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

Proceeding	92057023
Party	Defendant John "Giovanni" Aragona
Correspondence Address	JAMIE N PITTS THE LAW OFFICE OF JAMIE N PITTS 887 West Marietta Street, NWSuite M-105 Atlanta, GA 30318 UNITED STATES jamiempitts@jnplawfirm.com
Submission	Testimony For Defendant
Filer's Name	Jamie Pitts
Filer's e-mail	jamiempitts@jnplawfirm.com
Signature	/Jamie Pitts/
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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 In the matter of Trademark Registration No. 4220686
4 Mark: GIOVANNI'S ALOHA FOODS
5 Registration Date: October 9, 2012

6 In the matter of Trademark Registration No. 4224400
7 Mark: GIOVANNI'S SCAMPI MARINADE
8 Registration Date: October 16, 2012

9 In the matter of Trademark Registration No. 4232569
10 Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
11 Registration Date: October 30, 2012

12 In the matter of Trademark Registration No. 4248595
13 Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
14 Registration Date: November 27, 2012

15 LUCKYU ENTERPRISES, INC.,) CANCELLATION NO.

16 Petitioner,) 92057023

17 vs.)

18 JOHN "GIOVANNI" ARAGONA,)

19 Registrant.)

20 _____)

21 DEPOSITION OF TROY EDWIN NITSCHKE,
22 Taken on behalf of Registrant John "Giovanni" Aragona at
23 the Offices of Ralph Rosenberg Court Reporters, Inc.,
24 2460 American Savings Bank, 1001 Bishop Street,
25 Honolulu, Hawaii 96813, commencing at 12:24 p.m., on
December 3rd, 2014, pursuant to Notice.

BEFORE: PATRICIA ANN CAMPBELL, CSR 108

Certified Shorthand Reporter

State of Hawaii

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APPEARANCES:

For Registrant John "Giovanni" Aragona:

JAMIE N. PITTS, ESQ.
The Law Office of Jamie N. Pitts, Esq.
887 West Marietta Street, Northwest
Unit M 105
Atlanta, Georgia 30318
(941) 893-7751
jamiempitts@jnplawfirm.com

For Petitioner LuckyU Enterprises, Inc.:

JENNIFER FRASER, ESQ.
DANIEL MULLARKEY, ESQ.
Novak Druce Connolly Bove & Quigg LLP
1875 I Street, NW
Eleventh Floor
Washington, DC 20006
202-756-4356
jennifer.fraser@novakdruce.com
daniel.mullarkey@novakdruce.com

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1 TROY EDWIN NITSCHKE,
2 called on behalf of Registrant John "Giovanni" Aragona,
3 was first duly sworn to tell the truth, the whole truth,
4 and nothing but the truth, and testified as follows:

5 MS. FRASER: Counselor, before we get
6 started, I think it would be a good idea to do
7 introductions on the record, and on behalf of Petitioner
8 Luckyu, this is Jennifer Fraser attending with the
9 witness in Hawaii, and co-counsel Dan Mullarkey is
10 attending by telephone in Washington DC.

11 MS. PITTS: All right, and this is Jamie
12 Pitts on behalf of Respondent John Giovanni Aragona, and
13 I am attending from Atlanta on telephone.

14 MS. FRASER: And at this point, I would
15 like to designate the entire transcript trade secret
16 commercially sensitive as I anticipate we will be
17 discussing sensitive business matters.

18 MS. PITTS: All right, are you ready to
19 start?

20 MS. FRASER: Yes.

21 EXAMINATION

22 BY MS. PITTS:

23 Q. Okay, good morning, Mr. Nitsche.

24 A. Good morning.

25 Q. As you know, we are here for your testimony

1 deposition before the Trademark Trial and Appeal Board
2 for the proceeding between you and John Giovanni Aragona
3 regarding the registration of four trademarks. I am
4 going to ask you a series of questions regarding this
5 matter. Please listen to my questions carefully. If
6 you do not understand the questions, please let me know,
7 and I will be happy to rephrase or repeat as necessary.

8 The court reporter is here to take down
9 everything that you say, but she can only transcribe
10 what you say verbally, so if you could please give a
11 verbal answer rather than shake your head or nod, that
12 will help ensure that she takes down your testimony
13 perfectly. If at any point today during the deposition
14 you need to take a break, please let me know, and we can
15 take a break.

16 I would like to remind you that your testimony
17 is under oath, so we request that you answer fully and
18 truthfully. Is there anything to prevent you from
19 testifying truthfully and accurately today?

20 A. No.

21 MS. PITTS: We would like to go ahead and
22 designate the transcript, sorry, we have already done
23 that.

24 Q. (By Ms. Pitts) All right, Mr. Nitsche, please
25 tell us your full name and business address.

1 A. My name is Troy Edwin Nitsche, and my business
2 address is 56-505 Kamehameha Highway, Kahuku, Hawaii
3 96731.

4 Q. Okay, can we take out Exhibit 1 please?

5 (Deposition Exhibit 1 was marked for
6 identification.)

7 Q. (By Ms. Pitts) Exhibit 1 is the amended
8 Petitioner's notice of testimony deposition of Troy
9 Nitsche. Are you appearing here today pursuant to this
10 deposition notice?

11 A. Yes.

12 Q. All right, now, I would like to introduce
13 Exhibit 2.

14 (Deposition Exhibit 2 was marked for
15 identification.)

16 Q. (By Ms. Pitts) Okay, this is the petition for
17 cancellation. Prior to your purchasing or prior to
18 entering into the asset purchase agreement at Appendix A
19 of this exhibit, do you know whether Respondent had
20 already begun using the term Giovanni's Aloha Shrimp?

21 MS. FRASER: Objection, form.

22 A. And does the manner matter? What do you mean
23 when you say he had begun using it?

24 Q. (By Ms. Pitts) In connection with the sale of
25 shrimp at his business.

1 A. Yes, I know he called his business at the time
2 Giovanni's Aloha Shrimp, or at least that's what they
3 referred to it between themselves.

4 Q. Okay, and do you -- what were the
5 What was sold at this business?

6 MS. FRASER: Objection, form.

7 A. It's primarily, primarily plate lunch, plate
8 lunch style lunches.

9 Q. (By Ms. Pitts) Okay, and if you can look at
10 petition paragraph number thirteen? Now, the pictures
11 that are depicted below there, the first one on the
12 left, the sign, was that -- was a similar --

13 MS. PITTS: You know what, I need a break.
14 I need another break. I'm sorry. I got all
15 disorganized during the last deposition. Can I have
16 about five minutes, please?

17 MS. FRASER: Okay.

18 (Recess taken 12:32 p.m. to 12:36 p.m.)

19 MS. PITTS: Okay, thank you. I would like
20 to skip ahead. We discussed the APA during our last
21 deposition. I would like to introduce Deposition
22 Exhibit 4, please.

23 (Deposition Exhibit 4 was marked for
24 identification.)

25 Q. (By Ms. Pitts) All right, Mr. Nitsche, are you

1 familiar with this document?

2 A. I am still looking through it.

3 Q. Take your time.

4 A. Yeah, I believe so.

5 Q. Okay, and can you explain to me what was -- this
6 looks like to me -- what exactly this license agreement
7 was meant to do?

8 MS. FRASER: Objection, form, calls for a
9 legal conclusion.

10 MS. PITTS: I will rephrase.

11 Q. (By Ms. Pitts) What is your belief, why was
12 this document necessary?

13 MS. FRASER: Objection, form, foundation,
14 calls for a legal conclusion.

15 Q. (By Ms. Pitts) Just an opinion.

16 A. Yeah, I'm still -- I'm still going over it. I
17 haven't -- I haven't looked over it, I haven't seen this
18 in a while, really looked through it.

19 This is our -- this is our lease, basically, our
20 lease agreement with the management company that was
21 responsible for the property in Kahuku that we leased to
22 put the business -- to run the business on, to operate
23 the business on. This is our agreement with Kahuku
24 Village Association that is basically -- without going
25 through the whole thing, I think it's basically so we

1 can be -- Nitsche Enterprises could be put on the lease
2 or could continue or have a lease in place with KVA so
3 we that could operate Giovanni's Aloha Shrimp after,
4 after the purchase.

5 Q. All right, if you can look at the first
6 paragraph, the parties to the agreement were Kahuku
7 Village Association, which I believe is the landowner,
8 correct?

9 MS. FRASER: Objection, form.

10 A. Management company for the landowner.

11 Q. (By Ms. Pitts) Okay, and John Aragona and
12 Nitsche Enterprises dba Giovanni's Aloha Shrimp, can you
13 explain why John Aragona was still included in this
14 document after the asset purchase agreement was signed?

15 MS. FRASER: Objection foundation, calls
16 for a legal conclusion.

17 A. I believe if I remember correctly, I mean, I
18 believe the reason was because KVA didn't know me. They
19 didn't know me from Adam. They had an ongoing
20 relationship with John for a few years. I would imagine
21 that he paid his rent on -- you know, paid his rent on
22 time, and KVA didn't know if -- if they wanted to let go
23 of the lease, or they wanted to keep John -- they wanted
24 to keep someone that they knew on the hook, basically,
25 is what that was for, I think.

1 Q. All right, so if you can turn back to Exhibit
2 Number 2, and look at the asset purchase agreement
3 again?

4 A. Okay.

5 Q. Sorry about all the documents.

6 A. No, I'm used to it.

7 Q. You should see I have them laid out in a circle
8 all around me right now.

9 Okay, so page two of the asset purchase
10 agreement, section one is entitled asset purchase and
11 assignment of lease.

12 A. I'm sorry? Oh, paragraph one, I'm sorry.

13 Q. Yes, page two, paragraph one.

14 A. Got it.

15 Q. Okay, can you explain to me what you think --

16 Okay, assignment of the lease that's mentioned
17 in this paragraph, did you ever complete that?

18 MS. FRASER: Objection, form.

19 Q. (By Ms. Pitts) Was the lease ever assigned, to
20 your knowledge?

21 MS. FRASER: Objection, legal conclusion?

22 A. Yeah, I'm a little fuzzy on the actual legal,
23 the legal terms, but I mean, I was put on the lease, I
24 did pay rent to KVA, and so in that sense, I mean, we
25 did -- I did have a valid lease with KVA, and that's

1 kind of what -- what we were going for there. I didn't
2 want to buy a business and then suddenly have nowhere
3 to, you know, locate it. I wanted to make sure that the
4 lease that KVA had with John and Connie, you know, that
5 we would -- I could transfer that or I could assume that
6 lease and maintain that location as -- for the business.

7 Q. Okay.

8 A. So to my knowledge, yeah, that happened.

9 Q. Okay. So that paragraph, in your opinion, that
10 paragraph of the asset purchase agreement is why it is
11 -- how is it connected to the license agreement at
12 Exhibit 4?

13 MS. FRASER: Objection, form, legal
14 conclusion.

15 A. I think so.

16 Q. (By Ms. Pitts) Okay. Did you and John try to
17 get KVA to do a full transfer of the lease over to just
18 your name?

19 A. If I remember correctly, we asked about it in
20 the beginning, but sometimes lease holders don't like to
21 -- you know, they weren't -- they weren't amenable to
22 giving up, you know, someone that they had a
23 relationship with already, I guess. They weren't ready
24 to bet on a completely unknown entity, so it was like
25 maybe they wanted to give it a little trial period.

1 Q. So he required John Aragona to stay on the same
2 lease agreement?

3 MS. FRASER: Objection, form, foundation.

4 A. I believe KVA did initially, yes.

5 Q. (By Ms. Pitts) Okay.

6 A. Or they just didn't want to take him off.

7 Q. Okay.

8 A. Because they -- you know, they didn't know my,
9 you know, credit, I guess, or, you know, what they were
10 -- they didn't know me.

11 Q. All right, and then if we could turn to Exhibit
12 Number 2?

13 MS. FRASER: Counselor, are you referring
14 to the petition for cancellation?

15 MS. PITTS: I'm sorry, 3, the amendment to
16 the asset purchase agreement.

17 MS. FRASER: So we will need to mark that
18 one.

19 (Deposition Exhibit 3 was marked for
20 identification.)

21 Q. (By Ms. Pitts) Okay, so this is the first
22 amendment of the asset purchase agreement dated November
23 7th, 1997, and, Troy, are you familiar with this
24 document?

25 A. Only as a -- only recently during these

1 proceedings have I seen this document, do I remember
2 seeing this document.

3 Q. Okay. Can you look at the second paragraph
4 under witnesses where it says whereas seller and buyer
5 lessee agree to amend the agreement to change seller's
6 contingency as designated under paragraph three A,
7 stating in pertinent part that seller's leases must be
8 assigned to buyer.

9 A. I'm sorry, what paragraph was that? Landlord's
10 consent?

11 Q. Look at the second whereas.

12 A. Okay.

13 Q. And then the sentence that follows that, seller
14 and buyer lessee agree to amend.

15 A. Okay.

16 Q. What is your understanding, can you explain your
17 understanding of this paragraph?

18 MS. FRASER: Objection, form, legal
19 conclusion.

20 A. I don't know where this document came from or
21 who drew it up or really anything about it. I can read
22 to you what it says if you like. I don't know what I am
23 supposed to . . .

24 Q. (By Ms. Pitts) All right.

25 A. I don't know where this document came from is

1 what I am saying.

2 Q. Okay. Is it possible that this document was
3 necessary because of the landlord not agreeing to assign
4 the lease over to you --

5 MS. FRASER: Objection.

6 Q. (By Ms. Pitts) -- as required by the asset
7 purchase agreement?

8 MS. FRASER: Sorry. Objection, form, calls
9 for speculation, foundation.

10 A. Yeah, I don't know.

11 Q. (By Ms. Pitts) Okay, if we can turn to Exhibit
12 6 now?

13 (Deposition Exhibit 6 was marked for
14 identification.)

15 Q. (By Ms. Pitts) Mr. Nitsche, was it your
16 understanding that the effect of the asset purchase
17 agreement was to transfer to you the rent of the
18 business known as Giovanni's Aloha Shrimp?

19 MS. FRASER: Objection, form, legal
20 conclusion.

21 A. Yes.

22 Q. (By Ms. Pitts) Okay, and that agreement, when
23 was the asset purchase agreement executed?

24 A. Let me check the exact date, I guess. 11-24-97.

25 Q. Okay, and if you look back at Exhibit 6 now,

1 articles of organization for a limited liability
2 company, have you ever seen this document?

3 A. No.

4 Q. Okay. Were you aware of this document?

5 A. No.

6 MS. FRASER: Objection, form.

7 Q. (By Ms. Pitts) Okay, do you have any idea why
8 another company named Giovanni's Aloha Shrimp, LLC,
9 would have been formed in 1998 and with the owners
10 listed as John Aragona and James Goodrich?

11 MS. FRASER: Objection, form, foundation.

12 A. Well, I would speculate that this was the
13 precursor to Giovanni's Aloha Foods, and that this was
14 the entity that they wanted to form to handle the
15 bottling of the sauces. Like I say, that's strictly
16 speculation. I believe -- well, I can't say for any
17 certainty, but, you know, based on the members of the
18 company, I would say that this -- that this entity at
19 some point would have been changed to Giovanni's Aloha
20 Foods, but I don't know that for sure. I have never
21 seen this document before, and like I said, I am unaware
22 of it.

23 Q. (By Ms. Pitts) Okay. So does your Exhibit 6
24 have two pages or four?

25 A. Mine has two.

1 Q. Okay, it is missing the second, the second page.
2 I will come back to that after the next break and fax it
3 over, and we will mark it as 6 A, and that will be the
4 Giovanni's Aloha Foods, LLC, articles of organization
5 that was filed on the same day. I'm sorry about that.
6 I don't know how it wasn't included in the documents
7 that I sent over this morning. Sorry.

8 So if we can go back to Number 5, Exhibit 5?

9 (Deposition Exhibit 5 was marked for
10 identification.)

11 Q. (By Ms. Pitts) Okay, and are you familiar with
12 this document?

13 MS. FRASER: Objection, form.

14 A. It looks to be the LLC member agreement for
15 Giovanni's Aloha Foods.

16 Q. (By Ms. Pitts) Okay, and at the point that you
17 entered into this business, was it an ongoing business
18 operation?

19 MS. FRASER: Objection, form.

20 A. I'm sorry, what did you mean, what do you mean
21 by ongoing? We continued it after --

22 Q. (By Ms. Pitts) The Giovanni's Aloha Foods --

23 A. Yes.

24 Q. -- business operations, what sort of business
25 operation was it at that point when you entered into

1 this limited liability company member agreement?

2 A. If I remember, I think it -- I don't even think
3 we had a real business address at this point. I mean,
4 we weren't even really doing business anywhere at this
5 point. If I recollect correctly, John and Connie were
6 still making the sauces out of their home, and they
7 needed the additional capital to rent out a space and
8 buy equipment and start it, you know, as an actual
9 professional business, and I think this was the
10 beginning of that. I think after we signed this
11 agreement and I came on as a partner, that's when we
12 went to, you know, buy the -- get the warehouse space
13 and purchase the equipment and try to automatic the
14 sauce making business.

15 Q. All right, when you entered into the agreement,
16 was the business already using the name Giovanni's Aloha
17 Foods?

18 MS. FRASER: Objection, form.

19 A. You know, I'm really not sure.

20 Q. (By Ms. Pitts) Okay, what was the business
21 selling at that point before you entered into this
22 agreement?

23 A. I mean, I know what they were selling to me. I
24 know that they were selling, you know, the gallons of
25 Giovanni's scampi sauce, what we referred to as

1 Giovanni's scampi sauce, the sauce that we used to
2 marinate the shrimp at the truck. Also, the hot and
3 spicy, I believe.

4 Q. And do you know if they were selling to any
5 other people besides yourself?

6 A. I don't know.

7 Q. What made you decide to invest in this company?

8 A. Couple things. One was we needed a better
9 production method for the sauce so I would, you know,
10 have a more reliable source for sauces, and also I
11 thought it would be a -- I thought it would be a
12 profitable venture. I thought we could bottle the
13 sauces and sell them, sell them at the truck, sell them
14 over the Internet, sell them at supermarkets, sell them
15 all over.

16 Q. All right. What was your role at this company
17 after entering into the agreement?

18 A. Well, we did a little bit of everything. I
19 mean, mostly, I provided the capital up front, but, you
20 know, it was -- I was down there a lot, everything from
21 setting up the warehouse or helping, you know, helping
22 to set up the warehouse and the production line, the
23 equipment, trying to get the equipment to work.
24 Computer, computer related, internet related things as
25 far as setting up, helping set up the web site and our

1 ordering system, and I kind of -- I wasn't just a silent
2 -- you know, I wasn't just a silent partner. We were
3 all pretty hands on in the beginning.

4 Q. Okay. Was there ever any discussion about using
5 any other trade names or names of sauces other than the
6 ones that were already Giovanni's Scampi Marinade and
7 Giovanni's original hot sauce?

8 MS. FRASER: Objection, form.

9 MS. PITTS: Sorry, let me rephrase.

10 Q. (By Ms. Pitts) Did the members of this LLC ever
11 have any discussions related to brands outside --

12 MS. FRASER: Did -- sorry.

13 Q. (By Ms. Pitts) -- to any brands, to any brand
14 name for any product other than the ones that were
15 already in use when you entered into the company?

16 MS. FRASER: Objection, form.

17 A. I'm not sure if it was after John left the
18 bottling company, but, I mean, we did have other people
19 approach us wanting us to bottle their sauces, like we
20 were a co-packing company, which, you know, honestly, we
21 really didn't know what we were doing as far as that
22 goes, but we tried, and we did have -- someone wanted us
23 to bottle their lilikoi, their lilikoi jam and other
24 lilikoi products.

25 Q. (By Ms. Pitts) How do you spell that?

1 A. Lilikoi, L I L I K O I, I believe. I don't
2 know, I don't remember what the name of their -- what
3 their company was or what their organization was, and we
4 never ended up doing it because we didn't -- we didn't
5 know how. But, yeah, I mean, we did have visions of
6 bottling, you know, other people's products.

7 Q. Okay. Who were the distributors that you were
8 working with?

9 A. Oh, boy. I think one of them was called Snacks
10 and something. Snacks and Things I think was one of
11 them, if I'm not mistaken. We worked with a few, you
12 know, different supermarkets. I don't remember. Like
13 Times I think was one. I know we were in the military
14 PX's for a time.

15 Q. All right, and let's see. Have you ever heard
16 of Family Foods.

17 A. Family Foods? Might ring a bell, yeah, yeah,
18 that sounds familiar.

19 Q. Family Foods Hawaii?

20 A. Yes, could be.

21 Q. Or just Family Foods International is another
22 name they go by.

23 A. Yes, the name sounds familiar.

24 Q. Do you remember them ever approaching you for
25 any sort of contractual relationship?

1 A. Not specifically, I don't remember exactly
2 offhand.

3 Q. All right, if we could turn to Exhibit 8,
4 please?

5 (Deposition Exhibit 8 was marked for
6 identification.)

7 Q. (By Ms. Pitts) I'm sorry. Earlier when I said
8 there two pages were missing from Exhibit 6, it is
9 actually Exhibit 7, but I will come back to that in a
10 minute.

11 Okay, do the photos in Exhibit 8 look familiar
12 to you?

13 MS. FRASER: Objection, form.

14 A. Actually, no, I don't remember this label being
15 on the -- I mean, I see it's a bottle. I see where it
16 says it's a bottle of Giovanni's Hot and Spicy Sauce or,
17 yeah, just looks like Hot and Spicy, but I don't
18 remember Giovanni's Aloha Foods ever using this, this
19 label.

20 Q. (By Ms. Pitts) Okay.

21 A. So, yeah, I guess the answer would be, no, it
22 doesn't really look familiar.

23 Q. Okay, do you see on the bottom of the first
24 picture the date that's marked there?

25 A. It says '98.

1 Q. Right, 5-9-98, so this was prior to the time of
2 the limited liability company agreement. All right, so
3 the second photo, it's an internet archive Way Back
4 Machine screen shot that's saved. This came from the
5 Giovanni's Sauces dot com, and it was the way the web
6 site looked on June 10th, 2002. Do you remember selling
7 hot sauces through this web site?

8 MS. FRASER: Objection, form.

9 A. I don't, no.

10 Q. (By Ms. Pitts) Okay. So how were the bottled
11 sauces sold?

12 A. When?

13 Q. Through the company after you entered into the
14 company agreement and throughout your --

15 When you first started working with this
16 company, Giovanni's Aloha Foods, how were the sauces
17 being sold?

18 MS. FRASER: Objection, form.

19 A. Over my time there, we sold the sauces at the
20 shrimp truck, we sold them in supermarkets, we sold them
21 on the Internet.

22 Q. (By Ms. Pitts) And your sales on the Internet,
23 what was or what domain name was used for Internet
24 sales?

25 A. Oh, I honestly don't remember. I don't -- I

1 don't look at this and think that this was our main -- I
2 don't even -- I don't -- this -- honestly, I think you
3 said this was June 10th, 2002, am I reading that right?

4 Q. Well, which is one of the dates that it was
5 archived, but it starts back to 1999. If we can
6 introduce Exhibit Number 12?

7 (Deposition Exhibit 12 was marked for
8 identification.)

9 Q. (By Ms. Pitts) Okay, so this exhibit is a
10 series of --

11 MS. FRASER: Counselor, have these
12 documents been produced in connection with this case?

13 MS. PITTS: Yes, they have.

14 MS. FRASER: Exhibits 8 and 12?

15 MS. PITTS: Yes, ma'am.

16 MS. FRASER: I do not see any document
17 numbers on them.

18 MS. PITTS: I know you don't.

19 MS. FRASER: Do you know the document
20 numbers?

21 MS. PITTS: Off the top of my head, no, but
22 I can provide them to you.

23 MS. FRASER: Okay, thank you.

24 Q. (By Ms. Pitts) All right, so Exhibit 12, this
25 is a screen shot from the way Giovanni's Sauces dot com

1 has looked throughout history. Does the first page look
2 familiar to you at all?

3 MS. FRASER: Objection, form, foundation.

4 A. You know, I wasn't responsible for the web site
5 design itself. Mostly, I just looked on the ordering
6 sheets that came in, so I guess the answer would be, no,
7 not really, I mean, I don't -- I don't specifically
8 remember this as being our web site.

9 Q. (By Ms. Pitts) Okay, so you never have been,
10 during the time frame of, you know, 1999 or so to 2001,
11 you never visited Gio Sauces dot com?

12 MS. FRASER: Objection, form.

13 A. I don't -- I don't -- I don't think so. I would
14 just go down to the bottling company and pull up the --
15 you know, I think the term was miwa or something like
16 that, but it was just an ordering, you know, to track
17 the orders that were coming in so we could arrange for
18 shipping and everything, but I didn't -- I never went on
19 the home page or anything like that.

20 Q. (By Ms. Pitts) Okay. All right, if you could
21 just look through the pages there to see if anything
22 rings a bell?

23 A. What was I looking for?

24 Q. If anything had looked familiar to you.
25 Specifically --

1 MS. FRASER: Objection, form.

2 Q. (By Ms. Pitts) Specifically, the pictures, the
3 pictures of the products that were being sold on the web
4 site, those start on page, the pages are not numbered
5 right, but the first page is one of two. At the bottom
6 it would be 9-15-2004, 3:30 p.m.

7 MS. FRASER: I'm sorry, Counselor. What's
8 the question?

9 Q. (By Ms. Pitts) The question is the top picture
10 on that page, have you ever come into contact with a
11 bottle at the bottling plant of hot sauce that looks
12 like the one in the picture?

13 MS. FRASER: Objection, form.

14 A. I guess the short answer to that is I'm not
15 sure. It's not the label that I -- when I -- when I
16 think of the label, I think of the label that we did
17 that was blue with the gold, gold ribbon on it. This
18 may have been a previous label that we used, but it's
19 one that hasn't -- it hasn't stuck in my memory.

20 Q. (By Ms. Pitts) Right, I know what label you are
21 referring to. Okay, and what about the bottom picture
22 there of the scampi sauce, have you ever seen --

23 A. Same thing, really. I mean, I know we went
24 through a phase it had a white label on it. I remember
25 it as having a different design. I actually remember it

1 as having the -- if you flip to the next page, you see
2 the T-shirt design? On the T-shirt design, there's one
3 on the top? I actually remember the bottle as having --
4 having that design on the label, but I -- I could be
5 wrong. It was a while ago.

6 Q. Okay. All right, and if you flip to the next
7 page?

8 A. Yes.

9 Q. The bottom picture, the Giovanni's shirt?

10 A. Right.

11 Q. Are you familiar with these T-shirts?

12 A. Yeah.

13 MS. FRASER: Objection, form.

14 A. We designed, you know, we designed that logo.
15 That was the -- that was the logo for -- that I came up
16 with for the truck, and we decided to go ahead and sell
17 them on the web site as well, it seems.

18 Q. (By Ms. Pitts) Okay, so where were the shirts
19 being sold?

20 A. The shirts were being sold at -- at the shrimp
21 truck, shirts were being sold over the internet, and I
22 think that's about it.

23 Q. Okay. When you say these things were being sold
24 over the internet, was there any other web site that you
25 know of where these products were being sold on line?

1 A. I don't specifically recall.

2 Q. Okay, you said you are familiar with the sales,
3 the back end, the sales reports that were coming in
4 through the web site. The last page of the exhibit, it
5 lists prices for the product by product.

6 A. Okay, I see that.

7 Q. Are these accurate with what you recall --

8 MS. FRASER: Objection.

9 Q. (By Ms. Pitts) -- the prices --

10 MS. FRASER: Sorry.

11 (The pending question was read back by the
12 court reporter as follows:

13 Question: Are these accurate with what you
14 recall the prices --)

15 Q. (By Ms. Pitts) The products being sold for, the
16 prices?

17 MS. FRASER: Objection, form.

18 A. It could be. There -- there -- we had different
19 size bottles at different times. I believe we sold one,
20 the larger bottles for a different price. I don't -- I
21 don't --

22 Q. (By Ms. Pitts) Okay.

23 A. I don't specifically remember the Scampi
24 Marinade eight ounce bottles being sold for only five
25 dollars, but it could be.

1 Q. Okay. If you turn to the third page of this
2 exhibit and look at the comments that are on that page,
3 please? Have you ever seen these comments --

4 MS. FRASER: Objection, form.

5 Q. (By Ms. Pitts) -- prior to right now?

6 A. Not that I -- not -- I don't remember any of
7 these specifically, no.

8 Q. All right, can you see at the top of this page,
9 you see a picture of the shrimp truck?

10 A. Right.

11 Q. Did you have any issue with the bottling company
12 using photos like this one of the truck?

13 MS. FRASER: Objection, form.

14 A. I didn't -- I didn't make the decision to use
15 this photo, but I guess, yeah, I never -- I never
16 objected, I never objected to it. I can't say -- it's
17 hard for me to say because I don't -- I don't -- I don't
18 have a real good recollection of this, this web page.
19 Are you saying this was the -- this was the web page to
20 Gio Sauces?

21 Q. (By Ms. Pitts) Yes.

22 A. Okay.

23 Q. This was the way that it looked back from 1998
24 up until 2007.

25 A. Yes, well, this was --

1 MS. FRASER: Objection, foundation.

2 A. Yeah, I mean, this is -- this is -- this is the
3 way the shrimp truck looked when John -- when -- when I
4 bought it, so John could have very well still owned the
5 shrimp truck at the point that this picture was taken,
6 so if he wanted to put it on there, that was up to him.

7 Q. (By Ms. Pitts) Okay, all right, so did you
8 continue operations of this bottling business --

9 What date did you continue operations of the
10 business through?

11 A. When did the business end, or when did the
12 bottling company close?

13 Q. What was the last approximate date that it was
14 in full operation?

15 A. Oh, I don't know specifically, but I want to say
16 --

17 Q. Approximately.

18 A. Yeah, I want to say ballpark, it was probably
19 around sometime in 2004 when we stopped operation of the
20 bottling company.

21 Q. Okay, and from 2001 to 2004, you were still
22 selling sauces on line? Were you still selling sauces
23 on line?

24 MS. FRASER: Objection, form.

25 A. Yes, yes, we were still selling sauces on line.

1 Q. (By Ms. Pitts) Okay, and what was your role in
2 those sales?

3 A. A little less at that point. I was -- we had
4 brought George after -- after John and Connie left, we
5 brought George in to do the daily operations and
6 management, and he was a little more computer savvy than
7 I was, so he mostly -- mostly took over the, you know,
8 management operation of it at that point.

9 Q. Okay, George, what's his last name?

10 A. A M O R I M.

11 MS. PITTS: Counsel, did you include him on
12 your list of people with knowledge in the pretrial
13 disclosures or in the initial disclosures?

14 MS. FRASER: I'm sorry, Counsel, what are
15 you asking?

16 MS. PITTS: Was this person George included
17 in your initial disclosures as somebody who may have
18 personal knowledge as to the facts in the case?

19 MS. FRASER: I don't think he has been set
20 forth as someone with the most knowledge on certain
21 issues.

22 MS. PITTS: Okay. Has his name ever come
23 up before?

24 MS. FRASER: Yes, it has.

25 MS. PITTS: Okay.

1 MS. FRASER: We are not relying on his
2 testimony, so.

3 MS. PITTS: Okay, you know, if he was the
4 main one conducting the business at the very end, I may
5 need to speak to him, and I wasn't aware of his
6 existence until just now.

7 MS. FRASER: His name came up in the
8 previous deposition.

9 MS. PITTS: Okay, all right.

10 MS. FRASER: And I think your client might
11 know if that were the case too.

12 MS. PITTS: I didn't know the relevance of
13 this particular person's testimony until just now. If
14 he was the one that was primarily in charge of running
15 the business, and Troy can not answer, Mr. Nitsche can
16 not answer some of these questions, we may need to
17 depose him as well.

18 MS. FRASER: Counselor, you did not conduct
19 any discovery depositions of our side. That was a
20 strategic decision you made. I don't think we need to
21 get into this right now.

22 MS. PITTS: Does that preclude a
23 testimonial deposition of someone that I just learned
24 about?

25 MS. FRASER: I think we can discuss that

1 off line.

2 MS. PITTS: Okay.

3 MS. FRASER: But I don't think you have a
4 lot of time left in your testimony period.

5 MS. PITTS: Okay.

6 Q. (By Ms. Pitts) Okay, so on and upward, so while
7 George was operating the business, what, if any, goals
8 did you maintain during that time frame?

9 A. I'm sorry, what did we maintain?

10 Q. What roles did you maintain in terms of
11 operating the business during that time?

12 MS. FRASER: Objection, form.

13 A. Oh, we would -- we mostly talked about where we
14 wanted it to go, what we were trying to do with it. We
15 -- I was trying to get it into new markets. You know,
16 since John was primarily responsible for sales, after he
17 left, you know, we would have to talk to different
18 supermarkets, talk to different chains, talk to
19 different, you know, mediums of distribution and trying
20 to -- we were just trying to drum up sales, trying to
21 drum up business.

22 Q. (By Ms. Pitts) Okay, if we can look at, let's
23 see, Exhibit Number 13.

24 (Deposition Exhibit 13 was marked for
25 identification.)

1 Q. (By Ms. Pitts) This is a saved screen shot of
2 the Family Foods web site as it appeared February 5th,
3 2005. Troy, I'm sorry, Mr. Nitsche, do you recognize
4 this web site at all?

5 MS. FRASER: Objection, form, foundation.

6 A. Not really, no.

7 Q. (By Ms. Pitts) Okay, do you see a mention of
8 any of your businesses or products on this web page?

9 A. I see Giovanni's Sauce here, written here.

10 Q. Okay, so did you ever give permission to this
11 company to link to your web site --

12 MS. FRASER: Objection.

13 Q. (By Ms. Pitts) -- Gio Sauces dot com?

14 MS. FRASER: Objection, form, legal
15 conclusion.

16 A. I -- this looks like something George would do.

17 Q. (By Ms. Pitts) Okay. Do you know whether or
18 not this company was ever selling your sauces?

19 A. I -- no. I mean, until, you know, until you --
20 if you tell me this and show it to me and say that they
21 were selling it, I'll say, okay, well, I guess George,
22 you know, sells them, but I have no personal knowledge
23 of, you know, working -- working with them.

24 Q. Okay, and I'm sorry, refresh my memory how you
25 answered this question: Are you familiar with Family

1 Foods Hawaii?

2 A. The name --

3 Q. Family Food Co?

4 A. Yes, I mean, the name sounds familiar, but I
5 didn't have a real close working relationship with them,
6 so I -- I -- the --

7 Q. Have you ever visited any of their stores?

8 A. I didn't even know they had -- I didn't know
9 they had stores.

10 Q. Okay, all right. During the time frame that the
11 bottling company was in operation, were you aware of any
12 third party infringements of any of Giovanni's Aloha
13 Foods?

14 MS. FRASER: Objection, form, legal
15 conclusion.

16 MS. PITTS: I will rephrase.

17 Q. (By Ms. Pitts) Were you aware of any third
18 parties that were using the name Giovanni's's Aloha
19 Foods?

20 A. Not to my knowledge, no.

21 Q. Okay. Are you aware of any incidences where the
22 recipes to these sauces were disclosed to anyone not
23 working in the company?

24 MS. FRASER: Objection, form.

25 A. No.

1 Q. (By Ms. Pitts) Okay, were you aware of any
2 knock offs --

3 A. Oh, yeah.

4 Q. -- of your sauces?

5 A. Yeah, currently, I am. I mean, yeah, yeah.
6 Well, going -- I mean, going back to the last question
7 -- well, okay, do we want to go back or do I just --

8 Q. That's fine.

9 A. As far as the disclosing of the recipes go, the
10 only thing that I can think of is at some point George
11 may -- we were trying to automate the sauces or, you
12 know, figure out a way to increase production, so when
13 you go to a co-packer, or you go to someone who you want
14 to make the sauces for you, you know, obviously, you
15 have to tell them what they are going to be putting in
16 it, so, you know, that may have happened. I don't have
17 -- I don't have, you know, direct knowledge of it, but
18 that might be a possibility.

19 Q. Did anything happen to give you a feeling that
20 it might be going on?

21 MS. FRASER: Objection, form.

22 Q. (By Ms. Pitts) Do you have any reason to
23 believe that this could have been a possibility?

24 A. I don't know who -- I don't know with -- I don't
25 know with who.

1 Q. Okay.

2 A. The possibility -- sorry.

3 Q. Are you familiar with any knock off products
4 similar to the Giovanni's Scampi Marinade?

5 A. I mean, I know --

6 MS. FRASER: Objection, form.

7 A. I know there's something in stores now called
8 North Shore, you know, something something North Shore
9 Scampi Sauce, and I know it's got the same -- the same
10 label as, you know, or pretty close to the same label as
11 we used.

12 I know there was a company, and I don't remember
13 the name of the company, I don't remember who it was,
14 but I know there was a person that approached us at some
15 point and said, hey, we want to -- you know, we want to
16 try to bottle your sauces, or we want to try to do this
17 for you, and I know at the time, we said, well, we are
18 not doing that anymore because the bottling company had
19 already shut down by that point. And they said -- we
20 just didn't contact them back, and I guess they thought
21 to themselves, well, we will make up our own, you know,
22 copycat product.

23 Q. Right.

24 A. So that's --

25 Q. Do you remember the name of that company?

1 A. No, I -- no, I don't. That's why I am saying I
2 don't know -- I don't know -- offhand, I don't know who
3 they were.

4 Q. And the North Shore Scampi Sauce, who sells
5 that?

6 A. Yeah, I don't -- that's what I'm saying, I don't
7 really even know.

8 Q. Okay, all right. With either of these, with the
9 knock off North Shore Scampi Sauce, have you ever tried
10 to get them to stop intimidating, or not intimidating,
11 have you ever tried to get them to stop doing what they
12 are doing in terms of selling a similar product?

13 A. No.

14 Q. Okay.

15 MS. FRASER: Counselor, are we getting
16 close to a good breaking point soon?

17 MS. PITTS: Yes. I just wanted to go back
18 to Exhibit 6 now that I know you guys have Exhibit 7
19 too. If you could look at both of those exhibits
20 together, and we need to introduce Number 7.

21 (Deposition Exhibit 7 was marked for
22 identification.)

23 Q. (By Ms. Pitts) Okay, so if you could, Troy, I
24 know you said that you weren't familiar with Number 6,
25 Giovanni's Aloha Shrimp, LLC, being formed, look at

1 Number 7 now, and Number 7 is Giovanni's Aloha Foods,
2 LLC, which was formed on the same date. Were you
3 familiar with this limited liability company articles of
4 organization of Giovanni's Aloha Foods, LLC, being
5 formed?

6 MS. FRASER: Objection, form, foundation.

7 A. What was the question?

8 Q. (By Ms. Pitts) Have you ever seen this
9 document, Number 7?

10 A. No.

11 Q. Okay. Weren't you aware that you were on the
12 board of a company named Giovanni's Aloha Foods, LLC?

13 MS. FRASER: Objection, form.

14 A. Yeah, I mean, I know I was a member of
15 Giovanni's Aloha Foods, LLC.

16 Q. (By Ms. Pitts) Okay. Did James Goodrich, who
17 is listed as the organizer of both, ever discuss forming
18 these companies with you?

19 MS. FRASER: Objection, form.

20 A. Not -- not at the -- not at the time -- not as
21 of the date that these are dated, no.

22 Q. (By Ms. Pitts) Okay. When did he discuss
23 these, when did he first discuss Giovanni's Aloha
24 Shrimp, LLC?

25 A. I have never -- I have never -- we have never

1 discussed that.

2 Q. Okay, all right, and when did he discuss
3 Giovanni's Aloha Foods, LLC?

4 MS. FRASER: Objection, form.

5 A. I imagine that it was when they approached me to
6 become a part of it.

7 Q. (By Ms. Pitts) And did you have any idea of the
8 existence of the other LLC, Giovanni's Aloha Shrimp,
9 LLC?

10 A. No.

11 Q. If you had been told about the existence of
12 Giovanni's Aloha Shrimp, LLC, owned by John Aragona and
13 James Goodrich, would you have had a problem with that?

14 MS. FRASER: Objection, form.

15 MS. PITTS: I will rephrase.

16 Q. (By Ms. Pitts) Do you have a problem with the
17 fact that a company named Giovanni's Aloha Shrimp was
18 formed after you purchased Giovanni's Aloha Shrimp from
19 the Aragonas?

20 MS. FRASER: Objection, form, calls for a
21 legal conclusion.

22 Q. (By Ms. Pitts) Is that --

23 A. Yeah, I probably would have talked to an
24 attorney about it. Like I said, I'm not an attorney. I
25 don't -- you know, I don't know exactly what the

1 ramifications of it are, but I -- if I knew of its
2 existence, I -- I probably would have, you know,
3 questioned someone about it.

4 Q. Are you still represented by James Goodrich?

5 MS. FRASER: Objection, form.

6 A. Sometimes.

7 MS. PITTS: Okay, can we go off the record
8 for just one second, and let's take a break at the same
9 time?

10 MS. FRASER: Can we just take a little
11 break then?

12 MS. PITTS: Yes.

13 (Recess taken 1:43 p.m. to 2:17 p.m.)

14 MS. PITTS: Okay, if we could turn to
15 Exhibit 14, please?

16 (Deposition Exhibit 14 was marked for
17 identification.)

18 Q. (By Ms. Pitts) Okay, Mr. Nitsche, have you ever
19 seen this document before?

20 A. Yes.

21 MS. FRASER: Objection, form.

22 Q. (By Ms. Pitts) And when was the first time you
23 saw it?

24 MS. FRASER: Objection, form.

25 A. I believe I received this document in the mail

1 probably sometime after it was dated.

2 Q. (By Ms. Pitts) Okay, and after you reviewed it,
3 what were your thoughts with regard to its contents?

4 MS. FRASER: Objection, form.

5 A. I guess I was a little perturbed about it, but I
6 don't -- I don't remember, you know, deciding to take
7 any action.

8 Q. (By Ms. Pitts) You say you were perturbed about
9 it. Exactly what about it perturbed you?

10 MS. FRASER: Objection, form.

11 A. You know, that after having been out of the
12 business, you know, so long, that John suddenly decided
13 that he was going to try to exercise his, you know,
14 whatever previous rights he thought he had.

15 Q. (By Ms. Pitts) And what rights are you
16 referring to that he was exercising?

17 MS. FRASER: Objection, form.

18 A. Well, you know, I guess we were partners in the
19 -- in the sauce bottling business, and when he left, I
20 didn't expect him to come back, you know, however many
21 years later and decide that, you know, he was just going
22 to do it on his own then.

23 Q. (By Ms. Pitts) In the original asset purchase
24 agreement, do you remember John reserving the right to
25 sell bottled sauces?

1 MS. FRASER: Objection, form, legal
2 conclusion.

3 A. Yeah, that was in there, but all of those rights
4 and contracts were transferred to Giovanni's Aloha
5 Foods, as far as I understand.

6 Q. (By Ms. Pitts) Was there a contract that
7 transferred those or that mentions that transfer?

8 MS. FRASER: Objection, form, legal
9 conclusion.

10 A. I believe it is in the Giovanni's Aloha Foods,
11 LLC, member agreement that we all signed.

12 Q. (By Ms. Pitts) Okay, so in your opinion, you
13 thought that the limited liability member agreement, is
14 it your opinion that you thought the limited liability
15 member agreement changed the rights of the original
16 asset purchase agreement or changed the terms?

17 MS. FRASER: Objection, form.

18 A. It transferred all the -- it transferred
19 whatever -- I believe it transferred whatever rights
20 John had to Giovanni's products, sauces, you know,
21 whatever, to the bottling company as an entity.

22 Q. (By Ms. Pitts) Okay, so this letter, did you
23 respond to Exhibit 14?

24 A. I don't remember. I don't think so, but I'm not
25 -- I don't remember.

1 Q. Okay, and did you seek legal counsel after you
2 received this letter?

3 A. Just -- just Jim Goodrich, I spoke with him
4 about it.

5 Q. Okay, and other than that, did you take any
6 other actions other than that, other than speaking to
7 Jim Goodrich?

8 MS. FRASER: Objection, form.

9 A. No, none that I am aware of.

10 Q. (By Ms. Pitts) Okay, all right, can you please
11 go to Exhibits 15 A through D?

12 (Deposition Exhibits 15 A through D were
13 marked for identification.)

14 Q. (By Ms. Pitts) Okay, so let's look at 15 A
15 first. Page two is the application, trademark
16 application that was submitted on 12-18-2010 for the
17 mark Giovanni's Aloha Shrimp Truck.

18 MS. FRASER: Counsel, are you looking at 15
19 A?

20 MS. PITTS: 15 A, yes.

21 MS. FRASER: Our 15 A --

22 MS. PITTS: The first page is a status
23 copy. The second page is the trademark application.

24 MS. FRASER: It's for Giovanni's Original
25 White Shrimp Truck?

1 MS. PITTS: Yes.

2 A. Was there a question?

3 Q. (By Ms. Pitts) You can really start with any of
4 the exhibits, 15 B, 15 C, 15 D, they are basically all
5 the same thing, just different marks, applications for
6 different marks.

7 MS. FRASER: What is the question?

8 Q. (By Ms. Pitts) I was waiting for you to find
9 the document. Have you found it?

10 A. Yeah.

11 Q. Okay, so you are at 15 A now?

12 A. Yes.

13 Q. Okay, on page three, you will see a trademark
14 application for Giovanni's Original White Shrimp Truck.
15 Are you familiar with this trademark application?

16 MS. FRASER: Objection, form.

17 A. Yeah, Jim, Jim filled it out. I don't have a
18 lot of experience with these applications and whatnot,
19 so, but, yes, as I understand it, Jim filled this out
20 and submitted it.

21 Q. (By Ms. Pitts) Did you ask Jim to fill out the
22 trademark application on your behalf?

23 MS. FRASER: Objection. I would like to
24 caution the witness not to reveal any attorney client
25 privileged information to the extent this was done in

1 Jim's capacity as your attorney.

2 Q. (By Ms. Pitts) All right, is Gio shrimp at aol
3 dot com your email address?

4 A. It's -- it's an e-mail address we use mostly for
5 business, business related content things.

6 Q. So when did you first become aware of this
7 trademark application's existence?

8 MS. FRASER: Objection, form.

9 A. Yeah, I -- I don't really know. I mean, Jim and
10 I had talked about, you know, registering, trying to
11 register these things and properly after so many years,
12 and, you know, I guess I'm sure he told me probably when
13 -- when he did it that he was doing it.

14 Q. Okay, so did you submit --

15 Did you pay the fees for the filing?

16 A. I would have to go back and check the, you know,
17 company account records, but if there were fees
18 associated with it, I would imagine that we would have
19 paid them.

20 Q. Okay, and it says, on the next page, under first
21 use anywhere date, at least as early as 3-1-1998?

22 A. Yes.

23 Q. And it has the same date as the first use in
24 commerce. Do you agree with these dates, meaning do you
25 agree with the accuracy of the date of the first use

1 anywhere?

2 MS. FRASER: Objection, form, calls for a
3 legal conclusion.

4 A. Yeah, I believe those dates to be accurate.

5 Q. (By Ms. Pitts) Okay, and is the 3-1-1998 the
6 right date that you were actually selling goods under or
7 providing services under the Giovanni's Original White
8 Shrimp Truck mark?

9 MS. FRASER: Objection, form.

10 A. Yes.

11 Q. (By Ms. Pitts) Okay, and on the next page, is
12 that your signature on the fourth to the last line?

13 MS. FRASER: Objection, form.

14 Q. (By Ms. Pitts) Whose signature is on the
15 signature line under signature information?

16 MS. FRASER: Objection, form.

17 A. I'm not even finding -- I'm not even seeing
18 where we're looking. I am looking for a signature, but
19 I'm not -- oh, oh, oh, I see, the last block where it
20 says signature information. Signature, it says Troy
21 Nitsche.

22 Q. (By Ms. Pitts) Okay, and signatory's name?

23 A. Troy Nitsche.

24 Q. And date signed?

25 A. 12-18-2010.

1 Q. Okay. Did you, in fact, sign this application?

2 MS. FRASER: Objection, form.

3 A. Yeah, it would appear so.

4 Q. (By Ms. Pitts) I'm sorry, what?

5 A. I said, yes, it would appear so.

6 Q. Okay, and can you tell me how you did that, how
7 you signed the application?

8 MS. FRASER: Objection, form.

9 A. Yeah, you know, that's why -- that's why I said
10 I don't actually remember like signing it in pen. I'm
11 not sure if this were -- if this was some kind of an
12 electronic signature, or I don't remember signing it,
13 signing it in pen or like in person or anything like
14 that. So, I mean, I don't -- I don't really know.

15 Q. Okay, the date of Exhibit 14, if you could look
16 back at that, what is the letter dated?

17 A. The letter is dated November 30th, 2010.

18 Q. And Exhibit 15 A, what was the filing date that
19 is included on the application of Exhibit 15 A?

20 A. Filing date is 12-18-2010.

21 Q. Okay. Did Saccoccio's letter have any effect on
22 your decision to file this application when you filed
23 it?

24 MS. FRASER: Objection, form.

25 A. I don't believe so. We had talked about it

1 previously.

2 Q. (By Ms. Pitts) All right, now, if you will keep
3 scrolling down, there's a few blank pages, and then, I'm
4 sorry, if you can keep turning the pages, and then you
5 will see an office action dated 8-24-2011.

6 A. I'm sorry. Are we still on Exhibit 15 A?

7 Q. Yes.

8 A. Okay. Office, office action, you say? Let me
9 see.

10 Q. The first page starts with a big gray box, and
11 it is addressed to you, and it has got several
12 attachments listed --

13 MS. FRASER: Counselor, I am just guessing
14 that the witness doesn't know what an office action is.

15 A. Yeah, I'm not sure where -- I'm not sure where
16 we are on this.

17 Q. (By Ms. Pitts) Yes, I know. Could you let me
18 finish?

19 MS. FRASER: I was just trying to help you
20 out because it is clear that --

21 MS. PITTS: Yes, I just want to know if he
22 received this office action, if he has any knowledge of
23 it.

24 MS. FRASER: Is that a question?

25 MS. PITTS: If you would let me ask it.

1 MS. FRASER: Okay, objection, form.

2 MS. PITTS: I haven't asked it yet.

3 MS. FRASER: Well, you just --

4 MS. PITTS: Back to him, has he found it?
5 Has he looked at it?

6 A. No, I'm still -- I'm still -- okay, now, okay I
7 see -- I see it labeled office action now.

8 Q. (By Ms. Pitts) Okay, perfect. Have you ever
9 seen this document before?

10 MS. FRASER: Objection, form.

11 Q. (By Ms. Pitts) Before today?

12 MS. FRASER: Same objection.

13 A. This isn't ringing any bells with me. It's not
14 looking familiar. Without going through and reading it,
15 I am not really sure what it is, so, I guess, I mean, I
16 would have to say no.

