OIPE IAP97
JAN 12 2007
PATENT & TRADEMARK OFFICE

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

TTAB
78 136703

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

NOTICE OF FILING OF TESTIMONY DEPOSITION
TRANSCRIPT PURSUANT TO 37 C.F.R. § 2.125(c)

Applicant, BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI ("Applicant") hereby give notice to Opposer, AMERICAN ITALIAN PASTA COMPANY ("Opposer") in the above-identified Opposition proceeding that a certified transcript and accompanying exhibits 29-30 of the testimony deposition of Joslyn Poquette taken by Applicant on January 9, 2007 in Madison, Wisconsin (attended by Cheryl Burbach on behalf of Opposer and Brian Banner, Esq. on behalf of Applicant), has been filed with the U.S. Patent and Trademark Office, before the Trademark Trial and Appeal Board.

Counsel for Applicant has filed and served the transcript and accompanying exhibits 29-30 in accordance with the rules of the Trademark Trial and Appeal Board.

01-12-2007
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

January 11, 2007

Respectfully submitted,
BARILLA G. E R. FRATELLI -
SOCIETA PER AZIONI

By: Brian Banner

Brian Banner, Esq
G. Franklin Rothwell, Esq.
Rothwell, Figg, Ernst & Manbeck
1425 K Street N.W.
Suite 800
Washington D.C. 20005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following **NOTICE OF FILING OF TESTIMONY DEPOSITION TRANSCRIPT PURSUANT TO 37 C.F.R. § 2.125(c)** was served on this 12th day of January, 2007, by U.S. Mail postage pre-paid on the following counsel for Opposer:

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

Patrick Collares

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL
3 AND APPEAL BOARD
4 AMERICAN ITALIAN PASTA)
5 COMPANY,) OPPOSITION NO. 91161373
6 OPPOSER,)
7 vs.)
8 BARILLA G.E.R.) DEPOSITION TAKEN ON
9 FARTELLI-SOCIETA PER) BEHALF OF APPLICANT
10 AZIONI,)
11 APPLICANT,)
12
13 * * * * * * * *
14
15 DEPONENT: JOSLYN POQUETTE
16 JANUARY 9, 2007
17 9:53 A.M.
18
19
20 Reported by: Michelle Hagen, RPR
21
22
23
24
25

1 APPEARANCES VIA TELEPHONE:

2 On behalf of the Opposer,

3 Cheryl L. Burbach, Esq.

4 Hovey Williams, LLP

5 2405 Grand Boulevard, Suite 400

6 Kansas City, Missouri 64108

7 (816)474-9050

8 On behalf of the Applicant,

9 Brian E. Banner, Esq.

10 Rothwell, Figg, Ernst & Manbeck, P.C.

11 1425 K Street, NW, Suite 800

12 Washington, D.C. 20005

13 (202)783-6040

14 I N D E X

15 EXAMINATION PAGE

16 Direct by Mr. Banner..... 4

17 Cross by Ms. Burbach..... 12

18 Redirect by Mr. Banner..... 33

19 E X H I B I T S

20 EXHIBIT NO.: ID'D

21 29 Notice of deposition 6

22 30 Trademark investigation, 11/28/06 7

23

24

25

1 STIPULATION

2 It is here by stipulated and agreed by
3 and between counsel for the applicant and counsel
4 for the opposer that this deposition taken
5 telephonically may be taken in stenographic
6 shorthand by MICHELLE HAGEN, Registered
7 Professional Reporter, and hereafter reduced to
8 typewriting.
9 It is further stipulated and agreed by
10 and between the parties that pursuant to the
11 attorneys of record, a copy of this deposition
12 shall be considered submission to the witness for
13 signature pursuant to 703.01(j)-
14 37 CFR 2.123(c)(5); but shall in no way be
15 considered as a waiver of the witness's signature,
16 to be signed by the witness at the time -- at any
17 time before or at the trial of this case, and if
18 not signed by the time of trial, it may be used as
19 if signed.
20 It is further stipulated and agreed
21 between counsel for the respective parties hereto
22 that the deposition of the witness may be signed
23 before a notary public.
24
25

1 P R O C E E D I N G S

2 MR. BANNER: We have entered the

3 stipulation about the ground rules for this

4 deposition, as we have in the other depositions in

5 this matter. Cheryl, I'm saying this for your

6 attention because we've already read the

7 stipulation that appears in all of the other

8 depositions. The only difference is this is a

9 telephonic deposition that we have stipulated to.

10 MS. BURBACH: Correct.

11 MR. BANNER: Do you have any

12 objections? Okay. Miss Hagen, will you please

13 swear the witness.

14 JOSLYN POQUETTE, after having been

15 duly sworn to tell the truth, the whole truth, and

16 nothing but the truth, was examined and testified

17 as follows:

18 DIRECT EXAMINATION

19 BY MR. BANNER:

20 Q Joslyn Poquette, my name is Brian Banner. I'll be

21 taking your testimony and deposition today on

22 behalf of the applicant, Barilla G.E.R. Fratelli

23 SPA. When I conclude asking questions,

24 Miss Burbach is going to ask you questions. She

25 represents American Italian Pasta Company, the

1 opposer in this matter.
2 The testimony deposition is like being
3 a witness at a trial before a judge except there
4 isn't any judge in this matter. The judge will be
5 the Trademark Trial and Appeal Board of the United
6 States Patent and Trademark Office. Have you been
7 deposed before Miss Poquette?
8 A No.
9 Q Okay. In this deposition I'll ask you questions
10 and my questions and your answers will be recorded
11 by the court reporter. Please understand you need
12 to speak up and answer orally. Don't shake your
13 head yes or no, don't use any hand signals, and
14 give your answers loud enough so that we all can
15 hear you on the phones. Do you understand?
16 A Yes.
17 Q On occasion I may ask you a question you don't
18 understand. It's my job to ask you clear
19 questions. If you do not understand one of my
20 questions or one of Miss Burbach's questions,
21 please stop, tell us you don't understand. We'll
22 attempt to rephrase it. Is that okay with you?
23 A Yes.
24 Q You have water in the room you are, so help
25 yourself to water if you'd like it.

1 A Okay.
2 Q You should have no notes with you; is that
3 correct?
4 A That is correct.
5 Q Sometimes in a deposition you'll answer a question
6 and later remember something you didn't say. If
7 that happens during this deposition, if something
8 comes to mind, ask me or Miss Burbach if you can
9 stop and go back and answer the question more
10 fully. We will be happy to take your answer to
11 the question asked and then go back and answer
12 more fully the question you've answered before.
13 Do you understand?
14 A Yes.
15 Q Okay. Are you taking any medication today that
16 might inhibit your ability to understand and
17 answer the questions asked?
18 A No.
19 Q Okay. Will you please state your full name for
20 the record?
21 A Joslyn Nicole Poquette.
22 Q Okay. Are you appearing today pursuant to the
23 notice of deposition I have marked, the
24 applicant's Deposition Exhibit 29 marked a
25 corrected notice of deposition?

1 A Yes.
2 Q Okay, thank you. Can you please tell me your
3 educational level since high school?
4 A I am a current college student.
5 Q Okay. And who is your current employer?
6 A NameProtect, Incorporated.
7 Q What is your current position?
8 A Client services account manager.
9 Q Now I'll ask the court reporter to hand you what
10 is marked Applicant's Deposition Exhibit No. 30
11 and ask if you can identify it.
12 A It's the trademark investigation for America's
13 favorite.
14 Q And is there a date on that?
15 A Yes, November 28, 2006.
16 Q Do you recognize this investigation report?
17 A Yes, I do.
18 Q On what basis did this investigation report -- how
19 do you -- how did you come to come to create this
20 investigation report?
21 A It was ordered by Brian Banner.
22 Q Okay. And can you turn to the first page after
23 the cover page and explain what's on the first
24 page.
25 MS. BURBACH: Brian, I'm going to have

1 a running objection. Rather than repeat these
2 objections to every response provided about the
3 report, I'm going to issue a running objection to
4 Exhibit 30.
5 The NameProtect report dated
6 November 28 as well all and any testimony about
7 that report is objectionable because the report
8 and this deponent's testimony constitutes
9 inadmissible hearsay under Federal Rule of
10 Evidence 801 and cannot be used to prove the truth
11 of the matter asserted therein.
12 Additionally, the report lacks
13 foundation under Rule 602. NameProtect and/or its
14 investigators provided no evidence that the
15 Internet search results are accurate and
16 comprehensive, which we'll get to, I guess, more
17 specifically as you go along, but the investigator
18 lacks competence to testify as to the search
19 results as a result of that incompleteness; and
20 because the search is an incomplete assessment of
21 the registrant's respective uses, it calls for
22 improper speculation and therefore is not
23 reasonably calculated to lead to the discovery of
24 admissible evidence.
25 There is no showing yet -- and we'll

1 get to this more specifically and I'll object as
2 we go along -- of personal knowledge as required
3 under Federal Rule of Evidence 602 and it's not
4 the best evidence of actual trademark use under
5 Federal Rule of Evidence 1002.
6 I won't be repeating all of those
7 objections each time. Obviously that would make
8 it inefficient, but it will be maintained
9 throughout and as we get more specifically I'll
10 make specific objections.
11 MR. BANNER: Okay. That's noted.
12 MS. BURBACH: Thank you.
13 BY MR. BANNER:
14 Q Miss Poquette, can you tell me what steps you took
15 to create the first page of the report?
16 A I took the federal serial number and I looked it
17 up in our Active IP system to obtain the full
18 record. I then found the owner of the mark.
19 I looked up their information on the Google search
20 engine, found their home website, verified the
21 address on their home website with the address in
22 the record. I then searched for in use of the
23 trademark on their website. In this case I found
24 in use of the trademark directly on their website.
25 Q Thank you. Is it accurate -- did you do the same

1 thing for the rest of the records that are
2 reflected in this report?
3 A I did follow the same steps for all of the
4 records.
5 Q Okay, and is this the kind of report that
6 NameProtect normally sells?
7 A Yes, it is.
8 Q Okay. I'd direct your attention to -- I'm sorry,
9 these pages are not numbered.
10 MS. BURBACH: I went ahead and
11 numbered mine just one beginning with the cover
12 page just so we could make it a little easier.
13 MR. BANNER: Okay.
14 BY MR. BANNER:
15 Q It's page number 10 if you note that the cover
16 page is number 1. Can you turn to the 10th page?
17 A Yes.
18 Q And it should be the investigation of America's
19 favorite pretzel. Is that what you're looking at?
20 A Yes.
21 Q Can you tell me how and what result you acquired
22 and how you came about this information?
23 A I looked up the federal serial number and found
24 the full record. I took the owner information and
25 did an on-line search through the Google search

1 engine. The on-line search did not provide any
2 information.
3 I then did a business search on
4 whitepages.com, which provided no information from
5 that website. I did a reverse address search
6 found -- with the address found in the record, and
7 the listing was for a residential address, and I
8 could not find any further information.
9 Q Okay. Turning to page 11 of the report, what did
10 you do for gaining this information? Is it any
11 different than what you did for page 10?
12 A No, it is not.
13 Q So of the registration numbers you were given to
14 do this report, some were found and some were not
15 found on your searches?
16 A Correct.
17 Q Is that correct? I didn't hear your response.
18 A That is correct.
19 Q Thank you. Turning to page 21, can you tell me
20 what's on page 21?
21 A On page 21 is the investigation of America's
22 favorite.
23 Q What is the number?
24 A Federal registration number 2,263,243.
25 Q Okay. Please explain how you came about this

1 information.
2 A An on-line search using the Google search engine
3 provided no further information. I then did a
4 business search on whitepages.com and that
5 provided no information and the address and
6 business could not be found. I contacted
7 directory assistance in Florence, Kentucky and no
8 listing for HDN Development Corporation was found.
9 While conducting a search using the
10 Google search engine, I found that HDN Development
11 Corporation is connected to Krispy Kreme Doughnuts
12 through a loan agreement and no use of the mark
13 America's favorite could be found in conjunction
14 with either company.
15 MR. BANNER: Thank you. I'm at this
16 point going to turn you over for
17 cross-examination, after which time I will have an
18 opportunity to redirect.
19 CROSS-EXAMINATION
20 BY MS. BURBACH:
21 Q Miss Poquette, my name is Cheryl Burbach and I'm
22 here on behalf of American Italian Pasta Company.
23 Could you spell your last name for me?
24 A Yes. It is P-O-Q-U-E-T-T-E.
25 Q Thank you. How long have you been at NameProtect

1 as an employee?
2 A Almost four years.
3 Q And did you receive any training to perform the
4 type of search that you performed on behalf of
5 Barilla?
6 A I received training when I first started here,
7 yes.
8 Q And could you kind of explain what the training
9 involves?
10 A The training was performed by our QA department,
11 who is in charge of our full trademark research
12 reports, and they showed us the step of breaking
13 down the federal registration records and how to
14 identify the owners and the applicants and any
15 other information in there and how to use Google
16 and other search engines to look up that
17 information.
18 Q So in addition to Google, you're trained to use
19 other search engines?
20 A Yes.
21 Q Are you trained to do things beyond Internet
22 searching?
23 A No.
24 Q Are you trained to contact information or to call
25 a particular business or person?

