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Filing date: **05/08/2007**

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

| | |
|------------------------|---|
| Proceeding | 91172461 |
| Party | Plaintiff Trademark Management Company Trademark Management Company , |
| Correspondence Address | Thomas H. Curtin Lathrop & Gage L.C. 230 Park Avenue Suite 1847 New York, NY 10169 UNITED STATES tcurtin@lathropgage.com |
| Submission | Motion to Compel Discovery |
| Filer's Name | Thomas H. Curtin |
| Filer's e-mail | tcurtin@lathropgage.com |
| Signature | /Thomas H. Curtin/ |
| Date | 05/08/2007 |
| Attachments | CB Dec. of CURTIN MTC_20070508183120.pdf (5 pages)(229799 bytes) Ex A 2461.pdf (12 pages)(394156 bytes) Ex B 72461.pdf (14 pages)(454665 bytes) Ex C T. Curtin Corr.pdf (2 pages)(41133 bytes) Ex D 91172461.pdf (18 pages)(619909 bytes) Ex E Applicant Answer to Rogs.pdf (20 pages)(721087 bytes) Ex F 3-14-07 Corr.pdf (8 pages)(401054 bytes) Ex G E-mail.pdf (3 pages)(62649 bytes) Ex H E-mail.pdf (3 pages)(55916 bytes) Ex I E-mail.pdf (3 pages)(82966 bytes) CB Opposer's motion to compel_.pdf (6 pages)(226494 bytes) |

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

In the Matter of Application

| | |
|-------------|-----------------------------|
| Mark: | BONTA' DI PUGLIA and Design |
| Serial No.: | 78/504,042 |
| Published: | February 21, 2006 |

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TRADEMARK MANAGEMENT COMPANY, :
: **Opposer,** :
: **-against-** : **Opposition No. 91172461**
: **CHARLIE BROWN DI RUTIGLIANO &** :
FIGLI S.R.L., :
: **Applicant.** :
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DECLARATION OF THOMAS H. CURTIN
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL

I, Thomas H. Curtin, under penalty of perjury pursuant to 18 U.S.C. § 1001, declare as follows:

1. I am a partner with the law firm of Lathrop & Gage, L.C., the attorneys for Trademark Management Company, the Opposer herein (hereinafter referred to as "Opposer"). I make this Declaration in support of Opposer's Motion to Compel. The facts set forth in this Declaration are known to me either personally or upon information and belief.

2. On October 21, 2004, Charlie Brown di Rutigliano & Figli S.r.l. ("Applicant") filed an application to register the mark BONTA' DI PUGLIA and Design, Serial No. 78/504,042, on the Principal Register of the U.S. Patent and Trademark Office. The mark was published on February 21, 2006.

3. Opposer timely commenced an opposition proceeding, No. 91172461, by filing a Notice of Opposition against Application Serial No. 78/504,042, claiming that registration of the BONTA' DI PUGLIA mark would cause confusion with Opposer's registered mark BONTA, Registration No. 666,650. Applicant filed an Answer denying the salient allegations in the Notice of Opposition. Discovery in this proceeding is scheduled to close on May 8, 2007.

4. On December 5, 2006, Opposer served by first class mail its First Set of Document Requests pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure. Opposer's First Set of Document Requests ("Document Requests") consists of twenty-three (23) separate documents requests, not including subparts. A true and correct copy of the Documents Requests is attached hereto as Exhibit A.

5. On December 5, 2006, Opposer also served by first class mail its First Set of Interrogatories pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure. Opposer's First Set of Interrogatories ("Interrogatories") includes a total of twenty-three (23) separate interrogatories, not including subparts. A true and correct copy of the Interrogatories is attached hereto as Exhibit B.

6. Applicant's responses to Opposer's discovery requests were due on January 9, 2007. However, responses to Opposer's discovery were not forthcoming from Applicant on that date of thereafter. Applicant did not request nor was granted additional time to respond to Opposer's discovery requests. Applicant failed to object and/or respond in a timely fashion to any of the Opposer's discovery requests.

7. Having received nothing from Applicant, on January 26, 2007, Opposer sent a letter to Applicant pursuant to Rule 2.120(e), urging it to respond to Opposer's discovery

requests immediately, setting a deadline of February 9, 2007 before filing a Motion to Compel. A true and correct copy of the January 26 letter is attached hereto as Exhibit C.

8. In response to Opposer's letter on January 26, 2007, Applicant finally served its Answers to Opposer's First Set of Document Requests and Answers to Opposer's First Set of Interrogatories on February 9, 2007, almost a full month after their original due date. True and correct copies of the Applicant's Answers to Opposer's Document Requests and Interrogatories are attached hereto as Exhibit D and E, respectively.

9. Applicant's tardy February 9, 2007 response however was woefully inadequate. Applicant responded to most of the Interrogatories and Document Requests (namely, Interrogatory Nos. 1, 3-5, 7-11, 13-14, 16-18, 20-21 and 23, and Documents Request Nos. 1-4, 6-10 and 12-23) by making a blanket objection that such discovery requests called for disclosure of information or the production of documents that contain or comprise confidential or proprietary information. Applicant indicated it would not respond to such discovery requests until a stipulated protective order is in place.

10. Despite Applicant's duty as the disclosing party claiming confidentiality to make a motion for protective order to govern the disclosure of the alleged proprietary and confidential information of Applicant, Applicant did not propose a form of protective order until March 19, a month and a half after Applicant served its responses, when it finally forwarded the Board's standard form of protective order.¹ After reviewing Applicant's proposed protective order, Opposer proffered a simpler form of protective order on April 5, 2007. Applicant signed that protective order nearly three weeks later on April 25, 2007. Applicant's delay in discharging its obligations as the disclosing party demonstrate a studied indifference to the discovery process.

¹ It should be noted that during this time Applicant did find the time to prepare and serve its own sets of interrogatories, document requests and requests for admissions on March 8, 2007.

11. Applicant also asserted in response to a number of discovery requests (namely Interrogatory Nos. 3, 4, 11, 17-19 and 23 and Document Request Nos. 1, 3-4, 6 and 8-9) that such interrogatories or documents requests seek disclosure of information or the production of documents that are protected by the attorney-client or attorney work product privilege. To date, however, and despite due demand made by Opposer, Applicant has not provided any privilege log as required under Rule 26, Fed. R.Civ. P.

12. Applicant did produce a total of 15 pages in response to Opposer's discovery requests. All of the documents Applicant produced appear to be print-outs of Applicant's www.fiereparma.it website and are publicly available documents on the Internet. The documents are all in Italian. Apparently Applicant merely printed out its website in response to Opposer's discovery.

13. By letter dated March 14, 2007, I wrote to Messrs. Egbert and Wilson, Applicant's counsel, noting the gross deficiencies in Applicant's responses. A true and correct copy of my March 14 letter is attached as Exhibit F. The March 14 letter sets forth in detail why Applicant's responses to nearly all of the Interrogatories and Document Requests are seriously deficient. The letter further notes that Applicant's objections had been waived in view of Applicant's failure to respond to Opposer's discovery requests in the time allowed. More importantly, the March 14 letter details how the blanket confidentiality and privilege claims are misplaced.²

14. Applicant responded to my March 14 letter in an email dated March 19, 2007, which is annexed hereto as Exhibit G. In its email, Applicant's counsel promises to respond "as quickly as possible" to at least to some of the issues raised in my March 14 letter. To date

² Although Applicant asserts confidentiality, it is telling that Applicant freely discloses its annual sales of olives per year in response to Interrogatory No. 6, but claims the specimens of its product, olives, are confidential in response to Document Request No. 17.

however, Applicant has not supplemented or amended its discovery responses, submitted a privilege log and/or produced any further documents.

15. Having not received any substantive response to the issues raised in my March 14 letter, I emailed to Messrs. Egbert and Wilson again on April 18, 2007, urging Applicant to supplement its responses to Opposer's document requests. A true and correct copy of my April 18, 2007 email is attached hereto as Exhibit H. I sent a final reminder under 37 CFR 2.120(e) via email on May 3, 2007 to Applicant's attorney. That email is attached hereto as Exhibit I.

16. There has been no response to either my letter of March 14 or my emails of April 18 and May 3. Applicant has failed to correct any of the numerous deficiencies in Applicant's discovery responses outlined in my March 14 letter and has failed to fulfill its discovery obligations under the Federal Rules of Civil Procedure to provide complete and proper responses to Opposer's discovery requests.

17. I respectfully request that the Board grant Opposer's Motion and compel Applicant to provide full and complete answers to Opposer's Interrogatories and Document Requests, produce responsive documents in response to Opposer's Document Requests and to produce a privilege log forthwith.

Dated: May 8, 2007

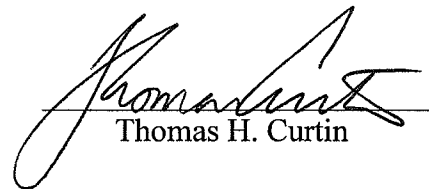

Thomas H. Curtin

EXHIBIT A

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

In the Matter of Application

| | |
|-------------|-----------------------------|
| Mark: | BONTA' DI PUGLIA and Design |
| Serial No.: | 78/504,042 |
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TRADEMARK MANAGEMENT COMPANY, :

Opposer, :

-against- :

Opposition No. 91172461

CHARLIE BROWN DI RUTIGLIANO & :
FIGLI S.R.L., :

Applicant. :
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**OPPOSER'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Trademark Management Company ("Opposer") hereby requests that Charlie Brown di Rutigliano & Figli S.r.l. ("Applicant"), produce for the purpose of inspection and copying, at the offices of Lathrop & Gage L.C., 230 Park Avenue, Suite 1847, New York, New York 10169 within thirty (30) days after the service hereof, or at such other time and place as may be agreed to by the parties in writing, the documents and/or things described below.

The following Requests should be responded to in accordance with the following
Definitions and Instructions:

DEFINITIONS AND INSTRUCTIONS

A. The terms "you" and "your" when used herein refer to Applicant, its present and former parents, subsidiaries, affiliates, divisions, subdivisions, general and limited partners,

licensees and/or agents, if any, its predecessors or successors, if any, and any entity which controls or is controlled by Applicant and its and their present and former general or limited partners, officers, directors, employees, agents and representatives and attorneys, to the fullest extent the context permits.

B. As used herein, the term "Opposer" shall mean and refer to Opposer, its parent and affiliate companies, divisions, agents, employees, representatives, attorneys and licensees or any other person or entity purporting to act on their behalf including, without limitation, the H.J. Heinz Company.

C. As used herein, the term "document" is defined to be synonymous in meaning and equal in scope to the usage of that term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of that term. Document includes the original and all copies which are different from the original (whether by interlineation, receipt, stamp, notation, indication of copy sent or received or otherwise), regardless of location, including all handwritten, typed, printed, photographed, recorded, transcribed, punched, taped, filmed or graphic matter, including any means or recording upon any tangible thing, any form of communication or representation, including without limitation: communications, including intra-agency communications; correspondence; directives; memoranda (including pencil jottings, diary entries, desk calendar entries, reported recollections and any other written form of notation of events or intentions); transcripts and recordings of conversations and telephone calls; books and records; reports; work sheets and work papers and all other documentary materials of any nature whatsoever, together with any attachments thereto or enclosures therewith, now in the possession, custody or control of Applicant or any attorney, employee, agent or any representative of Applicant.

