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

AMERICAN ITALIAN PASTA COMPANY	)	
	)	Opposition No. 91161373
Opposer,	)	
	)	
v.	)	
	)	
BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI,	)	
Applicant.	)	

OPPOSER'S NOTICE OF RELIANCE UNDER RULE 2.120(j)(5)

Notice is hereby given, pursuant to Trademark Rule 2.120(j)(5), that Opposer, American Italian Pasta Company is filing and placing in evidence Opposer's Exhibits 219 through 223, and will rely upon as evidence here, the following interrogatories by Opposer and Applicant's answers thereto:

Opposer's Exhibit 219

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

Interrogatory, Response and Supplemental Response No. 1
Interrogatory, Response and Supplemental Response No. 2
Interrogatory, Response and Supplemental Response No. 3
Interrogatory, Response and Supplemental Response No. 4
Interrogatory, Response and Supplemental Response No. 5
Interrogatory, Response and Supplemental Response No. 6
Interrogatory, Response and Supplemental Response No. 7
Interrogatory, Response and Supplemental Response No. 8
Interrogatory, Response and Supplemental Response No. 9

Interrogatory, Response and Supplemental Response No. 10
Interrogatory, Response and Supplemental Response No. 11
Interrogatory, Response and Supplemental Response No. 12
Interrogatory, Response and Supplemental Response No. 13
Interrogatory, Response and Supplemental Response No. 14
Interrogatory, Response and Supplemental Response No. 15
Interrogatory, Response and Supplemental Response No. 16
Interrogatory, Response and Supplemental Response No. 17
Interrogatory, Response and Supplemental Response No. 18
Interrogatory, Response and Supplemental Response No. 19
Interrogatory, Response and Supplemental Response No. 20
Interrogatory, Response and Supplemental Response No. 21
Interrogatory, Response and Supplemental Response No. 22
Interrogatory, Response and Supplemental Response No. 24
Interrogatory, Response and Supplemental Response No. 25
Interrogatory, Response and Supplemental Response No. 26
Interrogatory, Response and Supplemental Response No. 27
Interrogatory, Response and Supplemental Response No. 28
Interrogatory, Response and Supplemental Response No. 29
Interrogatory, Response and Supplemental Response No. 30
Interrogatory, Response and Supplemental Response No. 31
Interrogatory, Response and Supplemental Response No. 32
Interrogatory, Response and Supplemental Response No. 33
Interrogatory, Response and Supplemental Response No. 34
Interrogatory, Response and Supplemental Response No. 35
Interrogatory, Response and Supplemental Response No. 36
Interrogatory, Response and Supplemental Response No. 37

Opposer's Exhibit 220

OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT

APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES

Interrogatory, Response and Supplemental Response No. 38
Interrogatory, Response and Supplemental Response No. 39
Interrogatory, Response and Supplemental Response No. 40
Interrogatory, Response and Supplemental Response No. 41
Interrogatory, Response and Supplemental Response No. 42
Interrogatory, Response and Supplemental Response No. 43

Opposer's Exhibit 221	OPPOSER'S THIRD SET OF INTERROGATORIES TO APPLICANT APPLICANT'S RESPONSE TO OPPOSER'S THIRD SET OF INTERROGATORIES Interrogatory and Response No. 45 Interrogatory and Response No. 46 Interrogatory and Response No. 48 Interrogatory and Response No. 49 Interrogatory and Response No. 50 Interrogatory and Response No. 51 Interrogatory and Response No. 52 Interrogatory and Response No. 53 Interrogatory and Response No. 54
Opposer's Exhibit 222	OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS Request for Admission, Response and Supplemental Response No. 1 Request for Admission, Response and Supplemental Response No. 2 Request for Admission, Response and Supplemental Response No. 3 Request for Admission, Response and Supplemental Response No. 4 Request for Admission, Response and Supplemental Response No. 5 Request for Admission, Response and Supplemental Response No. 6 Request for Admission, Response and Supplemental Response No. 7 Request for Admission, Response and Supplemental Response No. 8 Request for Admission, Response and Supplemental Response No. 9 Request for Admission, Response and Supplemental Response No. 10 Request for Admission, Response and Supplemental Response No. 11 Request for Admission, Response and Supplemental Response No. 12 Request for Admission, Response and Supplemental Response No. 13 Request for Admission, Response and Supplemental Response No. 15 Request for Admission, Response and Supplemental Response No. 16 Request for Admission, Response and Supplemental Response No. 17 Request for Admission, Response and Supplemental Response No. 18

Opposer's Exhibit 223

OPPOSER'S THIRD REQUEST FOR ADMISSIONS TO APPLICANT

APPLICANT'S RESPONSE TO OPPOSER'S THIRD SET OF REQUESTS FOR ADMISSIONS

Request for Admission and Response No. 20
Request for Admission and Response No. 21
Request for Admission and Response No. 22
Request for Admission and Response No. 23
Request for Admission and Response No. 24
Request for Admission and Response No. 25
Request for Admission and Response No. 26
Request for Admission and Response No. 27
Request for Admission and Response No. 28
Request for Admission and Response No. 29
Request for Admission and Response No. 30
Request for Admission and Response No. 31
Request for Admission and Response No. 32
Request for Admission and Response No. 33

Respectfully submitted,

Thomas H. Van Hoozer, Reg. No. 32761
Cheryl L. Burbach
HOVEY WILLIAMS LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108
Phone: 816/474-9050
Fax: 816/474-9057
Attorneys for Opposer

CERTIFICATE OF MAILING

The undersigned hereby certifies that *Opposer's Notice of Reliance Under Rule 2.122(j)(5) is being deposited with the United States Postal Service as* First Class U.S. Mail addressed to:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

on this 13th day of November, 2006.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached *Opposer's Notice of Reliance Under Rule 2.120(j)(5)* has been served on Applicant via First Class U.S. Mail to the following address:

G. Franklin Rothwell
Brian E. Banner
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Fax: (202) 783-6031

on this 13th day of November, 2006.

American Italian Pasta Company
v.
Barilla Alimentare S.P.A.
Opposition No. 91161373
Opposer's Exhibit 219

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

AMERICAN ITALIAN PASTA COMPANY Opposer, v. BARILLA G.E.R. - Fratelli S.P.A. Registrant.	)))))))))))	Opposition No. 91161373 Mark: BARILLA - AMERICA'S FAVORITE PASTA Application No. 78/136,703 Published: March 23, 2004

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, as incorporated into the Rules of Practice in Trademark Cases under the provisions of 37 C.F.R. § 2.116, Opposer propounds the following Interrogatories to Applicant to be answered by Applicant separately in writing. Such answers and responses should be served upon the undersigned attorney at his address within thirty (30) days of service of this request, plus allowance for service time. Definitions of terms used throughout these Interrogatories are set forth below. Each Interrogatory and any subparagraphs thereof are identified by number and letter and answers thereto should correspond to these numbers and letters.

DEFINITIONS

As used herein, the following terms are defined as follows:

A. "Opposer" means American Italian Pasta Company, its officers, agents, employees, attorneys, parent companies, subsidiaries, sister companies and/or

predecessors in interest as may be further modified by the terms defined herein (hereinafter "Opposer");

B. "Applicant" means Barilla G.E.R. Fratelli S.p.A. (by change of name), its officers, agents, employees, attorneys, agents, consultants, parent companies, subsidiaries, sister companies and/or predecessors in interest, or any other person or entity acting for or in concert with Applicant or any of the previously mentioned persons or entities;

C. "Opposer's Mark" means the trademark AMERICA'S FAVORITE PASTA, alone or with any accompanying design features;

D. "Applicant's Mark" means the trademark BARILLA - AMERICA'S FAVORITE PASTA as set forth in Application Ser. No. 78/136,703 filed June 18, 2002.

E. "Trade Show" means any trade show, professional show, sales meeting, conference, or other forum open to the trade or public where members or exhibitors may demonstrate or promote their goods or services;

F. In the following Interrogatories, the terms "persons" includes both natural persons and corporate or other business entities;

G. A request to "identify" a natural person shall be responded to by stating:

(1) The full name of such person;

(2) The person's present business address;

(3) The person's home address (if his/her business address is unknown);

(4) The person's job title and the name and address of the person's employer at the time to which the Interrogatory relates; and

(5) The name and address of the person's present or last known employer and the person's present or last known job title;

H. A request to "identify" a business entity shall be responded to by stating its name, legal status (e.g., corporation, partnership, or proprietorship), state of organization, and the address of its principal place of business;

I. A request to "identify" an event shall be responded to by stating its name, geographical location by city and state, and date or dates when such event occurred, was held or conducted;

J. In the following Interrogatories, the term "document" or "documents" is used in a broad sense to include, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand, and whether or not claimed to be privileged, subject to work product immunity, confidential or personal, namely: software programs; agreements; communications, including intra company communications; correspondence; telegrams; reports; memoranda; summaries and records of telephone conversations; diaries; forecasts; statistical statements; graphs; laboratory and engineering reports and notebooks; charts; plans; sketches; drawings; blueprints; photographs; minutes or records of meetings, including directors' meetings; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports and summaries of interviews; reports and summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any documents; original or preliminary notes; computer printouts; and other data compilations from which information can be obtained or translated by Registrant through detection devices into reasonably usable form.

Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document";

K. In the following Interrogatories, to "identify" documents means to provide the following information regarding each document:

(1) The type of document (letter, report, manual, etc.);

(2) Title, caption, or subject;

(3) Its date;

(4) Its author;

(5) The identity of the sender (if different from the author);

(6) The identity of each and every addressee and/or distributee;

(7) The identity of each and every person in addition to any addressees and/or distributees to have examined the document;

(8) A brief statement of its contents; and

(9) The identity of the person(s) having custody thereof. (Attachment to the answers to these Interrogatories of copies of documents inquired about in any Interrogatory will be accepted in lieu of their identification);

L. These Interrogatories are continuing and require that Registrant serve upon Petitioner supplementary answers setting forth any information requested that is unavailable when the answers are served but become available up to and including the time of trial pursuant to Rule 26(e), Fed. R. Civ. P. Any information provided in response to these Interrogatories that is later found to be incorrect or incomplete or to have become incorrect or incomplete shall be corrected or completed by timely supplementary answers;

M. In the event Registrant deems certain information that is otherwise required to be furnished in answering the following Interrogatories to be privileged, Registrant is requested to return with the answers to these Interrogatories a list identifying each category of information Registrant asserts constitute privileged information that should be excluded from discovery. The list should include the date of preparation of each item within a designated category, the name of the person(s) who prepared each item or has knowledge thereof, identification of the person(s) who received each item, a description of each item of information deemed privileged, and the basis for the claim of privilege or other grounds for execution for each item of information;

N. In the event Registrant deems certain information that is otherwise required to be furnished in answering the following Interrogatories to be confidential, Registrant is requested to return with the answers to these Interrogatories a list identifying each category of information Registrant asserts is confidential information that should be disclosed only under an appropriate Protective Order to be entered in this case. If Registrant asserts that information cannot be furnished that should otherwise be disclosed in answering these Interrogatories, except for a claim of confidentiality, Registrant is requested to return with the answers to these Interrogatories a list identifying each category of information Registrant asserts to be confidential information. The list should include the date of preparation of each item within a designated category, the name of the person(s) who prepared each item or has knowledge thereof, identification of the person(s) who received each item of confidential information, a general description of each item of information deemed confidential, and the basis of the claim of confidentiality for each item of

information. Registrant is also requested to supply with such list a proposed Protective Order for protecting the confidentiality of the information being withheld from disclosure;

O. "Applicant's Goods" for the purposes of these Interrogatories and other discovery requests by Petitioner shall mean the following goods identified in Application No. 78/136,703: "PASTA, PASTA PRODUCTS, SAUCES FOR PASTA" in International Class 30;

P. "Opposer's Goods" for the purposes of these Interrogatories and other discovery requests by Opposer shall mean the following goods identified in U.S. Application for Trademark Registration Serial No. 76/497,489 and 76/497,190: "PASTA" in International Class 30;

Q. "Date" means the exact day, month and year if known or obtainable, or the most exact approximate possible.

R. "Study" or "Studies" means surveys, tests, taste tests, focus groups and/or other types of marketing studies and raw data pertaining thereto, including, but not limited to, interview sheets, interviewer instructions, list of interviewers, list of interviewees, sampling plans, demographic data, computer cards, computer printout sheets, any other computer input and outputs, work sheets, any statements of the method or program employed in evaluation or preparing the data and the like.

S. The term "concerning" shall mean supporting, rebutting, relating to, referring too, describing, mentioning, evidencing or constituting.

T. The term "commerce" shall mean all commerce which may lawfully be regulated by Congress.

INTERROGATORY NO. 1

Identify each person having knowledge with regard to Applicant's intention to use Applicant's Mark for each of Applicant's Goods.

ANSWER:

INTERROGATORY NO. 2

Describe the circumstances surrounding Applicant's creation, selection, adoption and use of Applicant's Mark.

ANSWER:

INTERROGATORY NO. 3

Identify and describe each pasta item, pasta products item, and/or pasta sauce item ever sold by Applicant or on its behalf under Applicant's Mark.

ANSWER:

INTERROGATORY NO. 4

With regard to each of the pasta items, pasta products item, and/or pasta sauce item identified in response to Interrogatory No. 3, provide the date upon which Applicant's Mark was first used in the United States in connection with the sale of such item.