1 A Yes.
2 Q Okay. Is that a service that your company offers
3 as part of an investigation?
4 A If on-line information cannot be found, we do try
5 to contact the company if there is a phone number
6 available.
7 Q Do you try to use alternative search engines to
8 Google?
9 A Yes.
10 Q This may sound like a strange question. Is anyone
11 else present with you today during this deposition
12 other than the court reporter?
13 A Yes.
14 Q And who would that be?
15 A Ryan Matteson.
16 Q Ryan Matteson, and who is he?
17 A He is a sales representative.
18 Q Okay. And why is he present?
19 A Because he is Brian Banner's sales representative.
20 Q Okay. And is there anyone else present?
21 A No.
22 Q Do you have a lawyer present?
23 A I do not.
24 Q At the very beginning of Brian's direct
25 examination of you, he clarified that you had no

1 notes with you; is that correct?
2 A Correct.
3 Q Are you aware of any notes that exist?
4 A I am not.
5 Q Are you the person who actually performed the
6 search that resulted in the report in Exhibit 30?
7 A Yes, I am.
8 Q Okay. And when you were explaining the step that
9 you took to come up with the report results
10 identified in Exhibit 30, you had stated that you
11 looked it up on a particular system. I didn't
12 catch the word. It began with an A, I believe?
13 A It's Active IP.
14 Q And can you explain what that is?
15 A Active IP is our internal searching system and
16 it's linked to the system we use to create our
17 full trademark reports, and it's a way to retrieve
18 federal records.
19 Q Got you. And let me back up here. When
20 Mr. Banner contacted NameProtect, did he speak to
21 you directly?
22 A No, he did not.
23 Q Did he speak with Mr. Matteson?
24 A Yes, he did.
25 Q Okay. Are you aware of what was said in those

1 conversations?
2 A No, I am not.
3 Q Have you spoken with Mr. Banner prior to today?
4 A No, I have not.
5 Q How did you know what you were supposed to do as
6 part of the search? I mean, how were you told
7 that you were to perform this search? Or
8 investigation, I guess is what you were calling
9 it.
10 A I was told to obtain the full records for each
11 registration or serial number.
12 Q And who told you to do that?
13 A Ryan Matteson.
14 Q Okay. But he told you to obtain the full records
15 for the registrations provided to you.
16 A Correct.
17 Q Okay. And do you know what registration numbers
18 you were provided?
19 A Yes, I do.
20 Q Are they all reflected in this investigation?
21 A Yes, they are.
22 Q Were you provided copies of the certificates of
23 registration?
24 A I do not understand the question.
25 Q How did you receive the registration numbers? Was

1 it an e-mail or a form or how do you know what
2 registrations to investigate?
3 A Ryan sent me an e-mail request.
4 Q And do you know if that e-mail has been produced
5 to American Italian Pasta?
6 A I do not know.
7 Q Okay. Do you still have a copy of that e-mail?
8 A Yes, I do.
9 Q Did you understand what the purpose of your
10 investigation was?
11 A Other than my normal investigations, no, I did not
12 know what it would be used for.
13 Q Why did you think you were performing this
14 investigation? What was your understanding?
15 A That Mr. Banner would like to see as much
16 information possible for these registrations.
17 Q And what would that include?
18 A I do not understand the question.
19 Q What would be the type of information that you
20 would provide in response to that request?
21 A In use of the marks on the Internet.
22 Q Were you -- I'm sorry. Did you receive any
23 information about this opposition proceeding?
24 A Only when Ryan gave me the paperwork.
25 Q Okay. Are you aware of any facts about this

1 opposition proceeding other than this particular
2 report?
3 A No, I am not.
4 Q Okay. Have you seen anything entitled a notice of
5 reliance that was filed in this proceeding?
6 A No, I have not.
7 Q Are you aware if Mr. Matteson received any
8 correspondence from Mr. Banner?
9 A No, I am not.
10 Q Did you see any e-mails from Mr. Banner to
11 Mr. Matteson?
12 A No, I have not.
13 Q If your customer wanted to request an
14 investigation like the one you performed here,
15 what steps would they have to take to get that
16 report from you?
17 A They would contact their sales representative and
18 give them the information or federal registration
19 numbers that they would like searched.
20 Q Is there any type of form that is required to be
21 filled out, whether it be on-line or in printed
22 form?
23 A No, there is not.
24 Q I note that the date of the report is November 28.
25 Do you recall when you performed the trademark

1 search?
2 A That day, November 28.
3 Q You're prompt. Did you receive any other
4 information other than the registration numbers to
5 perform the search?
6 A No, I did not.
7 Q Okay. When you provided the search report in
8 Exhibit 30 to Barilla's counsel, was it
9 accompanied by any instructions on how to
10 interpret or use the report?
11 A No, it was not.
12 Q I understand what you had said about website
13 searching that you performed. You indicated that
14 you had searched Google. Did you only use Google
15 as a search engine?
16 A I used other search engines such as MSN and Yahoo
17 if nothing could be found on Google.
18 Q Is that reflected in Exhibit 30 --
19 A No.
20 Q -- that you searched other search engines?
21 A It is not specific that I searched other search
22 engines. I just stated that on-line information
23 could not be found.
24 Q So I'm going to repeat back to you what I think is
25 part of the process that you use, and clarify if

1 I'm incorrect, but if you were able to find the
2 company or the registrant's e-mail address, is it
3 true that you then searched that website, if
4 possible, to find the mark you were looking for?
5 A That is correct.
6 Q And if you found the registrant's website but
7 couldn't locate the mark, did you do anything else
8 to find the mark?
9 A Yes. I did an overall search using the search
10 engine with the owner's name and the mark or the
11 mark alone.
12 Q Okay. And if you were still unable to find the
13 mark, did you take any other steps?
14 A I did try to contact the company if the
15 information was provided.
16 Q Did you do that uniformly for the use results in
17 which you couldn't find the mark?
18 A Yes.
19 Q So is it true that there were instances where you
20 were able to find the registrant's trademark by
21 searching Google?
22 A Yes.
23 Q Do you have an understanding of how an on-line
24 search of the mark may lead you to the page
25 containing that language?

1 A I do not understand the question.
2 Q Well, when you typed in America's favorite, fill
3 in the blank, whatever the mark was that you were
4 searching for, do you have an understanding of how
5 Google took you to the page that contained that
6 mark?
7 A Yes.
8 Q Could you explain that?
9 A Google searches millions of websites to find the
10 exact mark that you put in the exact words that
11 you put in on those websites.
12 Q So if a mark appeared on a website, are you saying
13 that Google would have probably taken you to that
14 page?
15 A Correct.
16 Q Are you familiar with Metatags?
17 A No, I am not.
18 Q Miss Poquette, is it true that you determined the
19 scope of your search based upon Mr. Banner's
20 instructions provided to Mr. Matteson?
21 A Can you rephrase the question?
22 Q Is it true that you determined or decided what the
23 scope of your search or investigation would be
24 based upon Mr. Brian Banner's instructions to his
25 sales representative, Ryan Matteson, of the scope

1 of the investigation that you performed?
2 A Right. The only information I was given was the
3 registration or serial numbers, and from then we
4 completed the search as we would any other one or
5 I completed the search as I would any other
6 investigation. There was no specifics.
7 Q I'm going to represent to you that these
8 registrations that you've searched or investigated
9 were attached to a notice of reliance that was
10 submitted in this proceeding, and because I'm
11 telling you that, I'm asking you do you know if
12 you were provided with copies -- or I'm sorry, do
13 you know if you were provided with all of the
14 registration numbers that were identified in that
15 notice of reliance?
16 A I do not know.
17 Q Are all your search results or your investigation
18 results included in your November 28, 2006 report?
19 A Yes, they are.
20 Q Isn't it true that you did not look at any
21 physical packages or whether or not the registrant
22 was making use of the trademark?
23 A Yes, it is true I did not look at any physical
24 packages.
25 Q Is that a service that your company would provide

1 if requested to do so as part of an investigation?
2 A No, it is not.
3 Q You didn't go to any stores as part of your
4 investigation, did you?
5 A No, I did not.
6 Q And you didn't go to any restaurants as part of
7 your investigation either, did you?
8 A No, I did not.
9 Q Were there any occasions where you spoke with
10 anyone on behalf of any of the trademark owners
11 identified in those registrations?
12 A No, I did not.
13 Q Is that a service that you would provide if
14 requested?
15 A I'm not sure.
16 Q Do you know if you would possibly contact a
17 trademark owner if you were doing a full search
18 of the availability of a trademark for
19 registration?
20 A Can you rephrase the question?
21 Q Yeah. Let me take a step back. Isn't it true
22 that your company will perform trademark searches
23 of the federal Patent and Trademark Office, state
24 records and common law uses in order to determine
25 whether a trademark is available for registration?

1 A Yes.
2 Q Okay. And as part of that investigation, does
3 your company at times contact registrants or
4 trademark owners by phone --
5 A No.
6 Q -- to determine if they are still using the
7 trademark identified in the search results?
8 A No.
9 MR. BANNER: I'm going to have to
10 enter an objection as to the scope of the line of
11 questions. I thought we were dealing with
12 Applicant's Exhibit 30 and I think now we're into
13 the many services that the NameProtect company
14 offers.
15 MS. BURBACH: I would respond that
16 this is reasonably calculated and is admissible
17 here because it illustrates whether or not the
18 search results are a complete and accurate picture
19 of whether or not the registrants identified in
20 the registrations are actually using the
21 trademark, and that's what you have intended to
22 prove with this report.
23 BY MS. BURBACH:
24 Q Miss Poquette, did you look at all of the
25 advertising of the registrants identified -- that

1 were the owners of the registrations given to you?
2 A Can you rephrase the question?
3 Q Yeah. Of the registrations that you looked at and
4 you said you contacted or you located the owners
5 of the trademarks -- I'm not saying that very
6 well. Let me back up.
7 You had stated, if I'm correct, that
8 you had found the websites of the registrants
9 whenever possible, and my question to you is do
10 you know if you observed or looked at all of the
11 advertising of the trademark owner?
12 MR. BANNER: I'm going to object.
13 That, I believe, is beyond the scope of what is
14 intended to be reflected in the trademark
15 investigation report.
16 MS. BURBACH: And again, I would just
17 reaffirm that that establishes again that the
18 trademark report is an inaccurate picture of
19 whether or not the trademark owner is actually
20 using the trademark and that other media were not
21 identified or investigated to determine whether
22 the use was being made.
23 BY MS. BURBACH:
24 Q Do you want me to repeat the question,
25 Miss Poquette?

1 A Yes, please.
2 Q Do you know if you looked at all of the
3 advertising of the trademark owners identified?
4 A I do not know.
5 Q Isn't it possible that there are uses by the
6 registrants that you did not observe?
7 MR. BANNER: I'm going to object as
8 that calls for speculation.
9 BY MS. BURBACH:
10 Q You can still answer the question.
11 A I don't know.
12 Q You didn't investigate any common law trademarks
13 in the food or restaurant industry that begin with
14 America's favorite, did you?
15 A I did not.
16 Q And you didn't investigate any state law or state
17 trademark registrants in the food or restaurant
18 industry that begin with America's favorite, did
19 you?
20 A I did not.
21 Q Are you aware that Pizza Hut advertises that it's
22 America's favorite pizza?
23 A I am not.
24 Q That didn't show up in your search results, did
25 it?

1 A It did not.
2 Q Isn't it true that you didn't investigate any
3 common law trademarks that begin with America's
4 favorite? So the question is isn't it true that
5 you didn't investigate any common law trademarks
6 that begin with America's favorite?
7 MR. BANNER: And I'm going to object
8 on the basis it's beyond the scope of the
9 trademark investigation report.
10 MS. BURBACH: That's precisely my
11 point.
12 BY MS. BURBACH:
13 Q Miss Poquette, can you answer the question,
14 please?
15 A I did not.
16 Q Isn't it also true that you didn't investigate any
17 registered trademark or pending trademark
18 applications that begin with America's favorite
19 that were not in the food industry?
20 MR. BANNER: I'm going to object again
21 for the same reason.
22 THE WITNESS: I did not.
23 MS. BURBACH: I should tell you when
24 there's an objection made, you can still answer
25 the question.

1 MR. BANNER: Yes, you can.
2 MS. BURBACH: Sorry, we should have
3 told you that sooner though.
4 BY MS. BURBACH:
5 Q Anyway, the question is, and his objection is
6 maintained, isn't it true that you didn't
7 investigate any state trademark -- I'm sorry.
8 Isn't it true you didn't investigate any
9 registered trademarks or pending trademark
10 applications that begin with America's favorite
11 that were not in the food industry?
12 A I did not.
13 Q Okay. Did you look at any uses of America's
14 favorite as used by American Italian Pasta
15 Company?
16 A I did not.
17 Q Okay. Did you look at any of Barilla's trademark
18 uses?
19 A I did not.
20 Q I'm going to ask you to look at Exhibit 30 and if
21 you could go back to page 10, which I will
22 represent to you is the America's favorite pretzel
23 results. And please let me know when you're
24 there.
25 A I am there.

1 Q Okay. So based on this page, it indicates that an
2 on-line search provided no new information and
3 that you searched the business white pages or you
4 did a business search of the white pages and were
5 unable to find the owner of America's favorite
6 pretzel; is that correct?
7 A That's correct.
8 Q Was the reverse address search performed at
9 whitepages.com?
10 A Yes, it was.
11 Q Is -- do you recall if you called the registrants
12 or tried to call the registrants to find out if
13 they were using America's favorite pretzel?
14 A I did not.
15 Q Did you call or attempt to reach the attorney
16 listed or the law firm listed on the trademark
17 registration?
18 A I did not.
19 Q Okay. I would next ask you to go to page 14, and
20 do you show that this is an investigation of
21 America's favorite registration number 2,689,567?
22 A Yes, I do.
23 Q I see that it states an on-line search provided
24 the owner's web address and that you used the
25 Google search engine to find in use of the mark at

1 the retailer's web address.
2 A Yes.
3 MR. BANNER: Is that a question?
4 MS. BURBACH: No, not yet.
5 BY MS. BURBACH:
6 Q Did you use any other search engines to determine
7 whether any use is being made of America's
8 favorite?
9 A No, I did not.
10 Q Is it true that when you found the results you
11 were looking for, that you stopped investigating
12 further that use?
13 A Yes.
14 Q Okay. And that's true for this entire report; is
15 that correct?
16 A That is correct.
17 Q I'd now ask you to go to page 18 of Exhibit 30 and
18 it states an investigation of America's favorite
19 flavors, federal registration number 2,722,791.
20 Do you have that in front of you?
21 A Yes, I do.
22 Q And I note that in the last bullet point it says a
23 call was placed to the number found on white pages
24 and it gives the number. The company
25 representative answered the phone saying "Thank

1 you for calling Houston Harvest." I inquired
2 about the products Houston Harvest sells and asked
3 about America's favorite flavors to see if it was
4 a product offering or tagline. The company
5 representative was not aware of any product or
6 tagline of that name. Is that an accurate reading
7 of that page?
8 A Yes, it is.
9 Q Okay. Why did you call this particular company,
10 unlike some of the other investigations that
11 turned up the same omitted information?
12 A When I conducted the white pages reverse address
13 search, if the search was confirmed and there was
14 a number provided, then I placed the call.
15 Q Okay. Did you attempt to contact the trademark or
16 the -- excuse me, the law firm or the attorney
17 identified in the certificate of registration?
18 A No, I did not.
19 Q Did you do that in the instance of any of these
20 registrations?
21 A No, I did not.
22 Q Let's see. If you would go to page 21 of
23 Exhibit 30 and it's an investigation of America's
24 favorite registration number 2,263,243. Do you
25 see that?

1 A No, I think I'm on the wrong page. Can you repeat
2 the registration number?
3 Q Yeah, 2,263,243.
4 A Okay, I'm there.
5 Q Great. I note that you contacted directory
6 assistance and couldn't locate HDN Development
7 Corporation. Do you know if you received special
8 instructions to call to obtain the number or try
9 to contact this company?
10 A No, I did not.
11 Q Last on page 30, which is the very last page, it
12 should be pretty easy --
13 A Okay.
14 Q -- and I'm reading the last paragraph, it says
15 "Note: Neither this electronic mail or any other
16 communication from NameProtect, Inc., including
17 from its agents and representatives, constitutes
18 legal advice or creates an attorney-client
19 relationship. NameProtect Inc. is not a law firm
20 and does not provide legal advice. If legal
21 advice or other assistance is required, you should
22 seek the services of an attorney." Do you see
23 that?
24 A Yes, I do.
25 Q So it's true that NameProtect is not providing any

1 legal advice in this document; correct?
2 A That is correct.
3 Q And it's also correct that you're not lawyers; is
4 that correct?
5 A That is correct.
6 Q And is it also correct that you're not providing
7 any opinions based upon the results of your search
8 or investigation?
9 A That is correct.
10 MS. BURBACH: I think that concludes
11 my cross-examination, Brian. I want to object on
12 the basis that this witness lacks competence in
13 the sense that she was not the one that directly
14 communicated with you, received instructions from
15 you; it's not the best evidence; that Mr. Matteson
16 may have information relevant to the scope and
17 instructions provided around this report. And I
18 would ask you to produce any correspondence
19 between you and Mr. Matteson, if there is any, to
20 the extent it hasn't been.
21 MR. BANNER: Okay. Redirect.
22 REDIRECT EXAMINATION
23 BY MR. BANNER:
24 Q Miss Poquette, when you conducted this
25 investigation on November 28, 2006, to the best of

1 your knowledge was the information that you
2 obtained accurate?
3 A Yes.
4 Q When you created this report, did you do anything
5 different than you would with any other report?
6 A No, I did not.
7 Q Did Mr. Ryan Matteson ask you to deviate in any
8 way from your standard report generation?
9 A No, he did not.
10 Q Did anyone else ask you to deviate or change your
11 report from the standard report?
12 A No, they did not.
13 MR. BANNER: Okay. That concludes the
14 deposition.
15 MS. BURBACH: And I would just repeat
16 the running objection throughout. I just want to
17 maintain that and --
18 MR. BANNER: Understood.
19 MS. BURBACH: Thank you.
20 MR. BANNER: Okay. Thanks very much
21 everyone.
22 (At 10:37 a.m. the deposition
23 concluded.)
24
25

1 STATE OF WISCONSIN)

2 MILWAUKEE COUNTY) SS:

3 I, MICHELLE HAGEN, Registered

4 Professional Reporter and Notary Public in and for the

5 State of Wisconsin, do hereby certify that the deposition

6 of JOSLYN POQUETTE was taken before me at NameProtect,

7 918 Deming Way, Madison, Wisconsin, on the 9th day of

8 January, 2007, commencing at 9:53 o'clock in the

9 forenoon.