D. As used herein, the terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

E. As used herein, the term "referring" shall mean concerning, relating to, pertaining to, describing, reflecting, constituting and/or evidencing, whether directly or indirectly.

F. The use of the singular form of any word includes the plural, and the use of the plural includes the singular.

G. For each document requested herein which is sought to be withheld under a claim of privilege, or other objection, provide the following information:

- (a) identify the nature of the privilege, e.g., work product, which is being claimed;
- (b) the place, approximate date, and manner of recordation or preparation of the document;
- (c) the name and title of the sender, and the name and title of each recipient of the document;
- (d) the name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
- (e) the name and corporate position of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading or substantial summarization;
- (f) a statement of the basis upon which the claim of privilege is asserted and whether or not the subject matter of the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice;
- (g) the number of the Request herein to which the document is responsive;
- (h) the identity and corporate position of the person or persons supplying the Applicant's attorney with the information in subsections (b) through (f) above; and
- (i) a brief description of the subject matter of the contents of the document.

H. If any document requested herein was formerly in Applicant's possession, custody, or control and has been lost or destroyed, or otherwise disposed of, Applicant is requested to submit, in lieu of any such document, a written statement:

- (a) describing in detail the nature of the document and its contents;
- (b) identifying the person(s) who prepared or authored the document and, if applicable, the person(s) to whom the document was sent, whether indicated thereon or by blind copies;
- (c) specifying the date on which the document was prepared and transmitted; and
- (d) specifying, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the persons requesting and performing the destruction.

I. If any document relates in any manner to a meeting or to any other conversation, all participants in the meeting or conversation are to be identified.

J. This request is a continuing one and any document obtained subsequent to production which would have been produced had it been available or its existence been known at the time of production specified herein is to be supplied forthwith.

K. Applicant shall produce such documents either as they are kept in the usual course of business or shall organize and label them to correspond with the numbered Document Requests.

L. The term "Applicant's Mark" shall mean and refer to Applicant's claimed trademark as set forth in Application Serial No. 78/504,042 or any variation thereof.

M. The term "Opposer's Mark" shall mean and refer to Opposer's trademark BONTA' including without limitation, the mark covered by Registration No. 666,650.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

DOCUMENT REQUEST NO. 1

All documents referring or relating to either Opposer and/or Opposer's Mark including, without limitation, results of any investigations or other inquiries, whether formal or informal, notes, correspondence, internal memoranda, searches and surveys.

DOCUMENT REQUEST NO. 2

All documents referring or relating to the current or intended manufacture, importation, distribution and sale of the products sold or to be sold bearing the Applicant's Mark.

DOCUMENT REQUEST NO. 3

All documents referring to Applicant's selection and adoption of the Applicant's Mark including, without limitation, any documentation of meetings or discussions held concerning the adoption of Applicant's Mark, any documentation concerning the reasons for selecting the Applicant's Mark and any documentation concerning the consideration of using any other mark.

DOCUMENT REQUEST NO. 4

All documents referring to or reflecting any grants, consents to use, permissions, licenses and/or assignments by and between Applicant and any third party concerning or regarding Applicant's Mark including, without limitation, all amendments and modifications thereto.

DOCUMENT REQUEST NO. 5

All documents referring to how, when and where Applicant acquired knowledge of Opposer's Mark and all documents surrounding the acquisition of such knowledge.

DOCUMENT REQUEST NO. 6

All documents including, without limitation, any searches, investigations or any other inquiries, whether formal or informal, conducted by or on behalf of Applicant referring or relating

to the availability of the Applicant's Mark for adoption and use by Applicant on or in connection with Applicant's products.

DOCUMENT REQUEST NO. 7

Produce specimens of all labels, tags, decals, stickers, packaging, containers, coupons, ad slicks, brochures, displays and point-of-purchase promotional materials which will be, are or have ever been used in connection with the offering for sale and sale of products under Applicant's Mark.

DOCUMENT REQUEST NO. 8

All federal and state trademark applications and registrations and the file histories thereof and all correspondence related thereto referring or relating to Applicant's Mark.

DOCUMENT REQUEST NO. 9

All documents referring or relating to formal or informal objection(s) made by Applicant to the use, application to register and/or registration by any third party of any trademark or trade name which Applicant believes to be confusingly similar to Applicant's Mark.

DOCUMENT REQUEST NO. 10

All consumer studies, surveys and market research reports referring or relating to the marketing, advertising, promotion and/or sale of products under Applicant's Mark including, without limitation, consumer studies relating to public recognition or awareness and/or secondary meaning in Applicant's Mark or any likelihood of confusion with Opposer's Mark.

DOCUMENT REQUEST NO. 11

All documents referring or relating to unsolicited media coverage of all products that are or will be offered and sold under Applicant's Mark including, without limitation, articles and features in newspapers, newsletters, magazines, television, radio programs and on the Internet.

DOCUMENT REQUEST NO. 12

A sample, specimen or copy of each and every advertisement (whether print, radio, television, internet or other media) and promotional material including, without limitation, all print and television advertisements, radio advertisements, brochures, leaflets, pamphlets, sales or promotional literature, bulletins, press releases, signage, packaging, and other promotional materials and displays referring to or concerning all products offered and sold, or to be offered and sold, under Applicant's Mark including all versions and drafts of any such advertisement and promotional material.

DOCUMENT REQUEST NO. 13

All documents relating or referring to the actual or intended manner, style and geographical areas of the promotion and advertisement of products that are or will be offered and sold under Applicant's Mark including, without limitation, documents indicating advertising budgets and expenditures, samples and drafts of advertisements and promotional pieces or materials ever used or to be used in connection with the products sold under Applicant's Mark, including, without limitation, Internet advertising.

DOCUMENT REQUEST NO. 14

All documents that would identify the actual or intended geographical areas of distribution and sale of products sold under Applicant's Mark including, without limitation, documents identifying the sales agents, jobbers, brokers, distributors, wholesalers, retailers and outlets nationwide who are or will be utilized by Applicant in connection with the sale of the products under Applicant's Mark.

DOCUMENT REQUEST NO. 15

All documents referring or relating to, or comprising any communication or notice to Applicant concerning the possibility that Applicant's use of Applicant's Mark, or any portion or

variation thereof, might or might not result in confusion or mistake in any industry or among the public, particularly in view of Opposer's use and registration of Opposer's Mark.

DOCUMENT REQUEST NO. 16

All documents referring to or reflecting the types and classes of consumers to whom, and the markets and channels of trade in the United States through which, Applicant has or will market or sell products bearing Applicant's Mark including, without limitation, all documents indicating the channels of trade through which Applicant has or will offer and sell products under Applicant's Mark to consumers including, without limitation, all documents indicating the manner in which goods are or will be offered for sale, marketed or sold under Applicant's Mark or by any division, subsidiary, related company or licensee of Applicant.

DOCUMENT REQUEST NO. 17

A specimen or sample of each and every product that will be or has ever been marketed and/or sold bearing Applicant's Mark.

DOCUMENT REQUEST NO. 18

Produce each and every document identified in Applicant's responses to Opposer's First Set of Interrogatories.

DOCUMENT REQUEST NO. 19

All documents and things referring or relating to, or comprising statements, inquiries, comments, or other communications by or from Applicant's potential customers, customers, distributors, suppliers, or others, relating to the similarity of Opposer's Mark to Applicant's Mark or evidencing any confusion, suspicion, belief, or doubt on the part of any third party as to the relationship between the Opposer and Applicant or their products sold under Opposer's Mark or Applicant's Mark, respectively, including any misdirected complaints or inquiries.

DOCUMENT REQUEST NO. 20

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

DOCUMENT REQUEST NO. 21

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

DOCUMENT REQUEST NO. 22

All documents referring or relating to, or comprising, any plan Applicant has to expand the type of goods it has or will offer for sale under Applicant's Mark.

DOCUMENT REQUEST NO. 23

Produce each and every document relied on, referred to or consulted in responding to
Opposer's First Set of Interrogatories.

LATHROP & GAGE L.C.
Attorneys for Applicant

Dated: New York, New York
December 5, 2006

By: 

Thomas H. Curtin
Gianfranco G. Mitrione

230 Park Avenue, Suite 1847
New York, New York 10169
(212) 850-6220 (tel)
(212) 850-6221 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Opposer's First Set of Requests for the Production of Documents and Things to Applicant was served this 5th day of December, 2006 by first class mail, postage prepaid, upon the attorneys for Applicant at the following address:

John S. Egbert, Esq.
412 Main Street, Floor 7
Houston, TX 77002-1838

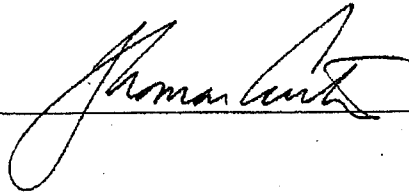


EXHIBIT B

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

In the Matter of Application

| | |
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| Mark: | BONTA' DI PUGLIA and Design |
| Serial No.: | 78/504,042 |
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TRADEMARK MANAGEMENT COMPANY, :

Opposer, :

-against- :

Opposition No. 91172461

CHARLIE BROWN DI RUTIGLIANO & FIGLI S.R.L., :

Applicant. :
-----X

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Trademark Management Company ("Opposer") hereby requests that Charlie Brown Di Rutigliano & Figli S.r.l. ("Applicant"), serve upon Opposer sworn Answers to the following Interrogatories within thirty (30) days after the service hereof. These Interrogatories are intended to be continuing in nature and any information which may be discovered subsequent to the service and filing of the Answers should be brought to the attention of Opposer through Supplemental Answers, within a reasonable time following such discovery, pursuant to Rule 26 of the Federal Rules of Civil Procedure.

INSTRUCTIONS

1. In each instance where an Interrogatory is answered on information and belief, it is requested that Applicant set forth the basis for such information and belief.

2. In each instance where Applicant denies knowledge or information sufficient to answer the Interrogatory, it is requested that Applicant set forth the name and address of each person, if any, known to have such knowledge.

3. In each instance where the existence of a document is disclosed, Applicant is requested to attach a copy of such document to its Answer. If such document is not in Applicant's possession, custody or control, it is requested that Applicant state the name and address of each person known to Applicant to have such possession, custody or control, and identify which documents are in such person's possession, custody or control.

4. In any instance in which an Interrogatory is objected to for any reason, including privilege, it is requested that all of the grounds for such objection be stated in detail and that the following information be provided:

(a) for documents, state: (i) the type of document; (ii) general subject matter of the document; (iii) the date of the document; (iv) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other; and

(b) for oral communications: state (i) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (ii) the date and place of communications; (iii) the general subject matter of the communications.

DEFINITIONS

1. The terms "you" and "your" when used herein refer to Applicant, its present and former parents, subsidiaries, affiliates, divisions, subdivisions, general and limited partners,

licensees and/or agents, if any, its predecessors or successors, if any, and any entity which controls or is controlled by Applicant and its and their present and former general or limited partners, officers, directors, employees, agents and representatives and attorneys, to the fullest extent the context permits.