ANSWER:

INTERROGATORY NO. 5

Identify all packaging or advertising materials which show Applicant's use of Applicant's Mark from the first use to the present, and specify the periods during which each identified item was used.

ANSWER:

INTERROGATORY NO. 6

Identify each use of any mark or term including the words "America's Favorite" by Applicant in connection with the items identified in response to Interrogatory No. 3, and the date that such use was first exposed to a third party, whether or not such exposure constitutes a date of first use of the mark in commerce.

ANSWER:

INTERROGATORY NO. 7

Identify all third parties who have any responsibilities connected with the advertising or promotion of Applicant's Goods under Applicant's Mark.

ANSWER:

INTERROGATORY NO. 8

Identify each presentation to any customer or potential customer at which Applicant has promoted Applicant's Goods which it has or intends to sell under Applicant's Mark.

ANSWER:

INTERROGATORY NO. 9

Identify the channels of trade through which each item of Applicant's Goods are or will be sold under Applicant's Mark.

ANSWER:

INTERROGATORY NO. 10

Identify each instance wherein Applicant received knowledge use of Opposer's Mark by Opposer, Best Foods and/or Unilever in connection with any packaging, advertising or promotion bearing Opposer's Mark.

INTERROGATORY NO. 11

Identify all uses of the mark BARILLA by Applicant on any of Applicant's Goods or advertising for Applicant's Goods in the United States, setting forth the dates of each such use.

ANSWER:

INTERROGATORY NO. 12

Set forth in detail the circumstances under which Applicant first offered each of Applicant's Goods in commerce in the United States under the mark BARILLA.

ANSWER:

INTERROGATORY NO. 13:

Identify each pasta item, pasta product item, and each pasta sauce item ever sold or distributed in the United States under Applicant's mark BARILLA by or on behalf of Applicant.

ANSWER

INTERROGATORY NO. 14:

If any item set forth in Interrogatory No. 14 has been discontinued for sale or on behalf of Applicant, set forth the dates of such discontinuance for each item.

ANSWER

INTERROGATORY NO. 15:

Does Applicant contest Opposer's right to use the mark AMERICA'S FAVORITE PASTA in connection with Applicant's goods? If so, state all facts supporting such contest.

ANSWER

INTERROGATORY NO. 16:

Does Applicant consent to Opposer's application to register the mark AMERICA'S FAVORITE PASTA as set forth in Application No. 76/497,489? If not, state all facts supporting any basis on which Applicant contests Opposer's right to registration of the mark set forth in Application No. 76/497,489.

ANSWER:

INTERROGATORY NO. 17:

Identify each person, organization, or agency responsible for advertising or promoting each pasta item identified in response to Interrogatory No. 3.

ANSWER

INTERROGATORY NO. 18:

Identify each person, organization, or agency responsible for advertising or promoting each pasta item identified in response to Interrogatory No. 13.

ANSWER

INTERROGATORY NO. 19:

Identify each location where each pasta item, pasta product item, and pasta sauce item of Applicant sold under the mark BARILLA in the United States has been manufactured, since the date of first use to the present.

ANSWER

INTERROGATORY NO. 20:

Identify all facts supporting Applicant's use of the phrase "America's Favorite Pasta" on or in connection with Applicant's Goods.

ANSWER

INTERROGATORY NO. 21:

Identify all uses of the phrase "America's Favorite Pasta" on or in connection with the advertising or promotion of Applicant's Goods.

ANSWER

INTERROGATORY NO. 22:

Give the dollar sales by month, quarter, and year for all pasta items, pasta product items, and pasta sauce items sold by or on behalf of Applicant bearing the mark BARILLA in the United States since the date of first use to the present.

ANSWER

INTERROGATORY NO. 24:

If Applicant claims the benefit of any use of Applicant's Mark or any variation thereof by any predecessor in title, identify the predecessor in title, and describe in detail the nature and extent of the predecessor's use of the mark.

ANSWER:

INTERROGATORY NO. 25:

Identify and describe all consumer studies that Applicant has conducted or caused to be conducted regarding the words "America's Favorite Pasta" used alone or in connection with any other word or words.

ANSWER

INTERROGATORY NO. 26:

Identify and describe all consumer studies that Applicant has conducted or caused to be conducted regarding the word "Barilla" used alone or in connection with any other word or words.

ANSWER

INTERROGATORY NO. 27:

Identify and describe Applicant's knowledge of any use by Opposer or any other person or entity of "America's Favorite" alone or in combination with any other term, in connection with food items.

ANSWER

INTERROGATORY NO. 28:

Describe any criteria promulgated by any person regarding standards for the use of the term "favorite" in connection with the advertising, promotion, or sales of goods or services, and identify the person promulgating such criteria.

ANSWER

INTERROGATORY NO. 29:

State with particularlity what Applicant contends is the meaning of the terms: (i) America's, (ii) Favorite, and (iii) Pasta.

ANSWER

INTERROGATORY NO. 30:

State with particularity all facts supporting the statement set forth in the opposed application number 78/136,703 that "Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services."

ANSWER

INTERROGATORY NO. 31

Describe in detail all agreements into which Applicant has entered concerning the sale of goods in connection with Applicant's Mark or the mark BARILLA, including but not limited to, all licensing agreements.

ANSWER:

INTERROGATORY NO. 32:

Describe in detail every search or investigation conducted by or on behalf of Applicant in connection with Applicant's Mark, including any search of the records of the U.S. Patent and Trademark Office or of any other records or publications.

ANSWER:

INTERROGATORY NO. 33:

With the exception of this opposition proceeding, state whether Applicant is now or ever has been a party to any civil action or administrative proceeding in the United States involving the ownership of and/or right to use or register Applicant's Mark or any other mark having the terms "America's Favorite" as a part thereof, and, if so, identify the parties to the proceeding and for each such proceeding, the persons now employed by Applicant most familiar with such proceeding.

ANSWER:

INTERROGATORY NO. 34:

If Applicant intends to call any individual to provide expert testimony under the provisions of the Federal Rules of Evidence 702, 703 or 705, provide a disclosure of such testimony as set forth in Fed.R.Civ.P. 26(a)(2).

ANSWER:

INTERROGATORY NO. 35:

State in detail the dates and circumstances known to Applicant of any instance of actual or possible confusion or any reports of such confusion, of which Applicant is aware, between Applicant's Mark and Opposer's Mark.

ANSWER:

INTERROGATORY NO. 36:

State whether Applicant has ever received any opinion of counsel with respect to any alleged rights which Applicant may have obtained in and to Applicant's Mark as compared to the rights of Opposer or other parties in marks having the term "America's Favorite" as a part thereof and if so, identify all opinions of counsel and identify the person(s) in receipt of such opinions.

ANSWER:

INTERROGATORY NO. 37:

Identify each and every person who supplied information utilized in the preparation of the answers to these Interrogatories and indicate the specific Interrogatories to which each person contributed all or part of the information comprising the answer.

ANSWER:

Respectfully submitted,

HOVEY WILLIAMS LLP

By Thomas H. Van Hoozer Sept 24, 2004

Thomas H. Van Hoozer, Reg. No. 32,761
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
816/474-9050

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's First Set of Interrogatories to Applicant was mailed this 24th day of September, 2004 by first class mail, postage prepaid, addressed to the attorney for Applicant at the following address:

Robert H. Cameron, Esq.
Rothwell, Figg, Ernst & Manbeck
1425 K Street, NW, Suite 800
Washington, D.C. 20005

Thomas H. Van Hoozer

2778-157
jea:rpd

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI,	)	
Applicant.	)	

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla") by and through counsel, hereby responds pursuant to the Federal Rules of Civil Procedure to Opposer's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Barilla objects to all Interrogatories to the extent that they purport to impose on Applicant obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

2. Barilla objects to all Interrogatories to the extent that they seek the production of information and material protected by the attorney-client privilege and/or the attorney-work product doctrine, or any other privilege recognized by law. Barilla will not disclose such privileged information and material, and any inadvertent disclosure thereof shall not be deemed

a waiver of any privilege or work product exemption with respect to such information and material.

3. Barilla objects to all Interrogatories to the extent that they request information or material not currently in its possession, custody or control or refer to persons, entities, or events not known to Barilla, on the grounds that any such Interrogatories would seek to require more of Barilla than obligations imposed by law; would subject Barilla to unreasonable and undue annoyance, oppression, burden and expense; or would seek to impose upon Barilla an obligation to investigate, or to discover information or materials from third-parties or sources which may be equally accessible to Opposer.

4. Barilla objects to all Interrogatories to the extent that they are unduly burdensome in that they call for information or material which is unreasonably cumulative or duplicative of material or information provided or they require Applicant to incur unreasonable burden or expense in ascertaining information or providing documents.

5. Barilla objects to all Interrogatories to the extent that they call for material or information which is not relevant to the subject matter of the present lawsuit and/or appear not to be calculated to lead to the discovery of admissible evidence.

6. Barilla objects to the use of the phrase "all documents" in all Interrogatories to the extent that it renders such Interrogatories unduly burdensome in calling for material or information which is unreasonably cumulative or duplicative of material or information provided, or in requiring Barilla to incur unreasonable burden or expense in ascertaining information or providing documents.

7. Indications herein that responsive, non-privileged documents will be produced are made only to the extent that any such documents exist and can be located; and any such production will occur at a mutually agreed-to time and place.

8. The below responses are based on Barilla's present information, materials located and investigation and are subject to any additional or different information or material located that discovery or further investigation may disclose.

9. Barilla specifically reserves all of its objections, including those based on attorney-client privilege and attorney work product and confidentiality (unless and until a Protective Order is in place) with respect to requests for which documents do not exist, to the extent that documents come into existence or are located at a later date.

RESPONSES

Subject to, and without waiver of the foregoing general objections, Barilla responds to the Interrogatories as follows:

INTERROGATORY NO. 1:

Identify each person having knowledge with regard to Applicant's intention to use Applicant's Mark for each of Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 1:

Kirk Trofholz, President and General Manger
Sergio Pereira, Vice President of Marketing
Barilla USA

INTERROGATORY NO. 2:

Describe the circumstances surrounding Applicant's creation, selection, adoption and use of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 2:

Barilla objects to "circumstances surrounding...use" as vague and ambiguous. Barilla further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objections, the mark was selected by then President and General Manager, Paul Davis for use in packaging/advertising to notify consumers that contrary to Mueller's false claim, Barilla was the leading brand of pasta in terms of market share in the United States. Applicant's Mark has not been used in commerce.

INTERROGATORY NO. 3:

Identify and describe each pasta item, pasta products item, and/or pasta sauce item ever sold by Applicant or on its behalf under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 3:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 4:

With regard to each of the pasta items, pasta products item, and/or pasta sauce item identified in response to Interrogatory No. 3, provide the date upon which Applicant's Mark was first used in the United States in connection with the sale of such item.

RESPONSE TO INTERROGATORY NO. 4:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 5:

Identify all packaging or advertising materials which show Applicant's use of Applicant's Mark from the first use to the present, and specify the periods during which each identified item was used.

RESPONSE TO INTERROGATORY NO. 5:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 6:

Identify each use of any mark or term including the words "America's Favorite" by Applicant in connection with the items identified in response to Interrogatory No. 3, and the date that such use was first exposed to a third party, whether or not such exposure constitutes a date of first use of the mark in commerce.

RESPONSE TO INTERROGATORY NO. 6:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 7:

Identify all third parties who have any responsibilities connected with the advertising or promotion of Applicant's Goods under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 7:

Subject to the general objections, none.

INTERROGATORY NO. 8:

Identify each presentation to any customer or potential customer at which Applicant has promoted Applicant's Goods which it has or intends to sell under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 8:

Barilla objects to "presentation" as vague and ambiguous. Barilla further objects to this Interrogatory on grounds that it is entirely irrelevant to the subject matter of this Board proceeding and does not appear to be calculated to lead to the discovery of any admissible evidence. Subject to the foregoing objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 9:

Identify the channels of trade through which each item of Applicant's Goods are or will be sold under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 9:

Subject to the general objections, retail channels, "big box" retailers such as Walmart, Costco, military commissaries.

INTERROGATORY NO. 10:

Identify each instance wherein Applicant received knowledge of use of Opposer's Mark by Opposer, Best Foods and/or Unilever in connection with any packaging, advertising or promotion bearing Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 10:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objections, Barilla first became aware of Opposer's claim of trademark use of AMERICA'S FAVORITE PASTA when it was served with notice of the instant opposition.

INTERROGATORY NO. 11:

Identify all uses of the mark BARILLA by Applicant on any of Applicant's Goods or advertising for Applicant's Goods in the United States, setting forth the dates of each such use.

RESPONSE TO INTERROGATORY NO. 11:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 12:

Set forth in detail the circumstances under which Applicant first offered each of Applicant's Goods in commerce in the United States under the mark BARILLA.

RESPONSE TO INTERROGATORY NO. 12:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 13:

Identify each pasta item, pasta product item, and each pasta sauce item ever sold or distributed in the United States under Applicant's mark BARILLA by or on behalf of Applicant.

RESPONSE TO INTERROGATORY NO. 13:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 14:

If any item set forth in Interrogatory No. 14 has been discontinued for sale or on behalf of Applicant, set forth the dates of such discontinuance for each item.

