Invoice No. 272941 dated January 22, 2009
6. Bargain Barn, Inc. Purchase Order No. G01200926
7. Order Entry List dated January 20, 2009
8. Straight Bill of Lading dated January 21, 2009
9. Load Check Procedure Checklist dated January 22, 2009
10. Pick Ticket
11. Payment Records dated February 5, 2009
12. Bargain Barn Sales Report for February 2009
13. Bargain Barn Sales Report for March 2009
14. Bargain Barn Sales Report for April 2009
15. Bargain Barn Sales Report for May 2009
16. Bargain Barn Sales Report for June 2009
17. Exemplars of VAL-U PLUS packaging maintained in Orchids' warehouse to fulfill future orders.
18. All documents submitted in connection with Orchids' anticipated dispositive motion(s)

19. All documents and tangible things identified by Petitioner and not objected to by Orchids
20. All documents and tangible things necessary for rebuttal
21. All documents and tangible things necessary to authenticate Orchids' evidence and documents
22. Orchids reserves the right to supplement this list of documents and tangible things during the course of litigation.

C. Computation of Damages: Not applicable.

D. Insurance agreements: Not applicable.

Respectfully submitted,



Anthony J. Jorgenson

ajorgenson@hallestill.com

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

100 North Broadway

Chase Tower, Suite 2900

Oklahoma City, OK 73102

Telephone: (405) 553-2845

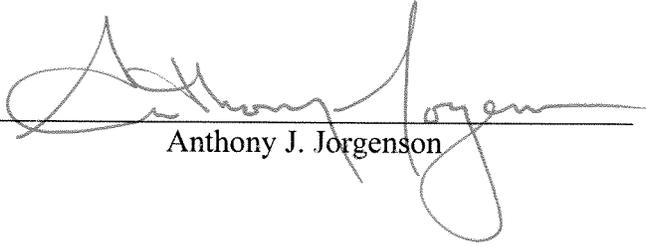
Facsimile: (405) 553-2855

**ATTORNEY FOR REGISTRANT,
ORCHIDS PAPER PRODUCTS
COMPANY**

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 20th day of March, 2012, a true and correct copy of the above and foregoing was mailed via first class mail with proper postage thereon fully paid to:

Amy Cohen Heller
Schiff Hardin, LLP
233 South Wacker Drive
Chicago, IL 60606



Anthony J. Jorgenson

792525.1:630825:00700

EXHIBIT 2

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

US FOODS, INC.,

Petitioner,

v.

Cancellation No. 92056545

**ORCHIDS PAPER PRODUCTS
COMPANY,**

Registrant.

**REGISTRANT'S ANSWERS TO PETITIONER'S FIRST SET OF
INTERROGATORIES**

Registrant, Orchids Paper Products Company ("Registrant"), submits the following Answers to "Petitioner's First Set of Interrogatories."

GENERAL OBJECTIONS AND CONDITIONS TO INTERROGATORIES

1. To the extent that Petitioner's discovery requests attempt in any way to reach privileged communications, work product or materials prepared in anticipation of litigation or trial, Registrant objects to the disclosure of such communications, work product or materials.

2. Registrant objects to the Petitioner's "Definitions and Instructions" to the extent that they conflict with or seek to impose requirements or conditions that exceed the requirements and conditions imposed by the Federal Rules of Civil Procedure. Registrant will respond to the Petitioner's interrogatories in accordance with the applicable procedural rules.

3. Each of the following discovery responses is made without waiving any objections Registrant may have with respect to the subsequent use of these discovery responses or the documents referred to herein. Registrant specifically reserves: (1) all objections as to the competence, relevance, materiality and admissibility of the responses or documents, and all objections as to privilege; (2) the right to object to the use of the discovery responses or documents, in any subsequent suit or proceeding in this action, on any or all of the foregoing grounds or upon any other proper ground; (3) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or related to the responses or documents; and (4) the right, at any time, upon proper showing, to revise, correct or clarify any of the following discovery responses.

4. The following responses are based on information presently available to the Registrant. Discovery in this case is ongoing. Consequently, these responses may not set forth all facts and documentation upon which Registrant may ultimately reply.

5. Any response that the requested documents will be produced is not a representation that such documents exist or are in the possession of Registrant. Documents will only be produced to the extent that they exist and are in Registrant's possession. Copies will be provided at Petitioner's expense.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: Describe the most recent use of Registrant's Mark in commerce in the United States, including the goods on which the Mark was used and the date of such use.

ANSWER TO INTERROGATORY NO. 1: Registrant used its Mark on bath tissue sold to Bargain Barn, Inc. on January 20, 2009. Bargain Barn, Inc., in turn, continued to sell bath tissue bearing Registrant's Mark to consumers until at least June 2009. Thereafter, on July 12, 2013, Registrant received purchase orders from Bargain Barn, Inc. for bath tissue and paper towels bearing Registrant's Mark. Registrant will deliver bath tissue and paper towels bearing Registrant's Mark to Bargain Barn, Inc. on or about December 19, 2013.

