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

In the matter of Application Serial No. 74/673,508
Filed on May 19, 1995
For the Mark Harry's and Design



07-01-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #70

The Harris Soup Company, Inc.,)
)
Applicant,)
)
v.)
)
Harry's Farmers Market, Inc.¹,)
)
Registrant.)

Concurrent Use No. 1242

APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Applicant, The Harris Soup Company, Inc. ("Applicant") serves its First Set of Interrogatories upon Registrant, Harry's Farmer Market, Inc. and its successor in interest, Whole Foods Market IP, LP ("Registrant"), to be answered fully in writing under oath. A copy of the answer shall be served upon Applicant's counsel within thirty (30) days after the service hereof. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these interrogatories are to be deemed continuing and the answers hereto are to be supplemented promptly upon Registrant's acquisition of further or additional information.

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TRADEMARK TRIAL AND
APPEAL BOARD

General Definitions and Instructions

All Interrogatories are to be answered on the basis of Registrant's knowledge or information and belief, including that of its officers, employees, directors, or agents having such knowledge. If any answer is given on information and belief, such fact should be stated in the

1 - Registrant's Answer to Notice of Concurrent Use Proceeding identified Registrant in the caption as Whole Foods Market, IP, L.P.

answer.

If any information called for in any Interrogatory is being withheld on the grounds that it is subject to the attorney-client privilege or any other privilege, Registrant is hereby directed to state with respect to such Interrogatory that the information is being withheld and state the alleged ground of privilege.

The following definitions are applicable herein:

1. Unless otherwise specifically indicated, the terms "Registrant" and "you" or "yours" mean and refer to the Registrant, Harry's Farmers Market, Inc., its subsidiaries and any merged or acquired subsidiaries; its predecessors, successors (including Whole Foods Market, IP, L.P.), or controlled, controlling, or affiliated companies; and Registrant's past and present officers, employees, agents, representatives, and attorneys, all to the fullest extent the context permits.

2. The term "Registrant's trademarks" and similar terms means and refers to Registrant's alleged trademarks, the subject of Registration Nos. 1929015 (stylized HARRY'S) and 1854765 (stylized HARRY'S FARMERS MARKET).

3. The term "Applicant's trademark" and similar terms means and refers to Applicant's trademark "HARRY'S and Design", including Application Serial No. 74/673508 for the goods and services set forth in the aforesaid application.

4. The term "document" is used herein in its customary broad sense as defined in FRCP 34(a)(1).

Interrogatories

Interrogatory No. 1:

Identify and describe all goods and services in conjunction with which Registrant has used Registrant's trademarks, and for each, supply the date of first use of the trademark on the

good or service, the geographic area in which the good or service has been placed into commerce, the individuals, retail stores, or other purchasers to whom the goods or services were sold, and the last date on which the good or service was marketed or sold.

Interrogatory No. 2:

State whether there is anything untrue or misleading in the attached "Script for Conference Call for Acquisition of Harry's Farmers Market Perishables, Super Stores, and Other Related Assets," with regard to the statement therein: "We intend to operate the stores under the Harry's Farmers Market for the next 18 to 24 months, but will bring the Whole Foods label into the store with our products, packaging and store décor."

Interrogatory No. 3:

State the amount paid by Whole Foods Market, Inc. for the HARRY'S and HARRY'S FARMERS MARKET trademarks, or the goodwill in those marks.

Interrogatory No. 4:

State the date Registrant was incorporated and the states in which Registrant is qualified or licensed to do business.

Interrogatory No. 5:

Identify each predecessor, successor, parent, subsidiary, and affiliated company of Registrant.

Interrogatory No. 6:

Describe in detail the business conducted by Registrant since its formation.

Interrogatory No. 7:

Set forth the dates on which Registrant decided to adopt and first used its trademarks.

Interrogatory No. 8:

Describe the circumstances and method by which Registrant selected and first used the trademarks for each type of goods or services for which they are used and for each state or market area in which the marks were used.

Interrogatory No. 9:

State whether any searches or investigations were conducted by Registrant or any person on its behalf (including its attorneys) to determine whether the designation HARRY'S or HARRY'S FARMERS MARKET was available as a trademark or trade name and, if so, identify each such search or investigation.

Interrogatory No. 10:

Identify all federal and state trademark applications filed by or on behalf of Registrant for Registrant's trademarks and any variants thereof.