17 Q. (By Ms. Pitts) Is the address at the top, the
18 57-120 Lalo Kuilima Way, Apartment 12, was that your
19 correct address on the date it was sent --

20 MS. FRASER: Objection.

21 Q. (By Ms. Pitts) -- 8-24-2011, was that the
22 correct address you had?

23 A. It's an address I had. It's my prior residence,
24 it was my prior residence at the time. I had moved.

25 Q. So you were no longer living there on 8-24-2011?

1 A. Correct.

2 Q. Okay, all right, and have you ever gotten an
3 email from US Patent and Trademark Office?

4 MS. FRASER: Objection, form.

5 A. Yeah, I mean, I -- I received it. There was a
6 few emails through -- through the process from US Patent
7 and Trademark Office. I don't recall exactly their
8 content offhand.

9 Q. (By Ms. Pitts) Okay, all right. This would
10 have been sent to you by email. Do you recall ever
11 seeing this in your in box --

12 MS. FRASER: Objection, form.

13 Q. (By Ms. Pitts) -- a link to this document in
14 your email?

15 A. No --

16 MS. FRASER: Objection, form.

17 A. -- not specifically, and I still don't know -- I
18 still don't -- I really don't -- without going through
19 it and reading it and seeing what it is, I still don't
20 really know what it is.

21 Q. (By Ms. Pitts) If you could, please go ahead
22 and read through it.

23 A. Okay.

24 Q. Take your time.

25 MS. FRASER: Counselor, just for the sake

1 of saving time, this is a legal document. I don't know
2 how much spending time reading the document is going to
3 help in this case, and this is also not a discovery
4 deposition, this is a testimony deposition, and I am
5 starting to question the relevance of most of these
6 questions.

7 MS. PITTS: Okay. Considering that this is
8 an office action related to the trademark that's at
9 issue in this case, I believe it is relevant.

10 MS. FRASER: Right, but you have asked and
11 answered him, and he said that he is really not familiar
12 with it, and he doesn't know what it is, and he is not
13 an attorney, so.

14 MS. PITTS: Well, he said that he wasn't
15 familiar with it because he hadn't read it, and that's
16 why I said to take the time to look through it.

17 A. I have -- I have never seen this document
18 before.

19 Q. (By Ms. Pitts) Okay, did anyone else, besides
20 during this case, make this document known to you before
21 now?

22 MS. FRASER: Objection, form.

23 A. Not that I am aware of.

24 Q. (By Ms. Pitts) Okay, all right. So if you
25 weren't aware, there would have --

1 All right. Were aware that John Aragona had
2 filed letters of protest against the trademark that were
3 filed in 2011 and 2010?

4 MS. FRASER: Objection, form, calls for a
5 legal conclusion.

6 A. Yeah, I became aware that John filed a protest
7 to those applications.

8 Q. (By Ms. Pitts) Okay, and did you consider
9 contesting the assertions of the letter or taking
10 action, you know, by communicating with John?

11 MS. FRASER: Objection, form.

12 A. No.

13 Q. (By Ms. Pitts) Okay. All right, so with this
14 application, it was ultimately, the next page, it is a
15 notice of abandonment. Have you ever seen this
16 document?

17 MS. FRASER: Objection, form.

18 Q. (By Ms. Pitts) It is dated March 21st, 2012.

19 MS. FRASER: Objection, form.

20 A. No, I don't remember seeing this specific
21 document.

22 Q. (By Ms. Pitts) All right, so if we could turn
23 to 15 B?

24 MS. PITTS: We can make this quicker, Jen,
25 if you guys will stipulate that the same questions I

1 asked with regards to the application 15 A also apply to
2 15 C, in other words, he did not file the applications?

3 MS. FRASER: Counselor, I won't be in a
4 position to do that unless we have actually seen the
5 documents and we have asked the witness.

6 MS. PITTS: All right, you just seemed to
7 be in a rush, so I wanted to give you the option.

8 Q. (By Ms. Pitts) Okay, 15 B is the same three
9 documents as 15 A, only it is for the Giovanni's Aloha
10 Shrimp mark.

11 MS. FRASER: Counsel, I will object to your
12 characterization of all the documents as all the same.

13 MS. PITTS: Okay, similar type.

14 Q. (By Ms. Pitts) So would you like to go through
15 one by one?

16 A. No, that's fine. I will -- well, I guess -- I
17 guess, I mean, the same thing is going to apply to this
18 one as will apply to 15 A.

19 Q. All right, and 15 C is the application for
20 Giovanni's Original Scampi Sauce. At the time this
21 application was filed on January 17th, 2011, were you
22 selling scampi sauce?

23 MS. FRASER: Objection, form.

24 A. Not in bottles.

25 Q. (By Ms. Pitts) Okay. Again do you agree with

1 the date, first use anywhere date as early as --

2 MS. PITTS: All right, so, Jen, Troy, if
3 you guys want to skip these same questions about him
4 agreeing with the dates, him not signing, him not
5 remembering about signing, or do you want to go through
6 and answer one by one for each application?

7 MS. FRASER: Well, considering your
8 questions change each time, I don't want to just say
9 everything is the same. These are different
10 applications.

11 MS. PITTS: Okay, so we will go one by one
12 then.

13 Q. (By Ms. Pitts) Okay, 15 B.

14 MS. FRASER: I mean, I still don't think
15 any of this is relevant, but.

16 A. I'm sorry, did you say 15 B?

17 Q. (By Ms. Pitts) Yes.

18 A. Okay, and, I'm sorry, your question was about
19 the date, the first use anywhere date?

20 Q. Yes, 3-1-1998 is included in the application.
21 Is that an accurate date of the first use of Giovanni's
22 Aloha Shrimp?

23 MS. FRASER: Objection, form, calls for a
24 legal conclusion.

25 A. Yeah, I mean, it says, you know, at least as

1 early as 1998, so I guess when we filed, instead of
2 trying to go back through and trying to remember
3 history, we filed a date that we knew was -- you know,
4 that we knew it was in use, you know, we definitely knew
5 it was in use by.

6 Q. (By Ms. Pitts) Okay, did you rely on anything
7 in going back to figure out what that date was?

8 MS. FRASER: Objection, form, legal
9 conclusion.

10 A. Yeah, I think we just used the same date.
11 Didn't we just use the same date as her -- Giovanni's
12 Original White Shrimp Truck? I think we just used the
13 same date.

14 Q. (By Ms. Pitts) Okay. And again, on the next
15 page on the signature line, whose signature is that?

16 A. Troy Nitsche.

17 Q. Signature name?

18 A. Troy Nitsche.

19 Q. Okay, and date signed?

20 A. 12-18-2010.

21 Q. All right, and did you receive the office
22 action, if you scroll down past the page that says
23 Giovanni's Aloha Shrimp --

24 A. Okay.

25 Q. -- and then there is a blank page --

1 A. Yeah.

2 Q. -- and then there's another office action?

3 A. Okay.

4 Q. Did you ever receive this in the mail or by
5 email?

6 A. Yeah, no, I don't remember, I don't remember
7 seeing this specific document before now.
8 document is specific document (. . .)

9 Q. Okay, all right, 15 C. I noticed the dates are
10 different. The date on this application is 1-17-2011,
11 whereas the other ones were filed 12-18-2010. Is there
12 a reason that two were filed earlier than the last two?

13 MS. FRASER: Objection, form.

14 A. I mean, I don't know for sure, I don't remember
15 for sure, but the only thing that I can think of is that
16 we wanted to try and do -- the initial ones were to --
17 you know, the ones that we thought were most important
18 with the Giovanni's Aloha Shrimp and Giovanni's Original
19 White Shrimp Truck because that's the -- you know,
20 that's the heart of the business, so we wanted to do
21 them first. And these other two were just when we
22 decided that we should go ahead and, you know, register
23 the sauces as well, but I guess -- I guess this just
24 came at a later time that we decided to do that.

25 Q. (By Ms. Pitts) So as of the filing date, the

1 1-17-2011, were you using Giovanni's Original Scampi
2 Sauce in any of your business operations?

3 MS. FRASER: Objection, form.

4 A. I mean, we used the sauce every day at the -- at
5 the truck. You know, that's what we used to make our
6 product, so in that sense, then yes.

7 Q. (By Ms. Pitts) Are the words Giovanni's
8 Original Scampi Sauce used anywhere in advertising --

9 A. Scampi --

10 Q. -- or on the goods themselves?

11 MS. FRASER: Objection, form.

12 A. Scampi is, Original is, but all put together on
13 -- no.

14 Q. (By Ms. Pitts) Okay, and the next page, first
15 use anywhere date, at least as early as 3-30-2001. Is
16 that an accurate date?

17 MS. FRASER: Objection, form.

18 A. Again, I think we just picked a date that we
19 knew the bottling company was in operation, and that it
20 -- you know, we were sure it was in use, so that's how
21 we came up with that date, I guess.

22 Q. (By Ms. Pitts) All right, and on the next page,
23 the signature, is that your signature?

24 A. Yes.

25 Q. Signature name?

1 A. Troy Nitsche.

2 Q. And did you sign this one, or do you remember
3 signing it?

4 A. It's the same as the previous two. I mean, I'm
5 not going to -- it's there, so just, you know, I don't
6 remember it, but, you know, it's there. I'm not going
7 to refute it.

8 Q. Okay, all right. And the office action, did you
9 ever review this one?

10 MS. FRASER: Objection, form.

11 A. I don't know. I guess at some point we did
12 because we are here now, but I -- I don't -- I don't
13 remember seeing this office action either.

14 Q. (By Ms. Pitts) Okay. Did Jim Goodrich ever
15 mention the office action to you?

16 MS. FRASER: Objection, form. And I will
17 caution the witness not to reveal attorney client
18 privileged information to the extent that Jim was acting
19 as an attorney with any of the trademark applications.

20 (Discussion off the record.)

21 MS. PITTS: Okay, so what was the last
22 thing you heard?

23 (The pending question was read back by the
24 court reporter as follows:

25 Question: Okay, did Jim Goodrich ever mention

1 the office action to you?)

2 THE REPORTER: Then I have Jennifer's
3 objection, and that was it.

4 Q. (By Ms. Pitts) All right, so if we could go to
5 Exhibit 15 D. Did we already go through this one?

6 A. D or C?

7 Q. D as in dog. Troy, did you file this
8 application?

9 MS. FRASER: Objection, form.

10 A. Yeah, I think Jim filed it on Luckyu's behalf.

11 Q. (By Ms. Pitts) Okay, and the Mark Giovanni's
12 original hot sauce, the date this was filed, 1-17-2011,
13 were you selling Giovanni's Original Hot Sauce?

14 MS. FRASER: Objection, form.

15 A. We were selling it prepared, same as with the
16 Scampi Sauce, we use it in the preparation, but, yeah,
17 we -- we don't sell it separately.

18 Q. (By Ms. Pitts) Okay, and then the next page,
19 first use anywhere date, 3-30-2001, is that accurate?

20 MS. FRASER: Objection, form, legal
21 conclusion.

22 A. Yeah, again, that's the date.

23 Q. (By Ms. Pitts) Okay.

24 A. You know, the same thing as the Scampi, we knew
25 that the bottling company was in operation, and we

1 picked that date.

2 Q. Okay, and so again, on the next page, your
3 signature, is that your signature?

4 A. Yeah.

5 MS. FRASER: Objection, form.

6 Q. (By Ms. Pitts) Mr. Nitsche, if you turn a
7 couple of pages, you will see a page that starts with
8 declaration in the middle?

9 A. Yes.

10 Q. Have you ever read this declaration or seen this
11 declaration --

12 MS. FRASER: Objection.

13 Q. (By Ms. Pitts) -- prior to today?

14 MS. FRASER: Form.

15 A. I probably never took the time to read it.

16 Q. (By Ms. Pitts) Okay. All right, let's see,
17 now, if we could go to, let's see, Exhibit 22, please.

18 (Discussion off the record.)

19 (Deposition Exhibit 16 A and 16 B were
20 marked for identification.)

21 Q. (By Ms. Pitts) All right, we are not looking at
22 22. We are looking at Exhibit 16 A and Exhibit 16 B.
23 Okay, Mr. Nitsche, can you start by look at Exhibit 16
24 A?

25 A. Yes.

1 Q. Are you familiar with this trademark
2 application?

3 MS. FRASER: Objection, form.

4 A. Yes.

5 Q. (By Ms. Pitts) Okay, and were you the party
6 that signed this trademark application?

7 MS. FRASER: Objection, form.

8 A. It says signature not provided.

9 Q. (By Ms. Pitts) If we look at the bottom of the
10 page that says 00005?

11 MS. FRASER: Counsel, I don't think we have
12 that.

13 MS. PITTS: All right, never mind then.

14 Q. (By Ms. Pitts) So did you file this
15 application?

16 MS. FRASER: Objection, form.

17 A. Yeah, I believe it was filed on behalf of
18 Luckyu.

19 Q. (By Ms. Pitts) Okay. Now, if you will look at
20 16 B?

21 A. Okay.

22 Q. Did you file this application?

23 MS. FRASER: Objection, form.

24 A. It was also filed on behalf of Luckyu.

25 Q. (By Ms. Pitts) Okay, and can you explain to me

1 why you decided to file these two trademark
2 applications, Giovanni's Aloha Shrimp Truck and
3 Giovanni's Original White Shrimp Truck, but not file
4 Giovanni's Aloha Shrimp as you previously had?

5 MS. FRASER: Objection, form.

6 A. These are the ones we normally -- we go by most
7 -- most of the time. I mean, Giovanni's Aloha Shrimp,
8 we use that as well, but most people know us as just
9 Giovanni's Shrimp Truck or Giovanni's, the Original
10 White Shrimp Truck, we wanted to make sure that we got
11 the Original, the Original part in there.

12 Q. (By Ms. Pitts) What changed your mind from
13 January 17th, 2011, when you filed for the sauce marks,
14 between that point and 4-26-2013 when these trademarks
15 were filed, can you explain your decision to not file
16 applications for Giovanni's Original Scampi Sauce?

17 MS. FRASER: Objection, form.

18 A. We didn't -- I thought we did file, I thought we
19 did file an application for Giovanni's Original Scampi
20 Sauce.

21 Q. (By Ms. Pitts) A second time, a second
22 application?

23 A. Yeah.

24 Q. Okay, and in terms of Giovanni's Original Hot
25 Sauce, did you believe that a second application had

1 been filed for Giovanni's Original Hot Sauce as well?

2 MS. FRASER: Objection, form.

3 A. Yeah.

4 Q. (By Ms. Pitts) Okay. All right, let's see.
5 Now, if we could go to Exhibit 22?

6 (Deposition Exhibit 22 was marked for
7 identification.)

8 Q. (By Ms. Pitts) All right, with the first page,
9 it is an annual report for Luckyu Enterprises. Now, can
10 you explain why the second line under Luckyu Enterprises
11 has been marked out?

12 MS. FRASER: Objection, form, foundation,
13 calls for a legal conclusion.

14 MS. PITTS: Okay, wait, let me rephrase.

15 Q. (By Ms. Pitts) Have you ever seen page one of
16 Exhibit 22?

17 A. No.

18 Q. So do you have any idea as to why dba Giovanni's
19 Original White Shrimp Truck would have been crossed out?

20 A. No idea at all.

21 Q. Okay. On this date 7-1-2004, were you, in fact,
22 doing business as Giovanni's Original White Shrimp
23 Truck?

24 MS. FRASER: Objection, form.

25 A. Yes. I just had a question on the date. The

1 date down here says 2-4-05, and the date on top says
2 7-1-03. I guess it doesn't matter because all through
3 that time we were doing business as Giovanni's Original
4 White Shrimp Truck, so I guess it doesn't matter.

5 Q. (By Ms. Pitts) That is strange.

6 A. Yeah.

7 Q. Okay, and then the same for the next filing.

8 A. The next page?

9 Q. Yes.

10 MS. FRASER: What's the question?

11 Q. (By Ms. Pitts) Have you ever seen this document
12 before?

13 A. No.

14 Q. Do you know why dba Giovanni's Original White
15 Shrimp Truck would have been crossed out?

16 MS. FRASER: Objection, form, foundation,
17 calls for a legal conclusion.

18 A. No.

19 Q. (By Ms. Pitts) All right, I would like to go to
20 Exhibit 20. 21, Petitioner's responses to Registrant's
21 first request for admissions. You can go ahead and give
22 him 19 as well.

23 (Deposition Exhibits 19, 20, and 21 were
24 marked for identification.)

25 Q. (By Ms. Pitts) Mr. Nitsche, have you seen this

1 document before?

2 MS. FRASER: Objection, form.

3 A. Which one?

4 Q. (By Ms. Pitts) Exhibit 21.

5 A. I believe these were prepared on behalf of
6 Luckyu as well.

7 Q. Okay, and were you involved with the
8 preparation?

9 MS. FRASER: Objection, form.

10 A. I would imagine I was to some degree. I know I
11 didn't write -- I know I didn't write it, but I would
12 imagine that I had some input on different things that
13 are contained in here.

14 Q. (By Ms. Pitts) All right. Okay, go to page
15 number six, request number seven, if you could read
16 that?

17 A. Admit that at the time Petitioner filed
18 Petitioner's applications, Petitioner was aware that
19 registering -- Registrant claimed a right and interest
20 in the marks that were the subjects of Petitioner's
21 applications.

22 Q. And then if you flip over to the next page, it
23 looks like, did you admit or deny this request?

24 MS. FRASER: Objection, form, calls for a
25 legal conclusion.

1 MS. PITTS: I am just asking if he --

2 Q. (By Ms. Pitts) Request for admissions are
3 something that the party either admits to something that
4 is asked or denies something that is asked. Did you
5 deny this request?

6 MS. FRASER: Objection, calls for a legal
7 conclusion.

8 A. It says subject to and without waiver of the
9 foregoing objections, this request is denied.

10 Q. (By Ms. Pitts) So do you agree with that answer
11 that is provided there?

12 MS. FRASER: Objection, form, calls for a
13 legal conclusion.

14 MS. PITTS: Let me rephrase.

15 Q. (By Ms. Pitts) When the first trademark
16 application was filed on your behalf by Mr. Goodrich,
17 had you been made aware that Mr. Aragona was also
18 claiming a right to the marks?

19 MS. FRASER: Objection, form, calls for a
20 legal conclusion.

21 A. I -- I don't know exactly what Mr. Aragona was
22 claiming.

23 Q. (By Ms. Pitts) Okay. All right, do you believe
24 that the original asset purchase agreement assigned you
25 all rights to all the trademarks at issue? I will go

1 one by one, okay? Do you believe that you were assigned
2 full ownership rights on a national basis of Giovanni's
3 Aloha Shrimp?

4 MS. FRASER: Objection, form, calls for a
5 legal conclusion.

6 A. Yes.

7 Q. (By Ms. Pitts) Okay, all right. Okay, in 1997
8 when you and Mr. Aragona entered into the asset purchase
9 agreement, did you do so in part in order to sell shrimp
10 using his Hot Sauce and Scampi Marinade?

11 MS. FRASER: Objection, form.

12 A. I'm sorry. Could you repeat that question?

13 Q. (By Ms. Pitts) In 1997 when you entered into
14 the asset purchase agreement, did you do so so you would
15 be able to sell the shrimp using Giovanni's Scampi Sauce
16 and Hot Sauce?

17 MS. FRASER: Objection, form.

18 A. Yeah. I mean, we wanted to sell -- we wanted to
19 sell that -- we wanted to be able to sell the scampi
20 plates and the hot and spicy plates, and that was -- you
21 know, that was pretty much -- that was pretty much the
22 business.

23 Q. (By Ms. Pitts) Okay, and did you receive
24 permission to do so from Mr. Aragona?

25 MS. FRASER: Objection, form.

1 A. I think that's what the asset purchase agreement
2 was, that's what it was for, you know? I didn't give
3 him \$120,000 because, you know, I liked him.

4 Q. (By Ms. Pitts) Or because you wanted a 1952
5 bread truck --

6 A. Bread truck.

7 Q. -- either, right?

8 A. Yeah.

9 Q. All right. In 1997 when you entered into the
10 asset purchase agreement, did you do so in part so you
11 could continue using the same name, Giovanni's Aloha
12 Shrimp?

13 A. It wasn't as important as it's -- it wasn't as
14 important then as it is now, but, yeah, we figured we
15 may as well -- we may as well keep the same name.

16 Q. Okay, and you received consent to use the name
17 through the asset purchase agreement?

18 MS. FRASER: Objection, form, calls for a
19 legal conclusion.

20 A. Yeah, yeah, I think asset purchase agreement
21 gave me the right to use the name.

22 Q. (By Ms. Pitts) Okay, and what about the
23 Giovanni's White Shrimp Truck name, do you believe that
24 the asset purchase agreement -- did you seek permission
25 to use that name?

1 A. I don't --

2 MS. FRASER: Objection, form.

3 A. Yeah, I don't -- the asset purchase agreement,
4 as I recall, doesn't make any mention of Giovanni's
5 White Shrimp Truck or Giovanni's Original White Shrimp
6 Truck or any of that. Those are things that we have --
7 you know, that's come about after.

8 Q. (By Ms. Pitts) Okay, was the name Giovanni's
9 Original White Shrimp Truck being used when you entered
10 into the asset purchase agreement?

11 MS. FRASER: Objection, form.

12 A. No, not to my recollection.

13 Q. (By Ms. Pitts) Okay. Was the name Giovanni's
14 White Shrimp Truck being used when you entered into the
15 asset purchase agreement?

16 A. The only -- the only place that I could even
17 possibly think that it was used would be on the sign,
18 and honestly, I really don't remember what was on the
19 sides of the sign at the time. It wasn't in use
20 anywhere else, but Giovanni's White Shrimp Truck may
21 have been on their original sign.

22 Q. Okay, and did you want to continue using that
23 name after you signed the asset purchase agreement?

24 MS. FRASER: Objection, form.

25 A. Yeah, sure.

1 Q. (By Ms. Pitts) Giovanni's Original White Shrimp
2 Truck or something similar to it?

3 A. Sure. I mean, that's what it was. That's how
4 people knew it, the White Shrimp Truck. I think they
5 knew White Shrimp Truck more than they knew Giovanni's
6 at the time.

7 Q. Right, and they knew of the business as
8 synonymous with that name. Was the business popularly
9 referred to or known as Giovanni's White Shrimp Truck
10 before you entered into that asset purchase agreement?

11 MS. FRASER: Objection, form, foundation.

12 A. Yeah, you know, honestly, by the time most
13 people -- it was small and just starting out, and most
14 people just knew it as the shrimp truck because it was
15 the only one around, so it was just the shrimp truck,
16 and it happened to be white, you know? So some people
17 called it White Shrimp Truck, some people called it
18 shrimp truck, you know? John put his name on there, you
19 know, as far as Giovanni's goes, so some people knew it
20 by that, but for the most part, it was just the shrimp
21 truck.

22 Q. (By Ms. Pitts) You said John put his name on
23 there. How did John put his name on the truck? What do
24 you mean by that?

25 MS. FRASER: Objection, form.

1 A. Well, I mean, I imagine that, you know, that --
2 I don't know who came up with the name. I don't know if
3 it was John or Connie or one of their kids or whoever
4 came up with the name, but, obviously, you know,
5 Giovanni is -- means John in Italian, from what I
6 understand, so I am just assuming that there's the
7 connection there.

8 Q. (By Ms. Pitts) Have you ever heard John Aragona
9 called Giovanni?

10 A. By Connie.

11 Q. What? Excuse me?

12 A. By Connie.

13 Q. Okay. Only Connie?

14 A. Yeah. You know, honestly, John likes to play
15 like everybody calls him Gio, but they don't.

16 Q. Okay. So up until the termination letter that
17 was sent to you right before the beginning of this
18 trial, had John ever complained or tried to stop you
19 from using the Giovanni's White Shrimp Truck name?

20 MS. FRASER: Objection, form, calls for a
21 legal conclusion.

22 A. No, not that I am aware of.

23 Q. (By Ms. Pitts) Okay. Had John ever objected to
24 you using Giovanni's Aloha Shrimp?

25 A. Not that I am aware of.

1 Q. Has John ever complained about you using the
2 name Giovanni's Hot Sauce, Giovanni's Original Hot
3 Sauce?

4 A. Not that I am aware of.

5 Q. Has John ever complained about you using
6 Giovanni's Scampi Marinade?

7 A. Not that I am aware of.

8 Q. So when you entered into the asset purchase
9 agreement, did you believe John Aragona to have the full
10 right to transfer any right to the name Giovanni's Aloha
11 Shrimp?

12 MS. FRASER: Objection, form, calls for a
13 legal conclusion.

14 A. Yeah, I mean, honestly, we -- I mean, this is
15 kind of the stuff that we're -- we're arguing about, I
16 guess. I didn't think I had to ask John anything about
17 anything when I -- we signed that agreement.

18 Q. (By Ms. Pitts) Okay, but did you consider him
19 the owner of that name prior to the asset purchase
20 agreement --

21 MS. FRASER: Objection.

22 Q. (By Ms. Pitts) -- the name Giovanni's Aloha
23 Shrimp?

24 MS. FRASER: Objection, form, calls for a
25 legal conclusion.

1 A. Yeah, I don't know legally, you know, I don't
2 know legally how you get -- you know, apparently, this
3 is how through patent and trademark you get to be the
4 owner of a name, so I mean, I know he was, you know,
5 commonly or -- what's word I'm looking for, you know?
6 He was -- he was -- that's what he referred -- that's
7 what they referred to their business as. I know that's
8 what they referred to their business as, at least, you
9 know, among themselves. So, you know, that's fine with
10 me.

11 Q. All right, if we could turn to Exhibit, let's
12 see, Number 19. Have you seen this document before?

13 A. Yeah, I think so.

14 Q. Okay, and did you assist your attorney in
15 providing answers to these questions?

16 A. Yes.

17 Q. Okay. If you look at it interrogatory
18 twenty-one on page twenty-three, all right, this asks
19 when you first became aware of Registrant's claim to the
20 right of ownership of any of the marks. Your response
21 starts after the objections on page twenty-four with
22 subject to?

23 A. Okay.

24 Q. All right. Can you read that, that last
25 paragraph?

1 A. Subject to and without waiver of the fore,
2 excuse me, foregoing objections, Petitioner first
3 learned that Registrant was trying to claim some
4 interest in Registrant's now federally registered marks
5 on or around August 24th, 2011, when the PTO issued an
6 office action based on a letter of protest.

7 Q. Okay, based on this answer, do you agree with
8 this answer?

9 MS. FRASER: Objection, form, calls for a
10 legal conclusion.

11 MS. PITTS: Okay, let me try to rephrase.

12 Q. (By Ms. Pitts) August 24th, did you receive an
13 office action based on the letter of protest on August
14 24th?

15 MS. FRASER: Objection, form.

16 A. I don't remember.

17 Q. (By Ms. Pitts) Okay. Do you remember if August
18 24th, 2011, was, in fact, the first date you learned
19 that Registrant was trying to claim some interest in the
20 federally registered mark?

21 A. Yeah.

22 Q. Okay, so if you look back at Exhibit 14, the
23 letter from Saccoccio?

24 A. Okay.

25 Q. Did this letter, is it your opinion -- sorry,

1 let me think about how to phrase it. Did this letter
2 make you -- how did this --

3 How did you interpret this letter? Did you
4 interpret this letter as a notice that Mr. Aragona was
5 claiming an interest in the marks?

6 MS. FRASER: Objection, form.

7 A. This letter doesn't mention anything about marks
8 or name or, you know, any of that. This just says that
9 he's trying -- he's going to try to sell his sauces on
10 line, he's going to try to bottle his sauces and sell
11 them on line. It didn't make any mention of any
12 trademark or any interest in such trademark or any of
13 that, so.

14 Q. (By Ms. Pitts) Okay.

15 A. Yeah.

16 Q. All right, and, okay, if we could turn back to
17 the Exhibit 2, the petition?

18 A. Okay.

19 Q. Okay, and, let's see, number nineteen refers to
20 customer comments on Registrant's web site?

21 A. You said appendix, what was it?

22 Q. Oh, no. Number paragraph nineteen of the
23 petition, page five.

24 A. Oh, paragraph nineteen. Okay.

25 Q. All right, and these same comments are also in

1 appendix C. You can actually get a better look at the
2 comments. Let me know when you are done.

3 A. Oh, am I waiting?

4 MS. FRASER: Are we ready?

5 Q. (By Ms. Pitts) Yes, I was waiting for you. Are
6 you ready?

7 A. No, I see appendix C, and that was -- but, I'm
8 sorry, was there a question?

9 Q. Yes. The question that I have actually relates
10 to a page in Exhibit 12. If you could compare the
11 customer comments in the Exhibit 12?

12 MS. FRASER: Counsel, what was Exhibit 12
13 again?

14 MS. PITTS: The old web site.

15 Q. (By Ms. Pitts) If you can go to page five of
16 Exhibit 12?

17 A. Okay.

18 Q. This is August 23rd, 1999. Do you see any
19 similarities between the comments at appendix C attached
20 to the petition and the comments on the web site page at
21 Exhibit 12?

22 MS. FRASER: Objection, form.

23 A. I might be on the wrong page. August 23rd,
24 1999. It's hard because they don't have -- you know, I
25 don't know. They don't have actual page numbers.

1 Q. (By Ms. Pitts) Yes, I know. I'm sorry about
2 that.

3 A. I mean, they both seem like, you know, that they
4 are comments saying how good the -- how good the shrimp
5 plates are at the truck or -- I mean, I'm just perusing
6 here.

7 Q. Yes, look specifically at the one that starts
8 under our customers say, that was written by Eddie,
9 Terry, Jacob Coleman of Venice, California.

10 A. Okay.

11 Q. And then compare that to the one at Exhibit 12,
12 and it is about mid page.

13 A. Yeah, I mean, it looks -- it looks to be where
14 -- you know, the same, the same writeup, the same blurb.

15 Q. Were you aware that the Giovanni's Aloha Foods
16 web site included these comments when you entered into
17 the company?

18 MS. FRASER: Objection, form.

19 A. Yeah. Yeah.

20 Q. (By Ms. Pitts) Okay, and did you have any
21 problem with them being on the web site?

22 MS. FRASER: Objection, form.

23 A. No, but, I mean, I was -- that was my part of --
24 my -- I was part of that company. The company was
25 partly mine at the time.

1 Q. (By Ms. Pitts) Right, right. What about before
2 you joined the company in 1998 when they put the web
3 site up?

4 MS. FRASER: Objection, form,
5 mischaracterizing.

6 A. I wasn't -- I wasn't really aware of the web
7 site before then.

8 Q. (By Ms. Pitts) Okay. Now, if you will look at
9 Exhibit B attached to the petition?

10 A. Sorry. Where are we?

11 MS. FRASER: Counselor, are we looking at
12 Exhibit B to Exhibit 2?

13 MS. PITTS: Exhibit B to Exhibit 2, yes.

14 A. Okay.

15 Q. (By Ms. Pitts) All right. Now, if you take a
16 look at the picture that's on Exhibit B, at least my
17 copy is black and white, it is kind of hard to see. The
18 shrimp truck picture is there. Does that look familiar
19 to you?

20 MS. FRASER: Objection, form.

21 A. Yes.

22 Q. (By Ms. Pitts) Okay, was this the same shrimp
23 truck that John was using prior to execution of the
24 asset purchase agreement?

25 MS. FRASER: Objection, form.

1 A. Yes, it looks to be.

2 Q. (By Ms. Pitts) All right. If you can look at,
3 okay, paragraph number twenty-six of the petition of
4 Exhibit 2?

5 A. Okay.

6 Q. Can you read that to me?

7 A. Registrant has never used the mark Giovanni's
8 Original White Shrimp Truck in connection with mobile
9 restaurant services.

10 Q. And would you agree with that sentence?

11 A. Yes.

12 Q. Okay. All right, now, paragraph number
13 thirty-seven mentions Registrant owned a 25 percent
14 share and Petitioner's members collectively owned a 50
15 percent share and his right to use the mark Giovanni's
16 Aloha Foods.

17 Can you explain to me where the 50 percent
18 number comes from?

19 MS. FRASER: Objection, form, foundation,
20 calls for a legal conclusion.

21 A. I had -- I had a 25 percent share of the profits
22 of the company. Jim and his wife Diane collectively had
23 a 25 percent share, John had a 25 percent share, and
24 Connie had a 25 percent share. Voting rights were
25 different.

1 Q. (By Ms. Pitts) Okay. You say that Jim and his
2 wife collectively had 25 percent?

3 A. Yes.

4 Q. Was Jim's wife also a member of your company?

5 A. I would have to go back and check that member
6 agreement. It wouldn't surprise me if she -- she was on
7 the paperwork, but I'm really not even -- I would have
8 to go back and look. Does anybody know what that was?

9 Q. But at present date, at present date, does she
10 still own 25, or does she still own 12.5 percent?

11 MS. FRASER: Objection, form.

12 A. Well, the Giovanni's Aloha Foods is -- it's no
13 longer --

14 Q. (By Ms. Pitts) Oh, no. I was talking about
15 Petitioner's members, so that would mean the owners of
16 your company, Luckyu, either that or Nitsche
17 Enterprises?

18 MS. FRASER: Objection, form.

19 A. Oh, oh, I see. Yeah, no, she's -- Jim's wife
20 Diane is not a -- not a member of, you know, my current
21 -- current company.

22 Q. (By Ms. Pitts) Has she ever been?

23 A. No.

24 Q. Okay. So that technically would mean that
25 Petitioner's members collectively owned, instead of 50

1 percent, it would be your 25 percent plus Goodrich's
2 12.5 --

3 MS. FRASER: Objection, form.

4 Q. (By Ms. Pitts) -- is that correct?

5 A. I'm -- I mean, I -- I let the lawyers argue that
6 out. I am not even sure what to say about that. I
7 don't know how they even -- you know, how that is even
8 worked out, honestly.

9 Q. Okay, all right.

10 (Recess taken 3:58 to 4:02 p.m.)

11 Q. (By Ms. Pitts) Okay, Exhibit 20. All right,
12 Mr. Nitsche, are you familiar with the document request?

13 A. Yes.

14 Q. Okay, and did you provide your counselor with
15 everything that the request asks for, to the best of
16 your ability?

17 MS. FRASER: Objection, form.

18 A. I believe so.

19 Q. (By Ms. Pitts) Okay. My pad fell off. I can't
20 find the questions that I want to ask you about. Give
21 me one second.

22 MS. FRASER: I'm sorry, Counselor, what was
23 that?

24 MS. PITTS: My pad fell off. I can't find
25 the questions that I am looking for. Give me one

1 second.

2 Q. (By Ms. Pitts) Okay, number fifty-eight?

3 A. Okay.

4 Q. All documents which you rely on to support your
5 allegations in paragraph twenty of the petition for
6 cancellation that Registrant's web site and advertising
7 materials were intentionally designed to create the
8 false impression that Registrant is somehow affiliated
9 with Petitioner. The response says that you will
10 produce non-privileged documents after reasonable and
11 diligent search.

12 Were you able to find any such documents?

13 MS. FRASER: Objection, form, calls for a
14 legal conclusion.

15 A. The way I am understanding it, I didn't have
16 these documents, I didn't have these documents. We were
17 -- maybe I am understanding this incorrectly, but it
18 says Registrant's web site and advertising materials
19 were intentionally designed to create the false
20 impression that Registrant is somehow affiliated with
21 the Petitioner.

22 So wouldn't that mean that we would look at his
23 web site and see like -- I know, I know -- wasn't there
24 a picture of our -- of our truck on his web site? I
25 think he took it down and then put up another one.

1 MS. FRASER: I can't answer any of these
2 questions.

3 MS. PITTS: Okay. I think that's all I
4 have for now.

5 MS. FRASER: I have no questions.

6 MS. PITTS: Actually, were there any
7 exhibits that haven't been introduced yet?

8 THE REPORTER: Yes. Off the record.

9 (Discussion between witness and counsel.)

10 MS. PITTS: Okay, so Exhibits 9 through 11,
11 please give them to him, and those will be my last.

12 (Deposition Exhibits 9 through 11 were
13 marked for identification.)

14 Q. (By Ms. Pitts) Okay, so Exhibit 9, are you
15 familiar with this label?

16 A. Yes.

17 Q. And approximately when was this label being
18 used?

19 MS. FRASER: Objection, form.

20 A. This was the -- this was our late model, one of
21 our late model labels. This was the -- I want to say --
22 I want to put it as the most recent label we used for
23 Giovanni's Aloha Foods in selling -- in selling the
24 sauces. I mean, okay, stipulate on my copy, it's just
25 solid black, but I mean, I know -- I know what it's

1 supposed to be.

2 Q. (By Ms. Pitts) Okay.

3 A. But on this copy, it's just a solid black box
4 with -- with the white, white lettering. But I assume
5 that this is the blue label with the gold blue ribbon in
6 the middle of it, and that was the -- that was the label
7 we -- the last label we used in Giovanni's Aloha Foods.

8 Q. Okay, all right, and if you look at Exhibit
9 Number 10, I thought we already went over these, but
10 they are the shirts that are being sold, right?

11 A. Yeah, mm-hm.

12 Q. Great. Okay, yes, we already did go over this.

13 A. Okay.

14 MS. PITTS: All right, that's it for me.

15 MS. FRASER: All right. Are we done?

16 MS. PITTS: We are done.

17 MS. FRASER: We would like to read and
18 sign, and as mentioned previously, we would like to
19 treat this as trade secret commercially sensitive under
20 the protective order.

21 (Deposition concluded at 4:14 p.m.)

22

23

24

25

1 I, TROY EDWIN NITSCHKE, hereby certify that I
2 have read the foregoing typewritten pages 1 through 87,
3 inclusive, and corrections, if any, were noted by me,
4 and the same is now a true and correct transcript of my
5 testimony.

6 DATED: Honolulu, Hawaii, _____.

7

8

9

10

TROY EDWIN NITSCHKE,

11

12

13 Signed before me this _____

14 day of _____, 2014.

15

16

17

18

19

20

21 Case: LuckyU Enterprises, Inc., v. John "Giovanni's"

22 Aragona

23 Cancellation No. 92057023

24 Deposition date: December 3rd, 2014

25 Taken by Patricia Ann Campbell, CSR 108

C E R T I F I C A T E

1
 2 STATE OF HAWAII)
 3) SS.
 4 CITY AND COUNTY OF HONOLULU)

5 I, PATRICIA ANN CAMPBELL, CSR 108, State of
 6 Hawaii, do hereby certify:

7 That on December 3rd, 2014, appeared before
 8 me TROY EDWIN NITSCHKE, the witness whose 88 page
 9 deposition is contained therein; that prior to being
 10 examined he was by me duly sworn or affirmed pursuant to
 11 Act 110 of the 2010 Session of the Hawaii State
 12 Legislature;

13 That the deposition was taken down by me in
 14 machine shorthand and was thereafter reduced to
 15 typewriting under my supervision; that the foregoing
 16 represents to the best of my ability a true and correct
 17 transcript of the proceedings had in the foregoing
 18 matter;

19 That pursuant to Rule 30(e) of the Hawaii
 20 Rules of Civil Procedure, a request for an opportunity
 21 to review and makes changes to this transcript was made
 22 by the deponent and/or their attorney prior to the
 23 completion of the deposition.

24 I further certify that I am not an attorney
 25 for any of the parties hereto, nor in any way concerned
 with the cause.

DATED this 14th day of December, 2014, in
 Honolulu, Hawaii.

23 PATRICIA ANN CAMPBELL, CSR 108
 24 Certified Shorthand Reporter
 25 State of Hawaii

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In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition

Exhibit: 1

Exhibit Offered by Respondent

12/3/14

Date: November 19, 2014

Respectfully submitted,
John "Giovanni" Aragona

s/Jamie N. Pitts

Jamie N. Pitts

Florida Bar No. 72632

The Law Office of Jamie N. Pitts, Esq.

3340 Wood Thrush Dr., Ste. 341

Punta Gorda, FL 33950

(941) 893-7751– telephone

(855) 224-7819– facsimile

Email: jamienpitts@jnplawfirm.com

Counsel for Registrant

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **NOTICE OF DEPOSITION** was served on November 19, 2014 to Petitioner's counsel via U.S. Mail with a courtesy copy sent via email as follows:

Jennifer Fraser
NOVAK DRUCE CONNOLLY BOVE & QUIGG LLP
1875 Eye Street, N.W.
Eleventh Floor
Washington, D.C. 20006

Jennifer.fraser@novakdruce.com
Daniel.mullarkey@novakdruce.com

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023
Registration Nos: 4,220,686 - GIOVANNI'S ALOHA FOODS
4,224,400 - GIOVANNI'S SCAMPI MARINADE
4,232,469 - GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
4,248,595 - GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
Petitioner,	:	
v.	:	Cancellation No. 92057023
John "Giovanni" Aragona	:	
Respondent.	:	

Troy Nitsche Deposition Exhibit: 2
Exhibit Offered by Respondent
2014.12.03

ESTTA Tracking number: **ESTTA531098**

Filing date: **04/08/2013**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck		
Entity	Corporation	Citizenship	Hawaii
Address	57-120 Lalo Kuilim Way #12 Kahuku, HI 96731 UNITED STATES		

Attorney information	Jason A. Cody Novak Druce Connolly Bove + Quigg, LLP 1875 Eye Street, NW Eleventh Floor Washington, DC 20006 UNITED STATES jason.cody@novakdruce.com, trademark@novakdruce.com, daniel.mullarkey@novakdruce.com Phone:2023317111		
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Registrations Subject to Cancellation

Registration No	4232569	Registration date	10/30/2012
Registrant	Aragona, John "Giovanni" 417 Whitfield Ave. Sarasota, FL 34243 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 1994/01/01 First Use In Commerce: 1994/02/01 All goods and services in the class are cancelled, namely: Mobile restaurant services

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)		
False suggestion of a connection	Trademark Act section 2(a)		
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Abandonment	Trademark Act section 14		
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14		
Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4220686	Registration date	10/09/2012
Registrant	Aragona, John "Giovanni" 417 Whitfield Ave. Sarasota, FL 34243 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 1997/06/01 First Use In Commerce: 1997/06/01
All goods and services in the class are cancelled, namely: Food preparation services

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)		
False suggestion of a connection	Trademark Act section 2(a)		
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Abandonment	Trademark Act section 14		
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14		
Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4224400	Registration date	10/16/2012
Registrant	Aragona, John "Giovanni" 417 Whitfield Ave. Sarasota, FL 34243 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 1994/01/01 First Use In Commerce: 1994/02/01
All goods and services in the class are cancelled, namely: Marinades

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)		
False suggestion of a connection	Trademark Act section 2(a)		
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Abandonment	Trademark Act section 14		
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14		
Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4248595	Registration date	11/27/2012
Registrant	Aragona, John "Giovanni" 417 Whitfield Ave. Sarasota, FL 34243 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 1994/01/01 First Use In Commerce: 1994/02/01
All goods and services in the class are cancelled, namely: Hot sauce

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)		
False suggestion of a connection	Trademark Act section 2(a)		

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK (Serial No. 85897861 ; filed on April 8, 2013)		
Goods/Services	International Class 043: Providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GIOVANNI'S SHRIMP TRUCK (Serial No. 85897872 ; filed on April 8, 2013)		
Goods/Services	International Class 043: Providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks		

Attachments	Consolidated Petition for Cancellation with appendix (FINAL).pdf (48 pages) (4462887 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Daniel P. Mullarkey/
Name	Daniel P. Mullarkey
Date	04/08/2013

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

In the Matter of Registration No. 4232569
Issued: October 30, 2012

In the Matter of Registration No. 4220686
Issued: October 9, 2012

In the Matter of Registration No. 4224400
Issued: October 16, 2012

In the Matter of Registration No. 4248595
Issued: November 27, 2012

LuckyU Enterprises, Inc.)	
)	
Petitioner)	
)	
v.)	Cancellation No. _____
)	
John Aragona)	
)	
Registrant)	

CONSOLIDATED PETITION FOR CANCELLATION

LuckyU Enterprises, Inc. (hereinafter "Petitioner" or "LuckyU"), a Hawaiian corporation, having its principal place of business at 57-120 Lalo Kulim Way #12, Kahuku, Hawaii 96731, believes that it is being damaged by Registration Nos. 4232569, 4220686, 4224400, and 4248595, and hereby petitions to cancel same.

The grounds for cancellation are as follows:

Petitioner's Business and Rights in the GIOVANNI'S Marks

1. In 1997, Petitioner's predecessor in interest, Nitsche Enterprises, Inc. (hereinafter collectively referred to a "Petitioner"), purchased from Registrant John Aragona and his previous wife Connie Aragona (hereinafter collectively referred to as the "Aragonas") a retail food business, which had been selling cooked shrimp from a lunch truck in Hawaii since approximately 1993 or 1994 under the name "Giovanni's Aloha Shrimp."

2. The Asset Purchase Agreement (the "Agreement") assigned all assets of the business to Petitioner, including, *inter alia*, the original white shrimp truck and rights to the trade name "Giovanni's Aloha Shrimp" within the state of Hawaii. (A true and accurate copy of the Agreement is annexed hereto as Appendix A.)

3. The Asset Purchase Agreement also contemplated a future arm's length supplier relationship, whereby Petitioner would obtain sauces and marinades from the Aragonas to the extent they could maintain adequate supply.

4. Shortly after selling Petitioner the shrimp truck business, the Aragonas formed Giovanni's Aloha Foods to supply sauces and marinades. It quickly became apparent the Aragonas were incapable of running the business on their own, and so members of Petitioner, Troy Nitsche and James Goodrich, invested in, became 50% owners in, and eventually had to run, and then shut down the failed company after the Aragonas abandoned operations.

5. In August 2001, Mrs. Aragona, with the help of three hired assailants, attacked Mr. Nitsche, pistol-whipped him, pointed a gun at his head, and threatened him and his family if he did not sign over the papers to the shrimp truck business; that same day, they stole Petitioner's cash box containing \$3,500.

6. Mrs. Aragona was convicted of robbery, kidnapping, and theft, and remains in prison for her crimes against Mr. Nitsche and Petitioner.

7. After abandoning the failed Giovanni's Aloha Foods, Mr. Aragona disappeared from the scene for a decade.

8. During this time, and despite all of the problems caused by the Aragonas, Petitioner's shrimp truck business took off and became exponentially more successful than ever before.

9. Opposer and/or its predecessors adopted and used, and Opposer continues to use and have prior rights in, *inter alia*, the following marks (collectively referred to as Petitioner's "GIOVANNI'S

Marks”):

GIOVANNI’S ALOHA SHRIMP

GIOVANNI’S SHRIMP TRUCK

GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK

10. Since buying the business in 1997, Petitioner has owned and continuously used the mark GIOVANNI’S ALOHA SHRIMP in connection with the sale of shrimp and related food from its shrimp trucks. The Asset Purchase Agreement states Petitioner agrees not to register the trade name “Giovanni’s Aloha Shrimp” outside of the state of Hawaii, and Petitioner has never done so.

11. Since buying the business in 1997, Petitioner has owned and continuously used the mark GIOVANNI’S SHRIMP TRUCK in connection with the sale of shrimp and related food from its shrimp trucks.

12. Since at least as early as March 1, 1998, Petitioner adopted and has owned and continuously used the mark GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK in connection with the sale of shrimp and related food from its shrimp trucks.

13. Petitioner advertises its shrimp truck business in connection with Petitioner’s GIOVANNI’S Marks through, *inter alia*, its website located at www.giovanisshrimptruck.com, signage on the property (such as the signage depicted below), and the Giovanni’s Original White Shrimp Truck, which resides on the property (as depicted below):



14. Since Petitioner took over in 1997, its shrimp truck business grew from annual sales of approximately \$25,000 to a multi-million dollar business with multiple locations and over thirty employees dedicated to providing the highest quality food and food services in connection with Petitioner's GIOVANNI'S Marks.

15. Due to Petitioner's advertising and sales, word of mouth advertising by customers, and unsolicited third party recognition by the media and food magazines and critics, such as Saveur Magazine, consumers have come to recognize Petitioner's GIOVANNI'S Marks as a singular indication of origin, as a consequence of which Petitioner has established valuable goodwill and exclusive rights in its marks.

16. In addition to common law rights in Petitioner's GIOVANNI'S Marks, Petitioner also owns federal applications for the marks GIOVANNI'S SHRIMP TRUCK (Serial No. 85897872) and GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK (Serial No. 85897861), both for food truck and related restaurant services.

Registrant's Fraudulent Activities and Registrations

17. Appreciating that Petitioner's business has achieved immense success, Mr. Aragona has now resurfaced, after a decade, in an attempt to improperly capitalize on Petitioner's hard-earned goodwill through fraudulent and deceptive conduct that suggests a false connection with Petitioner and through misuse of fraudulently obtained registrations.

18. Each of the marks for which Registrant obtained a fraudulent registration appears on Registrant's website, located at www.giovanissauces.com, in close proximity to a picture of one of Petitioner's distinctive shrimp trucks. In fact, each and every page of Registrant's website prominently features a picture of Petitioner's shrimp truck and the following advertising language intended to suggest a false association or affiliation with, or endorsement by, Petitioner: "What began as an unknown shrimp truck on Oahu's North Shore – Became a Legend!" (A true and accurate copy of

screenshot printout of Registrant's Home Page, located at www.giovanissauces.com, is annexed hereto as Appendix B.)