10 That it was taken at the instance of

11 the Applicant upon verbal interrogatories.

12 That said deponent, before

13 examination, was sworn to testify the truth, the whole

14 truth, and nothing but the truth relative to said cause.

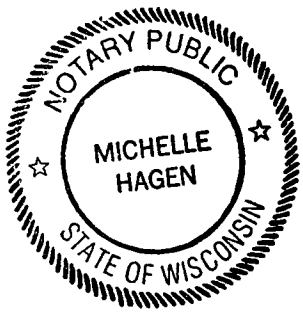
15 That the foregoing is a full, true and

16 correct record of all the proceedings had in the matter

17 of the taking of said deposition, as reflected by my

18 original machine shorthand notes taken at said time and

19 place.



20 Michelle Hagen

21 Notary Public in and for

22 the State of Wisconsin

23 Dated this 10th day of January, 2007,

24 Milwaukee, Wisconsin.

25 My commission expires September 26, 2010.

ERRATA SHEET

PAGE	LINE (S)	CHANGE	REASON

_____

SUBSCRIBED AND SWORN TO BEFORE ME
THIS ____ DAY OF _____, 20__.

_____
(NOTARY PUBLIC)

_____
MY COMMISSION EXPIRES:

A

ability 6:16
able 20:1,20
accompanied 19:9
account 7:8
accurate 8:15 9:25 24:18 31:6 34:2
acquired 10:21
Active 9:17 15:13,15
actual 9:4
addition 13:18
Additionally 8:12
address 9:21,21 11:5 11:6,7 12:5 20:2 29:8,24 30:1 31:12
admissible 8:24 24:16
advertises 26:21
advertising 24:25 25:11 26:3
advice 32:18,20,21 33:1
agents 32:17
agreed 3:2,9,20
agreement 12:12
ahead 10:10
alternative 14:7
American 1:4 4:25 12:22 17:5 28:14
America's 7:12 10:18 11:21 12:13 21:2 26:14,18,22 27:3,6,18 28:10,13 28:22 29:5,13,21 30:7,18 31:3,23
and/or 8:13
answer 5:12 6:5,9 6:10,11,17 26:10 27:13,24
answered 6:12 30:25
answers 5:10,14
Anyway 28:5
Appeal 1:3 5:5
APPEARANCES 2:1
appeared 21:12
appearing 6:22
appears 4:7
applicant 1:9,11 2:8 3:3 4:22 35:11
applicants 13:14
applicant's 6:24 7:10 24:12
applications 27:18 28:10
asked 6:11,17 31:2
asking 4:23 22:11
asserted 8:11
assessment 8:20
assistance 12:7 32:6 32:21
attached 22:9
attempt 5:22 29:15 31:15
attention 4:6 10:8
attorney 29:15 31:16 32:22
attorneys 3:11
attorney-client 32:18
availability 23:18
available 14:6 23:25
aware 15:3,25 17:25 18:7 26:21 31:5
AZIONI 1:10
a.m 1:17 34:22

B

B 2:19
back 6:9,11 15:19 19:24 23:21 25:6 28:21
Banner 2:9,16,18 4:2,11,19,20 7:21 9:11,13 10:13,14 12:15 15:20 16:3 17:15 18:8,10 24:9 25:12 26:7 27:7,20 28:1 30:3 33:21,23 34:13,18,20
Banner's 14:19 21:19,24
Barilla 1:8 4:22 13:5
Barilla's 19:8 28:17
based 21:19,24 29:1 33:7
basis 7:18 27:8 33:12
began 15:12
beginning 10:11 14:24
behalf 1:9 2:2,8 4:22 12:22 13:4 23:10
believe 15:12 25:13
best 9:4 33:15,25
beyond 13:21 25:13 27:8
blank 21:3
Board 1:3 5:5
Boulevard 2:5
breaking 13:12
Brian 2:9 4:20 7:21 7:25 14:19 21:24 33:11
Brian's 14:24
bullet 30:22
Burbach 2:3,17 4:10 4:24 6:8 7:25 9:12 10:10 12:20,21 24:15,23 25:16,23 26:9 27:10,12,23 28:2,4 30:4,5 33:10 34:15,19
Burbach's 5:20
business 11:3 12:4,6 13:25 29:3,4

C

C 4:1
calculated 8:23 24:16
call 13:24 29:12,15 30:23 31:9,14 32:8
called 29:11
calling 16:8 31:1
calls 8:21 26:8
case 3:17 9:23
catch 15:12
cause 35:14
certificate 31:17
certificates 16:22
certify 35:5
CFR 3:14
change 34:10
charge 13:11
Cheryl 2:3 4:5 12:21
City 2:6
clarified 14:25
clarify 19:25
clear 5:18
Client 7:8
college 7:4
come 7:19,19 15:9
comes 6:8
commencing 35:8
commission 35:25
common 23:24 26:12 27:3,5
communicated 33:14
communication 32:16
company 1:5 4:25 12:14,22 14:2,5 20:2,14 22:25 23:22 24:3,13 28:15 30:24 31:4,9 32:9
competence 8:18 33:12
complete 24:18
completed 22:4,5
comprehensive 8:16
conclude 4:23

concluded 34:23
concludes 33:10 34:13
conducted 31:12 33:24
conducting 12:9
confirmed 31:13
conjunction 12:13
connected 12:11
considered 3:12,15
constitutes 8:8 32:17
contact 13:24 14:5 18:17 20:14 23:16 24:3 31:15 32:9
contacted 12:6 15:20 25:4 32:5
contained 21:5
containing 20:25
conversations 16:1
copies 16:22 22:12
copy 3:11 17:7
Corporation 12:8 12:11 32:7
correct 4:10 6:3,4 11:16,17,18 15:1,2 16:16 20:5 21:15 25:7 29:6,7 30:15 30:16 33:1,2,3,4,5 33:6,9 35:16
corrected 6:25
correspondence 18:8 33:18
counsel 3:3,3,21 19:8
COUNTY 35:2
court 5:11 7:9 14:12
cover 7:23 10:11,15
create 7:19 9:15 15:16
created 34:4
creates 32:18
Cross 2:17
cross-examination 12:17,19 33:11
current 7:4,5,7
customer 18:13

D

D 2:14 4:1
date 7:14 18:24
dated 8:5 35:23
day 19:2 35:7,23
dealing 24:11
decided 21:22
Deming 35:7
department 13:10
deponent 1:15 35:12
deponent's 8:8
deposed 5:7
deposition 1:8 2:21 3:4,11,22 4:4,9,21 5:2,9 6:5,7,23,24 6:25 7:10 14:11 34:14,22 35:5,17
depositions 4:4,8
determine 23:24 24:6 25:21 30:6
determined 21:18 21:22
Development 12:8 12:10 32:6
deviate 34:7,10
difference 4:8
different 11:11 34:5
direct 2:16 4:18 10:8 14:24
directly 9:24 15:21 33:13
directory 12:7 32:5
discovery 8:23
document 33:1
doing 23:17
Doughnuts 12:11
duly 4:15
D.C 2:12

E

E 2:9,14,19 4:1,1
easier 10:12
easy 32:12
educational 7:3
either 12:14 23:7
electronic 32:15
employee 13:1
employer 7:5
engine 9:20 11:1 12:2,10 19:15 20:10 29:25
engines 13:16,19 14:7 19:16,20,22 30:6
enter 24:10
entered 4:2
entire 30:14
entitled 18:4
Ernst 2:10
Esq 2:3,9
establishes 25:17
evidence 8:10,14,24 9:3,4,5 33:15
exact 21:10,10
examination 2:15 4:18 14:25 33:22 35:13
examined 4:16
excuse 31:16
Exhibit 2:20 6:24 7:10 8:4 15:6,10 19:8,18 24:12 28:20 30:17 31:23
exist 15:3
expires 35:25
explain 7:23 11:25 13:8 15:14 21:8
explaining 15:8
extent 33:20
e-mail 17:1,3,4,7 20:2
e-mails 18:10

F

facts 17:25
familiar 21:16
FARTELLI-SOC... 1:9
favorite 7:13 10:19 11:22 12:13 21:2 26:14,18,22 27:4,6 27:18 28:10,14,22 29:5,13,21 30:8,18 31:3,24
federal 8:9 9:3,5,16 10:23 11:24 13:13 15:18 18:18 23:23 30:19
Figg 2:10
filed 18:5
fill 21:2
filled 18:21
find 11:8 20:1,4,8,12 20:17,20 21:9 29:5 29:12,25
firm 29:16 31:16 32:19
first 7:22,23 9:15 13:6
flavors 30:19 31:3
Florence 12:7
follow 10:3
follows 4:17
food 26:13,17 27:19 28:11
foregoing 35:15
forenoon 35:9
form 17:1 18:20,22
found 9:18,20,23 10:23 11:6,6,14,15 12:6,8,10,13 14:4 19:17,23 20:6 25:8 30:10,23
foundation 8:13
four 13:2
Fratelli 4:22
front 30:20
full 6:19 9:17 10:24

13:11 15:17 16:10 16:14 23:17 35:15
fully 6:10,12
further 3:9,20 11:8 12:3 30:12

G

G 4:1
gaining 11:10
generation 34:8
give 5:14 18:18
given 11:13 22:2 25:1
gives 30:24
go 6:9,11 8:17 9:2 23:3,6 28:21 29:19 30:17 31:22
going 4:24 7:25 8:3 12:16 19:24 22:7 24:9 25:12 26:7 27:7,20 28:20
Google 9:19 10:25 12:2,10 13:15,18 14:8 19:14,14,17 20:21 21:5,9,13 29:25
Grand 2:5
Great 32:5
ground 4:3
guess 8:16 16:8
G.E.R 1:8 4:22

H

H 2:19
Hagen 1:20 3:6 4:12 35:3
hand 5:13 7:9
happens 6:7
happy 6:10
Harvest 31:1,2
HDN 12:8,10 32:6
head 5:13
hear 5:15 11:17
hearsay 8:9
help 5:24
hereto 3:21
high 7:3
home 9:20,21
Houston 31:1,2
Hovey 2:4
Hut 26:21

I

identified 15:10 22:14 23:11 24:7 24:19,25 25:21 26:3 31:17
identify 7:11 13:14
ID'D 2:20
illustrates 24:17
improper 8:22
inaccurate 25:18
inadmissible 8:9
include 17:17
included 22:18
including 32:16
incomplete 8:20
incompleteness 8:19
Incorporated 7:6
incorrect 20:1
indicated 19:13
indicates 29:1
industry 26:13,18 27:19 28:11
inefficient 9:8
information 9:19 10:22,24 11:2,4,8 11:10 12:1,3,5 13:15,17,24 14:4 17:16,19,23 18:18 19:4,22 20:15 22:2 29:2 31:11 33:16 34:1
inhibit 6:16
inquired 31:1
instance 31:19 35:10
instances 20:19
instructions 19:9 21:20,24 32:8 33:14,17
intended 24:21 25:14
internal 15:15
Internet 8:15 13:21 17:21
interpret 19:10
interrogatories 35:11
investigate 17:2 26:12,16 27:2,5,16 28:7,8
investigated 22:8 25:21
investigating 30:11
investigation 2:22 7:12,16,18,20 10:18 11:21 14:3 16:8,20 17:10,14 18:14 21:23 22:1,6 22:17 23:1,4,7 24:2 25:15 27:9 29:20 30:18 31:23 33:8,25
investigations 17:11 31:10
investigator 8:17
investigators 8:14
involves 13:9
IP 9:17 15:13,15
issue 8:3
Italian 1:4 4:25 12:22 17:5 28:14

J

January 1:16 35:8 35:23
job 5:18
Joslyn 1:15 4:14,20 6:21 35:6
judge 5:3,4,4

K

K 2:11
Kansas 2:6
Kentucky 12:7
kind 10:5 13:8
know 16:5,17 17:1,4 17:6,12 22:11,13 22:16 23:16 25:10 26:2,4,11 28:23 32:7
knowledge 9:2 34:1
Kreme 12:11
Krispy 12:11

L

L 2:3
lacks 8:12,18 33:12
language 20:25
law 23:24 26:12,16 27:3,5 29:16 31:16 32:19
lawyer 14:22
lawyers 33:3
lead 8:23 20:24
legal 32:18,20,20 33:1
Let's 31:22
level 7:3
line 24:10
linked 15:16
listed 29:16,16
listing 11:7 12:8
little 10:12
LLP 2:4
loan 12:12
locate 20:7 32:6
located 25:4
long 12:25
look 13:16 22:20,23 24:24 28:13,17,20
looked 9:16,19 10:23 15:11 25:3 25:10 26:2
looking 10:19 20:4 30:11

loud 5:14

M

machine 35:18
Madison 35:7
mail 32:15
maintain 34:17
maintained 9:8 28:6
making 22:22
manager 7:8
Manbeck 2:10
mark 9:18 12:12 20:4,7,8,10,11,13 20:17,24 21:3,6,10 21:12 29:25
marked 6:23,24 7:10
marks 17:21
matter 4:5 5:1,4 8:11 35:16
Matteson 14:15,16 15:23 16:13 18:7 18:11 21:20,25 33:15,19 34:7
mean 16:6
media 25:20
medication 6:15
Metatags 21:16
Michelle 1:20 3:6 35:3
millions 21:9
Milwaukee 35:2,24
mind 6:8
mine 10:11
Missouri 2:6
MSN 19:16

N

N 2:14 4:1
name 4:20 6:19 12:21,23 20:10 31:6
NameProtect 7:6 8:5,13 10:6 12:25 15:20 24:13 32:16 32:19,25 35:6
need 5:11
Neither 32:15
new 29:2
Nicole 6:21
normal 17:11
normally 10:6
notary 3:23 35:4,21
note 10:15 18:24 30:22 32:5,15
noted 9:11
notes 6:2 15:1,3 35:18
notice 2:21 6:23,25 18:4 22:9,15
November 7:15 8:6 18:24 19:2 22:18 33:25
number 9:16 10:15 10:16,23 11:23,24 14:5 16:11 29:21 30:19,23,24 31:14 31:24 32:2,8
numbered 10:9,11
numbers 11:13 16:17,25 18:19 19:4 22:3,14
NW 2:11