Interrogatory No. 11:

State Registrant's annual expenditures for advertising and promoting Registrant's goods and services under each of Registrant's trademarks since the first use of each of Registrant's trademarks for the Atlanta, Georgia metropolitan area and for outside the Atlanta, Georgia metropolitan area.

Interrogatory No. 12:

State whether Registrant or any person acting for or on its behalf has ever granted to any person any authorization or license to use either or both of Registrant's trademarks or any variation thereof and, if so, identify to whom such authorization or license was granted; the date it was granted; the terms and conditions of such authorization or license, including the duration of permitted use; and the business, goods, and services for which the authorization or license was

granted.

Interrogatory No. 13:

State the first date on which the manner in which Registrant became aware of Applicant's use of its trademark HARRY'S and Design, and identify each person connected or associated with Registrant who first learned of such use.

Interrogatory No. 14:

Identify the trade channels through which Registrant has sold and now is offering and selling goods or services under Registrant's trademarks or any variation thereof.

Interrogatory No. 15:

State whether Registrant or any person acting for or on its behalf has conducted any type of inquiry or investigation of Applicant or its adoption, use, or registration of its mark or trade name, and if so, state the date the inquiry or investigation was conducted; identify each person who conducted and reviewed it; and state with specificity the findings that were made.

Interrogatory No. 16:

State whether Registrant or any person acting for or on its behalf has obtained any statements or opinions regarding any of the issues in this proceeding, and if so identify the person or persons who rendered each statement or opinion and the person who obtained or received each statement or opinion, and state whether it was oral or in writing.

Interrogatory No. 17:

State whether Registrant or any person acting for or on behalf of Registrant has consulted with or retained the services of any expert with respect to any of the issues involved in this proceeding, and if so, identify each such expert, identify all documents upon which the expert will base her expert opinion, and describe the subject matter concerning which she was consulted

or retained.

Interrogatory No. 18:

Identify the witnesses Registrant intends to call to testify on its behalf in connection with this proceeding and state the facts or subject matter concerning which they are each expected to testify.

Interrogatory No. 19:

Identify the documents upon which Registrant intends to rely in connection with this proceeding.

Interrogatory No. 20:

State whether Registrant is aware of any past or present third-party uses or registrations of the designation HARRY'S or any variation thereof with respect to any goods or services, and if so, identify each such third party and the goods or services for which the designation has been or is now used or registered.

Interrogatory No. 21:

Identify each person who participated in the preparation of Registrant's responses to these interrogatories or furnished any information in response thereto, and for each specify the interrogatory response for which each such person provided information or participated in the preparation of.

Interrogatory No. 22:

Identify each document relating, referring to, or evidencing any fact stated in any answer to these interrogatories.

Interrogatory No. 23:

Identify all documents other than those described in response to the preceding

Interrogatory relating to the subject matter of these interrogatories and the preparation of Registrant's responses thereto.

Dated: June 27, 2002

Respectfully submitted,

THE HARRIS SOUP COMPANY, INC.

By: Michael J. Esler
Michael J. Esler, Esq., Applicant's Attorney
Esler Stephens & Buckley
888 SW 5th Avenue, Suite 700
Portland, OR 97204-2021
(503) 223-1510

c:\wp\Harris Trademark\Interrogatories.doc

CERTIFICATE OF MAILING

I hereby certify that these Interrogatories are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on June 27, 2002.

Jessie Hibbs
Signature
Jessie Hibbs
Printed Name

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of APPLICANT'S FIRST SET OF INTERROGATORIES was served on counsel for Registrant, Christopher L. Graff and Jane A. O'Connell, Thompson & Knight, LLP, 1200 San Jacinto Center, 98 San Jacinto Boulevard, Austin, TX 78701-4081 via first class mail on this 27th day of June, 2002.