19. Registrant's website also prominently features putative customer comments about Registrant, which really refer to Petitioner's shrimp truck business, such as the following statements:

"Our friend told us to stop at the 'White Shrimp Truck' in Kahuku, and we're glad we did!"

"We really enjoyed dining daily at the white shrimp truck, during our recent vacation."

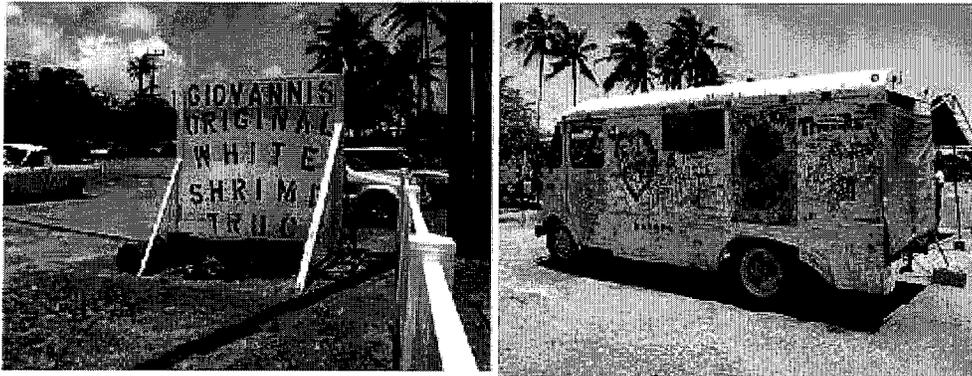
(A true and accurate copy of a printout of Registrant's About Us page, located at www.giovanissauces.com/about, is annexed hereto as Appendix C.)

20. Registrant's website and advertising materials were intentionally designed to create the false impression that Registrant is somehow affiliated with Petitioner and attempt to trade off the goodwill associated with Petitioner's GIOVANNI'S Marks and shrimp truck business.

21. Registrant's fraudulently procured registrations further manifest his intent to deceive the USPTO and consumers as to a false relationship with Petitioner.

22. On September 21, 2011, Registrant filed an application for registration of the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK for mobile restaurant services (U.S. Registration No. 4232569), claiming a date of first use in commerce of February 1, 1994.

23. The specimen of use Registrant submitted with its application for GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK depicts a picture of Petitioner's sign located on Petitioner's business premises. The specimen of use also depicts Petitioner's original shrimp truck, which is well-known and famously referred to as "Giovanni's Original White Shrimp Truck." This truck was specifically itemized as an asset assigned and transferred to Petitioner in Exhibit A to the Asset Purchase Agreement. (A true and accurate copy of this specimen printed from the United States Patent and Trademark Office's (USPTO) Trademark Document Retrieval (TDR) system is annexed hereto as Appendix D, and depicted below.)



24. In the application for GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK, Registrant falsely describes the specimen of use as follows: "Photo of Giovanni's Original White Shrimp Truck and Sign."

25. Petitioner never authorized or otherwise gave permission to Registrant to depict Petitioner's sign bearing Petitioner's mark and advertising Petitioner's business, or use a photo of Petitioner's shrimp truck, in connection with Registrant's business. Petitioner also never authorized or otherwise gave permission to Registrant to use or register the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK, which is identical to the mark in which Petitioner has prior rights.

26. Registrant has never used the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with mobile restaurant services.

27. Registrant has not continuously or exclusively used the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with mobile restaurant services since February 1, 1994.

28. In the alternative, to the extent Registrant ever used the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with mobile restaurant services, Registrant abandoned any such rights.

29. In procuring the application which matured into Registration No. 4232569 of the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to

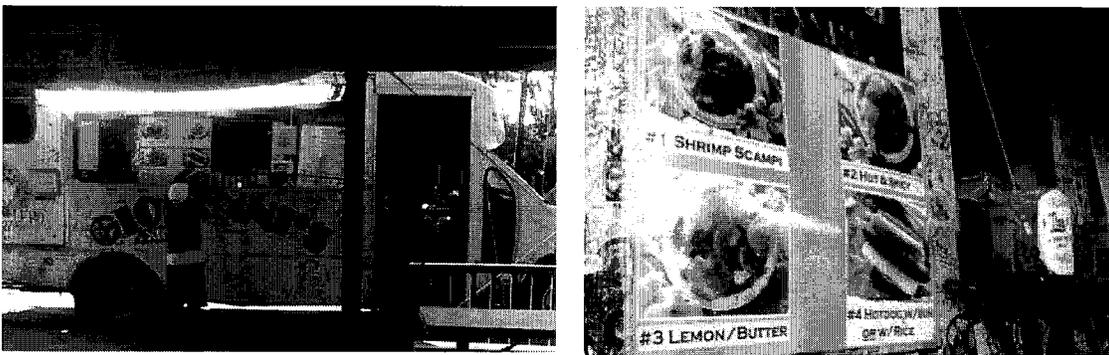
the source of goods sold under the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK.

30. Registrant's use of the identical mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK for identical mobile restaurant services is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.

31. Registrant's use of the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in the manner described above also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.

32. On September 21, 2011, Registrant filed an application for registration of the mark GIOVANNI'S ALOHA FOODS for food preparation services (U.S. Registration No. 4220686), claiming a date of first use in commerce of June 1, 1997.

33. The specimen of use Registrant submitted with its application for GIOVANNI'S ALOHA FOODS depicts no less than five pictures of Petitioner's shrimp truck. (A true and accurate copy of this specimen printed from the United States Patent and Trademark Office's (USPTO) Trademark Document Retrieval (TDR) system is annexed hereto as Appendix E.) In fact, a couple of the images in the specimen of use actually show Petitioner's food for sale from Petitioner's shrimp truck, as can be seen below:



34. In the application for GIOVANNI'S ALOHA FOODS, Registrant falsely describes the

specimen of use, in part, as follows: "Pictures of the Giovanni's Aloha Foods Original White Shrimp Truck."

35. Petitioner never authorized or otherwise gave permission to Registrant to depict Petitioner's shrimp truck or food sold by Petitioner, or to use a photo of Petitioner's shrimp trucks, in connection with Registrant's business. Neither did Petitioner authorize or otherwise give permission to Registrant to create a false impression of an association or affiliation with, or endorsement by, Petitioner.

36. Registrant has not continuously or exclusively used the mark GIOVANNI'S ALOHA FOODS in connection with food preparation services since June 1, 1997.

37. At most, Registrant was permitted to use the mark GIOVANNI'S ALOHA FOODS until sometime in 2001 when he abandoned the company Giovanni's Aloha Foods—a company in which Registrant owned a 25% share and Petitioner's members collectively owned a 50% share—and his right to use the mark GIOVANNI'S ALOHA FOODS.

38. Neither Petitioner nor its members ever gave Registrant permission to recommence use of the mark GIOVANNI'S ALOHA FOODS, or to use the mark in the manner described herein.

39. In procuring the application which matured into Registration No. 4220686 of the mark GIOVANNI'S ALOHA FOODS, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to the source of goods sold under the mark GIOVANNI'S ALOHA FOODS and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in Petitioner's GIOVANNI'S Marks.

40. Registrant's use of the mark GIOVANNI'S ALOHA FOODS for food preparation services, in the manner described herein, is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.

41. Registrant's use of the mark GIOVANNI'S ALOHA FOOD in the manner described herein also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.

42. On September 21, 2011, Registrant filed an application for registration of the mark GIOVANNI'S SCAMPI MARINADE for marinades (U.S. Registration No. 4224400), claiming a date of first use in commerce of February 2, 1994.

43. Registrant has not continuously or exclusively used the mark GIOVANNI'S SCAMPI MARINADE in connection with marinades since February 2, 1994.

44. At most, Registrant used the mark GIOVANNI'S SCAMPI MARINADE until sometime in 2001 when he abandoned the company Giovanni's Aloha Foods—a company in which Registrant owned a 25% share and Petitioner's members collectively owned a 50% share—and his right to use the mark GIOVANNI'S SCAMPI MARINADE.

45. Neither Petitioner nor its members ever gave Registrant permission to recommence use of the mark GIOVANNI'S SCAMPI MARINADE, or to use the mark in the manner described herein.

46. In procuring the application which matured into Registration No. 4224400 of the mark GIOVANNI'S SCAMPI MARINADE, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to the source of goods sold under the mark GIOVANNI'S SCAMPI MARINADE and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in Petitioner's GIOVANNI'S Marks.

47. Registrant's use of the mark GIOVANNI'S SCAMPI MARINADE for marinades, in the manner described herein, is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.

48. Registrant's use of the mark GIOVANNI'S SCAMPI MARINADE in the manner described

herein also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.

49. On September 21, 2011, Registrant filed an application for registration of the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE for hot sauce (U.S. Registration No. 4248595), claiming a date of first use of February 2, 1994.

50. Registrant has not continuously or exclusively used the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE in connection with hot sauce since February 2, 1994.

51. At most, Registrant used the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE until sometime in 2001 when he abandoned the company Giovanni's Aloha Foods—a company in which Registrant owned a 25% share and Petitioner's members collectively owned a 50% share—and his right to use the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE.

52. Neither Petitioner nor its members ever gave Registrant permission to recommence use of the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE, or to use the mark in the manner described herein.

53. In procuring the application which matured into Registration No. 4248595 of the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to the source of goods sold under the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in Petitioner's GIOVANNI'S Marks.

54. Registrant's use of the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE for hot sauce, in the manner described herein, is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.

55. Registrant's use of the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE in the manner described herein also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.

56. Beginning in May 2011, Registrant sent a letter to Petitioner making false ownership claims in the above-marks for which Registrant obtained fraudulent registrations in an attempt to cause Petitioner to license use of the marks from Registrant.

57. In February 2013, Registrant repeated this attempt to extort a license from Petitioner, relying on misstatements of fact and law and otherwise misusing its fraudulently procured trademarks to thwart competition and lawful and fair uses of Petitioner's GIOVANNI'S Marks.

58. For all of the reasons set forth above, Petitioner is being damaged by the continued existence of Registration Nos. 4232569, 4220686, 4224400, and 4248595, and the business and goodwill of Petitioner is further damaged in that said registrations tend to create or maintain statutory rights in violation and derogation of the established rights of Petitioner.

WHEREFORE, Petitioner prays that judgment be entered herein canceling U.S. Trademark Registration Nos. 4232569, 4220686, 4224400, and 4248595, and for such other and further relief that may be just and proper.

The requisite filing fee for this Consolidated Petition for Cancellation is submitted herewith.

* * *

Respectfully submitted,



Jason A. Cody
Jay Guiliano
Daniel P. Mullarkey
NOVAK DRUCE CONNOLLY
BOVE & QUIGG LLP
1875 Eye Street, N.W.
Eleventh Floor
Washington, D.C. 20001
(202) 659-0100

Attorneys for Petitioner
LuckyU Enterprises, Inc.

Dated: April 8, 2013

Certificate of Service

This is to certify that on this 8th day of April 2013, a copy of the foregoing Consolidate Petition for Cancellation and exhibits were mailed by First Class mail, postage prepaid, to the following attorney of record:

Jamie Pitts
The Law Offices of Jamie N. Pitts, Esq., P.A.
542 Columbia Ct.
Sarasota, Florida 34236-7124
941-893-7751
jamiempitts@gmail.com

/Daniel Mullarkey/

APPENDIX A

Revised 11/4/97

ASSET PURCHASE AGREEMENT

JW
9/21

THIS ASSET PURCHASE AGREEMENT is made this 7 ^{November} day of ~~October~~,

1997, by and between JOHN ARAGONA AND CONNIE ARAGONA, whose business and post office address is 59-614 KAWOA PL HALEIWA HI 96711 (hereinafter referred to as "Seller") and NITSCHKE ENTERPRISES, INC., a Hawaii corporation, whose business and post office address is 57-120 Lalo Kuilima Way, Kahuku, HI 96731 (hereinafter referred to as "Buyer").

WITNESSETH

WHEREAS, the Seller is the present owner of that sole proprietorship known as "Giovanni's Aloha Shrimp", which is a retail food business specializing in the sale of cooked shrimp lunches from a lunchwagon at locations in Kahuku and Haleiwa;

WHEREAS, the Buyer desires to purchase and the Seller desires to sell a portion of the assets of the business operated by Seller, known as "Giovanni's Aloha Shrimp", and Buyer desires to purchase the exclusive rights in the State of Hawaii, to (a) use the name "Giovanni's Aloha Shrimp", (b) use for the purposes of selling food either retail or wholesale, the Giovanni's Scampi and Giovanni's Hot and Spicy shrimp sauces (the Seller shall retain the right to sell and market Giovanni's Scampi, and Hot and Spicy shrimp sauces only for retail sales), and (c) sell shrimp at retail or wholesale using the present recipe that Seller has for Giovanni's Aloha Shrimp Scampi and Giovanni's Aloha Shrimp Hot and Spicy; and

WHEREAS, Seller desires to assign and Buyer is willing to accept the assignment for that lease that the Seller presently has at two sites situate in Kahuku and Haleiwa and at an additional site in Kahuku which the Seller presently uses to prepare his food; and

WHEREAS, the parties to this Agreement desire to set forth in writing their agreement regarding the purchase of all of the assets of "Giovanni's Aloha Shrimp", subject only to the exclusions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in consideration of monies exchanged, the parties hereby agree to the following:

1. **Asset Purchase and Assignment of Lease.**

The Seller agrees to sell and the Buyer agrees to purchase from the Seller, all of those assets of the Seller that are specifically listed in Exhibit "A" attached herein as made a part hereof. All such assets shall be transferred to the Buyer by the Seller in good condition at the time of closing. The obligation of the Buyer to buy the assets of the Seller as described in Exhibit "A" are contingent upon the fulfillment of the contingencies set forth in Paragraph 3 herein. The Seller also agrees, as an integral part of this Agreement, to assign to Buyer the rights and obligations of the Tenant or Lessee in that certain leases for (a) that property situate in Haleiwa where Seller presently operates a lunchwagon, (b) that property situate in Kahuku, at the site of the former Ahi's restaurant, where Seller presently operates a lunchwagon, and (c) that property situate in Kahuku (said property is a part of the same property that the Seller presently uses to operate his lunchwagon) that is presently used as the preparation room for the preparation of the food.

2. Consideration

The Buyer agrees to pay the Seller the sum of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00), which shall be paid into escrow at Closing. This sum shall be paid as follows:

A. A deposit of FIVE THOUSAND DOLLARS (\$5,000.00), which shall be deposited into escrow upon execution of this document. This deposit shall be fully refundable until November 21, 1997 or until all of the contingencies in Paragraph 3 are met. Any interest on this deposit shall be credited to the Buyer.

B. The balance to be paid to escrow at closing.

3. Contingencies

The obligations of the Buyer under this Agreement are contingent upon the following being met on the dates specified herein:

A. This Agreement is contingent upon the Buyer and Seller obtaining consent from the landlord on both leases, that is the lease for the Kahuku property and the lease for the Haleiwa property, to assign the rights and obligations of the Tenant or Lessee in both leases to the Buyer or to Troy Nitsche. This Agreement is also contingent on the Buyer obtaining a three year lease for the Kahuku site and the lease terms for said site being and monthly rent of EIGHT HUNDRED DOLLARS (\$800.00) with annual rent increases of TEN PERCENT (10%) of the previous year's rent. The Buyer and Seller shall cooperate in obtaining said consent, but it shall be the sole responsibility of the Seller to obtain the consents from both landlords prior to Closing. The consent, including but not limited to the provision that the Kahuku lease is a three year lease along with the stated lease

terms, shall be obtained by 5:00 p.m. on Friday, November 21, 1997. If said consent is not obtained by said date and time, this offer shall be null and void and all deposits shall be returned by the Seller to the Buyer immediately.

B. This Agreement is contingent upon the Seller conveying to the Buyer all of the equipment listed in Exhibit "A" attached, hereto, without any liens or encumbrances.

(2) C. This Agreement is contingent upon the Seller and Buyer jointly owning the State of Hawaii trademark registration to the name "Giovanni's Aloha Shrimp". The Seller shall, prior to closing, provide the Buyer with evidence that said trade name is registered by the Seller in the State of Hawaii.

D. This Agreement is contingent upon the Buyer obtaining financing for the purchase price. The Buyer shall notify the Seller on or before 5:00 p.m. on Friday, November 21, 1997, if the Buyer has been able to obtain financing. If the Buyer is not able to obtain financing, then the Buyer may cancel this Agreement and receive a full refund of all deposits.

E. The obligations of the parties under this Agreement are contingent upon the Seller passing a Department of Health Inspection on the Date of Closing. If the applicable sites do not pass the Department of Health Inspection on said date, then the Closing shall be delayed until such time that the Seller does pass said inspection. If said inspection is not passed within thirty (30) calendar days of the scheduled Date of Closing, then this agreement shall be canceled, the buyer shall receive a full refund of any deposits, and all obligations by and between the parties shall be null and void.

4. Closing Date.

The Closing Date of this Asset Purchase Agreement shall be ~~Friday,~~
December 15, 1997
November 28, 1997. Escrow shall be with Island Title, the escrow officer shall be Nina Arakawa.

1/4
TEA
JK

5. Representations of Seller to Buyer.

The Seller makes the following representations regarding the assets being transferred to the Buyer:

A. Seller represents they are the sole owner of the assets listed in Exhibit "A" and that they will have the right and authority to sell and deliver the same in accordance with this Agreement and that the Seller will, pursuant to this Agreement, transfer valid legal title of all the assets listed in Exhibit "A", free and clear of all liens, encumbrances and claims of every kind.

B. Seller will at the request of Buyer, execute and deliver to Buyer all such further assignments, endorsements and other documents as the Buyer may reasonably request to complete such sale of the assets listed in Exhibit "A".

C. The Seller hereby covenants with the Buyer that he has not placed any mortgage or any other liens upon said assets listed in Exhibit "A".

D. Seller represents that they are a lessee as to both the Kahuku property (both areas) and the Haleiwa property that are described herein and that they have the right to occupy the leased premises at both sites and that as of the date of this Agreement no legal action has been taken against them for summary possession or any removal from either premises.

E. Seller is the only individual or entity that owns any rights to the Giovanni's Scampi, and Giovanni's Hot and Spicy Sauces and the Seller has the full right to contract with the Buyer as to any agreement regarding restricting the sale and use of said sauces.

F. Seller represents that there are no actions, proceedings, or investigations pending or, to the knowledge of the Seller, threatened or affecting the Seller, that are before or by any federal, state, municipal or other governmental agency, department, commission, board, bureau, agency or instrumentality, which would make it impossible for Seller to consummate this Agreement with the Buyer or which would make the assets listed in Exhibit "A" subject to lien.

G. All representations and warranties of the Seller contained in this Paragraph 5 shall survive Closing.

6. Payment of Closing Fees and Costs.

All closing costs shall be equally divided by the parties except that the Seller shall be solely responsible for bearing any costs relating to fulfilling the contingencies described herein and any other consents. All real property taxes and rent shall be prorated as of the Date of Closing. Each party shall bear their own attorneys fees and costs.

7. Buyer's Closing Obligations.

On or before the Closing Date, the Buyer shall:

A. Have paid into escrow all of the purchase price described in Paragraph 2 herein.

B. Deposit into Escrow sufficient cash to cover (i) closing costs, and (ii) all other sums of money required to be paid by the Buyer pursuant to this Agreement.

C. Execute and acknowledge all documents necessary to consummate the transactions contemplated by this Asset Purchase Agreement (including all escrow instructions and closing statements).

D. Perform and satisfy, or cause to be performed and satisfied, all other obligations and conditions which are required to be performed or satisfied by the Buyer under this Asset Purchase Agreement.

8. Seller's Closing Obligations.

On or before the Closing Date, the Seller shall:

A. Deliver to the Buyer all of the assets listed in Exhibit "A" attached hereto.

B. Execute and acknowledge a bill of sale transferring all of the assets listed in Exhibit "A" from the Seller to the Buyer.

C. Perform and satisfy, or cause to be performed and satisfied, all other obligations and conditions which are required to be performed or satisfied by the Seller under this Asset Purchase Agreement.

D. Execute and acknowledge all documents necessary to consummate the transactions contemplated by this Purchase Agreement, including but not limited to documents that would transfer the registration of the trade name "Giovanni's Aloha Shrimp" into a joint ownership between the Buyer and Seller.

E. Possession. Seller shall deliver the keys and any codes for security devices to the Buyer at Closing. Any warranties in the possession of the Seller for the equipment or appliances shall also be delivered to Buyer at Closing.

9. Buyer Does Not Assume Debts of Seller.

It is expressly understood and agreed between the parties that the Seller is responsible for paying any and all debts incurred by the Seller prior and after the Date of Closing. The Buyer does not and will not assume any and all debts incurred by the Seller. The Seller hereby indemnifies and holds harmless the Buyer from any claim, liability or cause of action for any debt, claim, or action brought against the Seller that arose from any actions or transactions. It is further agreed between the parties that Seller shall retain the right to collect any accounts receivable for debts owed to Seller that were incurred prior to the Date of Closing.

10. Further Agreements Between the Parties That Will Survive Closing.

In consideration of the mutual covenants contained herein, the parties hereby covenant and agree that the following are also terms and conditions of this Agreement that will survive Closing. The parties covenant and agree that these terms and conditions may be fully enforced by either party after Closing and that any breach of the following conditions shall be considered to be a breach of this Agreement:

A. The only restriction on the Buyer's use of the trade name "Giovanni's Aloha Shrimp" shall be that the Buyer shall sell at least a half pound of shrimp in the plate lunches sold by the Buyer after acquiring the Seller's business and the Buyer shall use as marination and sauces for the shrimp sold by the Buyer after acquiring the Seller's business both the scampi sauce, and the hot and spicy sauce

that the Seller presently uses. If in the event however, the aforesaid scampi and hot and spicy sauce is not available to the Buyer after the buyer acquires the Seller" business, then the Buyer shall have the right to use a replacement sauce, subject however, to the terms set forth in Paragraph 10-C herein. The joint ownership of the trade name "Giovanni's Aloha Shrimp" shall apply only to the State of Hawaii, and the Buyer covenants and agrees not to register said trade name outside the State of Hawaii.

B. The Buyer shall have the right to purchase from the Seller the Giovanni's Scampi, and Giovanni's Hot and Spicy sauce that is presently used in the cooking and preparation of that product presently called "Giovanni's Aloha Shrimp". The Buyer shall have the right to purchase said sauces in sizes of gallon jugs or larger and the Buyer shall have the exclusive right to purchase said sauces in sizes of gallon jugs or larger at wholesale cost. The Buyer shall have the right to purchase said sauces at the Seller's cost from the bottler plus shipping cost, said cost however, being exclusive of labor. The seller may sell said sauces in the retail market but the Seller covenants and agrees that he shall not (i) sell said sauces in any containers larger than 12 ounces, (ii) sell said sauces to any person or entity other than the Buyer at wholesale (however, this shall not prohibit the Seller from selling his sauces, with the limitation on the sizes as noted above, to any food wholesaler for intended resale on the consumer market only), (iii) sell said sauces to any person or entity that will use said sauces to prepare and sell a food product for retail sale, and (iv) sell the sauce to any person or entity that will compete

against the Buyer. The Seller's obligations under this paragraph shall be limited to the State of Hawaii, and shall not apply to sales outside the State of Hawaii.

C. The parties acknowledge that Seller has contracted Hagerty Foods of California to bottle Seller's sauces and that the Buyer will be buying Seller's sauces through Hagerty Foods. Until the sauce becomes available through Hagerty foods and the Buyer receives delivery of its first complete order, Seller will be responsible for supplying the Buyer with an adequate quantity of sauce at the cost of ingredients. Seller and Buyer mutually covenant and agree that if Hagerty Foods, for whatever reason, cannot supply the Buyer with the shrimp sauces described herein in the required quantities or cannot supply the sauces to the Buyer at the cost of the product plus shipping (the failure of Hagerty Foods to provide said sauces shall be said to occur if the Seller cannot provide the Buyer with any order within twenty ^{30 (THIRTY)} ~~(20)~~ ^(TEN) calendar days of the Buyer making the order) then the following shall apply:

i. Seller shall first have the right to provide Buyer with the sauce that has become unavailable to Buyer. Seller shall however, provide the sauce to the Buyer at a price no higher than that which the Buyer was paying Hagerty Foods.

ii. In the event that the Seller does not provide the Buyer with the sauce within ten (10) calendar days of the date that Hagerty Foods fails to provide the order to the Buyer, then the Seller shall provide the Buyer with the recipes for said shrimp sauces. Said recipes, shall be subject, however, to a confidentiality agreement between the parties.

iii. In the event that the Buyer receives neither the sauce or the recipes in a timely fashion, then the Buyer may, at the Buyer's option, use a replacement sauce for the period that the Seller's sauces are unavailable to the Buyer. By using a replacement sauce the Buyer does not waive any rights or remedies that it may have under this Agreement as the use of said sauce is simply a means to allow the Buyer to mitigate any damages. The Buyer shall, in such circumstances, retain the right to take legal action against the Seller to enforce any provision of this Agreement.

D. Seller agrees to provide the Buyer with training for a period of two weeks after Closing. Said training shall be provided at no cost to the Buyer and shall inform the Buyer on all aspects of operating the business.

11. **Compliance with Antitrust Act.**

The parties hereby represent by executing this Agreement that they are not subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvement Act of 1976. If the parties are so required to report then the parties shall cooperate with each other to meet the requirements of this Act.

12. **Compliance with Bulk Sales Act.**

The parties hereby covenant and agree that the Seller is subject to the reporting requirements of the Bulk Sales Act under the Hawaii Revised Statutes. The Seller shall be solely responsible for meeting any reporting requirements under said Bulk Sales Act.

13. Cooperation of Parties in Transition: Inspection of Books.

Seller and Buyer shall each use reasonable efforts and cooperate in good faith to achieve an orderly transition relating to the leased premises described herein.

14. Cancellation of Agreement.

In the event that the Seller fails to fulfill any of the contingencies listed in this Agreement by the dates set forth, unless there is written agreement to the contrary, this Agreement shall be null and void if any of those conditions are not met. Upon cancellation of this Agreement the Buyer shall receive a full refund of any deposits.

15. Non-Competition Clause.

In consideration of the covenants contained herein, the Seller agrees not to operate, own, participate in, manage, supervise, or engage in consulting any retail food business in the State of Hawaii for a period of five (5) years after the Date of Closing, except that the Seller may participate in a catering business, catering other types of food in addition to the product known as "Giovanni's Aloha Shrimp" if and only if the Seller purchases all the required shrimp, already cooked and prepared, from the Buyer at a price of the Buyer's cost plus a sixty percent (60%) mark-up. The Seller further covenants and agrees that they shall not use the name "Giovanni's" or "Giovanni" in the operation of any business in the State of Hawaii for a period of five (5) years after the Date of Closing, except that (A) the Seller may market and sell any sauces under the name Giovanni's provided that the market and sale of said sauces does not violate any other term of this Agreement, and (B) the Seller may open a sit-down restaurant that sells the shrimp under the aforesaid name if and only if said restaurant serves the shrimp only for dinner (after 6:00 p.m. daily). The Seller further covenants and agrees that under no circumstances will

they operate, own, participate in, manage, supervise, or engage in consulting any lunchwagon operation in the State of Hawaii without the express written consent of the Buyer. The terms of this Paragraph shall survive Closing and the parties covenant and agree that without the existence of this clause that the Buyer would not have entered into this Agreement.

16. Event of Default.

The following shall constitute and "Event of Default" this Agreement:

A. Buyer or Seller shall fail to pay any sums of money when due under this Purchase Agreement, or fail to observe or perform any other term or provision to be observed or performed by Buyer or Seller under this Agreement, or

B. Buyer or Seller shall acquiesce in writing to, or fail to controvert in a timely manner, any petition filed against Buyer or Seller in an involuntary case under the federal bankruptcy laws, or

C. Buyer or Seller fails to observe or perform any term or provision of this Agreement that is to survive Closing.

17. Remedies Upon Default.

Upon the occurrence of any "Event of Default", the non-defaulting party shall have the following rights and remedies:

A. In the case of the Seller being the non-defaulting party, the Seller's remedies shall be limited to canceling this Purchase Agreement and, if applicable, retention of the deposit described in Paragraph 2A herein.

B. In the case of the Buyer being the non-defaulting party, the Buyer may either:

(i). Sue the Seller for and obtain damages and/or specific performances; or

(ii) The Buyer may choose to cancel this Agreement in accordance with the terms contained in paragraph 11 herein, in which case the deposit shall then be fully refunded to the Buyer, and upon cancellation there shall be no further obligations between the parties.

18. Time is of the Essence.

Time is hereby expressly declared to be of the essence of this Purchase Agreement. Unless otherwise specified herein, the due date for the receipt of any notices or sum of money shall be 5:00 p.m., H.S.T., of each respective day.

19. Applicable Law.

This Purchase Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action hereunder shall be filed in the State of Hawaii judicial system only and the Buyer and Seller hereby submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii.

20. Attachments to this Agreement.

The attachment marked as Exhibit "A" shall be made a part to this Agreement.

21. General Provisions.

A. This is the sole and only agreement between the parties. Any modification of this Agreement must be in writing and executed by both of the parties hereto.

B. If any part of this Agreement is deemed to be invalid for any reason, this shall not invalidate this entire agreement but shall only invalidate that one provision and the remainder of this agreement shall remain in full force and effect.

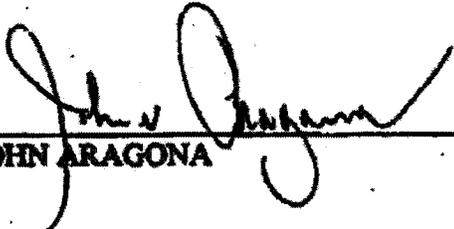
C. This Agreement shall be construed to give the Buyer full rights to use the name "Giovanni's Aloha Shrimp" without any limitations placed upon the Buyer on the use of said name.

D. This Agreement has been reviewed by each party and their respective counsel. Although this Agreement may have been drafted by one party, the Agreement shall be construed as if it had been drafted jointly by the parties and shall not be interpreted on behalf of one party as against the other.

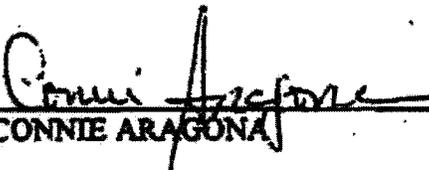
E. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purpose, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

F. Facsimile copies shall be treated as originals for the purposes of this
Asset Purchase Agreement.

DATED: Honolulu Hawaii, November 7, 1997.



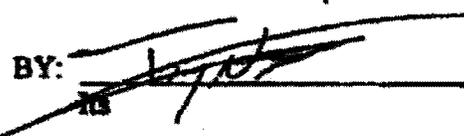
JOHN ARAGONA



CONNIE ARAGONA

"Seller"

NITSCHÉ ENTERPRISES, INC., a
Hawaii corporation

BY: 

"Buyer"

ASSET PURCHASE AGREEMENT, by and between JOHN ARAGONA and CONNIE
ARAGONA and NITSCHÉ ENTERPRISES, INC.

EXHIBIT "A"

GIOVANNI'S ALOHA SHRIMP INVENTORY

Inventory - Kahuku Truck: *OH*

- 1 - 1952 Chevrolet Truck (sold as is) *TEN*
- 1 - Ladder
- 1 - Refrigerator
- 1 - Single burner stove
- 1 - Double Burner Stove
- 3 - Strainers
- 5 - A-frame signs
- 2 - Coolers
- 3 - Spray bottles
- 6 - Scampi pans
- 2 - Hot & Spicy pans
- 3 - Grilled pans
- 1 - Crate (spray bottles & trash bags)
- 14 - Stainless steel trays (Scampi containers)
- 10 - Stainless steel tray tops
- 8 - White plastic tubs (cut & uncut containers)
- 1 - Hot dog container
- 3 - Trash cans (2 outside - large; 1 inside - small)
- 2 - Large rice inserts
- 2 - Small rice inserts
- 2 - Large rice cookers
- 2 - Small rice cookers
- 2 - Condiment containers - stainless steel
- 2 - Blue tarps
- 1 - Lemon wedge container
- 6 - Plastic containers (napkins, forks, etc.)
- 2 - Rice scoopers
- 1 - Circular plastic container
- 4 - Rinsing jars
- 2 - Buckets
- 1 - Circular fan
- 5 - Plastic trays ("To go" section)
- 1 - Set of jumper cables
- 2 - Cutting boards
- 1 - Stereo
- 9 - Tables (8 vinyl & 1 wooden with parasol and base)
- 1 - 30' x 20' tent
- 1 - Clipboard
- 1 - Lighting system for tent
- 2 - Propane tanks
- 3 - Cork boards
- 3 - Extension cords (large gauge)
- 1 - Broom
- 1 - Cash box
- Assorted markers and bungee cords
- 1 - Plastic hand rinse container
- 1 - Large plastic tub (holds sauces next to cooler)
- 3 - Small plastic trays (on serving counter)
- 2 - Plastic jars (tickets and tips)
- 5 - Shoyu dispensers
- 1 - Salt & pepper shaker combo
- 1 - Toothpick dispenser
- 1 - Kiddy chair
- 1 - Black tarp
- 3 - Rakes
- 6 - Cutting knives (truck and house)
- 1 - Chopping knife
- 3 - Rubber floor mats
- 1 - Trailer
- 1 - Trailer sign
- 3 - Tonga
- 2 - Ladles
- 1 - Phillips head screw driver
- 1 - Flat head screw driver
- 1 - Metal grease container
- 1 - Spatula
- 1 - Can opener

Inventory - Preparation Room:

- 1 - Hose and nozzle
- 1 - Refrigerator
- 2 - Freezers, 1 single capacity, 1 double capacity
- 1 - Coffee machine and carafe
- 3 - Night stands
- 1 - 3 basin stainless steel sink & rinsing handle
- 1 - Stainless steel work table
- 1 - 20 gallon cooler
- 1 - 20 gallon coffee/tea dispenser
- 2 - 2' x 2' circular fans
- 1 - Bar stool
- 1 - Ratan table
- 4 - Ratan chairs
- 1 - 8' x 3' Stocking table
- 2 - Trash bins (small)
- 1 - Air conditioner
- 1 - 5' x 2' desk and chair
- 1 - Futon frame
- 6 - Window shades
- 1 - Paper towel dispenser
- 1 - Hi-fi
- 2 - Table lamps
- 2 - Mops
- 1 - Large clock
- 1 - Pair walkie-talkies
- 1 - Ceramic washing sink (outside)
- 2 - Brooms
- 2 - First-aid kits
- 1 - Blue tarp
- 1 - Z Burner stove (working)
- 1 - Cork board
- 1 - Ice machine (outside)
- 1 - Scampi pan (un-used)
- 2 - Large rice inserts
- 4 - Small rice inserts
- 3 - Cutting boards
- 3 - Propane tanks
- 1 - Box of order books
- 5 - Large plastic tubs (blue & green)
- 1 - Dirty linen container (outside)
- 1 - Gasoline container
- 1 - Large trash can (outside)
- 1 - Set of tongs
- 2 - Ladles (Large)
- 2 - Extension cords (small gauge)
- 2 - Spray bottles
- 1 - Dust pan and brush set
- 1 - Pair vice-grips
- 3 - Rice spoons
- 1 - Spatula
- 1 - Can opener
- 1 - Large "Giovanni's" wooden sign

Inventory - Haleiwa Truck

- 1 - 1977 Dodge Truck (sold as is) *TAW*
- 2 - Extension cords (Large gauge)
- 1 - Hose
- 2 - Scampi pans
- 1 - Hot & Spicy pan
- 1 - Grilled pan
- 2 - Small rice cookers
- 2 - Small rice inserts
- 1 - Refrigerator
- 2 - Shoyu dispensers
- 1 - Tip jar
- 1 - Stereo
- 1 - 2 Burner stove
- 3 - sets of tongs
- 1 - Ladle
- 1 - Rice scooper
- 1 - Small trash container
- 1 - Large trash can
- 2 - Tables
- 1 - A-frame sign
- 2 - Cutting knives
- 1 - Cutting board
- 1 - Strainer
- 3 - Stainless steel scampi containers
- 1 - Hot dog container
- 7 - Plastic trays (napkins, chopsticks, etc.)
- 1 - Propane tank
- 3 - Padlocks

- 1 - Toothpick dispenser
- 2 - Spray bottles
- 4 - Marker pens
- 1 - Cooler
- 1 - Pair of vice-grips
- 2 - Rinsing containers
- 1 - Fan
- 1 - Bucket
- 1 - Cash Box
- 1 - Black tarp
- 1 - Metal grease container

BUYER:

Nitsche Enterprises, Inc.

By: *[Signature]* 11/24/97
 Its: _____ Date

SELLERS

[Signature] 11/29/97
 John Aragona _____ Date

[Signature] 11/29/97
 Connie Aragona _____ Date

APPENDIX B



What began as an unknown shrimp truck on Oahu's North Shore —

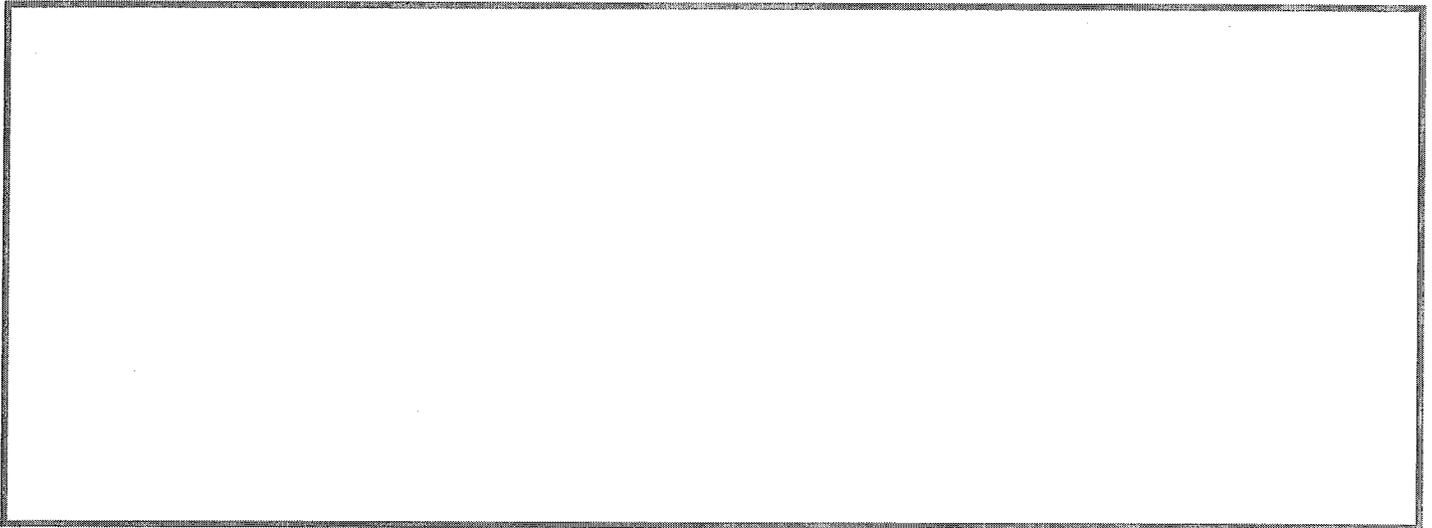
Became a Legend!



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APPENDIX C

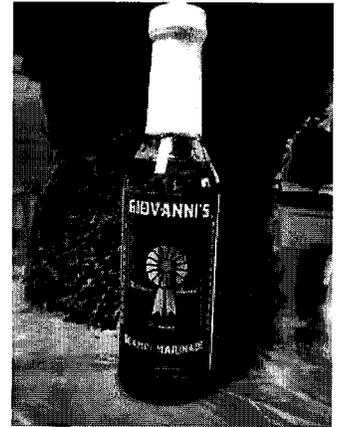


About Giovanni's Aloha Foods and Our Famous Shrimp Sauce!

**What began as an unknown, white shrimp truck on Oahu, Hawaii's North Shore —
Became a Legend ...**

Known for its succulent shrimp morsels served up hot and tasty, Giovanni's Aloha Foods has been pleasing palettes since 1997. Giovanni's Hot & Spicy Sauce, a sauce almost as hot as volcanic lava, has been known to bring customers to their knees; while the mild, but flavor-packed, Giovanni's Scampi Marinade has brought nothing but delight to customers. **AND NOW YOU CAN BUY IT IN A BOTTLE! Made in the USA!**

Giovanni's Aloha Foods is a member of the [National Association for the Speciality Food Trade](#).



1997 Scovie Award: 1st place winner of Scampi Marinade (pictured above); **Scovie Award:** 2nd place winner of Hot & Spicy Sauce

Our Customers Say

"Our friend told us to stop at the "White Shrimp Truck" in Kahuku, and we're glad we did! The garlic scampi was our family's overall favorite, and I loved the Hot & Spicy, I really mean it! I collect hot sauce from all over the place, Barbados to Belize, Louisiana to Los Angeles, and your secret African Roots and spice are truly unique. I can't wait till you start bottling it."

— Eddie, Terry & Jacob Coleman, Venice, Calif.

"We think your shrimp scampi is the best we have eaten anywhere."

— Jim & Mary Jane West Lufkin, Texas

"Still looking forward to seeing you and having your famous shrimp sauces."

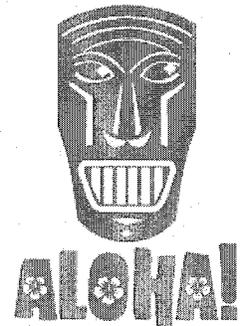
— Gerda Vienna, Austria

"The thing I miss most is my shrimp fix."

— Pat & Clyde Jacobs Vancouver, Canada

"We enjoyed the best shrimp of Oahu."

"Thanks for serving some of Oahu's finest, tastiest, freshest shrimp scampi. We really enjoyed dining



– Ann & Eric Appelt Nurnberg, Germany daily at the white shrimp truck, during our recent vacation. Your shrimp is the BEST!"

– Harry & Rochelle Pillion, University Heights,

"You have been one of "A list" stops on our list of must see sights on Oahu As always it was the most scrumptious meal."

– Lou Harris San Mateo, California

"I miss talking to you and eating your incredible shrimp. I'll see you soon in paradise."

– Yasser Alexandria, Egypt

"Best shrimp ever!"

– Yuki, Tokyo, Japan

"The hottest shrimp ever!"

– Allan Ciaport, Montpellier, France

"Just to let you know we marinated 2 lb. 31/40 shrimp in the Giovanni scampi sauce and put them on the grill screen at medium heat 4 minutes on each side . Then we put them back in your sauce and served them . At first bite my brother-in-law said "WOW !!!! GET ME A CASE OF THIS SAUCE". Thank you Giovanni."

– Mike Antonelli

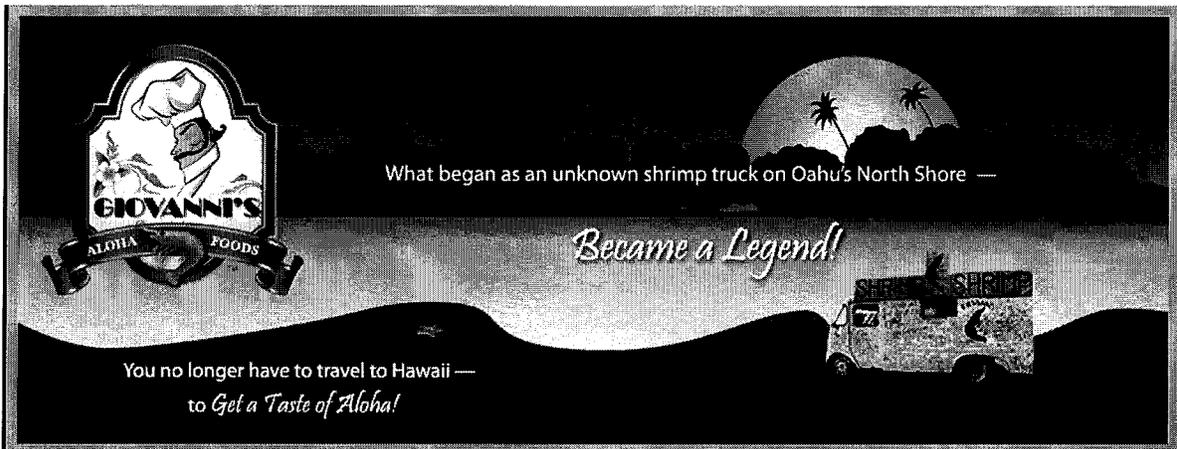
"I'm a shrimp truck addict for 12 years - nothing but Giovanni's! I didn't eat at the truck the first time I saw it (2000). It was just a truck melted into the dirt - covered in graffiti. Boy am I glad I asked someone if the legend was true - I went back to the truck and got my first taste of what has become my number one "to do" when I arrive for vacation!! Just so you know - everyone that's come to the truck after 2000...it was me that sent them!! I know - you wondered where all those people came from. What can I say - when I like something - I tell everyone."

– Mike, Portland, Oregon

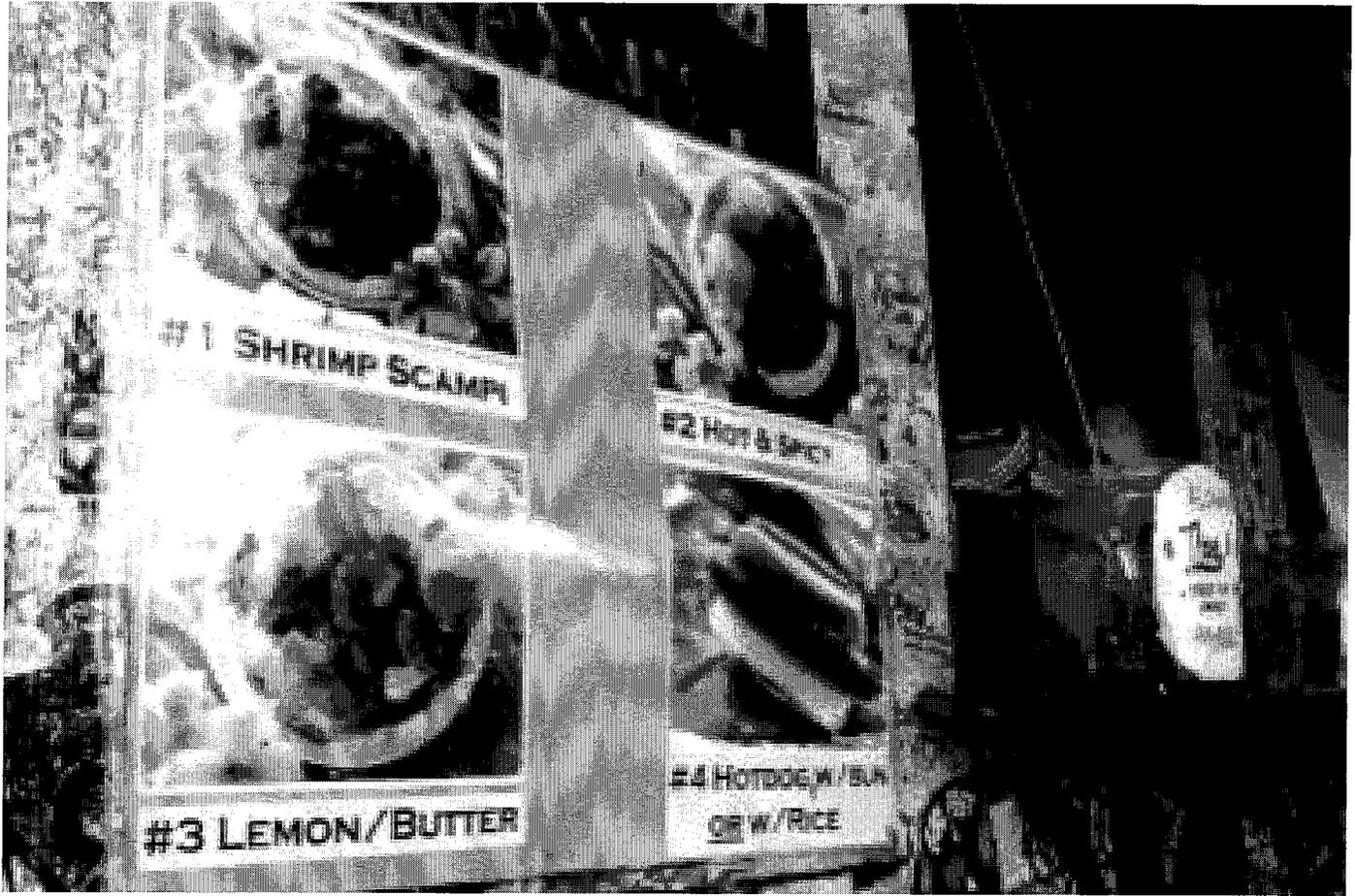
APPENDIX D



APPENDIX E



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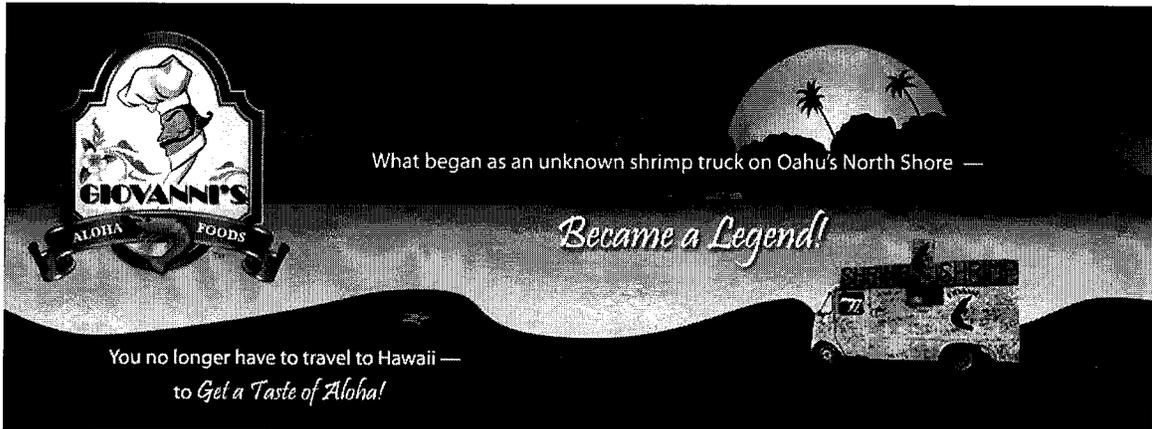
#1 SHRIMP SCAMPI

#2 HOT & SAUCY

#3 LEMON/BUTTER

#4 HOTDOG W/ SAUCE
OR W/ RICE





Buy Giovanni's Sauces Online!