2. The term "Opposer" when used herein shall mean and refer to Opposer, its parent and affiliate companies, divisions, agents, employees, representatives, attorneys and licensees or any other person or entity purporting to act on their behalf including, without limitation, the H.J. Heinz Company.

3. As used herein, "person" means an individual, firm, partnership, corporation, proprietorship, association or any other organization or entity.

4. When used herein, the term "identify" shall mean:

(a) in connection with natural persons, to state their full names, titles and job descriptions, if applicable, and their present or last known business and home address;

(b) in connection with firms, partnerships, corporations, proprietorships, associations or other entities, to state their name, and each of their present or last known addresses;

(c) in connection with documents, to describe the documents, setting forth their dates, titles, authors, addressees, parties thereto and the substance thereof, with such reasonable particularity as would be sufficient to permit them to be sought by subpoenas duces tecum or under the provisions of Rule 34 of the Federal Rules of Civil Procedure. Documents to be identified shall include both documents in your possession, custody and control and all other documents of which you have knowledge; and

(d) in connection with oral statements and communications, to (i) state when and where they were made; (ii) identify each of the makers and recipients thereof, in addition to all others present; (iii) indicate the medium of communication; and (iv) state their substance.

5. As used herein, the term "document" is defined to be synonymous in meaning and equal in scope to the usage of that term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of that term. Document includes the original and all copies which are different from the original (whether by interlineation, receipt, stamp, notation, indication of copy sent or received or otherwise), regardless of location, including all handwritten, typed, printed, photographed, recorded, transcribed, punched, taped, filmed or graphic matter, including any means or recording upon any tangible thing, any form of communication or representation, including without limitation: communications, including intra-agency communications; correspondence; directives; memoranda (including pencil jottings, diary entries, desk calendar entries, reported recollections and any other written form of notation of events or intentions); transcripts and recordings of conversations and telephone calls; books and records; reports; work sheets and work papers and all other documentary materials of any nature whatsoever, together with any attachments thereto or enclosures therewith, now in the possession, custody or control of Applicant or any attorney, employee, agent or any representative of Applicant.

6. The singular form of a word (e.g., "document" or "person") shall also refer to the plural, and words used in the masculine, feminine, or neuter gender refer to and include all genders.

7. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to bring within the Interrogatory all information which might otherwise be construed as outside its scope.

8. The term "Applicant's Mark" shall mean and refer to Applicant's claimed trademark as set forth in Application Serial No. 76/504,042 as well as any variation thereof.

9. The term "Opposer's Mark" shall mean and refer to Opposer's trademark BONTA' including, without limitation, the mark covered by Opposer's Registration No. 666,650.

INTERROGATORIES

INTERROGATORY NO. 1

Identify each and every product that is or will be manufactured, offered for sale and/or sold by Applicant in the United States on or in connection with which Applicant's Mark has or will be used.

INTERROGATORY NO. 2

Identify the officer, director, partner, representative or employee of Applicant who is most knowledgeable concerning the: (a) manufacture or supply; (b) distribution; (c) sales; and (d) marketing of each and every product identified in response to Interrogatory No. 1.

INTERROGATORY NO. 3

For each and every product identified in your response to Interrogatory No. 1:

- (a) state the date of the first use or sale in the United States, if applicable;
- (b) identify the person who has or will manufacture the product;
- (c) identify all documents referring or relating to such first use or sale, including, without limitation, invoices, waybills, bills of lading, etc.

INTERROGATORY NO. 4

State whether any searches or investigations were conducted by Applicant or any person on its behalf (including its attorneys) to determine whether the Applicant's Mark was available for adoption and use as a trademark or trade name in the United States and, if so, identify each such search or investigation.

INTERROGATORY NO. 5

Describe the circumstances and method by which Applicant considered, selected and adopted Applicant's Mark for use on each product identified in response to Interrogatory No. 1.

INTERROGATORY NO. 6

In reference to each and every product identified in response to Interrogatory No. 1, set forth the unit volume and approximate dollar amount of Applicant's annual sales of such products for each year since the date of first use, if any.

INTERROGATORY NO. 7

In reference to each and every product identified in response to Interrogatory No. 1, state the total dollar amount Applicant has spent, if any, for each year since the date of first use, and intends to spend during 2006 and 2007, in advertising and promoting products offered and/or sold under Applicant's Mark, if any.

INTERROGATORY NO. 8

In reference to each and every product identified in response to Interrogatory No. 1, identify each advertisement bearing Applicant's Mark for such product which has been or will be published, broadcast, displayed or distributed and for each such advertisement:

(a) state the date on which it was or will be published, broadcast, displayed or distributed;

(b) if a print media advertisement, identify the publication in which such advertisement will or did appear by name, date and page number;

(c) if a broadcast advertisement, identify the radio or television station or network over which such advertisement was or will be broadcast and state the length of the commercial and the date and time of broadcast; and

(d) state the total amount of money spent or budgeted for such advertisement including, but not limited to, cost of space or time, production costs, and agency commissions.

INTERROGATORY NO. 9

Identify each person employed by Applicant including, without limitation, any outside agent or agency retained by Applicant, who has been or now is responsible for marketing, advertising and promotion with respect to any products to be offered for sale or sold under Applicant's Mark.

INTERROGATORY NO. 10

In reference to each and every product identified in response to Interrogatory No. 1, identify all catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, flyers, press releases, signs, displays and other promotional material for such product which have been, are or will be distributed or displayed in the United States, bearing Applicant's Mark and for each such item state:

(a) each date on which or the inclusive dates during which said item was or will be distributed or displayed and the manner in which said item was or will be distributed or displayed;

(b) the approximate quantity of each such item that was or will be distributed or displayed; and

(c) the geographic area (by city or state) where said item or copies thereof were or will be distributed or displayed.

INTERROGATORY NO. 11

Identify any and all grants, consents to use, permissions, licenses and assignments concerning or relating to the Applicant's Mark and identify all documents referring or relating to each such grant, consent to use, permission, license and assignment and each amendment or modification thereof.

INTERROGATORY NO. 12

Identify the elements of the design portion of Applicant's Mark including, without limitation, the foods and/or vegetable depicted in the design (viz., mushrooms, tomatoes, etc.).

INTERROGATORY NO. 13

Identify the origin of the products identified in response to Interrogatory No. 1 including, without limitation, the origin of the ingredients for such products, where applicable, and the place of origin or manufacture of all products and their respective ingredients.

INTERROGATORY NO. 14

In reference to each and every product identified in response to Interrogatory No. 1, state:

- (a) the past, current or anticipated manufacturer(s) or supplier(s) of the product(s);
- (b) the manner in which such product(s) are or will be delivered to Applicant including, without limitation, how the products are shipped to Applicant from the manufacturer or supplier;
- (c) the ultimate purchasers and end users of such product(s);
- (d) the geographical areas of distribution for such product(s) in the United States specifying the states in which said product(s) have been or will be sold;

(e) the channels of trade through which such product(s) are or will be distributed identifying by category all suppliers, wholesalers, distributors, brokers, jobbers and/or sales agents, if any; and

(f) the type of entities at which said product(s) are or will be sold to the ultimate purchaser.

INTERROGATORY NO. 15

For each product identified in response to Interrogatory No. 1, state whether you have promoted such products at any conventions, trade shows or exhibitions, or have any plans to do so, and if so, state the title, dates and location of each such convention, trade show or exhibition.

INTERROGATORY NO. 16

Identify all tags, containers, labels, packaging, point of purchase displays and other written materials which demonstrate Applicant's use or intended use of Applicant's Mark in the United States in connection with Applicant's products identified in response to Interrogatory No. 1 from their date of first use, if any, to date.

In lieu of identifying each document, an actual sample of each type of same may be attached to the Response to this Interrogatory.

INTERROGATORY NO. 17

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

INTERROGATORY NO. 18

State whether Applicant, or any individual(s) or other company(ies) or organization(s) acting on your behalf, have conducted or authorized any other individual or company to conduct a survey, investigation, study, or market test (hereinafter "Survey") relating either to Applicant's Mark, Opposer's Mark or the products presently offered or to be offered under Applicant's Mark, including, but not limited to, surveys relating to public recognition, consumer acceptance, secondary meaning or confusion and, if so, identify:

(a) each individual or entity who was or is in charge of conducting each Survey;

(b) each report or summary of the results thereof, whether written or oral and, if oral, state the contents thereof and identify the persons making and receiving such report or summary and each person having knowledge thereof; and

(c) each document relating to, reflecting, supporting or generated in the consideration, planning, conducting or reporting of any such survey, and the results or substance thereof.

INTERROGATORY NO. 19

Identify each expert witness whose testimony Applicant may or will rely upon in connection with the instant proceeding involving any of the issues in this case including, but not limited to, Opposer's Mark, and with respect to each such witness:

(a) state the subject matter on which he or she is expected to testify; and

(b) state the substance of the facts and opinions on which the expert is expected to testify, and summarize the grounds for each opinion.

INTERROGATORY NO. 20

State whether Applicant or any person acting for or on behalf of Applicant has received any communication, oral or in writing, from any person which suggests, implies, or infers that Applicant may be connected or associated with Opposer or any other person, or which comprises any inquiry as to whether there is or may be or which evidences any such connection or association.

INTERROGATORY NO. 21

If you, or any of your agents, representatives or customers have received a written or verbal order, inquiry or communication which was intended for Opposer or inquired whether Opposer or any product sold or intended for sale by Applicant are connected, affiliated, associated, or sponsored by Opposer identify:

- (a) by whom it was communicated;
- (b) the date and place thereof;
- (c) the nature and substance thereof;
- (d) the manner in which the incident came to Applicant's attention including, without limitation, the method of communication; and
- (e) any and all documents embodying, relating to, arising out of or connected with it.

INTERROGATORY NO. 22

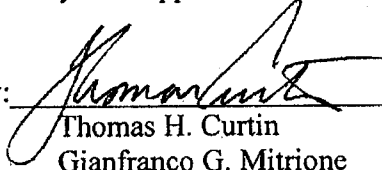
Identify each person who participated in the preparation of Applicant's responses to the foregoing Interrogatories or furnished any information in response thereto, and for each specify the Interrogatory Response for which each such person provided information or participated in the preparation of the Response.

INTERROGATORY NO. 23

Identify all documents consulted, referred to or relied on by Applicant in responding to the foregoing Interrogatories.