RESPONSE TO INTERROGATORY NO. 14:

Barilla is unable to respond to this Interrogatory because it is unintelligible.

INTERROGATORY NO. 15:

Does Applicant contest Opposer's right to use the mark AMERICA'S FAVORITE PASTA in connection with Applicant's goods? If so, state all facts supporting such contest.

RESPONSE TO INTERROGATORY NO. 15:

Barilla objects to this Interrogatory on grounds that Opposer's right to use or register the mark AMERICA'S FAVORITE PASTA is not involved in this proceeding. Such a request purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 16:

Does Applicant consent to Opposer's application to register the mark AMERICA'S FAVORITE PASTA as set forth in Application No. 76/497,489? If not, state all facts supporting

any basis on which Applicant contests Opposer's right to registration of the mark set forth in Application No. 76/497,489.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the general objections, Barilla does not consent to Opposer's application. Under Board precedent, the mark AMERICA'S FAVORITE PASTA is laudatory and so highly descriptive that it is incapable of serving as a source identifier.

INTERROGATORY NO. 17:

Identify each person, organization, or agency responsible for advertising or promoting each pasta item identified in response to Interrogatory No. 3.

RESPONSE TO INTERROGATORY NO. 17:

Barilla objects to this Interrogatory to the extent it is unreasonably cumulative and/or duplicative of other discovery requests made by Opposer and would require Barilla to incur unreasonable burden or expense in responding thereto. Subject to the foregoing objection, *See* Response to Interrogatory No. 7.

INTERROGATORY NO. 18:

Identify each person, organization, or agency responsible for advertising or promotion each pasta item identified in response to Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 18:

See Response to Interrogatory No. 13.

INTERROGATORY NO. 19:

Identify each location where each pasta item, pasta product item, and pasta sauce item of Applicant sold under the mark BARILLA in the United States has been manufactured, since the date of first use to the present.

RESPONSE TO INTERROGATORY NO. 19:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 20:

Identify all facts supporting Applicant's use of the phrase "America's Favorite Pasta" on or in connection with Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 20:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 21:

Identify all uses of the phrase "America's Favorite Pasta" on or in connection with the advertising or promotion of Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 21:

Barilla objects to "uses" as vague and ambiguous. Barilla further objects to this Interrogatory to the extent it is unreasonably cumulative and/or duplicative of other discovery requests made by Opposer and would require Barilla to incur unreasonable burden or expense in responding thereto. Subject to the foregoing objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 22:

Give the dollar sales by month, quarter, and year for all pasta items, pasta product items, and pasta sauce items sold by or on behalf of Applicant bearing the mark BARILLA in the United States since the date of first use to the present.

RESPONSE TO INTERROGATORY NO. 22:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place. Barilla further objects to providing sales by month, quarter and year as overly broad and unduly burdensome such that it potentially seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Barilla also objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO.23:

NO INTERROGATORY

INTERROGATORY NO. 24:

If Applicant claims the benefit of any use of Applicant's Mark or any variation thereof by any predecessor in title, identify the predecessor in title, and describe in detail the nature and extent of the predecessor's use of the mark.

RESPONSE TO INTERROGATORY NO. 24:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

INTERROGATORY NO. 25:

Identify and describe all consumer studies that Applicant has conducted or caused to be conducted regarding the words "America's Favorite Pasta" used alone or in connection with any other word or words.

RESPONSE TO INTERROGATORY NO. 25:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place. Subject to the foregoing objection, no consumer studies have been conducted or caused to be conducted.

INTERROGATORY NO. 26:

Identify and describe all consumer studies that Applicant has conducted or caused to be conducted regarding the word "Barilla" used alone or in connection with any other word or words.

RESPONSE TO INTERROGATORY NO. 26:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place. Barilla further objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 27:

Identify and describe Applicant's knowledge of any use by Opposer or any other person or entity of "America's Favorite" alone or in combination with any other term, in connection with food items.

RESPONSE TO INTERROGATORY NO. 27:

Barilla objects to this Interrogatory to the extent that it purports to impose upon it an obligation to investigate and discover information and materials from third parties or sources equally accessible to Opposer. Barilla further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objections, Barilla was generally aware since 1997 of Mueller's use of the phrase "America's Favorite Pasta" on packaging on Mueller's pasta products and freestanding inserts.

INTERROGATORY NO. 28:

Describe any criteria promulgated by any person regarding standards for the use of the term "favorite" in connection with the advertising, promotion, or sales of goods or services, and identify the person promulgating such criteria.

RESPONSE TO INTERROGATORY NO. 28:

Barilla objects to this Interrogatory on grounds that it purports to impose upon it an obligation to investigate and discover information and materials from third parties or sources equally accessible to Opposer. Subject to the foregoing objection, statistics on national sales of branded products by A.C. Nielsen.

INTERROGATORY NO. 29:

State with particularity what Applicant contends is the meaning of the terms: (i) America's, (ii) Favorite, and (iii) Pasta.

RESPONSE TO INTERROGATORY NO. 29:

Subject to the general objections, Barilla responds as follows: (i) of the United States; (ii) leading brand by sales; (iii) products sold in the retail pasta category.

INTERROGATORY NO. 30:

State with particularity all facts supporting the statement set forth in the opposed application number 78/136,703 that "Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services."

RESPONSE TO INTERROGATORY NO. 30:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objection, Barilla plans to use BARILLA - AMERICA'S FAVORITE PASTA in packaging, collateral and sales materials.

INTERROGATORY NO. 31:

Describe in detail all agreements into which Applicant has entered concerning the sale of goods in connection with Applicant's Mark or the mark BARILLA, including but not limited to, all licensing agreements.

RESPONSE TO INTERROGATORY NO. 31:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place.

Barilla further objects to this Interrogatory to the extent that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 32:

Describe in detail every search or investigation conducted by or on behalf of Applicant in connection with Applicant's Mark, including any search of the records of the U.S. Patent and Trademark Office or of any other records or publications.

RESPONSE TO INTERROGATORY NO. 32:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objection, Barilla is not aware of any search or investigation conducted by or on its behalf.

INTERROGATORY NO. 33:

With the exception of this opposition proceeding, state whether Applicant is now or ever has been a party to any civil action or administrative proceeding in the United States involving the ownership of and/or right to use or register Applicant's Mark or any other mark having the terms "America's Favorite" as a part thereof, and, if so, identify the parties to the proceeding and for each such proceeding, the persons now employed by Applicant most familiar with such proceeding.

RESPONSE TO INTERROGATORY NO. 33:

Subject to the general objections, none.

INTERROGATORY NO. 34:

If Applicant intends to call any individual to provide expert testimony under the provisions of the Federal Rules of Evidence 702, 703 or 705, provide a disclosure of such testimony as set forth in Fed.R.Civ.P. 26(a)(2).

RESPONSE TO INTERROGATORY NO. 34:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify all the witnesses and evidence it intends to present in support of its case. Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

INTERROGATORY NO. 35:

State in detail the dates and circumstances known to Applicant of any instance of actual or possible confusion or any reports of such confusion, of which Applicant is aware, between Applicant's Mark and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 35:

Subject to the general objections, Barilla is not aware of any actual or possible confusion or reports of such confusion in the marketplace. Applicant's Mark is not in use in commerce.

INTERROGATORY NO. 36:

State whether Applicant has ever received any opinion of counsel with respect to any alleged rights which Applicant may have obtained in and to Applicant's Mark as compared to the rights of Opposer or other parties in marks having the term "America's Favorite" as a part thereof and if so, identify all opinions of counsel and identify the person (s) in receipt of such opinions.

RESPONSE TO INTERROGATORY NO. 36:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to the foregoing objection, Applicant received an opinion of counsel from attorneys at Perani Mezzanotte & Partners.

INTERROGATORY NO. 37:

Identify each and every person who supplied information utilized in the preparation of the answers to these Interrogatories and indicate the specific Interrogatories to which each person contributed all or part of the information comprising the answer.

RESPONSE TO INTERROGATORY NO. 37:

Subject to the general objections, Sergio Pereira, Vice President of Marketing; Kim Stevens, Business Director, Barilla U.S.A; U.S. and European counsel for Applicant.

Dated: January 28, 2005

As to Objections:

Robert H. Cameron

G. Franklin Rothwell
Robert H. Cameron
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, I served the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES by first class mail, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Robert DiGiovanni

2778-157-resp-interrog

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI,	)	
Applicant.	)	

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla") by and through counsel, hereby responds pursuant to the Federal Rules of Civil Procedure to Opposer's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Barilla objects to all Interrogatories to the extent that they purport to impose on Applicant obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

2. Barilla objects to all Interrogatories to the extent that they seek the production of information and material protected by the attorney-client privilege and/or the attorney-work product doctrine, or any other privilege recognized by law. Barilla will not disclose such privileged information and material, and any inadvertent disclosure thereof shall not be deemed

a waiver of any privilege or work product exemption with respect to such information and material.

3. Barilla objects to all Interrogatories to the extent that they request information or material not currently in its possession, custody or control or refer to persons, entities, or events not known to Barilla, on the grounds that any such Interrogatories would seek to require more of Barilla than obligations imposed by law; would subject Barilla to unreasonable and undue annoyance, oppression, burden and expense; or would seek to impose upon Barilla an obligation to investigate, or to discover information or materials from third-parties or sources which may be equally accessible to Opposer.

4. Barilla objects to all Interrogatories to the extent that they are unduly burdensome in that they call for information or material which is unreasonably cumulative or duplicative of material or information provided or they require Applicant to incur unreasonable burden or expense in ascertaining information or providing documents.

5. Barilla objects to all Interrogatories to the extent that they call for material or information which is not relevant to the subject matter of the present lawsuit and/or appear not to be calculated to lead to the discovery of admissible evidence.

6. Barilla objects to the use of the phrase "all documents" in all Interrogatories to the extent that it renders such Interrogatories unduly burdensome in calling for material or information which is unreasonably cumulative or duplicative of material or information provided, or in requiring Barilla to incur unreasonable burden or expense in ascertaining information or providing documents.

7. Indications herein that are responsive, non-privileged documents will be produced are made only to the extent that any such documents exist and can be located; and any such production will occur at a mutually agreed-to time and place.

8. The below responses are based on Barilla's present information, materials located and investigation and are subject to any additional or different information or material located that discovery or further investigation may disclose.

9. Barilla specifically reserves all of its objections, including those based on attorney-client privilege and attorney work product and confidentiality (unless and until a Protective Order is in place) with respect to requests for which documents do not exist, to the extent that documents come into existence or are located at a later date.

RESPONSES

Subject to, and without waiver of the foregoing general objections, Barilla responds to the Interrogatories as follows:

INTERROGATORY NO. 1:

Identify each person having knowledge with regard to Applicant's intention to use Applicant's Mark for each of Applicant's Goods.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Kirk Trofholz, President and General Manger
Sergio Pereira, Vice President of Marketing
Barilla USA

SUPPLEMENTAL RESPONSE:

These two individuals are now with Barilla America, Inc. due to a corporate name change.

INTERROGATORY NO. 2:

Describe the circumstances surrounding Applicant's creation, selection, adoption and use of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 2:

Barilla objects to "circumstances surrounding...use" as vague and ambiguous. Barilla further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objections, the mark was selected by then President and General Manager, Paul Davis for use in packaging/advertising to notify consumers that contrary to Mueller's false claim, Barilla was the leading brand of pasta in terms of market share in the United States. Applicant's Mark has not been used in commerce.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 3:

Identify and describe each pasta item, pasta products item, and/or pasta sauce item ever sold by Applicant or on its behalf under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 3:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

Applicant's four word slogan mark still has not been used in commerce.

INTERROGATORY NO. 4:

With regard to each of the pasta items, pasta products item, and/or pasta sauce item identified in response to Interrogatory No. 3, provide the date upon which Applicant's Mark was first used in the United States in connection with the sale of such item.

RESPONSE TO INTERROGATORY NO. 4:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

Applicant's mark still has not been used in commence.

INTERROGATORY NO. 5:

Identify all packaging or advertising materials which show Applicant's use of Applicant's Mark from the first use to the present, and specify the periods during which each identified item was used.

RESPONSE TO INTERROGATORY NO. 5:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

Applicant's mark still has not been used in commence.

INTERROGATORY NO. 6:

Identify each use of any mark or term including the words "America's Favorite" by Applicant in connection with the items identified in response to Interrogatory No. 3, and the date that such use was first exposed to a third party, whether or not such exposure constitutes a date of first use of the mark in commerce.

RESPONSE TO INTERROGATORY NO. 6:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

Applicant's mark still has not been used in commence

INTERROGATORY NO. 7:

Identify all third parties who have any responsibilities connected with the advertising or promotion of Applicant's Goods under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 7:

Subject to the general objections, none.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 8:

Identify each presentation to any customer or potential customer at which Applicant has promoted Applicant's Goods which it has or intends to sell under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 8:

Barilla objects to "presentation" as vague and ambiguous. Barilla further objects to this Interrogatory on grounds that it is entirely irrelevant to the subject matter of this Board proceeding and does not appear to be calculated to lead to the discovery of any admissible evidence. Subject to the foregoing objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

No presentations to customer's of Applicant's slogan "BARILLA-AMERICA'S FAVORITE PASTA" have been made.