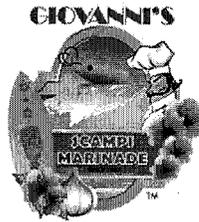
Category: [Store](#)

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Giovanni's Hot & Spicy Sauce
SKU 1195100971

\$6.95



Giovanni's Scampi Marinade
SKU 1195100969

\$7.95

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Giovanni's Aloha Foods BY: Amy Hepler [← Back](#)

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Giovanni's Aloha Foods

www.giovanissauces.com

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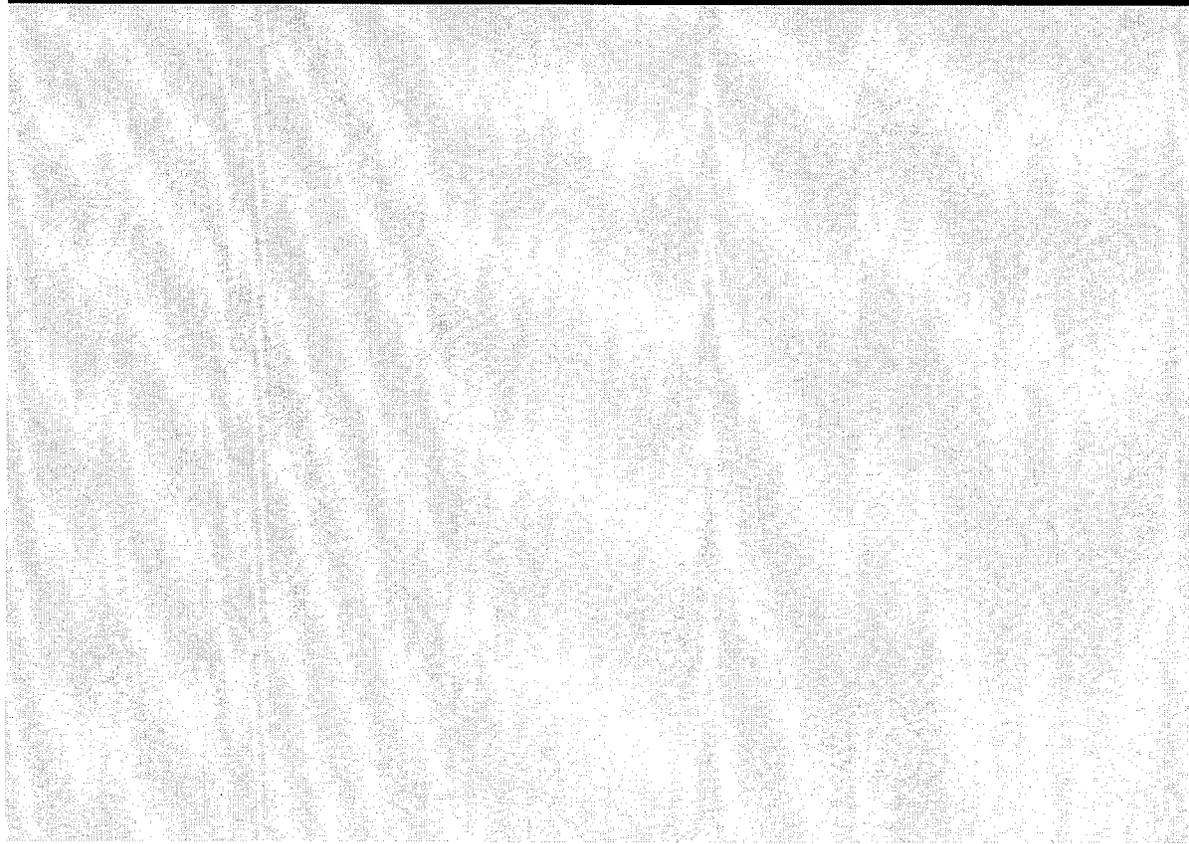
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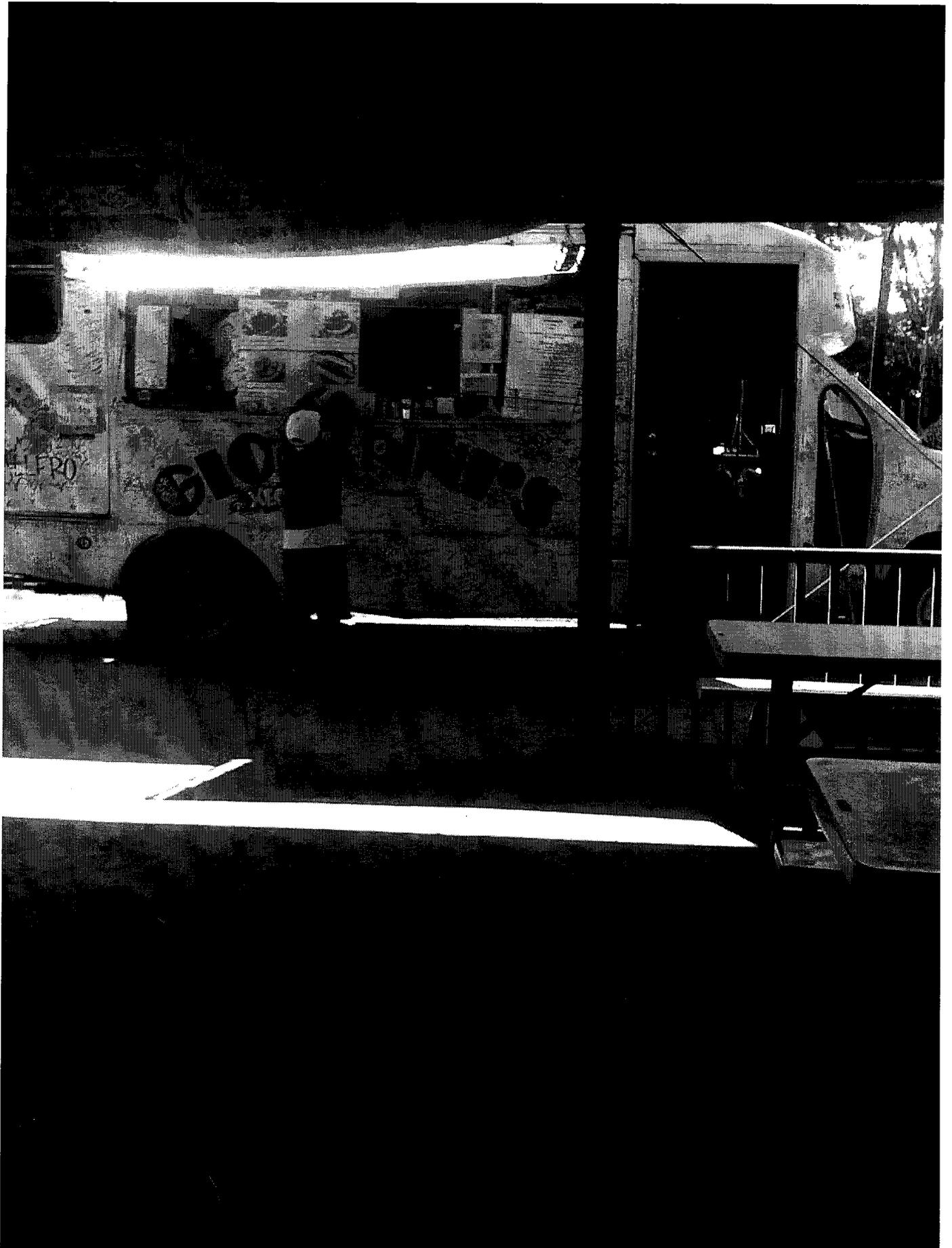
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In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit: 3
Exhibit Offered by Respondent
12/3/14

FIRST AMENDMENT OF ASSET PURCHASE AGREEMENT
DATED NOVEMBER 7, 1997

THIS FIRST AMENDMENT OF ASSET PURCHASE AGREEMENT DATED NOVEMBER 7, 1997 is made and entered into, effective November ____, 1997, by and between JOHN ARAGONA and CONNIE ARAGONA, whose business and post office address is 59-618 Kawoa Place, Haleiwa, Hawaii 96712, (hereinafter referred to as "Seller") and NITSCHKE ENTERPRISES, INC., a Hawaii corporation, whose business and post office address is 57-120 Lalo Kuilima Way, Kahuku, Hawaii 96731 (hereinafter referred to as "Buyer");

WITNESSETH:

WHEREAS, pursuant to that certain unrecorded ASSET PURCHASE AGREEMENT DATED NOVEMBER 7, 1997 (the "Agreement") Seller has sold and Buyer has purchased a portion of the assets of Seller's business known as "Giovanni's Aloha Shrimp", which is a retail food business specializing in the sale of cooked shrimp lunches from a lunch wagon at locations in Kahuku and Haleiwa; ("Business"); and

WHEREAS, Seller and Buyer Lessee agree to amend the Agreement to change Seller's contingencies designated under paragraphs 3A stating, in pertinent part, that Seller's leases must be assigned to Buyer and that Landlord's consent must be obtained, and 3C stating, in pertinent part, that the Hawaii trademark registration to the name "Giovanni's Aloha Shrimp" must be jointly owned by Seller and Buyer;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and in the Agreement, Seller and Buyer agree to a first amendment of the Agreement as follows:

1. Landlord's Consent and Assignment Contingency. Seller and Buyer hereby agree that the Contingency requiring the Kahuku lease to be assigned to Buyer with the Landlord's consent shall be deleted and replaced with the following: Seller provide proof prior to closing that the Buyer has been named as a tenant on the existing lease with Campbell Estates as landlord. The Buyer understands that the consent of the Landlord, Campbell Estates, can not be obtained and that as such Buyer has agreed to be added onto the current lease with Seller.

2. Trademark Contingency. Paragraph 3C shall be deleted in its entirety and replaced with the following:

Seller shall provide evidence, prior to closing, that the trademark "Giovanni's Aloha Shrimp" is registered and owned in the State of Hawaii by the Seller. Seller hereby covenants and agrees to permit Buyer to use the trade name "Giovanni's Aloha Shrimp", at no cost to Buyer, for a period of ten years with

said term to be extended for an additional ten year period upon Seller's renewal of said trade mark, subject to remaining term in the Asset Purchase Agreement. Buyer shall be permitted to use said trade name in the State of Hawaii without any restrictions except for those restrictions noted in the Asset Purchase Agreement.

3. Amendment. Except as expressly amended in this First Amendment, the Agreement shall remain unchanged and shall continue in full force and effect. The Agreement, as hereby amended, is ratified and confirmed.

4. VEHICLES. As a part of the Asset Purchase Agreement, Seller shall transfer title to those vehicles listed in exhibit "B" from the Seller to the Buyer. Seller shall provide, prior to closing, proof that the Seller holds title to these vehicles and the actual transfer of the vehicles shall be effected through closing by the Seller tendering to Escrow an executed original of the certificate of title for both vehicles. No title abstract shall be required prior to closing but the Seller hereby warrants that there are no liens and encumbrances on said vehicles.

IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment of Asset Purchase Agreement, dated November 7, 1997, as of December _____, 1997, and shall be effective upon the signatures of Seller and Buyer .

JOHN ARAGONA

CONNIE ARAGONA

"Seller"

NITSCHER ENTERPRISES, INC. A
Hawaii Corporation

By _____
Its

"Buyer"

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 4
Exhibit Offered by Respondent
12/3/14

Cancellation No. 92057023

Troy Nitsche Deposition

Exhibit: 4

Exhibit Offered by Respondent

LICENSE AGREEMENT

12/3/14

THIS LICENSE AGREEMENT ("Agreement") made this 9th day of December, 1997, but effective as of July 1, 1997 ("Effective Date") by and between KAHUKU VILLAGE ASSOCIATION, INC., a Hawaii corporation, whose post office address is P.O. Box 398, Kahuku, Hawaii 96731 ("KVA"), and JOHN ARAGONA and NITSCHKE ENTERPRISES, INC., a Hawaii corporation, dba GIOVANNI'S ALOHA SHRIMP, whose address is 59-618 Kawoa Place, Haleiwa, Hawaii 96712 ("GAS").

RECITALS.

KVA has a leasehold interest in certain premises situated at Kahuku, Hawaii, which includes the License Area described below;

GAS has requested that KVA grant GAS a license to operate a roadside lunch wagon from such License Area, and to use the structure located within the License Area for storage and employee restroom purposes,

KVA is willing to accommodate GAS' request and grant GAS a license for such purposes on the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereby agree as follows:

1. Premises. KVA hereby grants to GAS the right, in the nature of a license, to use the portion of the premises outlined in red on the map attached hereto as **Exhibit A** and incorporated herein by reference, together with the existing improvements located thereon (collectively the "License Area"), solely for the purpose of selling shrimp and related prepared food products from GAS' lunch wagon and the structure located thereon for storage and an employee restroom, all on the terms and conditions set forth herein.

2. Term. This Agreement shall commence on July 1, 1997 and shall terminate on June 30, 2000, unless sooner terminated pursuant to the terms hereof.

3. License Fee. During the term of this Agreement, GAS shall pay to KVA, license fees as follows:

<u>Period</u>	<u>License Fee</u>
July 1, 1997 - June 30, 1998	\$800 per month

<u>Period</u>	<u>License Fee</u>
July 1, 1998 - June 30, 1999	\$880 per month
July 1, 1999 - June 30, 2000	\$968 per month

In addition, GAS shall pay its pro rata share of the real property taxes associated with the License Area. GAS shall pay this license fee in advance on the first day of each month during the term of this Agreement, without any offset, counterclaims or deductions whatsoever.

4. KVA's Reservations. KVA hereby expressly reserves the right (for itself and its assigns) to use the License Area for such other purposes as it deems necessary or appropriate, provided that such other uses shall not unreasonably impair GAS's use of the License Area for the uses contemplated hereunder.

5. Limitations on Use. The License Area shall be used for the purpose of selling shrimp and related prepared food products from GAS' lunch wagon, and shall use and the structure located thereon for storage and an employee restroom, and no other uses. No portion of the License Area nor the structure located thereon may be used for residential purposes.

6. General Excise Taxes. GAS shall pay to KVA, as additional rent, together with each payment of the license fee or any other payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment, yields to the KVA, after deduction of all such tax payable by the KVA with respect to all such payments, a net amount equal to that which the KVA would have realized from such payments had no such tax been imposed.

7. Utilities. GAS shall provide all utilities required for its operations and shall not hook up to or otherwise use any water, sewer, electricity or other utility services on the License Area without the prior written consent of KVA, which may be withheld in its sole discretion.

8. Installation of Equipment. GAS shall not install any equipment on the License Area or otherwise construct any improvements thereon without the prior written consent of KVA, which may be withheld in its sole discretion.

9. Security. KVA makes no representation or warranty as to the security of the License Area, and GAS assumes all responsibility for loss, theft or damage to merchandise, supplies or other material brought onto the License Area by GAS.

10. Security Deposit. Upon execution of this License Agreement, GAS shall deposit with KVA a security deposit of EIGHT HUNDRED and NO/100 DOLLARS (\$800.00). The security deposit shall be held by KVA, without liability for interest, as security for GAS's full and faithful performance of all of the terms and conditions of this Agreement. If GAS fails to observe or perform any of the terms, covenants and conditions of this Agreement, then KVA may apply all or a portion of the security deposit as may be necessary to compensate KVA for all loss or damage sustained or suffered by KVA caused by such default or breach. As often as such security deposit is applied by KVA, upon written demand, GAS shall deposit with the KVA an amount sufficient to reinstate the security deposit to its then required amount.

11. Maintenance and Repair. During the term of this Agreement, GAS shall keep and maintain the License Area and all equipment located therein in a good and safe condition and shall perform all necessary and discretionary repair and maintenance obligations so as to keep the License Area and such equipment in the same condition as existed at the beginning of the term, reasonable wear and tear from normal usage excepted.

12. No Alterations. GAS shall not make any alterations to the License Area, other than as specifically set forth in paragraph 8 above.

13. Observance of Laws. GAS shall at all times during the term of this Agreement: (a) observe, perform and comply with all applicable laws; and (b) keep the License Area, its lunch wagon, and all other equipment located therein in a strictly clean, sanitary, good and safe condition. Any failure by GAS to comply with the requirements set forth in clauses (a) and (b) of the immediately preceding sentence shall be an event of default under this Agreement, and KVA shall have the right to exercise all remedies which KVA may have hereunder, at law or in equity, including without limitation, the right to terminate this Agreement. GAS shall indemnify, defend and hold KVA and the Estate harmless from and against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of the requirements of: (i) all applicable laws, and (ii) this paragraph 13.

14. Insurance. At its own expense, GAS shall maintain a policy or policies of comprehensive general liability insurance, naming KVA and the Estate as additional insureds, in a responsible insurance company approved by KVA and the Estate, with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, and such policy or policies or certificates evidencing the above coverage (i) shall be deposited with KVA and the Estate concurrently with the execution of this Agreement, (ii) shall contain a requirement that thirty (30) days' notice of cancellation or change shall be given to KVA and the Estate, and (iii) shall contain the following statement: "This insurance includes coverage for liability assumed by the insured under that certain License Agreement between the insured and KVA dated _____, 1997." GAS shall, at its own expense, and at all times during the term of this Agreement keep the existing building on the License Area insured against (a) all of the risks covered by a standard "Special Form" causes of loss form, with additional coverage for risk of loss by earthquake and

flood if the same can be obtained at commercially reasonable rates, and (b) such other hazards or risks which a prudent businessperson would insure against. This property insurance shall be written on an ISO Commercial Property Policy "Special Form" causes of loss form or its equivalent. This property insurance coverage shall be in an amount equal to the full replacement cost of such building without deduction for depreciation, shall be written on an "Agreed Value" basis. All such insurance shall be in the joint names of KVA, GAS and the Estate, and such other parties as KVA or the Estate may reasonably specify, as their respective interests may appear. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Agreement ceases or terminates under the applicable provisions herein. If the building is not repaired or restored following damage or destruction in accordance with other provisions herein, KVA shall receive all of the insurance proceeds, unless otherwise provided in the lease between the Estate and KVA referenced above.

15. Indemnity. In addition to any other indemnity contained herein running in favor of KVA and the Estate, and not in limitation thereof, GAS shall indemnify, defend (with counsel reasonably acceptable to the KVA and the Estate) and hold the KVA and the Estate harmless from and against any and all claims and demands for loss or damage, including claims for property damage, personal injury or wrongful death, arising out of or in connection with the use or occupancy of the License Area by GAS or any other person claiming by, through or under GAS, or any accident or fire on the License Area, or any nuisance made or suffered thereon, or any failure of GAS to maintain the License Area in a safe condition. The provisions of this paragraph 15 shall survive the termination of this Agreement.

16. Costs and Expenses of the KVA. GAS shall pay to KVA all costs and expenses, including without limitation reasonable attorneys' fees, incurred or paid by KVA in reviewing documents for which KVA's consent is required, in preparing and processing consents, in enforcing any of the covenants and conditions contained in this Agreement, in recovering possession of the License Area or any part thereof or in collecting any delinquent license fee, taxes or other charges payable under this Agreement by GAS, or incurred by or imposed upon KVA by or in connection with any litigation commenced by or against GAS to which KVA shall, without fault, be made a party. All payments required of GAS under this paragraph 16 shall be subject to interest at the greater of (i) twelve percent (12%) per annum, or (ii) three (3) points above the Bank of Hawaii base rate (or such successor rate as may be established by Bank of Hawaii from time to time), but never more than the maximum rate allowed by law, from the due date to and including the date of payment.

17. Access by KVA. KVA and/or its authorized employees or agents shall at all times have the right to enter onto the License Area for purposes of inspection.

18. Acceptance of Premises. GAS acknowledges that prior to execution of this Agreement it has had ample opportunity to personally inspect the License Area and/or to have its consultant(s) inspect the License Area, that GAS has approved the results of such inspection.

GAS specifically acknowledges that it assumes the risk, and responsibility for any faults, defects or other imperfections observed or discovered by GAS after execution of this Agreement, and that no such discovery will entitle them to cancel this Agreement, or otherwise refuse to perform their obligations hereunder in the time periods required for such performance.

19. Early Termination. Notwithstanding any other provision of this Agreement to the contrary, KVA shall have the right, upon six (6) months prior written notice, to terminate this Agreement if the Estate, pursuant to its rights under the Lease, withdraws the License Area from the terms of the Lease.

20. Surrender. At the end of the term, or earlier termination of this Agreement, GAS shall remove its lunch wagon all other equipment placed there by GAS from the License Area and repair all damage resulting from such removal, and shall thereafter deliver possession of the License Area to KVA in the same condition as it was in at the beginning of the term, reasonable wear and tear from normal usage excepted.

21. Default. If either party defaults hereunder or breaches any of the terms or conditions contained herein, if such breach continues for a period of ten (10) days after written notice, then the non-defaulting party shall be entitled to (i) immediately terminate this Agreement without further notice, and (ii) all remedies available to it at law or equity, including, without limitation summary possession.

22. Assignment. GAS's rights under this Agreement are personal to it and may not be assigned except upon KVA's prior written approval, which may be unreasonably withheld, and any purported assignment absent such approval is void.

23. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

24. Attorneys' Fees. In the event of a dispute under this Agreement, the prevailing party shall be entitled to recover from the losing party all costs including reasonable attorneys' fees.

25. Time of Essence. Time is of the essence in this Agreement.

26. Joint and Several Obligations. If more than one person is entering into this Agreement as the licensee (GAS), then all such persons shall be jointly and severally bound by such licensee's covenants in this Agreement and any notice given to any one such person by KVA shall be deemed to be notice upon all such persons.

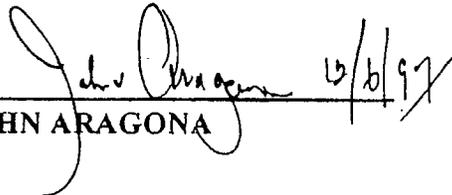
27. Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the matters contained herein, and replace any prior written or oral Agreement of the parties.

28. Amendments. Any amendments to this Agreement shall be in writing and signed by both parties.

29. Termination of Prior License Agreement. By their respective execution of this Agreement, the undersigned acknowledge termination on the Effective Date of that certain month to month License Agreement dated September 1, 1996 between KVA and John Aragona dba Giovanni's Aloha Shrimp for and affecting the License Area.

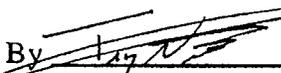
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GAS:



JOHN ARAGONA

NITSCHKE ENTERPRISES, INC.,
a Hawaii corporation

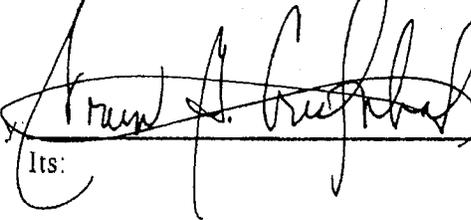
By  12/6/97

Name:
Its: President

(collectively doing business as
GIOVANNI'S ALOHA SHRIMP)

KVA:

KAHUKU VILLAGE ASSOCIATION, INC.


By _____
Its:

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 5
Exhibit Offered by Respondent
12/3/14

Troy Nitsche Deposition

Exhibit: 5

Exhibit Offered by Respondent

12/3/14

LIMITED LIABILITY COMPANY MEMBER AGREEMENT

JOHN ARAGONA, CONNIE ARAGONA, JAMES GOODRICH, DIANE WONG, and TROY NITSCHIE, the below signed hereby enter into this Member Agreement on behalf of themselves, their heirs, successors and assigns, and set forth following terms and conditions as constituting the Member Agreement in its entirety:

1. The Limited Liability Company (LLC) shall go by the following name: Giovanni's Aloha Foods, LLC.

2. The LLC's principle place of business shall be in the State of Hawaii.

3. The first day that the LLC shall begin business is September 15, 1999, and it will continue in business until a majority of the members agree to terminate it or until forced by law to cease operations.

4. The LLC's operations shall be primarily in the following field or area:

The manufacture and sale of the LLC's bottled sauces and bottling of third party products. It is understood by all members that John and Connie Aragona may, at their discretion, operate a catering service from the LLC's place of business. The catering service will have no affiliation with the LLC. All profits, and any liabilities, associated with the catering service belong solely to John and Connie Aragona.

5. The following member contributions, ownership interests, and voting rights in the LLC shall apply:

There are five (5) ownership interests in the LLC, as follows:

John Aragona and Connie Aragona, having contributed their sauce recipes, existing business contracts, and certain production equipment valued at Fifteen Thousand Dollars (\$15,000.00), shall each be entitled to an ownership interest of twenty-five (25%) for a total ownership interest of fifty percent (50%) of the LLC.

James Goodrich and Diane Wong, having contributed Three Thousand Dollars (\$3,000.00) cash, their business expertise, and legal services, shall each be entitled to an ownership interest of twelve and one-half percent (12.5%) for a total of twenty-five percent (25%) of the LLC.

Troy Nitsche, having contributed the sum of One Hundred Thousand Dollars (\$100,000.00) cash shall be entitled to an ownership interest of twenty-five percent (25%) of the LLC.

There are three voting interests in the LLC, as follows:

John Aragona and Connie Aragona, as one entity for voting purposes, shall be entitled to collectively cast ONE (1) vote. Should there be disagreement between John Aragona and Connie Aragona as to a voting decision, the vote cast by John Aragona shall be binding as to both parties.

James Goodrich and Diane Wong, as one entity for voting purposes, shall be entitled to collectively cast ONE (1) vote. Should there be disagreement between James Goodrich and Diane Wong as to a voting decision, the vote cast by James Goodrich shall be binding as to both parties.

Troy Nitsche, as one entity for voting purposes, shall be entitled to cast ONE (1) vote.

6. The IRS's general allocation rule shall apply, and gains and losses shall be allocated according to the % of total capital contributed by each member as set out in paragraph #5 above.

7. Profits and losses shall be allocated according to the same percentage of ownership interests set forth in paragraph #5 above.

8. Salary for the services rendered by any member shall be determined by unanimous approval of the members.

9. Control and management of the LLC shall be in accordance with the following:

John Aragona and Connie Aragona shall be responsible for the day-to-day management of the LLC. They shall have the right to make all day-to-day decisions regarding the operation of the LLC. However, any decision to purchase additional equipment, hire employees, increase salaries or benefits of employees, or expense LLC funds exceeding Two Thousand Dollars (\$2,000.00) requires majority approval. Expenditure of funds exceeding Five Thousand Dollars (\$5,000.00), or acquisition of any debt by the LLC which exceeds Five Thousand Dollars (\$5,000.00) requires unanimous approval.

10. The members designate the following as the LLC's business checking account into which all the funds of the LLC shall be placed and maintained:

First Hawaiian Bank, Account No. 26-035295

11. Adequate accounting records shall be made and maintained. Any member, or his/her agent, may review any and all accounting or other records at anytime. Any costs of inspection shall be paid by the individual member seeking the review. However, with majority approval any costs incurred by such review shall be paid by the LLC.

12. Accounting records and books shall be kept on a cash basis and the fiscal year shall begin on the 1ST day of January and shall end 31ST day of December.

13. The LLC shall dissolve upon the retirement, death or incapacity of any member unless the remaining members, or any individual member, elect(s) the option of buying out that member's share. If so elected, the LLC shall be valued by submission to arbitration with GAMA, Inc., according to reasonable accounting and valuation principles, and as set forth in paragraph #15 below. The finding of the arbitrator as to the value of the LLC shall be final and binding upon the members, their heirs, successors, and assigns. Upon the issuance of this finding, the remaining members shall have sixty (60) days to buy out the previous member's share. Should more than

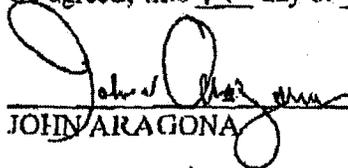
one remaining member desire to buy this share, the share shall be split evenly between the same.

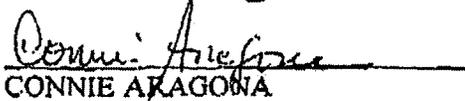
14. Upon termination or dissolution of the LLC, the LLC will be promptly liquidated, with all debts being paid first, prior to any distribution of the remaining funds. To the extent any funds remain, distribution of the remaining funds shall be made according to the following:

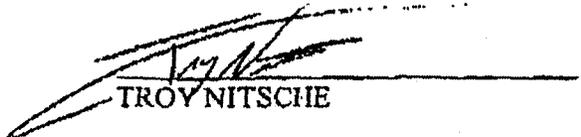
First paid shall be Troy Nitsche, in an amount equal to his initial \$100,000.00 contribution to the LLC. Any remaining funds shall then be distributed according to the percentage of ownership as set out in paragraph #5 above.

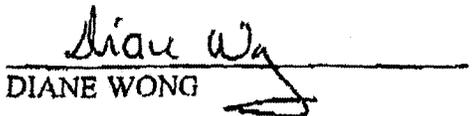
15. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

So agreed, this 14th day of October, 1999.


JOHN ARAGONA


CONNIE ARAGONA


TROY NITSCHIE


DIANE WONG

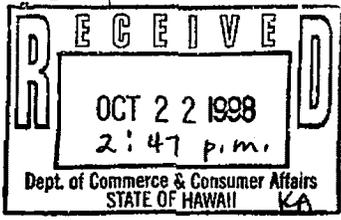

JAMES GOODRICH

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 6
Exhibit Offered by Respondent
12/3/14

BAC TNCN

07/16/201310011



STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810

ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY
(Section 428-203, 428-902, Hawaii Revised Statutes)

2046 C5

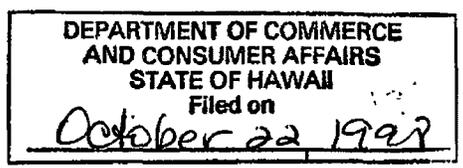
Cash Doc.

L13 00045130 2-10/22/98 100.00

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, for the purpose of (check one),

- Forming a limited liability company under the laws of the State of Hawaii (F/S100/L13)
- Converting to a limited liability company under the laws of the State of Hawaii (F/S100/L12)



do hereby make and execute these Articles of Organization:

The name of the company shall be:

Giovanni's Aloha Shrimp, L.L.C.

(The name must contain the words Limited Liability Company or the abbreviation LLC, or L.L.C.)

II

The street address of the initial designated office in Hawaii is: 59-618 Kawoa Pl, Haleiwa HI 96712

(Mailing) P.O. Box 390, Haleiwa, Hawaii 96712

III

The company shall have and continuously maintain in the State of Hawaii an agent and street address of the agent for service of process on the company. The agent must be an individual resident of Hawaii, a domestic corporation, or another domestic limited liability company.

a. The name of the company's initial agent for service of process is:

James L. Goodrich

b. The street address of the agent for service of process is:

1717 Ala Wai Blvd. #1402, Honolulu, HI. 96815

IV

The name and address of each organizer is:

John V. Aragona

59-618 Kawoa Place, Haleiwa, HI. 96712

James L. Goodrich

1717 Ala Wai Blvd. #1402, Honolulu, HI. 96815

V

The period of duration is (check one):

At-will

For a specified term to expire on: _____
(Month Day Year)

2360490

LuckyU 002077

07/16/201310011

VI

The company is (check one):

- Manager-managed, and the names and residence street addresses of the initial managers are listed below.
(Number of initial members: _____)
- Member-managed, and the names and residence street addresses of the initial members are listed below.

<u>John V. Aragona</u>	<u>59-618 Kawoa Place, Haleiwa, HI. 96712</u>
<u>Connie M. Aragona</u>	<u>59-618 Kawoa Place, Haleiwa, HI. 96712</u>
<u>James L. Goodrich</u>	<u>1717 Ala Wai Blvd. #1402, Honolulu, HI. 96815</u>
<u>Diane K. Wong</u>	<u>1717 Ala Wai Blvd. #1402, Honolulu, HI. 96815</u>

VII

The members of the company (check one):

- Shall not be liable for the debts, obligations and liabilities of the company.
- Shall be liable for some or all, as stated below, of the specified debts, obligations and liabilities of the company, and have consented in writing to the adoption of this provision or to be bound by this provision.

VIII
(For LLC Resulting from Conversion)

a. The name of the domestic partnership being converted is:

Check one: General Limited Partnership

b. The agreement of conversion was approved by:

- All of the partners
- The number or percentage of the partners required for conversion in the partnership agreement.

c. The partnership registration statement certificate of limited partnership is canceled as of the effective date of the conversion. The effective date of the conversion is (check one):

- On the date and time of filing.
- On _____, at _____
Hawaiian Standard Time, which date is not later than 30 days after filing.

d. The notice of conversion was published on: _____
(Month Days Year)

in the (state newspaper name) _____, and reasonable efforts to give notice thereof in a reasonable manner to persons with whom the partnership expects to have a continuing business relationship as of the time of conversion were made.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statement and that the same is true and correct.

Signed this 8th day of October, 19 98

John V. Aragona
(Type/Print Name of Organizer)
John V. Aragona
(Signature of Organizer)

James L. Goodrich
(Type/Print Name of Organizer)
James L. Goodrich
(Signature of Organizer)

LuckyU 002078

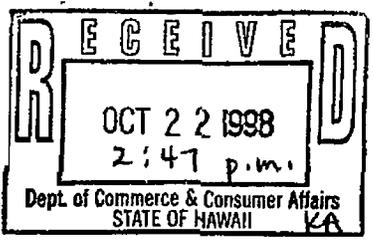
In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 7
Exhibit Offered by Respondent
12/3/14

12/09/201310015

BAC TNCN

FORM LLC-1
8/98



STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810

2045 05

ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY
(Section 428-203, 428-902, Hawaii Revised Statutes)

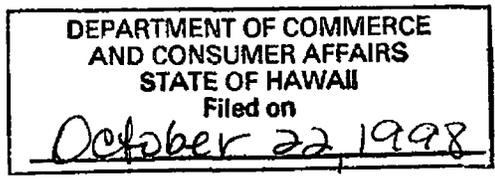
Cash Doc.

L13 00045129 2-10/22/98 100.00

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, for the purpose of (check one).

- Forming a limited liability company under the laws of the State of Hawaii (F/S100/L13)
- Converting to a limited liability company under the laws of the State of Hawaii (F/S100/L12)



do hereby make and execute these Articles of Organization:

The name of the company shall be:

Giovanni's Aloha Foods, L.L.C.

(The name must contain the words Limited Liability Company or the abbreviation L.L.C. or LLC)

II Kawoa Pl.

The street address of the initial designated office in Hawaii is: 59-618 Kawoa Pl Haleiwa HI 96712

(Mailing) P.O. Box 390, Haleiwa, Hawaii 96712

III

The company shall have and continuously maintain in the State of Hawaii an agent and street address of the agent for service of process on the company. The agent must be an individual resident of Hawaii, a domestic corporation, or another domestic limited liability company.

a. The name of the company's initial agent for service of process is:

James L. Goodrich

b. The street address of the agent for service of process is:

1717 Ala Wai Blvd. #1402, Honolulu, HI. 96815

IV

The name and address of each organizer is:

John V. Aragona

59-618 Kawoa Place, Haleiwa, HI. 96712

James L. Goodrich

1717 Ala Wai Blvd. #1402, Honolulu, HI 96815

V

The period of duration is (check one):

At-will

For a specified term to expire on: _____
(Month Day Year)

2360480

I HEREBY CERTIFY that this is a true and correct copy of the official record(s) of the Business Registration Division.



[Signature]
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS
December 9, 2013

Validate online at <http://hbe.hawaii.gov/documents>
Document ID: 4JA-5SM-4HD-7XT-10199905

VI

The company is (check one):

- Manager-managed, and the names and residence street addresses of the initial managers are listed below.
(Number of initial members: _____)
- Member-managed, and the names and residence street addresses of the initial members are listed below.

<u>John V. Aragona</u>	<u>59-618 Kawoa Place, Haleiwa, HI. 96712</u>
<u>Connie M. Aragona</u>	<u>59-618 Kawoa Place, Haleiwa, HI. 96712</u>
<u>James L. Goodrich</u>	<u>1717 Ala Wai Blvd #1402, Honolulu, HI. 96815</u>
<u>Diane K. Wong</u>	<u>1717 Ala Wai Blvd. #1402, Honolulu, HI. 96815</u>

VII

The members of the company (check one):

- Shall not be liable for the debts, obligations and liabilities of the company.
- Shall be liable for some or all, as stated below, of the specified debts, obligations and liabilities of the company, and have consented in writing to the adoption of this provision or to be bound by this provision.

VIII
(For LLC Resulting from Conversion)

a. The name of the domestic partnership being converted is:

Check one: General Limited Partnership

b. The agreement of conversion was approved by:

- All of the partners
- The number or percentage of the partners required for conversion in the partnership agreement.

c. The partnership registration statement certificate of limited partnership is canceled as of the effective date of the conversion. The effective date of the conversion is (check one):

- On the date and time of filing.
- On _____, at _____
Hawaiian Standard Time, which date is not later than 30 days after filing.

d. The notice of conversion was published on: _____
(Month Days Year)

in the (state newspaper name) _____, and reasonable efforts to give notice thereof in a reasonable manner to persons with whom the partnership expects to have a continuing business relationship as of the time of conversion were made.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statement and that the same is true and correct.

Signed this 8th day of October, 19 98

John V. Aragona
(Type/Print Name of Organizer)

John V. Aragona
(Signature of Organizer)

James L. Goodrich
(Type/Print Name of Organizer)

James L. Goodrich
(Signature of Organizer)

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition

Exhibit: 8

Exhibit Offered by Respondent

12/3/14





Giovanni's Hot & Spicy Sauce (14 Fl. oz.) --\$8.95
[Back] Scrol



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 9
Exhibit Offered by Respondent
12/3/14

GIOVANNI'S

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National Award

Winning

SCAMPI MARINADE

Made in Hawaii

Net: 8 fl. oz. (236 mL.)

LuckyU 000470

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 10
Exhibit Offered by Respondent
12/3/14

INTERNET ARCHIVE
Wayback Machine
5 captures
24 Oct 00 - 10 Jun 02

http://www.giosauces.com/scampishirt.html



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 11
Exhibit Offered by Respondent
12/3/14



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 12
Exhibit Offered by Respondent
12/3/14

INTERNET ARCHIVE
Wayback Machine
 http://www.giosauces.com/
 51 captures
 9 Oct 99 - 17 May 14

OCT DEC AU
 2002 2003 200
 14



Aloha Foods, LLC

North Shore, Hawaii



Welcome to Giovanni's Aloha Food



Home of Hawaii's best scampi and **hot**  sauce.



Our Products

Recipe

Contact Us

Company Info



Send mail to webmaster@giosauces.com with questions or comments about this web site.

Copyright © 1998 Giovanni's Aloha Foods

Last modified: April 5 2000

INTERNET ARCHIVE
waybackMachine

http://www.giosauces.com/ Go

51 captures
9 Oct 99 - 17 May 14

SEP OCT JUL
9
1998 1999 200



Aloha Foods L.L.C.
North Shore, Hawaii



Welcome to Giovanni's Aloha Foods



Home of Hawaii's best scampi and **hot**  sauce.



Our Products Feed Back Contact Us Company Info

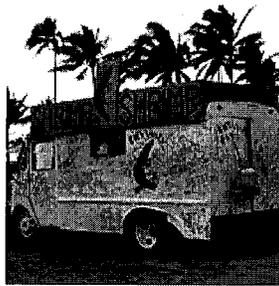
Send mail to webmaster@giosauces.com with questions or comments about this web site.
Copyright © 1998 Giovanni's Aloha Foods
Last modified: March 6 1999

INTERNET ARCHIVE
Wayback Machine

http://www.giosauces.com/company.html

23 captures
23 Aug 99 - 4 May 07

DEC FEB MA
2002 2004 2005



What began as an unknown white shrimp truck on Oahu's North Shore became a legend known for it's succulent shrimp morsels served up **HOT** and tasty, pleasing to most every palette. The Hot & Spicy sauce, a sauce almost as **HOT** as our volcanic lava, brought some of our hot loving customers to their knees, while the mild but flavor-packed Scampi sauce brought nothing but delight to our wonderful customers. Now you don't have to travel all the way to Hawaii to get a taste of ALOHA. The infamous "We really mean it" **HOT** & Spicy sauce, as well as the Scampi sauce, is available now through mail order. If you don't believe how good it is, just check out the testimony from our customers and friends from all over the globe.

Please read on

.... Best Shrimp Ever.....

Yuki, Tokyo, Japan

.... Thanks for serving some of Oahu's finest, tastiest, freshest shrimp Scampi. We really enjoyed dining daily at the white shrimp truck, during our recent vacation...your shrimp is the BEST!

Harry & Rochelle Pillion
University Heights, Ohio

.... we think your shrimp scampi is the best we have eaten anywhere

Jim & Mary Jane West
Lufkin, Texas

.... Our friend Colette told us to stop at the "White Shrimp Truck" in Kahuku, and boy are we glad we did! The garlic Scampi was our family's overall favorite, and I loved the Hot & Spicy, I really mean it! I collect Hot Sauce from all over the place, Barbados to Belize, Louisiana to Los Angeles, and your secret African Roots and spice are truly unique. I can't wait till you start bottling it. I took a small container with me on the plane to dress up my airline seafood plate, and I huffed and puffed for hundreds of miles, what a treat.

Eddie, Terry & Jacob Coleman
Venice, California

.... The Virginia Diner also serves seafood but there is no Hot & Spicy like Giovanni's. We wait for the postman everyday for a catalog, sample, or something from you. All my ailments have returned and I need a cure.

Arthur & Elaine Harris, Jr.
Branchville, Virginia

.... The taste of those Scampi are still with us

Aldo Azzolin
Cicero, Illinois

.... still looking forward to you and eating your famous "Shrimp Sauces" See you again, next year.

Gerda
Vienna, Austria

INTERNET ARCHIVE
Wayback Machine
23 captures
23 Aug 99 - 4 May 07

Go

DEC FEB MAY
2002 2004 2007

.... The thing I miss most is my shrimp fix

Pat & Clyde Jacobs
Vancouver, Canada

.... was this little truck with the words "Shrimp, Shrimp" screaming from the top. You have been one of "A list" stops on out list of must see sights on Oahu with heaping plates of Scampi and Hot & Spicy. As always it was the most scrumptious meals although I'm so glad I had me little bottle of water with me.

Lou Harris San Mateo,
California

.... Below your sunshade we enjoyed the best shrimp of Oahu and the Coldest coke in USA

Ann & Eric Appelt
Nurnberg, Germany

.... The hottest shrimp EVER

Allan Ciaport
Montpellier, France

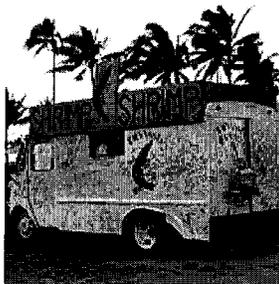
INTERNET ARCHIVE
waybackmachine

http://www.giosauces.com/company.html

Go

JUL AUG NO
23
1998 1999 2000

23 captures
23 Aug 99 - 4 May 07



What began as an unknown white shrimp truck on Oahu's North Shore became a legend known for it's succulent shrimp morsels served up **HOT** and tasty, pleasing to most every palette. The Hot & Spicy sauce, a sauce almost as **HOT** as our volcanic lava, brought some of our hot loving customers to their knees, while the mild but flavor-packed Scampi sauce brought nothing but delight to our wonderful customers. Now you don't have to travel all the way to Hawaii to get a taste of ALOHA. The infamous "We really mean it" **HOT** & Spicy sauce, as well as the Scampi sauce, is available now through mail order. If you don't believe how good it is, just check out the testimony from our customers and friends from all over the globe.

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.... Best Shrimp Ever.....

Yuki, Tokyo, Japan

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Harry & Rochelle Pillion
University Heights, Ohio

.... we think your shrimp scampi is the best we have eaten anywhere

Jim & Mary Jane West
Lufkin, Texas

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Eddie, Terry & Jacob Coleman
Venice, California

.... The Virginia Diner also serves seafood but there is no Hot & Spicy like Giovanni's. We wait for the postman everyday for a catalog, sample, or something from you. All my ailments have returned and I need a cure.

Arthur & Elaine Harris, Jr.
Branchville, Virginia

.... The taste of those Scampi are still with us

Aldo Azzolin
Cicero, Illinois

.... still looking forward to you and eating your famous "Shrimp Sauces" See you again, next year.

Gerda
Vienna, Austria

INTERNET ARCHIVE
Wayback Machine
23 captures
23 Aug 99 - 4 May 07

Go

JUL AUG NOV
1998 23 1999 2000

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Pat & Clyde Jacobs
Vancouver, Canada

.... was this little truck with the words "Shrimp, Shrimp" screaming from the top. You have been one of "A list" stops on out list of must see sights on Oahu with heaping plates of Scampi and Hot & Spicy. As always it was the most scrumptious meals although I'm so glad I had me little bottle of water with me.

Lou Harris San Mateo,
California

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Ann & Eric Appelt
Nurnberg, Germany

.... The hottest shrimp EVER

Allan Ciaport

Montpellier, France

INTERNET ARCHIVE
waybackmachine

http://www.giosauces.com

Go

20 captures
23 Aug 99 - 13 Jan 04



FEB APR AU
2
2002 2003 2004

Giovanni's Aloha Foods LLC
96-1362 Waihona St.
Pearl City, HI 96712
Tel: 808-735-1194

Email: Giovanni@hawaii.rr.com

Giovanni's Aloha Sauces Ltd. Co.

PO Box 390

Honolulu HI 96822

Tel: (808) 925-1094

E-Mail: Giovanni@hawaii.rr.com

INTERNET ARCHIVE
Wayback Machine

http://www.giosauces.com/products.html

11 captures
23 Aug 99 - 10 Jun 02

APR JUN JU
◀ 10 ▶
2001 2002 20

NEW
GIOVANNI'S RECIPE
PAGE
NEW



HOT



[\[Proceed to Checkout\]](#)

Company Info



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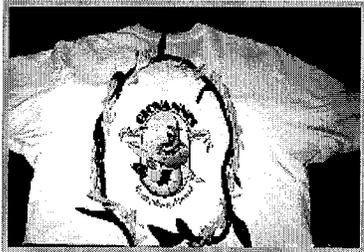
INTERNET ARCHIVE
Wayback Machine
11 captures
23 Aug 99 - 10 Jun 02

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APR JUN JUL
2001 **10** 2002 2003



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INTERNET ARCHIVE
Wayback Machine

http://www.giosauces.com/products.html

11 captures
23 Aug 99 - 10 Jun 02

JUL AUG NC
1998 **23** 1999 2000

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HOT



[\[Order\]](#) [\[Checkout\]](#)

[Company Info](#)

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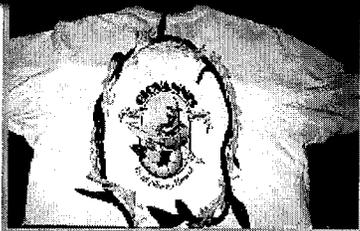
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11 captures
23 Aug 99 - 10 Jun 02



JUL AUG NOV
1998 23 1999 2000



[Order] [Checkout]



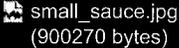
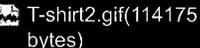
http://www.giosauces.com/Order/order.mv

Go

8 captures

17 Oct 02 - 1 Feb 04

OCT FEB MAR
2002 2004 2005
1

Quantity	Price	Code	Description
0	\$5.00	GSM-01	New Giovanni's Scampi Marinade 8oz bottle  small_sauce.jpg (900270 bytes)
0	\$12.95	GTS-01-SM	The Original Giovanni's Aloha Shrimp Shirt (Size Small)  T-shirt2.gif(114175 bytes)
0	\$12.95	GTS-01-M	The Original Giovanni's Aloha Shrimp Shirt (Size Medium)  T-shirt2.gif(114175 bytes)
0	\$12.95	GTS-01-LG	The Original Giovanni's Aloha Shrimp Shirt (Size Large)  T-shirt2.gif(114175 bytes)
0	\$12.95	GTS-01-XL	The Original Giovanni's Aloha Shrimp Shirt (Size Xtra-Large)  T-shirt2.gif(114175 bytes)

Bold = Required

Italic = Optional

Ship To:

First Name:

Last Name:

Email Address:

Bill To (If Different):

First Name:

Last Name:

Email Address:

INTERNET ARCHIVE Wayback Machine		<input type="text"/>		<input type="button" value="Go"/>	OCT	FEB	MAR	
8 captures		17 Oct 02 - 1 Feb 04		2002		1	2004	2005
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Address:	<input type="text"/>	Address:	<input type="text"/>					
City:	<input type="text"/>	City:	<input type="text"/>					
State/Province:	Outside US	State/Province:	Outside US					
Other State/Province:	<input type="text"/>	Other State/Province:	<input type="text"/>					
Zip/Postal Code:	<input type="text"/>	Zip/Postal Code:	<input type="text"/>					
Country:	United States	Country:	<Select One>					
<input type="button" value="Continue"/>								
Back to Giovanni's								

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 13
Exhibit Offered by Respondent
12/3/14

INTERNET ARCHIVE


DEC FEB MAR 5

 24 captures
 4 Dec 03 - 11 Apr 11
 2003 2005 2006



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[Foodservice](#)

[Bubble Tea](#)

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[Frequently Asked Questions](#)

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Visit our suppliers websites to learn more about their products

[Lee Kum Kee Sauces - Maker of Fine Asian Sauces and Marinades](#)

[Bubble Drink Mixes](#)

[Harpo's Dressings](#)

[Giovanni's Sauce](#)

[Sam Choy's Dressings](#)

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In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 14
Exhibit Offered by Respondent
12/3/14

Saccoccio & Lopez
ATTORNEYS AT LAW

Paul H. Saccoccio
Admitted Hawaii and New York

Marianita Lopez
Admitted Hawaii and New York

November 30, 2010

Troy Nitsche
Giovanni's Shrimp Truck
83 Kamehameha Highway
Kahuku, HI 96731

Dear Mr. Nitsche:

Please be advised that I represent John Aragona whom you know well. I have tried to contact you and Mr. Goodrich without success.