INTERROGATORY NO. 2: Identify any communications about use of the Mark since 2009.

ANSWER TO INTERROGATORY NO. 2: Registrant objects to Interrogatory No. 2 on the ground that it seeks to discover communications protected from disclosure by the attorney-client privilege. Registrant further objects to Interrogatory No. 2 on the ground that it is overly broad. However, subject to, and without waving its objections, Registrant states that it has engaged in numerous internal communications regarding the viability of Registrant's Mark and Registrant's intent to continue using the Mark. Registrant also engaged in communications with Bargain Barn, Inc. in 2009 and in 2013 concerning the sale of bath tissue and paper towels bearing Registrant's Mark.

INTERROGATORY NO. 3: Identify all products on which Registrant's Mark has been used since 2009.

ANSWER TO INTERROGATORY NO. 3: Bath tissue and paper towels.

INTERROGATORY NO. 4: For each year since 2009, describe in detail any communication, oral statements, analyses, studies, interviews, or surveys that you have performed or had performed relating to continued use of Registrant's Mark in commerce in the United States.

ANSWER TO INTERROGATORY NO. 4: Registrant objects to Interrogatory No. 4 on the ground that it seeks to discover communications protected from disclosure by the attorney-client privilege. However, subject to, and without waving its objection, Registrant states that it has engaged in numerous internal communications regarding the viability of Registrant's Mark and Registrant's intent to continue using the Mark. Registrant also engaged in communications with Bargain Barn, Inc. in 2009 and in 2013 concerning the sale of bath tissue and paper towels bearing Registrant's Mark.

INTERROGATORY NO. 5: Identify all geographic locations within the United States where goods associated with Registrant's Mark have been sold in commerce since 2009.

ANSWER TO INTERROGATORY NO. 5: Registrant used its Mark on bath tissue sold to Bargain Barn, Inc. on January 20, 2009. The bath tissue bearing Registrant's Mark was shipped to Bargain Barn, Inc. at its facility in Athens, Tennessee. Bargain Barn, Inc., in turn, continued to sell bath tissue bearing Registrant's Mark to consumers until at least June 2009. Bargain Barn, Inc. has retail locations in Tennessee, North Carolina, Kentucky, Alabama, and Georgia. Registrant's Mark will also be used on bath tissue and paper towels sold to Bargain

Barn, Inc. in July 2013 for delivery to Bargain Barn, Inc.'s facility in Athens, Georgia on or about December 19, 2013. Registrant expects that these goods will be sold at Bargain Barn, Inc. retail establishments throughout the Country.

INTERROGATORY NO. 6: Identify all persons to whom goods associated with Registrant's Mark have been sold since 2009.

ANSWER TO INTERROGATORY NO. 6: Registrant is unable to identify all persons, including end-user consumers, to whom goods associated with Registrant's Mark have been sold since 2009. However, Registrant states that it used its Mark on products sold to Bargain Barn, Inc. since 2009.

INTERROGATORY NO. 7: Identify every person that you intend to call to testify in this case, and state the subject matter of their expected testimony.

ANSWER TO INTERROGATORY NO. 7: Please see Registrant's Initial Disclosures which were served on March 20, 2013.

INTERROGATORY NO. 8: Identify every person that you have retained or intend to retain to provide expert testimony in this case, and state the subject matter of their expected testimony.

ANSWER TO INTERROGATORY NO. 8: Registrant has not yet determined whether it will offer expert testimony in this proceeding.

INTERROGATORY NO. 9: If you deny any of the requests in Petitioner's First Set of Requests for Admissions, explain the basis for each such denial.

ANSWER TO INTERROGATORY NO. 9: Registrant objects to Interrogatory No. 9 on the ground that it is over broad and fails to describe the

information sought with reasonable particularity. Registrant further objects to Interrogatory No. 9 on the ground that it is compound. However, subject to, and without waving its objection, please see Registrant's Response to Petitioner's First Set of Requests for Admissions.

INTERROGATORY NO. 10: Explain the basis for your denial of allegations contained in the Answer to the Petition to Cancel, particularly Paragraphs 5, 6 and 7.

ANSWER TO INTERROGATORY NO. 10: Registrant objects to Interrogatory No. 10 on the ground that it is over broad and fails to describe the information sought with reasonable particularity. Registrant further objects to Interrogatory No. 10 on the ground that it is compound. However, subject to, and without waving its objection, Registrant states that it is not familiar with the basis, if any, of Petitioner's claimed "information and belief" as set forth in Paragraphs 5, 6 and 7 of the petition to Cancel. Therefore, Registrant denies those claims. Additionally, Registrant has not abandoned the mark VAL-U PLUS in connection with bathroom tissue and paper towels as alleged in Paragraph 5 of the Petition to Cancel. Registrant has not discontinued use of the mark VAL-U PLUS in connection with bathroom tissue and paper towels, with the intent not to resume such use. Finally, upon information and belief, Registrant has used the mark VAL-U PLUS in connection with bathroom tissue in the three years preceding the commencement of this cancellation proceeding.