INTERROGATORY NO. 9:

Identify the channels of trade through which each item of Applicant's Goods are or will be sold under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 9:

Subject to the general objections, retail channels, "big box" retailers such as Walmart, Costco, military commissaries.

SUPPLEMENTAL RESPONSE:

There has been no change in the intended channels of trade.

INTERROGATORY NO. 10:

Identify each instance wherein Applicant received knowledge of use of Opposer's Mark by Opposer, Best Foods and/or Unilever in connection with any packaging, advertising or promotion bearing Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 10:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objections, Barilla first became aware of Opposer's claim of trademark use of AMERICA'S FAVORITE PASTA when it was served with notice of the instant opposition.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 11:

Identify all uses of the mark BARILLA by Applicant on any of Applicant's Goods or advertising for Applicant's Goods in the United States, setting forth the dates of each such use.

RESPONSE TO INTERROGATORY NO. 11:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 12:

Set forth in detail the circumstances under which Applicant first offered each of Applicant's Goods in commerce in the United States under the mark BARILLA.

RESPONSE TO INTERROGATORY NO. 12:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 13:

Identify each pasta item, pasta product item, and each pasta sauce item ever sold or distributed in the United States under Applicant's mark BARILLA by or on behalf of Applicant.

RESPONSE TO INTERROGATORY NO. 13:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 14:

If any item set forth in Interrogatory No. 14 has been discontinued for sale or on behalf of Applicant, set forth the dates of such discontinuance for each item.

RESPONSE TO INTERROGATORY NO. 14:

Barilla is unable to respond to this Interrogatory because it is unintelligible.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 15:

Does Applicant contest Opposer's right to use the mark AMERICA'S FAVORITE PASTA in connection with Applicant's goods? If so, state all facts supporting such contest.

RESPONSE TO INTERROGATORY NO. 15:

Barilla objects to this Interrogatory on grounds that Opposer's right to use or register the mark AMERICA'S FAVORITE PASTA is not involved in this proceeding. Such a request purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 16:

Does Applicant consent to Opposer's application to register the mark AMERICA'S FAVORITE PASTA as set forth in Application No. 76/497,489? If not, state all facts supporting any basis on which Applicant contests Opposer's right to registration of the mark set forth in Application No. 76/497,489.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the general objections, Barilla does not consent to Opposer's application. Under Board precedent, the mark AMERICA'S FAVORITE PASTA is laudatory and so highly descriptive that it is incapable of serving as a source identifier.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 17:

Identify each person, organization, or agency responsible for advertising or promoting each pasta item identified in response to Interrogatory No. 3.

RESPONSE TO INTERROGATORY NO. 17:

Barilla objects to this Interrogatory to the extent it is unreasonably cumulative and/or duplicative of other discovery requests made by Opposer and would require Barilla to incur unreasonable burden or expense in responding thereto. Subject to the foregoing objection, *See* Response to Interrogatory No. 7.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 18:

Identify each person, organization, or agency responsible for advertising or promotion each pasta item identified in response to Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 18:

See Response to Interrogatory No. 13.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 19:

Identify each location where each pasta item, pasta product item, and pasta sauce item of Applicant sold under the mark BARILLA in the United States has been manufactured, since the date of first use to the present.

RESPONSE TO INTERROGATORY NO. 19:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla

obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

In Italy and the United States.

INTERROGATORY NO. 20:

Identify all facts supporting Applicant's use of the phrase "America's Favorite Pasta" on or in connection with Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 20:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

Still not used in commerce.

INTERROGATORY NO. 21:

Identify all uses of the phrase "America's Favorite Pasta" on or in connection with the advertising or promotion of Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 21:

Barilla objects to "uses" as vague and ambiguous. Barilla further objects to this Interrogatory to the extent it is unreasonably cumulative and/or duplicative of other discovery requests made by Opposer and would require Barilla to incur unreasonable burden or expense in responding thereto. Subject to the foregoing objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

Applicant's four word mark is still not used in commerce.

INTERROGATORY NO. 22:

Give the dollar sales by month, quarter, and year for all pasta items, pasta product items, and pasta sauce items sold by or on behalf of Applicant bearing the mark BARILLA in the United States since the date of first use to the present.

RESPONSE TO INTERROGATORY NO. 22:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place. Barilla further objects to providing sales by month, quarter and year as overly broad and unduly burdensome such that it potentially seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Barilla also objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO.23:

NO INTERROGATORY

INTERROGATORY NO. 24:

If Applicant claims the benefit of any use of Applicant's Mark or any variation thereof by any predecessor in title, identify the predecessor in title, and describe in detail the nature and extent of the predecessor's use of the mark.

RESPONSE TO INTERROGATORY NO. 24:

Subject to the general objections, not applicable. Applicant's mark has not been used in U.S. commerce.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 25:

Identify and describe all consumer studies that Applicant has conducted or caused to be conducted regarding the words "America's Favorite Pasta" used alone or in connection with any other word or words.

RESPONSE TO INTERROGATORY NO. 25:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place. Subject to the foregoing objection, no consumer studies have been conducted or caused to be conducted.

SUPPLEMENTAL RESPONSE:

No consumer studies have been conducted.

INTERROGATORY NO. 26:

Identify and describe all consumer studies that Applicant has conducted or caused to be conducted regarding the word "Barilla" used alone or in connection with any other word or words.

RESPONSE TO INTERROGATORY NO. 26:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place.

Barilla further objects to this Interrogatory on grounds that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

Applicant is aware of third party uses of "America's Favorite" alone or in combination with other terms in connection with food items.

INTERROGATORY NO. 27:

Identify and describe Applicant's knowledge of any use by Opposer or any other person or entity of "America's Favorite" alone or in combination with any other term, in connection with food items.

RESPONSE TO INTERROGATORY NO. 27:

Barilla objects to this Interrogatory to the extent that it purports to impose upon it an obligation to investigate and discover information and materials from third parties or sources equally accessible to Opposer. Barilla further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objections, Barilla was generally aware since 1997 of Mueller's use of the phrase "America's Favorite Pasta" on packaging on Mueller's pasta products and freestanding inserts.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 28:

Describe any criteria promulgated by any person regarding standards for the use of the term "favorite" in connection with the advertising, promotion, or sales of goods or services, and identify the person promulgating such criteria.

RESPONSE TO INTERROGATORY NO. 28:

Barilla objects to this Interrogatory on grounds that it purports to impose upon it an obligation to investigate and discover information and materials from third parties or sources equally accessible to Opposer. Subject to the foregoing objection, statistics on national sales of branded products by A.C. Nielsen.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 29:

State with particularity what Applicant contends is the meaning of the terms: (i) America's, (ii) Favorite, and (iii) Pasta.

RESPONSE TO INTERROGATORY NO. 29:

Subject to the general objections, Barilla responds as follows: (i) of the United States; (ii) leading brand by sales; (iii) products sold in the retail pasta category.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 30:

State with particularity all facts supporting the statement set forth in the opposed application number 78/136,703 that "Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services."

RESPONSE TO INTERROGATORY NO. 30:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objection, Barilla plans to use BARILLA - AMERICA'S FAVORITE PASTA in packaging, collateral and sales materials.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 31:

Describe in detail all agreements into which Applicant has entered concerning the sale of goods in connection with Applicant's Mark or the mark BARILLA, including but not limited to, all licensing agreements.

RESPONSE TO INTERROGATORY NO. 31:

Barilla objects to this Interrogatory as calling for trade secret or other confidential research, development or commercial information and no protective order is yet in place.

Barilla further objects to this Interrogatory to the extent that it requires Barilla to specify information concerning those of its numerous BARILLA marks that are not involved in this proceeding. *See* TBMP Sec. 414(11). Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 32:

Describe in detail every search or investigation conducted by or on behalf of Applicant in connection with Applicant's Mark, including any search of the records of the U.S. Patent and Trademark Office or of any other records or publications.

RESPONSE TO INTERROGATORY NO. 32:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Subject to the foregoing objection, Barilla is not aware of any search or investigation conducted by or on its behalf.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 33:

With the exception of this opposition proceeding, state whether Applicant is now or ever has been a party to any civil action or administrative proceeding in the United States involving the ownership of and/or right to use or register Applicant's Mark or any other mark having the terms "America's Favorite" as a part thereof, and, if so, identify the parties to the proceeding and for each such proceeding, the persons now employed by Applicant most familiar with such proceeding.

RESPONSE TO INTERROGATORY NO. 33:

Subject to the general objections, none.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 34:

If Applicant intends to call any individual to provide expert testimony under the provisions of the Federal Rules of Evidence 702, 703 or 705, provide a disclosure of such testimony as set forth in Fed.R.Civ.P. 26(a)(2).

RESPONSE TO INTERROGATORY NO. 34:

Barilla objects to this Interrogatory on grounds that it requires Barilla to specify all the witnesses and evidence it intends to present in support of its case. Such a requirement purports to impose on Barilla obligations not required by the Federal Rules of Civil Procedure or those of the Trademark Trial and Appeal Board.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 35:

State in detail the dates and circumstances known to Applicant of any instance of actual or possible confusion or any reports of such confusion, of which Applicant is aware, between Applicant's Mark and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 35:

Subject to the general objections, Barilla is not aware of any actual or possible confusion or reports of such confusion in the marketplace. Applicant's Mark is not in use in commerce.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 36:

State whether Applicant has ever received any opinion of counsel with respect to any alleged rights which Applicant may have obtained in and to Applicant's Mark as compared to the rights of Opposer or other parties in marks having the term "America's Favorite" as a part thereof and if so, identify all opinions of counsel and identify the person (s) in receipt of such opinions.

RESPONSE TO INTERROGATORY NO. 36:

Barilla objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

Subject to the foregoing objection, Applicant received an opinion of counsel from attorneys at Perani Mezzanotte & Partners.

SUPPLEMENTAL RESPONSE:

None.

INTERROGATORY NO. 37:

Identify each and every person who supplied information utilized in the preparation of the answers to these Interrogatories and indicate the specific Interrogatories to which each person contributed all or part of the information comprising the answer.

RESPONSE TO INTERROGATORY NO. 37:

Subject to the general objections, Sergio Pereira, Vice President of Marketing; Kim Stevens, Business Director, Barilla U.S.A; U.S. and European counsel for Applicant.

SUPPLEMENTAL RESPONSE:

Barilla U.S.A. is now Barilla America, Inc.

Dated: October 16, 2006 Barilla G. E. R. FRATELLI-SOCIETA PER AZONIONI

Brian E. Banner

G. Franklin Rothwell
Brian E. Banner
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2006, I served the foregoing APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES by first class mail, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Patrick R. Collares

13570203

American Italian Pasta Company
v.
Barilla Alimentare S.P.A.
Opposition No. 91161373
Opposer's Exhibit 220

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

AMERICAN ITALIAN PASTA COMPANY	)	OPPOSITION NO.: 91-161,373
	)	SERIAL NO.: 78/136,703
Opposer,	)	MARK: BARILLA - AMERICA'S FAVORITE PASTA
	)	
v.	)	
	)	
BARILLA G. E R. FRATELLI-SOCIETA PER AZIONI,	)	
	)	
Applicant.	)	

OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, American Italian Pasta Company ("AIPC"), requests that Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), serve upon Opposer sworn answers to the Second Set of Interrogatories set forth below at the offices of Hovey Williams LLP, 2405 Grand Boulevard, Suite 400, Kansas City, Missouri 64108, within thirty (30) days after service hereof. These discovery requests are intended to be continuing in nature and any information or related materials which may be discovered subsequent to the service and filing of these answers should be brought to the attention of Opposer through Supplemental Answers within a reasonable time following such discovery.

For the convenience of the Board and the parties, Opposer requests that each discovery request (including sub-parts) be quoted in full immediately proceeding the response.

DEFINITIONS

Opposer incorporates its "Definitions" as set forth in its First Set of Interrogatories already served upon and responded to by Barilla.

INTERROGATORIES

INTERROGATORY NO. 38: Please set forth all facts supporting your contention that Opposer's mark is not inherently distinctive.

RESPONSE:

INTERROGATORY NO. 39: Please set forth all facts supporting your contention that Opposer's mark lacks acquired distinctiveness.

RESPONSE:

INTERROGATORY NO. 40: Please set forth all facts supporting your contention that Opposer is barred by equitable doctrines of laches and/or estoppel.

RESPONSE:

INTERROGATORY NO. 41: Please set forth all facts supporting your contention that Opposer's mark is misdescriptive of a Opposer's good.

RESPONSE:

INTERROGATORY NO. 42: Please set forth all facts supporting your answer to Interrogatory No. 29.

RESPONSE:

INTERROGATORY NO. 43 Please set forth all facts supporting your answer to Interrogatory No. 29.

RESPONSE:

Dated: May 6, 2005

Respectfully submitted,

Thomas H. Van Hoozer
Cheryl L. Burbach
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2005, I served the foregoing **OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT** by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Robert H. Cameron
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

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

AMERICAN ITALIAN PASTA COMPANY, Opposer v. BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI, Applicant.	)))))))))))	Opposition No. 91-161,373

APPLICANT'S RESPONSE TO OPPOSER'S
SECOND SET OF INTERROGATORIES

Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla") by and through counsel, hereby responds pursuant to the Federal Rules of Civil Procedure to Opposer's Second Set of Interrogatories as follows:

GENERAL OBJECTIONS

Applicant incorporates by reference its General Objections to Opposer's First Set of Interrogatories.