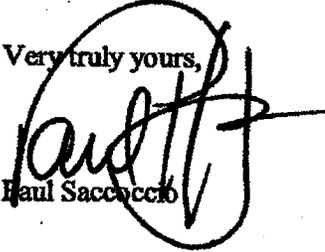
As you know, Mr. Aragona, the originator of Giovanni's Shrimp Truck, signed a contract with you agreeing not to compete for a limited period of time. That time has long since expired. Mr. Aragona is now in the process of bottling and selling his Giovanni's Shrimp Sauce and Scampy Marinade through all means of distribution including online.

I am writing to inform you of his plans that you may take this opportunity to register any legal concerns you may have based on the original contract. I am not in possession of the contract and if you are willing to forward it to me it would greatly assist me in protecting all parties legal rights.

I welcome the opportunity to discuss this matter with you or anyone you authorize. My client is in the process of developing his business plan so should you have objections now is the time raise them.

I look forward to hearing from you.

Very truly yours,


Paul Saccoccio

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 15a
Exhibit Offered by Respondent
12/3/14

EXHIBIT 15A

Generated on: This page was generated by TSDR on 2014-12-02 21:42:32 EST

Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK

Giovanni's Original White
Shrimp Truck

US Serial Number: 85201283

Application Filing Date: Dec. 18, 2010

Register: Principal

Mark Type: Service Mark

Status: Abandoned because the applicant failed to respond or filed a late response to an Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Mar. 21, 2012

Date Abandoned: Feb. 27, 2012

Mark Information

Mark Literal Elements: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Providing of food and drink; Providing of food and drink via a mobile truck; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks

International Class(es): 043 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 01, 1998

Use in Commerce: Mar. 01, 1998

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: LuckyU Enterprises, Inc.

DBA, AKA, Formerly: DBA Giovanni's Original White Shrimp Truck

Owner Address: 57-120 Lalo Kuliima Way, #12
Kahuku, HAWAII 96731
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where
Organized: HAWAII

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KULIIMA WAY APT 12
KAHUKU, HAWAII 96731-2122
UNITED STATES

Phone: 808-630-9116

Fax: 808-638-0110

Correspondent e-mail: gioshrimp@aol.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 12, 2012	UNDELIVERABLE MAIL - NO ACTION TAKEN	99888
Mar. 21, 2012	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	
Mar. 21, 2012	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Aug. 24, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 24, 2011	NON-FINAL ACTION E-MAILED	6325
Aug. 24, 2011	NON-FINAL ACTION WRITTEN	77764
Aug. 15, 2011	LETTER OF PROTEST ACCEPTED	
Mar. 21, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 21, 2011	NON-FINAL ACTION E-MAILED	6325
Mar. 21, 2011	NON-FINAL ACTION WRITTEN	77764
Mar. 19, 2011	ASSIGNED TO EXAMINER	77764
Dec. 27, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 22, 2010	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: YOUNG, CARRIE SKYE

Law Office Assigned: LAW OFFICE 117

File Location

Current Location: LAW OFFICE 117 - EXAMINING ATTORNEY
ASSIGNED

Date in Location: Mar. 21, 2012

Trademark/Service Mark Application, Principal Register

Serial Number: 85201283

Filing Date: 12/18/2010

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85201283
MARK INFORMATION	
*MARK	<u>Giovanni's Original White Shrimp Truck</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Giovanni's Original White Shrimp Truck
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	LuckyU Enterprises, Inc.
DBA/AKA/TA/Formerly	DBA Giovanni's Original White Shrimp Truck
*STREET	57-120 Lalo Kuilima Way, #12
*CITY	Kahuku
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	gioshrimp@aol.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Hawaii
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	043
*IDENTIFICATION	Providing of food and drink; Providing of food and drink via a mobile truck; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/01/1998
FIRST USE IN COMMERCE DATE	At least as early as 03/01/1998
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<u>spec-7223480161-162959180 . Giovanni.pdf</u>
CONVERTED PDF FILE(S) (1 page)	<u>\\TICRS\EXPORT1\IMAGEOUT1\852\012\85201283\xml1\APP0003.JPG</u>
SPECIMEN DESCRIPTION	Words used to identify business.
CORRESPONDENCE INFORMATION	
NAME	LuckyU Enterprises, Inc.
FIRM NAME	LuckyU Enterprises, Inc.
STREET	57-120 Lalo Kuilima Way, #12
CITY	Kahuku
STATE	Hawaii
COUNTRY	United States
ZIP/POSTAL CODE	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	

EMAIL ADDRESS	gioshrimp@aol.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Troy Nitsche/
SIGNATORY'S NAME	Troy Nitsche
SIGNATORY'S POSITION	President
DATE SIGNED	12/18/2010

Trademark/Service Mark Application, Principal Register

Serial Number: 85201283

Filing Date: 12/18/2010

To the Commissioner for Trademarks:

MARK: Giovanni's Original White Shrimp Truck (Standard Characters, see mark)

The literal element of the mark consists of Giovanni's Original White Shrimp Truck.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, LuckyU Enterprises, Inc., DBA Giovanni's Original White Shrimp Truck, a corporation of Hawaii, having an address of

57-120 Lalo Kuilima Way, #12

Kahuku, Hawaii 96731

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: Providing of food and drink; Providing of food and drink via a mobile truck; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks

In International Class 043, the mark was first used at least as early as 03/01/1998, and first used in commerce at least as early as 03/01/1998, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Words used to identify business..

Original PDF file:

spec-7223480161-162959180 . Giovanni.pdf

Converted PDF file(s) (1 page)

Specimen File1

The applicant's current Correspondence Information:

LuckyU Enterprises, Inc.

LuckyU Enterprises, Inc.

57-120 Lalo Kuilima Way, #12

Kahuku, Hawaii 96731

808-630-9116(phone)

808-638-0110(fax)

gioshrimp@aol.com (authorized)

A fee payment in the amount of \$325 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: /Troy Nitsche/ Date Signed: 12/18/2010

Signatory's Name: Troy Nitsche

Signatory's Position: President

RAM Sale Number: 7402

RAM Accounting Date: 12/20/2010

Serial Number: 85201283

Internet Transmission Date: Sat Dec 18 17:18:39 EST 2010

TEAS Stamp: USPTO/BAS-72.234.80.161-2010121817183969

8655-85201283-47063f5f5fab16b2e57c54854c

c51521d2-CC-7402-20101218162959180099

Giovanni's Original White Shrimp Truck

Giovanni's Original White Shrimp Truck

Giovanni's Original White Shrimp Truck

Giovanni's Original White Shrimp Truck

To: LuckyU Enterprises, Inc. (gioshrimp@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85201283 - GIOVANNI'S ORIGINAL WHITE SHRIMP - N/A
Sent: 8/24/2011 11:21:32 PM
Sent As: ECOM117@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](#)

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

APPLICATION SERIAL NO. 85201283

MARK: GIOVANNI'S ORIGINAL WHITE
SHRIMP

85201283

CORRESPONDENT ADDRESS:

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: LuckyU Enterprises, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
gioshrimp@aol.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: 8/24/2011

LETTER OF PROTEST GRANTED

The Office of the Deputy Commissioner for Trademark Examination Policy granted a Letter of Protest received in connection with this application. The evidence presented in the letter was forwarded to the trademark examining attorney for consideration. *See* TMEP §1715.

Based upon this evidence, the trademark examining attorney is taking further action, as specified below. *See* TMEP §1715.02(b).

In addition to the requirement in this Office action, all refusals and requirement (s) in the Office action dated March 21, 2011, are herein incorporated by reference. Therefore, a proper response to this Office action must address each issue raised in the preceding Office action as well as in this Office action.

REFUSAL – FALSE CONNECTION

Registration is refused because the applied-for mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK consists of or includes matter – the term GIOVANNI'S - which may falsely suggest a connection with John "Giovanni" Aragona. Although John "Giovanni" Aragona is not connected with the goods and/or services provided by applicant under the applied-for mark, John "Giovanni" Aragona is so famous that consumers would presume a connection. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §§1203.03, 1203.03(e). *See generally* *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Trademark Act Section 2(a):

- (1) The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- (4) The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services.

In re Peter S. Herrick, P.A., 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505, 508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test used to determine the existence of a false connection).

The examiner notes the attached advertisements and articles excerpted from a search of the <http://www.google.com> website which demonstrate that Giovanni and Connie Aragona began a shrimp shack in 1994 that became one of the oldest and famous shrimp trucks in Kahuku, O'ahu known as "Giovanni's Original Shrimp Truck". See attachments. It is also noted that the applicant is located in Kahuku, Hawaii. See applicant's address. The applicant has not provided any written consent from Mr. Aragona that his name may be used in the applicant's mark. Given the popularity, fame and history of the Aragona's shrimp truck, there is a likelihood that the term "Giovanni" in the applicant's mark would be read to refer to John "Giovanni" Aragona and his original shrimp truck.

Notably, the term at issue need not be the actual, legal name of the party falsely associated with applicant's mark to be unregistrable. TMEP §1203.03(a); *see, e.g., Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429-30 (TTAB 1985) (holding the wording MARGARITAVILLE to be the persona of singer Jimmy Buffett). The term must, however, be so uniquely and unmistakably associated with the named party as to constitute that party's name or identity. TMEP §1203.03; *see, e.g., In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985); *Buffett*, 226 USPQ at 429.

Accordingly, the mark is refused registration on the Principal Register absent consent to register from John "Giovanni" Aragona. Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

SECTION 2(c) REFUSAL – NAME IDENTIFIES A LIVING INDIVIDUAL

Registration is refused because the applied-for mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; *see, e.g., In re Hoefflin*, 97 USPQ2d 1174 (TTAB 2010).

The refusal under Section 2(c) will be withdrawn if applicant provides the following:

- (1) A statement that the name "GIOVANNI" shown in the mark identifies < **John "Giovanni" Aragona** >, a living individual whose consent is of record. If the name represents that of a

pseudonym, stage name, title and name combination, or nickname, applicant must include a statement that "GIOVANNI" identifies the <pseudonym/stage name/title and name/nickname> of <specify actual name>, a living individual whose consent is of record; and

(2) A written consent, personally signed by the individual whose name, signature, or portrait appears in the mark, authorizing applicant to register the identifying matter as a trademark and/or service mark with the USPTO (e.g., "I, John "Giovanni" Aragona, consent to the use and registration by **LuckyU Enterprises, Inc. DBA Giovanni's Original White Shrimp Truck** of my name as a trademark and/or service mark with the USPTO").

See TMEP §§813, 813.01(a), 1206.04(a).

Applicant is advised that the written consent must include a statement of the party's consent to applicant's *registration*, and not just the *use*, of the identifying matter as a trademark. See *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1912-13 (TTAB 2005); *In re New John Nissen Mannequins*, 227 USPQ 569, 571 (TTAB 1985); *Reed v. Bakers Eng'g & Equip. Co.*, 100 USPQ 196, 199 (PTO 1954); TMEP §1206.04(a).

REQUEST FOR INFORMATION

Applicant must submit the following information to permit proper examination of the application. See 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e).

Due to the notoriety of the person named in the mark, and the fact that there is no information in the application record regarding a connection with applicant, **applicant must specify whether the person or institution named in the mark has any connection with applicant's goods and/or services**, and if so, must describe the nature and extent of that connection. See 37 C.F.R. §2.61(b); TMEP §1203.03(e).

Failure to respond to a request for information is an additional ground for refusing registration. See *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

DISCLAIMER

Applicant must disclaim the descriptive wording "**ORIGINAL WHITE SHRIMP TRUCK**" apart from the mark as shown because it merely describes an ingredient, function, feature and purpose of applicant's services. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Attached to the previous office action, the applicant will find a dictionary reference wherein the term "original" is defined as "preceding all others in time; first." See attachments. The previously attached advertisement from www.frommers.com indicates that the applicant's service "claims to be the first shrimp truck to serve the delicious aquaculture shrimp farmed in the surrounding area" of north shore of Oahu. See previously attached.

A term is merely descriptive if it conveys an immediate idea of the ingredients, qualities, or characteristics of the identified goods and/or services. See *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d

1807, 1812 (Fed. Cir. 2001). When used in relation to the services, the immediate idea rendered by the wording ORIGINAL WHITE SHRIMP TRUCK describes the applicant's services. Specifically, it merely informs consumers that the applicant's provision of food and drink services include being the first to serve white shrimp from a truck. Given the descriptive nature of the wording, it lacks source identifying significance and, thus, must be disclaimed.

A "disclaimer" is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that are merely descriptive of the goods and/or services, and is wording or an illustration that others would need to use to describe or show their goods and services in the marketplace. 15 U.S.C. §1052(e); see TMEP §§1209.03(f), 1213.03 et seq.

The following is the standard format used by the Office:

No claim is made to the exclusive right to use "ORIGINAL WHITE SHRIMP TRUCK" apart from the mark as shown.

TMEP §1213.08(a)(i); see *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

SPECIMEN

The specimen is not acceptable because it is merely a photocopy of the drawing or a picture or rendering of the applied-for mark; it does not show the applied-for mark in actual use in commerce. See 37 C.F.R. §2.56(c); TMEP §§904.04(a), 904.07(a). Trademark Act Section 45 requires use of the mark "in the sale or advertising of services." 15 U.S.C. §1127; see 37 C.F.R. §2.56(b)(2); TMEP §1301.04.

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of services specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**The substitute specimen was in use in commerce at least as early as the filing date of the application.**" 37 C.F.R. §2.59(a); TMEP §904.05; see 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the actual sale or advertising of the services. See TMEP §§1301.04 et seq.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP

§1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the services listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a service mark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

PLEASE NOTE:

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

/C. Skye Young/
Trademark Examining Attorney
Law Office 117
Ph: (571) 272-9713
Fx: (571) 273-9117
Em: skye.young@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. 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. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

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>.



UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mar 21, 2012

NOTICE OF ABANDONMENT

TM117

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

ATTORNEY
REFERENCE
NUMBER:

SERIAL NUMBER: 85/201283
MARK: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
APPLICANT: LuckyU Enterprises, Inc.

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED
IN FULL ON 02/27/2012 FOR THE FOLLOWING REASON:

NO RESPONSE TO THE OFFICE ACTION MAILED ON 08/24/2011 WAS RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) WITHIN THE SIX-MONTH RESPONSE PERIOD. (15 U.S.C. 1062(b); TRADEMARK RULE 2.65(a)). YOU MAY VIEW THE OFFICE ACTION THROUGH TRADEMARK DOCUMENT RETRIEVAL (TDR) AVAILABLE AT <http://tportal.uspto.gov/external/portal/tow>.

YOU CAN REQUEST REINSTATEMENT OF THE APPLICATION FOR NO FEE IF:

- * YOU HAVE PROOF THAT YOUR RESPONSE WAS RECEIVED IN THE USPTO ON OR BEFORE THE DUE DATE - SUCH AS A POSTCARD WITH A USPTO MAILROOM DATE STAMP; OR,
- * YOU MAILED OR FAXED THE RESPONSE ON OR BEFORE THE DUE DATE WITH A CERTIFICATE OF MAILING OR FACSIMILE TRANSMISSION, IN ACCORDANCE WITH USPTO RULE 2.197, 37 CFR SEC. 2.197.

YOU MUST SUBMIT A COPY OF THE PREVIOUSLY SUBMITTED TIMELY RESPONSE WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE ALONG WITH ONE OF THE TYPES OF PROOF SET OUT ABOVE. YOU MAY FAX THIS INFORMATION TO 571-273-8950.

IF YOU DO NOT HAVE THE PROOF NECESSARY FOR REINSTATEMENT, YOU CAN FILE A PETITION TO REVIVE THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) AVAILABLE AT <http://www.uspto.gov/teas/index.html>. USPTO RULE 2.66, 37 CFR SEC. 2.66, REQUIRES:

- * A "PETITION TO REVIVE" TO BE FILED WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE;
- * A SIGNED STATEMENT BY SOMEONE WITH FIRST HAND KNOWLEDGE OF THE FACTS THAT THE DELAY IN RESPONDING BY THE DUE DATE WAS "UNINTENTIONAL";
- * A PETITION FEE OF \$100, MADE PAYABLE TO THE COMMISSIONER OF TRADEMARKS; AND
- * A RESPONSE TO THE OFFICE ACTION (IF YOU RECEIVED THE OFFICE ACTION - OTHERWISE, A STATEMENT THAT YOU DID NOT RECEIVE THE OFFICE ACTION.)

FOR FURTHER INFORMATION CALL 1-800-786-9199



04-10-2012

United States Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA. 22313-1451
If Undeliverable Return in Ten Days

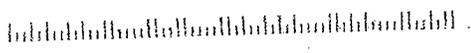
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER



NIXIE 968 DE 1 00 04/03/12
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 22313145151 *0217-02239-22-38

22313 02452



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 15b
Exhibit Offered by Respondent
12/3/14

EXHIBIT 15B

PTO Form 1473 (Rev 9/2006)
 OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register**Serial Number: 85201288****Filing Date: 12/18/2010**

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85201288
MARK INFORMATION	
*MARK	<u>Giovanni's Aloha Shrimp</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Giovanni's Aloha Shrimp
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	LuckyU Enterprises, Inc.
DBA/AKA/TA/Formerly	AKA Giovanni's Aloha Shrimp
*STREET	57-120 Lalo Kuilima Way, #12
*CITY	Kahuku
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	gioshrimp@aol.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Hawaii
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	043
*IDENTIFICATION	Fast-food restaurant services; Providing of food and drink via a mobile truck; Restaurant and catering services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving of food and drink/beverages
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/01/1998
FIRST USE IN COMMERCE DATE	At least as early as 03/01/1998
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<u>spec-7223480161-172117867 . Giovanni.pdf</u>
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\852\012\85201288\xml1\APP0003.JPG
SPECIMEN DESCRIPTION	Words used to identify business
CORRESPONDENCE INFORMATION	
NAME	LuckyU Enterprises, Inc.
FIRM NAME	LuckyU Enterprises, Inc.
STREET	57-120 Lalo Kuilima Way, #12
CITY	Kahuku
STATE	Hawaii
COUNTRY	United States
ZIP/POSTAL CODE	96731
PHONE	808-630-9116
FAX	808-638-0110

EMAIL ADDRESS	gioshrimp@aol.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Troy Nitsche/
SIGNATORY'S NAME	Troy Nitsche
SIGNATORY'S POSITION	President
DATE SIGNED	12/18/2010

Trademark/Service Mark Application, Principal Register

Serial Number: 85201288

Filing Date: 12/18/2010

To the Commissioner for Trademarks:

MARK: Giovanni's Aloha Shrimp (Standard Characters, see mark)

The literal element of the mark consists of Giovanni's Aloha Shrimp.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, LuckyU Enterprises, Inc., AKA Giovanni's Aloha Shrimp, a corporation of Hawaii, having an address of

57-120 Lalo Kuilima Way, #12
Kahuku, Hawaii 96731
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: Fast-food restaurant services; Providing of food and drink via a mobile truck; Restaurant and catering services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving of food and drink/beverages

In International Class 043, the mark was first used at least as early as 03/01/1998, and first used in commerce at least as early as 03/01/1998, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Words used to identify business.

Original PDF file:

[spec-7223480161-172117867 . Giovanni.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

The applicant's current Correspondence Information:

LuckyU Enterprises, Inc.
LuckyU Enterprises, Inc.
57-120 Lalo Kuilima Way, #12
Kahuku, Hawaii 96731
808-630-9116(phone)
808-638-0110(fax)

gioshrimp@aol.com (authorized)

A fee payment in the amount of \$325 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: /Troy Nitsche/ Date Signed: 12/18/2010

Signatory's Name: Troy Nitsche

Signatory's Position: President

RAM Sale Number: 7417

RAM Accounting Date: 12/20/2010

Serial Number: 85201288

Internet Transmission Date: Sat Dec 18 17:42:20 EST 2010

TEAS Stamp: USPTO/BAS-72.234.80.161-2010121817422098

7640-85201288-4703a2ffcfb2d26ce95b952e0b

f4a5ddb29-CC-7417-20101218172117867857

Giovanni's Aloha Shrimp

Giovanni's Aloha Shrimp

Giovanni's Aloha Shrimp

Giovanni's Aloha Shrimp

To: LuckyU Enterprises, Inc. (gioshrimp@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85201288 - GIOVANNI'S ALOHA SHRIMP - N/A
Sent: 8/24/2011 11:22:20 PM
Sent As: ECOM117@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](#)
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[Attachment - 22](#)
[Attachment - 23](#)

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

APPLICATION SERIAL NO. 85201288

MARK: GIOVANNI'S ALOHA SHRIMP

85201288

CORRESPONDENT ADDRESS:

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: LuckyU Enterprises, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
gioshrimp@aol.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: 8/24/2011

LETTER OF PROTEST GRANTED

The Office of the Deputy Commissioner for Trademark Examination Policy granted a Letter of Protest received in connection with this application. The evidence presented in the letter was forwarded to the trademark examining attorney for consideration. *See* TMEP §1715.

Based upon this evidence, the trademark examining attorney is taking further action, as specified below. *See* TMEP §1715.02(b).

In addition to the requirement in this Office action, all refusals and requirement (s) in the Office action dated March 21, 2011, are herein incorporated by reference. Therefore, a proper response to this Office action must address each issue raised in the preceding Office action as well as in this Office action.

REFUSAL – FALSE CONNECTION

Registration is refused because the applied-for mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK consists of or includes matter – the term GIOVANNI'S - which may falsely suggest a connection with John "Giovanni" Aragona. Although John "Giovanni" Aragona is not connected with the goods and/or services provided by applicant under the applied-for mark, John "Giovanni" Aragona is so famous that consumers would presume a connection. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §§1203.03, 1203.03(e). *See generally* *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Trademark Act Section 2(a):

- (1) The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- (4) The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services.

In re Peter S. Herrick, P.A., 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505, 508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test used to determine the existence of a false connection).

The examiner notes the attached advertisements and articles excerpted from a search of the <http://www.google.com> website which demonstrate that Giovanni and Connie Aragona began a shrimp shack in 1994 that became one of the oldest and famous shrimp trucks in Kahuku, O'ahu known as "Giovanni's Original Shrimp Truck". See attachments. It is also noted that the applicant is located in Kahuku, Hawaii. See applicant's address. The applicant has not provided any written consent from Mr. Aragona that his name may be used in the applicant's mark. Given the popularity, fame and history of the Aragona's shrimp truck, there is a likelihood that the term "Giovanni" in the applicant's mark would be read to refer to John "Giovanni" Aragona and his original shrimp truck.

Notably, the term at issue need not be the actual, legal name of the party falsely associated with applicant's mark to be unregistrable. TMEP §1203.03(a); *see, e.g., Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429-30 (TTAB 1985) (holding the wording MARGARITAVILLE to be the persona of singer Jimmy Buffett). The term must, however, be so uniquely and unmistakably associated with the named party as to constitute that party's name or identity. TMEP §1203.03; *see, e.g., In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985); *Buffett*, 226 USPQ at 429.

Accordingly, the mark is refused registration on the Principal Register absent consent to register from John "Giovanni" Aragona. Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

SECTION 2(c) REFUSAL – NAME IDENTIFIES A LIVING INDIVIDUAL

Registration is refused because the applied-for mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; *see, e.g., In re Hoefflin*, 97 USPQ2d 1174 (TTAB 2010).

The refusal under Section 2(c) will be withdrawn if applicant provides the following:

- (1) A statement that the name "GIOVANNI" shown in the mark identifies < **John "Giovanni" Aragona** >, a living individual whose consent is of record. If the name represents that of a

pseudonym, stage name, title and name combination, or nickname, applicant must include a statement that "GIOVANNI" identifies the <pseudonym/stage name/title and name/nickname> of <specify actual name>, a living individual whose consent is of record; and

(2) A written consent, personally signed by the individual whose name, signature, or portrait appears in the mark, authorizing applicant to register the identifying matter as a trademark and/or service mark with the USPTO (e.g., "I, John "Giovanni" Aragona, consent to the use and registration by **LuckyU Enterprises, Inc. DBA Giovanni's Original White Shrimp Truck** of my name as a trademark and/or service mark with the USPTO").

See TMEP §§813, 813.01(a), 1206.04(a).

Applicant is advised that the written consent must include a statement of the party's consent to applicant's *registration*, and not just the *use*, of the identifying matter as a trademark. See *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1912-13 (TTAB 2005); *In re New John Nissen Mannequins*, 227 USPQ 569, 571 (TTAB 1985); *Reed v. Bakers Eng'g & Equip. Co.*, 100 USPQ 196, 199 (PTO 1954); TMEP §1206.04(a).

REQUEST FOR INFORMATION

Applicant must submit the following information to permit proper examination of the application. See 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e).

Due to the notoriety of the person named in the mark, and the fact that there is no information in the application record regarding a connection with applicant, **applicant must specify whether the person or institution named in the mark has any connection with applicant's goods and/or services**, and if so, must describe the nature and extent of that connection. See 37 C.F.R. §2.61(b); TMEP §1203.03(e).

Failure to respond to a request for information is an additional ground for refusing registration. See *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

DISCLAIMER

Applicant must disclaim the descriptive wording "**SHRIMP**" apart from the mark as shown because it merely describes an ingredient and feature of applicant's services. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Attached to the previous office action, the applicant will find a review of the applicant's services wherein the applicant is recognized as featuring shrimp as part of its restaurant related services. See attachments.

A term is merely descriptive if it conveys an immediate idea of the ingredients, qualities, or characteristics of the identified goods and/or services. See *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001). When used in relation to the services, the immediate idea rendered by the wording SHRIMP describes that the applicant provides shrimp as part of its restaurant services. Given the descriptive nature of the wording, it lacks source identifying significance and, thus, must be disclaimed.

A “disclaimer” is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that are merely descriptive of the goods and/or services, and is wording or an illustration that others would need to use to describe or show their goods and services in the marketplace. 15 U.S.C. §1052(e); see TMEP §§1209.03(f), 1213.03 et seq.

The following is the standard format used by the Office:

No claim is made to the exclusive right to use “SHRIMP” apart from the mark as shown.

TMEP §1213.08(a)(i); see *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

SPECIMEN

The specimen is not acceptable because it is merely a photocopy of the drawing or a picture or rendering of the applied-for mark; it does not show the applied-for mark in actual use in commerce. See 37 C.F.R. §2.56(c); TMEP §§904.04(a), 904.07(a). Trademark Act Section 45 requires use of the mark “in the sale or advertising of services.” 15 U.S.C. §1127; see 37 C.F.R. §2.56(b)(2); TMEP §1301.04.

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of services specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**The substitute specimen was in use in commerce at least as early as the filing date of the application.**” 37 C.F.R. §2.59(a); TMEP §904.05; see 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the actual sale or advertising of the services. See TMEP §§1301.04 et seq.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the services listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); see 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a service mark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

PLEASE NOTE:

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/C. Skye Young/
Trademark Examining Attorney
Law Office 117
Ph: (571) 272-9713
Fx: (571) 273-9117
Em: skye.young@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. 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. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

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>.



Mar 21, 2012

NOTICE OF ABANDONMENT

TM117

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

ATTORNEY
REFERENCE
NUMBER:

SERIAL NUMBER: 85/201268
MARK: GIOVANNI'S ALOHA SHRIMP
APPLICANT: LuckyU Enterprises, Inc.

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED
IN FULL ON 02/27/2012 FOR THE FOLLOWING REASON:

NO RESPONSE TO THE OFFICE ACTION MAILED ON 08/24/2011 WAS RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) WITHIN THE SIX-MONTH RESPONSE PERIOD. (15 U.S.C. 1062(b); TRADEMARK RULE 2.65(a)). YOU MAY VIEW THE OFFICE ACTION THROUGH TRADEMARK DOCUMENT RETRIEVAL (TDR) AVAILABLE AT <http://tportal.uspto.gov/external/portal/tow>.

YOU CAN REQUEST REINSTATEMENT OF THE APPLICATION FOR NO FEE IF:

- * YOU HAVE PROOF THAT YOUR RESPONSE WAS RECEIVED IN THE USPTO ON OR BEFORE THE DUE DATE - SUCH AS A POSTCARD WITH A USPTO MAILROOM DATE STAMP; OR,
- * YOU MAILED OR FAXED THE RESPONSE ON OR BEFORE THE DUE DATE WITH A CERTIFICATE OF MAILING OR FACSIMILE TRANSMISSION, IN ACCORDANCE WITH USPTO RULE 2.197, 37 CFR SEC. 2.197.

YOU MUST SUBMIT A COPY OF THE PREVIOUSLY SUBMITTED TIMELY RESPONSE WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE ALONG WITH ONE OF THE TYPES OF PROOF SET OUT ABOVE. YOU MAY FAX THIS INFORMATION TO 571-273-8950.

IF YOU DO NOT HAVE THE PROOF NECESSARY FOR REINSTATEMENT, YOU CAN FILE A PETITION TO REVIVE THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) AVAILABLE AT <http://www.uspto.gov/teas/index.html>. USPTO RULE 2.66, 37 CFR SEC. 2.66, REQUIRES:

- * A "PETITION TO REVIVE" TO BE FILED WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE;
- * A SIGNED STATEMENT BY SOMEONE WITH FIRST HAND KNOWLEDGE OF THE FACTS THAT THE DELAY IN RESPONDING BY THE DUE DATE WAS "UNINTENTIONAL";
- * A PETITION FEE OF \$100, MADE PAYABLE TO THE COMMISSIONER OF TRADEMARKS; AND
- * A RESPONSE TO THE OFFICE ACTION (IF YOU RECEIVED THE OFFICE ACTION - OTHERWISE, A STATEMENT THAT YOU DID NOT RECEIVE THE OFFICE ACTION.)

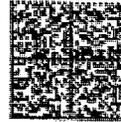
FOR FURTHER INFORMATION CALL 1-800-786-9199



04-10-2012

United States Patent and Trademark Office
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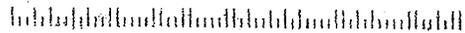


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In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 15c
Exhibit Offered by Respondent
12/3/14

EXHIBIT 15C

PTO Form 1473 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85219363

Filing Date: 01/17/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85219363
MARK INFORMATION	
*MARK	<u>Giovanni's Original Scampi Sauce</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Giovanni's Original Scampi Sauce
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	LuckyU Enterprises, Inc.
DBA/AKA/TA/Formerly	DBA Giovanni's Original White Shrimp Truck
*STREET	57-120 Lalo Kuilima Way #12
*CITY	Kahuku
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	gioshrimp@aol.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Hawaii
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	030
*IDENTIFICATION	Cooking sauces; Flavourings for foods
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/30/2001
FIRST USE IN COMMERCE DATE	At least as early as 03/30/2001
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<u>spec-7223480161-180710315 . GiovanniScampiSauce.pdf</u>
CONVERTED PDF FILE(S) (1 page)	<u>\\TICRS\EXPORT11\IMAGEOUT11\852\193\85219363\xml1\APP0003.JPG</u>
SPECIMEN DESCRIPTION	Bottle Label
CORRESPONDENCE INFORMATION	
NAME	LuckyU Enterprises, Inc.
FIRM NAME	LuckyU Enterprises, Inc.
STREET	57-120 Lalo Kuilima Way #12
CITY	Kahuku
STATE	Hawaii
COUNTRY	United States
ZIP/POSTAL CODE	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	gioshrimp@aol.com
AUTHORIZED TO COMMUNICATE VIA	Yes

EMAIL	
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Troy Nitsche/
SIGNATORY'S NAME	Troy Nitsche
SIGNATORY'S POSITION	President
DATE SIGNED	01/17/2011

Trademark/Service Mark Application, Principal Register

Serial Number: 85219363

Filing Date: 01/17/2011

To the Commissioner for Trademarks:

MARK: Giovanni's Original Scampi Sauce (Standard Characters, see mark)

The literal element of the mark consists of Giovanni's Original Scampi Sauce.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, LuckyU Enterprises, Inc., DBA Giovanni's Original White Shrimp Truck, a corporation of Hawaii, having an address of

57-120 Lalo Kuilima Way #12

Kahuku, Hawaii 96731

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 030: Cooking sauces; Flavourings for foods

In International Class 030, the mark was first used at least as early as 03/30/2001, and first used in commerce at least as early as 03/30/2001, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Bottle Label.

Original PDF file:

[spec-7223480161-180710315 . GiovanniScampiSauce.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

The applicant's current Correspondence Information:

LuckyU Enterprises, Inc.

LuckyU Enterprises, Inc.

57-120 Lalo Kuilima Way #12

Kahuku, Hawaii 96731

808-630-9116(phone)

808-638-0110(fax)

gioshrimp@aol.com (authorized)

A fee payment in the amount of \$325 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: /Troy Nitsche/ Date Signed: 01/17/2011

Signatory's Name: Troy Nitsche

Signatory's Position: President

RAM Sale Number: 12224

RAM Accounting Date: 01/18/2011

Serial Number: 85219363

Internet Transmission Date: Mon Jan 17 18:35:41 EST 2011

TEAS Stamp: USPTO/BAS-72.234.80.161-2011011718354107

7057-85219363-4704dbd4ef229509c32c325ce9

5a119d-CC-12224-20110117180710315109

Giovanni's Original Scampi Sauce

Giovanni's Original Scampi Sauce

Giovanni's Original Scampi Sauce

Giovanni's Original Scampi Sauce

To: LuckyU Enterprises, Inc. (gioshrimp@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85219363 - GIOVANNI'S ORIGINAL SCAMPI SAUCE - N/A
Sent: 8/24/2011 11:17:31 PM
Sent As: ECOM117@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](#)
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[Attachment - 18](#)
[Attachment - 19](#)
[Attachment - 20](#)
[Attachment - 21](#)
[Attachment - 22](#)
[Attachment - 23](#)

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

APPLICATION SERIAL NO. 85219363

MARK: GIOVANNI'S ORIGINAL SCAMPI SAUCE

85219363

CORRESPONDENT ADDRESS:

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: LuckyU Enterprises, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
gioshrimp@aol.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: 8/24/2011

LETTER OF PROTEST GRANTED

The Office of the Deputy Commissioner for Trademark Examination Policy granted a Letter of Protest received in connection with this application. The evidence presented in the letter was forwarded to the trademark examining attorney for consideration. *See* TMEP §1715.

Based upon this evidence, the trademark examining attorney is taking further action, as specified below. *See* TMEP §1715.02(b).

In addition to the requirement in this Office action, all refusals and requirement (s) in the Office action dated March 21, 2011, are herein incorporated by reference. Therefore, a proper response to this Office action must address each issue raised in the preceding Office action as well as in this Office action.

REFUSAL – FALSE CONNECTION

Registration is refused because the applied-for mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK consists of or includes matter – the term GIOVANNI'S - which may falsely suggest a connection with John "Giovanni" Aragona. Although John "Giovanni" Aragona is not connected with the goods and/or services provided by applicant under the applied-for mark, John "Giovanni" Aragona is so famous that consumers would presume a connection. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §§1203.03, 1203.03(e). *See generally* *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Trademark Act Section 2(a):

- (1) The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- (4) The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services.

In re Peter S. Herrick, P.A., 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505, 508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test used to determine the existence of a false connection).

The examiner notes the attached advertisements and articles excerpted from a search of the <http://www.google.com> website which demonstrate that Giovanni and Connie Aragona began a shrimp shack in 1994 that became one of the oldest and famous shrimp trucks in Kahuku, O'ahu known as "Giovanni's Original Shrimp Truck". See attachments. It is also noted that the applicant is located in Kahuku, Hawaii. See applicant's address. The applicant has not provided any written consent from Mr. Aragona that his name may be used in the applicant's mark. Given the popularity, fame and history of the Aragona's shrimp truck, there is a likelihood that the term "Giovanni" in the applicant's mark would be read to refer to John "Giovanni" Aragona and his original shrimp truck.

Notably, the term at issue need not be the actual, legal name of the party falsely associated with applicant's mark to be unregistrable. TMEP §1203.03(a); *see, e.g., Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429-30 (TTAB 1985) (holding the wording MARGARITAVILLE to be the persona of singer Jimmy Buffett). The term must, however, be so uniquely and unmistakably associated with the named party as to constitute that party's name or identity. TMEP §1203.03; *see, e.g., In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985); *Buffett*, 226 USPQ at 429.

Accordingly, the mark is refused registration on the Principal Register absent consent to register from John "Giovanni" Aragona. Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

SECTION 2(c) REFUSAL – NAME IDENTIFIES A LIVING INDIVIDUAL

Registration is refused because the applied-for mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; *see, e.g., In re Hoefflin*, 97 USPQ2d 1174 (TTAB 2010).

The refusal under Section 2(c) will be withdrawn if applicant provides the following:

- (1) A statement that the name "GIOVANNI" shown in the mark identifies < **John "Giovanni" Aragona** >, a living individual whose consent is of record. If the name represents that of a

pseudonym, stage name, title and name combination, or nickname, applicant must include a statement that "GIOVANNI" identifies the <pseudonym/stage name/title and name/nickname> of <specify actual name>, a living individual whose consent is of record; and

(2) A written consent, personally signed by the individual whose name, signature, or portrait appears in the mark, authorizing applicant to register the identifying matter as a trademark and/or service mark with the USPTO (e.g., "I, John "Giovanni" Aragona, consent to the use and registration by **LuckyU Enterprises, Inc. DBA Giovanni's Original White Shrimp Truck** of my name as a trademark and/or service mark with the USPTO").

See TMEP §§813, 813.01(a), 1206.04(a).

Applicant is advised that the written consent must include a statement of the party's consent to applicant's *registration*, and not just the *use*, of the identifying matter as a trademark. See *Krause v. Krause Publ'ns, Inc.*, 76 USPQ2d 1904, 1912-13 (TTAB 2005); *In re New John Nissen Mannequins*, 227 USPQ 569, 571 (TTAB 1985); *Reed v. Bakers Eng'g & Equip. Co.*, 100 USPQ 196, 199 (PTO 1954); TMEP §1206.04(a).

REQUEST FOR INFORMATION

Applicant must submit the following information to permit proper examination of the application. See 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e).

Due to the notoriety of the person named in the mark, and the fact that there is no information in the application record regarding a connection with applicant, **applicant must specify whether the person or institution named in the mark has any connection with applicant's goods and/or services**, and if so, must describe the nature and extent of that connection. See 37 C.F.R. §2.61(b); TMEP §1203.03(e).

Failure to respond to a request for information is an additional ground for refusing registration. See *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

DISCLAIMER

Applicant must disclaim the descriptive wording "**ORIGINAL SCAMPI SAUCE**" apart from the mark as shown because it merely describes an ingredient and feature of applicant's goods. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Attached to the previous office action, the applicant will find a dictionary reference wherein the term "original" is defined as "preceding all others in time; first." See attachments. Furthermore, the examiner notes the previously attached advertisements excerpted from her search of the <http://www.google.com> website which demonstrate that "scampi sauce" is a type of sauce.

A term is merely descriptive if it conveys an immediate idea of the ingredients, qualities, or characteristics of the identified goods and/or services. See *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001). When used in relation to the goods, the immediate idea rendered by the

wording “ORIGINAL SCAMPI SAUCE” describes the applicant’s goods. Specifically, it merely informs consumers that the applicant’s scampi sauce is a first of its kinds. Given the descriptive nature of the wording, it lacks source identifying significance and, thus, must be disclaimed.

A “disclaimer” is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that are merely descriptive of the goods and/or services, and is wording or an illustration that others would need to use to describe or show their goods and services in the marketplace. 15 U.S.C. §1052(e); see TMEP §§1209.03(f), 1213.03 et seq.

The following is the standard format used by the Office:

No claim is made to the exclusive right to use “ORIGINAL SCAMPI SAUCE” apart from the mark as shown.

TMEP §1213.08(a)(i); see *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

SPECIMEN

The specimen is not acceptable because it is merely a photocopy of the drawing or a picture or rendering of the applied-for mark; it does not show the applied-for mark in actual use in commerce on the goods. See 37 C.F.R. §2.56(c); TMEP §904.04(a). Trademark Act Section 45 requires use of the mark “on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto.” 15 U.S.C. §1127; see 37 C.F.R. §2.56(b)(1); TMEP §904.03.

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**The substitute specimen was in use in commerce at least as early as the filing date of the application.**” 37 C.F.R. §2.59(a); TMEP §904.05; see 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. See TMEP §§904.03 et seq.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP

§1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

PLEASE NOTE:

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

/C. Skye Young/
Trademark Examining Attorney
Law Office 117
Ph: (571) 272-9713
Fx: (571) 273-9117
Em: skye.young@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. 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. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

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>.

To: LuckyU Enterprises, Inc. (gioshrimp@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85219363 - GIOVANNI'S ORIGINAL SCAMPI SAUCE - N/A
Sent: 8/24/2011 11:17:32 PM
Sent As: ECOM117@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 85219363) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on 8/24/2011 to which you must respond. Please follow these steps:

1. Read the Office letter by clicking on this [link](#) OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Respond within 6 months, calculated from 8/24/2011 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System Response to Office Action form. If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/C. Skye Young/
Trademark Examining Attorney
Law Office 117
Ph: (571) 272-9713
Fx: (571) 273-9117
Em: skye.young@uspto.gov

WARNING

Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System Response to Office Action form.



UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mar 21, 2012

NOTICE OF ABANDONMENT

TM117

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

ATTORNEY
REFERENCE
NUMBER:

SERIAL NUMBER: 85/219363
MARK: GIOVANNI'S ORIGINAL SCAMPI SAUCE
APPLICANT: LuckyU Enterprises, Inc.

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED
IN FULL ON 02/27/2012 FOR THE FOLLOWING REASON:

NO RESPONSE TO THE OFFICE ACTION MAILED ON 08/24/2011 WAS RECEIVED IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) WITHIN THE SIX-MONTH
RESPONSE PERIOD. (15 U.S.C. 1062(b); TRADEMARK RULE 2.65(a)). YOU MAY
VIEW THE OFFICE ACTION THROUGH TRADEMARK DOCUMENT RETRIEVAL (TDR)
AVAILABLE AT <http://tportal.uspto.gov/external/portal/tow>.

YOU CAN REQUEST REINSTATEMENT OF THE APPLICATION FOR NO FEE IF:

- * YOU HAVE PROOF THAT YOUR RESPONSE WAS RECEIVED IN THE USPTO ON OR BEFORE THE DUE DATE - SUCH AS A POSTCARD WITH A USPTO MAILROOM DATE STAMP; OR,
- * YOU MAILED OR FAXED THE RESPONSE ON OR BEFORE THE DUE DATE WITH A CERTIFICATE OF MAILING OR FACSIMILE TRANSMISSION, IN ACCORDANCE WITH USPTO RULE 2.197, 37 CFR SEC. 2.197.

YOU MUST SUBMIT A COPY OF THE PREVIOUSLY SUBMITTED TIMELY RESPONSE WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE ALONG WITH ONE OF THE TYPES OF PROOF SET OUT ABOVE. YOU MAY FAX THIS INFORMATION TO 571-273-8950.

IF YOU DO NOT HAVE THE PROOF NECESSARY FOR REINSTATEMENT, YOU CAN FILE A PETITION TO REVIVE THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) AVAILABLE AT <http://www.uspto.gov/teas/index.html>. USPTO RULE 2.66, 37 CFR SEC. 2.66, REQUIRES:

- * A "PETITION TO REVIVE" TO BE FILED WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE;
- * A SIGNED STATEMENT BY SOMEONE WITH FIRST HAND KNOWLEDGE OF THE FACTS THAT THE DELAY IN RESPONDING BY THE DUE DATE WAS "UNINTENTIONAL";
- * A PETITION FEE OF \$100, MADE PAYABLE TO THE COMMISSIONER OF TRADEMARKS; AND
- * A RESPONSE TO THE OFFICE ACTION (IF YOU RECEIVED THE OFFICE ACTION - OTHERWISE, A STATEMENT THAT YOU DID NOT RECEIVE THE OFFICE ACTION.)

FOR FURTHER INFORMATION CALL 1-800-786-9199



04-10-2012

United States Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA. 22313-1451
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AN EQUAL OPPORTUNITY EMPLOYER



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BC: 22313145151 *0217-02236-22-38

22313145151



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 15d
Exhibit Offered by Respondent
12/3/14

EXHIBIT 15D

PTO Form 1473 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85219370

Filing Date: 01/17/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85219370
MARK INFORMATION	
*MARK	<u>Giovanni's Original Hot Sauce</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Giovanni's Original Hot Sauce
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	LuckyU Enterprises, Inc.
DBA/AKA/TA/Formerly	DBA Giovanni's Original White Shrimp Truck
*STREET	57-120 Lalo Kuilima Way #12
*CITY	Kahuku
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	gioshrimp@aol.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Hawaii
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	030
*IDENTIFICATION	Flavourings for foods
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/30/2001
FIRST USE IN COMMERCE DATE	At least as early as 03/30/2001
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	spec-7223480161-183729102 . GiovanniHotSauce.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT1\IMAGEOUT1\852\193\85219370\xml1\APP0003.JPG
SPECIMEN DESCRIPTION	Bottle label
CORRESPONDENCE INFORMATION	
NAME	LuckyU Enterprises, Inc.
FIRM NAME	LuckyU Enterprises, Inc.
STREET	57-120 Lalo Kuilima Way #12
CITY	Kahuku
STATE	Hawaii
COUNTRY	United States
ZIP/POSTAL CODE	96731
PHONE	808-630-9116
FAX	808-638-0110
EMAIL ADDRESS	gioshrimp@aol.com
AUTHORIZED TO COMMUNICATE VIA	Yes

EMAIL	
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Troy Nitsche/
SIGNATORY'S NAME	Troy Nitsche
SIGNATORY'S POSITION	President
DATE SIGNED	01/17/2011

Trademark/Service Mark Application, Principal Register

Serial Number: 85219370

Filing Date: 01/17/2011

To the Commissioner for Trademarks:

MARK: Giovanni's Original Hot Sauce (Standard Characters, see mark)

The literal element of the mark consists of Giovanni's Original Hot Sauce.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, LuckyU Enterprises, Inc., DBA Giovanni's Original White Shrimp Truck, a corporation of Hawaii, having an address of

57-120 Lalo Kuilima Way #12

Kahuku, Hawaii 96731

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 030: Flavourings for foods

In International Class 030, the mark was first used at least as early as 03/30/2001, and first used in commerce at least as early as 03/30/2001, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Bottle label.

Original PDF file:

[spec-7223480161-183729102 . GiovanniHotSauce.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

The applicant's current Correspondence Information:

LuckyU Enterprises, Inc.

LuckyU Enterprises, Inc.

57-120 Lalo Kuilima Way #12

Kahuku, Hawaii 96731

808-630-9116(phone)

808-638-0110(fax)

gioshrimp@aol.com (authorized)

A fee payment in the amount of \$325 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: /Troy Nitsche/ Date Signed: 01/17/2011

Signatory's Name: Troy Nitsche

Signatory's Position: President

RAM Sale Number: 12289

RAM Accounting Date: 01/18/2011

Serial Number: 85219370

Internet Transmission Date: Mon Jan 17 18:56:14 EST 2011

TEAS Stamp: USPTO/BAS-72.234.80.161-2011011718561441

6057-85219370-470be954b657293a01a3ea9b81

f90ab52f5-CC-12289-20110117183729102681

Giovanni's Original Hot Sauce

Giovanni's Original Hot Sauce

Giovanni's Original Hot Sauce

Giovanni's Original Hot Sauce

To: LuckyU Enterprises, Inc. (gioshrimp@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85219370 - GIOVANNI'S ORIGINAL HOT SAUCE - N/A
Sent: 8/24/2011 11:21:05 PM
Sent As: ECOM117@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85219370

MARK: GIOVANNI'S ORIGINAL HOT SAUCE

85219370

CORRESPONDENT ADDRESS:

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: LuckyU Enterprises, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

gioshrimp@aol.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: 8/24/2011

LETTER OF PROTEST GRANTED

The Office of the Deputy Commissioner for Trademark Examination Policy granted a Letter of Protest received in connection with this application. The evidence presented in the letter was forwarded to the trademark examining attorney for consideration. *See* TMEP §1715.

Based upon this evidence, the trademark examining attorney is taking further action, as specified below. *See* TMEP §1715.02(b).

In addition to the requirement in this Office action, all refusals and requirement (s) in the Office action dated March 21, 2011, are herein incorporated by reference. Therefore, a proper response to this Office action must address each issue raised in the preceding Office action as well as in this Office action.

REFUSAL – FALSE CONNECTION

Registration is refused because the applied-for mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK consists of or includes matter – the term GIOVANNI'S - which may falsely suggest a connection with John "Giovanni" Aragona. Although John "Giovanni" Aragona is not connected with the goods and/or services provided by applicant under the applied-for mark, John "Giovanni" Aragona is so famous that consumers would presume a connection. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §§1203.03, 1203.03(e). *See generally* *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Trademark Act Section 2(a):

- (1) The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- (4) The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods and/or services.

In re Peter S. Herrick, P.A., 91 USPQ2d 1505, 1507 (TTAB 2009); *In re MC MC S.r.l.*, 88 USPQ2d 1378, 1379 (TTAB 2008); TMEP §1203.03(e); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505, 508-10 (Fed. Cir. 1983) (providing foundational principles for the current four-part test used to determine the existence of a false connection).

The examiner notes the attached advertisements and articles excerpted from a search of the <http://www.google.com> website which demonstrate that Giovanni and Connie Aragona began a shrimp shack in 1994 that became one of the oldest and famous shrimp trucks in Kahuku, O'ahu known as "Giovanni's Original Shrimp Truck". See attachments. It is also noted that the applicant is located in Kahuku, Hawaii. See applicant's address. The applicant has not provided any written consent from Mr. Aragona that his name may be used in the applicant's mark. Given the popularity, fame and history of the Aragona's shrimp truck, there is a likelihood that the term "Giovanni" in the applicant's mark would be read to refer to John "Giovanni" Aragona and his original shrimp truck.