O

O 4:1
object 9:1 25:12 26:7 27:7,20 33:11
objection 8:1,3 24:10 27:24 28:5 34:16
objectionable 8:7
objections 4:12 8:2 9:7,10
observe 26:6
observed 25:10
obtain 9:17 16:10,14 32:8
obtained 34:2
Obviously 9:7
occasion 5:17
occasions 23:9
offering 31:4
offers 14:2 24:14
Office 1:1 5:6 23:23
okay 4:12 5:9,22 6:1 6:15,19,22 7:2,5 7:22 9:11 10:5,8 10:13 11:9,25 14:2 14:18,20 15:8,25 16:14,17 17:7,25 18:4 19:7 20:12 24:2 28:13,17 29:1 29:19 30:14 31:9 31:15 32:4,13 33:21 34:13,20
omitted 31:11
on-line 10:25 11:1 12:2 14:4 18:21 19:22 20:23 29:2 29:23
opinions 33:7
opportunity 12:18
opposer 1:6 2:2 3:4 5:1
opposition 1:5 17:23 18:1
orally 5:12
order 23:24
ordered 7:21
original 35:18
overall 20:9
owner 9:18 10:24 23:17 25:11,19 29:5
owners 13:14 23:10 24:4 25:1,4 26:3
owner's 20:10 29:24
o'clock 35:8

P

P 4:1
packages 22:21,24
page 2:15 7:22,23,24 9:15 10:12,15,16 10:16 11:9,11,19 11:20,21 20:24 21:5,14 28:21 29:1 29:19 30:17 31:7 31:22 32:1,11,11
pages 10:9 29:3,4 30:23 31:12
paperwork 17:24
paragraph 32:14
part 14:3 16:6 19:25 23:1,3,6 24:2
particular 13:25 15:11 18:1 31:9
parties 3:10,21
Pasta 1:4 4:25 12:22 17:5 28:14
Patent 1:1 5:6 23:23
pending 27:17 28:9
perform 13:3 16:7 19:5 23:22
performed 13:4,10 15:5 18:14,25 19:13 22:1 29:8
performing 17:13
person 13:25 15:5
personal 9:2
phone 14:5 24:4 30:25
phones 5:15
physical 22:21,23
picture 24:18 25:18
pizza 26:21,22
place 35:19
placed 30:23 31:14
please 4:12 5:11,21 6:19 7:2 11:25 26:1 27:14 28:23
point 12:16 27:11 30:22
Poquette 1:15 4:14 4:20 5:7 6:21 9:14

12:21 21:18 24:24 25:25 27:13 33:24 35:6
position 7:7
possible 17:16 20:4 25:9 26:5
possibly 23:16
precisely 27:10
present 14:11,18,20 14:22
pretty 32:12
pretzel 10:19 28:22 29:6,13
printed 18:21
prior 16:3
probably 21:13
proceeding 17:23 18:1,5 22:10
proceedings 35:16
process 19:25
produce 33:18
produced 17:4
product 31:4,5
products 31:2
Professional 3:7 35:4
prompt 19:3
prove 8:10 24:22
provide 11:1 17:20 22:25 23:13 32:20
provided 8:2,14 11:4 12:3,5 16:15 16:18,22 19:7 20:15 21:20 22:12 22:13 29:2,23 31:14 33:17
providing 32:25 33:6
public 3:23 35:4,21
purpose 17:9
pursuant 3:10,13 6:22
put 21:10,11
P-O-Q-U-E-T-T-E 12:24
P.C 2:10

Q

QA 13:10
question 5:17 6:5,9 6:11,12 14:10 16:24 17:18 21:1 21:21 23:20 25:2,9 25:24 26:10 27:4 27:13,25 28:5 30:3
questions 4:23,24 5:9,10,19,20,20 6:17 24:11

R

R 4:1
reach 29:15
read 4:6
reading 31:6 32:14
reaffirm 25:17
reason 27:21
reasonably 8:23 24:16
recall 18:25 29:11
receive 13:3 16:25 17:22 19:3
received 13:6 18:7 32:7 33:14
recognize 7:16
record 3:11 6:20 9:18,22 10:24 11:6 35:16
recorded 5:10
records 10:1,4 13:13 15:18 16:10,14 23:24
redirect 2:18 12:18 33:21,22
reduced 3:7
reflected 10:2 16:20 19:18 25:14 35:17
registered 3:6 27:17 28:9 35:3
registrant 22:21
registrants 24:3,19 24:25 25:8 26:6,17 29:11,12
registrant's 8:21 20:2,6,20
registration 11:13 11:24 13:13 16:11 16:17,23,25 18:18 19:4 22:3,14 23:19 23:25 29:17,21 30:19 31:17,24 32:2
registrations 16:15 17:2,16 22:8 23:11 24:20 25:1,3 31:20
relationship 32:19
relative 35:14
relevant 33:16
reliance 18:5 22:9 22:15
remember 6:6
repeat 8:1 19:24 25:24 32:1 34:15
repeating 9:6
rephrase 5:22 21:21 23:20 25:2
report 7:16,18,20 8:3,5,7,7,12 9:15 10:2,5 11:9,14 15:6,9 18:2,16,24 19:7,10 22:18 24:22 25:15,18 27:9 30:14 33:17 34:4,5,8,11,11
Reported 1:20
reporter 3:7 5:11 7:9 14:12 35:4
reports 13:12 15:17
represent 22:7 28:22
representative 14:17,19 18:17 21:25 30:25 31:5
representatives 32:17
represents 4:25
request 17:3,20 18:13
requested 23:1,14
required 9:2 18:20 32:21
research 13:11
residential 11:7
respective 3:21 8:21
respond 24:15
response 8:2 11:17 17:20
rest 10:1
restaurant 26:13,17
restaurants 23:6
result 8:19 10:21
resulted 15:6
results 8:15,19 15:9 20:16 22:17,18 24:7,18 26:24 28:23 30:10 33:7
retailer's 30:1
retrieve 15:17
reverse 11:5 29:8 31:12
Right 22:2
room 5:24
Rothwell 2:10
RPR 1:20
Rule 8:9,13 9:3,5
rules 4:3
running 8:1,3 34:16
Ryan 14:15,16 16:13 17:3,24 21:25 34:7

S

S 2:19 4:1
sales 14:17,19 18:17 21:25
saying 4:5 21:12 25:5 30:25
says 30:22 32:14
school 7:3

scope 21:19,23,25 24:10 25:13 27:8 33:16
search 8:15,18,20 9:19 10:25,25 11:1 11:3,5 12:2,2,4,9 12:10 13:4,16,19 14:7 15:6 16:6,7 19:1,5,7,15,16,20 19:21 20:9,9,24 21:19,23 22:4,5,17 23:17 24:7,18 26:24 29:2,4,8,23 29:25 30:6 31:13 31:13 33:7
searched 9:22 18:19 19:14,20,21 20:3 22:8 29:3
searches 11:15 21:9 23:22
searching 13:22 15:15 19:13 20:21 21:4
see 17:15 18:10 29:23 31:3,22,25 32:22
seek 32:22
seen 18:4
sells 10:6 31:2
sense 33:13
sent 17:3
September 35:25
serial 9:16 10:23 16:11 22:3
service 14:2 22:25 23:13
services 7:8 24:13 32:22
shake 5:12
shorthand 3:6 35:18
show 26:24 29:20
showed 13:12
showing 8:25
signals 5:13
signature 3:13,15
signed 3:16,18,19,22
sooner 28:3
sorry 10:8 17:22 22:12 28:2,7
sound 14:10
SPA 4:23
speak 5:12 15:20,23
special 32:7
specific 9:10 19:21
specifically 8:17 9:1 9:9
specifics 22:6
speculation 8:22 26:8
spell 12:23
spoke 23:9
spoken 16:3
SS 35:2
standard 34:8,11
started 13:6
state 6:19 23:23 26:16,16 28:7 35:1 35:5,22
stated 15:10 19:22 25:7
states 1:1 5:6 29:23 30:18
stenographic 3:5
step 13:12 15:8 23:21
steps 9:14 10:3 18:15 20:13
stipulated 3:2,9,20 4:9
stipulation 3:1 4:3,7
stop 5:21 6:9
stopped 30:11
stores 23:3
strange 14:10
Street 2:11
student 7:4
submission 3:12
submitted 22:10
Suite 2:5,11
supposed 16:5
sure 23:15
swear 4:13
sworn 4:15 35:13
system 9:17 15:11 15:15,16

T

T 2:19
tagline 31:4,6
take 6:10 18:15 20:13 23:21
taken 1:8 3:4,5 21:13 35:6,10,18
TELEPHONE 2:1
telephonic 4:9
telephonically 3:5
tell 4:15 5:21 7:2 9:14 10:21 11:19 27:23
telling 22:11
testified 4:16
testify 8:18 35:13
testimony 4:21 5:2 8:6,8
thank 7:2 9:12,25 11:19 12:15,25 30:25 34:19
Thanks 34:20
thing 10:1
things 13:21
think 17:13 19:24 24:12 32:1 33:10
thought 24:11
time 3:16,17,18 9:7 12:17 35:18
times 24:3
today 4:21 6:15,22 14:11 16:3
told 16:6,10,12,14 28:3
trademark 1:1,2 2:22 5:5,6 7:12 9:4 9:23,24 13:11 15:17 18:25 20:20 22:22 23:10,17,18 23:22,23,25 24:4,7 24:21 25:11,14,18 25:19,20 26:3,17 27:9,17,17 28:7,9 28:17 29:16 31:15
trademarks 25:5 26:12 27:3,5 28:9
trained 13:18,21,24
training 13:3,6,8,10
trial 1:2 3:17,18 5:3 5:5
tried 29:12
true 20:3,19 21:18 21:22 22:20,23 23:21 27:2,4,16 28:6,8 30:10,14 32:25 35:15
truth 4:15,15,16 8:10 35:13,14,14
try 14:4,7 20:14 32:8
turn 7:22 10:16 12:16
turned 31:11
Turning 11:9,19
type 13:4 17:19 18:20
typed 21:2
typewriting 3:8

U

unable 20:12 29:5
understand 5:11,15 5:18,19,21 6:13,16 16:24 17:9,18 19:12 21:1
understanding 17:14 20:23 21:4
Understood 34:18
uniformly 20:16
United 1:1 5:5

use 5:13 9:4,22,24 12:12 13:15,18 14:7 15:16 17:21 19:10,14,25 20:16 22:22 25:22 29:25 30:6,7,12
uses 8:21 23:24 26:5 28:13,18

V

verbal 35:11
verified 9:20
vs 1:7

W

waiver 3:15
want 25:24 33:11 34:16
wanted 18:13
Washington 2:12
water 5:24,25
way 3:14 15:17 34:8 35:7
web 29:24 30:1
website 9:20,21,23 9:24 11:5 19:12 20:3,6 21:12
websites 21:9,11 25:8
went 10:10
we'll 5:21 8:16,25
we're 24:12
we've 4:6
white 29:3,4 30:23 31:12
whitepages.com 11:4 12:4 29:9
Williams 2:4
Wisconsin 35:1,5,7 35:22,24
witness 3:12,16,22 4:13 5:3 27:22 33:12
witness's 3:15
word 15:12
words 21:10
wrong 32:1

X

X 2:14,19

Y

Yahoo 19:16
Yeah 23:21 25:3 32:3
years 13:2

1

1 10:16
10 10:15 11:11 28:21
10th 10:16 35:23
10:37 34:22
1002 9:5
11 11:9
11/28/06 2:22
12 2:17
14 29:19
1425 2:11
18 30:17

2

2,263,243 11:24 31:24 32:3
2,689,567 29:21
2,722,791 30:19
2.123(c)(5) 3:14
20005 2:12
2006 7:15 22:18 33:25
2007 1:16 35:8,23
2010 35:25
202)783-6040 2:13
21 11:19,20,21 31:22
2405 2:5
26 35:25
28 7:15 8:6 18:24 19:2 22:18 33:25
29 2:21 6:24

3

30 2:22 7:10 8:4 15:6,10 19:8,18 24:12 28:20 30:17 31:23 32:11
33 2:18
37 3:14

4

4 2:16
400 2:5

6

6 2:21
602 8:13 9:3
64108 2:6

7

7 2:22
703.01(j) 3:13

8

800 2:11
801 8:10
816)474-9050 2:7

9

9 1:16
9th 35:7
9:53 1:17 35:8
91161373 1:5
918 35:7

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

CORRECTED NOTICE OF DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to 37 C.F.R. 2.123, Applicant, Barilla G. E R. Fratelli – Societa Per Azioni, by and through its attorneys, will take the deposition of Joslyn Pocquette before a Notary Public, or other officer authorized to administer oaths and will be recorded by stenographic and/or audiovisual means, commencing Tuesday, January 9, 2007, at 10:30 A.M. at 918 Deming Way, Madison, Wisconsin 53717.

You are invited to attend and cross-examine.

Dated: January 4, 2007

Respectfully submitted,

Thomas D. Lyford, Esq.
Brian Banner, Esq.
G. Franklin Rothwell, Esq.
Rothwell, Figg, Ernst & Manbeck
1425 K Street, NW, Suite 800
Washington, DC 20005
Telephone: (202) 783-6040

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
Applicant Deposition Exhibit 29

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following **CORRECTED NOTICE OF DEPOSITION** was served this 4th day of January 2007, by Electronic means and First Class Mail, postage prepaid, on the following counsels for Opposer:

Cheryl Burbach
Thomas H. Van Hoozer, Esq.
Hovey Williams, LLP.
2405 Grand Boulevard
Suite 400
Kansas City, MO64108

Patrick Collares

NameProtect®
digital brand protection

TRADEMARK INVESTIGATION REPORT

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

November 28, 2006

RE: Trademark Investigation – AMERICA'S FAVORITE

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
Applicant Deposition Exhibit 30

An investigation of **AMERICA'S FAVORITE SHRIMP** ; Federal Serial Number: 78-628068, provided the following information:

- An online search provided the owners web address: http://www.contessa.com
- From the owners website, In-Use of the mark was found at the following address: http://www.contessa.com/careers/

In-Use Screen Shot:

CONTESSA.

PREMIUM FOODS

► REGISTER NOW

► SEARCH GO

ABOUT US

OUR PRODUCTS

PROMOTIONS

REWARDS PROGRAM

RECIPES & TIPS

NEWS & EVENTS

HEALTH & WELLNESS

HOME

HEAR FROM OUR EMPLOYEES

Company Overview

COMPANY OVERVIEW

Where We Began

Contessa Premium Foods was founded in January 1984. Contessa's President and CEO envisioned a company dedicated solely to producing frozen seafood of consistent quality and value - something that did not yet exist in the marketplace.

Founded with an initial investment of $10,000, Contessa rapidly became one of the largest importers, processors, exporters, and distributors of farm-raised shrimp in the world. In addition to importing and processing top-of-the-line shrimp and scallop-based products, Contessa pioneered the marketing of frozen stir-fry exotic vegetables.

As sales grew, Contessa quickly rose to the forefront as the quality leader in shrimp, scallops, and entrees.

Where We Are Today

Since its origin as an exclusive leader in premium seafood, Contessa has grown its portfolio with its Value-added seafood, Convenience meals, gourmet stir-fry vegetables and more. Contessa imports, processes, exports, and distributes its products throughout North America, Europe and Asia - and markets to the retail, club, food service and private label channels. Contessa leads the industry by combining convenience, value and unmatched standards of consistent quality - and has been awarded for those strengths by the media, various agencies and organizations. Known as "America's Favorite Shrimp®," Contessa is one of the top-selling supermarket brands in the country.