GENERAL DEFINITIONS AND INSTRUCTIONS

The following definitions are applicable herein:

1. Unless otherwise specifically indicated, the terms "Registrant" and "you" or "yours" mean and refer to the Registrant, Harry's Farmers Market, Inc., its subsidiaries and any merged or acquired subsidiaries; its predecessors, successors (including Whole Foods Market, IP, L.P.), or controlled, controlling, or affiliated companies; and Registrant's past and present officers, employees, agents, representatives, and attorneys, all to the fullest extent the context permits.
2. The term "Registrant's trademarks" and similar terms means and refers to Registrant's alleged trademarks, the subject of Registration Nos. 1929015 (stylized HARRY'S) and 1854765 (stylized HARRY'S FARMERS MARKET).
3. The term "Applicant's trademark" and similar terms means and refers to Applicant's trademark "HARRY'S and Design", including Application Serial No. 74/673508 for the goods and services set forth in the aforesaid application.
4. The term "document" is used herein in its customary broad sense as defined in FRCP 34(a)(1).
5. Should Registrant withhold any document requested by any of the following Requests, Registrant shall, in its written response, describe such document by specifying the following for each such document:
 - (a) The date appearing on the document and if no date appears thereon, so state and give the date or approximate date on which the document was prepared;
 - (b) The identifying number, letter, or combination thereof, if any, and the significance of meaning of such;

- (c) The general nature or description of the document (i.e., whether it is a letter, memorandum, minutes of a meeting, etc.), and the number of pages of which it consists;
- (d) The name of the person who signed the document and if it was not signed, so state and give the name of the person or persons who prepared it.
- (e) The name of the person to whom the document was addressed and the name of each person, other than such addressee, to whom the document, or a copy thereof, was sent;
- (f) The subject matter to which the document relates; and
- (g) The specific claim relied on for withholding production of the document.

REQUESTS FOR PRODUCTION

1. All documents and things referring or relating to the creation and selection of Registrant's trademarks including correspondence with and memoranda between Registrant and any name consultant, design firm, advertising agency, advertising media, suppliers and printers.
2. All documents and things referring or relating to the adoption and use (including Registrant's first use in intrastate and interstate commerce) of Registrant's trademark, including correspondence with and memoranda between Registrant and any name consultant, design firm, advertising agency, advertising media, suppliers and printers.
3. All search reports and investigation reports prepared by or for Registrant which refer to, relate to, or comment upon Registrant's trademarks or trade name or Applicant's trademark.
4. All federal and state service mark applications filed by or on behalf of Registrant for Registrant's trademarks and all documents referring or relating to any such applications.
5. All assumed or fictitious business name applications filed by Registrant.
6. All documents referring or relating to Registrant's sale of goods or services in conjunction with Registrant's trademarks or any variation thereof.

7. All documents and things referring or relating to, or comprising any permission given by Registrant to any third party to use a trademark, or trade name which Registrant considered or considers to be similar or identical to Registrant's trademarks, including all franchise agreements, licenses, and other documents permitting such use, and all documents relating thereto.

8. All documents and things referring or relating to, or comprising any permission received by Registrant from any third party to use a trademark, or trade name, which Registrant considered or considers to be similar or identical to Registrant's trademarks or trade name, including all franchise agreements, licenses, and other documents permitting such use, and all documents relating thereto.

9. All documents and things pertaining to use by third parties of a service mark, trademark, or trade name including or consisting of the designation HARRY'S.

10. All documents and things referring or relating to, or comprising any challenges Registrant has ever made to any third party, and any third party has made to Registrant, concerning the use of any service mark, trademark, or trade name which was considered to conflict with Registrant's trademarks or any portion thereof.

11. All documents and things referring or relating to, or comprising any assignment of any trademark rights for Registrant's trademarks.

12. All documents and things referring or relating to any court or Patent and Trademark Office action filed by Registrant or filed against Registrant in connection with Registrant's trademarks.

13. Specimens of all advertising and promotional documents bearing Registrant's trademark, including brochures, catalogues, circulars, leaflets, direct mail pieces, newspaper and

magazine advertisements, commercials, telephone book advertisements, price lists, trade association listings, annual reports, and any other material such as labels, tags, packages, containers, decals, stamps, and name plates used by Registrant, its distributors, or other sellers of its products or services.

14. Specimens of all types of goods bearing Registrant's trademarks.

15. All documents identifying the publications and broadcast media in which Registrant has advertised, is advertising, or has planned to advertise any of its products or services bearing or sold under Registrant's trademarks.

16. Specimens of each different counter display or other point-of-sale display prepared, printed, or disseminated by or for Registrant in which the designation HARRY'S or any variation thereof appears since the alleged date of first use of that designation to date.

17. Copies of all television commercials, radio scripts, and other media advertising not previously requested in which the designation HARRY'S or any variation thereof appears or is mentioned.