Notably, the term at issue need not be the actual, legal name of the party falsely associated with applicant's mark to be unregistrable. TMEP §1203.03(a); *see, e.g., Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429-30 (TTAB 1985) (holding the wording MARGARITAVILLE to be the persona of singer Jimmy Buffett). The term must, however, be so uniquely and unmistakably associated with the named party as to constitute that party's name or identity. TMEP §1203.03; *see, e.g., In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985); *Buffett*, 226 USPQ at 429.

Accordingly, the mark is refused registration on the Principal Register absent consent to register from John "Giovanni" Aragona. Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

SECTION 2(c) REFUSAL – NAME IDENTIFIES A LIVING INDIVIDUAL

Registration is refused because the applied-for mark consists of or includes a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record. Trademark Act Section 2(c), 15 U.S.C. §1052(c); TMEP §1206; *see, e.g., In re Hoeflin*, 97 USPQ2d 1174 (TTAB 2010).

The refusal under Section 2(c) will be withdrawn if applicant provides the following:

- (1) A statement that the name "GIOVANNI" shown in the mark identifies < **John "Giovanni" Aragona** >, a living individual whose consent is of record. If the name represents that of a pseudonym, stage name, title and name combination, or nickname, applicant must include a statement that "GIOVANNI" identifies the <pseudonym/stage name/title and name/nickname> of

<specify actual name>, a living individual whose consent is of record; and

(2) A written consent, personally signed by the individual whose name, signature, or portrait appears in the mark, authorizing applicant to register the identifying matter as a trademark and/or service mark with the USPTO (e.g., “I, John “Giovanni” Aragona, consent to the use and registration by **LuckyU Enterprises, Inc. DBA Giovanni's Original White Shrimp Truck** of my name as a trademark and/or service mark with the USPTO”).

See TMEP §§813, 813.01(a), 1206.04(a).

Applicant is advised that the written consent must include a statement of the party’s consent to applicant’s *registration*, and not just the *use*, of the identifying matter as a trademark. See *Krause v. Krause Publ’ns, Inc.*, 76 USPQ2d 1904, 1912-13 (TTAB 2005); *In re New John Nissen Mannequins*, 227 USPQ 569, 571 (TTAB 1985); *Reed v. Bakers Eng’g & Equip. Co.*, 100 USPQ 196, 199 (PTO 1954); TMEP §1206.04(a).

REQUEST FOR INFORMATION

Applicant must submit the following information to permit proper examination of the application. See 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e).

Due to the notoriety of the person named in the mark, and the fact that there is no information in the application record regarding a connection with applicant, **applicant must specify whether the person or institution named in the mark has any connection with applicant’s goods and/or services**, and if so, must describe the nature and extent of that connection. See 37 C.F.R. §2.61(b); TMEP §1203.03(e).

Failure to respond to a request for information is an additional ground for refusing registration. See *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

DISCLAIMER

Applicant must disclaim the descriptive wording “**ORIGINAL HOT SAUCE**” apart from the mark as shown because it merely describes an ingredient and feature of applicant’s goods. See 15 U.S.C. §§1052(e)(1), 1056(a); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); TMEP §§1213, 1213.03(a).

Attached to the previous office action, the applicant will find a dictionary reference wherein the term “original” is defined as “preceding all others in time; first” and “hot sauce” is defined as a condiment. See attachments.

A term is merely descriptive if it conveys an immediate idea of the ingredients, qualities, or characteristics of the identified goods and/or services. See *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001). When used in relation to the goods, the immediate idea rendered by the wording “ORIGINAL HOT SAUCE” describes the applicant’s goods. Specifically, it merely informs consumers that the applicant’s flavorings for food are a first of its kind formula of the condiment, hot sauce. Given the descriptive nature of the wording, it lacks source identifying significance and, thus, must

be disclaimed.

A “disclaimer” is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component of a mark includes wording and designs that are merely descriptive of the goods and/or services, and is wording or an illustration that others would need to use to describe or show their goods and services in the marketplace. 15 U.S.C. §1052(e); see TMEP §§1209.03(f), 1213.03 et seq.

The following is the standard format used by the Office:

No claim is made to the exclusive right to use “ORIGINAL HOT SAUCE” apart from the mark as shown.

TMEP §1213.08(a)(i); see *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

SPECIMEN

The specimen is not acceptable because it is merely a photocopy of the drawing or a picture or rendering of the applied-for mark; it does not show the applied-for mark in actual use in commerce on the goods. See 37 C.F.R. §2.56(c); TMEP §904.04(a). Trademark Act Section 45 requires use of the mark “on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto.” 15 U.S.C. §1127; see 37 C.F.R. §2.56(b)(1); TMEP §904.03.

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**The substitute specimen was in use in commerce at least as early as the filing date of the application.**” 37 C.F.R. §2.59(a); TMEP §904.05; see 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. See TMEP §904.03 et seq.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

PLEASE NOTE:

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

/C. Skye Young/
Trademark Examining Attorney
Law Office 117
Ph: (571) 272-9713
Fx: (571) 273-9117
Em: skye.young@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. 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. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

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>.

To: LuckyU Enterprises, Inc. (gioshrimp@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85219370 - GIOVANNI'S ORIGINAL HOT SAUCE - N/A
Sent: 8/24/2011 11:21:06 PM
Sent As: ECOM117@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 85219370) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on 8/24/2011 to which you must respond. Please follow these steps:

1. Read the Office letter by clicking on this [link](#) OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Respond within 6 months, calculated from 8/24/2011 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System **Response to Office Action form**. If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/C. Skye Young/
Trademark Examining Attorney
Law Office 117
Ph: (571) 272-9713
Fx: (571) 273-9117
Em: skye.young@uspto.gov

WARNING

Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System Response to Office Action form.



UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mar 21, 2012

NOTICE OF ABANDONMENT

TM117

LUCKYU ENTERPRISES, INC.
LUCKYU ENTERPRISES, INC.
57-120 LALO KUILIMA WAY APT 12
KAHUKU, HI 96731-2122

ATTORNEY
REFERENCE
NUMBER:

SERIAL NUMBER: 85/219370
MARK: GIOVANNI'S ORIGINAL HOT SAUCE
APPLICANT: LuckyU Enterprises, Inc.

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED
IN FULL ON 02/27/2012 FOR THE FOLLOWING REASON:

NO RESPONSE TO THE OFFICE ACTION MAILED ON 08/24/2011 WAS RECEIVED IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) WITHIN THE SIX-MONTH
RESPONSE PERIOD. (15 U.S.C. 1062(b); TRADEMARK RULE 2.65(a)). YOU MAY
VIEW THE OFFICE ACTION THROUGH TRADEMARK DOCUMENT RETRIEVAL (TDR)
AVAILABLE AT <http://tportal.uspto.gov/external/portal/tow>.

YOU CAN REQUEST REINSTATEMENT OF THE APPLICATION FOR NO FEE IF:

- * YOU HAVE PROOF THAT YOUR RESPONSE WAS RECEIVED IN THE USPTO ON OR BEFORE
THE DUE DATE - SUCH AS A POSTCARD WITH A USPTO MAILROOM DATE STAMP; OR,
- * YOU MAILED OR FAXED THE RESPONSE ON OR BEFORE THE DUE DATE WITH A
CERTIFICATE OF MAILING OR FACSIMILE TRANSMISSION, IN ACCORDANCE WITH USPTO
RULE 2.197, 37 CFR SEC. 2.197.

**YOU MUST SUBMIT A COPY OF THE PREVIOUSLY SUBMITTED TIMELY RESPONSE
WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE
ALONG WITH ONE OF THE TYPES OF PROOF SET OUT ABOVE. YOU MAY FAX
THIS INFORMATION TO 571-273-8950.**

**IF YOU DO NOT HAVE THE PROOF NECESSARY FOR REINSTATEMENT, YOU CAN
FILE A PETITION TO REVIVE THROUGH THE TRADEMARK ELECTRONIC APPLICATION
SYSTEM (TEAS) AVAILABLE AT <http://www.uspto.gov/teas/index.html>.
USPTO RULE 2.66, 37 CFR SEC. 2.66, REQUIRES:**

- * A "PETITION TO REVIVE" TO BE FILED WITHIN 2 MONTHS OF THE DATE PRINTED
AT THE TOP OF THIS NOTICE;
- * A SIGNED STATEMENT BY SOMEONE WITH FIRST HAND KNOWLEDGE OF THE FACTS
THAT THE DELAY IN RESPONDING BY THE DUE DATE WAS "UNINTENTIONAL";
- * A PETITION FEE OF \$100, MADE PAYABLE TO THE COMMISSIONER OF TRADEMARKS; AND
- * A RESPONSE TO THE OFFICE ACTION (IF YOU RECEIVED THE OFFICE ACTION
- OTHERWISE, A STATEMENT THAT YOU DID NOT RECEIVE THE OFFICE ACTION.)

FOR FURTHER INFORMATION CALL 1-800-786-9199



04-10-2012

United States Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA. 22313-1451
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AN EQUAL OPPORTUNITY EMPLOYER

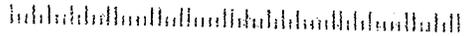


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22313145151



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 16a
Exhibit Offered by Respondent
12/3/14

Trademark/Service Mark Application, Principal Register

Serial Number: 85897861

Filing Date: 04/08/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85897861
MARK INFORMATION	
*MARK	GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
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	LuckyU Enterprises, Inc.
DBA/AKA/TA/Formerly	DBA Giovanni's Original White Shrimp Truck
*STREET	57-120 Lalo Kuilima Way #12
*CITY	Kahuku
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96731
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Hawaii
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	043

*IDENTIFICATION	Providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks.
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/01/1998
FIRST USE IN COMMERCE DATE	At least as early as 03/01/1998
SPECIMEN FILE NAME(S)	<u>\\TICRS\EXPORT16\IMAGEOUT</u> <u>16\858\978\85897861\xml1\ APP0003.JPG</u>
SPECIMEN DESCRIPTION	webpage printout showing use of the applied-for mark advertising the identified services in commerce
ATTORNEY INFORMATION	
NAME	Jason A. Cody
ATTORNEY DOCKET NUMBER	20688.0003.TMUS00
FIRM NAME	Novak Druce Connolly Bove + Quigg, LLP
INTERNAL ADDRESS	Eleventh Floor
STREET	1875 Eye Street, NW
CITY	Washington
STATE	District of Columbia
COUNTRY	United States
ZIP/POSTAL CODE	20006
PHONE	(202) 331-7111
EMAIL ADDRESS	trademark@novakdruce.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Daniel P. Mullarkey
CORRESPONDENCE INFORMATION	
NAME	Jason A. Cody
FIRM NAME	Novak Druce Connolly Bove + Quigg, LLP
INTERNAL ADDRESS	Eleventh Floor
STREET	1875 Eye Street, NW

CITY	Washington
STATE	District of Columbia
COUNTRY	United States
ZIP/POSTAL CODE	20006
PHONE	(202) 331-7111
EMAIL ADDRESS	trademark@novakdruce.com;jason.cody@novakdruce.com; daniel.mullarkey@novakdruce.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED
SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED

Trademark/Service Mark Application, Principal Register

Serial Number: 85897861

Filing Date: 04/08/2013

To the Commissioner for Trademarks:

MARK: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK (Standard Characters, see mark)
The literal element of the mark consists of GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, LuckyU Enterprises, Inc., DBA Giovanni's Original White Shrimp Truck, a corporation of Hawaii, having an address of
57-120 Lalo Kuilima Way #12
Kahuku, Hawaii 96731
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:

International Class 043: Providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks.

In International Class 043, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 03/01/1998, and first used in commerce at least as early as 03/01/1998, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) webpage printout showing use of the applied-for mark advertising the identified services in commerce.

Specimen File 1

The applicant's current Attorney Information:

Jason A. Cody and Daniel P. Mullarkey of Novak Druce Connolly Bove + Quigg, LLP

Eleventh Floor
1875 Eye Street, NW
Washington, District of Columbia 20006
United States

The attorney docket/reference number is 20688.0003.TMUS00.

The applicant's current Correspondence Information:

Jason A. Cody

Novak Druce Connolly Bove + Quigg, LLP

Eleventh Floor

1875 Eye Street, NW

Washington, District of Columbia 20006

(202) 331-7111(phone)

trademark@novakdruce.com;jason.cody@novakdruce.com;daniel.mullarkey@novakdruce.com

(authorized)

A fee payment in the amount of \$325 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.

Declaration Signature

Signature: Not Provided Date: Not Provided

Signatory's Name: Not Provided

Signatory's Position: Not Provided

RAM Sale Number: 85897861

RAM Accounting Date: 04/09/2013

Serial Number: 85897861

Internet Transmission Date: Mon Apr 08 13:58:53 EDT 2013

TEAS Stamp: USPTO/BAS-38.104.29.206-2013040813585307

2929-85897861-500a2881273765e3ab9a7bfb98

a607391bf9f2c3fe3318732b3bdffe54afe2ba3-

CC-220-20130408135355494810

GIOVANNI'S ORIGINAL WHITE
SHRIMP TRUCK



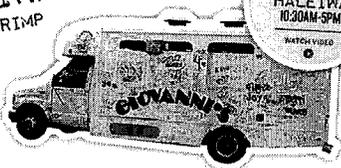
MENU DIRECTIONS HISTORY NEWS & PRESS STORE

GIOVANNI'S ON: [Twitter] [Facebook] [Instagram] [YouTube]

FACEBOOK FEED

Recent Activity
Giovanni's Shrimp Truck
North Shore, Oahu
4,548 likes

GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK



PHOTOS
SUBMIT YOURS →
& SEE THE GALLERY

THE FOOD!!!
VIEW OUR MENU

TOP TEN!!!!!!
FOOD TRUCKS TAKING OVER THE U.S.

THE SHOP!!
VIEW THE SHRIMP TRUCK PRODUCTS



In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 16b
Exhibit Offered by Respondent
12/3/14

Trademark/Service Mark Application, Principal Register

Serial Number: 85897872

Filing Date: 04/08/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85897872
MARK INFORMATION	
*MARK	<u>GIOVANNI'S SHRIMP TRUCK</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	GIOVANNI'S SHRIMP TRUCK
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	LuckyU Enterprises, Inc.
DBA/AKA/TA/Formerly	DBA Giovanni's Original White Shrimp Truck
*STREET	57-120 Lalo Kuilima Way #12
*CITY	Kahuku
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96731
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Hawaii

GOODS AND/OR SERVICES AND BASIS INFORMATION

INTERNATIONAL CLASS	043
*IDENTIFICATION	Providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 11/00/1997
FIRST USE IN COMMERCE DATE	At least as early as 11/00/1997
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<u>SPE0-3810429206-095757097 . Giovanni s Shrimp Truck - North Shore Oahu.pdf</u>
CONVERTED PDF FILE(S) (6 pages)	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0003.JPG</u>
	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0004.JPG</u>
	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0005.JPG</u>
	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0006.JPG</u>
	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0007.JPG</u>
	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0008.JPG</u>
ORIGINAL PDF FILE	<u>SPE0-3810429206-095757097 . Facebook Screen Shot.pdf</u>
CONVERTED PDF FILE(S) (1 page)	<u>\\TICRS\EXPORT16\IMAGEOUT16\858\978\85897872\xml1\APP0009.JPG</u>
SPECIMEN DESCRIPTION	a webpage printout and screen shot of applicant's Facebook page showing use of the applied-for mark advertising the identified services in commerce
ATTORNEY INFORMATION	
NAME	Jason A. Cody
ATTORNEY DOCKET NUMBER	20688.0004.TMUS00
FIRM NAME	Novak Druce Connolly Bove + Quigg, LLP
INTERNAL ADDRESS	Eleventh Floor
STREET	1875 Eye Street, NW

CITY	Washington
STATE	District of Columbia
COUNTRY	United States
ZIP/POSTAL CODE	20006
PHONE	(202) 331-7111
EMAIL ADDRESS	trademark@novakdruce.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Daniel P. Mullarkey
CORRESPONDENCE INFORMATION	
NAME	Jason A. Cody
FIRM NAME	Novak Druce Connolly Bove + Quigg, LLP
INTERNAL ADDRESS	Eleventh Floor
STREET	1875 Eye Street, NW
CITY	Washington
STATE	District of Columbia
COUNTRY	United States
ZIP/POSTAL CODE	20006
PHONE	(202) 331-7111
EMAIL ADDRESS	trademark@novakdruce.com;jason.cody@novakdruce.com;daniel.mullarkey@novakdruce.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED

SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED

Trademark/Service Mark Application, Principal Register

Serial Number: 85897872

Filing Date: 04/08/2013

To the Commissioner for Trademarks:

MARK: GIOVANNI'S SHRIMP TRUCK (Standard Characters, see mark)

The literal element of the mark consists of GIOVANNI'S SHRIMP TRUCK.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, LuckyU Enterprises, Inc., DBA Giovanni's Original White Shrimp Truck, a corporation of Hawaii, having an address of

57-120 Lalo Kuilima Way #12

Kahuku, Hawaii 96731

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:

International Class 043: Providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks

In International Class 043, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 11/00/1997, and first used in commerce at least as early as 11/00/1997, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) a webpage printout and screen shot of applicant's Facebook page showing use of the applied-for mark advertising the identified services in commerce.

Original PDF file:

SPE0-3810429206-095757097 . Giovanni s Shrimp Truck - North Shore Oahu.pdf

Converted PDF file(s) (6 pages)

Specimen File1

Specimen File2

Specimen File3

Specimen File4

Specimen File5

Specimen File6

Original PDF file:

SPE0-3810429206-095757097 . Facebook Screen Shot.pdf

Converted PDF file(s) (1 page)

Specimen File1

The applicant's current Attorney Information:

Jason A. Cody and Daniel P. Mullarkey of Novak Druce Connolly Bove + Quigg, LLP

Eleventh Floor
1875 Eye Street, NW
Washington, District of Columbia 20006
United States

The attorney docket/reference number is 20688.0004.TMUS00.

The applicant's current Correspondence Information:

Jason A. Cody
Novak Druce Connolly Bove + Quigg, LLP

Eleventh Floor
1875 Eye Street, NW
Washington, District of Columbia 20006

(202) 331-7111(phone)

trademark@novakdruce.com;jason.cody@novakdruce.com; daniel.mullarkey@novakdruce.com
(authorized)

A fee payment in the amount of \$325 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.

Declaration Signature

Signature: Not Provided Date: Not Provided

Signatory's Name: Not Provided

Signatory's Position: Not Provided

RAM Sale Number: 85897872

RAM Accounting Date: 04/09/2013

Serial Number: 85897872

Internet Transmission Date: Mon Apr 08 14:03:42 EDT 2013
TEAS Stamp: USPTO/BAS-38.104.29.206-2013040814034206
8964-85897872-5006dcfdc1a35eaec82c9296e3
518fcc20e0898a9c2ebff34095f4ea7b31372b-C
C-297-20130408140028564536

GIOVANNI'S SHRIMP TRUCK



Giovanni's Shrimp Truck - North Shore, Oahu

Like

Message

4,594 likes · 215 talking about this · 1,564 were here

\$\$ (10-30) · Seafood Restaurant
56-505 Kamehameha Highway, Kahuku, HI.
(808) 293-1839

Always open

About - Suggest an Edit

4,594



Photos

Likes

Map

Highlights

Post Photo / Video

Write something...

Giovanni's Shrimp Truck - North Shore, Oahu
March 30

Giovanni's Shrimp Truck will be at the Blaisdell Center for the Hawaii Ocean Expo April 13th and 14th...

Like · Comment · Share

144 people like this.

View 16 more comments

Matthew Weatherford Will be there to eat June 18th see you then
Sunday at 5:16pm · Like

Chris Tsuha do i have to pay a blaisdell admrission fee to eat your shrimp plate?
Yesterday at 4:11am · Like

Write a comment...

Giovanni's Shrimp Truck - North Shore, Oahu
January 1

Happy New Year to all of you from Giovanni's..... Wish you had the shrimp plate for your headache? Have a great 2013.

Like · Comment · Share

271 25

Giovanni's Shrimp Truck - North Shore, Oahu
December 25, 2012

Recent Posts by Others

See All

Kahea Ilikea Lopes
Anyone know who this is??? lol
15 hours ago

Bridge Real Estate Hawaii
WE LOVE YOUR FOOD!!! Aloha, just wanna spread the w...
22 hours ago

Frieda Delgado
For my Sabrina this is a must !!!!!
2 · March 29 at 2:39am

CookingPal FoodtubeDotnet
<http://foodtube.net/video/shrimp-truck-giovanni-s-kahuk...>
4 · March 5 at 2:08pm

More Posts

Recommendations

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Write a recommendation...

Carol Lisa Ricci
A fabulous find...couldn't recommend more highly...delicious
about 2 weeks ago

Mindy Colin
Just thinking about eating those buttery garlicky shrimp mak...
about a month ago

Chardel LeGalley
YUM YUM YUM.
2 3 · about 2 months ago

Harmonie Kinetobe Morrison
No trip to the north shore is complete without stopping and ...
1 1 · about 2 months ago

Happy Holidays to all from Giovanni's.....

Like · Comment · Share 160 5 1

 Giovanni's Shrimp Truck - North Shore, Oahu
September 8, 2012

Giovanni's Shrimp Truck will be at the Ho'olaule'a Festival on 09/15/2012 and Waikiki (Sunset on the Beach festival) 09/23/2012. Hope to see you there.

Like · Comment · Share 147 18 1

 Giovanni's Shrimp Truck - North Shore, Oahu updated their cover photo.
March 20, 2012



Like · Comment · Share 38 19 22

 Giovanni's Shrimp Truck - North Shore, Oahu shared a link.
December 4, 2011

Giovanni's was featured on The Travel Channel's Man v Food Oahu Episode! We are so proud and we hope you enjoy!!
<http://www.travelchannel.com/tv-shows/man-v-food/episodes/oahu>



Oahu Man vs Food Nation
www.travelchannel.com

Adam Richman is on the island of Oahu for some Hawaiian-style hot dogs and spicy and scampi-flavored shrimp. His trip concludes when he coaches a native

Like · Comment · Share 101 36

 Giovanni's Shrimp Truck - North Shore, Oahu
November 24, 2011

I wanted to wish everyone a HAPPY THANKSGIVING.....

Like · Comment · Share 54 28

 Giovanni's Shrimp Truck - North Shore, Oahu
May 9, 2011

The winner will have their picture & name in the article, plus two free shrimp plates when they go back to the truck. Don't forget to also upload your pictures with a message to the website www.giovanisshrimptruck.com

Thank You,
Troy

Like · Comment · Share 16 9

 Giovanni's Shrimp Truck - North Shore, Oahu
November 21, 2012

On behalf of everyone at Giovanni's, I want to wish you all a Happy Thanksgiving.....

Like · Comment · Share 301 30

 Giovanni's Shrimp Truck - North Shore, Oahu shared John S Tubera's photo.
April 11, 2012

What a great looking hot dog... HAHA

Garlic Hot Dog from Giovanni's Shrimp Truck - North Shore, Oahu



Like · Comment · Share 104 31 1

 Giovanni's Shrimp Truck - North Shore, Oahu
December 1, 2011

Man vs food episode aired last night... what did you think..

Like · Comment · Share 13 35

 Giovanni's Shrimp Truck - North Shore, Oahu
November 7, 2011

Let's go everyone... Want to see more pictures uploaded to the website so I can see all ur pretty faces.....

Like · Comment · Share 29 6 1

 Giovanni's Shrimp Truck - North Shore, Oahu shared a link.
May 9, 2011

The website is up and running and I need some help everyone. Philippine Airlines wants an article on Giovanni's Shrimp Truck and they need some cool pictures, so I wanted to offer it to all of our loyal customers. Please submit all your pictures to info@giovanisshrimptruck.com, but they must be is high resolution of at least 300ppi and a length of 6 inches.

4/3/13

Giovanni's Shrimp Truck - North Shore, Oahu



Giovanni's Shrimp Truck - North Shore, Oahu
May 8, 2011

Happy Mother's Day to all the mom's out there for all you do for the family and to the rest give her flowers more often then today.

Like · Comment · Share

30 2



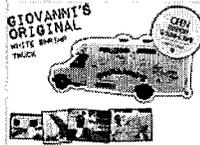
Giovanni's Shrimp Truck - North Shore, Oahu shared a link.
March 26, 2011

We at Giovanni's would like to thank Steve Sheranian and his wife for creating this Facebook page two years ago for our loyal customers. Giovanni's is coming out of the stone age and into the digital age with a website and more interaction with our customers. Please let us know your ideas, feedback or anything you think will make us better. Also, start downloading your pictures on the website when it is up.

<http://www.giovanisshrimptruck.com/>
www.giovanisshrimptruck.com

Like · Comment · Share

37 21



Giovanni's Shrimp Truck
www.giovanisshrimptruck.com

Like · Comment · Share

12 2 1



Giovanni's Shrimp Truck - North Shore, Oahu
March 26, 2011



Like · Comment · Share

54 18

2011



Charleston Food Bloggers (Charlestonfoodbloggers.com)
shared a link.
March 25, 2011

These Charleston, SC food truck owners said in this interview that Giovanni's Shrimp Truck was one of their favorite things about living in Hawaii.



Charleston Food Bloggers: "Hello, my name is BBQ" means business!!!
blog.charlestonfoodbloggers.com

Like · Comment · Share

1 1



Katy Parrish Hosenfeld Giovanni's Shrimp Truck -
North Shore, Oahu
January 20, 2011

Wishing I was enjoying some shrimp from Giovanni's rather than



Kathy Fuller Smith Giovanni's Shrimp Truck - North
Shore, Oahu
March 13, 2011

Looking at these photos makes me realize I need my next fix soon... :-)

Like · Comment

1



Kurt Kajioka Giovanni's Shrimp Truck - North Shore,
Oahu
February 12, 2011

Your truck is da bomb.

Like · Comment

1

looking at snow in Missouri!

Like · Comment

1

2010



Mary Lou Sandler Giovanni's Shrimp Truck - North Shore, Oahu
November 27, 2010

Ever since I ate here in the year 1999 or 2000 I am disappointed in every piece of shrimp I have eaten since.... "Eating shrimp at Giovanni's Shrimp Truck was like the best sex in my mouth! Every shrimp since... fails in comparison." Mary L. Carter

Like · Comment

4 2



Norma Othman Giovanni's Shrimp Truck - North Shore, Oahu
April 14, 2010

I've never missed Hawaii for it's beaches and shopping paradise....but I surely miss Giovanni's shrimp truck....dream of it almost every night in fact....and now I'm already dribbling from thinking about it...goshhh I wish I'm in Honolulu now!!

Like · Comment

2 4



Patti Tsang Giovanni's Shrimp Truck - North Shore, Oahu
October 5, 2010

I read some place , last week. Giovanni's shrimp truck is one of the top 10 food trucks in the nation . I must agree !!

Like · Comment

1 1



Leticia Hooper Giovanni's Shrimp Truck - North Shore, Oahu
June 29, 2010

Best shrimp scampi in the world.

Like · Comment

1 1



Snoopee Shady Giovanni's Shrimp Truck - North Shore, Oahu
March 24, 2010

the best.....simply.....guys wanna start some franchise in asia?

Like · Comment

3

2009



Earl-April Brewer-Salvosa Giovanni's Shrimp Truck - North Shore, Oahu
December 28, 2009

I'm here in Oahu right now, and going to the North Shore tomorrow. Cant wait, I heard so much about this truck.

Like · Comment

1



Norman Isa Giovanni's Shrimp Truck - North Shore, Oahu
June 2, 2009

hmimm yum yum yum... salivating already..

Like · Comment

1 2



Cherrie Lim Giovanni's Shrimp Truck - North Shore, Oahu
November 30, 2009

ohh my god, i miss this north shore shrimps!!!

Like · Comment

1



Cherrie Lim Giovanni's Shrimp Truck - North Shore, Oahu
November 30, 2009

ohh my god, i miss this north shore shrimps!!!

Like · Comment

1



Neil Bakshani Giovanni's Shrimp Truck - North Shore, Oahu

June 1, 2009

Oh Man, I so remember this place and love the shrimp there every time we made a round island trip... sigh! Yummy!

Like · Comment

2

2008



Giovanni's Shrimp Truck - North Shore, Oahu
November 11, 2008

Giovanni's (7 photos)



Search for people, places and things



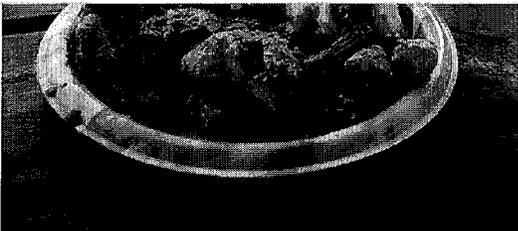
Dan Mullarkey Home



Giovanni's Shrimp Truck - N.. Timeline 2008

Like

Create Page



Like · Comment · Share

22 29 1

- Now
- 2011
- 2010
- 2009
- 2008**
- Founded

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Still #1 Slots!



Pl
Sk
Fe

Play Now 1,000,000
Get 20% off!

Treat yourself to an I
investor.vanguard.com



T
pr
St

Your Credit Matters
equifax.com



M
M
Ec
Ac
\$4

Free Weight Loss Sen



5/6

Joined Facebook

November 11, 2008

Founded

Founded in 1993

About Create an Ad Create a Page Developers Care Chat (32) Help

Facebook © 2013 · English (US)

Camp Pankatank



Are you looking for an exciting, energetic, and growing Christian camp for your child?

Like 1733 people like Camp Pankatank.



Giovanni's Shrimp Truck - North Shore, Oahu

4,599 likes · 215 talking about this · 1,564 were here

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 📍 56-505 Kamehameha Highway, Kahuku, HI.
 ⌚ Always open
 About · Suggest an Edit



Photos

👍 4,599

Likes



Map

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Now

- 2013
- 2010
- 2009
- 2003
- Founded

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FREE Samsung Galaxy S II

shop.sprint.com



Switch to Sprint. After \$50 mail-in rebate. New lines of service only. Restrictions apply.

AT&T customer savings

att.com



Add a line to your wireless account for only \$9.99/mo. with phones starting at under \$1.

Do Your Taxes w/TurboTax®

turbotax.intuit.com

APPOINTMENT

Easily Transfer Your 2011 Tax Info! Maximum Refund Guaranteed - Start for Free.

Turbotax

Enterprise Rent-A-Car

What makes a great rental car company? Great customer service. That's the Enterprise Way.

Enterprise

Like · Sarah Clark likes Enterprise Rent-A-Car.

BIC Razors

Enter for a chance to Unleash Your Tough with a Knife & Pan set! No Purlic, 18+ Rules.

BIC Razors

Like · 219,634 people like BIC Razors.

Highlights

Post Photo / Video

Write something...

Giovanni's Shrimp Truck - North Shore, Oahu
March 20

Giovanni's Shrimp Truck will be at the Blaisdell Center for the Hawaii Ocean Expo April 13th and 14th...

Like · Comment · Share

144 people like this.

View 16 more comments

Matthew Weatherford Will be there to eat June 18th see you

Recent Posts by Others

See All

Mike Michlevitz
Mike posted a photo.
1 · 13 hours ago

Kahea Ilkeia Lopes
Anyone know who this is??? lol
Tuesday at 11:51pm

Bridge Real Estate Hawaii
WE LOVE YOUR FOOD!!! Aloha, just wanna spread the w...
Tuesday at 5:03pm

Frieda Delgado
For my Sabrina this is a must!!!!
1 · March 29 at 3:39am

More Posts

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 19
Exhibit Offered by Respondent
12/3/14

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

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
Registration date: October 9, 2012

In the matter of Trademark Registration No. 4,224,400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration date: October 16, 2012

In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

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

Pursuant to Federal Rule of Civil Procedure 33, Petitioner LuckyU Enterprises, Inc. ("Petitioner") hereby responds and objects to the First Set of Interrogatories propounded by Respondent, John "Giovanni" Aragona ("Respondent" or "Registrant"), as follows:

INTRODUCTION

The following responses, while based on diligent exploration by Petitioner and its counsel, are necessarily supported only by those facts and writings, presently and specifically known and readily available to Petitioner. Petitioner has not completed its investigation of all the facts related to the subject matter of this action, discovery, or its preparation for the Cancellation proceeding. Petitioner therefore makes these Responses without prejudice to its right to produce at any stage of these proceedings, including at trial, evidence of any facts or information that Petitioner may later recall or discover. Petitioner further reserves the right to change, amend or supplement any or all of the matters contained in these Responses with factors or information that it learns was omitted by inadvertence, mistake, excusable neglect, and as additional facts are ascertained, analyses are made, research is completed and contentions are made in this proceeding.

These Responses also are made solely for the purpose of this action, and are subject to all objections as to competence, relevance, materiality, propriety and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Request were asked of, or statements contained herein were made by, a witness present and testifying in this proceeding. All such objections and grounds are expressly reserved and may be interposed during the testimony period.

Petitioner's Response to each individual Interrogatory is submitted without prejudice to, and without in any way waiving, the general objections listed below but not expressly set forth in that response. These objections are incorporated into every response and are set forth here to avoid the duplication and repetition of restating them for each Interrogatory. These general objections may specifically be referred to in response to a Interrogatory for clarity; however, the

failure to specifically repeat a general objection should not be construed as a waiver of the objection. Moreover, no incidental or implied admissions are intended by the Responses below. The fact that Petitioner has answered or objected to all or part of any Interrogatory should not be construed or taken as an admission that Petitioner accepts or admits the existence of any purported facts set forth or assumed by such Request or that Petitioner has waived or intended to waive any part of any objection to the Request. Furthermore, Petitioner's objections to Registrant's Interrogatories do not necessarily reflect the existence of the requested information.

GENERAL OBJECTIONS

1. Petitioner objects to these Interrogatories to the extent they seek to impose an obligation on Petitioner which exceeds a litigant's discovery obligations as provided by the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Petitioner objects to these Interrogatories to the extent they use vague, ambiguous, indefinite or undefined terms and are overly broad and unduly burdensome so as to render it impossible to respond in any reasonable manner or amount of time.

3. Petitioner objects to these Interrogatories to extent they seek information publicly available and/or already in the possession of Registrant and/or information in the custody or control of third parties.

4. Petitioner objects to these Interrogatories to the extent they encompass and seek documents, information or communications protected from discovery on grounds of the attorney-client privilege, work product immunity, trial preparation material and/or other applicable privileges or immunities from discovery and such information will be withheld (herein generally referred to as "privilege").

5. Petitioner objects to each Interrogatory to the extent that investigation and discovery are ongoing.

6. Petitioner objects to the multiplicity of the Interrogatories; there are clearly more than the numbered 28. For instance, Interrogatory No. 1 is comprised of numerous parts.

7. The specific Responses set forth below are based upon Petitioner's interpretation of the language used in the Interrogatories, and Petitioner reserves the right to amend or supplement further its responses in the event Registrant asserts an interpretation that differs from Petitioner's interpretation.

8. Petitioner objects to the definition "Registrant's Marks" as vague and indefinite and further objects to each request that uses the term "Registrant's Marks." Petitioner further objects to the extent the definition seeks to suggest Registrant's ownership of the marks and that Registrant owns marks that are not the subject of any registrations. Petitioner further objects to the Requests to the extent they refer to a time frame and events when Registrant did not own the Registrations, was not an owner of the mark(s), and/or and was not the sole owner of the mark.

9. Petitioner objects to the definition "Marks in Petitioner's Applications" as vague and indefinite and further objects to each request that uses the term "Petitioner's Applications."

10. Petitioner objects to these Requests to the extent they refer to "marks" as undefined, vague, ambiguous and indefinite and further is confusing and incongruent with Registrant's definition for "Marks in Petitioner's Applications and therefore Petitioner cannot respond to any Interrogatory requesting this information.

11. Petitioner objects to term "the Amendment" as vague and indefinite and further objects to each request that uses the term "Amendment." Petitioner further objects to the extent the definition seeks to suggest there was an effective, agreed-upon or signed Amendment to the

Asset Purchase Agreement and tries to mischaracterize the terms of the signed Asset Purchase Agreement.

12. Petitioner objects to definition No. 12 referring to the definition of “document” as overly broad and unduly burdensome to the extent it requires identification and a general description, the number of pages in the document and any other request outside the normal bounds of discovery.

13. Each and all of these General Objections are hereinafter incorporated by reference in response to each and every Request.

INTERROGATORIES

INTERROGATORY NO. 1: With respect to each of the Marks in Petitioner’s Applications, (a) identify the person(s) most knowledgeable with respect to the adoption, use, projected use, or of the marks, (b) identify the date of first use in commerce of each of the marks, and (c) state in detail each and every product or service identified by the marks.

RESPONSE:

Petitioner objection to this interrogatory to the extent it requests publicly available information. Further, Petitioner objects to this request to the extent the term “marks” is vague and indefinite and to the extent the term is defined by Registrant as stated in General Objection No. 10 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and as stated in General Objection No. 9 above. Petitioner also objects to the phrase “or of the marks” as vague and ambiguous. Petitioner also objects to this interrogatory because the term “use” is vague, ambiguous and undefined. Petitioner also objects to the request to the extent it is a compound interrogatory and therefore should be treated as such, i.e., the

interrogatory requests (1) identification of a person or persons, (2) requests the date of first use of each “mark” and (3) requests each product and service identified by the “marks.”

Subject to and without waiver of the foregoing objections, Petitioner refers Respondent to the individual identified in Petitioner’s Initial Disclosures and, specifically, Troy Nitsche. In order to answer the second two requests, and to extent Petitioner understands this Interrogatory, Petitioner directs Registrant to the Petition for Cancellation paragraphs 10-12 and U.S. Trademark Application Serial Nos. 85/897,872 and 85/897,861. As stated therein, GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK was first used in commerce at least as early as March 1, 1998. GIOVANNI’S SHRIMP TRUCK was first used in commerce at in November of 1997. The mark GIOVANNI’S ALOHA SHRIMP was first used by Petitioner in November of 1997. The services associated with each mark are: providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks.

INTERROGATORY NO. 2: For each of the Marks in Petitioner’s Applications, state all channels of trade in which each product or service identified, or to be identified, have been sold, are presently sold or offered for sale, or intended to be offered for sale, and state all manners in which these products or services are distributed, offered for sale and/or sold, or intended to be distributed, offered for sale and/or sold.

RESPONSE:

Petitioner objects to this Interrogatory to the extent it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this interrogatory to the extent it requests publicly available information. Petitioner

further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and as stated in General Objection No. 9 above. Petitioner further objects to the phrase “all channels of trade” as vague, ambiguous and undefined. For purposes of its response, Petitioner interprets “all channels of trade” to mean generally how/through whom products or services are sold to consumers.

Subject to and without waiver of the foregoing objections, Petitioner currently provides the following: providing food and drink; providing food and drink via a mobile truck; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises; serving food and drinks. These services are currently offered at two locations (i.e., the “Haleiwa Property” and the “Kahuku Property”).

INTERROGATORY NO. 3: Identify each geographic area and location in the United States in which Petitioner, or others under the authority of Petitioner, have advertised or promoted (or intends to advertise or promote) the products and/or services identified in response to Interrogatory No. 1, including the date of the advertisement, the name of the publication(s) in which any print advertisements appeared, the name of the radio or television station(s) in which a broadcast advertisement was broadcast, and all documents relating to all such advertising or promotion. With regard to internet websites, identify the address or the “URL” of each website, describe what is offered on the site and when each item was first offered at the site, and describe in detail whether items as advertised can be purchased from the web site or whether only information is offered at the web site.

RESPONSE:

Petitioner objects to this Interrogatory to the extent it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this interrogatory to the extent it requests publicly available information. Petitioner objects to the phrase “geographic area and location” as vague and indefinite. Further, Petitioner objects to the phrase “authority of Petitioner” as vague, ambiguous and undefined.

Subject to and without waiver of the foregoing objections, Petitioner owns and uses the website www.giovanisshrimptruck.com which advertises the services, but does not presently directly sell any products. The website has been in operation since approximately January 5, 2011. Petitioner’s restaurant services are rendered in Hawaii, and most advertising is directed to Hawaii and its residents and visitors, but Petitioner’s trademarks and accompanying services are also known outside Hawaii and within the rest of the United States and other foreign jurisdictions. For example, see the Travel Channel episode featuring Hawaii and Petitioner’s shrimp truck at <http://www.travelchannel.com/video/adam-goes-hawaiian>. Petitioner directs Respondent to documents produced in this proceeding by Petitioner, and Petitioner is making appropriate inquiries and will supply additional relevant information if available at the appropriate time.

INTERROGATORY NO. 4: State the annual dollar amount expended by Petitioner or by others under the authority of or at the direction of Petitioner, for all advertising and promotion identified in your response to Interrogatory No. 3, from the date of first use of each mark to the present.

RESPONSE:

Petitioner objects to this interrogatory to the extent the phrase “others under the authority of or at the direction of Petitioner” is vague and indefinite.

Subject to and without waiver of the foregoing objections, Petitioner can only state with certainty its annual advertising and promotion since 2008 is around:



Petitioner further directs Respondent to documents produced in this proceeding by Petitioner and Petitioner is making appropriate inquiries and will supply additional relevant information if available at the appropriate time. This response should be considered HIGHLY CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE.

INTERROGATORY NO. 5: Identify each person who possesses knowledge of the facts surrounding the selection, adoption and use of each of the Marks in Petitioner’s Applications, state in detail the knowledge of each such person possesses, identify all documents related to the selection, adoption, and use of these marks, and state in detail all reasons for the selection of these marks as opposed to any other mark.

RESPONSE:

Petitioner objects to this Interrogatory to the extent it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further, Petitioner objects to this request to the extent the term “marks” is vague and indefinite as stated in General Objection No. 9 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant as stated in General Objection No. 8 above. Petitioner

further objects to the term “use” as vague, ambiguous and undefined. Petitioner also objects to the extent this request is unduly burdensome as it appears to request that petitioner explain in detail the reasons why “any other mark” was not selected which is an indefinite term.

Furthermore, Petitioner objects to the request to the extent it is a compound interrogatory and therefore should be treated as such, i.e., the interrogatory requests (1) identification of a person or person, (2) identification of documents and (3) requests a statement in detail “all reasons for the selection of these marks.”

Subject to and without waiver of the foregoing objections, Petitioner identifies Troy Nitsche as described in Petitioner’s Initial Disclosures and further identifies Jim Goodrich of 149 Plantation Circle, Ponte Vidra Beach, FL 32082. Further, Petitioner identifies all persons identified in Petitioner’s Initial Disclosures, including John and Connie Aragona. Petitioner further responds that Nitsche Enterprises, Inc., Petitioner’s predecessor-in-interest entered into an asset purchase agreement with John and Connie Aragona and purchased all assets associated with their shrimp food truck known as Giovanni’s Aloha Shrimp including any goodwill thereto in the mark GIOVANNI’S ALOHA SHRIMP. Subsequent to the purchase of all the assets, Petitioner adopted the marks GIOVANNI’S SHRIMP TRUCK and GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK in order to differentiate Petitioner’s services from those of competitors. To the extent any documents exist evidencing the selection, adoption and use of these marks, the documents will be produced at the appropriate time.

INTERROGATORY NO. 6: State your annual gross revenue for each product or service identified by each of the Marks in Petitioner’s Applications, and identify each person with knowledge of the facts set forth in response to this Interrogatory and state the specific knowledge that each person possesses.

RESPONSE:

Petitioner objects to this Interrogatory as overbroad and unduly burdensome and not likely to lead to admissible evidence and therefore not relevant to the extent it is unlimited in time. Petitioner further objects to the phrase "Marks in Petitioner's Applications" as defined by Registrant and stated in General Objection No. 9 above.

Subject to and without waiver of the foregoing objections Petitioner responds that the various restaurant services described in U.S. Trademark Application Serial Nos. 85/897,872 and 85/897,861 grossed approximately \$ [REDACTED] in 2012. Petitioner grossed around [REDACTED] in 2010 and [REDACTED] in 2011. Petitioner's predecessor, Nitsche Enterprises, grossed approximately [REDACTED] in 1998. Troy Nitche has the specific knowledge relating to Petitioner's annual gross revenue for its various restaurant services. Petitioner further directs Respondent to documents produced in this proceeding by Petitioner and Petitioner is making appropriate inquiries and will supply additional relevant information if available at the appropriate time. This response should be considered HIGHLY CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE.

INTERROGATORY NO. 7: Identify each search, clearance, watch service, investigation or other inquiry, prepared by you, or on your behalf, directed to each of the Marks in Petitioner's Applications; Registrant's Marks; and/or any other mark including the term "Giovanni's" as a component, and state the nature and means of preparing each such clearance, watch service report, investigation or other inquiry, the date(s) upon which each such clearance, watch service report, investigation, or other inquiry was conducted, the identity of each person involved in conducting, receiving and reviewing such search clearance, watch service report, investigation or

other inquiry, and each person who authorized each such clearance, watch service report, investigation or other inquiry.

RESPONSE:

Petitioner objects to this Interrogatory to the extent it seeks information subject to attorney-client privileged information and/or attorney work-product protection. Further, Petitioner objects to this request to the extent the term “mark” is vague and indefinite and as stated in General Objection No. 9 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and stated in General Objection No. 9 above. Furthermore, Petitioner objects to the phrase “Registrant’s Marks” as defined by Registrant and stated in General Objection No. 9 above.

Subject to and without waiver of the foregoing objections, Petitioners responds that Jim Goodrich conducted a search of the USPTO trademark records prior to filing trademark applications for certain marks in 2010.

INTERROGATORY NO. 8: Describe in detail your use, intended use, or anticipated use in commerce in the United States and the circumstances surrounding first use for each of the Marks in Petitioner’s Applications and any other mark that includes the term “Giovanni’s” as a component.

RESPONSE:

Petitioner objects to this interrogatory to the extent it seeks a legal conclusion. Petitioner further objects to the term “use” as vague and indefinite and thus describing use is also confusing. Petitioner further objects to the terms “intended use” and “anticipated use” as vague, indefinite, and not likely to lead to admissible evidence and are therefore irrelevant. Further, Petitioner objects to this request to the extent the term “marks” is vague and indefinite and as

stated in General Objection No. 10 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and as stated in General Objection No. 9 above. Petitioner also objects to the phrase “circumstances surrounding” as vague, indefinite and undefined. Petitioner also objects to the request to the extent it is a compound interrogatory and therefore should be treated as such, i.e., the interrogatory requests (1) detail use (2) intended use (3) anticipated use and (4) circumstances surrounding first use.

Subject to and without waiver of the foregoing objections, Petitioner uses the marks, defined in the Petition for Cancellation at paragraphs 10-12, in connection with the sale of shrimp and related food from its food trucks and further with services described in U.S. Trademark Application Serial Nos. 85/897,872 and 85/897,861 and as explained more fully above in Petitioner’s Response to Interrogatory No. 1. Petitioner’s predecessor, Nitsche Enterprises, first started using the marks after it purchased the assets defined in the APA including any goodwill in the mark, if any, and the prior use benefits Nitsche Enterprises. Petitioner first started using the marks after the formation of LuckyU Enterprises, Inc d/b/a Giovanni’s Original White Shrimp Truck in 2001.

INTERROGATORY NO. 9: State whether you claim any trademark rights in any of Registrant’s Marks, the Marks in Petitioner’s Applications, and/or any other mark that includes the term “Giovanni’s” as a component, and how you claim those rights arose (i.e., whether by assignment, license, operation of law, or other transfer, express or implied), stating the precise right acquired by you from each such person, the date(s) on which you acquired rights, and identifying any relevant documents relating to such acquisition of rights and the means whereby such acquisition of rights was accomplished.

RESPONSE:

Petitioner objects to the extent this Interrogatory seeks a legal conclusion. Further, Petitioner objects to this request to the extent the term “marks” is vague and indefinite and as stated in General Objection No. 9 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and stated in General Objection No. 9 above. Petitioner also objects to the phrase “Registrant’s Marks” as vague and indefinite as stated in General Objection No. 8 above.

Subject to and without waiver of the foregoing objections, Petitioner has trademark rights in at least the marks described in the Petitioner for Cancellation. Petitioner’s rights arose from continued use of the marks since Petitioner’s formation in 2001 and before that from the use of the marks since Nitsche Enterprises purchased the assets in the APA from the sellers, Connie Aragona and John Aragona.

INTERROGATORY NO. 10: Other than this proceeding, state whether you are presently, or have ever been, a party to any litigation, TTAB proceeding, or other proceeding anywhere in the world, in which the similarity of the Marks in Petitioner’s Applications to a third party’s mark was at issue. If you were the objecting party, identify all individuals involved in making the decision to object.

RESPONSE:

Petitioner objects to this interrogatory to the extent it calls for information neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Further, Petitioner objects to this request to the extent the term “mark” is vague and indefinite and as stated in General Objection No. 10 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and stated in General Objection No. 9

above. Petitioner also objects to the term “similarity” as vague, ambiguous and indefinite.

Petitioner also objects to the phrase “was at issue” as vague, ambiguous and indefinite.

Subject to and without waiver of the foregoing objections, Petitioner is not aware of any other proceeding involving the marks described in the Petition for Cancellation.

INTERROGATORY NO. 11: Identify each person who prepared, assisted in the preparation of, providing information, who was consulted, or whose documents or files were consulted for the answers to the foregoing and following interrogatories, stating each interrogatory that each such individual prepared, assisted in the preparation of, provided information for, who was consulted for, or whose documents or files were consulted for the answer thereto.

RESPONSE:

Petitioner objects to this interrogatory to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner further objects to the phrase “providing information” as vague, ambiguous and otherwise confusing.

Subject to and without waiver of the foregoing objections, Petitioner identifies Troy Nitsche and Jim Goodrich, and responds that both Mr. Nitsche and Mr. Goodrich were involved in the preparation of most of these interrogatories. Mr. Nitsche was solely responsible for responding to Interrogatory Nos. 4 and 6.

INTERROGATORY NO. 12: If you have ever conducted or caused to be conducted on its behalf any market survey or other investigation which disclosed or related in any way to consumer recognition or awareness of any of the Marks in Petitioner’s Applications, Registrant’s Marks, or any other mark that includes the term “Giovanni’s” as a component, identify the date or dates of such survey or investigation, each person who conducted or is conducting such survey

or investigation, the results of such survey or investigation, and all documents which relate in any way to such survey or investigation.