Where We Are Heading

In expanding growth, Contessa will increase our market share in retail outlets nationwide by continuing to supply food service and club channels. Contessa will increase sales in these arenas by remaining true to consistent quality and innovation. Contessa's retail line will likely include a more diverse selection of entrees.

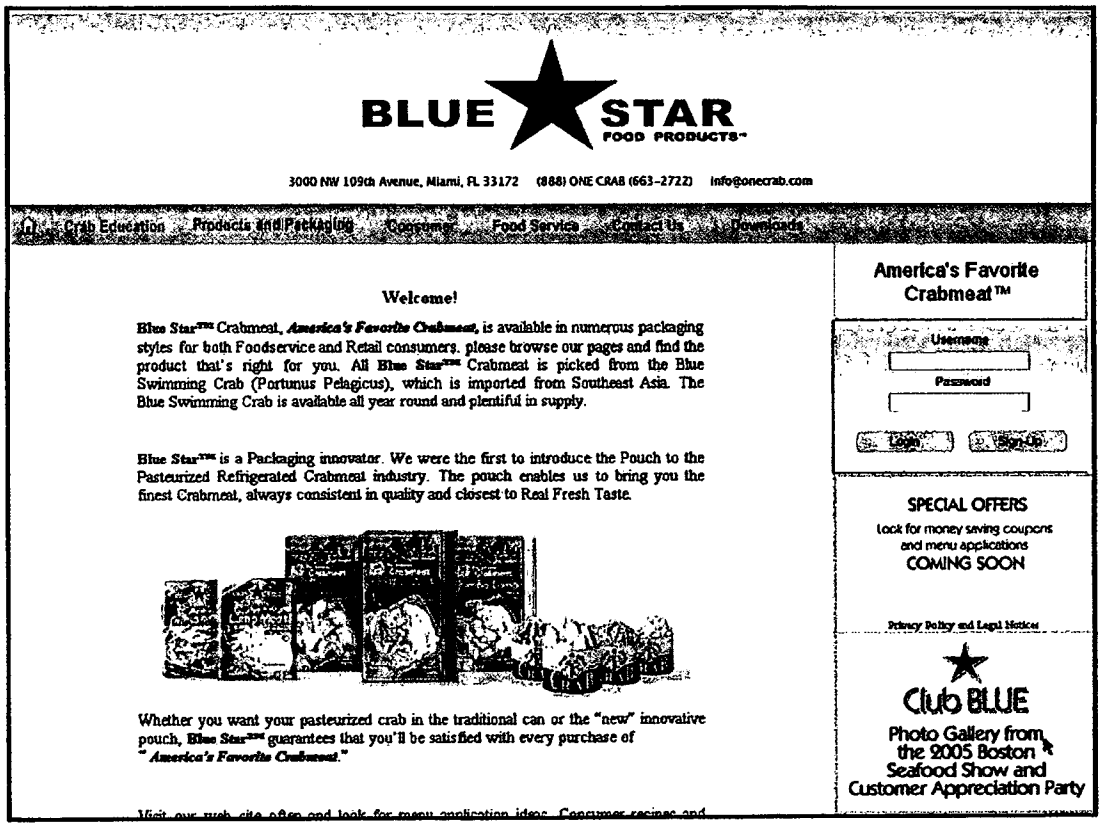
Regardless of the scale of company growth, Contessa will always remain true to consumer demand for a unique line of affordable, easy-to-prepare, and great-tasting products.

"We begin with integrity--add creativity and consistent quality. The outcome is Contessa."

An investigation of **AMERICA'S FAVORITE CRABMEAT** , Federal Registration Number: 2,961,590, provided the following information:

- An online search provided the owners web address: http://www.onecrab.com/
- From the owners website, In-Use of the mark was found at the following address: http://www.onecrab.com/

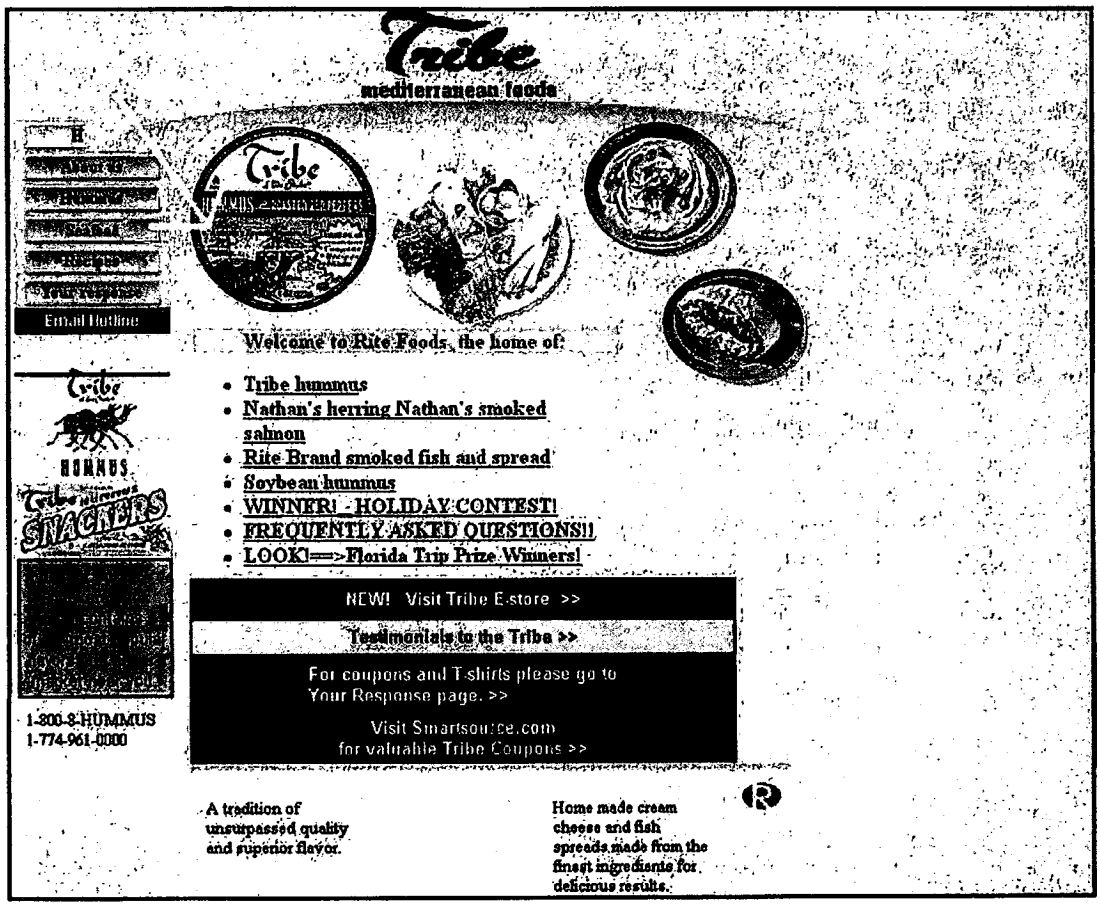
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE HUMMUS,** Federal Registration Number: 2,806,008, provided the following information:

- An online search provided the owners web address: http://www.oceanbeauty.com/
- Using the Google search engine, In-Use of the mark was found on the product website at the following address: http://www.ritefoods.com/
  - The mark has been highlighted manually by a circle and arrow.

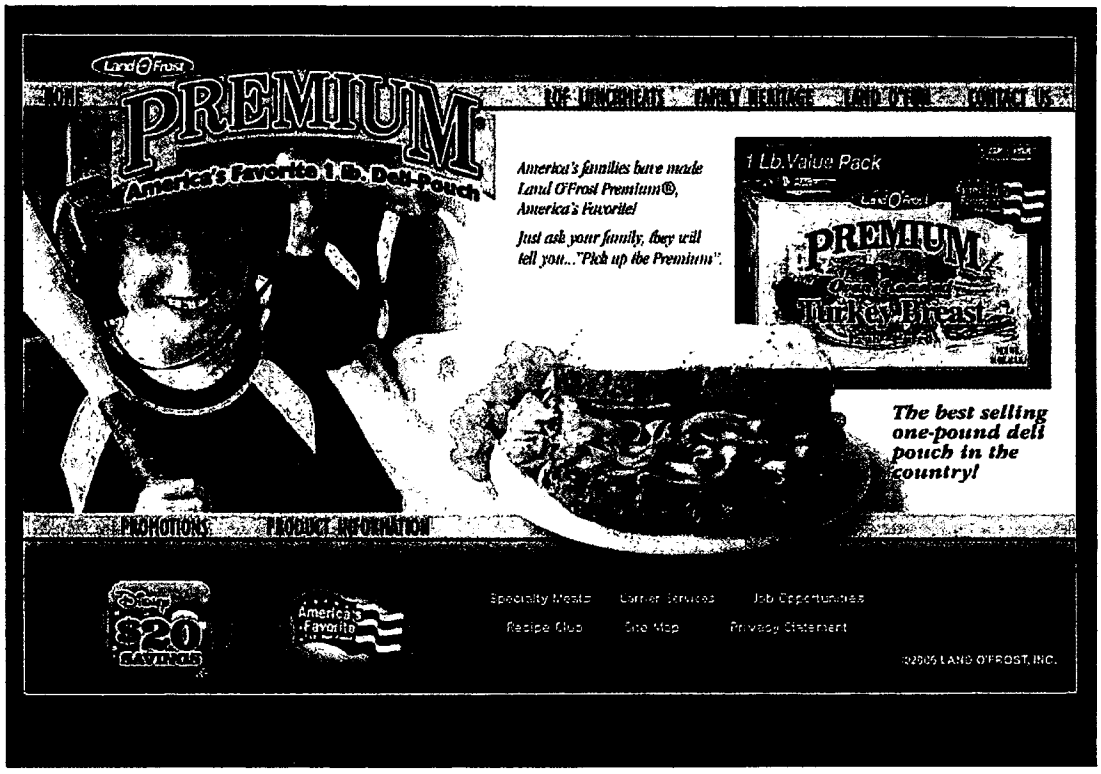
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE 1 LB. DELI-POUCH,** Federal Registration Number: 2,953,789, provided the following information:

- An online search provided the owners web address: http://www.landofrost.com
- From the owners website, In-Use of the mark was found at the following address: http://www.landofrost.com/prod_prem.html

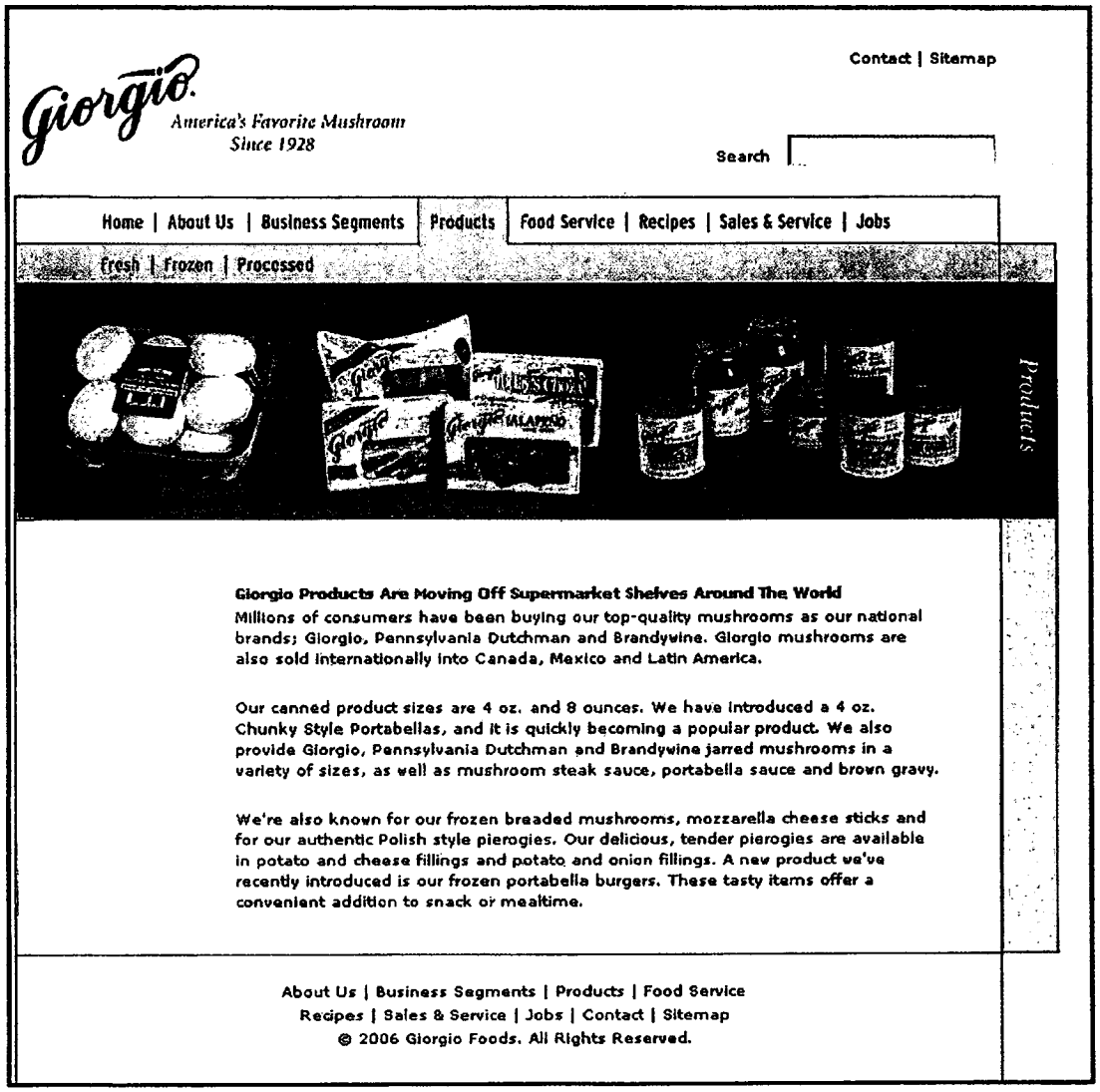
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE MUSHROOM,** Federal Registration Number: 2,520,064, provided the following information:

- An online search provided the owners web address: http://giorgiofoods.com
- From the owners website, In-Use of the mark was found at the following address: http://giorgiofoods.com/products.html

In-Use Screen Shot:



Contact | Sitemap

Giorgio. America's Favorite Mushroom Since 1928

Search

Home | About Us | Business Segments | Products | Food Service | Recipes | Sales & Service | Jobs

Fresh | Frozen | Processed

Products

Giorgio Products Are Moving Off Supermarket Shelves Around The World

Millions of consumers have been buying our top-quality mushrooms as our national brands; Giorgio, Pennsylvania Dutchman and Brandywine. Giorgio mushrooms are also sold internationally into Canada, Mexico and Latin America.

Our canned product sizes are 4 oz. and 8 ounces. We have introduced a 4 oz. Chunky Style Portabellas, and it is quickly becoming a popular product. We also provide Giorgio, Pennsylvania Dutchman and Brandywine jarred mushrooms in a variety of sizes, as well as mushroom steak sauce, portabella sauce and brown gravy.

We're also known for our frozen breaded mushrooms, mozzarella cheese sticks and for our authentic Polish style pierogies. Our delicious, tender pierogies are available in potato and cheese fillings and potato and onion fillings. A new product we've recently introduced is our frozen portabella burgers. These tasty items offer a convenient addition to snack or mealtime.