LATHROP & GAGE L.C.
Attorneys for Opposer

Dated: December 5, 2006
New York, New York

By: 
Thomas H. Curtin
Gianfranco G. Mitrione

230 Park Avenue, Suite 1847
New York, New York 10169
(212) 850-6220 (tel)
(212) 850-6221 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Opposer's First Set of Interrogatories to Applicant was served this 5th day of December, 2006 by first class mail, postage prepaid, upon the attorneys for Applicant at the following address:

John S. Egbert, Esq.
412 Main Street, Floor 7
Houston, TX 77002-1838

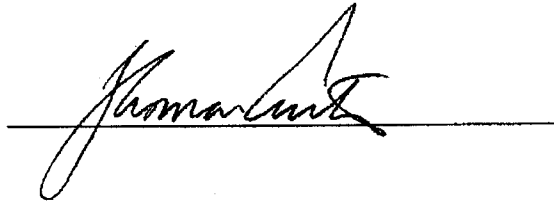


EXHIBIT C



THOMAS H. CURTIN
(212) 850-6241
EMAIL: TCURTIN@LATHROPGAGE.COM
WWW.LATHROPGAGE.COM

230 PARK AVENUE
SUITE 1847
NEW YORK, NY 10169
(212) 850-6220, FAX (212) 850-6221

January 26, 2007

John S. Egbert, Esq.
Egbert Law Offices
412 Main Street, 7th Floor
Houston, Texas 77002-1838

Re: Trademark Management Company v.
Charlie Brown di Rutigliano & Figli S.r.l.
Opposition No. 91172461

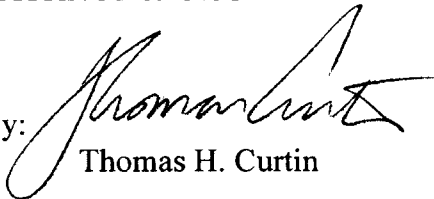
Dear Mr. Egbert:

We are the attorneys for the Opposer in the subject action. On December 5, 2006, our office served Opposer's First Set of Requests for the Production of Documents and Things as well as Opposer's First Set of Interrogatories to Applicant. By our calculation, Applicant's responses were due on January 9, 2007. To date, however, we have not received any responses to the aforementioned discovery requests.

Opposer demands that Applicant immediately serve responses to the aforementioned discovery requests. If we do not receive responses by February 9, 2007, Opposer will file a Motion to Compel. This letter shall constitute Opposer's good faith effort under 37 C.F.R. § 2.120(e) to resolve this discovery dispute.

Very truly yours,

LATHROP & GAGE L.C.

By: 
Thomas H. Curtin

:thc/nam

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*LATHROP & GAGE DC PLLC-AFFILIATE

EXHIBIT D

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

In the Matter of Application Serial No. 78/504,042
Published in the Official Gazette on February 21, 2006

| | | |
|-----------------------------|---|-------------------------|
| TRADEMARK MANAGEMENT | § | |
| COMPANY, | § | |
| | § | |
| Opposer, | § | |
| | § | |
| v. | § | Opposition No. 91172461 |
| | § | |
| CHARLIE BROWN DI RUTIGLIANO | § | |
| & FIGLI S.R.L. | § | |
| | § | |
| Applicant. | § | |

**APPLICANT'S ANSWERS TO OPPOSER'S
FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, CHARLIE BROWN DI RUTIGLIANO & FIGLI S.R.L., (hereinafter referred to as "Applicant") by its attorneys, hereby submits the following response and objections to TRADEMARK MANAGEMENT COMPANY's (hereinafter referred to as "Opposer") First Set of Requests For Production of Documents.

GENERAL OBJECTION

1. Applicant objects to Opposer's requests to the extent they seek information subject to the attorney/client privilege, or within the attorney's work product immunity, or other grounds of immunity from discovery.
2. Applicant objects to Opposer's requests to the extent they seek information not relevant to any issue in this case, nor reasonably calculated to lead to the discovery of admissible evidence.

3. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value.

4. Applicant objects to Opposer's requests to the extent they seek information that is unreasonably cumulative, duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive.

5. Applicant's responses are based upon information and writings presently available to and located by Applicant and its attorneys. Applicant has not completed its investigation of the facts relating to this Opposition, its discovery in this action, nor its preparation for trial. All the information supplied is based only on such information and documents which are presently and specifically known to Applicant. Therefore, Applicant's written responses are without prejudice to its rights to supplement or amend its written responses and to present evidence discovered hereafter at any hearing or trial.

6. No Protective Order has been entered in these proceedings. Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings.

GENERAL RESPONSE

Any response to the effect that Applicant has produced or will produce documents responsive to the request does not mean or imply that ANY such documents exist or that Applicant has any such documents in its possession, custody, or control. Applicant will produce relevant, non-privileged documents responsive to the requests upon a mutually agreed upon date at Egbert Law Offices, State National Building, 412 Main St., 7th Floor, Houston, Texas 77002.

RESPONSES AND OBJECTIONS

DOCUMENT REQUEST NO. 1

All documents referring or relating to either Opposer and/or Opposer's Mark including, without limitation, results of any investigations or other inquiries, whether formal or informal, notes, correspondence, internal memoranda, searches and surveys.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 2

All documents referring or relating to the current or intended manufacture, importation, distribution and sale of the products sold or to be sold bearing the Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Subject to and without waiving the foregoing specific and

general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 3

All documents referring to Applicant's selection and adoption of the Applicant's Mark including, without limitation, any documentation of meetings or discussions held concerning the adoption of Applicant's Mark, any documentation concerning the reasons for selecting the Applicant's Mark and any documentation concerning the consideration of using any other mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 4

All documents referring to or reflecting any grants, consents to use, permissions, licenses and/or assignments by and between Applicant and any third party concerning or regarding Applicant's Mark including, without limitation, all amendments and modifications thereto.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the

attorney/client privilege and/or work product doctrine. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 5

All documents referring to how, when and where Applicant acquired knowledge of Opposer's Mark and all documents surrounding the acquisition of such knowledge.

RESPONSE: Applicant incorporates the general objections referenced above. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant first acquired knowledge of Opposer's Mark via a letter from counsel for Opposer sent on February 2, 2006, which should be easily accessible to Opposer.

DOCUMENT REQUEST NO. 6

All documents including, without limitation, any searches, investigations or any other inquiries, whether formal or informal, conducted by or on behalf of Applicant referring or relating to the availability of the Applicant's Mark for adoption and use by Applicant on or in connection with Applicant's products.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order

being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 7

Produce specimens of all labels, tags, decals, stickers, packaging, containers, coupons, ad slicks, brochures, displays and point-of-purchase promotional materials which will be, are or have ever been used in connection with the offering for sale and sale of products under Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Applicant objects to Opposer's requests for "all" specimens to the extent that the burden or expense of production outweighs its likely probative value. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 8

All federal and state trademark applications and registrations and the file histories thereof and all correspondence related thereto referring or relating to Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the

attorney/client privilege and/or work product doctrine. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent that the information requested is not already readily available to Opposer.

DOCUMENT REQUEST NO. 9

All documents referring or relating to formal or informal objection(s) made by Applicant to the use, application to register and/or registration by any third party of any trademark or trade name which Applicant believes to be confusingly similar to Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist and to the extent that the information requested is not already readily available to Opposer.

DOCUMENT REQUEST NO. 10

All consumer studies, surveys and market research reports referring or relating to the marketing, advertising, promotion and/or sale of products under Applicant's Mark including, without limitation, consumer studies relating to public recognition or awareness and/or secondary meaning in Applicant's Mark or any likelihood of confusion with Opposer's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 11

All documents referring or relating to unsolicited media coverage of all products that are or will be offered and sold under Applicant's Mark including, without limitation, articles and features in newspapers, newsletters, magazines, television, radio programs and on the Internet.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that the requested documents are not relevant to the claim or defenses of any party nor reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 12

A sample, specimen or copy of each and every advertisement (whether print, radio, television, internet or other media) and promotional material including, without limitation, all print and television advertisements, radio advertisements, brochures, leaflets, pamphlets, sales or promotional literature, bulletins, press releases, signage, packaging, and other promotional materials and displays referring to or concerning all products offered and sold, or to be offered and sold, under Applicant's Mark including all versions and drafts of any such advertisement and promotional material.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Applicant objects to Opposer's requests for "each and every" advertisement to the extent that the burden or expense of production outweighs its likely probative value. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 13

All documents relating or referring to the actual or intended manner, style and geographical areas of the promotion and advertisement of products that are or will be offered and sold under Applicant's Mark including, without limitation, documents indicating advertising budgets and expenditures, samples and drafts of advertisements and promotional pieces or materials ever used

or to be used in connection with the products sold under Applicant's Mark, including, without limitation, Internet advertising.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 14

All documents that would identify the actual or intended geographical areas of distribution and sale of products sold under Applicant's Mark including, without limitation, documents identifying the sales agents, jobbers, brokers, distributors, wholesalers, retailers and outlets nationwide who are or will be utilized by Applicant in connection with the sale of the products under Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production

outweighs its likely probative value. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 15

All documents referring or relating to, or comprising any communication or notice to Applicant concerning the possibility that Applicant's use of Applicant's Mark, or any portion or variation thereof, might or might not result in confusion or mistake in any industry or among the public, particularly in view of Opposer's use and registration of Opposer's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, no responsive documents exist.

DOCUMENT REQUEST NO. 16

All documents referring to or reflecting the types and classes of consumers to whom, and the markets and channels of trade in the United States through which, Applicant has or will market or sell products bearing Applicant's Mark including, without limitation, all documents indicating the channels of trade through which Applicant has or will offer and sell products under Applicant's Mark to consumers including, without limitation, all documents indicating the manner in which goods are or will be offered for sale, marketed or sold under Applicant's Mark or by any division, subsidiary, related company or licensee of Applicant.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 17

A specimen or sample of each and every product that will be or has ever been marketed and/or sold bearing Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Applicant objects to Opposer's requests for "each and every" product to the extent that the burden or expense of production outweighs its likely probative value. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 18

Produce each and every document identified in Applicant's responses to Opposer's First Set of Interrogatories.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 19

All documents and things referring or relating to, or comprising statements, inquiries, comments, or other communications by or from Applicant's potential customers, customers, distributors, suppliers, or others, relating to the similarity of Opposer's Mark to Applicant's Mark or evidencing any confusion, suspicion, belief, or doubt on the part of any third party as to the relationship between the Opposer and Applicant or their products sold under Opposer's Mark or Applicant's Mark, respectively, including any misdirected complaints or inquiries.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, no responsive documents exist.

DOCUMENT REQUEST NO. 20

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

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, no responsive documents exist.

DOCUMENT REQUEST NO. 21

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

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

DOCUMENT REQUEST NO. 22

All documents referring or relating to, or comprising, any plan Applicant has to expand the type of goods it has or will offer for sale under Applicant's Mark.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

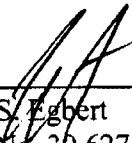
DOCUMENT REQUEST NO. 23

Produce each and every document relied on, referred to or consulted in responding to Opposer's First Set of Interrogatories.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Subject to and without waiving the foregoing specific and general objections set forth above, Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings to the extent any responsive documents exist.