RESPONSES

Subject to, and without waiver of the foregoing general objections, Barilla responds to the Interrogatories as follows:

INTERROGATORY NO. 38: Please set forth all facts supporting your contention that Opposer's mark is not inherently distinctive.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence supporting its contentions in advance of trial. Subject to, and without waiving

this objection, Opposer's mark consists solely of a highly laudatory phrase that is incapable of trademark protection and registration.

INTERROGATORY NO. 39: Please set forth all facts supporting your contention that Opposer's mark lacks acquired distinctiveness.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial. Subject to, and without waiving this objection, Opposer's mark consists solely of a highly laudatory phrase that is incapable of trademark protection. Also, the requisite level of purchasers do not recognize the term as denoting source exclusively in Opposer.

INTERROGATORY NO. 40: Please set forth all facts supporting your contention that Opposer is barred by equitable doctrines of laches and/or estoppel.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial.

INTERROGATORY NO. 41: Please set forth all facts supporting your contention that Opposer's mark is misdescriptive of a Opposer's good (sic).

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial. Subject to, and without waiving this objection, Opposer's product is not AMERICA'S FAVORITE PASTA.

INTERROGATORY NO. 42: Please set forth all facts supporting your answer to Interrogatory No. 29.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial. Subject to, and without waiving this objection, Applicant will produce several documents currently in its possession responsive to this request pursuant to Fed. R. Civ. P. Rule 33 (d).

INTERROGATORY NO. 43: Please set forth all facts supporting your answer to Interrogatory No. 29.

RESPONSE: See answer to Interrogatory No. 42.

As to Objections:

BARILA G.E.R. FRATELLI-SOCIETA PER AZIONI

By: _____ 6/10/05

G. Franklin Rothwell
Carla C. Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2005, I served the foregoing APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES by first class mail, postage prepaid, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Joan Adair

Joan Adair

2778-157-resp-interrog

2778-0157 BEB

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI,	)	
Applicant.	)	

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S
SECOND SET OF INTERROGATORIES

Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla") by and through counsel, hereby responds pursuant to the Federal Rules of Civil Procedure to Opposer's Second Set of Interrogatories as follows:

GENERAL OBJECTIONS

Applicant incorporates by reference its General Objections to Opposer's First Set of Interrogatories.

RESPONSES

Subject to, and without waiver of the foregoing general objections, Barilla responds to the Interrogatories as follows:

INTERROGATORY NO. 38: Please set forth all facts supporting your contention that Opposer's mark is not inherently distinctive.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence supporting its contentions in advance of trial. Subject to and without waiving this

objection, Opposer's mark consists solely of a highly laudatory phrase that is incapable of trademark protection and registration.

SUPPLEMENTAL RESPONSE: None.

INTERROGATORY NO. 39: Please set forth all facts supporting your contention that Opposer's mark lacks acquired distinctiveness.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial. Subject to and without waiving this objection, Opposer's mark consists solely of a highly laudatory phrase that is incapable of trademark protection. Also, the requisite level of purchasers do not recognize the term as denoting source exclusively in Opposer.

SUPPLEMENTAL RESPONSE: None.

INTERROGATORY NO. 40; Please set forth all facts supporting your contention that Opposer is barred by equitable doctrines of laches and/or estoppel.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial.

SUPPLEMENTAL RESPONSE: None.

INTERROGATORY NO. 41: Please set forth all facts supporting your contention that Opposer's mark is misdescriptive of a Opposer's good (sic).

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial. Subject to and without waiving this objection, Opposer's product is not AMERICA'S FAVORITE PASTA.

SUPPLEMENTAL RESPONSE: None.

INTERROGATORY NO. 42: Please set forth all facts supporting your answer to Interrogatory No. 29.

RESPONSE: Applicant objects to this interrogatory on the ground that it is not required to produce all evidence in support of its contentions in advance of trial. Subject to and without waiving this objection, Applicant will produce several documents currently in its possession responsive to this request pursuant to Fed. R. Civ. P. Rule 33 (d).

SUPPLEMENTAL RESPONSE: None.

INTERROGATORY NO. 43: Please set forth all facts supporting your answer to Interrogatory No. 29.

RESPONSE: See answer to Interrogatory No. 42.

SUPPLEMENTAL RESPONSE: None.

As to Objections:

BARILA G.E.R. FRATELLI-SOCIETA PER AZIONI

Date: October 16, 2006

By: Brian E. Banner

G. Franklin Rothwell
Brian E. Banner
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2006, I served the foregoing APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES by first class mail, postage prepaid, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Patrick R. Collares

American Italian Pasta Company
v.
Barilla Alimentare S.P.A.
Opposition No. 91161373
Opposer's Exhibit 221

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

AMERICAN ITALIAN PASTA COMPANY	)	**OPPOSITION NO.: 91-161,373**
	)	**SERIAL NO.: 78/136,703**
Opposer,	)	**MARK: BARILLA - AMERICA'S FAVORITE PASTA**
	)	
v.	)	
	)	
BARILLA G. E R. FRATELLI-SOCIETA PER AZIONI,	)	
	)	
Applicant.	)	

OPPOSER'S THIRD SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, American Italian Pasta Company ("AIPC"), requests that Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), serve upon Opposer sworn answers to the Second Set of Interrogatories set forth below at the offices of Hovey Williams LLP, 2405 Grand Boulevard, Suite 400, Kansas City, Missouri 64108, within thirty (30) days after service hereof. These discovery requests are intended to be continuing in nature and any information or related materials which may be discovered subsequent to the service and filing of these answers should be brought to the attention of Opposer through Supplemental Answers within a reasonable time following such discovery.

For the convenience of the Board and the parties, Opposer requests that each discovery request (including sub-parts) be quoted in full immediately proceeding the response.

DEFINITIONS

Opposer incorporates its "Definitions" as set forth in its First Set of Interrogatories already served upon and responded to by Barilla.

INTERROGATORIES

INTERROGATORY NO. 44: To the extent that any of your responses to any of Opposer's Requests for Admissions is other than an unqualified admission, list all facts on which you based any part of your response that is not an unqualified admission, identify all documents memorializing each such fact, and identify all persons with knowledge of each such fact.

RESPONSE:

INTERROGATORY NO. 45: State whether it is your contention that Opposer's use of AMERICA'S FAVORITE PASTA is likely to create confusion among consumers with Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA and, if so, set forth all facts supporting that contention.

RESPONSE:

INTERROGATORY NO. 46: State whether it is your contention that AMERICA'S FAVORITE PASTA is visually similar to Applicant's mark, BARILLA - AMERICA'S FAVORITE PASTA, and, if so, set forth all facts supporting that contention.

RESPONSE:

INTERROGATORY NO. 47: State whether it is your contention that the slogan AMERICA'S FAVORITE PASTA conveys the same commercial impression as the slogan BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE:

INTERROGATORY NO. 48: State whether you are aware of anyone other than Opposer that displays the words "AMERICA'S FAVORITE PASTA" on the packaging of any pasta products offered for sale in the United States.

RESPONSE:

INTERROGATORY NO. 49: State whether Opposer's pasta products and Applicant's products identified in the application for BARILLA - AMERICA'S FAVORITE PASTA are sold through similar or overlapping trade channels.

RESPONSE:

INTERROGATORY NO. 50: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has conducted or caused to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE:

INTERROGATORY NO. 51: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has conducted or caused to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S #1 PASTA.

RESPONSE:

INTERROGATORY NO. 52: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has conducted or caused to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S BEST PASTA.

RESPONSE:

INTERROGATORY NO. 53: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has conducted or caused to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S PREFERRED PASTA.

RESPONSE:

INTERROGATORY NO. 54: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has conducted or caused to be conducted regarding Applicant's Mark, ITALY'S #1PASTA.

RESPONSE:

INTERROGATORY NO. 55: Identify and describe any and all of your responses to any interrogatory, document request, or request for admission propounded by Opposer in which you have learned that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing.

RESPONSE:

INTERROGATORY NO. 56: Identify and describe any and all of your responses to any interrogatory, document request, or request for admission propounded by Opposer in which you have learned that any of your responses are in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing.

RESPONSE:

INTERROGATORY NO. 57: Identify and describe any and all documents and things which have come into existence subsequent to your answers to Opposer's Interrogatories No. 1 through 44 that which would be responsive thereto.

RESPONSE:

INTERROGATORY NO. 58: State all responsive facts which have arisen subsequent to each of Applicant's answers to Opposer's Interrogatories 1 through 44.

RESPONSE:

Dated: August 15, 2006

Respectfully submitted,

Thomas H. Van Hoozer
Cheryl L. Burbach
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2006, I served the foregoing **OPPOSER'S THIRD SET OF INTERROGATORIES TO APPLICANT** by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI- SOCIETA PER AZIONI,	)	
Applicant.	)	

APPLICANT'S RESPONSE TO OPPOSER'S
THIRD SET OF INTERROGATORIES

Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), by and through counsel, hereby responds, pursuant to the Federal Rules of Civil Procedure, to Opposer's Third Set of Interrogatories as follows:

GENERAL OBJECTIONS

Applicant hereby incorporates by reference its General Objections to Opposer's First Set of Interrogatories.

RESPONSES

Subject to, and without waiving the foregoing general objections, Barilla provides the following responses to Opposer's First Set of Interrogatories:

INTERROGATORY 44: To the extent that any of your responses to Opposer's Requests for Admissions is other than an unqualified admission, list all the facts on which you based any part of your response that is not an unqualified admission, identify all documents memorializing each such fact, and identify all persons with knowledge of each such fact.

RESPONSE: Applicant's relevant responses to Opposer's First and Second Requests

for Admissions are based on the following facts that are in the public record:

a) Application Serial Nos. 76/136,701 and 76/136,703 have not been filed by Applicant.

b) Application Serial No. 76/422,402 pertains to the mark ITALY'S #1 PASTA

c) Application Serial No. 78/136,701 has been abandoned by Applicant.

INTERROGATORY 45: State whether it is your contention that Opposer's use of AMERICA'S FAVORITE PASTA is likely to create confusion among consumers with Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA and, if so, set forth all facts supporting that contention.

RESPONSE: Likelihood of Confusion is unlikely in view of the presence of the famous house mark "Barilla" preceding the highly laudatory phrase America's Favorite Pasta that is incapable of identifying origin and source.

INTERROGATORY 46: State whether it is your contention that AMERICA'S FAVORITE PASTA is visually similar to Applicant's mark, BARILLA - AMERICA'S FAVORITE PASTA, and, if so, set forth all facts supporting that contention.

RESPONSE: The three words, America's Favorite Pasta of opposer's alleged mark is visually similar and identical with the highly laudatory three America's Favorite Pasta words in Applicant's slogan and at the end of Applicant's mark.

INTERROGATORY 47: State whether it is your contention that the slogan AMERICA'S FAVORITE PASTA conveys the same commercial impression as the slogan,

BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE: BARILLA- AMERICA'S FAVORITE PASTA conveys a distinctly different commercial impression.

INTERROGATORY 48: State whether you are aware of anyone other than Opposer that displays the words "AMERICA'S FAVORITE PASTA" on the packaging of any pasta products offered for sale in the United States.

RESPONSE: Applicant is not aware of any third party use of alleged mark America's Favorite Pasta for pasta but is aware of many other third party uses of "America's Favorite" in combination with other terms used on foods or in the food industry.

INTERROGATORY 49: State whether Opposer's pasta products and Applicant's products identified in the application for BARILLA - AMERICA'S FAVORITE PASTA are sold through similar or overlapping trade channels.

RESPONSE: Applicant has not sold in commerce any product under its slogan word mark.

INTERROGATORY 50: Identify and describe any and all market research, including but not limited to, focus groups and brand awareness surveys that Applicant has conducted or caused to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE: Applicant has not conducted any market research on its Intent-to-Use slogan word mark.

INTERROGATORY 51: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys that Applicant has conducted or caused to be conducted regarding Applicant's Mark BARILLA - AMERICA'S #1 PASTA.

RESPONSE: Applicant has not conducted any market research on its Intent-to-Use slogan word mark.

INTERROGATORY 52: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has concluded or caused to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S BEST PASTA.

RESPONSE: Applicant has not conducted any market research on its Intent-to-Use slogan word mark.

INTERROGATORY 53: Identify and describe any and all market research, including by not limited to, focus groups and brand awareness surveys, that Applicant has conducted or cause to be conducted regarding Applicant's Mark, BARILLA - AMERICA'S PREFERRED PASTA.

RESPONSE: Applicant has not conducted any market research on its Intent-to-Use slogan word mark.

INTERROGATORY 54: Identify and describe any and all market research, including, but not limited to, focus groups and brand awareness surveys, that Applicant has conducted or caused to be conducted regarding Applicant's Mark, ITALY'S #1 PASTA.

RESPONSE: Applicant has not conducted any market research on its Intent-to-Use slogan word mark.

INTERROGATORY 55: Identify and describe any and all of your responses to any interrogatory, document request, or request for admission propounded by Opposer in which you have learned that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not been made know to Opposer during the discovery process or in writing.

RESPONSE: *See* supplemental responses to first and second set of Interrogatories.

ADMISSIONS: None

DOCUMENT REQUESTS: None

INTERROGATORY 56: Identify and describe any and all of your responses to any interrogatory, document request, or request for admission propounded by Opposer in which you have learned that any of your responses are in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing.