18. All documents referring or relating to or commenting upon Registrant's advertising or promotional expenditures for any goods or services under the designation HARRY'S or any variation thereof.

19. All documents and things relating or referring to the geographic scope of the advertising, distribution and sale of goods or services bearing or under Registrant's trademarks.

20. All documents and things relating or referring to, or comprising, Registrant's advertising expenditures for goods bearing or services sold under Registrant's trademarks or trade name by geographic or distribution regions where the services have been offered or products have been sold.

21. All documents referring or relating to, or comprising Registrant's customer lists, prospective customer lists, and mailing lists for products or services offered and sold under Registrant's trademarks.

22. All documents referring or relating to or comprising any consumer or market survey, test, or study Registrant has conducted or has caused to be conducted regarding the public's or the trade's recognition of or reaction to Registrant's trademarks.

23. All documents referring or relating to or comprising any consumer or market survey, test, or study Registrant has conducted or has caused to be conducted regarding the public's or the trade's recognition of or reaction to Applicant's trademark.

24. All documents referring or relating to, or comprising any consumer or market survey, test, or study Registrant has conducted or has caused to be conducted regarding any confusion among the public, retailers, or the trade resulting from the use of Registrant's trademarks.

25. All documents referring or relating to, or comprising Registrant's first notice or knowledge of Applicant's use and application of Applicant's trademark.

26. All documents referring or relating to, or comprising any communication or notice to Registrant concerning the possibility that Registrant's use of its trademarks, or any portion or variation thereof, might or might not result in confusion or mistake in any industry or among the public, particularly in view of Applicant's use of its trademark.

27. All documents regarding the types and classes of consumers to whom, and the markets and channels of trade in the United States through which Registrant markets or sells goods and services identified by Registrant's trademarks, including without limitation all documents indicating the channels of commerce through which Registrant offers and sells its services or goods to consumers, and including without limitation all documents indicating the

manner in which orders are solicited for Registrant's goods and services marketed or sold under Registrant's trademarks or by any division, subsidiary, or related company.

28. All documents and things referring or relating to any modification by Registrant of Registrant's trademarks or trade name since the first use thereof, including all documents relating to the reason such modification was made.

29. All documents and things referring or relating to, or comprising statements, inquiries, comments, or other communications by or from Registrant's customers, distributors, suppliers, or others, relating to the similarity of Registrant's trademark to Applicant's trademark or evidencing any confusion, suspicion, belief, or doubt on the part of said third parties as to the relationship between either or both of the Applicant and Registrant or their respective products or services sold under Registrant's trademarks or Applicant's trademark, including any misdirected complaints or inquiries.

30. All documents referring or relating to or comprising any communication, oral or written, received by Registrant from any person which suggests, implies, or infers any connection or association with Applicant or which inquires as to whether there is or may be such a connection or association.

31. All documents referring or relating to or evidencing or comprising any instance or occurrence of actual confusion on the part of any person due to Applicant's and Registrant's use of their trademarks or trade names.

32. All documents referring or relating to or comprising any opinion from counsel, whether or not such counsel was employed by Registrant, concerning Registrant's rights to Registrant's trademarks, including without limitation all documents identifying the date of any such opinion and the attorney rendering the opinion, or discussing any action Registrant may

have taken, or considered taking, in reliance upon said opinion.

33. All documents referring or relating to or commenting upon Registrant's development, manufacture, offering for sale, sale, and distribution of any goods or services with which the designation HARRY'S or any variation thereof has been used.

34. All documents referring or relating to, or comprising, any analyses, studies, or reports relating to the sales or prospective sales of Registrant's goods or services under Registrant's trademarks, including but not limited to business plans, marketing plans, development plans, financial plans, and budgetary plans.

35. All documents referring or relating to, or comprising, any plan Registrant has to expand the type of goods or services it offers for sale under its trademarks or trade name.

36. All documents referring or relating to or comprising or commenting on Registrant's incorporation, corporate name reservations, qualifications to do business, trade name registrations and assumed name records for Registrant and any of its divisions, subsidiaries, or related businesses, referring or relating to the use of Registrant's trade name.

37. All documents and things referring or relating to the proportion of Registrant's products or services marketed and sold under Registrant's trademarks.