CHARLIE BROWN DI RUTIGLIANO &
FIGLI S.R.L.,
Applicant

2-9-07
Date



John S. Egbert
Reg. No. 30,627
Attorney for Applicant

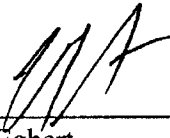
Egbert Law Offices
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Houston, Texas 77002
(713)224-8080
(713)223-4873 (Fax)

JSE:ksw
Our File: 1722-98

CERTIFICATE OF MAILING

I hereby certify that Applicant's Response to Opposer's First Set of Requests for Production is being sent by first class mail on this 9th day of December 2006, to the attorney of record for Opposer at the following address:

Thomas H. Curtin
Gianfranco G. Mitrione
LATHROP & GAGE L.C.
230 Park Avenue, Suite 1847
New York, NY 10169
(212) 850-6220



John S. Egbert
Reg. No. 30,627
Attorney for Applicant

Egbert Law Offices
412 Main Street, 7th Floor
Houston, Texas 77002
(713)224-8080
(713)223-4873 (Fax)

EXHIBIT E

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

In the Matter of Application Serial No. 78/504,042
Published in the Official Gazette on February 21, 2006

TRADEMARK MANAGEMENT
COMPANY,

Opposer,

v.

CHARLIE BROWN DI RUTIGLIANO
& FIGLI S.R.L.

Applicant.

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Opposition No. 91172461

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

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, CHARLIE BROWN DI RUTIGLIANO & FIGLI S.R.L., (hereinafter referred to as "Applicant") by its attorneys, hereby submits the following answers to TRADEMARK MANAGEMENT COMPANY's (hereinafter referred to as "Opposer") First Set of Interrogatories.

GENERAL OBJECTIONS

1. Applicant objects to Opposer's Interrogatories to the extent they seek information subject to the attorney/client privilege, or within the attorney's work product immunity, or other grounds of immunity from discovery.
2. Applicant objects to Opposer's Interrogatories to the extent they seek information that is unreasonably cumulative, duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive.
3. Applicant objects to Opposer's Interrogatories to the extent that the burden or expense of the Interrogatory outweighs its likely probative value.

4. Applicant's responses are based upon information and writings presently available to and located by Applicant and its attorneys. Applicant has not completed its investigation of the facts relating to this Opposition, its discovery in this action, nor its preparation for trial. All the information supplied is based only on such information and documents which are presently and specifically known to Applicant. Therefore, Applicant's written responses are without prejudice to its rights to supplement or amend its written responses and to present evidence discovered hereafter at any hearing or trial.

5. Applicant objects to Opposer's Interrogatories instructions and definitions to the extent they seek to impose burdens contrary to or in addition to those provided in the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Accordingly, Applicant will produce documents identified in its responses in accordance with the applicable rules.

6. Applicant objects to each and every definition, instruction, or interrogatory which calls for information that is irrelevant and/or immaterial to the issues in this matter or which are not reasonably calculated to lead to the discovery of admissible evidence.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

Interrogatory No.1.

Identify each and every product that is or will be manufactured, offered for sale and/or sold by Applicant in the United States on or in connection with which Applicant's Mark has or will be used.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory is overly broad and unduly burdensome. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective

Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S. Application No. 78/504,042. Currently, olives preserved in brine is the only product being exported into the United States in connection with Applicant's Mark.

Interrogatory No.2.

Identify the officer, director, partner, representative or employee of Applicant who is most knowledgeable concerning the: (a) manufacture or supply; (b) distribution; (c) sales; and (d) marketing of each and every product identified in response to Interrogatory No. 1.

ANSWER: Applicant incorporates by this reference the general objections set forth above. Without waving these objections or any others, Mr. Giacomo RUTIGLIANO, the Managing Director of Applicant, is most knowledgeable about the issues mentioned in this interrogatory.

Interrogatory No.3.

For each and every product identified in your response to interrogatory No. 1:

(a) state the date of the first use or sale in the United States, if applicable;

(b) identify the person who has or will manufacture the product;

(c) identify all documents referring or relating to such first use or sale, including, without limitation, invoices, waybills, bills of lading, etc.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, this interrogatory is overly broad and unduly burdensome. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. The

interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the parties. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S. Application No. 78/504,042. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order.

Interrogatory No.4.

State whether any searches or investigations were conducted by Applicant or any person on its behalf (including its attorneys) to determine whether the Applicant's Mark was available for adoption and use as a trademark or trade name in the United States and, if so, identify each such search or investigation.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory calls for information that is protected by the Attorney/Client privilege. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. The interrogatory is an improper attempt to require Applicant to list all factual assertions or contentions in this case, marshal all of its available proof, or marshal all proof Applicant intends to offer. Without waving these objections or any others, Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order if any such documents exist.

Interrogatory No.5.

Describe the circumstances and method by which Applicant considered, selected and adopted Applicant's Mark for use on each product identified in response to Interrogatory No. 1.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory is overly broad, unduly burdensome and harassing. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Applicant. Without waving these objections or any others, Applicant's Mark was first coined for use in Italy in 1995 in the Region of Apulia, Italy. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order.

Interrogatory No.6.

In reference to each and every product identified in response to Interrogatory No.1, set forth the unit volume and approximate dollar amount of Applicant's annual sales of such products for each year since the date of first use, if any.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, this interrogatory is overly broad and unduly burdensome. Applicant objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the parties. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S.

Application No. 78/504,042. The unit volume of Applicant's annual sales of the olives preserved in brine is approximately \$700,000 per year.

Interrogatory No.7.

In reference to each and every product identified in response to Interrogatory No. 1, state the total dollar amount Applicant has spent, if any, for each year since the date of first use, and intends to spend during 2006 and 2007, in advertising and promoting products offered and/or sold under Applicant's Mark, if any.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory as being overly broad. Applicant objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the parties. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, no money has been expended in the United States on advertising or promotion of products sold under Applicant's Mark.

Interrogatory No.8.

In reference to each and every product identified in response to Interrogatory No. 1, identify each advertisement bearing Applicant's Mark for such product which has been or will be published, broadcast, displayed or distributed and for each such advertisement:

(a) state the date on which it was or will be published, broadcast, displayed or distributed;

(b) if a print media advertisement, identify the publication in which such advertisement will or did appear by name, date and page number;

(c) if a broadcast advertisement, identify the radio or television station or network over which such advertisement was or will be broadcast and state the length of the commercial and the date and time of broadcast; and

(d) state the total amount of money spent or budgeted for such advertisement including, but not limited to, cost of space or time, production costs, and agency commissions.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory as being overly broad. Applicant objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the parties. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S. Application No. 78/504,042. Applicant has never published, broadcasted displayed nor distributed any advertisement in the United States.

Interrogatory No.9.

Identify each person employed by Applicant including, without limitation, any outside agent or agency retained by Applicant, who has been or now is responsible for marketing, advertising and promotion with respect to any products to be offered for sale or sold under Applicant's Mark.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory is overly broad, unduly burdensome and harassing. The interrogatory is vague as to the time period for the information requested. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the parties. Without waving these objections or any others, Mr. Giacomo RUTIGLIANO, the Managing Director of Applicant, is most responsible for marketing, advertising and promotion of products sold under Applicant's Mark. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order.

Interrogatory No. 10.

In reference to each and every product identified in response to Interrogatory No. 1, identify all catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, flyers, press releases, signs, displays and other promotional material for such product which have been, are or will be distributed or displayed in the United States, bearing Applicant's Mark and for each such item state:

- (a) each date on which or the inclusive dates during which said item was or will be distributed or displayed and the manner in which said item was or will be distributed or displayed;
 - (b) the approximate quantity of each such item that was or will be distributed or displayed;
- and

(c) the geographic area (by city or state) where said item or copies thereof were or will be distributed or displayed.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory is overly broad, unduly burdensome and harassing. The interrogatory is vague as to the time period for the information requested. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S. Application No. 78/504,042. No such materials requested in this interrogatory exist at this time. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order.

Interrogatory No. 11.

Identify any and all grants, consents to use, permissions, licenses and assignments concerning or relating to the Applicant's Mark and identify all documents referring or relating to each such grant, consent to use, permission, license and assignment and each amendment or modification thereof.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory calls for information that is protected by the Attorney/Client privilege. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. Without waving these objections or any others, Applicant will

supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order, if any such documents exist.

Interrogatory No. 12.

Identify the elements of the design portion of Applicant's Mark including, without limitation, the foods and/or vegetable depicted in the design (viz., mushrooms, tomatoes, etc.).

ANSWER: Applicant incorporates by this reference the general objections set forth above. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Applicant. Without waving these objections or any others, see the Design Search Code section of U.S. Serial No. 78/504,042 for the elements of the design.

Interrogatory No. 13.

Identify the origin of the products identified in response to Interrogatory No. 1 including, without limitation, the origin of the ingredients for such products, where applicable, and the place of origin or manufacture of all products and their respective ingredients.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Applicant. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark

on all goods listed in U.S. Application No. 78/504,042. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order. The olives preserved in brine that are produced and merchandised by Applicant, as well as all the ingredients used thereto, originate in the region of Apulia in southern Italy.

Interrogatory No. 14.

In reference to each and every product identified in response to Interrogatory No. 1, state:

- (a) the past, current or anticipated manufacturer(s) or supplier(s) of the product(s);
- (b) the manner in which such product(s) are or will be delivered to Applicant including, without limitation, how the products are shipped to Applicant from the manufacturer or supplier;
- (c) the ultimate purchasers and end users of such product(s);
- (d) the geographical areas of distribution for such product(s) in the United States specifying the states in which said product(s) have been or will be sold;
- (e) the channels of trade through which such product(s) are or will be distributed identifying by category all suppliers, wholesalers, distributors, brokers, jobbers and/or sales agents, if any; and
- (f) the type of entities at which said product(s) are or will be sold to the ultimate purchaser.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory is overly broad, unduly burdensome and harassing. The interrogatory is vague as to the time period for the information requested. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed

relief, or to the defenses of the parties. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S. Application No. 78/504,042. The following information applies to the olives preserved in brine:

- (a) The olives preserved in brine originates from the region of Apulia in southern Italy;
- (b) Not applicable;
- (c) The "olives preserved in brine" consumer;
- (d) The geographical areas of distribution for Applicant's olives preserved in brine include Florida, New Jersey, New York and California;
- (e) The goods are transported in the United States by Applicant in refrigerated trucks. Applicant works with a broker company named INTERBUSINESS U.S.A. Inc. The broker finds distributors for its products in the United States; and
- (f) Applicant sells the product to wholesale buyers, which, in turn sell the same products to retailers.

Interrogatory No. 15.

For each product identified in response to Interrogatory No. 1, state whether you have promoted such products at any conventions, trade shows or exhibitions, or have any plans to do so, and if so, state the title, dates and location of each such convention, trade show or exhibition.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory is vague as to the time period for the information requested. The interrogatory is broad as to the location. Applicant objects to this interrogatory on the grounds that it seeks information that is beyond the proper scope of discovery. The interrogatory cannot be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or

to the defenses of the parties. Without waving these objections or any others, in the United States, Applicant has attended the Fancy Food trade show in New York to promote its product.

Interrogatory No. 16.

Identify all tags, containers, labels, packaging, point of purchase displays and other written materials which demonstrate Applicant's use or intended use of Applicant's Mark in the United States in connection with Applicant's products identified in response to Interrogatory No. 1 from their date of first use, if any, to date. In lieu of identifying each document, an actual sample of each type of same may be attached to the Response to this Interrogatory.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, the application is based on a bona fide intent to use Applicant's mark on all goods listed in U.S. Application No. 78/504,042. Any specimens or other similar materials illustrating the use of the mark will be made available for inspection in accordance with any appropriate Request for Production under Federal Rules of Civil Procedure 34.