RESPONSE: *See* response 55.

INTERROGATORY 57 Identify and describe any and all documents and things which have come into existence subsequent to your answer to Opposer's Interrogatories No. 1 through 44 that which would be responsive thereto.

RESPONSE: *See* supplemental responses to opposer's interrogatories 1-44.

INTERROGATORY 58: State all responsive facts which have arisen subsequent to each of Applicant's answers to Opposer's Interrogatories 1 through 44.

RESPONSE: *See* response 57

BARILLA G. E R. FRATELLI- SOCIETA
PER AZIONI

By: Brian E. Banner

G. Franklin Rothwell
Brian E. Banner
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

Date: October 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2006, I served the foregoing APPLICANT'S RESPONSE TO OPPOSER'S THIRD SET OF INTERROGATORIES by first class mail, postage prepaid, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Patrick R. Collares

American Italian Pasta Company
v.
Barilla Alimentare S.P.A.
Opposition No. 91161373
Opposer's Exhibit 222

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

AMERICAN ITALIAN PASTA COMPANY	)	**OPPOSITION NO.: 91-161,373**
	)	**SERIAL NO.: 78/136,703**
Opposer,	)	**MARK: BARILLA - AMERICA'S FAVORITE PASTA**
	)	
v.	)	
	)	
BARILLA G. E R. FRATELLI-SOCIETA PER AZIONI,	)	
	)	
Applicant.	)	

OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, as incorporated into the Trademark Rules of Practice, Opposer, American Italian Pasta Company ("AIPC"), propounds the following requests for admission to Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), for which responses are to be served upon Opposer at the offices of Hovey Williams LLP, 2405 Grand Boulevard, Suite 400, Kansas City, Missouri 64108, within thirty (30) days after service hereof.

For the convenience of the Board and the parties, Opposer requests that each discovery request (including sub-parts) be quoted in full immediately proceeding the response.

DEFINITIONS

Opposer incorporates its "Definitions" as set forth in its First Set of Interrogatories already served upon and responded to by Barilla.

REQUESTS

REQUEST NO. 1: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S #1 PASTA.

RESPONSE:

REQUEST NO. 2: Attached as Exhibit A is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S #1 PASTA, Serial No. 78/136,706.

RESPONSE:

REQUEST NO. 3: At the time Barilla filed the Application Serial No. 78/136,706, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE:

REQUEST NO. 4: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S PREFERRED PASTA.

RESPONSE:

REQUEST NO. 5: Attached as Exhibit B is a true and correct copy of Barillia's trademark application for BARILLA - AMERICA'S PREFERRED PASTA, Serial No. 78/136,708.

RESPONSE:

REQUEST NO. 6: At the time Barilla filed the Application Serial No. 78/136,708, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE:

REQUEST NO. 7: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S BEST PASTA.

RESPONSE:

REQUEST NO. 8: Attached as Exhibit C is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S BEST PASTA, Serial No. 78/136,701.

RESPONSE:

REQUEST NO. 9: At the time Barilla filed the Application Serial No. 78/136,701, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE:

REQUEST NO. 10: At the time Barilla filed Application Serial No. 78/136,703 for AMERICA'S FAVORITE PASTA, the application did not contain a disclaimer of the phrase "AMERICA'S FAVORITE PASTA."

RESPONSE:

REQUEST NO. 11: Attached as Exhibit D is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S FAVORITE PASTA, Serial No. 78/136,703.

RESPONSE:

REQUEST NO. 12: At the time Barilla filed the Application Serial No. 78/136,703, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE:

REQUEST NO. 13: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - ITALY'S #1 PASTA.

RESPONSE:

REQUEST NO. 14: Attached as Exhibit E is a true and correct copy of Barilla's trademark application for BARILLA - ITALY'S #1 PASTA, Serial No. 76/422,402.

RESPONSE:

REQUEST NO. 15: At the time Barilla filed the Application Serial No. 76/422,402, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE:

REQUEST NO. 16: Exhibit F is a representative example of the packaging of Applicant's product bearing the trademark "ITALY'S #1 PASTA."

RESPONSE:

REQUEST NO. 17: Application Serial No. 76/422,402 has matured into Registration No. 2,790,465.

RESPONSE:

REQUEST NO. 18: Exhibit G is a true and accurate copy of Registration No. 2,790,465.

RESPONSE:

REQUEST NO. 19: On June 18, 2002, Barilla filed Application Serial Nos. 78/136,706, 78/136,708, 76/136,701, and 76/136,703.

RESPONSE:

Dated: May 6, 2005

Respectfully submitted,

Thomas H. Van Hoozer
Cheryl L. Burbach
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

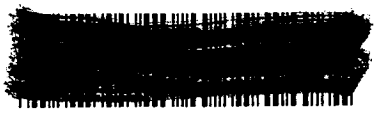
CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2005, I served the foregoing **OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT** by causing a true copy thereof to be sent via first class, postage paid, to the following:

Carla Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

Drawing Page

Serial Number:
78136706

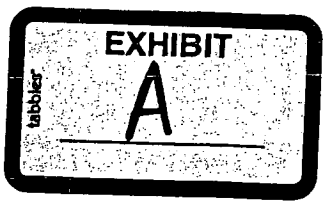


Applicant:
Barilla Alimentare S.p.A.
Via Mantova 166
Parma PA Italy 43100

Goods and Services:
PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

Mark:

BARILLA - AMERICA'S #1 PASTA



NO OCR

06-18-2002

Internet Transmission Date:
2002/06/18

Serial Number:
78136706

Filing Date:
2002/06/18

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TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: $325

RAM SALE NUMBER: 133
RAM ACCOUNTING DATE: 20020619

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NO OCR

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06-18-2002

<SERIAL NUMBER> 78136706
<FILING DATE> 06/18/2002

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<TRADEMARK/SERVICEMARK APPLICATION>
<VERSION 1.24>

<APPLICANT INFORMATION>

<NAME>	Barilla Alimentare S.p.A.
<STREET>	Via Mantova 166
<CITY>	Parma PA
<COUNTRY>	Italy
<ZIP/POSTAL CODE>	43100

<APPLICANT ENTITY INFORMATION>
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Italy

<TRADEMARK/SERVICEMARK INFORMATION>
<MARK> BARILLA - AMERICA'S #1 PASTA
<TYPED FORM> Yes
* Applicant requests registration of the above-identified trademark/service mark 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). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>
<INTENT TO USE: SECTION 1(b)> Yes
* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) *
<INTERNATIONAL CLASS NUMBER> 030
<LISTING OF GOODS AND/OR SERVICES> PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

<ATTORNEY INFORMATION>

<NAME>	G. Franklin Rothwell, Esq.
<STREET>	1425 K Street, NW Suite 800
<CITY>	Washington
<STATE>	DC
<COUNTRY>	USA
<ZIP/POSTAL CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040

<FAX NUMBER> 202-783-6031
<ATTORNEY DOCKET NUMBER> 2778-126
<OTHER APPOINTED ATTORNEY(S)> Robert H. Cameron; Anne M. Sterba

<DOMESTIC REPRESENTATIVE FOR FOREIGN APPLICANT>
* is hereby appointed applicant's representative upon whom notice or process in the proceedings affecting the mark may be served *

<NAME>	G. Franklin Rothwell, Esq.
<STREET>	1425 K Street, NW Suite 800
<CITY>	Washington
<STATE>	DC
<ZIP CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040
<FAX NUMBER>	202-783-6031

<FEE INFORMATION>
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<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>
<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>
* PTO-Application 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 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>	/Robert H. Cameron/
<DATE>	06/18/2002
<NAME>	Robert H. Cameron
<TITLE>	Attorney for Applicant

<MAILING ADDRESS>
<LINE> G. Franklin Rothwell, Esq.
<LINE> Rothwell, Figg, Ernst & Manbeck, P.C.
<LINE> 1425 K Street, NW
<LINE> Suite 800
<LINE> Washington DC 20005

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E-MAIL ADDRESS FOR ACKNOWLEDGMENT> bmanning@rothwellfigg.com

Drawing Page

Serial Number:
78136708

Applicant:
Barilla Alimentare S.p.A.
Via Mantova 166
Parma PR Italy 43100

Goods and Services:
PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

Mark:

BARILLA - AMERICA'S PREFERRED PASTA

EXHIBIT
B

NO OCR

06-18-2002

Internet Transmission Date:
2002/06/18

Serial Number:
78136708

Filing Date:
2002/06/18

TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: $325

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RAM ACCOUNTING DATE: 20020619

NO OCR

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<VERSION 1.24>

<APPLICANT INFORMATION>

<NAME>	Barilla Alimentare S.p.A.
<STREET>	Via Mantova 166
<CITY>	Parma PR
<COUNTRY>	Italy
<ZIP/POSTAL CODE>	43100

<APPLICANT ENTITY INFORMATION>
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Italy

<TRADEMARK/SERVICEMARK INFORMATION>
<MARK> BARILLA - AMERICA'S PREFERRED PASTA
<TYPED FORM> Yes
* Applicant requests registration of the above-identified trademark/service mark 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). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>
<INTENT TO USE: SECTION 1(b)> Yes
* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) *
<INTERNATIONAL CLASS NUMBER> 030
<LISTING OF GOODS AND/OR SERVICES> PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

<ATTORNEY INFORMATION>

<NAME>	G. Franklin Rothwell
<STREET>	1425 K Street, NW Suite 800
<CITY>	Washington
<STATE>	DC
<COUNTRY>	USA
<ZIP/POSTAL CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040

<FAX NUMBER> 202-783-6031
<ATTORNEY DOCKET NUMBER> 2778-132
<OTHER APPOINTED ATTORNEY(S)> Anne M. Sterba; Robert H. Cameron

<DOMESTIC REPRESENTATIVE FOR FOREIGN APPLICANT>
* is hereby appointed applicant's representative upon whom notice or process in the proceedings affecting the mark may be served *

<NAME>	G. Franklin Rothwell
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<CITY>	Washington
<STATE>	DC
<ZIP CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040
<FAX NUMBER>	202-783-6031

<FEE INFORMATION>
<TOTAL FEES PAID> 325
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>
<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>
* PTO-Application 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 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>	/Robert H. Cameron/
<DATE>	06/18/2002
<NAME>	Robert H. Cameron
<TITLE>	Attorney for Applicant

<MAILING ADDRESS>
<LINE> G. Franklin Rothwell
<LINE> Rothwell, Figg, Ernst & Manbeck, P.C.
<LINE> 1425 K Street, NW
<LINE> Suite 800
<LINE> Washington DC 20005

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E-MAIL ADDRESS FOR ACKNOWLEDGMENT> bmanning@rothwellfigg.com

Drawing Page

Serial Number:
78136701

Applicant:
Barilla Alimentare S.p.A.
Via Mantova 166
Parma PR Italy 43100

Goods and Services:
PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

Mark:

BARILLA - AMERICA'S BEST PASTA

EXHIBIT
C

NO OCR

06-18-2002

Internet Transmission Date:
2002/06/18

Serial Number:
78136701

Filing Date:
2002/06/18

TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: $325

RAM SALE NUMBER: 122
RAM ACCOUNTING DATE: 20020619

NO OCR

06-18-2002

<SERIAL NUMBER> 78136701
<FILING DATE> 06/18/2002

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<VERSION 1.24>

<APPLICANT INFORMATION>

<NAME>	Barilla Alimentare S.p.A.
<STREET>	Via Mantova 166
<CITY>	Parma PR
<COUNTRY>	Italy
<ZIP/POSTAL CODE>	43100

<APPLICANT ENTITY INFORMATION>
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Italy

<TRADEMARK/SERVICEMARK INFORMATION>
<MARK> BARILLA - AMERICA'S BEST PASTA
<TYPED FORM> Yes
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<INTERNATIONAL CLASS NUMBER> 030
<LISTING OF GOODS AND/OR SERVICES> PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

<ATTORNEY INFORMATION>

<NAME>	G. Franklin Rothwell, Esq.
<STREET>	1425 K Street, NW Suite 800
<CITY>	Washington
<STATE>	DC
<COUNTRY>	USA
<ZIP/POSTAL CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040

<FAX NUMBER> 202-783-6031
<ATTORNEY DOCKET NUMBER> 2778-128
<OTHER APPOINTED ATTORNEY(S)> Robert H. Cameron; Anne M. Sterba

<DOMESTIC REPRESENTATIVE FOR FOREIGN APPLICANT>
* is hereby appointed applicant's representative upon whom notice or process in the proceedings affecting the mark may be served *

<NAME>	G. Franklin Rothwell, Esq.
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<CITY>	Washington
<STATE>	DC
<ZIP CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040
<FAX NUMBER>	202-783-6031

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<TOTAL FEES PAID> 325
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>
<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>
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<SIGNATURE>	/Robert H. Cameron/
<DATE>	06/18/2002
<NAME>	Robert H. Cameron
<TITLE>	Attorney for Applicant

<MAILING ADDRESS>
<LINE> G. Franklin Rothwell, Esq.
<LINE> Rothwell, Figg, Ernst & Manbeck, P.C.
<LINE> 1425 K Street, NW Suite 800
<LINE> Washington DC 20005

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E-MAIL ADDRESS FOR ACKNOWLEDGMENT> bmanning@rothwellfigg.com