38. All documents regarding Registrant's policy with respect to retention of documents, including business records.

39. All documents referring or relating to or evidencing or comprising any inquiry, investigation, or survey conducted by or on behalf of Registrant regarding any issues involved in this proceeding.

40. All statements or opinions of any expert retained by Registrant or any person acting for or on behalf of Registrant regarding any of the issues involved in this proceeding.

41. All documents, other than those produced in response to any of the foregoing Requests, identified by Registrant in its responses to Applicant's First Set of Interrogatories.

42. All documents, other than those produced in response to any of the foregoing Requests, upon which Registrant intends to rely in connection with this proceeding.

Dated: June 27, 2002

Respectfully submitted,

THE HARRIS SOUP COMPANY, INC.

By: Michael J. Esler
Michael J. Esler, Esq., Applicant's Attorney
Esler Stephens & Buckley
888 SW 5th Avenue, Suite 700
Portland, OR 97204-2021
(503) 223-1510

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CERTIFICATE OF MAILING

I hereby certify that this Applicant's First Request for Production of Documents and Things is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3313

on June 27, 2002.

Signature Jessie Hibbs

Printed Name Jessie Hibbs

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS was served on counsel for Registrant, Christopher L. Graff and Jane A. O'Connell, Thompson & Knight, LLP, 1200 San Jacinto Center, 98 San Jacinto Boulevard, Austin, TX 78701-4081 via first class mail on this 17 day of June, 2002.



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

In the matter of Application Serial No. 74/673,508
Filed on May 19, 1995
For the Mark Harry's and Design



07-01-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #70

The Harris Soup Company, Inc.,)
)
Applicant,)
) Concurrent Use No. 1242
v.)
)
Harry's Farmers Market, Inc.,¹)
)
Registrant.)

APPLICANT'S FIRST REQUEST FOR ADMISSIONS

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37.C.F.R. § 2.120), Applicant, The Harris Soup Company, Inc. ("Applicant") propounds the following First Set of Requests for Admission to Registrant, Harry's Farmers Market, Inc., and its successor in interest Whole Food Markets, IP, LP ("Registrant"). Responses in writing shall be served within thirty (30) days of service of these Requests for Admissions upon Applicant's counsel: Michael J. Esler, Esq., Esler Stephens & Buckley, 888 S.W. Fifth Avenue, Suite 700, Portland, Oregon 97204-2021.

Definitions

The definitions included in Applicant's First Set of Interrogatories and First Request for Production of Documents and Things to Registrant shall apply to Applicant's First Request for Admissions to Registrant.

1 - Registrant's Answer to Notice of Concurrent Use Proceeding identified Registrant in the caption as Whole Foods Market, IP, L.P.

Requests

1. Admit that Registrant's use of its trademarks has been limited to the Atlanta, Georgia metropolitan area.

2. Admit that Registrant intends to abandon its use of the HARRY'S and HARRY'S FARMERS MARKET marks within 18 to 24 months.

3. Admit that Registrant intends to abandon its use of the HARRY'S and HARRY'S FARMERS MARKET trademarks within twelve months.

4. Admit that Registrant intends to abandon its use of the HARRY'S and HARRY'S FARMERS MARKET trademarks within six months.

5. Admit that Registrant has abandoned its use of the trademarks HARRY'S and HARRY'S FARMERS MARKET.

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6. Admit that the statement attached as Exhibit A to Applicant's First Set of Interrogatories filed herewith contains no untrue or misleading statements.

Dated: June 27, 2002

Respectfully submitted,

THE HARRIS SOUP COMPANY, INC.

By: Michael J. Esler
Michael J. Esler, Esq., Applicant's Attorney
Esler Stephens & Buckley
888 SW 5th Avenue, Suite 700
Portland, OR 97204-2021
(503) 223-1510

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CERTIFICATE OF MAILING

I hereby certify that this Applicant's First Request for Admissions is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Box TTAB No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on June 27, 2002.

Jessie Hibbs
Signature
Printed Name
Jessie Hibbs

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of APPLICANT'S FIRST REQUEST FOR ADMISSIONS was served on counsel for Registrant, Christopher L. Graff and Jane A. O'Connell, Thompson & Knight, LLP, 1200 San Jacinto Center, 98 San Jacinto Boulevard, Austin, TX 78701-4081 via first class mail on this 27 day of June, 2002.

Michael J. Esler