INTERROGATORY NO. 11: Identify every person who participated in or was consulted with, in connection with preparing the answers to these Interrogatories.

For each such person identify which individual Interrogatories they participated in or were consulted with in connection with preparing the answers.

ANSWER TO INTERROGATORY NO. 11: Becky Thomaselli participated in, or was consulted with, in connection with preparing the answers to these Interrogatories.

Respectfully submitted,



Anthony J. Jorgenson
ajorgenson@hallestill.com

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

100 North Broadway
Chase Tower, Suite 2900
Oklahoma City, OK 73102
Telephone: (405) 553-2845
Facsimile: (405) 553-2855

**ATTORNEY FOR REGISTRANT,
ORCHIDS PAPER PRODUCTS
COMPANY**

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 29th day of July, 2013, a true and correct copy of the above and foregoing was mailed via first class mail with proper postage thereon fully paid to:

Amy Cohen Heller
Schiff Hardin, LLP
233 South Wacker Drive
Chicago, IL 60606



Anthony J. Jorgenson

EXHIBIT 3

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

US FOODS, INC.,

Petitioner,

v.

Cancellation No. 92056545

**ORCHIDS PAPER PRODUCTS
COMPANY,**

Registrant.

**REGISTRANT'S RESPONSE TO PETITIONER'S FIRST SET OF
REQUESTS FOR ADMISSIONS**

Registrant, Orchids Paper Products Company ("Registrant"), submits the following Responses to "Petitioner's First Set of Requests for Admissions" pursuant to Fed. R. Civ. P. 36(a) and 37 C.F.R. § 2.120(a)(3).

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Registrant made no use of the Mark in commerce in the United States in 2009.

RESPONSE TO ADMISSION NO. 1: Denied. Registrant made use of the Mark in commerce in the United States in 2009.

REQUEST FOR ADMISSION NO. 2: Registrant made no use of the Mark in commerce in the United States in 2010.

RESPONSE TO ADMISSION NO. 2: Registrant has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny Request No. 2.

REQUEST FOR ADMISSION NO. 3: Registrant made no use of the Mark in commerce in the United States in 2011.

RESPONSE TO ADMISSION NO. 3: Registrant has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny Request No. 3.

REQUEST FOR ADMISSION NO. 4: Registrant made no use of the Mark in commerce in the United States in 2012.

RESPONSE TO ADMISSION NO. 4: Registrant has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny Request No. 4.

REQUEST FOR ADMISSION NO. 5: Registrant does not have any evidence to support its intent to use the Mark in commerce in the United States in 2010.

RESPONSE TO ADMISSION NO. 5: Denied. Registrant's witness(es) will testify regarding its intent to use the Mark in commerce in the United States in 2010.

REQUEST FOR ADMISSION NO. 6: Registrant does not have any evidence to support its intent to use the Mark in commerce in the United States in 2011.

RESPONSE TO ADMISSION NO. 6: Denied. Registrant's witness(es) will testify regarding its intent to use the Mark in commerce in the United States in 2011.

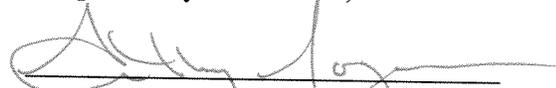
REQUEST FOR ADMISSION NO. 7: Registrant does not have any evidence to support its intent to use the Mark in commerce in the United States in 2012.

RESPONSE TO ADMISSION NO. 7: Denied. Registrant's witness(es) will testify regarding its intent to use the Mark in commerce in the United States in 2012.

REQUEST FOR ADMISSION NO. 8: Registrant does not have any evidence to support its intent to use the Mark in commerce in the United States in the future.

RESPONSE TO ADMISSION NO. 8: Denied. Registrant's witness(es) will testify regarding its intent to use the Mark in commerce in the United States in the future.

Respectfully submitted,



Anthony J. Jorgenson
ajorgenson@hallestill.com

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

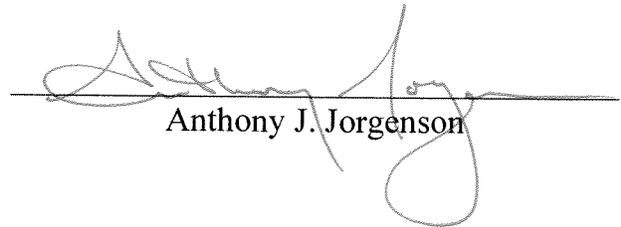
100 North Broadway
Chase Tower, Suite 2900
Oklahoma City, OK 73102
Telephone: (405) 553-2845
Facsimile: (405) 553-2855

**ATTORNEY FOR REGISTRANT,
ORCHIDS PAPER PRODUCTS
COMPANY**

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 29th day of July, 2013, a true and correct copy of the above and foregoing was mailed via first class mail with proper postage thereon fully paid to:

Amy Cohen Heller
Schiff Hardin, LLP
233 South Wacker Drive
Chicago, IL 60606


Anthony J. Jorgenson

C:\NRPortbl\okcim\AJORGENSON\853017_1.docx