Drawing Page

Serial Number:
78136703

Applicant:
Barilla Alimentare S.p.A.
Via Mantova 166
Parma PR Italy 43100

Goods and Services:
PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

Mark:

BARILLA - AMERICA'S FAVORITE PASTA

EXHIBIT
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NO OCR

06-18-2002

Internet Transmission Date:
2002/06/18

Serial Number:
78136703

Filing Date:
2002/06/18

TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: $325

RAM SALE NUMBER: 127
RAM ACCOUNTING DATE: 20020619

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06-18-2002

<SERIAL NUMBER> 78136703
<FILING DATE> 06/18/2002

<DOCUMENT INFORMATION>
<TRADEMARK/SERVICEMARK APPLICATION>
<VERSION 1.24>

<APPLICANT INFORMATION>

<NAME>	Barilla Alimentare S.p.A.
<STREET>	Via Mantova 166
<CITY>	Parma PR
<COUNTRY>	Italy
<ZIP/POSTAL CODE>	43100

<APPLICANT ENTITY INFORMATION>
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Italy

<TRADEMARK/SERVICEMARK INFORMATION>
<MARK> BARILLA - AMERICA'S FAVORITE PASTA
<TYPED FORM> Yes
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* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) *
<INTERNATIONAL CLASS NUMBER> 030
<LISTING OF GOODS AND/OR SERVICES> PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

<ATTORNEY INFORMATION>

<NAME>	G. Franklin Rothwell, Esq.
<STREET>	1425 K Street, NW Suite 800
<CITY>	Washington
<STATE>	DC
<COUNTRY>	USA
<ZIP/POSTAL CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040

<FAX NUMBER> 202-783-6031
<ATTORNEY DOCKET NUMBER> 2778-127
<OTHER APPOINTED ATTORNEY(S)> Robert H. Cameron; Anne M. Sterba

<DOMESTIC REPRESENTATIVE FOR FOREIGN APPLICANT>
* is hereby appointed applicant's representative upon whom notice or process in the proceedings affecting the mark may be served *

<NAME>	G. Franklin Rothwell, Esq.
<STREET>	1425 K Street, NW Suite 800
<CITY>	Washington
<STATE>	DC
<ZIP CODE>	20005
<FIRM NAME>	Rothwell, Figg, Ernst & Manbeck, P.C.
<TELEPHONE NUMBER>	202-783-6040
<FAX NUMBER>	202-783-6031

<FEE INFORMATION>
<TOTAL FEES PAID> 325
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>
<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>
* PTO-Application 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 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>	/Robert H. Cameron/
<DATE>	06/18/2002
<NAME>	Robert H. Cameron
<TITLE>	Attorney for Applicant

<MAILING ADDRESS>
<LINE> G. Franklin Rothwell, Esq.
<LINE> Rothwell, Figg, Ernst & Manbeck, P.C.
<LINE> 1425 K Street, NW
<LINE> Suite 800
<LINE> Washington DC 20005

<RAM INFORMATION>
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<RAM ACCOUNTING DATE> 20020619

<SERIAL NUMBER INFORMATION>
<SERIAL NUMBER> 78/136703
<INTERNET TRANSMISSION DATE> Tuesday, 06-18-2002 16:40:16 EDT
<TEAS STAMP>
USPTO-12150177130-20020618164022616-78/136703-
124c18cc5c8a2b5c1d36e5f455ca4201533-RAM-127-20020618163822616
E-MAIL ADDRESS FOR ACKNOWLEDGMENT> bmanning@rothwellfigg.com

06-19-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #31

APPLICANT: Barilla Alimentare S.p.A.

ADDRESS: Via Mantova 166
43100 Parma, Italy

FIRST USE: 1996 **IN COMMERCE:** 1996

GOODS: PASTA, PASTA PRODUCTS AND SAUCES FOR PASTA

ITALY'S #1 PASTA

Attorneys:
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
Suite 800, 1425 K Street, N.W.
Washington, D. C. 20005
Phone: (202) 783-6040
Attorney Docket No. 2778-129TM

EXHIBIT
E

U.S. Patent & TMOfc/TM
[redacted]
76422402

76422402

TRADEMARK APPLICATION SERIAL NO. _

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

06/27/2002 SWILSON 00000191 76422402
01 FC:361 325.00 OP

PTO-1555
(5/87)

*U.S. Government Printing Office: 2000 — 466-232/29119

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ROBERT J. JONDLE, Ph.D.†
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GREGG L. JANSEN*†
NANCY T. MORRIS*†
LISA FAHIEN ULDRICH*†
ROBERT H. CAMERON
RICHARD WYDEVEN
THOMAS E. McKIERNAN*
MICHAEL J. MORAN, Ph.D.*
ANNE M. STERBA
LISA N. PHILLIPS*
LEIGH M. ZANOWSKI*
C. NICHOLE GIFFORD
REGINA A. BAILEY

* NOT ADMITTED IN D.C.
† IN NE OFFICE

OF COUNSEL
DON M. KERR*
JEFFREY L. IHNEN
GLENN E. KARTA
MARK I. BOWDITCH
MINAKSI BHATT
MICHAEL G. SULLIVAN
SHARON L. DAVIS

MIDWEST OFFICE
OMAHA, NEBRASKA

OIPE JC98
JUN 19 2002
TRADEMARK OFFICE

June 19, 2002

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: U.S. Trademark Application
Applicant: Barilla Alimentare S.p.A.
Mark : ITALY'S #1 PASTA
ATTORNEY DOCKET NO. 2778-129TM

Sir:

Submitted herewith for filing is an application for registration of the mark ITALY'S #1 PASTA, in International Class 30.

A check in the amount of $325.00 is attached for payment of the government filing fee of $325.00 for one class. In addition, please charge any additional fees to Deposit Account No. 02-2135. An extra copy of this letter is attached for that purpose.

Respectfully submitted,

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

By Robert H. Cameron
G. Franklin Rothwell and
Robert H. Cameron
Attorneys for Applicant

GFR:RHC:lml
Attachments

TRADEMARK/SERVICE MARK APPLICATION (15 U.S.C. §§ 1051, 1126(d)&(e))

To the Assistant Commissioner for Trademarks

<APPLICANT INFORMATION>

<Name> Barilla Alimentare S.p.A.

<Street> Via Mantova 166

<City> Parma

<State>

<Country> Italy

<Zip/Postal Code> 43100

<Telephone Number>

<Fax Number>

<e-Mail Address>

<APPLICANT ENTITY INFORMATION>-Select only *ONE*

<Individual: Country of Citizenship>

<Corporation: State/Country of Incorporation> Italy

<Partnership: State/Country under which Organized>

<Name(s) of General Partner(s) & Citizenship/Incorporation>

<Other Entity Type: Specific Nature of Entity>

<State/Country under which Organized>

<DOMESTIC REPRESENTATIVE> *Required ONLY if the owner's address is outside the United States*

<Name> Rothwell, Figg, Ernst & Manbeck
is hereby appointed the owner's representative upon whom notice or process in the proceedings affecting the mark may be served.
<Street> 1425 K St., N.W., Suite 800
<City> Washington
<State> D.C.
<Zip Code> 20005

<TRADEMARK/SERVICE MARK INFORMATION>

<Mark> ITALY'S #1 PASTA

<Typed Form>-Enter YES, if appropriate YES

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<Use in Commerce: Section I *(a)>-Applicant is using the mark in commerce on or in connection with the below-identified goods and/or services (15 U.S.C.. § 1051(a))*

.<International Class Number(s)> 30

<Listing of Goods and/or Services>

PASTA, PASTA PRODUCTS, SAUCES FOR PASTA

<Date of First Use Anywhere> 1996

<Date of First Use in Commerce> 1996

One (1) SPECIMEN for *each international class* showing the mark as used in commerce is submitted herewith..

<Intent to Use: Section 1(b)> *Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods and/or services (15 U S. C § 1051 (b)).*

<International Class Number(s)>
<Listing of Goods and/or Services>

<Foreign Priority: Section 44(d)> Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods and/or services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C § 1126(d).

<International Class Number(s)>
<Listing of Goods and/or Services>
<Country of Foreign Filing>
<Foreign Application Number>
<Date of Foreign Filing->

<Foreign Registration: Section 44(e)> *Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods and/or services based on registration of the mark in applicant's country of origin.*

<International Class Number(s)>
<Listing of Goods and/or Services>

<Country of Foreign Registration>

<Foreign Registration Number>

<Foreign Registration Date>

<Foreign Registration Renewal Date>

<Foreign Registration Expiration Date>

A foreign registration certificate or a certified copy of the foreign registration, in accordance with 15 U.S.C §1126(e) is submitted herewith together with an English translation thereof if not in the English language.

<FEE INFORMATION>

$325.00 x <Number of Classes> ONE = <Total Filing Fee Paid> $325.00

<SPECIMEN AND SIGNATURE INFORMATION>

Applicant requests registration of the above-identified mark in the United States Patent and Trademark Office on the Principal Register established by Act of July 5, 1946 (15 U.S.C. § 1051 et seq.) for the above-identified goods and/or services.

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. § 1001, and that such willful false statements 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. § 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 Robert H. Cameron

<Date> June 19, 2002

<Name> Robert H. Cameron

<Title> Attorney for Applicant

<CONTACT INFORMATION>

<Name> G. Franklin Rothwell, Esq.

<Company/Firm Name> Rothwell, Figg, Ernst & Manbeck, p.c.

<Street> Suite 800, 1425 K Street, N.W.

<City> Washington

<State> D.C.

<Country> U.S.A.

<Zip/Postal Code> 20005

<Telephone Number> 202-783-6040

<Fax Number> 202-783-6031

<e-Mail Address>

<Attorney Docket Number> 2778-129TM

ITALY'S #1 PASTA
Barilla
100% Selected Durum Wheat Semolina
CAMPANELLE
"Al Dente" Perfection in 10-12 Minutes
ENRICHED
MACARONI PRODUCT
1 LB
(454g)

EXHIBIT
F

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,790,465

United States Patent and Trademark Office

Registered Dec. 9, 2003

TRADEMARK
PRINCIPAL REGISTER

ITALY'S #1 PASTA

BARILLA ALIMENTARE S.P.A. (ITALY CORPORATION)
VIA MANTOVA 166
PARMA, ITALY 43100

FOR: PASTA, PASTA PRODUCTS, NAMELY PENNE LISCE, PENNETTE RIGATE, LINGUINE, CAPELLINI, LINGUINE FINI, SPAGHETTI, THIN SPAGHETTI, FARFALLE, ROTINI, RIGATONI, CONCHIGLIE RIGATE, PENNE RIGATE, TORTIGLIONI, GEMELLI, FETTUCCINE, SAUCES FOR PASTA, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1996; IN COMMERCE 0-0-1996.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PASTA", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "ITALY'S #1".

SER. NO. 76-422,402, FILED 6-19-2002.

GEORGIA CARTY, EXAMINING ATTORNEY

EXHIBIT
G

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI- SOCIETA PER AZIONI,	)	
Applicant.	)	

RECEIVED
JUN 16 2005
HOVEY WILLIAMS LLP

APPLICANT'S RESPONSE TO OPPOSER'S
FIRST SET OF REQUESTS FOR ADMISSIONS

Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), by and through counsel, hereby responds, pursuant to the Federal Rules of Civil Procedure, to Opposer's First Set of Requests for Admissions as follows:

GENERAL OBJECTIONS

Applicant hereby incorporates by reference its General Objections to Opposer's First Set of Interrogatories.

RESPONSES

Subject to, and without waiving the foregoing general objections, Barilla provides the following responses to Opposer's First Set of Requests for Admissions:

REQUEST NO. 1: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S #1 PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 2: Attached as Exhibit A is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S #1 PASTA, Serial No. 78/136,706.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO.3: At the time Barilla filed the Application Serial No. 78/136,706, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 4: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S PREFERRED PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 5: Attached as Exhibit B is a true and correct copy of Barillia's [sic] trademark application for BARILLA - AMERICA'S PREFERRED PASTA, Serial No. 78/136,708.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 6: At the time Barilla filed the Application Serial No. 78/136,708, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 7: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S BEST PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 8: Attached as Exhibit C is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S BEST PASTA, Serial No. 78/136,701.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 9: At the time Barilla filed the Application Serial No. 78/136,701, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 10: At the time Barilla filed Application Serial No. 78/136,703 for AMERICA'S FAVORITE PASTA, the application did not contain a disclaimer of the phrase "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO.11: Attached as Exhibit D is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S FAVORITE PASTA, Serial No. 78/136,703.

RESPONSE: Applicant objects to this Request as vague.

REQUEST NO. 12 : At the time Barilla filed the Application Serial No. 78/136,703,

Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this request as vague.

REQUEST NO. 13: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - ITALY'S #1 PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 14: Attached as Exhibit E is a true and correct copy of Barilla's trademark application for BARILLA - ITALY'S #1 PASTA, Serial No. 76/422,402.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 15: At the time Barilla filed the Application Serial No. 76/422,402, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 16: Exhibit F is a representative example of the packaging of Applicant's product bearing the trademark "ITALY'S #1 PASTA."

RESPONSE: Applicant objects to this request as vague and irrelevant.

REQUEST NO. 17: Application Serial No. 76/422,402 has matured into Registration No. 2,790,465.