Interrogatory No. 17.

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

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory calls for information that is protected by the Attorney/Client privilege.

Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. The interrogatory is an improper attempt to require Applicant to list all factual assertions or contentions in this case, marshal all of its available proof, or marshal all proof Applicant intends to offer. Without waving these objections or any others, Applicant did not become aware of Opposer or Opposer's mark until receiving a letter from counsel for Opposer on February 2, 2006.

Interrogatory No. 18.

State whether Applicant, or any individual(s) or other company(ies) or organization(s) acting on your behalf, have conducted or authorized any other individual or company to conduct a survey, investigation, study, or market test (hereinafter "Survey") relating either to Applicant's Mark, Opposer's Mark or the products presently offered or to be offered under Applicant's Mark, including, but not limited to, surveys relating to public recognition, consumer acceptance, secondary meaning or confusion and, if so, identify:

- (a) each individual or entity who was or is in charge of conducting each Survey;
- (b) each report or summary of the results thereof, whether written or oral and, if oral, state the contents thereof and identify the persons making and receiving such report or summary and each person having knowledge thereof; and
- (c) each document relating to, reflecting, supporting or generated in the consideration, planning, conducting or reporting of any such survey, and the results or substance thereof.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory calls for information that is protected by the Attorney/Client privilege. Applicant further objects to identifying confidential and proprietary documents or information

without a Stipulated Protective Order or a Protective Order being entered in these proceedings. The interrogatory is an improper attempt to require Applicant to list all factual assertions or contentions in this case, marshal all of its available proof, or marshal all proof Applicant intends to offer. Without waving these objections or any others, Applicant did not become aware of Opposer or Opposer's mark until receiving a letter from counsel for Opposer on February 2, 2006. No such survey, study, or market test was ever made.

Interrogatory No. 19.

Identify each expert witness whose testimony Applicant may or will rely upon in connection with the instant proceeding involving any of the issues in this case including, but not limited to, Opposer's Mark, and with respect to each such witness:

(a) state the subject matter on which he or she is expected to testify; and

(b) state the substance of the facts and opinions on which the expert is expected to testify, and summarize the grounds for each opinion.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory calls for information that is protected by the Attorney/Client privilege. The interrogatory is an improper attempt to require Applicant to list all factual assertions or contentions in this case, marshal all of its available proof, or marshal all proof Applicant intends to offer. Without waving these objections or any others, no expert has been retained at this time. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory.

Interrogatory No. 20.

State whether Applicant or any person acting for or on behalf of Applicant has received any communication, oral or in writing, from any person which suggests, implies, or infers that Applicant may be connected or associated with Opposer or any other person, or which comprises any inquiry as to whether there is or may be or which evidences any such connection or association.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, there has been no communication, oral or in writing, from any third party suggesting, implying, or inferring a connection between Opposer and Applicant.

Interrogatory No. 21.

If you, or any of your agents, representatives or customers have received a written or verbal order, inquiry or communication which was intended for Opposer or inquired whether Opposer or any product sold or intended for sale by Applicant are connected, affiliated, associated, or sponsored by Opposer identify:

- (a) by whom it was communicated;
- (b) the date and place thereof;
- (c) the nature and substance thereof;
- (d) the manner in which the incident came to Applicant's attention including, without limitation, the method of communication; and
- (e) any and all documents embodying, relating to, arising out of or connected with it.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Without waving these objections or any others, there has been no written or verbal order, inquiry or communication made to Applicant that was intended for Opposer. There has been no inquiry as to whether any products sold by Applicant are connected, affiliated, associated, or sponsored by Opposer.

Interrogatory No. 22.

Identify each person who participated in the preparation of Applicant's responses to the foregoing Interrogatories or furnished any information in response thereto, and for each specify the Interrogatory Response for which each such person provided information or participated in the preparation of the Response.

ANSWER: Applicant incorporates by this reference the general objections set forth above. Without waving these objections or any others, Applicant prepared the answers and responses to discovery requests with the help of its attorneys, Egbert Law Offices, in Houston, TX.

Interrogatory No. 23.

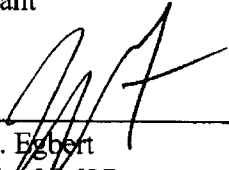
Identify all documents consulted, referred to or relied on by Applicant in responding to the foregoing Interrogatories.

ANSWER: Applicant incorporates by this reference the general objections set forth above. In addition, the interrogatory calls for information that is protected by the Attorney/Client privilege. Applicant further objects to identifying confidential and proprietary documents or information without a Stipulated Protective Order or a Protective Order being entered in these proceedings. The

interrogatory is an improper attempt to require Applicant to list all factual assertions or contentions in this case, marshal all of its available proof, or marshal all proof Applicant intends to offer. Without waving these objections or any others, Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this Interrogatory upon entry of a Protective Order, if any such documents exist.

CHARLIE BROWN DI RUTIGLIANO &
FIGLI S.R.L.,
Applicant

2.9.07
Date


John S. Egbert
Reg. No. 30,627
Attorney for Applicant

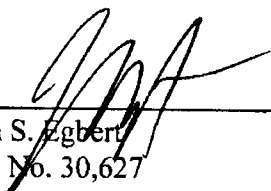
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JSE:ksw
Our File: 1722-98

CERTIFICATE OF MAILING

I hereby certify that Applicant's Answers to Opposer's First Set of Interrogatories is being sent by first class mail on this 9th day of February 2007, to the attorney of record for Opposer at the following address:

Thomas H. Curtin
Gianfranco G. Mitrione
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EXHIBIT F



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March 14, 2007

**VIA EMAIL AND
FIRST CLASS MAIL**

John S. Egbert, Esq.
Kevin Wilson, Esq.
Egbert Law Offices
412 Main Street, 7th Floor
Houston, Texas 77002-1838

Re: Trademark Management Company v. Charlie Brown di Rutigliano & Figli
S.r.l.
Opposition No. 91172461

Dear Messrs. Egbert and Wilson:

We now have had an opportunity to review the belated responses of the Applicant to Opposer's First Sets of Interrogatories (hereinafter "Interrogatories") and Request for Production of Documents ("Document Requests").

As a threshold matter, we note that, in response to Opposer's Interrogatories and Document Requests, Applicant has asserted General Objections as well as specific objections to many of the Interrogatories and Document Requests. As you know, Opposer served its Document Requests and Interrogatories on December 5, 2006. By our calculation, Applicant's responses were due on or before January 9, 2007. Since Opposer had not received any responses by mid-January nor had Applicant requested or been granted additional time to respond, Opposer sent its January 26, 2007 demand letter under 37 C.F.R. 2.120 (e). In response to that letter, Applicant finally served its responses on February 9, 2007. As Applicant failed to timely respond to Opposer's discovery requests, Applicant did not timely object to such discovery requests and thus has waived any objections (whether "General" or specific) it may have had to Opposer's discovery requests.

Turning to the actual responses, we find both Opposer's responses to Interrogatories and Production of Documents to be woefully inadequate and, pursuant to

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*LATHROP & GAGE DC PLLC-AFFILIATE

John S. Egbert, Esq.
March 14, 2007
Page 2

37 C.F.R. 2.120 (e), demand that Applicant serve complete responses to Opposer's discovery requests as soon as possible.

Applicant, in response to nearly all of the Interrogatories and Document Requests propounded, has objected to Opposer's discovery requests on the grounds that they call for the disclosure of information or the production of documents that contain or comprise confidential or proprietary information. Applicant has refused to respond to such discovery requests until a stipulated protective order is in place. See Applicant's Answers to Opposer's Interrogatory Nos. 1, 3-5, 7-11, 13-14, 16-18, 20-21 and 23 and Answers to Document Request Nos. 1-4, 6-10 and 12-23. As the party asserting confidentiality, it is Applicant's burden under Rule 26, Fed. R. Civ. P., to move for a protective order. Notwithstanding Applicant's obligation to move for protective order, Opposer is willing to consider and agree to a suitable form of protective order. To that end, please provide Opposer with a draft form of protective order for our review as soon as possible. If not, Applicant should immediately move for a protective order. Otherwise Opposer will file a motion to compel production of such documentation and information.

In addition, Applicant has asserted in response to several discovery requests that such interrogatories or document requests seek disclosure of information or the production of documents that are protected from disclosure by the attorney-client or attorney work product privileges. In that instance, please provide Opposer with a privilege log, as required under Rule 26, Fed. R. Civ. P., providing pertinent details as to the documentation Applicant is withholding on the basis of privilege and which documents respond to which Interrogatory or Document Request, namely Interrogatory Nos. 3, 4, 11, 17-19 and 23 and Document Request Nos. 1, 3-4, 6 and 8-9. Such a privilege log will assist Opposer, and the Board, in determining whether the privilege has been properly asserted.

INTERROGATORIES

Turning to the few substantive responses made by Applicant to Opposer's Interrogatories and Document Requests, Opposer notes the following insufficiencies in Applicant's responses:

INTERROGATORY NO. 3

This Interrogatory requires, in part, that Applicant state, with respect to the products identified in Response to Interrogatory No. 1, the date of the first use or sale of Applicant's product in the United States. No such information is provided in Applicant's

John S. Egbert, Esq.
March 14, 2007
Page 3

answer, however. Moreover, such information is not privileged. Please amend and supplement Applicant's Response to Interrogatory No. 3 to include the date of first use or sale of Applicant's olives preserved in brine within the United States. Please also identify all documents referring or relating to that first use or sale, including, without limitation, any invoices or other sales documentation confirming the date of first use or sale. To our knowledge, such information is not privileged and should have been identified and produced.

INTERROGATORY NO. 6

Interrogatory No. 6 seeks disclosure of the unit volume and approximate dollar amount of Applicant's annual sales for each product identified in Response to Interrogatory No. 1 for each year since the date of first use. As noted above, Applicant has failed to disclose the date of first use in the United States. Please identify the years during which the olives have been sold in the United States. Although Applicant has stated that annual sales of the olives preserved in brine is approximately \$700,000.00 per year, please confirm that that figure covers U.S. sales only. Moreover, please state the approximate dollar amount of annual sales for each year since first use as requested by the Interrogatory. Also, please identify the unit volume (i.e., number of cases or jars, etc.) of the olives preserved in brine sold by Applicant in the United States for each year since first use.

INTERROGATORY NO. 9

In response to Applicant's objection, Opposer agrees to limit the scope of the Interrogatory to the time period during which the Opposer utilized its mark within the United States. This accommodation should not be construed however as a waiver by Opposer of the fact that Applicant has waived its objection to any of Opposer's Interrogatories due to its tardy response.

INTERROGATORY NO. 10

Please see the comments above in response to the objection made in connection with Interrogatory No. 9. Please explain however how Applicant can represent that "no such materials requested in this Interrogatory exist at this time" but in the next sentence state that Applicant will supplement its response to the Interrogatory with other responsive information upon entry of a protective order. If there are documents, they should be identified. If there are no documents, Applicant should so state. Please amend and supplement your Response to Interrogatory No. 10 accordingly.