About Us | Business Segments | Products | Food Service
Recipes | Sales & Service | Jobs | Contact | Sitemap
© 2006 Giorgio Foods. All Rights Reserved.

An investigation of, **AMERICA'S FAVORITE FRIES,** Federal Registration Number: 2,360,994, provided the following information:

- An online search provided the owners web address: http://www.mcdonalds.com
- From the owners website, In-Use of the mark was found at the following address: http://www.mcdonalds.com/content/es/usa/eat/features/dollar.RowPar.0001.ContentPar.0001.ColumnPar.0001.File.tmp/dollarmenu01142005.swf

In-Use Screen Shot:

An investigation of, **AMERICA'S FAVORITE CORN DOG,** Federal Registration Number: 2,154,372, provided the following information:

- An online search provided the owners web address: http://www.saralee.com
- From the owners website, In-Use of the mark was found at the following address: http://saraleefoodservice.com/gw_cdogs.asp?cat=31

In-Use Screen Shot:

About Us | Contact Us | Search

STATE FAIR Corn Dogs

from the family of Sara Lee

Home
Products
Bakery
Meat
Beverages
Recipes
POS/Merchandising
Promotions
Sales Contacts
Sara Lee Connection

THEY ALWAYS REMEMBER WHAT THEY LOVE MOST

In the 1930's, two Texans invented a revolutionary fun food. Their honey-batter wrapped hot dog on a stick started getting smiles all over the state fair. The fun continued to grow and has now become an American classic. The one, the only, State Fair® Corn Dogs.

YOU CAN SERVE THE EXCITEMENT ANYTIME

If you need a classic kids meal on the menu or a convenient breakfast treat, we have a solution for you. Pure fun. Pure flavor. Any meal or occasion. The original corn dog offers you more than ever before.

- USDA Choice
- USDA Select
- Consistent Workmanship

WHAT IT TAKES TO BE AMERICA'S FAVORITE CORN DOG

Everyone knows and loves State Fair® Corn Dogs. The unforgettable flavor. The remarkable fun. They've become a legend. And we've been doing everything it takes to make sure the original is always the best.

- Over 50 years of being the leader
- Classic recipes
- Branded with the best

HOW FUN FOOD TURNS INTO REAL SUCCESS

Check Our Corn Dogs

Always Fun

From kids to grandparents, State Fair® brings a smile to everyone's face

Exciting Variety

From mini to jumbo, breakfast to lunch, we have corn dogs to satisfy every customer

Great on the Go

Finger food. No mess or fuss - just grab a corn dog and let the incredible taste begin

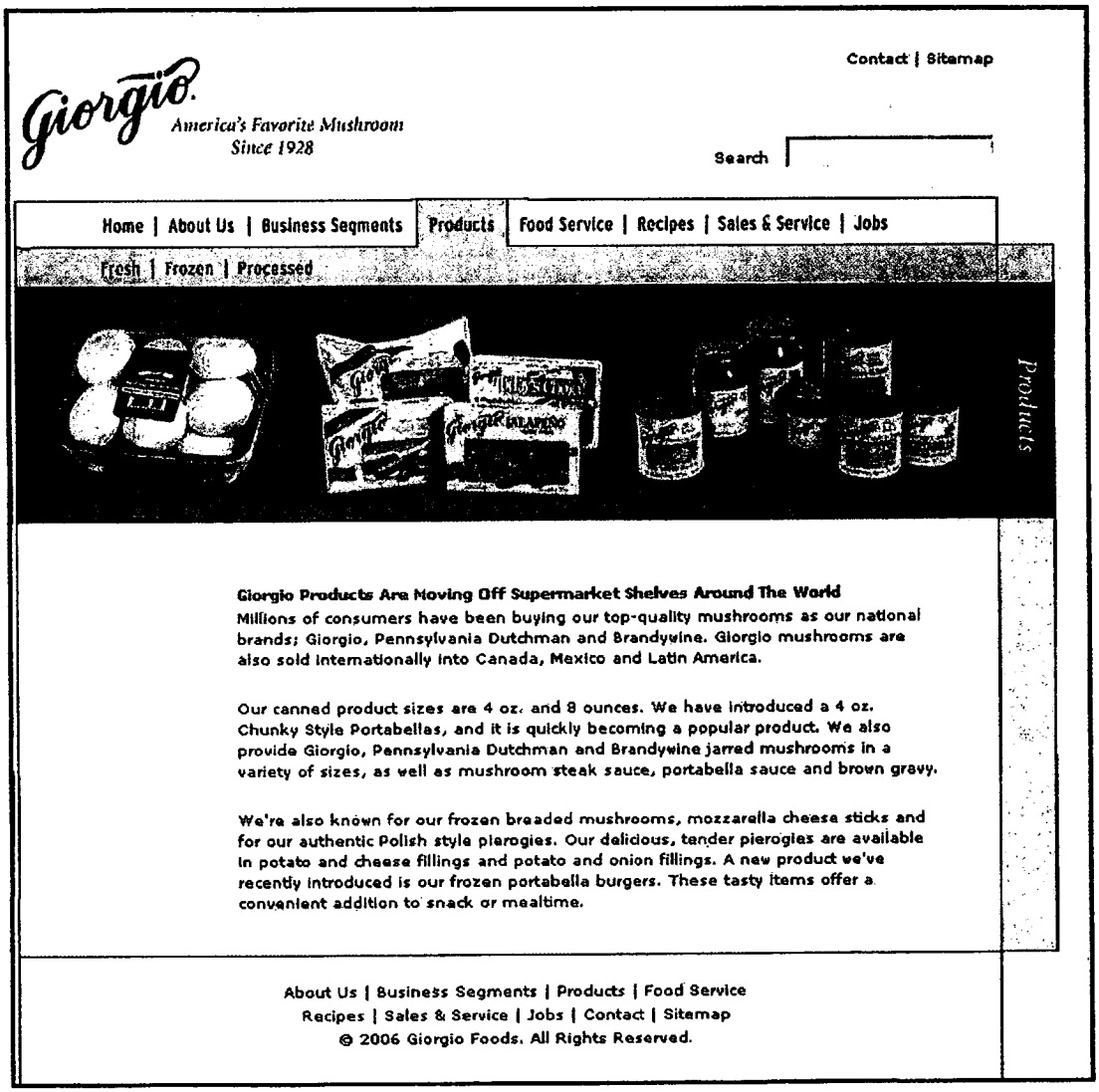
All Corn Dog Products

Click here for a product listing.

An investigation of, **AMERICA'S FAVORITE MUSHROOM,** Federal Registration Number: 1,777,517, provided the following information:

- An online search provided the owners web address: http://giorgiofoods.com
- From the owners website, In-Use of the mark was found at the following address: http://giorgiofoods.com/products.html

In-Use Screen Shot:



Contact | Sitemap

Giorgio. America's Favorite Mushroom Since 1928

Search

Home | About Us | Business Segments | Products | Food Service | Recipes | Sales & Service | Jobs

Fresh | Frozen | Processed

Products

Giorgio Products Are Moving Off Supermarket Shelves Around The World

Millions of consumers have been buying our top-quality mushrooms as our national brands; Giorgio, Pennsylvania Dutchman and Brandywine. Giorgio mushrooms are also sold internationally into Canada, Mexico and Latin America.

Our canned product sizes are 4 oz. and 8 ounces. We have introduced a 4 oz. Chunky Style Portabellas, and it is quickly becoming a popular product. We also provide Giorgio, Pennsylvania Dutchman and Brandywine jarred mushrooms in a variety of sizes, as well as mushroom steak sauce, portabella sauce and brown gravy.

We're also known for our frozen breaded mushrooms, mozzarella cheese sticks and for our authentic Polish style pierogies. Our delicious, tender pierogies are available in potato and cheese fillings and potato and onion fillings. A new product we've recently introduced is our frozen portabella burgers. These tasty items offer a convenient addition to snack or mealtime.

About Us | Business Segments | Products | Food Service
Recipes | Sales & Service | Jobs | Contact | Sitemap
© 2006 Giorgio Foods. All Rights Reserved.

An investigation of, **AMERICA'S FAVORITE PRETZEL,** Federal Serial Number: 78-946955, provided the following information:

- An online search provided no new information.
- A business search of www.whitepages.com provided no information.
  - A reverse address search was performed on the address found in the record (500 BAYVIEW DR. SUITE 722, SUNNY ISLES BEACH, FL 33160). The listing found was for a residential address.
- No further information was found

An investigation of, **AMERICA'S FAVORITE POPCORN,** Federal Registration Number: 2,994,383, provided the following information:

- An online search provided no new information.
- A business search of www.whitepages.com provided no information.
    - A reverse address search was performed on the address found in the record (500 BAYVIEW DR. SUITE 722, SUNNY ISLES BEACH, FL 33160). The listing found was for a residential address.
- No further information was found

An investigation of, **TUMARO'S GOURMET TORTILLAS AMERICA'S FAVORITE GOURMET TORTILLAS,** Federal Registration Number: 2,853,695, provided the following information:

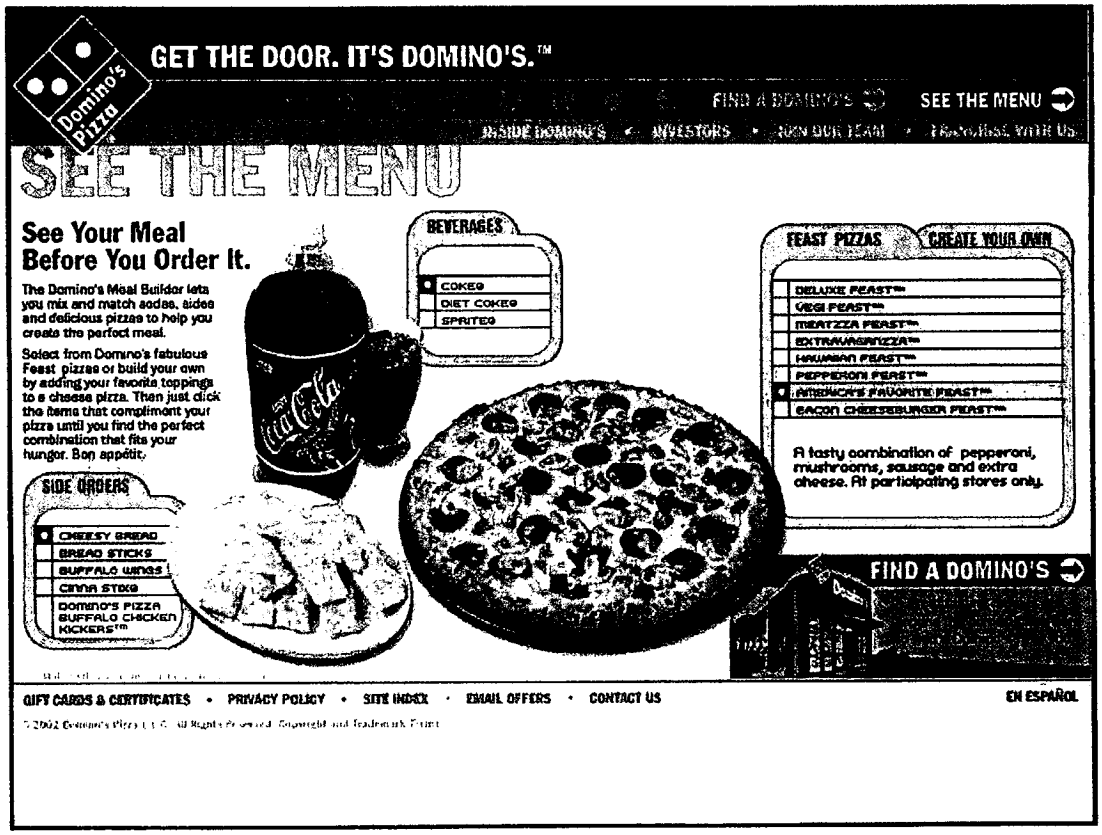
- An online search provided the owners web address: http://www.tumaros.com/
- From the owners website, In-Use of the mark was found at the following address: http://www.tumaros.com/

In-Use Screen Shot:

An investigation of, **AMERICA'S FAVORITE FEAST,** Federal Registration Number: 2,639,844, provided the following information:

- An online search provided the owners web address: http://www.dominos.com
- From the owners website, In-Use of the mark was found at the following address: http://www.dominos.com/Public-EN/Site+Content/Primary/See+the+Menu/Meal+Builders/

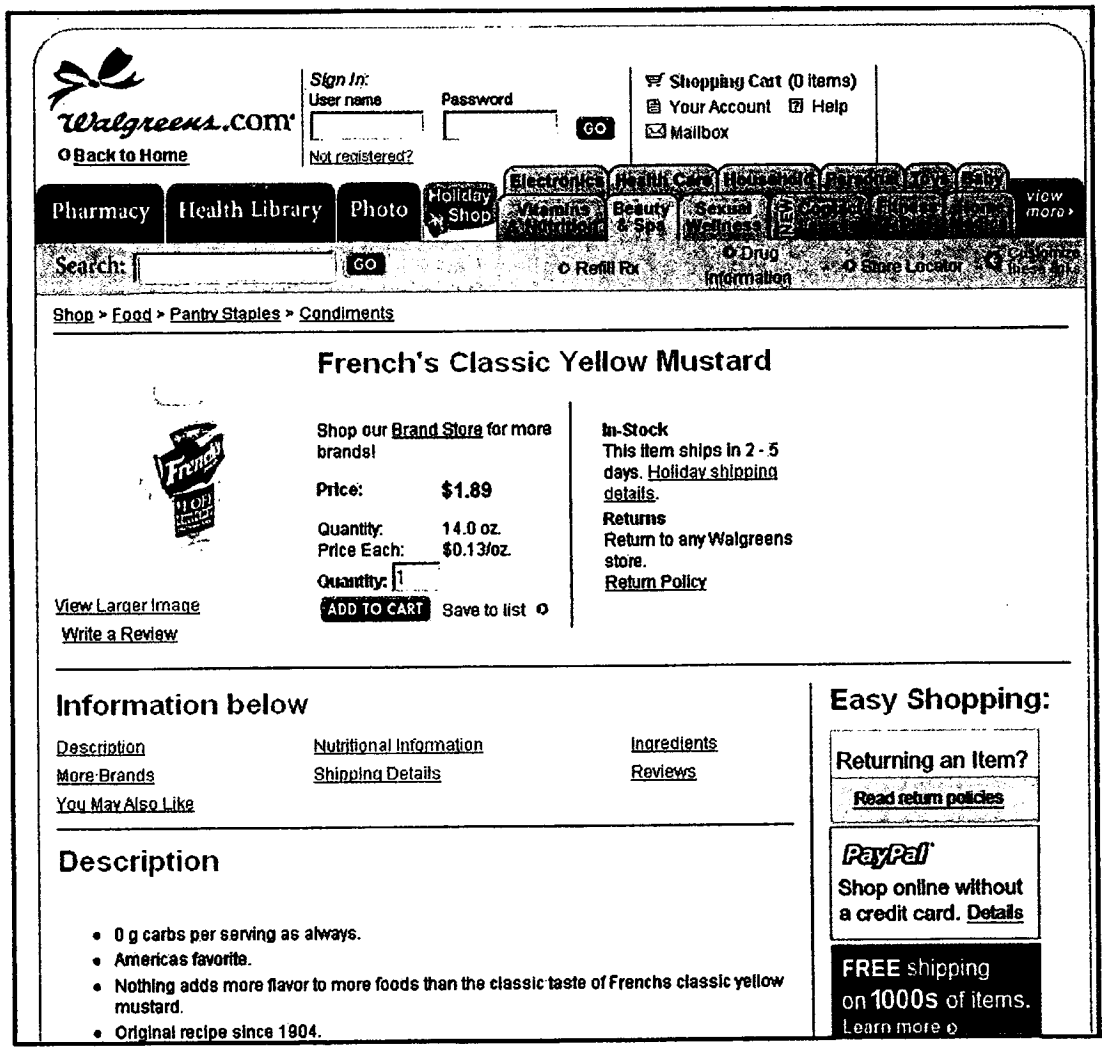
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE,** Federal Registration Number: 2,689,567, provided the following information:

- An online search provided the owners web address: http://www.reckitt.com/
- Using the Google search engine, In-Use of the mark was found at the following retailers web address: http://www.walgreens.com/store/product.jsp?CATID=100536&navAction=jump&navCount=1&id=prod374683#

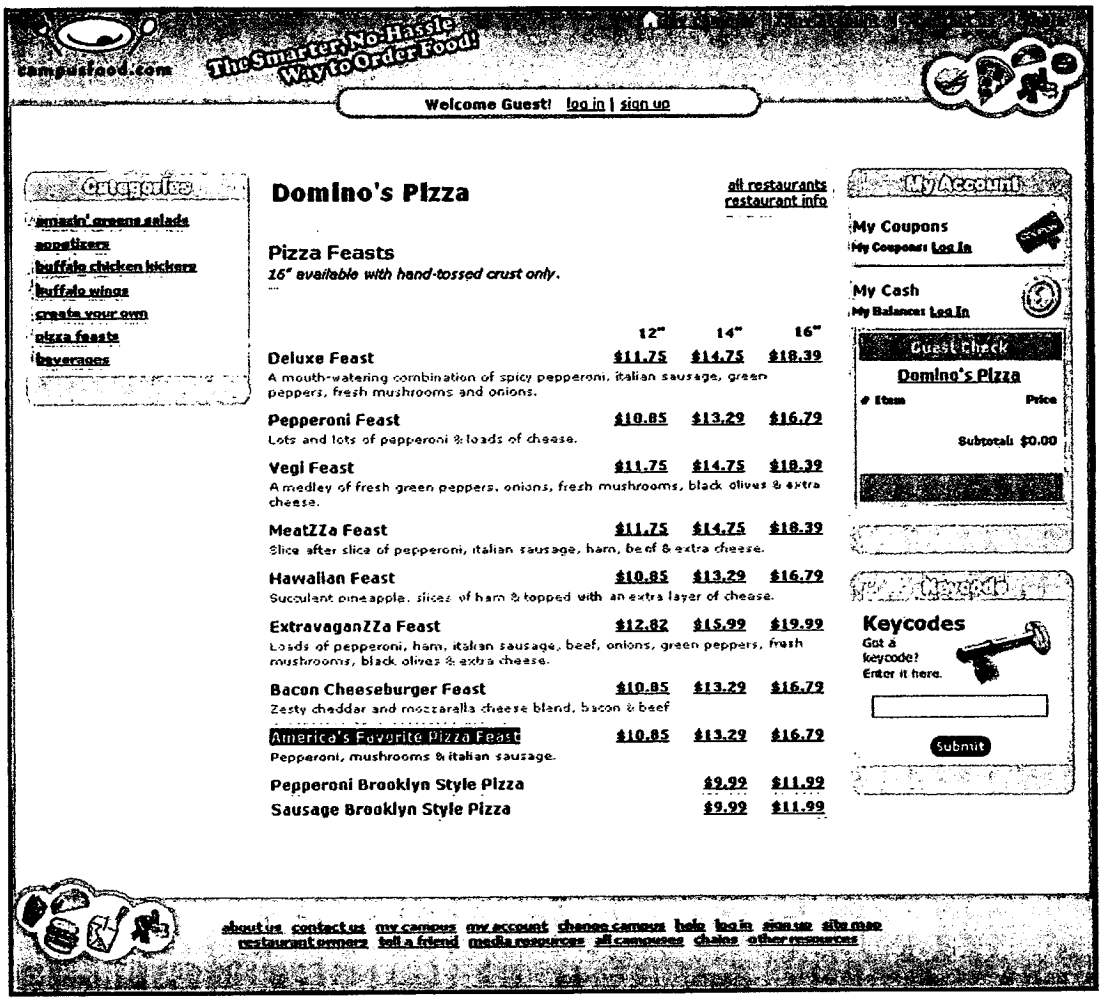
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE PIZZA FEAST,** Federal Registration Number: 2,558,945, provided the following information:

- An online search provided the owners web address: http://www.dominos.com
- Using the Google search engine, In-Use of the mark was found at the following web address: http://www.campusfood.com/menu/items.asp?restid=2021&catid=22448&campusid=10

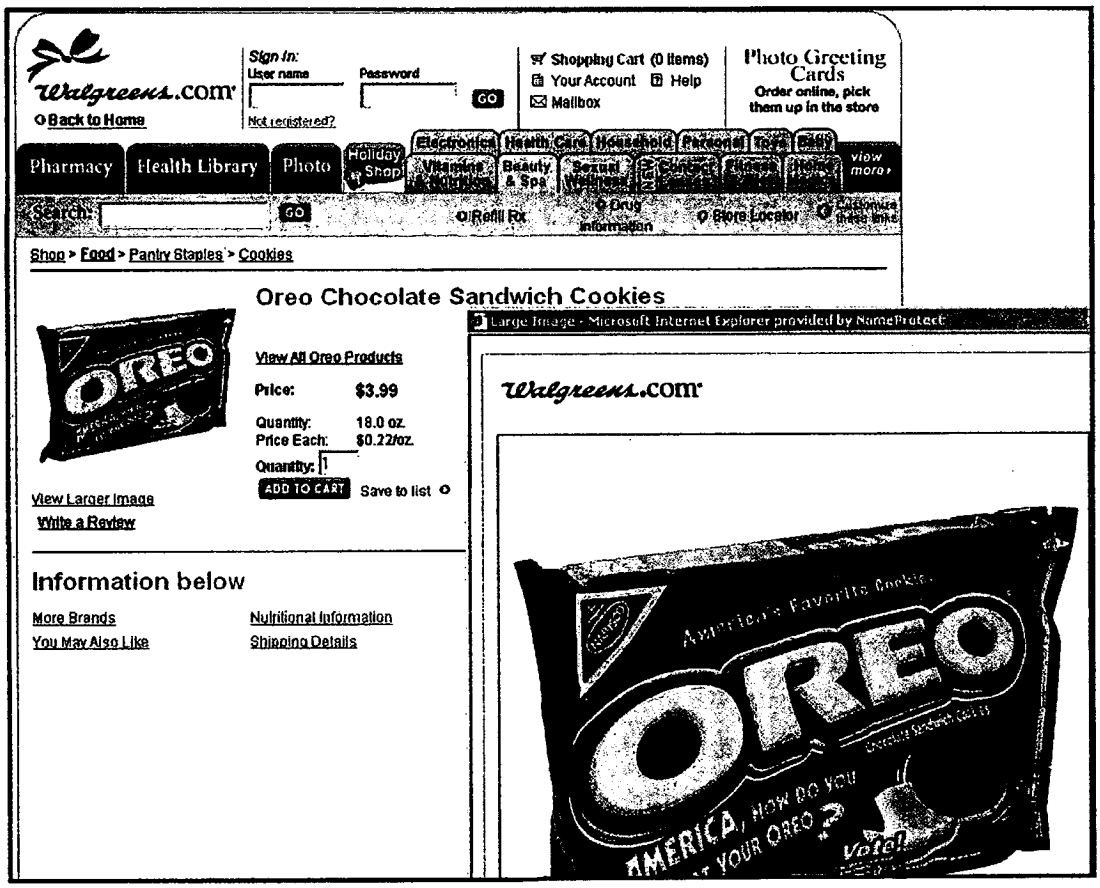
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE COOKIE,** Federal Registration Number: 2,572,410, provided the following information:

- An online search provided the owners web address: http://www.nabiscoworld.com
- Using the Google search engine, In-Use of the mark was found at the following retailers web address: http://www.walgreens.com/store/product.jsp?CATID=100537&navAction=jump&navCount=0&skuid=sku394818&id=prod394817#

In-Use Screen Shot:



An investigation of, **TUMARO'S AMERICA'S FAVORITE GOURMET TORTILLA,** Federal Registration Number: 2,762,465, provided the following information:

- An online search provided the owners web address: http://www.tumaros.com/
- From the owners website, In-Use of the mark was found at the following address: http://www.tumaros.com/

In-Use Screen Shot:

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343
APPLICANT'S DEPOSITION EXHIBIT 30
PAGE 17 OF 30

An investigation of, **AMERICA'S FAVORITE FLAVORS,** Federal Registration Number: 2,722,791, provided the following information:

- An online search provided no new information.
- A business search of www.whitepages.com provided no information.
  - A reverse address search was performed on the address found in the record and confirmed the address in the record (3501 MOUNT PROSPECT ROAD, FRANKLIN PARK, IL 60131) is the correct address for Houston Harvest.
  - A call was placed to the number found on whitepages.com (847) 957-9191). The company representative answered the phone saying "Thank you for calling Huston Harvest". I inquired about the products Huston Harvest sells and asked about "America's Favorite Flavors" to see if it was a product offering or tagline. The company representative was not aware of any product or tagline of that name.

An investigation of, **AMERICA'S FAVORITE SNACK CAKES** Federal Registration Number: 2,641,675, provided the following information:

- An online search provided the owners web address: http://www.interstatebakeriescorp.com
  - No In-Use of the mark could be found on the owners website.
  - An online search was performed using the Google search engine, no In-Use of the mark could be found.

An investigation of, **AMERICA'S FAVORITE SOUR GUM** Federal Registration Number: 2,347,915, provided the following information:

- An online search provided the owners web address: http://www.concordconfectionsinc.com
  - No In-Use of the mark could be found on the owners website.
  - An online search was performed using the Google search engine, no In-Use of the mark could be found.

An investigation of **AMERICA'S FAVORITE**, Federal Registration Number: 2,263,243, provided the following information:

- An online search provided no new information.
- A business search of www.whitepages.com provided no information; the address and business could not be found.
- Directory assistance was contacted in Florence Kentucky, no listing for HDN Development Corporation was found.
- While conducting a search using the Google search engine, it was found that HDN Development Corporation is connected to Krispy Kreme Doughnuts through a loan agreement. No use of the mark, AMERICA'S FAVORITE, could be found in conjunction with either company.

An investigation of the **AMERICA'S FAVORITE CANDIES** , Federal Registration Number: 2,359,173, provided the following information:

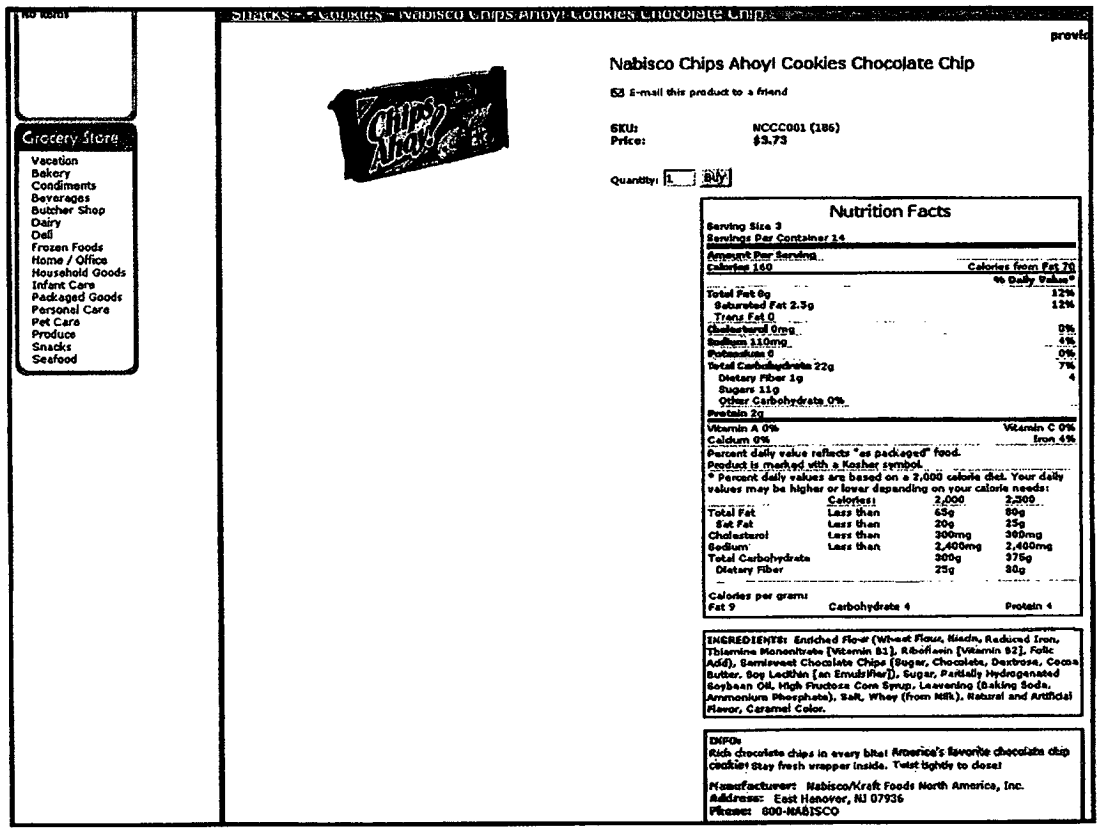
- An online search provided the owners web address: http://www.promotioninmotion.com/
- From the owners website, In-Use of the mark was found at the following address: http://www.promotioninmotion.com/
    - In-use of the mark is show on the website as: AMERICA'S FAVORITE CANDIES & SNACKS.

In-Use Screen Shot:

An investigation of the **AMERICA'S FAVORITE CHOCOLATE CHIP COOKE!**, Federal Registration Number: 2,149,887, provided the following information:

- An online search provided the owners web address: http://www.nabiscoworld.com/.
- Use of the mark could not be found on the owners website. However, a link was found using the Google search engine that provided the following web address: http://www.groceries-n-more.com/pc-186-38-nabisco-chips-ahoy-cookies-chocolate-chip.aspx

In-Use Screen Shot:



An investigation of, **IT'S AMERICA'S FAVORITE JELLY BEAN** Federal Registration Number: 2,077,329, provided the following information:

- An online search provided the owners web address: http://www.jellybelly.com
- Using the Google search engine, In-Use of the mark was found at the following retailers web address: http://www.drugstore.com/qxp146637_333181_sespider/jelly_belly/mini_bean_machine_with_4oz_bag_of_jelly_beans.htm

In-Use Screen Shot:

drugstore.com
the uncommon drugstore

welcome (sign in) | view shopping bag | Checkout | help
your account | your list™ | your prescriptions | fast shop

home | prescriptions | gifts | health | personal care | hair | beauty & jewelry | skin care | men's | vitamins | GNC | diet & fitness | SALE
SEARCH: | natural | household | pets | baby | sexual well-being | contact lenses | BEAUTY.COM.

up to 50% off! 11/22 - 11/28 / one week only thanksgiving sale! shop now >

your shopping bag
no items in bag
view details | Checkout

browse: food | candy | non chocolate | Jelly Belly store

Jelly Belly Mini Bean Machine with 4oz Bag of Jelly Beans 1 ea

Product Info

package details
see accessories

Talk about this item:

e-mail a friend
write a review

Related Products:

chocolate
gum & mints
sugar free
holiday candy
More in home

Visit our Jelly Belly Store

See what other customers of this item also shopped for and bought

see larger photo

our price: $14.99

quantity: 1 Add to bag
or
Save to your list™

availability: in stock

Everyday Free Shipping
Buy Jelly Belly Machine get free tin of asst flavors! ($2.49 value)

Need a no-fail gift? This desk-size, retro-style mini bean machine includes a 4-oz. bag of assorted, tasty Jelly Belly beans.