RESPONSE: Applicant objects to this Request as irrelevant.

REQUEST NO. 18: Exhibit G is a true and accurate copy of Registration No. 2,790,465.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

REQUEST NO. 19: On June 18, 2002, Barilla filed Application Serial Nos. 78/136,706, 78/136,708, 78/136,701, and 76/136,703.

RESPONSE: Applicant objects to this request as vague and irrelevant.

BARILLA G. E R. FRATELLI- SOCIETA
PER AZIONI

By: _____

G. Franklin Rothwell
Carla C. Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

Date: June 10, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2005, I served the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS by first class mail, postage prepaid, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Joan Adair

Joan Adair

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI- SOCIETA PER AZIONI,	)	
Applicant.	)	

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S
FIRST SET OF REQUESTS FOR ADMISSIONS

Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), by and through counsel, hereby responds, pursuant to the Federal Rules of Civil Procedure, to Opposer's First Set of Requests for Admissions as follows:

GENERAL OBJECTIONS

Applicant hereby incorporates by reference its General Objections to Opposer's First Set of Interrogatories.

RESPONSES

Subject to, and without waiving the foregoing general objections, Barilla provides the following responses to Opposer's First Set of Requests for Admissions:

REQUEST NO. 1: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S #1 PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 2: Attached as Exhibit A is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S #1 PASTA, Serial No. 78/136,706.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted to the extent Exhibit A was true and correct as of the date indicated therein.

REQUEST NO.3: At the time Barilla filed the Application Serial No. 78/136,706, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 4: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S PREFERRED PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 5: Attached as Exhibit B is a true and correct copy of Barillia's [sic] trademark application for BARILLA - AMERICA'S PREFERRED PASTA, Serial No. 78/136,708.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted to the extent Exhibit B was true and correct as of the date indicated therein.

REQUEST NO. 6: At the time Barilla filed the Application Serial No. 78/136,708, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 7: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - AMERICA'S BEST PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted to the extent an application for BARILLA- AMERICA'S BEST PASTA had been filed but subsequently abandoned.

REQUEST NO. 8: Attached as Exhibit C is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S BEST PASTA, Serial No. 78/136,701.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted to the extent Exhibit C was true and correct as of the date indicated therein

REQUEST NO. 9: At the time Barilla filed the Application Serial No. 78/136,701, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 10: At the time Barilla filed Application Serial No. 78/136,703 for AMERICA'S FAVORITE PASTA, the application did not contain a disclaimer of the phrase "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO.11: Attached as Exhibit D is a true and correct copy of Barilla's trademark application for BARILLA - AMERICA'S FAVORITE PASTA, Serial No. 78/136,703.

RESPONSE: Applicant objects to this Request as vague.

SUPPLEMENTAL RESPONSE: Admitted to the extent Exhibit D was true and correct as of the date indicated therein.

REQUEST NO. 12 : At the time Barilla filed the Application Serial No. 78/136,703, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this request as vague.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 13: Barilla has filed an application with the United States Patent and Trademark Office to seek registration of the trademark BARILLA - ITALY'S #1 PASTA.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 14: Attached as Exhibit E is a true and correct copy of Barilla's trademark application for BARILLA - ITALY'S #1 PASTA, Serial No. 76/422,402.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Denied. Exhibit E is a copy of Barilla's trademark Application for ITALY'S #1 PASTA.

REQUEST NO. 15: At the time Barilla filed the Application Serial No. 76/422,402, Barilla knew that the packaging for Mueller's Pasta contained the language "AMERICA'S FAVORITE PASTA."

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 16: Exhibit F is a representative example of the packaging of Applicant's product bearing the trademark "ITALY'S #1 PASTA."

RESPONSE: Applicant objects to this request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 17: Application Serial No. 76/422,402 has matured into Registration No. 2,790,465.

RESPONSE: Applicant objects to this Request as irrelevant.

SUPPLEMENTAL RESPONSE: Admitted

REQUEST NO. 18: Exhibit G is a true and accurate copy of Registration No. 2,790,465.

RESPONSE: Applicant objects to this Request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Admitted.

REQUEST NO. 19: On June 18, 2002, Barilla filed Application Serial Nos. 78/136,706, 78/136,708, 76/136,701, and 76/136,703.

RESPONSE: Applicant objects to this request as vague and irrelevant.

SUPPLEMENTAL RESPONSE: Denied to the extent that Applicant has not filed Application Serial Nos. 76/136,701 and 76/136,703. Admitted to the rest.

BARILLA G. E R. FRATELLI- SOCIETA
PER AZIONI

By: Brian E. Banner

G. Franklin Rothwell, Esq.
Brian E. Banner, Esq.
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

Date: October 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2006, I served the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS by first class mail, postage prepaid, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Patrick R. Collares

American Italian Pasta Company
v.
Barilla Alimentare S.P.A.
Opposition No. 91161373
Opposer's Exhibit 223

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

AMERICAN ITALIAN PASTA COMPANY	)	**OPPOSITION NO.: 91-161,373**
	)	**SERIAL NO.: 78/136,703**
Opposer,	)	**MARK: BARILLA - AMERICA'S FAVORITE PASTA**
	)	
v.	)	
	)	
BARILLA G. E R. FRATELLI-SOCIETA PER AZIONI,	)	
	)	
Applicant.	)	

OPPOSER'S THIRD REQUEST FOR ADMISSIONS TO APPLICANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, as incorporated into the Trademark Rules of Practice, Opposer, American Italian Pasta Company ("AIPC"), propounds the following requests for admission to Applicant, Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), for which responses are to be served upon Opposer at the offices of Hovey Williams LLP, 2405 Grand Boulevard, Suite 400, Kansas City, Missouri 64108, within thirty (30) days after service hereof.

For the convenience of the Board and the parties, Opposer requests that each discovery request (including sub-parts) be quoted in full immediately proceeding the response.

DEFINITIONS

Opposer incorporates its "Definitions" as set forth in its First Set of Interrogatories already served upon and responded to by Barilla.

REQUESTS

REQUEST NO. 20: Admit that Applicant's use of BARILLA- AMERICA'S FAVORITE PASTA is likely to cause confusion among consumers with Opposer's use of AMERICA'S FAVORITE PASTA.

RESPONSE:

REQUEST NO. 21: Admit that the slogan AMERICA'S FAVORITE PASTA is visually similar to BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE:

REQUEST NO. 22: Admit that Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA is likely to cause confusion among the relevant consuming public with Opposer's mark, AMERICA'S FAVORITE PASTA, as set forth in Application Serial No. 76497489.

RESPONSE:

REQUEST NO. 23: Admit that Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA is likely to cause confusion among consumers with Opposer's mark, AMERICA'S FAVORITE PASTA, as set forth in Application Serial No. 76497190.

RESPONSE:

REQUEST NO. 24: Admit that the slogan AMERICA'S FAVORITE PASTA conveys the same commercial impression as the slogan BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE:

REQUEST NO. 25: Admit that to the best of Applicant's knowledge, and with the exception of Opposer's packaging of its goods, the words "AMERICA'S FAVORITE PASTA" does not appear on the packaging of any pasta products offered for sale in the United States.

RESPONSE:

REQUEST NO. 26: Admit that Opposer's pasta products and Applicant's products identified in the application for BARILLA - AMERICA'S FAVORITE PASTA are sold through similar trade channels.

RESPONSE:

REQUEST NO. 27: Admit that Opposer's pasta products and Applicant's goods identified in the application for BARILLA - AMERICA'S FAVORITE PASTA are sold through overlapping trade channels.

RESPONSE:

REQUEST NO. 28: Admit that Applicant's goods identified in the application for BARILLA - AMERICA'S FAVORITE PASTA are the same or similar to the Opposer's goods identified in Application Serial No. 76497489.

RESPONSE:

REQUEST NO. 29: Admit that Applicant's goods identified in the application for

BARILLA - AMERICA'S FAVORITE PASTA are the same or similar to the Opposer's goods identified in Application Serial No. 76497190.

RESPONSE:

REQUEST NO. 30: Admit that Exhibit A, which is attached hereto, is a true and accurate copy of Applicant's entire document production in this opposition proceeding.

RESPONSE:

REQUEST NO. 31: Admit that Opposer's use of AMERICA'S FAVORITE PASTA is puffery.

RESPONSE:

REQUEST NO. 32: Admit that Opposer's use of AMERICA'S FAVORITE PASTA is laudatory.

RESPONSE:

REQUEST NO. 33: Admit that Opposer used AMERICA'S FAVORITE PASTA on its goods prior to the filing date of Applicant's application for BARILLA - AMERICA'S FAVORITE PASTA, Serial No. 78136703.

RESPONSE:

Dated: August 14, 2006

Respectfully submitted,

Thomas H. Van Hoozer
Cheryl L. Burbach
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2006, I served the foregoing **OPPOSER'S THIRD REQUEST FOR ADMISSIONS TO APPLICANT** by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

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

AMERICAN ITALIAN PASTA COMPANY,	)	
Opposer	)	
v.	)	Opposition No. 91-161,373
BARILLA G. E R. FRATELLI- SOCIETA PER AZIONI,	)	
Applicant.	)	

APPLICANT'S RESPONSE TO OPPOSER'S
THIRD REQUESTS FOR ADMISSIONS

Barilla G. E R. Fratelli-Societa Per Azioni ("Barilla"), by and through counsel, hereby responds, pursuant to the Federal Rules of Civil Procedure, to Opposer's Third Set of Requests for Admissions as follows:

GENERAL OBJECTIONS

Applicant hereby incorporates by reference its General Objections to Opposer's First Set of Interrogatories. There is no Opposer's Second Requests for Admissions.

RESPONSES

Subject to, and without waiving the foregoing general objections, Barilla provides the following responses to Opposer's Third Set of Requests for Admissions:

REQUEST NO. 20: Admit that Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA is likely to cause confusion among consumers with Opposer's use of "AMERICA'S FAVORITE PASTA."

RESPONSE: Denied.

REQUEST NO. 21: Admit that the slogan AMERICA'S FAVORITE PASTA is visually similar to BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE: Denied. While the highly laudatory three words 'AMERICA'S FAVORITE PASTA' is in Opposer's alleged mark and in Applicant's mark, the visually similar ends there because Applicant's mark contains four (4) words beginning with the famous house mark BARILLA.

REQUEST NO. 22: Admit that Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA is likely to cause confusion among the relevant consuming public with Opposer's mark AMERICA'S FAVORITE PASTA, as set for in Application Serial No. 76497489.

RESPONSE: Denied.

REQUEST NO. 23: Admit that Applicant's use of BARILLA - AMERICA'S FAVORITE PASTA is likely to cause confusion among consumers with Opposer's mark AMERICA'S FAVORITE PASTA, as set forth in Application Serial No. 76497190.

RESPONSE: Denied.

REQUEST NO. 24: Admit that the slogan AMERICA'S FAVORITE PASTA conveys the same commercial impression as the slogan BARILLA - AMERICA'S FAVORITE PASTA.

RESPONSE: Denied.

REQUEST NO. 25: Admit that to the best of Applicant's knowledge, and with the exception of Opposer's packaging of its goods, the words, "AMERICA'S FAVORITE PASTA" does not appear on the packaging of any pasta products offered for sale in the United States.

RESPONSE: Admitted.

REQUEST NO. 26: Admit that Opposer's pasta products and Applicant's products identified in the application for BARRILLA - AMERICA'S FAVORITE PASTA are sold through similar trade channels.

RESPONSE: Admitted.

REQUEST NO. 27: Admit that Opposer's pasta products and Applicant's products identified in the application for BARRILLA - AMERICA'S FAVORITE PASTA are sold through overlapping trade channels.

RESPONSE: Admitted.

REQUEST NO. 28: Admit that Applicant's goods identified in the application for BARILLA - AMERICA'S FAVORITE PASTA are the same or similar to the Opposer's goods identified in Application Serial No. 76497489.

RESPONSE: Admitted.

REQUEST NO. 29: Admit that Applicant's goods identified in the application for

BARILLA- AMERICA'S FAVORITE PASTA are the same or similar to the Opposer's goods identified in Application Serial No. 76497190.

RESPONSE: Admitted.

REQUEST NO. 30: Admit that Exhibit A, which is attached here to, is a true and accurate copy of Applicant's entire document production in this opposition proceeding.

RESPONSE: We can neither confirm nor deny as Exhibit A was never received.

REQUEST NO. 31: Admit that Opposer's use of AMERICA'S FAVORITE PASTA IS puffery.

RESPONSE: Admitted.

REQUEST NO. 32: Admit that Opposer's use of AMERICA'S FAVORITE PASTA IS laudatory.

RESPONSE: Admitted.

REQUEST NO. 33: Admit that Opposer used AMERICA'S FAVORITE PASTA on its goods prior to the filing date of Applicant's application for BARILLA - AMERICA'S FAVORITE PASTA, Serial No. 78136703.

RESPONSE: Admitted.

BARILLA G. E R. FRATELLI- SOCIETA
PER AZIONI

By: Brian E. Banner

G. Franklin Rothwell, Esq.
Brian Banner, Esq.
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

Date: October 16, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th of October 2006, I served the foregoing APPLICANT'S RESPONSE TO OPPOSER'S THIRD SET OF REQUESTS FOR ADMISSIONS by first class mail, postage prepaid, to the following:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108

Patrick R. Collares