John S. Egbert, Esq.
March 14, 2007
Page 4

INTERROGATORY NO. 14

With respect to the Applicant's objection as to the time period covered by this Interrogatory, please see Opposer's comments in respect to Interrogatories No. 9 and 10. Turning to the actual response to Interrogatory No. 14, Opposer takes issue with Applicant's lack of response to subparagraphs (a) and (b). Please explain Applicant's response. For instance, does your client own the farms where the olives are harvested in Italy? How do the olives reach Applicant? Please identify the supplier and provide proper and complete responses to both subsection (a) and (b).

Turning to subparagraph (f), please provide a full and complete response to the information requested in the Interrogatory, including the identity of the types of retailers who sell Applicant's product to the ultimate purchasers and identify any such specialty food stores, supermarkets, club stores, etc.

INTERROGATORY NO. 15

Although Applicant has identified the Fancy Foods trade show in New York, Applicant has not provided dates when Applicant attended that show and whether and/or when Applicant promoted the olives in brine product sold under Applicant's mark. Please amend and supplement Applicant's Response to Interrogatory No. 15 accordingly.

INTERROGATORY NO. 16

In response to this Interrogatory, Applicant states that specimens or other similar materials that illustrate the use of the mark will be made available for inspection. The document production accompanying Applicant's Response to Opposer's Document Requests however only consists of a print out of Applicant's website. If there are specimens or other materials available for inspection, we ask that Applicant produce them forthwith by making copies of same and forwarding them to the undersigned promptly.

INTERROGATORY NO. 22

This Interrogatory specifically requests that Applicant "identify each person" who participated in the preparation of Applicant's Responses to Interrogatories or who provided any information in response thereto. In response, Applicant merely states that "Applicant prepared the answers and responses to discovery requests with the help of its attorneys"... That is not a proper response to the Interrogatory. Please amend and

John S. Egbert, Esq.
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Page 5

supplement Applicant's response by identifying any individual(s), whether or not they are employees or agents of Applicant, that participated in the preparation of Applicant's responses to the Interrogatories or furnished any information in response thereto.

DOCUMENT REQUESTS

As in the case with the Interrogatories, the General Objections interposed by Applicant to the Document Requests as well as the specific objections made by Applicant to the individual Document Requests were not timely asserted by Applicant and therefore have been waived. Moreover, if Applicant is in possession of any documents that are responsive to Opposer's document requests and that have not already been produced, *i.e.*, other than print-outs of the fiereparma.it website, please produce copies of such documents forthwith.

As stated above in connection with Applicant's Responses to Opposer's Interrogatories, it is Applicant's obligation and duty under Rule 26 of the Federal Rules of Civil Procedure to provide a privilege log as to any documents that it is withholding from production on the basis of the attorney-client privilege and/or the attorney work product doctrine or any other applicable privilege. It is also Applicant's burden to make a motion for a protective order to govern the disclosure of the alleged proprietary and confidential information of Applicant. As stated above, Opposer is willing to review and consider any form of protective order proposed by Applicant. Opposer's offer however, does not excuse Applicant's failure to propose or move for a protective order in the first instance. The upshot is Applicant's Answers to Opposer's Document Requests are wholly insufficient and serve only to delay these proceedings and increase costs.

Opposer addresses the deficiencies in Applicant's responses to the individual Document Requests listed below:

DOCUMENT REQUEST NO. 5

Opposer is entitled to Applicant's copies of the demand letter sent from Opposer's counsel in 2006. The fact that Opposer may already have a copy of that letter is irrelevant. Please produce Applicant's copy, including any notations or other markings thereon, of the February 2, 2006 letter as soon as possible.

DOCUMENT REQUEST NO. 11

Applicant's response to this Document Request is one of the few document requests that does not claim that other such documentation is either privileged or confidential or that production is made subject to the entry of a protective order. Even

John S. Egbert, Esq.
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Page 6

then, Applicant responds by stating that it will "supplement this response with relevant, non-privileged documents responsive to this request to the extent that any responsive documents exist." Applicant had well over sixty (60) days to search its files and produce documents responsive to this document request. During that time, Applicant did not request any additional time or an extension of time from Opposer. Applicant had ample time to search its records and produce documents responsive to this Request. If there are no documents responsive to this Request, Applicant should state so. If there are responsive documents, Applicant should produce them forthwith. Please amend and supplement Applicant's response to this Document Request as needed and required.

DOCUMENT REQUEST NO. 12

While prior versions and drafts of any advertisements and/or promotions materials may arguably be confidential, the actual samples or specimens of any such advertisements (of whatever medium) that were distributed or otherwise disseminated to the public are not confidential. Therefore there is no proper basis to withhold any such responsive documents until a protective order is in place. Please produce immediately all samples, specimens or copies of each and every advertisement and/or promotional material referring or concerning the olives in brine product sold under Applicant's mark in the United States. If there are no documents responsive to this Document Request, please amend and/or supplement Applicant's response accordingly.

DOCUMENT REQUEST NO. 14

Please explain how documents that may identify the entity that is responsible for distributing and selling the olives at issue are confidential. As Applicant reports over \$700,000.00 in sales, it follows that there are numerous third parties that have apparently encountered Applicant's product in the marketplace. Therefore the identity of retailers and other outlets at a minimum is not confidential information. Applicant must amend and supplement its response to Document Request No. 14 by producing documents that identify, at a minimum, the retailers and other outlets utilized in the United States that sell Applicant's product.

DOCUMENT REQUEST NO. 16

See Opposer's comments to Applicant's Response to Document Request No. 14.

DOCUMENT REQUEST NO. 17

In response to Opposer's Interrogatories, Applicant has conceded that it has made sales of olives in brine to consumers here in the United States. As such, a specimen or

John S. Egbert, Esq.
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Page 7

sample of such a product cannot reasonably be deemed to be a confidential and proprietary document. In this instance, a claim of confidentiality is wholly without merit and interposed merely to delay these proceedings and frustrate Opposer's ability to gather discovery to prosecute its case against Applicant. Please amend and/or supplement Applicant's Response to Document Request No. 17 immediately.

* * *

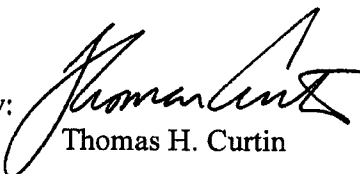
In reviewing Applicant's responses, the repeated, unsupported claims of privilege and confidentiality made to both Opposer's Interrogatories and Document Requests leads to the conclusion that Applicant has interposed these tardy, frivolous objections to delay discovery and to increase the costs to Opposer. Such behavior is frowned upon by the Trademark Trial and Appeal Board and will be brought to the Board's attention in Opposer's Motion to Compel if Applicant does not immediately cure the gross deficiencies in its responses to Opposer's discovery to date.

This letter shall serve as Opposer's good faith effort under 37 C.F.R. 2.120 (e) to resolve this discovery dispute. If the issues raised in this letter are not promptly addressed by Applicant, Opposer intends to file a Motion to Compel.

Finally, it is Opposer's understanding that Applicant's principal, Mr. Rutigliano, may, at times, be present within the United States. Please advise any dates when Applicant knows or anticipates that Mr. Rutigliano will be in the United States so that Opposer may consider noticing his deposition at that time. Opposer does not currently plan to conduct such a deposition however until Applicant has fulfilled its obligations to provide complete discovery.

Very truly yours,

LATHROP & GAGE L.C.

By: 
Thomas H. Curtin

:thc/nam

EXHIBIT G

Curtin, Thomas

From: Kevin Wilson [kwilson@egbertlawoffices.com]
Sent: Monday, March 19, 2007 5:54 PM
To: Curtin, Thomas
Subject: Re: Trademark Mgmt Co. v. Charlie Brown - Opp. No. 91172461

Dear Mr. Curtin,

I have attached a standard protective order for your review. Please sign and return it to our office at your convenience if you are agreeable to the order.

Also, we have requested further information from our client regarding some of the topics addressed in your letter and we will attempt to comply with your requests as quickly as possible. We do feel that a motion to compel would be an unnecessary burden on the Board at this point in time, and we hope that you will instead work with us to find an amicable resolution to this discovery dispute.

Sincerely,
Kevin Wilson

"Curtin, Thomas" <TCurtin@LathropGage.com> wrote:

Please see attached.
Thomas H. Curtin
Lathrop & Gage L.C.
230 Park Avenue, Suite 1847
New York, New York 10169
Tel: (212) 850 - 6220
Direct: (212) 850 - 6241
Fax: (212) 850 - 6221
Email: tcurtin@lathropage.com
<<Egbert ltr - 3.14.07_20070314104931.pdf>>

WE ARE INCLUDING THE FOLLOWING SENTENCE TO COMPLY WITH TREASURY REGULATIONS. ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS OR ENCLOSURES) WAS NOT INTENDED OR WRITTEN BY THE AUTHOR TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER OR (2) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR OTHER MATTER ADDRESSED HEREIN.

This e-mail (including any attachments) may contain material that (1) is confidential and for the sole use of the intended recipient, and (2) may be protected by the attorney-client privilege, attorney work product doctrine or other legal rules. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Egbert Law Offices
State National Building
412 Main St., 7th Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 212
Fax: (713) 223-4873

EXHIBIT H

Curtin, Thomas

From: Curtin, Thomas
Sent: Wednesday, April 18, 2007 6:21 PM
To: 'Kevin Wilson'; 'harrisonegbert@yahoo.com'
Subject: FW: TMC v. CHARLIE BROWN



NYDOCS-49491-v1-
Heinz_-_Charli...

Dear Messrs. Egbert and Wilson:

Please execute the protective order prepared by our office and return it to the undersigned for counter-signature. Failing that, please let us have your comments and/or revisions to the proposed form of protective order.

Almost a month has passed since your March 19 email and we have not received any substantive response to the gross deficiencies in Applicant's responses to Opposer's discovery requests outlined in our letter of March 14. Unless substantive information and documentation is immediately forthcoming, Opposer will move to compel Applicant to fulfill its discovery obligations. This email constitutes Opposer's good faith effort to resolve this discovery dispute under Section 2.120(e) of the Trademark Rules of Practice.

We await your response.

Thomas H. Curtin
Lathrop & Gage L.C.
230 Park Avenue, Suite 1847
New York, New York 10169
Tel: (212) 850 - 6220
Direct: (212) 850 - 6241
Fax: (212) 850 - 6221
Email: tcurtin@lathropgage.com

-----Original Message-----

From: Mitrione, Gianfranco
Sent: Thursday, April 05, 2007 4:54 PM
To: 'kwilson@egbertlawoffices.com'
Cc: Curtin, Thomas; Morrow, Nancy
Subject: TMC v. CHARLIE BROWN

Dear Mr. Wilson:

We have reviewed your proposed protective order which includes three (3) classes or tiers of "protected information." To simplify the designation of documents during the production of documents in this proceeding, we recommend utilizing the attached protective order which incorporates a single tier of protected information. You will note from the attached agreement, all confidential non-public information and attorneys' eyes only materials will be designated as "CONFIDENTIAL." Please sign and return the document to us at your earliest convenience.

If you have any questions, please contact Thomas Curtin of this office as soon as possible.