Package Details

The Original Jelly Bean®

Dispenses Jelly Belly® Jelly Beans, JBz® Chocolate Candies, and JB Gum™

- Includes one 4 oz. bag of jelly Belly® jelly beans
- Collectible die-cast Dispenser with glass dome
- Works with all coins
- 9" tall; 1.5 lb. capacity
- Safe non-toxic paint

Product Guarantee
Your Jelly Belly® confection items are made of the finest food ingredients. They should reach you in excellent condition. If not, we will replace them free of charge. Just return the unused portion of the package and tell us your reason for return, along with where and when you bought it. For additional information, contact the manufacturer at 1-800-522-3267 or visit JellyBelly.com

IT'S AMERICA'S FAVORITE JELLY BEAN.

An investigation of, **AMERICA'S FAVORITE KETCHUP,** Federal Registration Number: 2,098,790, provided the following information:

- An online search provided the owners web address: http://www.heinz.com
- From the owners website, In-Use of the mark was found at the following address: http://www.heinz.com/2005annualreport/goodfood_us.html

In-Use Screen Shot:

H.J. HEINZ COMPANY
2005 ANNUAL REPORT

Good Food, Every Day™ A Heritage of Trust

About this Report

Good Food, Every Day™

- China, Japan & the Philippines
- United States
- Australia
- Canada
- U.K.
- Russia
- India, Singapore & Thailand

Financial Highlights

10-K (pdf)

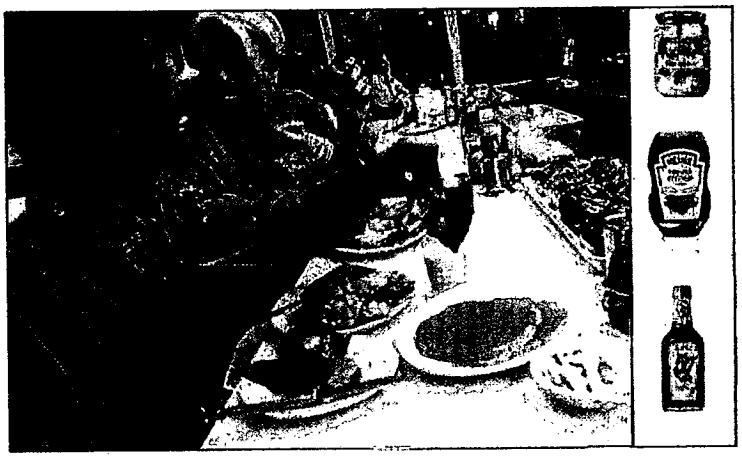
Dear Shareholders

Heinz Brand Q&A

Fiscal 2005 in Review

Heinz and the Community

Great Varieties, Every Day



Click on selected products for more information.

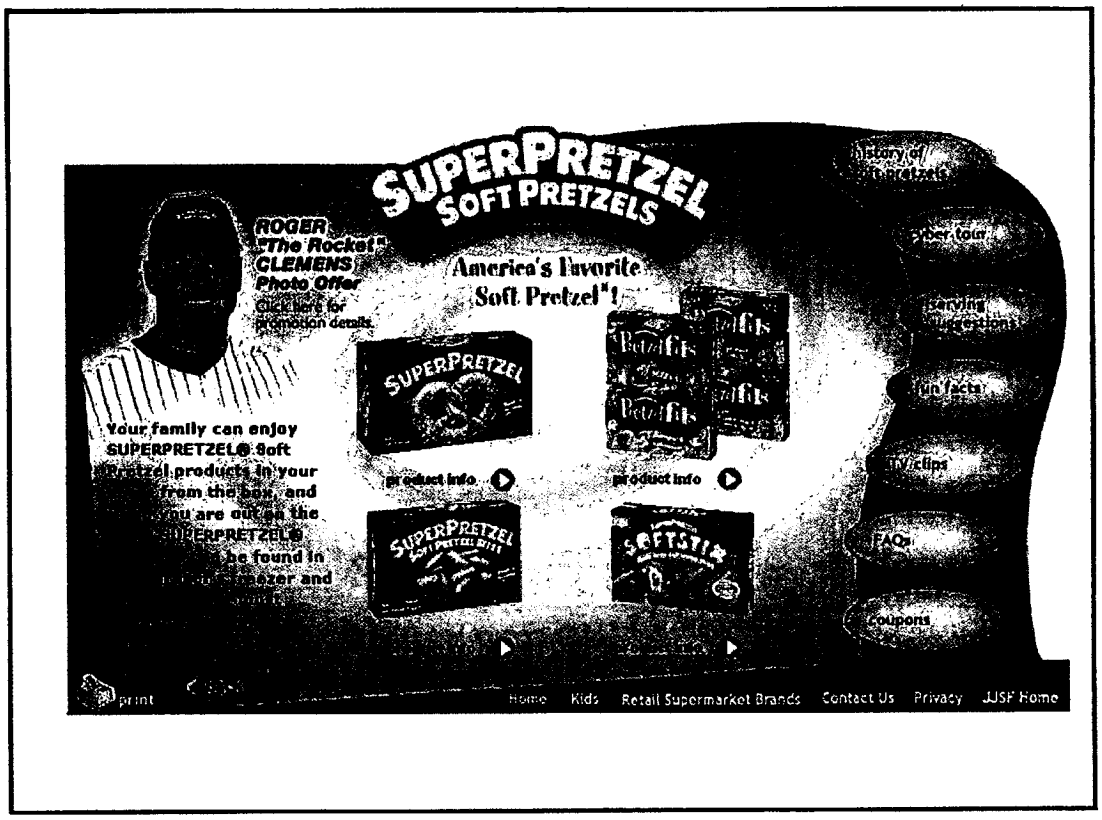
America's favorite ketchup™ is one of the most popular and highly valued brands in the United States. Heinz® Ketchup—which holds a 60% retail market share and an 80% share in foodservice—is the variety most associated with the iconic Heinz® name. Found atop millions of restaurant tables across the country, the familiar Forever-Full™ ketchup bottle satisfies consumer tastes 24/7

Kitchen pantries throughout the United States are stocked with Heinz's heritage brands, including such category leaders as vinegar, cocktail sauce and chili sauce along with pickles, relishes, mustard and Heinz® 57 Sauce. Heinz® HomeStyle Gravy is yet another category leader and a staple at family dinners and special occasions. During 2005, Heinz re-launched its popular mustard on a national scale in a smart, new upside-down bottle. Americans know that where there's Heinz®, there's a heritage of trust.

An investigation of, **AMERICA'S FAVORITE SOFT PRETZEL,** Federal Registration Number: 2,155,994, provided the following information:

- An online search provided the owners web address: http://www.jjsnack.com
- Using the Google search engine, In-Use of the mark was found on the product website at the following address: http://www.superpretzel.com/

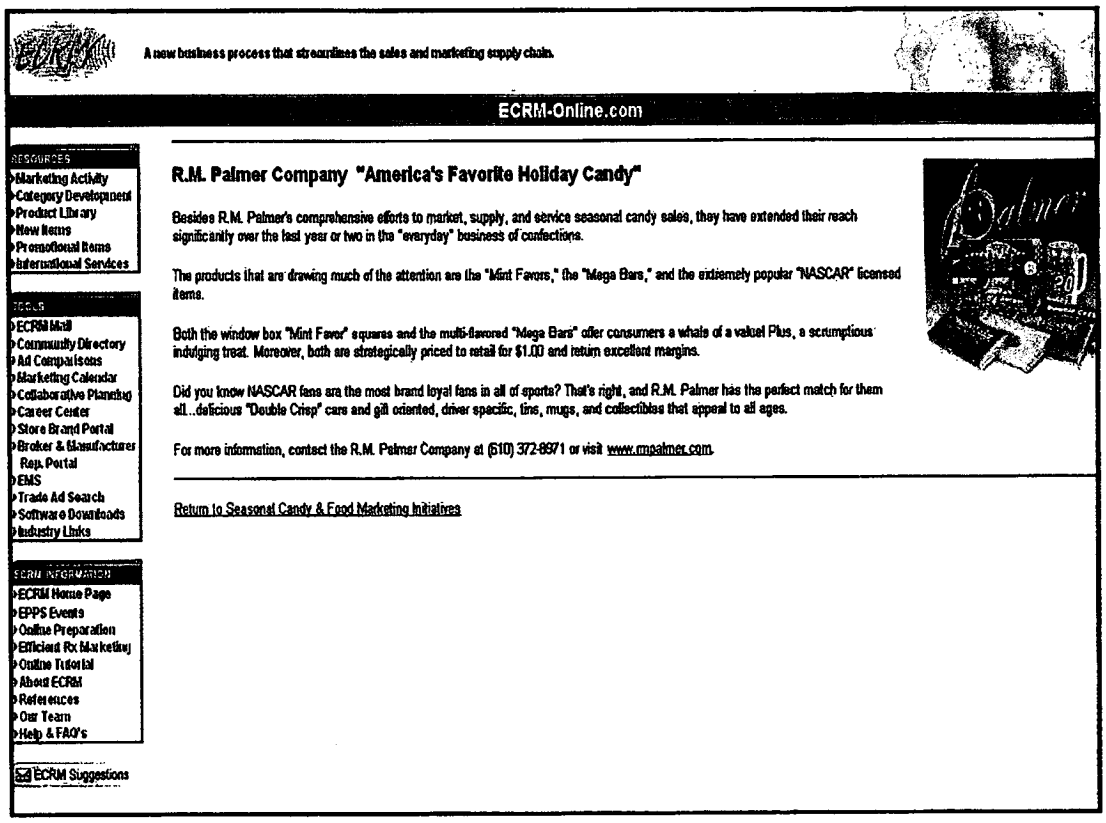
In-Use Screen Shot:



An investigation of, **AMERICA'S FAVORITE HOLIDAY CANDY** Federal Registration Number: 1,837,304, provided the following information:

- An online search provided the owners web address: http://www.rmpalmer.com
- Using the Google search engine, In-Use of the mark was found at the following web address: http://www.ecrm-online.com/web_press_releases/SeasonalCandyFood_Feb'03/Marketing_Initiatives/rmpalmer.asp

In-Use Screen Shot:



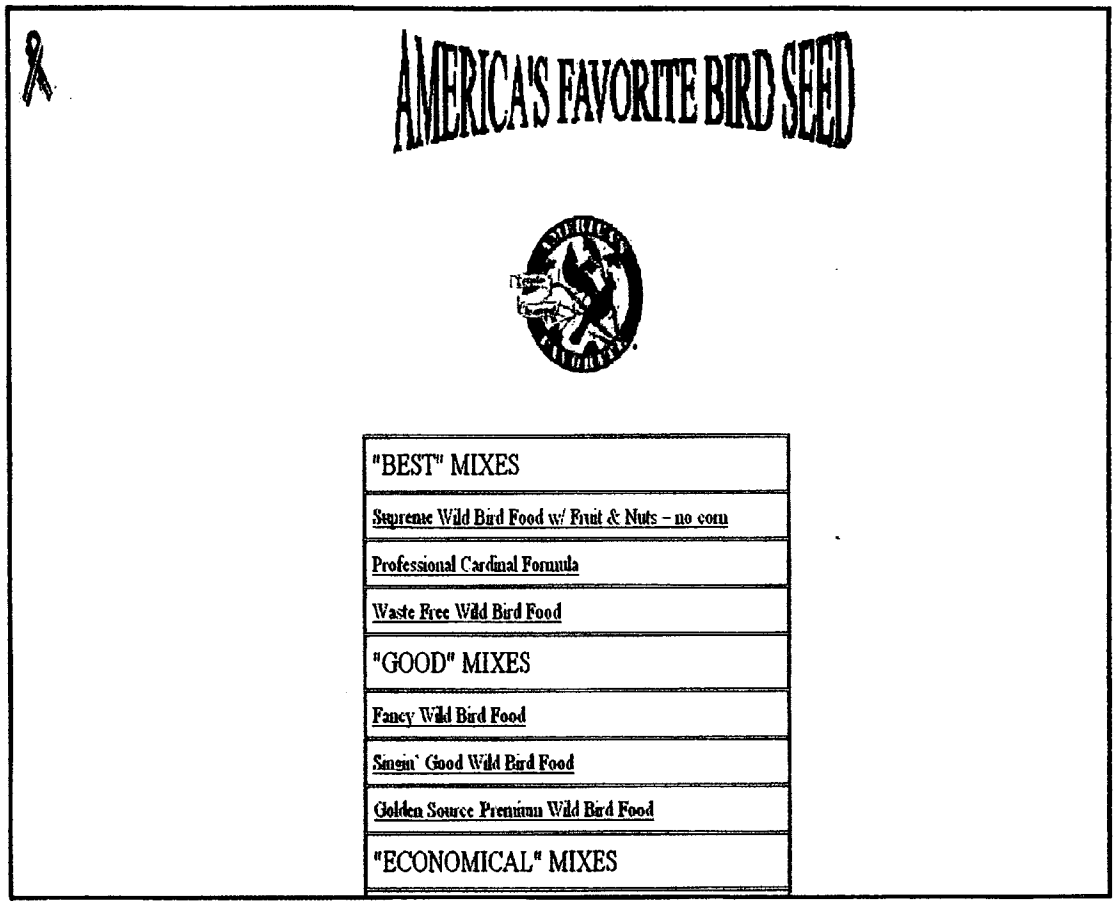
An investigation of, **AMERICA'S SNACK FAVORITE** Federal Registration Number: 1,638,019, provided the following information:

- An online search provided the owners web address: http://www.mckeefoods.com
  - No In-Use of the mark could be found on the owners website.
  - An online search was performed using the Google search engine, no In-Use of the mark could be found.

An investigation of the **AMERICA'S FAVORITE**, Federal Registration Number: 1,706,042, provided the following information:

- An online search provided the owners web address: http://www.siemerent.com/
- From the owners website, In-Use of the mark was found at the following address: http://www.siemerent.com/Info/Americas_Favorite.htm

In-Use Screen Shot:



American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343
APPLICANT'S DEPOSITION EXHIBIT 30
PAGE 30 OF 30

Please feel free to contact Client Services with any questions you may have regarding these investigations at 1-800-689-6223.

NOTE: NEITHER THIS ELECTRONIC MAIL NOR ANY OTHER COMMUNICATION FROM NAMEPROTECT INC., INCLUDING FROM ITS AGENTS AND REPRESENTATIVES CONSTITUTES LEGAL ADVICE OR CREATES AN ATTORNEY-CLIENT RELATIONSHIP. NAMEPROTECT INC.IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL ADVICE. IF LEGAL ADVICE OR OTHER ASSISTANCE IS REQUIRED, YOU SHOULD SEEK THE SERVICES OF AN ATTORNEY