RESPONSE:

Petitioner objects to this interrogatory to the extent it uses “its” as incomprehensible. Further, Petitioner objects to this request to the extent the term “marks” is vague and indefinite and as stated in General Objection No. 10 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and stated in General Objection No. 9 above. Petitioner also objects to the phrase “Registrant’s Marks” as vague and indefinite and as stated in General Objection No. 8 above. Petitioner also objects to the phrase “market survey” as undefined and ambiguous. Petitioner also objects to the phrase “other investigation” as undefined, vague and ambiguous.

Subject to and without waiver of the foregoing objections, and to the extent Petitioner understands this interrogatory, Petitioner has not conducted an investigation related to consumer recognition or awareness of the marks described in the Petition for Cancellation.

INTERROGATORY NO. 13: Identify each non-party witness from whom you intend to seek testimony (by affidavit, declaration, or deposition) in connection with this proceeding and, for each, the specific optics on which the witness will testify and if the witness is an expert, the substance of the facts relied upon and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

RESPONSE:

Petitioner objects to this interrogatory to the extent it uses the term “optics’ as undefined, vague and ambiguous.

Subject to and without waiver of the foregoing objections, Petitioner has not yet identified all witnesses it plans to call in this case. Petitioner might call the people identified in its Initial Disclosures and others. Petitioner is making appropriate inquiries and will identify all relevant witnesses at the appropriate time.

INTERROGATORY NO. 14: Identify all licenses, assignments, franchise agreements, settlement agreements, distribution agreements, manufacturing agreements, supply agreements, operating agreements, and any other agreements which relate to the use and/or acquisition of any of the Marks in Petitioner's Applications, Registrant's Marks, and/or any other mark that includes the term "Giovanni's" as a component.

RESPONSE:

Petitioner objects to this interrogatory to the extent the term "mark" is vague and indefinite and as stated in General Objection No. 10 above. Petitioner further objects to the phrase "Marks in Petitioner's Applications" as defined by Registrant and as stated in General Objection No. 9 above. Petitioner also objects to the phrase "Registrant's Marks" as vague and indefinite and as stated in General Objection No. 8 above. Petitioner also objects to the term "relate to" as vague, ambiguous and overly broad. Petitioner also objects to the extent this request calls for information relating to "any other mark" as vague, ambiguous, overly broad and unduly burdensome and neither relevant nor likely to lead to admissible evidence.

Subject to and without waiver of the foregoing objections, Petitioner identifies the APA which relates to the acquisition of assets associated with Petitioner's subsequent use of its marks including the rights in the name Giovanni's Aloha Shrimp. Petitioner also identifies the Limited Liability Member Agreement for Giovanni's Aloha Foods, Inc., executed on October 1, 1999 between John Aragona, Connie Aragona, Troy Nitsche, Jim Goodrich, and Diane Wong.

Petitioner is currently not aware of any other agreements relating to the use/acquisition of the marks identified in the Petition for Cancellation. Petitioner is making appropriate inquiries and will supply additional relevant information if available and at the appropriate time.

INTERROGATORY NO. 15: Identify each product and service that you sell or offer for sale or intend to offer for sale that is identified by any mark that contains any of the Marks in Petitioner's Applications, Registrant's Marks, and/or any other mark that include the term "Giovanni's" as a component, alone or in combination, and for each such product, identify its retail price.

RESPONSE:

Petitioner objects to this interrogatory to the extent the term "mark" is vague and indefinite and as stated in General Objection No. 10 above. Petitioner further objects to the phrase "Marks in Petitioner's Applications" as defined by Registrant and stated in General Objection No. 9 above. Petitioner also objects to the phrase "Registrant's Marks" as vague and indefinite and as stated in General Objection No. 8 above. To the extent this interrogatory requests information regarding "intent to offer for sale" Petitioner objects that this request is overly broad, unduly burdensome, and internally inconsistent and confusing and not likely to lead to relevant or admissible evidence. Petitioner also objects to the extent this request calls for information relating to "any other mark" as vague, ambiguous, overly broad and unduly burdensome, and neither relevant nor likely to lead to admissible evidence. Petitioner also objects to the request to the extent it is a compound interrogatory and therefore should be treated as such, i.e., the interrogatory requests (1) identification of each product and service and (2) identification of 'retail price.'

Subject to and without waiver of the foregoing objections, Petitioner will produce relevant documents from which Registrant can obtain the menu prices and, for a sample of pricing, Petitioner responds as follows:

- (a) Shrimp Scampi = \$13.00
- (b) The “No Refunds” Hot & Spicy Shrimp = \$13.00
- (c) Lemon Butter Shrimp = \$13.00
- (d) Jumbo Garlic Hotdog = \$3.50

INTERROGATORY NO. 16: Identify any instance in which a court, tribunal, government or public body determined that a third party violated any rights you own in any of the Marks in Petitioner’s Applications.

RESPONSE:

Petitioner objects to the phrase “any instance” as vague and indefinite. Petitioner further objects to the phrase “determined that a third party violated any rights you own” as vague, ambiguous, indefinite and undefined. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and stated in General Objection No. 9 above.

Subject to and without waiving the foregoing objections, Petitioner is unaware of any determination that a third-party violated Petitioner’s rights in the marks identified in the Petition for Cancellation.

INTERROGATORY NO. 17: State whether you are aware of any instances of actual confusion between goods and/or services identified by any of the Marks in Petitioner’s Applications and goods and/or services identified by and of the Registrant’s Marks, and for each such instance of actual confusion, state the relevant facts concerning the discovery of such actual confusion,

identify all persons with knowledge regarding such actual confusion and identify all documents evidencing such actual confusion.

RESPONSE:

Petitioner objects to this interrogatory to the extent it uses the phrase “Marks in Petitioner’s Applications” as defined by Registrant and stated in General Objection No. 9 above. Petitioner also objects to the phrase “Registrant’s Marks” as vague and indefinite and as stated in General Objection No. 8 above. Petitioner further objects to the phrase “instances of actual confusion” as vague, ambiguous and indefinite. Petitioner objects to the request to the extent it is a compound interrogatory and therefore should be treated as such, i.e., the interrogatory requests (1) state all facts (2) identify all persons and (3) identify all documents.

Petitioner is making appropriate inquiries and will supplement this response if necessary at the appropriate time. Subject to and without waiver of the foregoing objections, Petitioner is aware that Registrant’s website, www.giovanmissauces.com, utilizes the marks subject to this cancellation proceeding with pictures of Petitioner’s food truck. The same website contains customer comments that refer to Petitioner, not Registrant, as described in the Petition for Cancellation at paragraphs 18-19.

INTERROGATORY NO. 18: Identify all persons with knowledge with regard to any claim or defense asserted by you in connection with this proceeding and for each person so identified state the nature of such knowledge.

RESPONSE:

Petitioner objects to this interrogatory to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this

interrogatory to the extent it seeks “all persons” and the “nature of such knowledge” as overly broad and unduly burdensome.

Subject to and without waiver of the foregoing objections, Petitioner is continuing its investigation in this case. Petitioner submits that the individuals identified in its Initial Disclosures, Jim Goodrich, and others have knowledge of Petitioner’s use of Petitioner’s marks, Registrant’s improper attempts to register the marks and Registrant’s non use of the marks, as described in the Petition for Cancellation. Petitioner is making appropriate inquiries and will identify all relevant persons at the appropriate time.

INTERROGATORY NO. 19: If you contend that Registrant abandoned Registrant’s Marks, or abandoned any rights or interests with respect to any of such marks, please state all facts supporting such contention, identify any documents or things reflecting or evidencing such facts and identify all persons with knowledge or any such facts or who possess evidence of any such facts.

RESPONSE:

Petitioner objects to this interrogatory to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the extent this request calls for a legal conclusion. Petitioner objects to this interrogatory as overly broad and unduly burdensome to the extent it calls for information not in the custody and control of Petitioner. Petitioner also objects to the phrase “Registrant’s Marks” as vague and indefinite and as stated in General Objection No. 8 above. Further, Petitioner objects to the phrase “any rights or interests” as vague and indefinite. Petitioner further objects to the extent this interrogatory implies that Registrant had rights in any mark at any time, no matter how defined.

Petitioner states that discovery is ongoing and Petitioner is making appropriate inquiries and will supply additional relevant information if available at the appropriate time. Subject to and without waiver of the foregoing objections, Petitioner refers to its Initial Disclosures document to identify persons with knowledge regarding Registrant's use of the marks identified in the U.S. Trademark Registrations identified above and Petitioner further identifies Jim Goodrich as a person with knowledge of Registrant's non use of the marks. Petitioner further refers Registrant to paragraph 7 of the Petitioner for Cancellation and the fact that Petitioner had no contact with Registrant for nearly ten years and, upon information, Registrant was living in New York engaging in other activities such as driving a taxi. Prior to Petitioner's predecessor's acquisition of rights in the marks and the business, John Aragona and his wife Connie Aragona were joint sellers of the business under the APA. Subsequent to the APA, Connie Aragona enlisted three hired assailants and assaulted and threatened Petitioner's president if he did not sign over the rights to the shrimp truck business and, thereafter, Ms. Aragona was incarcerated for these crimes, among others.

INTERROGATORY NO. 20: If you contend that Petitioner obtained rights and interests in any of the Marks in Petitioner's Applications and/or the Registrant's Marks independent of any relationship with Registrant, please state all facts supporting such contention, identify any documents or things reflecting or evidencing such facts and identify all persons with knowledge of any such facts or who possess evidence of any such facts.

RESPONSE:

Petitioner objects to this request to the extent it calls for a legal conclusion. Petitioner also objects to this interrogatory to the extent the phrase "obtained rights and interests" is undefined, vague and ambiguous. Petitioner further objects to the phrase "Marks in Petitioner's

Applications” as defined by Registrant and as stated in General Objection No. 9 above. Petitioner further objects to the phrase “Registrant’s Marks” as vague and indefinite and as stated in General Objection No. 8 above. Petitioner also objects to the use of the term “independent” as vague and indefinite. Petitioner also objects to the extent this interrogatory implies there was or is a relationship between Petitioner and Registrant.

Petitioner is making appropriate inquiries and will supply additional relevant information if available at the appropriate time. Subject to and without waiver of the foregoing objections, Petitioner refers to its Initial Disclosures to identify persons with knowledge regarding Petitioner’s use of the marks identified in the Petition for Cancellation and Petitioner further identifies Jim Goodrich as a person with knowledge of Petitioner’s use of the marks. Petitioner’s trademark rights in its marks have at least arisen through extensive use of the marks since Nitsche Enterprises purchased the assets in the APA and later through Petitioner’s extensive and continuous use of the marks since its formation in 2001.

INTERROGATORY NO. 21: State the date upon which Petitioner first became aware that Registrant claimed a right to the ownership and use of any of the Marks in Petitioner’s Applications and/or any of Registrant’s Marks contrary or adverse to Petitioner’s use of such marks.

RESPONSE:

Petitioner objects to this interrogatory to the extent the phrase “first became aware that Registrant claimed a right to the ownership and use of any” is vague, ambiguous, and indefinite. Petitioner further objects to this interrogatory to the extent the term “marks” is vague and as stated in General Objection No. 10 above. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and as stated in General Objection No. 9

above. Petitioner further objects to the phrase “Registrant’s Marks” as vague and indefinite and as stated in General Objection No. 8 above. Furthermore, Petitioner objects to the phrase “contrary or adverse” as vague and indefinite.

Subject to and without waiver of the foregoing objections, Petitioner first learned that Registrant was trying to claim some interest in Registrant’s now federally registered marks on or around August 24, 2011 when the PTO issued an Office Action based on a Letter of Protest.

INTERROGATORY NO. 22: State the date upon which you first became aware that Registrant was making a demand for Petitioner to cease use of Registrant’s Marks and/or the Marks in Petitioner’s Applications.

RESPONSE:

Petitioner objects to the interrogatory to the extent the term “aware” is ambiguous and indefinite. Petitioner further objects that this request is unduly burdensome to the extent that Registrant should know when he made Petitioner aware of his demand. Petitioner further objects to the phrase “Marks in Petitioner’s Applications” as defined by Registrant and as stated in General Objection No. 9 above. Petitioner further objects to the phrase “Registrant’s Marks” as vague and indefinite and as stated in General Objection No. 8 above.

Subject to and without waiver of the foregoing objections, Petitioner received a letter from Registrant’s lawyer, Jamie Pitts, on or around February 25, 2013. In that letter, Ms. Pitts informed Petitioner that “Mr. John Aragona, the founder of Giovanni’s Shrimp Truck and Giovanni’s Aloha Foods” terminates the APA entered into with Mr. Aragona. In the letter, Ms. Pitts concluded that the cancellation of the APA “includes termination of its grant of a right to use the trademarks owned by [Mr. Aragona].” In this letter, Ms. Pitts informed Petitioner that Mr. Aragona was “willing to negotiate a license agreement.”

INTERROGATORY NO. 23: If Petitioner's response to any Request for Admission served on August 20, 2013 is anything but unqualified admission, please state all facts supporting such response, identify any documents or things reflecting or evidencing such facts and identify all persons with knowledge of any such facts or who possess evidence of any such facts.

RESPONSE:

Petitioner objects to this interrogatory as overly broad and unduly burdensome and Petitioner will not respond. Further, Petitioner considers this a compound interrogatory consisting of 89 separate interrogatories, which is beyond the limit provided to Registrant under Federal Rule of Civil Procedure 33 and 37 C.F.R. § 2.120(d)(1).

INTERROGATORY NO. 24: Please identify all members, owners, interest holders, officers, directors or managers of LuckyU Enterprises, Inc. and describe their title, position or interest therein.

RESPONSE:

Petitioner objects to this interrogatory to the extent it is overly broad, unduly burdensome and not likely to lead to relevant and admissible evidence. Petitioner further objects to the terms "directors" and "managers" as ambiguous and indefinite. For purposes of this response, Petitioner assumes the interrogatory is directed towards the ownership structure of LuckyU Enterprises, Inc. and will respond as such.

Subject to and without waiver of the foregoing objections, Petitioner's ownership consists of three individuals, each holding separate interest percentages:

- (a) Troy Nitsche – President/Vice President/Secretary/Treasurer = 55%
- (b) Barbara Nitsche = 35%
- (c) Jim Goodrich = 10%

INTERROGATORY NO. 25: Identify all state and federal registrations, applications for registration, and uses by Petitioner of any such mark which incorporates the term “Giovanni’s,” and for each such registration, application, and use, identify all documents relating thereto.

RESPONSE:

Petitioner objects to this interrogatory as overly broad, unduly burdensome and not likely to lead to relevant and admissible evidence. Petitioner further objects to the use of the term “mark” as vague and indefinite and as stated in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “all state and federal registrations” which is unduly burdensome and overly broad and neither relevant nor likely to lead to admissible evidence. Petitioner further objects to this request to the extent it is duplicative of prior interrogatory requests.

Subject to and without waiver of the foregoing objections, Petitioner directs Registrant to U.S. Trademark Application Serial Nos. 85/219,370, 85/219,363, 85/201,288, 85/201,283, 85/897,872 and 85/897,861 and the publicly available documents at the PTO.

INTERROGATORY NO. 26: Describe in detail the derivation of the term “Giovanni’s” as incorporated into the Marks in Petitioner’s Applications and identify all documents related thereto.

RESPONSE:

Petitioner objects to this interrogatory to the extent the term “derivation” is undefined and ambiguous. Further, Petitioner objects to this interrogatory to the extent it is a compound interrogatory requesting Petitioner to (1) “[d]escribe in detail” and (2) “identify all documents.” For purposes of this Interrogatory, Petitioner assumes the “identify all documents” interrogatory is incorporated in Registrant’s First Request for Production of Documents and Petitioner will

respond appropriately through its response to those requests. Petitioner further objects to the phrase "Marks in Petitioner's Applications" as defined by Registrant and as stated in General Objection No. 9 above.

Subject to and without waiver of the foregoing objections, Nitsche Enterprises purchased assets from Connie Aragona and John Aragona, as described in the APA, including at least a mobile food truck and a sign that contained the word "Giovanni's." Petitioner's predecessor incorporated the name on the truck and the sign in its promotion of its mobile food restaurant services to distinguish its shrimp truck business from other shrimp trucks in the area. Petitioner further adopted the use of "Giovanni's" once it was formed in 2001.

INTERROGATORY NO. 27: Has petitioner ever licensed or permitted or had negotiations to license or permit, or otherwise granted rights to third parties to use the Marks in Petitioner's Applications or any other mark that includes the term "Giovanni's" as a component? If so, identify the party or parties that have received or sought such license or permission or other right, state the nature and extent of any such license or permitted use or right, given or negotiated, and identify and describe all documents comprising or containing any such license, permission, or other right, or any agreement in respect to such mark.

RESPONSE:

Petitioner objects to this interrogatory to the extent it is duplicative of Interrogatory No. 14 above. Petitioner further objects to the use of the term "mark" as vague and indefinite and as stated in General Objection No. 10 above. Petitioner further objects to the phrase "Marks in Petitioner's Applications" as defined by Registrant and as stated in General Objection No. 9 above. Petitioner further objects to the term "component" as vague and ambiguous.

Subject to and without waiver of the foregoing objections, Petitioner has never granted rights to third parties to use the marks identified in the Petition Cancellation.

INTERROGATORY NO. 28: For purposes of establishing priority of use, identify the earliest date upon which Petitioner intends to rely in this proceeding with respect to its use of the Marks in Petitioner's Applications and/or any mark that includes the term "Giovanni's" and produce all documents relating to such use(s).

RESPONSE:

Petitioner objects to this request to the extent it calls for a legal conclusion. Petitioner also objects to this interrogatory to the extent it is a compound interrogatory requesting Petitioner to (1) "identify the earliest date" and (2) "produce all documents." For purposes of this Interrogatory, Petitioner assumes the "produce all documents" interrogatory is incorporated in Registrant's First Request for Production of Documents and Petitioner will respond appropriately through its response to those requests. Petitioner further objects to this interrogatory to the extent the term "mark" is vague and indefinite and as stated in General Objection No. 10 above. Petitioner further objects to the phrase "Marks in Petitioner's Applications" as defined by Registrant and as stated in General Objection No. 9 above.

Subject to and without waiver of the foregoing, Petitioner directs Registrant to the Petition for Cancellation, paragraphs 10-12, Petitioner's Response to Interrogatory No. 1 and U.S. Trademark Application Serial Nos. 85/897,872 and 85/897,861. As stated therein, GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK was first used in commerce at least as early as March 1, 1998. GIOVANNI'S SHRIMP TRUCK was first used in commerce in November of 1997. The mark GIOVANNI'S ALOHA SHRIMP was first used by Petitioner in November of 1997. It is Petitioner's understanding that Connie Aragona and John Aragona began using GIOVANNI'S

ALOHA SHRIMP sometime in 1993 and Petitioner, as successor in interest, can claim priority at least as early as January 1, 1994.

DATE: September 27, 2013

s/Jennifer Fraser/
Jennifer Fraser
Daniel Mullarkey
NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP
1875 Eye Street, NW
11th Floor
Washington, DC 20006
(209) 659-0100 Telephone
(202) 659-0105 Facsimile

Attorneys for Petitioner,
LuckyU Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September 2013 a true and correct copy of the foregoing **Petitioner's Responses to Registrants First Set of Interrogatories** was served by First Class Mail, postage prepaid, on Respondent's Counsel, Jamie N. Pitts, The Law Office of Jamie N. Pitts, 1064 N. Tamiami Trail, STE 1533, Sarasota, FL 34236, with a courtesy copy served via e-mail to JAMIENPITTS@jnplawfirm.com.

s/Daniel Mullarkey/

Daniel Mullarkey

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 20
Exhibit Offered by Respondent
12/3/14

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

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
Registration date: October 9, 2012

In the matter of Trademark Registration No. 4,224,400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration date: October 16, 2012

In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

**PETITIONER'S RESPONSE TO REGISTRANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Federal Rules of Civil Procedure Rules 26 and 34, and 37 C.F.R. § 2.120, Petitioner, LuckyU Enterprises, Inc. ("Petitioner"), by and through undersigned counsel, hereby responds and objects to the First Request for Production of Documents and Things propounded by Respondent, John "Giovanni" Aragona ("Respondent" or "Registrant"), as follows:

INTRODUCTION

The following responses, while based on diligent exploration by Petitioner and its counsel, are necessarily supported only by those facts and writings, presently and specifically known and readily available to Petitioner. Petitioner has not completed its investigation of all the facts related to the subject matter of this action, discovery, or its preparation for the Cancellation proceeding. Petitioner therefore makes these Responses without prejudice to its right to produce at any stage of these proceedings, including at trial, evidence of any facts or information that Petitioner may later recall or discover. Petitioner further reserves the right to change, amend or supplement any or all of the matters contained in these Responses with facts or information that it learns was omitted by inadvertence, mistake, excusable neglect, and as additional facts are ascertained, analyses are made, research is completed and contentions are made in this proceeding.

These Responses also are made solely for the purpose of this action, and are subject to all objections as to competence, relevance, materiality, propriety and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Request were asked of, or statements contained herein were made by, a witness present and testifying in this proceeding. All such objections and grounds are expressly reserved and may be interposed during the testimony period.

Petitioner's Response to each individual Request is submitted without prejudice to, and without in any way waiving, the general objections listed below but not expressly set forth in that response. These objections are incorporated into every response and are set forth here to avoid the duplication and repetition of restating them for each Request. These general objections may specifically be referred to in response to a Request for clarity; however, the failure to specifically

repeat a general objection should not be construed as a waiver of the objection. Moreover, no incidental or implied admissions are intended by the Responses below. The fact that Petitioner has answered or objected to all or part of any Request should not be construed or taken as an admission that Petitioner accepts or admits the existence of any purported facts set forth or assumed by such Request or that Petitioner has waived or intended to waive any part of any objection to the Request. Furthermore, Petitioner's objections to Respondent's Interrogatories/Requests do not necessarily reflect the existence of the requested information.

GENERAL OBJECTIONS

1. Petitioner objects to these Interrogatories/Requests to the extent they encompass and seek documents, information or communications protected from discovery on grounds of the attorney-client privilege, work product immunity, trial preparation material and/or other applicable privileges or immunities from discovery and such information will be withheld (herein generally referred to as "privilege").

2. Petitioner objects to these Requests to the extent they seek to impose an obligation on Petitioner which exceeds a litigant's discovery obligations as provided by the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

3. Petitioner objects to these Requests to the extent they seek information publicly available or already in the possession of Respondent. Petitioner further objects to these Requests to the extent they request publicly available information and/or information in the custody or control of third parties.

4. Petitioner objects to these Requests to the extent they use broad or undefined terms.

5. Petitioner objects to these Requests to the extent they call for information and/or documents not in the possession, custody or control of Petitioner.

6. Petitioner objects to these Requests to the extent that each is so vague, ambiguous, overly broad, and unduly burdensome so as to render it impossible to respond in any reasonable manner or amount of time.

7. Petitioner objects to these Requests to the extent that they seek information pertaining to activities or events occurring outside the United States which are inapplicable to this proceeding.

8. Petitioner objects to these Requests to the extent that investigation and discovery are ongoing.

9. Petitioner objects to DEFINITIONS AND INSRUCTIONS and the definition at B for "Registrant's Marks" as vague and indefinite and further objects to each request that uses the term "Registrant's Marks." Petitioner further objects to the extent the definition seeks to suggest Registrant's ownership of the marks and that Registrant owns marks that are not the subject of any registrations. Petitioner further objects to the Requests to the extent they refer to a time frame and events when Registrant did not own the Registrations, was not an owner of the mark(s), and/or and was not the sole owner of the mark.

10. Petitioner objects to the definition at C for "Petitioner's Marks" as vague and indefinite and further objects to each request that uses the term "Petitioner's Applications."

11. Petitioner objects to the definition at G for "Amendment" as vague and indefinite and further objects to each request that uses the term "Amendment." Petitioner further objects to the extent the definition seeks to suggest there was an effective, agreed-upon or signed Amendment to the Asset Purchase Agreement and tries to mischaracterize the terms of the

signed Asset Purchase Agreement.

12. Petitioner objects to these Requests to the extent that they seek documents that should be in the possession of Registrant.

13. Each and all of these General Objections are hereinafter incorporated by reference in response to each and every Request.

DOCUMENT REQUESTS

Request No. 1

Any and all documents constituting or reflecting communications between Petitioner and Registrant, or between Petitioner and any third party, concerning the creation and negotiation of the APA, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting or reflecting” as overly broad and unduly burdensome. Petitioner also objects to this request to the extent it suggests Petitioner and Registrant ever communicated regarding the APA. Petitioner also objects to this request to the extent Registrant implies that Troy Nitsche entered into an agreement solely with Registrant. Petitioner also objects to the phrase “any third party” as vague and indefinite.

Subject to these specific objections and the general objections set forth above, Petitioner will produce non-privileged documents responsive to this Request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 2

Any and all documents constituting or reflecting communications between Petitioner and Registrant, or between Petitioner and any third party, concerning the revisions that were made to the November 4, 1997 version of the APA, as noted on the first page of the APA (top left corner), or any other draft versions of the APA, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting or reflecting” as overly broad and unduly burdensome. Petitioner also objects to this request to the extent it suggests Petitioner and Registrant ever communicated regarding the APA. Petitioner also objects to this request to the extent Registrant implies that Troy Nitsche entered into an agreement with Registrant. Petitioner also objects to the phrase “any third party” as vague and indefinite. Petitioner also objects to the extent this Request seeks “drafts” and documents from 1997 as these documents are not likely to be kept in the ordinary course of Petitioner’s business.

Subject to these specific objections and the general objections set forth above, Petitioner will produce non-privileged documents responsive to this Request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 3

An executed copy of the Amendment of APA.

Response:

Petitioner objects to this Request to the extent it implies an amendment was made to the executed APA and having no knowledge of an executed "Amendment of APA," Petitioner cannot produce same.

Request No. 4

Any and all documents constituting or reflecting communications between Petitioner and Registrant, or between Petitioner and any third party, concerning the creation or negotiation of the Amendment, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for "any and all documents constituting or reflecting" as overly broad and unduly burdensome. Petitioner also objects to this request to the extent it suggests Petitioner and Registrant ever communicated regarding the APA. Petitioner also objects to this request to the extent Registrant implies that Troy Nitsche entered into an agreement with Registrant. Petitioner also objects to the phrase "any third party" as vague and indefinite. Petitioner objects to this Request to the extent it implies an amendment was made to the APA and having no knowledge of an "Amendment," Petitioner cannot produce same.

Request No. 5

Any and all documents constituting or reflecting communications between Petitioner and Registrant, or between Petitioner and any third party, concerning any revisions or draft versions of the Amendment, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting or reflecting” as overly broad and unduly burdensome. Petitioner also objects to this request to the extent it suggests Petitioner and Registrant ever communicated regarding the APA. Petitioner also objects to this request to the extent Registrant implies that Troy Nitsche entered into an agreement with Registrant. Petitioner also objects to the phrase “any third party” as vague and indefinite. Petitioner also objects to the extent this Request seeks “drafts” as these documents are not likely to be kept in the ordinary course of Petitioner’s business. Petitioner objects to this Request to the extent it implies an amendment was made to the APA and having no knowledge of an “Amendment,” Petitioner cannot produce same.

Request No. 6

An executed copy of any subsequent amendments made to the APA.

Response:

Petitioner objects to this Request to the extent “subsequent amendments” is undefined, vague and indefinite. Petitioner also objects to this Request to the extent it implies an amendment was made to the executed APA and having no knowledge of an executed “amendments made to the APA,” Petitioner cannot produce same.

Request No. 7

An executed copy of any other written agreements between Petitioner and Registrant and any amendments or revisions made thereto, including but not limited to Petitioner’s acquisition of an ownership interest in Giovanni’s Aloha Foods, LLC.

Response:

Petitioner objects to this request to the extent it suggests Petitioner and Registrant entered into an agreement. Petitioner also objects to this request to the extent Registrant implies that Troy Nitsche entered into an agreement with Registrant. Petitioner also objects to the Request to the extent it refers to “any other written agreements” as vague and indefinite.

Subject to these specific objections and the general objections set forth above, Petitioner will produce non-privileged documents responsive to this Request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 8

Any and all documents constituting or reflecting communications between Petitioner and Registrant, or between Petitioner and any third party, concerning the creation or negotiation of any other written agreements between Petitioner and Registrant, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting or reflecting” as overly broad and unduly burdensome. Petitioner also objects to this request to the extent it suggests Petitioner and Registrant ever communicated regarding the creation or negotiation of any written agreement. Petitioner also objects to this request to the extent Registrant implies that Troy Nitsche entered into an agreement with Registrant. Petitioner also objects to the phrase “any third party” as vague and indefinite. Petitioner also objects to the Request to the extent it refers to “any other written agreements” as vague and indefinite.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 9

Any and all documents constituting or reflecting communications between Petitioner and Registrant or any third party concerning Petitioner's use or continued use of the Registrant Marks, or any variation thereof, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for "any and all documents constituting or reflecting" as overly broad and unduly burdensome. Petitioner also objects to this Request to the extent it requests communications between Petitioner and any third party as over broad and unduly burdensome. Petitioner also objects to the phrase "use or continued use" as vague, indefinite, ambiguous and undefined. Petitioner also objects to the phrase "Registrant's Marks" as vague and ambiguous as discussed in General Objection No. 9 above. Petitioner also objects to the phrase "any variation thereof" as vague and ambiguous

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 10

Any and all documents constituting or reflecting communications between Petitioner and Registrant or any third party concerning Petitioner's use or continued use of the Petitioner Marks, or any variation thereof, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for "any and all documents constituting or reflecting" as overly broad and unduly burdensome. Petitioner also objects to this Request to the extent it requests communications between Petitioner and any third party as over broad and unduly burdensome. Petitioner also objects to the phrase "use or continued use" as vague, indefinite, ambiguous and undefined. Petitioner also objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the phrase "any variation thereof" as vague and ambiguous.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 11

Any and all documents constituting or reflecting communications between Petitioner and Registrant or any third party concerning Petitioner's use or continued use of the any of the following phrases: "Established in 1993"; "Since 1993"; "Beginning in 1993"; or any variation

thereof, in connection with providing restaurant services or sales of food products, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting or reflecting” as overly broad and unduly burdensome. Petitioner also objects to this Request to the extent it requests communications between Petitioner and any third party as over broad and unduly burdensome. Petitioner also objects to the phrase “use or continued use” as vague, indefinite, ambiguous and undefined. Petitioner also objects to the phrase. Petitioner also objects to the phrase “any variation thereof” as vague and ambiguous.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 12

Any and all documents constituting, reflecting or evidencing Petitioner's ownership of the Petitioner Marks, or any variation thereof, alone or in combination with other words or design elements, in any form.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting, reflecting or evidencing” as overly broad and unduly burdensome. Petitioner also objects to the phrase “Petitioner’s Marks” as

vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the term “ownership” as vague, ambiguous and indefinite. Petitioner also objects to the phrase “any variation thereof” as vague and ambiguous. Petitioner also objects to the phrase “alone or in combination with other words or design elements, in any form” as vague, ambiguous, indefinite, overly broad and unduly burdensome.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 13

Any and all documents constituting, reflecting or evidencing Petitioner's ownership of the Registrant Marks, or any variation thereof, alone or in combination with other words or design elements, in any form.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents constituting, reflecting or evidencing” as overly broad and unduly burdensome. Petitioner also objects to the phrase “Registrant’s Marks” as vague and ambiguous as discussed in General Objection No. 9 above. Petitioner also objects to the term “ownership” as vague, ambiguous and indefinite. Petitioner also objects to the phrase “any variation thereof” as vague and ambiguous. Petitioner also objects to the phrase “alone or in combination with other words or design elements, in any form” as vague, ambiguous, indefinite, overly broad and unduly burdensome.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 14

Any and all tax documents reflecting or evidencing Petitioner's ownership in Giovanni's Aloha Foods, LLC.

Response:

Petitioner objects to this Request to the extent third-parties have custody and control of these documents. Petitioner further objects to the phrase "tax documents" as vague, ambiguous and indefinite. Petitioner also objects to the term "ownership" as vague and indefinite.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 15

Any and all documents constituting or reflecting communications between Petitioner and Registrant or any third party concerning Petitioner's use or continued use of any personal property that Registrant used in its business operations prior to entering into the APA, including but not limited to signs, menus, food trucks, and intellectual property, to which Petitioner claims or claimed some right or interest, including but not limited to correspondence, notes, fax transmittals and emails.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to

the extent it calls for “any and all documents constituting or reflecting” as overly broad and unduly burdensome. Petitioner also objects to this Request to the extent it requests communications between Petitioner and any third party as over broad and unduly burdensome. Petitioner also objects to the phrase “use or continued use” as vague, indefinite, ambiguous and undefined. Petitioner also objects to the phrase “any personal property” as vague and ambiguous. Petitioner objects to the request to the extent it implies Registrant was the sole business owner who entered into the APA with Troy Nitsche. Petitioner also objects to the extent the request implies Petitioner entered into the APA, and also to the extent it suggests any permission for continued use was required. Petitioner also objects to the term “its” as vague, ambiguous and confusing.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 17

The executed leases and all drafts of the leases for the Kahuku Property between Petitioner and Petitioner's lessor or sublessor for said property.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “all drafts” as overly broad and unduly burdensome. Petitioner also objects to the extent this Request seeks “drafts” as these documents are not likely to be kept in the ordinary course of Petitioner’s business. Petitioner also objects to this Request as unduly

burdensome to the extent it seeks documents such as leases that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 18

The executed lease and all drafts of the lease for the Haleiwa Property location between Petitioner and Petitioner's lessor or sublessor for said property.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for "all drafts" as overly broad and unduly burdensome. Petitioner also objects to the extent this Request seeks "drafts" as these documents are not likely to be kept in the ordinary course of Petitioner's business. Petitioner also objects to this Request as unduly burdensome to the extent it seeks documents such as leases that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 19

Any and all documents constituting or reflecting a business plan or business plans for Petitioner's operation or proposed operation of a restaurant service business at any location.

Response:

Petitioner objects to this request to the extent it calls for "any and all documents constituting or reflecting" as overly broad and unduly burdensome. Petitioner objects to the phrase "at any location" as vague and indefinite. Petitioner also objects to the phrase "operation or proposed operation" as vague, ambiguous, undefined and indefinite. Petitioner also objects to the phrase "restaurant service business" as vague and undefined.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 20

Any and all documents reflecting operation and cessation of any business operation which manufactured, distributed, or sold hot sauce, scampi marinade, or scampi sauce, of or by Petitioner, or its principals, owners, members or affiliates, including, but not limited to, James Goodrich and Troy Nitsche.

Response:

Petitioner objects to this request to the extent it calls for "any and all documents reflecting operation and cessation" as overly broad and unduly burdensome and suggests "operation and cessation." Petitioner further objects to the Request to the extent it calls for documents not in the possession of Petitioner.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 21

An image, screenshot or other graphic reproduction of each and every web page now or ever displayed on any of the following web sites: www.giovanisshrimptruck.com; www.giovanisshrimptruck.net; and www.giosauces.com.

Response:

Petitioner objects to this request to the extent it calls for "reproduction of each and every web page now or ever displayed" as overly broad and unduly burdensome. Petitioner further

objects to the Request to the extent it calls for documents not in the possession of Petitioner. Petitioner further objects to the extent that www.giosauces.com no longer exists. Petitioner also objects to the extent that www.giovannisshrimptruck.net no longer exists. Petitioner also objects to the extent this information is in the public domain.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 22

Any and all inspection reports, permits, and/or other documents issued by the State of Hawaii, Department of Health, or similar state agency in relation to Petitioner's past or current operations.

Response:

Petitioner objects to this request to the extent it calls for "any and all inspection reports, permits, and/or other documents" as overly broad and unduly burdensome. Petitioner further objects to the Request to the extent it calls for documents not in the possession of Petitioner. Petitioner objects to the phrase "other documents" as vague, undefined and indefinite. Petitioner also objects to the phrase "similar state agency" as vague and indefinite. Petitioner also objects to the request to the extent it is not limited in time. Petitioner also objects to this request as unduly burdensome to the extent it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 23

All documents referring or relating to any state trademark or service mark application or registration filed and/or prosecuted by or on behalf of Petitioner(s) which contains any of the Petitioner Marks or any variation thereof, alone or in combination with other words or design elements, in any form.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents referring or relating” as overly broad and unduly burdensome. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the term “Petitioner(s)” as vague and confusing. Petitioner also objects to the phrase “any variation thereof” as vague and ambiguous. Petitioner also objects to the phrase “alone or in combination with other words or design elements, in any form” as vague, ambiguous, indefinite, overly broad and unduly burdensome.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 24

All documents referring or relating to any foreign trademark or service mark application or registration filed and/or prosecuted by or on behalf of Petitioner(s) which contains any of the Petitioner Marks or any variation thereof, alone or in combination with other words or design elements, in any form.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents referring or relating” as overly broad and unduly burdensome. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the term “Petitioner(s)” as vague and confusing. Petitioner also objects to the phrase “any variation thereof” as vague and ambiguous. Petitioner also objects to the phrase “alone or in combination with other words or design elements, in any form” as vague, ambiguous, indefinite, overly broad and unduly burdensome. Petitioner also objects to the phrase “foreign trademark or service mark” as vague and ambiguous.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 25

All documents referring to or relating to any United States trademark or service mark application or registration filed and/or prosecuted by or on behalf of Petitioner(s) which contain any of the Petitioner Marks or any variation thereof, alone or in combination with other words or design elements, in any form.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “any and all documents referring or relating” as overly broad and unduly

burdensome. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the term “Petitioner(s)” as vague and confusing. Petitioner also objects to the phrase “any variation thereof” as vague and ambiguous. Petitioner also objects to the phrase “alone or in combination with other words or design elements, in any form” as vague, ambiguous, indefinite, overly broad and unduly burdensome.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 26

All documents which relate to past, present and future business plans with respect to the adoption, selection, registration and use of the Petitioner Marks, including all notes, memoranda, minutes of meetings, and correspondence referring or relating to such adoption or selection.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to this request to the extent it calls for “all documents” as overly broad and unduly burdensome. Petitioner also objects to this request as unduly burdensome to the extent it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner objects to the term “use” as vague and indefinite. Petitioner also objects to the extent the request calls for “future business plans” as unduly burdensome to the extent it

seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 27

Representative samples of all promotional materials or items utilized, or under consideration to be utilized, in the advertising and promotion of the Petitioner Marks, including without limitation direct mail literature, magazine advertisements, newspaper advertisements, radio or television advertisements or scripts, audio or video tapes, press releases, press kits, and/or internet or e-mail advertisements.

Response:

Petitioner objects to this request to the extent the request calls for "materials or items...under consideration to be utilized" as unduly burdensome to the extent it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner also objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 28

All documents evidencing your actual or projected advertising expenditures, advertising budgets, and financial statements related to any good and/or service advertised, promoted,

marketed, offered for sale, sold, or otherwise provided by you for which you made any use or intend to make any use of the Petitioner Marks.

Response:

Petitioner objects to this request to the extent the request calls for “projected” items or “intent to make any use” as unduly burdensome to the extent it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner also objects to the phrase “all documents” as overly broad and unduly burdensome. Petitioner also objects to the term “use” as vague and indefinite. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 29

Documents sufficient to identify all of your past and present employees and any other persons who were involved in or contributed to the creation, selection, consideration and/or evaluation of the Petitioner Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the phrase “any other persons” as vague and indefinite. Petitioner objects to the terms “consideration” and “evaluation” as vague, ambiguous and undefined.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 30

Representative samples of all containers, tags, labels, packaging, and point of sale displays which include the Petitioner Marks, and samples evidencing each and every manner in which the Petitioner Marks have been displayed or will be displayed, including print outs of each website page.

Response:

Petitioner objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the request to the extent it seeks representative samples that "will be displayed" as vague, indefinite, confusing and neither relevant nor likely to lead to admissible evidence. Petitioner also objects to the extent this request is duplicative of Request No. 21 above.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 31

Representative samples of all signs, brochures, handbills, stationery, business cards, and decals used by or intended to be used by you in connection with the Petitioner Marks, and samples evidencing each and every manner in which the Petitioner Marks have been displayed or will be displayed.

Response:

Petitioner objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the request to the extent it seeks representative samples that are "intended to be used" or "will be displayed" as vague, indefinite, confusing and neither relevant nor likely to lead to admissible evidence and is therefore overly broad and unduly burdensome.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 32

All agreements, policies, contracts, and all other documents evidencing any agreements which relate to the acquisition, use, promotion, licensing, assignment and/or concerning the Petitioner Marks, including any modification of such agreements.

Response:

Petitioner objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the phrase "all other documents" as vague and indefinite. Petitioner also objects to the term "relate" as vague and indefinite. Petitioner objects to the term "use" as vague, ambiguous, and undefined. Petitioner also objects to the term "concerning" as vague and indefinite.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 33

All documents referring or relating to your examination, analysis, opinion, tests, inquiries and consideration of the Registrant Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Registrant’s Marks” as vague and ambiguous as discussed in General Objection No. 9 above. Petitioner also objects to the phrase “all documents referring or relating” as vague, indefinite, overly broad and unduly burdensome. Petitioner also objects to the phrase “examination, analysis, opinion, tests, inquiries and consideration” as vague, ambiguous, undefined and indefinite.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 34

All documents regarding, referring or relating to, or containing any results of, any survey, poll, search, investigation, or other study undertaken by, or on behalf of, Petitioners in connection with the Petitioner Marks, the Registrant Marks, the likelihood of confusion between the Petitioner Marks and the Registrant Marks, and/or damage to the Petitioner Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above.

Petitioner also objects to the phrase “Registrant’s Marks” as vague and ambiguous as discussed in General Objection No. 9 above. Petitioner also objects to the phrase “[a]ll documents regarding, referring or relating to, or containing” as overly broad and unduly burdensome. Petitioner objects to the terms “investigation” and “other study” as vague, ambiguous, indefinite and undefined. Petitioner further objects to the term “damage” as vague and indefinite. Petitioner objects to the term “Petitioners” as confusing.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 35

All documents referring or relating to the conception, design, development, and selection of the Petitioner Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “all documents referring or relating” as overly broad and unduly burdensome.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 36

All documents relating to your consideration of alternative terms, names and symbols other than or in place of the Petitioner Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “all documents relating” as overly broad and unduly burdensome. Petitioner also objects to the term “consideration” as vague and ambiguous. Petitioner objects to the phrase “other than or in place of” as vague and confusing. Petitioner objects to the request to extent it calls for documents providing “alternative terms” as neither relevant nor likely to lead to admissible evidence and therefore this request is overly broad and unduly burdensome.

Request No. 37

All documents regarding any investigation, trademark search, clearance, or evaluation concerning the Petitioner Marks, possible registration of the Petitioner Marks, conducted by, or on behalf of, Petitioners, prior to and/or after adopting any of the Petitioner Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “all documents regarding” as overly

broad and unduly burdensome. Petitioner objects to the term “evaluation” as vague and indefinite. Petitioner also objects to the term “Petitioners” as undefined and confusing.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 38

All documents regarding any investigation, trademark search, clearance, or evaluation concerning Registrant and/or the Registrant Marks conducted by, or on behalf of, Petitioner(s).

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Registrant’s Marks” as vague and ambiguous as discussed in General Objection No. 9 above. Petitioner also objects to the extent this request calls for “all documents regarding” as overly broad and unduly burdensome. Petitioner objects to the term “evaluation” as vague and indefinite. Petitioner also objects to the term “Petitioner(s)” as undefined and confusing.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 39

Documents sufficient to identify each type of service or product that you intend to or already have advertised, distributed, offered for sale, or sold to customers under the Petitioner Marks.

Response:

Petitioner objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner further objects to the request to the extent it calls for documents of goods/services Petitioner “intend[s] to” advertise, distribute, or offer for sale as overly broad and unduly burdensome and neither relevant nor likely to lead to admissible evidence.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 40

All documents which record, relate or refer to any of your uses or intended uses of the Petitioner Marks in connection with any of their goods or services, including but not limited to, marketing reports, internal memoranda, promotional materials and outside communications.

Response:

Petitioner objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “all documents which record, relate or refer” as overly broad and unduly burdensome. Petitioner also objects to the term “uses” as vague and indefinite. Petitioner further objects to the request to the extent it calls for “intended uses” as overly broad and unduly burdensome and neither relevant nor likely to lead to admissible evidence. Petitioner objects to the phrase “outside communications” as vague and undefined and further objects to the extent these documents are not in the custody or control of Petitioner.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 41

All documents relating to your marketing strategy or promotional strategy involving the use of the Petitioner's Marks and your business plan for any products or services using the Petitioner's Marks.

Response:

Petitioner objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for "all documents relating" as overly broad and unduly burdensome. Petitioner also objects to the terms "use" or "using" as vague and indefinite.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 42

All documents concerning, evidencing, relating, or referring to, authorizations, policies, contracts and/or agreements with third parties involving any of the Petitioner Marks, including but not limited to, all licenses, assignments, franchise agreements, settlement agreements, distribution agreements, supply agreements, manufacturing agreements, and other agreements which relate to the use and/or acquisition of the Petitioner Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “all documents concerning, relating, or referring to” as overly broad and unduly burdensome. Petitioner also objects to the term “use” as vague and indefinite. Petitioner objects to the request to the extent these documents are not in the custody or control of Petitioner.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 43

All documents which relate to any of your investors.

Response:

Petitioner objects to this request as overly broad, unduly burdensome, unlimited in time and neither relevant nor likely to lead to admissible evidence and Petitioner cannot respond to this request.

Request No. 44

Representative documents that identify the past, present and anticipated market trade channels and means of distribution by which all services or products sold or to be sold by you under the Petitioner Marks reach or will reach ultimate users.

Response:

Petitioner objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for “anticipated” or services or products “to be sold” or “will reach” as overly broad and unduly burdensome and neither relevant nor likely to lead to admissible evidence. Petitioner also objects to the term “users” as vague, undefined, ambiguous, confusing and indefinite. Petitioner objects to the term “reach” as vague and indefinite.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 45

All documents relating to your intentions or plans, alone or in conjunction with any other person or entity, to expand the use of the Petitioner Marks in the future in connection with additional goods or services or additional geographic locations.

Response:

Petitioner objects to the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to this request as all it calls for are documents related to future plans, etc., that are not at issue in a cancellation proceeding and therefore this entire request is overly broad and unduly burdensome and neither relevant nor likely to lead to admissible evidence.

Request No. 46

All documents reflecting gross sales, gross profits, revenues, and related financial information related or derived from restaurant services and the sauces which are advertised,

promoted, marketed, offered for sale, sold, or otherwise provided by Petitioner for which Petitioner made any use of Petitioner's Marks, including, without limitation, the quantity of such goods or services sold and the revenue generated by such sale.

Response:

Petitioner objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent the request calls for "all documents" as overly broad and unduly burdensome. Petitioner also objects to the term "use" as vague, and indefinite. Petitioner objects to the term "related financial information" as vague and indefinite. Petitioner objects to the terms "related" and "derived" as vague and indefinite. Petitioner objects to the request to the extent it requests documents reflecting the "quantity" of services as impossible to provide.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 47

All agreements, actual or contemplated, between you and another person or entity, involving Petitioner's Marks.

Response:

Petitioner objects to this Request to the extent it seeks information subject to attorney-client privilege and/or attorney work-product protection. Petitioner also objects to the phrase "Petitioner's Marks" as vague and ambiguous as discussed in General Objection No. 10 above. Petitioner also objects to the extent this request calls for "all agreements, actual or contemplated" as overly broad and unduly burdensome. Petitioner also objects to the term "use" as vague and

indefinite. Petitioner objects to the request to the extent these documents are not in the custody or control of Petitioner. Petitioner further objects to this request as it is duplicative of at least Requests Nos. 32 and 42 and to the extent any relevant documents exist, other requests already cover this information.

Request No. 48

All documents which relate to Registrant, apart from the pleadings and correspondence exchanged by the parties in this action.

Response:

Petitioner objects to this request as overly broad and unduly burdensome to the extent it is unlimited in time, requests "all documents," requests information not in the custody or control of Petitioner, and therefore Petitioner cannot respond to this request.

Request No. 49

All documents identified in your responses to the Registrant's First Set of Interrogatories or referred to or relied upon in the course of your preparation of responses to the First Set of Interrogatories.

Response:

Subject to the specific objections found in Petitioner's Responses to Registrant's First Set of Interrogatories and general objections set forth in that document and above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 50

Any and all documents or things identified in Petitioner's responses to Registrant's First Set of Requests for Admission served herewith.

Response:

Subject to the specific objections found in Petitioner's Responses to Registrant's First Set of Requests for Admission and general objections set forth in that document and above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 51

All non-privileged documents relating to any TTAB proceeding or litigation to which you have been a party which has involved any question of any party's intellectual property rights, or of any action in tort or contract involving any party's reputation or economic rights, including but not limited to any claims relating to trademark infringement, rights of publicity, misappropriation, invasion of privacy, false light, false advertising, fraud, defamation, slander, libel, tortious interference with business relations, and tortious interference with prospective business opportunities.

Response:

Petitioner objects to this entire request as it calls for documents neither relevant nor likely to lead to admissible evidence.

Request No. 52

All documents which refer or relate to any and all inquiries by consumers as to whether any of your products offered in connection with the Petitioner Marks are related, associated, affiliated, or otherwise connected with Registrant.

Response:

Petitioner objects to this request as overly broad and unduly burdensome to the extent it calls for "all documents which refer or relate to any and all inquiries." Petitioner also objects to

the phrase “Petitioner’s Marks” as vague and ambiguous as discussed in General Objection No. 10 above.