Very truly yours,

Gianfranco G. Mitrione, Esq.
LATHROP & GAGE L.C.

230 Park Avenue, Suite 1847
New York, New York 10169
(212) 850-6230 (direct tel)
(212) 850-6221 (fax)

EXHIBIT I

Curtin, Thomas

From: Curtin, Thomas
Sent: Thursday, May 03, 2007 4:48 PM
To: 'Kevin Wilson'; 'harrisonegbert@yahoo.com'
Subject: TMC v. CHARLIE BROWN

Dear Messrs. Egbert and Wilson:

We acknowledge receipt of the protective order as signed by your firm and have forwarded it on to in-house counsel for Opposer for execution. Once we have the fully-executed protective order, we will attend to its filing with the Trademark Trial and Appeal Board and serve you with a copy electronically.

Turning to the issue of Applicant's failure to provide complete and proper responses to Opposer's discovery, there has been no substantive response to date to the issues initially raised in our March 14 letter. Nor have you responded to my follow-up email of April 18. Please advise immediately when Applicant shall fulfill its discovery obligations and will respond properly and completely to Opposer's discovery requests. If we do not receive from Applicant full and complete answers to interrogatories and proper responses and responsive documents to our document requests by the close of business on May 7, we will file with the Board a motion to compel same.

We now await your response.

Thomas H. Curtin
Lathrop & Gage L.C.
230 Park Avenue, Suite 1847
New York, New York 10169
Tel: (212) 850 - 6220
Direct: (212) 850 - 6241
Fax: (212) 850 - 6221
Email: tcurtin@lathropgage.com

-----Original Message-----

From: Curtin, Thomas
Sent: Wednesday, April 18, 2007 6:21 PM
To: 'Kevin Wilson'; 'harrisonegbert@yahoo.com'
Subject: FW: TMC v. CHARLIE BROWN

Dear Messrs. Egbert and Wilson:

Please execute the protective order prepared by our office and return it to the undersigned for counter-signature. Failing that, please let us have your comments and/or revisions to the proposed form of protective order.

Almost a month has passed since your March 19 email and we have not received any substantive response to the gross deficiencies in Applicant's responses to Opposer's discovery requests outlined in our letter of March 14. Unless substantive information and documentation is immediately forthcoming, Opposer will move to compel Applicant to fulfill its discovery obligations. This email constitutes Opposer's good faith effort to resolve this discovery dispute under Section 2.120(e) of the Trademark Rules of Practice.

We await your response.

Thomas H. Curtin
Lathrop & Gage L.C.
230 Park Avenue, Suite 1847

New York, New York 10169
Tel: (212) 850 - 6220
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Fax: (212) 850 - 6221
Email: tcurtin@lathropgage.com

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From: Mitrione, Gianfranco
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Cc: Curtin, Thomas; Morrow, Nancy
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Dear Mr. Wilson:

We have reviewed your proposed protective order which includes three (3) classes or tiers of "protected information." To simply the designation of documents during the production of documents in this proceeding, we recommend utilizing the attached protective order which incorporates a single tier of protected information. You will note from the attached agreement, all confidential non-public information and attorneys' eyes only materials will be designated as "CONFIDENTIAL." Please sign and return the document to us at your earliest convenience.

If you have any questions, please contact Thomas Curtin of this office as soon as possible.

Very truly yours,

Gianfranco G. Mitrione, Esq.
LATHROP & GAGE L.C.
230 Park Avenue, Suite 1847
New York, New York 10169
(212) 850-6230 (direct tel)
(212) 850-6221 (fax)

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

In the Matter of Application

| | |
|-------------|-----------------------------|
| Mark: | BONTA' DI PUGLIA and Design |
| Serial No.: | 78/504,042 |
| Published: | February 21, 2006 |

-----X
TRADEMARK MANAGEMENT COMPANY, :
: **Opposer,** :
: **-against-** : **Opposition No. 91172461** :
: **CHARLIE BROWN DI RUTIGLIANO &** :
FIGLI S.R.L., :
: **Applicant.** :
-----X

OPPOSER'S MOTION TO COMPEL

Opposer, Trademark Management Company ("Opposer"), by and through its counsel of record, moves this Board, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Section 2.120(e) of the Trademark Rules of Practice, for an order compelling Charlie Brown Di Rutigliano & Figli S.r.l., ("Applicant"), to produce documents responsive to Opposer's First Set of Requests for Production of Documents, and to provide proper and complete responses to Opposer's First Set of Interrogatories, within fifteen (15) days from the date of the Board's Order.

FACTS

Opposer served its First Set of Requests for Production of Documents and First Set of Interrogatories on December 5, 2006 by first class mail. See Exhibit A and B, respectively, to the accompanying Declaration of Thomas H. Curtin ("Curtin Decl."). Responses were due on January 9, 2007 but Applicant only served its belated responses a month late, on February 9, 2007. Applicant never requested, nor did Opposer ever consent to, any extension of time for Applicant to

answer Opposer's discovery. Accordingly, Applicant failed to assert in timely fashion any general objections or specific objections to Opposer's discovery requests, and therefore has waived any right to assert such objections.

With respect to Opposer's twenty-three Interrogatories, Applicant has entirely failed to respond to fifteen of them. Applicant has either refused to respond to such discovery requests until a stipulated protective order is in place, See Applicant's Answers to Opposer's Interrogatory Nos. 1-4, 6-10 and 12-23 annexed as Exhibit E to the Curtin Decl.; or has asserted that such interrogatories seek information that is protected by the attorney-client or attorney work product privilege. As the disclosing party claiming confidentiality, Applicant failed to move promptly for a protective order. Moreover, the blanket claim of alleged confidentiality is belied by the fact that Applicant claims confidentiality for documents and things that are clearly not confidential such as specimens of Applicant's own product, olives. See Exhibit D, Response to Document Request No. 17. In contrast, Applicant freely discloses sales information for its olives without benefit of a protective order. The only conclusion to be drawn is that the claims of privilege and confidentiality are frivolous, without any merit and designed only to stall and hinder Opposer from obtaining discovery while increasing the cost of this litigation.

Applicant also failed to provide Opposer a privilege log as required under Rule 26, Fed. R. Civ. P., providing pertinent details as to the documentation Applicant is withholding so that Opposer and the Board could determine whether the privilege has been properly asserted. For the eight Interrogatories that Applicant partially responded, See Interrogatory Nos. 3, 6, 9, 10, 14-16, and 22 to Exhibit E to Curtin Decl., the answers are woefully insufficient or confusing. See Exhibit F to Curtin Decl.

Turning to Opposer's Document Requests, Applicant has failed to respond to seventeen of Opposer's twenty-three Document Requests. Applicant has either refused to respond until a Protective Order is in place, See Applicant's Answers to Opposer's First Set of Requests for Production Nos. 1-4, 6-10, 12-23 annexed as Exhibit D to the Curtin Decl.; or has asserted that such Document Requests seek production of documents that are protected by the attorney-client or attorney work product privilege. Again, Applicant has failed to provide a privilege log. Furthermore, the handful of documents that Applicant produced consist of print-outs from Applicant's www.fiereparma.it website that are available to the public on the Internet, albeit in Italian.

By letter dated March 14, annexed as Exhibit F to the Curtin Decl., Opposer cataloged the deficiencies in Applicant's responses to Opposer's discovery. Applicant however has not amended or supplemented its responses or otherwise responded substantively to the issues raised in the March 14 letter.

ARGUMENT

If a party fails to answer any question propounded in any interrogatory, or fails to produce any document or thing, the party seeking discovery may file a motion for an order to compel an answer or production. 37 C.F.R. §2.120(e). *See also*, TBMP §411; *Jain v. Ramparts Inc.*, 49 U.S.P.Q.2d 1429 (T.T.A.B. 1998); *MacMillan Bloedel Ltd., v. Arrow-M. Corp.*, 203 U.S.P.Q. 952 (T.T.A.B. 1979); *Fidelity Prescriptions, Inc. v. Medicine Chest Discount Centers, Inc.*, 191 U.S.P.Q. 127 (T.T.A.B. 1976)(party may file motion to compel if it believes objections to discovery requests to be improper).

Applicant's objections to Opposer's discovery are improper as they are deemed to have been waived by Applicant's failure to assert such objections in a timely manner. Putting aside Applicant's belated objections, Applicant has failed to provide Opposer any substantive answers or documents in response to nearly all of Opposer's Interrogatories and Document Requests, nor has Applicant provided any basis for its overly broad and conflicting claims of confidentiality and privilege. In view of Applicant's wholesale failure to provide discovery, Opposer requests that the

Board enter an Order compelling Applicant to produce responsive documents, and provide proper and complete answers to Interrogatories and, where appropriate, produce a privilege log, no later than fifteen (15) days following the entry of the Board's Order compelling Applicant to respond to Opposer's discovery.

Pursuant to Section 2.120(e) of the Trademark Rules of Practice, Opposer certifies that it has, through counsel, attempted on several occasions to confer in good faith with counsel for Applicant in an effort to resolve the issues raised by this motion but Applicant has not responded. See Exhibits F, H, and I to Curtin Decl. Applicant's blatant disregard for its discovery obligations including its failure to respond substantively to Opposer's communications under Rule 2.120(e) concerning discovery issues should not be countenanced by the Board.

CONCLUSION

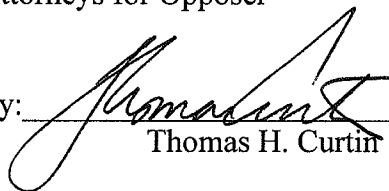
The only conclusion one may draw from Applicant's behavior is that Applicant is improperly asserting confidentiality and privilege to stall, hinder and delay Opposer from obtaining discovery from Applicant. As a result of Applicant's studied indifference to its discovery obligations, Opposer has not been able to obtain full and meaningful discovery from Applicant. As a result, Opposer has been hindered in its ability to prepare its case in support of its Notice of Opposition. Further, Opposer has been required to spend time and effort in filing this motion which

could have been avoided if Applicant had properly responded to Opposer's discovery and Rule 2.120(e) communications. Opposer respectfully requests the Board grant the instant motion.

LATHROP & GAGE L.C.
Attorneys for Opposer

Dated: New York, New York
May 8, 2007

By: _____



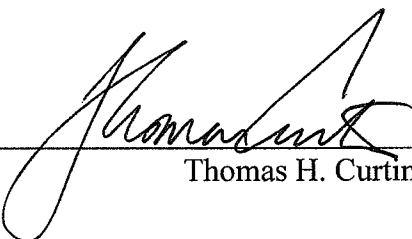
Thomas H. Curtin

230 Park Avenue, Suite 1847
New York, New York 10169
(212) 850-6220 (tel)
(212) 850-6221 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Opposer's Motion to Compel Discovery and Declaration of Thomas H. Curtin and exhibits thereto were served this 8th day of May, 2007 by first class mail, postage prepaid, upon the attorneys for Applicant at the following address:

John S. Egbert, Esq.
Kevin Wilson, Esq.
Egbert Law Offices
State National Building
412 Main Street, 7th Floor
Houston, Texas 77002



Thomas H. Curtin