Subject to these specific objections and general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 53

All documents upon which you rely to support your allegation in Paragraph 9 of the Petition for Cancellation that “[Petitioner] and/or its predecessors adopted and used, and continues to use and have prior rights in, inter alia, the following marks (collectively referred to as Petitioner’s “GIOVANNI’S Marks”):

GIOVANNI’S ALOHA SHRIMP

GIOVANNI’S SHRIMP TRUCK

GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 54

All documents upon which you rely to support your allegation in Paragraph 12 of the Petition for Cancellation that “[d]ue to Petitioner’s advertising and sales, word of mouth advertising by customers, and unsolicited third party recognition by the media and food magazines and critics, such as Saveur Magazine, consumers have come to recognize Petitioner’s

GIOVANNI'S Marks as a singular indication of origin, as a consequence of which Petitioner has established valuable goodwill and exclusive rights in its marks.”

Response:

Petitioner objects to this request to the extent it cites Paragraph 12 of the Petition for Cancellation and yet quotes from paragraph 15 of the Petitioner for Cancellation and is therefore confusing. Petitioner assumes for purposes of a response that Registrant meant paragraph 15, which is quoted in the request.

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 55

All documents upon which you rely to support your allegation in Paragraph 15 of the Petition for Cancellation that “consumers have come to recognize Petitioner's GIOVANNI'S Marks as a singular indication of origin, as a consequence of which Petitioner has established valuable goodwill and exclusive rights in its marks.”

Response:

Petitioner objects to this request as it is duplicative of Request No. 54 and therefore Petitioner will not provide a second response.

Request No. 56

All documents upon which you rely to support your allegation in Paragraph 17 of the Petition for Cancellation that “[a]ppreciating that Petitioner's business has achieved immense success, Mr. Aragona has now resurfaced, after a decade, in an attempt to improperly capitalize

on Petitioner's hard-earned goodwill through fraudulent and deceptive conduct that suggests a false connection with Petitioner and through misuse of fraudulently obtained registrations."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 57

All documents upon which you rely to support your allegation in Paragraph 18 of the Petition for Cancellation that Registrant "intended to suggest a false association or affiliation with, or endorsement by, Petitioner."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 58

All documents upon which you rely to support your allegation in Paragraph 20 of the Petition for Cancellation that "Registrant's website and advertising materials were intentionally designed to create the false impression that Registrant is somehow affiliated with Petitioner and attempt to trade off the goodwill associated with Petitioner's GIOVANNI'S Marks and shrimp truck business."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 59

All documents upon which you rely to support your allegation in Paragraph 21 of the Petition for Cancellation that "Registrant's fraudulently procured registrations further manifest his intent to deceive the USPTO and consumers as to a false relationship with Petitioner."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 60

All documents upon which you rely to support your allegation in Paragraph 24 of the Petition for Cancellation that "Registrant falsely describe[d] the specimen of use as follows: "Photo of Giovanni's Original White Shrimp Truck and Sign."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 61

All documents upon which you rely to support your allegation in Paragraph 26 of the Petition for Cancellation that "Registrant has never used the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with mobile restaurant services."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 62

All documents upon which you rely to support your allegation in Paragraph 27 of the Petition for Cancellation that "Registrant has not continuously or exclusively used the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with mobile restaurant services since February 1, 1994."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 63

All documents upon which you rely to support your allegation in Paragraph 28 of the Petition for Cancellation that “to the extent Registrant ever used the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with mobile restaurant services, Registrant abandoned any such rights.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 64

All documents upon which you rely to support your allegation in Paragraph 29 of the Petition for Cancellation that “[i]n procuring the application which matured into Registration No. 4232569 of the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to the source of goods sold under the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 65

All documents upon which you rely to support your allegation in Paragraph 30 of the Petition for Cancellation that “Registrant’s use of the identical mark GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK for identical mobile restaurant services is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 66

All documents upon which you rely to support your allegation in Paragraph 31 of the Petition for Cancellation that “Registrant’s use of the mark GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK in the manner described above also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 67

All documents upon which you rely to support your allegation in Paragraph 36 of the Petition for Cancellation that “Registrant has not continuously or exclusively used the mark

GIOVANNI'S ALOHA FOODS in connection with food preparation services since June 1, 1997.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 68

All documents upon which you rely to support your allegation in Paragraph 37 of the Petition for Cancellation that “[a]t most, Registrant was permitted to use the mark GIOVANNI'S ALOHA FOODS until sometime in 2001 when he abandoned the company Giovanni’s Aloha Foods—a company in which Registrant owned a 25% share and Petitioner’s members collectively owned a 50% share—and his right to use the mark GIOVANNI'S ALOHA FOODS.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 69

All documents upon which you rely to support your allegation in Paragraph 39 of the Petition for Cancellation that “[i]n procuring the application which matured into Registration No. 4220686 of the mark GIOVANNI'S ALOHA FOODS, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and

the public as to the source of goods sold under the mark GIOVANNI'S ALOHA FOODS and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in Petitioner's GIOVANNI'S Marks."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 70

All documents upon which you rely to support your allegation in Paragraph 40 of the Petition for Cancellation that "Registrant's use of the mark GIOVANNI'S ALOHA FOODS for food preparation services, in the manner described herein, is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 71

All documents upon which you rely to support your allegation in Paragraph 41 of the Petition for Cancellation that "Registrant's use of the mark GIOVANNI'S ALOHA FOOD in the manner described herein also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 72

All documents upon which you rely to support your allegation in Paragraph 43 of the Petition for Cancellation that "Registrant has not continuously or exclusively used the mark GIOVANNI'S SCAMPI MARINADE in connection with marinades since February 2, 1994."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 73

All documents upon which you rely to support your allegation in Paragraph 44 of the Petition for Cancellation that "[a]t most, Registrant used the mark GIOVANNI'S SCAMPI MARINADE until sometime in 2001 when he abandoned the company Giovanni's Aloha Foods—a company in which Registrant owned a 25% share and Petitioner's members collectively owned a 50% share—and his right to use the mark GIOVANNI'S SCAMPI MARINADE."

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 74

All documents upon which you rely to support your allegation in Paragraph 46 of the Petition for Cancellation that “[i]n procuring the application which matured into Registration No. 4224400 of the mark GIOVANNI'S SCAMPI MARINADE, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to the source of goods sold under the mark GIOVANNI'S SCAMPI MARINADE and to knowingly misappropriate Petitioner’s valuable goodwill and exclusive rights in Petitioner’s GIOVANNI’S Marks.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 75

All documents upon which you rely to support your allegation in Paragraph 47 of the Petition for Cancellation that “Registrant’s use of the mark GIOVANNI'S SCAMPI MARINADE for marinades, in the manner described herein, is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 76

All documents upon which you rely to support your allegation in Paragraph 48 of the Petition for Cancellation that “Registrant’s use of the mark GIOVANNI’S SCAMPI MARINADE in the manner described herein also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 77

All documents upon which you rely to support your allegation in Paragraph 50 of the Petition for Cancellation that “Registrant has not continuously or exclusively used the mark GIOVANNI’S HOT & SPICY WE REALLY MEAN IT! SAUCE in connection with hot sauce since February 2, 1994.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 78

All documents upon which you rely to support your allegation in Paragraph 51 of the Petition for Cancellation that “[a]t most, Registrant used the mark GIOVANNI’S HOT & SPICY WE REALLY MEAN IT! SAUCE until sometime in 2001 when he abandoned the company

Giovanni's Aloha Foods—a company in which Registrant owned a 25% share and Petitioner's members collectively owned a 50% share—and his right to use the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 79

All documents upon which you rely to support your allegation in Paragraph 53 of the Petition for Cancellation that “[i]n procuring the application which matured into Registration No. 4248595 of the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE, Registrant knowingly provided false and misleading statements and information concerning its use and ownership of the mark, including a false and misleading declaration signed by Jamie Pitts, with the intent to deceive the USPTO and the public as to the source of goods sold under the mark GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE and to knowingly misappropriate Petitioner's valuable goodwill and exclusive rights in Petitioner's GIOVANNI'S Marks.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner's possession, custody and control.

Request No. 80

All documents upon which you rely to support your allegation in Paragraph 54 of the Petition for Cancellation that “Registrant’s use of the mark GIOVANNI’S HOT & SPICY WE REALLY MEAN IT! SAUCE for hot sauce, in the manner described herein, is likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Federal Trademark Act.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 81

All documents upon which you rely to support your allegation in Paragraph 55 of the Petition for Cancellation that “Registrant’s use of the mark GIOVANNI’S HOT & SPICY WE REALLY MEAN IT! SAUCE in the manner described herein also is deceptive and falsely suggests a connection with Petitioner within the meaning of Section 2(a) of the Federal Trademark Act.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 82

All documents upon which you rely to support your allegation in Paragraph 58 of the Petition for Cancellation that “Petitioner is being damaged by the continued existence of

Registration Nos. 4232569, 4220686, 4224400, and 4248595, and the business and goodwill of Petitioner is further damaged in that said registrations tend to create or maintain statutory rights in violation and derogation of the established rights of Petitioner.”

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

Request No. 83

All documents identified in Petitioners’ Initial Disclosures.

Response:

Subject to the general objections set forth above, Petitioner will produce non-privileged documents responsive to this request, if any exist, after a reasonable and diligent search of documents in Petitioner’s possession, custody and control.

DATE: September 24, 2013

s/Jennifer Fraser/

Jennifer Fraser
Daniel Mullarkey
NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP
1875 Eye Street, NW
11th Floor
Washington, DC 20006
(202) 659-0100 Telephone
(202) 659-0105 Facsimile

Attorneys for Petitioner,
LuckyU Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2013 a true and correct copy of the foregoing **Petitioner's Responses to Registrants First Request for Production of Documents** was served by First Class Mail, postage prepaid, on Respondent's Counsel, Jamie N. Pitts, The Law Office of Jamie N. Pitts, 1064 N. Tamiami Trail, STE 1533, Sarasota, FL 34236, with a courtesy copy served via e-mail to JAMIENPITTS@jnplawfirm.com.

s/Daniel Mullarkey/

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit 21
Exhibit Offered by Respondent
12/3/14

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

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
Registration date: October 9, 2012

In the matter of Trademark Registration No. 4,224,400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration date: October 16, 2012

In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

**PETITIONER'S RESPONSES TO REGISTRANT'S
FIRST REQUEST FOR ADMISSIONS**

Pursuant to Federal Rules of Civil Procedure 26 and 36, Petitioner LuckyU Enterprises, Inc. ("Petitioner") hereby responds and objects to the First Set of Requests for Admission (Nos. 1-89) propounded by Respondent, John "Giovanni" Aragona ("Respondent" or "Registrant"), as follows:

INTRODUCTION

The following responses, while based on diligent exploration by Petitioner and its counsel, are necessarily supported only by those facts and writings, presently and specifically known and readily available to Petitioner. Petitioner has not completed its investigation of all the facts related to the subject matter of this action, discovery, or its preparation for the Opposition proceeding. Petitioner therefore makes these Responses without prejudice to its right to produce at any stage of these proceedings, including at trial, evidence of any facts or information that Petitioner may later recall or discover. Petitioner further reserves the right to change, amend or supplement any or all of the matters contained in these Responses with factors or information that it learns was omitted by inadvertence, mistake, excusable neglect, and as additional facts are ascertained, analyses are made, research is completed and contentions are made in this proceeding.

These Responses also are made solely for the purpose of this action, and are subject to all objections as to competence, relevance, materiality, propriety and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Request were asked of, or statements contained herein were made by, a witness present and testifying in this proceeding. All such objections and grounds are expressly reserved and may be interposed during the testimony period.

Petitioner's Response to each individual Request is submitted without prejudice to, and without in any way waiving, the general objections listed below but not expressly set forth in that response. These objections are incorporated into every response and are set forth here to avoid the duplication and repetition of restating them for each Request. These general objections may specifically be referred to in response to a Request for clarity; however, the failure to specifically

repeat a general objection should not be construed as a waiver of the objection. Moreover, no incidental or implied admissions are intended by the Responses below. The fact that Petitioner has answered or objected to all or part of any Request should not be construed or taken as an admission that Petitioner accepts or admits the existence of any purported facts set forth or assumed by such Request or that Petitioner has waived or intended to waive any part of any objection to the Request. Furthermore, Petitioner's objections to Registrant's Requests do not necessarily reflect the existence of the requested information.

GENERAL OBJECTIONS

1. Petitioner objects to these Requests to the extent they seek to impose an obligation on Petitioner which exceeds a litigant's discovery obligations as provided by the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Petitioner objects to these Requests to the extent they use broad or undefined terms.

3. Petitioner objects to these Requests to the extent they seek an admission as to information not within the present possession, custody or control of Petitioner. Petitioner also objects to these requests to extent they seek information publicly available and/or already in the possession of Respondent and/or information in the custody or control of third parties.

4. Petitioner objects to these Requests to the extent they encompass and seek documents, information or communications protected from discovery on grounds of the attorney-client privilege, work product immunity, trial preparation material and/or other applicable privileges or immunities from discovery and such information will be withheld (herein generally referred to as "privilege").

5. Petitioner objects to each Request to the extent it seeks an admission to or calls for scientific, medical or other expert opinion or seeks a legal conclusion.

6. Petitioner objects to each Request to the extent it seeks an admission as to information whose possible materiality is outweighed by the burden of collecting the information.

7. Petitioner objects to each Request to the extent it seeks an admission as to facts which are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence.

8. The specific Responses set forth below are based upon Petitioner's interpretation of the language used in the Requests, and Petitioner reserves the right to amend or supplement further its responses in the event Registrant asserts an interpretation that differs from Petitioner's interpretation

9. Petitioner objects to these Requests to the extent that each is so vague, indefinite, confusing, ambiguous, overly broad, and unduly burdensome so as to render it impossible to respond in any reasonable manner or amount of time.

10. Petitioner objects to these Requests to the extent that investigation and discovery are ongoing.

11. Petitioner objects to these Requests to the extent they refer to "marks" as undefined, vague, ambiguous and indefinite.

12. Petitioner objects to DEFINITIONS AND INSRUCTIONS and the definition at B for "Registrant's Marks" as vague and indefinite and further objects to each request that uses the term "Registrant's Marks." Petitioner further objects to the extent the definition seeks to suggest Registrant's ownership of the marks and that Registrant owns marks that are not the subject of

any registrations. Petitioner further objects to the Requests to the extent they refer to a time frame and events when Registrant did not own the Registrations, was not an owner of the mark(s), and/or and was not the sole owner of the mark.

13. Petitioner objects to DEFINITIONS AND INSTRUCTIONS and the definition at C for “Petitioner’s Applications” as vague and indefinite and further objects to each request that uses the term “Petitioner’s Applications.”

14. Petitioner objects to the DEFINITIONS AND INSTUCTIONS and the definition at G for “Amendment” as vague and indefinite and further objects to each request that uses the term “Amendment.” Petitioner further objects to the extent the definition seeks to suggest there was an effective, agreed-upon or signed Amendment to the Asset Purchase Agreement and tries to mischaracterize the terms of the signed Asset Purchase Agreement.

15. Each and all of these General Objections are hereinafter incorporated by reference in response to each and every Request.

ADMISSIONS

REQUEST NO. 1: Admit that Petitioner does not own the mark GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK.

RESPONSE:

Denied.

REQUEST NO. 2: Admit that Petitioner does not own the mark GIOVANNI’S ALOHA SHRIMP.

RESPONSE:

Denied.

REQUEST NO. 3: Admit that Petitioner does not own the mark GIOVANNI'S ALOHA FOODS.

RESPONSE:

Denied.

REQUEST NO. 4: Admit that Petitioner does not own the mark GIOVANNI'S SCAMPI SAUCE.

RESPONSE:

Denied.

REQUEST NO. 5: Admit that Petitioner does not own the mark GIOVANNI'S SCAMPI MARINADE.

RESPONSE:

Denied

REQUEST NO. 6: Admit that Petitioner does not own the mark GIOVANNI'S HOT & SPICY SAUCE.

RESPONSE:

Denied.

REQUEST NO. 7: Admit that, at the time Petitioner filed Petitioner's Applications, Petitioner was aware that Registrant claimed a right and interest in the marks that were the subjects of Petitioner's Applications.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner also objects to the extent that "time Petitioner filed Petitioner's Applications," "claimed a right and

interest in the marks” and “marks” are undefined, vague and ambiguous. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 8: Admit that Petitioner has not received a valid trademark assignment of the marks that were the subjects of Petitioner’s Applications from Registrant, or any other any person or entity.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner also objects to the extent “not received a valid trademark assignment” is undefined and vague. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 9: Admit that Petitioner has not received a valid trademark assignment of any of the Registrant’s Marks, from Registrant, or any other any person or entity.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner also objects to the extent “not received a valid trademark assignment” is undefined and vague. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 10: Admit that in 1997, Petitioner sought and received Registrant’s consent to sell shrimp, hot sauce, and scampi marinade, at either retail or wholesale, within the State of Hawaii, using the same recipe Registrant had been using since 1993.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner also objects to the extent “sought and received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “sell shrimp, hot sauce, and scampi marinade, at either retail or wholesale, within the

State of Hawaii, using the same recipe Registrant had been using since 1993” as overly broad, ambiguous, indefinite, undefined and vague. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 11: Admit that in 1997, Petitioner sought and received Registrant’s consent to use the names Giovanni’s Aloha Shrimp; Giovanni’s Scampi Sauce; and Giovanni’s Hot and Spicy Sauce; and Giovanni’s Original White Shrimp Truck in connection with selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, within the State of Hawaii.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner also objects to the extent “sought and received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, within the State of Hawaii” as overly broad, ambiguous, indefinite, undefined and vague. Furthermore, Petitioner objects to the term “names” as vague and indefinite. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 12: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Kahuku location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase

“selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad, vague, ambiguous, indefinite and undefined.

Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 13: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI’S ORIGINAL WHITE SHRIMP TRUCK in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Haleiwa location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad, vague, ambiguous, indefinite and undefined and Petitioner cannot respond and therefore this request is denied.

REQUEST NO. 14: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI’S ALOHA SHRIMP in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Kahuku location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad,

vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 15: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S ALOHA SHRIMP in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Haleiwa location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent "received" is undefined, vague and ambiguous. Petitioner further objects to the term "consent" as vague, ambiguous and undefined. Further, Petitioner objects to the phrase "selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale" as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 16: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S HOT & SPICY SAUCE in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Kahuku location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent "received" is undefined, vague and ambiguous. Petitioner further objects to the term "consent" as vague, ambiguous and undefined. Further, Petitioner objects to the phrase "selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale" as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 17: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S HOT & SPICY SAUCE in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Haleiwa location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 18: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S SCAMPI MARINADE in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Haleiwa location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 19: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S SCAMPI MARINADE in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Kahuku location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 20: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S SCAMPI SAUCE in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Haleiwa location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent “received” is undefined, vague and ambiguous. Petitioner further objects to the term “consent” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 21: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S SCAMPI SAUCE in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, at the Kahuku location.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent "received" is undefined, vague and ambiguous. Petitioner further objects to the term "consent" as vague, ambiguous and undefined. Further, Petitioner objects to the phrase "selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale" as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 22: Admit that Petitioner received the consent of Registrant to use the mark GIOVANNI'S ALOHA FOODS in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale, in 1999.

RESPONSE:

Petitioner objects to the extent this request seeks a legal conclusion. Petitioner further objects to the extent "received" is undefined, vague and ambiguous. Petitioner further objects to the term "consent" as vague, ambiguous and undefined. Further, Petitioner objects to the phrase "selling shrimp, hot sauce, and scampi marinade, at either retail or wholesale" as overly broad, vague, ambiguous, indefinite. Subject to and without waiver of the foregoing objections, this Request is denied.

REQUEST NO. 23: Admit that Registrant was using the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK in connection with providing restaurant services and selling shrimp,

hot sauce, and scampi marinade at the Kahuku Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied..

REQUEST NO. 24: Admit that Registrant was using the mark GIOVANNI’S ORIGINALWHITE SHRIMP TRUCK in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Haleiwa Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 25: Admit that Registrant was using the mark GIOVANNI’S ALOHA SHRIMP in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Kahuku Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad,

vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 26: Admit that Registrant was using the mark GIOVANNI'S ALOHA SHRIMP in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Haleiwa Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term "using" as undefined, vague and ambiguous. Petitioner further objects to the phrase "selling shrimp, hot sauce, and scampi marinade" as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 27: Admit that the Registrant was using the GIOVANNI'S HOT & SPICY SAUCE mark in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Kahuku Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term "using" as undefined, vague and ambiguous. Petitioner further objects to the phrase "selling shrimp, hot sauce, and scampi marinade" as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 28: Admit that the Registrant was using the GIOVANNI'S HOT & SPICY SAUCE mark in connection with providing restaurant services and selling shrimp, hot sauce, and

scampi marinade at the Haleiwa Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined and Petitioner. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 29: Admit that Registrant was using the GIOVANNI'S SCAMPI MARINADE mark in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Kahuku Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 30: Admit that Registrant was using the GIOVANNI'S SCAMPI MARINADE mark in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Haleiwa Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad,

vague, ambiguous, indefinite and undefined and Petitioner. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 31: Admit that Registrant was using the GIOVANNI'S SCAMPI SAUCE mark in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Kahuku Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 32: Admit that Registrant was using the GIOVANNI'S SCAMPI SAUCE mark in connection with providing restaurant services and selling shrimp, hot sauce, and scampi marinade at the Haleiwa Location prior to the execution date of the Asset Purchase Agreement executed by Petitioner and Registrant in 1997.

RESPONSE:

Petitioner objects to the term “using” as undefined, vague and ambiguous. Petitioner further objects to the phrase “selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 33: Admit that Petitioner has continuously used the marks included within Petitioner’s Applications in connection with providing restaurant services and/or selling shrimp,

hot sauce, and scampi marinade at the Kahuku location since the date of commencement of Petitioner's lease for the Kahuku property.

RESPONSE:

Petitioner objects to the term “used” as undefined, vague and ambiguous. Petitioner further objects to the phrase “and/or selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined and the time frame of the request is vague, ambiguous, indefinite, undefined and confusing. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 34: Admit that Petitioner has continuously used the marks included within Petitioner’s Applications in connection with providing restaurant services and/or selling shrimp, hot sauce, and scampi marinade at the Haleiwa location since the date of commencement of Petitioner's lease for the Haleiwa property.

RESPONSE:

Petitioner objects to the term “used” as undefined, vague and ambiguous. Petitioner further objects to the phrase “and/or selling shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 35: Admit that Petitioner has used the phrases “Established in 1993”; “Beginning in 1993”; and/or other similar variations thereof in connection with its advertising, promotion, and/or marketing of Petitioner's goods and services.

RESPONSE:

Petitioner objects to the phrase “and/or other similar variations thereof” as vague, undefined and ambiguous. Admitted.

REQUEST NO. 36: Admit that the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK has not lost significance as an indicator of the origin of goods or services since the execution date of the Asset Purchase Agreement in 1997.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase "has not lost significance as an indicator of the origin of goods or services" as vague, undefined and ambiguous. Petitioner also objects to the extent the Request suggests Registrant was the source of the goods and services when Petitioner was and is the source and this request is confusing because Petitioner adopted this mark after 1997 and the mark was not in use at the time the APA was executed. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 37: Admit that the mark GIOVANNI'S SCAMPI MARINADE has not lost significance as an indicator of the origin of goods or services since the execution date of the Asset Purchase Agreement in 1997.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase "has not lost significance as an indicator of the origin of goods or services" as vague, undefined and ambiguous. Petitioner also objects to the extent the Request suggests Registrant was the source of the goods and services when Petitioner was and is the source and this request is confusing because Petitioner has not adopted this mark and the mark was not in use at the time the APA was executed and Petitioner cannot answer because it does not know whether third parties considered this as a source indicator.

REQUEST NO. 38: Admit that the mark GIOVANNI'S SCAMPI SAUCE has not lost significance as an indicator of the origin of goods or services since the execution date of the Asset Purchase Agreement in 1997.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase “has not lost significance as an indicator of the origin of goods or services” as vague, undefined and ambiguous. Petitioner also objects to the extent the Request suggests Registrant was the source of the goods and services when Petitioner was and is the source and this request is confusing because Petitioner adopted this mark after 1997 and the mark was not in use at the time the APA was executed. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 39: Admit that the mark GIOVANNI'S HOT & SPICY SAUCE has not lost significance as an indicator of the origin of goods or services since the execution date of the Asset Purchase Agreement in 1997.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase “has not lost significance as an indicator of the origin of goods or services” as vague, undefined and ambiguous. Petitioner also objects to the extent the Request suggests Registrant was the source of the goods and services when Petitioner was and is the source and this request is confusing because Petitioner adopted this mark after 1997 and the mark was not in use at the time the APA was executed. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 40: Admit that the mark GIOVANNI'S ALOHA SHRIMP has not lost significance as an indicator of the origin of goods or services since the execution date of the Asset Purchase Agreement in 1997.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase “has not lost significance as an indicator of the origin of goods or services” as vague, undefined and ambiguous. Petitioner also objects to the extent the Request suggests Registrant was the source of the goods and services when Petitioner was and is the source and Petitioner cannot answer because it does not know whether third parties considered this as a source indicator.

REQUEST NO. 41: Admit that the mark GIOVANNI'S ALOHA FOODS has not lost significance as an indicator of the origin of goods or services since 1999.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase “has not lost significance as an indicator of the origin of goods or services” as vague, undefined and ambiguous. Petitioner also objects to the extent the Request suggests Registrant was the source of the goods and services when Petitioner was and is the source and Petitioner cannot answer because it does not know whether third parties considered this as a source indicator.

REQUEST NO. 42: Admit that Petitioner's right to use any of the Registrant's Marks, if any, arises solely from its contractual relationship with Registrant.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase “right to use” as vague, undefined and ambiguous. Petitioner further objects to the contention to the extent the request suggests it has a contractual relationship with Registrant and/or any contractual relationship is ongoing. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 43: Admit that Petitioner's right to use any of the marks within Petitioner's Applications, if any, arises solely from its contractual relationship with Registrant.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase “right to use” as vague, undefined and ambiguous. Further, Petitioner objects to the contention to the extent the request suggests it has a contractual relationship with Registrant and/or any contractual relationship is ongoing. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 44: Admit that Registrant did not abandon the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 45: Admit that Registrant did not abandon the mark GIOVANNI'S ALOHA SHRIMP.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 46: Admit that Registrant did not abandon the mark GIOVANNI'S ALOHA FOODS.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 47: Admit that Registrant did not abandon the mark GIOVANNI'S SCAMPI MARINADE.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 48: Admit that Registrant did not abandon the mark GIOVANNI'S SCAMPI SAUCE.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 49: Admit that Registrant did not abandon the mark GIOVANNI'S HOT & SPICY SAUCE.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 50: Admit that Petitioner's use since 1997 of the marks that were the subjects of Petitioner's Applications inures to the benefit of Registrant.

RESPONSE:

Denied.

REQUEST NO. 51: Admit that Petitioner's use since 1997 of any or all of the Registrant's Marks inures to the benefit of Registrant.

RESPONSE:

Denied.

REQUEST NO. 52: Admit that the use by Registrant of Registrant's Marks has been valid and continuous since the date of first use in 1993.

RESPONSE:

Denied.

REQUEST NO. 53: Admit that the mark GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK is inherently distinctive and had come to identify Registrant as the source of the goods and services, in particular but without limitation restaurant services and shrimp, hot sauce, and scampi marinade, at the Haleiwa and Kahuku locations, prior to Petitioner's possession of said premises pursuant to its lease.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term "identify" as vague and indefinite. Further, Petitioner objects to the phrase "the source of the goods and services, in particular without limitation restaurant services

and shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 54: Admit that the mark GIOVANNI'S ALOHA SHRIMP is inherently distinctive and had come to identify Registrant as the source of the goods and services, in particular but without limitation restaurant services and shrimp, hot sauce, and scampi marinade, at the Haleiwa and Kahuku locations, prior to Petitioner's possession of said premises pursuant to its lease.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “identify” as vague and indefinite. Further, Petitioner objects to the phrase “the source of the goods and services, in particular without limitation restaurant services and shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 55: Admit that the mark GIOVANNI'S ALOHA FOODS is inherently distinctive and had come to identify Registrant as the source of the goods and services, in particular but without limitation restaurant services and shrimp, hot sauce, and scampi marinade, prior to Petitioner's use beginning in 1999.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “identify” as vague and indefinite. Further, Petitioner objects to the phrase “the source of the goods and services, in particular without limitation restaurant services and shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 56: Admit that the mark GIOVANNI'S SCAMPI SAUCE is inherently distinctive and had come to identify Registrant as the source of the goods and services, in particular but without limitation restaurant services and shrimp, hot sauce, and scampi marinade, at the Haleiwa Location and Kahuku Location, prior to Petitioner's possession of said premises pursuant to its lease.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “identify” as vague and indefinite. Further, Petitioner objects to the phrase “the source of the goods and services, in particular without limitation restaurant services and shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 57: Admit that the mark GIOVANNI'S SCAMPI MARINADE is inherently distinctive and had come to identify Registrant as the source of the goods and services, in particular but without limitation restaurant services and shrimp, hot sauce, and scampi marinade, at the Haleiwa Location and Kahuku Location, prior to Petitioner's possession of said premises pursuant to its lease.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “identify” as vague and indefinite. Further, Petitioner objects to the phrase “the source of the goods and services, in particular without limitation restaurant services and shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 58: Admit that the mark GIOVANNI'S HOT & SPICY SAUCE is inherently distinctive and had come to identify Registrant as the source of the goods and services, in particular but without limitation restaurant services and shrimp, hot sauce, and scampi marinade, at the Haleiwa Location and Kahuku Locations, prior to Petitioner's possession of said premises pursuant to its lease.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “identify” as vague and indefinite. Further, Petitioner objects to the phrase “the source of the goods and services, in particular without limitation restaurant services and shrimp, hot sauce, and scampi marinade” as overly broad, vague, ambiguous, indefinite and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 59: Admit that at the time of filing the Petitioner’s Applications, Petitioner was aware that Registrant was raising and asserting its prior use, superior right and ownership of the trade name and marks that are the subject of such applications, against Petitioner.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “raising and asserting” as vague, ambiguous and undefined. Further, Petitioner objects to the phrase “superior right and ownership” as vague, undefined, and ambiguous. Furthermore, Petitioner objects to the phrase “the time of filing the Petitioner’s Applications” as vague, ambiguous, indefinite and confusing and therefore Petitioner cannot respond and therefore this request is denied.

REQUEST NO. 60: Admit that at the time of filing the Petitioner's Applications, that Registrant was communicating and negotiating with Petitioner for Petitioner's use of the trade name and mark.

RESPONSE:

Petitioner objects to the phrase "the time of filing the Petitioner's Applications" as vague, ambiguous, indefinite and confusing. Further petitioner objects to the phrase "communicating and negotiating" as vague and indefinite. Petitioner further objects to the phrase "Petitioner's use of the tradename and mark" as vague, undefined, ambiguous, overly broad, and incoherent and Petitioner cannot respond and therefore this request is denied.

REQUEST NO. 61: Admit that at the time of filing the Petitioner's Applications Registrant was disputing Petitioner's right to use or refer to the trade name and mark other than as arose from their contractual relationship.

RESPONSE:

Petitioner objects to the phrase "the time of filing the Petitioner's Applications" as vague, ambiguous, indefinite and confusing. Further, Petitioner objects to the term "disputing" as vague and ambiguous. Petitioner further objects to the phrase "Petitioner's use of the tradename and mark" as vague, undefined, ambiguous, overly broad, and incoherent and Petitioner cannot respond and therefore this request is denied.

REQUEST NO. 62: Admit that the APA is authentic.

RESPONSE:

Admitted.

REQUEST NO. 63: Admit that when entering into the APA, Petitioner acknowledged and Registrant was required to warranty that it was the only individual or entity that owned any rights to Giovanni's Aloha Shrimp, the Giovanni's Scampi and Giovanni's Hot and Spicy Sauces and that it had the full right to contract with Petitioner as to any agreement regarding the sale and use of said sauces (Para. 5E).

RESPONSE:

Petitioner objects to this Request to the extent it seeks a legal conclusion. Petitioner further objects to the phrase "required to warranty" as undefined, vague, confusing and ambiguous. Further, Petitioner objects to this Request to the extent it implies Petitioner was a party to the APA. Furthermore, Petitioner objects to this Request to extent it implies Registrant was the sole party warranting rights. Petitioner further objects to this Request to extent the request uses the term "it" as nonsensical and confusing. Petitioner further objects to this Request to the extent it attempts to expand upon the writing of the APA Paragraph 5E. Subject to and without waiver of the foregoing Objections, Petitioner admits only that it agreed to Paragraph 5E of the APA.

REQUEST NO. 64: Admit that the Parties executed an Amendment to the APA and that the document that is attached as "Exhibit A" is a genuine and authentic copy of the Amendment that was made to the APA.

RESPONSE:

Denied.

REQUEST NO. 65: Admit that Petitioner is contractually (a) proscribed from using the marks outside of Hawaii, (b) proscribed from registering the marks outside of Hawaii; (c) obligated to sell at least a half pound of shrimp in the plate lunches sold by Buyer; (d) obligated to use the

same scampi sauce and hot and spicy sauce that the Registrant used as marination and sauces for the shrimp sold by Petitioner after acquiring the Registrant's business, (e) and trained by Registrant.

RESPONSE:

Petitioner objects to this request to the extent it requires multiple responses and to the extent it is vague, indefinite and confusing and suggests Petitioner was a party to the APA and has any ongoing contractual relationship with Registrant. Petitioner further objects to the term "marks" as vague, indefinite, and undefined. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 66: Admit that Petitioner has maintained the portion size as contractually required.

RESPONSE:

Petitioner objects to this Request to the extent it seeks a legal conclusion. Petitioner further objects to the term "portion size" as undefined, vague, indefinite and confusing and suggests Petitioner has any contract with Registrant and thus Petitioner cannot respond and therefore this request is denied.

REQUEST NO. 67: Admit that Petitioner has maintained the overall quality of the food and services that it provides since 1997.

RESPONSE:

Petitioner objects to the terms "Petitioner" and "maintained" as vague, indefinite and undefined. Petitioner further objects to the term "overall quality" as vague, indefinite and undefined and the time frame of the request is also vague, ambiguous, indefinite, undefined and confusing and thus Petitioner cannot respond and therefore denies this request.

REQUEST NO. 68: Admit that Petitioner serves largely the same menu items that were served prior to 1997.

RESPONSE:

Petitioner objects to this request to the extent it uses the term “largely” as vague, ambiguous and indefinite and Petitioner cannot respond and therefore this request is denied.

REQUEST NO. 69: Admit that Petitioner continues to sell shrimp using the same sauce recipes to present date.

RESPONSE:

Petitioner objects to this request to extent it calls for an admission of information in the possession of others. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 70: Admit that Petitioner has represented to the public that it is a continuation of the same business that Registrant operated starting in 1993.

RESPONSE:

Petitioner objects to the phrases “Registrant” and “represented to the public” as vague and indefinite. Petitioner further objects to the phrases “continuation,” “same business” and “operated” as vague, ambiguous and undefined, and objects to the extent the phrase “same business” suggests an ongoing relationship with Registrant or that Registrant was the sole owner and/or operator of a business going back to 1993 and/or that Registrant has been operating a business since 1993. Petitioner cannot respond and therefore this request is denied

REQUEST NO. 71: Admit that under the history tab on Petitioner’s website giovannisshrimptruck.com Petitioner includes a history of the company by way of a timeline and that the first date on the timeline is 1993 and Petitioner’s website states: “Giovanni’s started

operating out of a converted 1953 bread truck without much more than a few recipes for great shrimp and an entrepreneurial spirit. We drove our beloved truck around the North Shore stopping along the side of the road for a couple hours at each stop to share what we thought was some pretty special food- turns out, we were the only shrimp truck around. Locals took notice and word began to spread about the delicious shrimp...”

RESPONSE:

Admitted.

REQUEST NO. 72: Admit that Petitioner advertises on Facebook that it was “Founded in 1993.”

RESPONSE:

Admitted.

REQUEST NO. 73: Admit that Registrant used the Giovanni’s Aloha Shrimp, Giovanni’s Original White Shrimp Truck, Giovanni’s Hot and Spicy Sauce, Giovanni’s Scampi Sauce names to establish himself in the trade and to gain customer acceptance.

RESPONSE:

Denied.

REQUEST NO. 74: Admit that Registrant used the “Giovanni’s Original White Shrimp Truck” signage depicted below Para. 13 of the Petition for Cancellation to advertise its business prior to 1997.

RESPONSE:

Denied.

REQUEST NO. 75: Admit that Registrant used the Giovanni’s Original White Shrimp Truck depicted below Para. 13 of the Petition for Cancellation to advertise its business prior to 1997.

RESPONSE:

Petitioner objects to the extent Registrant titles the truck depicted in paragraph 13 of the Petition for Cancellation as Giovanni's Original White Shrimp Truck as undefined, improper, and appears to seek a legal conclusion. Petitioner further objects to this request to the extent Registrant implies he was the sole user of the truck depicted below paragraph 13 in the Petition for Cancellation prior to 1997. Petitioner further objects to the use of the term "its" as undefined, ambiguous and confusing considering the fact that Registrant is an individual. Petitioner further objects to the extent the truck depicted in paragraph 13 has been modified in appearance since 1997. Petitioner further objects to the extent the request uses the phrase "to advertise its business prior to 1997" as Petitioner's truck depicted in paragraph 13 of the Petition for Cancellation has been modified since Petitioner purchased the asset depicted. Petitioner also objects to the extent it calls for an admission regarding information in possession of others. Subject to and without waiver of the foregoing objections, Petitioner admits it is the same truck Petitioner purchased in the asset purchase agreement. Subject to and without waiver of the foregoing Objections, this request is denied

REQUEST NO. 76: Admit that, apart from the APA and the Amendment attached hereto as Exhibit A, the Parties have not entered into any other written agreement that pertains to the Registrant's Marks, or the other rights and obligations contained within the APA.

RESPONSE:

Petitioner has already denied that it entered into or signed Exhibit A and therefore Petitioner objects to this request. Subject to and without waiver of the foregoing, Petitioner denies this request.

REQUEST NO. 77: Admit that, in 1997, Petitioner paid Registrant a lump-sum payment of \$120,000 as required under the terms of the APA.

RESPONSE:

Petitioner objects to the term “lump-sum payment” as vague and indefinite. Subject to and without waiver of the foregoing Objections, Petitioner admits that Nitsche Enterprises, Inc., paid John Aragona and Connie Aragona the \$120,000 specified in the APA.

REQUEST NO. 78: Admit that Petitioner paid the lump-sum consideration in part for the right to use the Registrant’s Marks, either in the identical form thereof or in near resemblance thereto.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “lump-sum payment” as vague and indefinite. Further, Petitioner objects to the phrase “consideration in part for the right to use the Registrant’s Marks” as vague and indefinite. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 79: Admit that Petitioner paid the lump-sum consideration in part for the right to use the marks that are the subject of Petitioner’s Applications, either in the identical form thereof or in near resemblance thereto.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects to the term “lump-sum payment” as vague and indefinite. Further, Petitioner objects to the phrase “consideration in part for the right to use the marks” as vague and indefinite. Petitioner further objects to the phrase “either in the identical form thereof or in near resemblance thereto” as vague and indefinite. Subject to and without waiver of the foregoing objections, this request is denied.

REQUEST NO. 80: Admit that the name “Giovanni’s” in Petitioner’s shrimp truck business and the shrimp and sauces that Petitioner sells were named after and refers to John “Giovanni” Aragona.

RESPONSE:

Denied.

REQUEST NO. 81: Admit that Petitioner is not commonly known as “Giovanni.”

RESPONSE:

Petitioner objects to the phrase “not commonly known as” as vague and indefinite. Petitioner further objects to this request as the term “Petitioner” as vague and undefined as it appears to indicate Petitioner is a person and is contrary to the Registrant’s definition. Petitioner admits that its business and goods/services are known as and/or referred to in part as “Giovanni’s.”

REQUEST NO. 82: Admit that Registrant is publicly connected with Petitioner’s shrimp truck business and the shrimp and sauces that Petitioner sells.

RESPONSE:

Petitioner objects to this request to the extent the phrase “publicly connected” is undefined, vague and ambiguous. Subject to and without waiver of these Objections, this request is denied.

REQUEST NO. 83: Admit that Registrant did not ask Petitioner to discontinue using Registrant’s Marks until after Petitioner filed US Trademark Applications in December of 2010.

RESPONSE:

Petitioner objects to this request to the extent it seeks a legal conclusion. Petitioner further objects that “US Trademark Applications in December of 2010” is undefined. Petitioner

further objects to the extent the request suggests Registrant had the right to make any requests or Petitioner. Subject to and without waiver of the foregoing Objections and to the extent Petitioner can understand this request, it is admitted.

REQUEST NO. 84: Admit that when Petitioner filed the US Trademark Application for the GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK mark (Serial Number: 85201283) on December 18, 2010, Petitioner knew of Registrant's prior use of and rights to the mark, either in the identical form thereof or in near resemblance thereto.

RESPONSE:

Petitioner objects to the phrase "knew of Registrations prior use of and rights to the mark" as vague and indefinite. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 85: Admit that when Petitioner filed the US Trademark Application for the GIOVANNI'S ALOHA SHRIMP mark (Serial Number: 85201288) on December 18, 2010, Petitioner knew of Registrant's prior use of and rights to the mark, either in the identical form thereof or in near resemblance thereto.

RESPONSE:

Petitioner objects to the phrase "knew of Registrations prior use of and rights to the mark" as vague and indefinite. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 86: Admit that when Petitioner filed the US Trademark Application for the GIOVANNI'S ORIGINAL HOT SAUCE mark (Serial No.: 85219370) on January 17, 2011, Petitioner knew of Registrant's prior use of and rights to the mark, either in the identical form thereof or in near resemblance thereto.

RESPONSE:

Petitioner objects to the phrase “knew of Registrations prior use of and rights to the mark” as vague and indefinite. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 87: Admit that when Petitioner filed the US Trademark Application for the GIOVANNI'S ORIGINAL SCAMPI SAUCE mark (Serial Number: 85219363) on January 17, 2011, Petitioner knew of Registrant’s prior use of and rights to the mark, either in the identical form thereof or in near resemblance thereto.

RESPONSE:

Petitioner objects to the phrase “knew of Registrations prior use of and rights to the mark” as vague and indefinite. Subject to and without waiver of the foregoing Objections, this request is denied.

REQUEST NO. 88: Admit that Registrant has legal rights to Registrant’s Marks superior to Petitioner’s trademark rights.

RESPONSE:

Denied.

REQUEST NO. 89: Admit that Petitioner failed to disclose Registrant’s legal rights to the marks that were the subject of Petitioner’s Applications when Petitioner filed Petitioner’s Applications.

RESPONSE:

Denied.

DATE: September 24, 2013

s/Jennifer Fraser/

Jennifer Fraser
Daniel Mullarkey
NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP
1875 Eye Street, NW
11th Floor
Washington, DC 20006
(202) 659-0100 Telephone
(202) 659-0105 Facsimile

Attorneys for Petitioner,
LuckyU Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2013 a true and correct copy of the foregoing **Petitioner's Responses to Registrants First Request for Admissions** was served by First Class Mail, postage prepaid, on Respondent's Counsel, Jamie N. Pitts, The Law Office of Jamie N. Pitts, 1064 N. Tamiami Trail, STE 1533, Sarasota, FL 34236, with a courtesy copy served via e-mail to JAMIENPITTS@jnplawfirm.com.

s/Daniel Mullarkey/

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Troy Nitsche Deposition
Exhibit: 22
Exhibit Offered by Respondent
12/3/14

DOMESTIC PROFIT CORPORATION
FILING FEE: \$ 25.00

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

RETURN ORIGINAL BY
PENALTY FOR LATE FILING

H JY

335 Merchant Street
Mailing Address: Annual Filing, P.O. Box 113600, Honolulu, HI. 96811

DOMESTIC PROFIT CORPORATION ANNUAL REPORT AS OF 7/1/03
CORPORATE NAME AND MAILING ADDRESS:

LUCKY U ENTERPRISES, INC.

~~PO BOX: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCKS~~

✓ 52-120 Lalo Kuilima Way #12
Kahuku, HI. 96731

B17 SPECIAL 25.00
B22 SPECIAL 20.00
SUBT \$45.00
035001035
CHRG 45.00

If the above mailing address has changed, line out and print change to the right.

If address of principal office differs from the above mailing address, state the address of principal office. Include City, State, and Zip

Code:

1. AUTHORIZED SHARES (To correct line out and print the correction to the right.)	TOTAL NUMBER OF SHARES ISSUED	
CLASS	NUMBER	CLASS
✓ COMMON	1,000	COMMON
		NUMBER
		1,000

2. NATURE OF BUSINESS: Restaurants

(To correct, line out and print corrections below. If inactive during the period, state INACTIVE.)

3. Street address of the registered office in Hawaii and the name of the registered agent at that address. (To correct, line out and print change on the right. See reverse for instructions.) After any changes made, the street addresses of its registered office and principal office shall be identical.

✓ TROY NITSCHÉ
52-120 LALO KUILIMA WAY #12
KAHUKU, HI 96731

4. OFFICERS/DIRECTORS: List all officers and directors. (To correct, line out and print corrections to the right. See reverse for instructions.)

OFFICE HELD/ DIRECTOR CODE	NAME IN FULL	ADDRESS (INCLUDE CITY, STATE & ZIP CODE)
P-D	TROY NITSCHÉ	52-120 LALO KUILIMA WAY #12, KAHUKU, HI. 96731
VP	"	"
S	"	"
T	"	"

NO CHANGES: Do not check this box if changes have been made above. (Checking this box means there are no changes reported. The Department will not be held responsible for any changes made to this report.)

C/JY

CERTIFICATION

I certify under the penalties of Section 414-20, Hawaii Revised Statutes, that I have read the above, the information is true and correct, and I am authorized to sign this report.

DATE: 2/4/05


Signature of authorized officer, attorney-in-fact
for an officer, or receiver or trustee

James Goodrich
Print Name

FILE NO. 20160201
Rev. 7/2004

B17 25.
B22 20.

File this Original
(SEE REVERSE SIDE FOR INSTRUCTIONS)

02/18/200520130

RECEIVED
BUSINESS REGISTRATION
DIVISION COUNTER
2005 FEB 18 P 2:42
DEPARTMENT OF
COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

DOMESTIC PROFIT CORPORATION
FILING FEE: \$ 25.00

STATE OF HAWAII

RETURN ORIGINAL BY
PENALTY FOR LATE FILING

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

H
JY

335 Merchant Street
Mailing Address: Annual Filing, P.O. Box 113600, Honolulu, HI. 96811

DOMESTIC PROFIT CORPORATION ANNUAL REPORT AS OF 7/1/04
CORPORATE NAME AND MAILING ADDRESS:

LUCKYU ENTERPRISES, INC.
~~DBA: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK~~ (JD)
52-120 Lalo Kuilima Way #12
Kahuku, HI. 96731

817 SPECIAL 25.00
822 SPECIAL 10.00
SUBT \$35.00
035001035
CHRG 35.00

If the above mailing address has changed, line out and print change to the right.
If address of principal office differs from the above mailing address, state the address of principal office. Include City, State, and Zip Code:

1. AUTHORIZED SHARES (To correct line out and print the correction to the right.)		TOTAL NUMBER OF SHARES ISSUED	
CLASS	NUMBER	CLASS	NUMBER
COMMON	1,000	COMMON	1,000

2. NATURE OF BUSINESS: RESTAURANTS

(To correct, line out and print corrections below. If inactive during the period, state INACTIVE.)

3. Street address of the registered office in Hawaii and the name of the registered agent at that address. (To correct, line out and print change on the right. See reverse for instructions.) After any changes made, the street addresses of its principal office and agent shall be identical.

TROY NITSCHÉ
52-120 Lalo Kuilima Way #12
KAHUKU, HI. 96731

4. OFFICERS/DIRECTORS: List all officers and directors. (To correct, line out and print corrections to the right. See reverse for instructions.)

OFFICE HELD DIRECTOR CODE	NAME IN FULL	ADDRESS (INCLUDE CITY, STATE & ZIP CODE)
VP	TROY NITSCHÉ	52-120 LALO KUILIMA WAY #12, KAHUKU, HI. 96731
S	"	"
T	"	"

NO CHANGES: Do not check this box if changes have been made above. (Checking this box means there are no changes reported. The Department will not be held responsible for any changes made to this report.)

CERTIFICATION

I certify under the penalties of Section 414-20, Hawaii Revised Statutes, that I have read the above, the information is true and correct, and I am authorized to sign this report.

DATE: 2/4/05
Signature of authorized officer, attorney-in-fact for an officer, or receiver or trustee: *James Goodrich*
Print Name: James Goodrich
(if the corporation is in the hands of a receiver or trustee)

FILE NO. 20140201
Rev. 7/2004

B17 25-
B22 10

File this Original
(SEE REVERSE SIDE FOR INSTRUCTIONS)

02/18/200520128

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BUSINESS REGISTRATION-COUNTER
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

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

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
Registration date: October 9, 2012

In the matter of Trademark Registration No. 4,224,400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration date: October 16, 2012

In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

**STIPULATION REGARDING
CERTIFICATION OF TROY NITSCHKE DEPOSITION TRANSCRIPT**

Pursuant to Trademark Rule 2.123(b) and TBMP § 705, Petitioner and Respondent, through their undersigned attorneys, hereby stipulate and agree to the following:

1) The parties stipulate and agree to the waiver of the requirement that Troy Nitsche read and sign the certified deposition testimony transcript of the deposition taken on December 3rd,

2014 as described in 37 C.F.R. § 2.123(e)(5). The parties reserve the right to all other objections.

Date: December 30, 2014

/ Jamie N. Pitts
Jamie N. Pitts
The Law Office of Jamie N. Pitts, Esq., PA
887 West Marietta Street, Northwest
Unit M-105
Atlanta, Georgia 30318
Attorney for Respondent

Date: December 30, 2014

/Daniel Mullarkey
Jennifer Fraser
Daniel P. Mullarkey
Novak Druce Connolly + Quigg LLP
1875 Eye Street, NW, 11th Floor
Washington, DC 20006
Attorneys for Petitioner