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

Proceeding	91235706
Party	Plaintiff Del Taco LLC
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Submission	Stipulation of Facts
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Date	08/01/2019
Attachments	Del Taco v. Ziebarth Trial Stipulations (fv).pdf(397995 bytes)

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

NAUGLES CORP.,)	
)	
Petitioner,)	
)	
-vs-)	
)	Cancellation No.: 92064091
DEL TACO, LLC)	Registration No.: 4,261,951
)	Mark: NAUGLES
Respondent.)	
)	Consolidated with:
)	
DEL TACO, LLC,)	Opposition No.: 91235706
)	U.S. Application: 85/040,746
Opposer,)	Mark: NAUGLES
)	
-vs-)	
)	
ZIEBARTH HOLDINGS, LLC)	
)	
Applicant.)	

TRIAL STIPULATIONS

Respondent/Opposer in the above-captioned proceedings, Del Taco, LLC (“Del Taco”) and Petitioner and Applicant in the above-captioned proceedings, Naugles Corp. and Ziebarth Holdings, LLC respectively (collectively “Ziebarth”) hereby stipulate to the following:

1. In accordance 37 C.F.R. § 2.122(f), trial testimony from the following witnesses in the prior trademark cancellation between Del Taco and Christian Ziebarth (Cancellation No. 92053501) shall be introduced into evidence without the need to call the witnesses to authenticate the testimony:

- a. Affidavit of Noah Chillingworth dated January 16, 2014 and Exhibits;
- b. Cross-Examination testimony of Noah Chillingworth taken on March 24, 2014 and Exhibits;
- c. Testimonial affidavit of Christian Ziebarth dated October 3, 2013 and Exhibits; and
- d. Cross-Examination testimony of Christian Ziebarth taken on October 28, 2013 and Exhibits.

2. In accordance with TBMP § 528.05(a)(1), and cases cited therein, the parties stipulate to the admission of the following declarations and affidavits submitted by Naugles Corp. and Ziebarth Holdings, LLC in support of their Opposition and Cross-Motion for Summary Judgment as trial testimony and evidence and to be subject to oral cross-examination by Del Taco:

- a. The Declaration of Eve Feuerstein and Exhibits thereto dated April 17, 2018;
- b. The Declaration of Carlos Fonseca and Exhibits thereto dated April 12, 2018;
- c. The Declaration of Christian Ziebarth and Exhibits thereto dated June 14, 2018; and
- d. The Affidavit of William Odell dated March 22, 2018.


3. All documents produced in response to a request for production of documents are deemed to be authentic business records and may be introduced into evidence at trial by way of a Notice of Reliance subject to any objections other than objections to authenticity, per TBMP Section 702.04(e) and *Board of Regents, University of Texas System v. Southern Illinois Miners, LLC*, 110 USPQ2d 1182, 1186 (TTAB 2014) (stipulation to the admission and use of certain produced documents and waiver of objections based on authenticity or hearsay as to those documents).

4. The testimony of any witness or witnesses of either party, and exhibits thereto, will be submitted in the form of an affidavit or declaration by such witness or witnesses pursuant to 37 C.F.R. §§ 2.20 and 2.123(a)(1). The non-submitting party reserves the right to conduct oral cross-examination of the witness, and the submitting party reserves the right to conduct oral redirect examination in the event the non-submitting party exercises its option to conduct oral cross-examination of the witness. The parties will work together in good faith to promptly schedule any noticed depositions on mutually agreeable dates.


5. The parties agree that they will jointly move the Board to extend or suspend the testimony periods, as necessary, in order to accommodate the cross-examination and any redirect examination by oral deposition.

6. The parties agree, pursuant to 37 C.F.R. § 2.123(b), that oral cross-examination or oral redirect may be taken by live video or telephonic means, at the taking party's election.

Respectfully submitted,

By: 

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Petitioner Naugles Corp.*

Dated: 8-1-19

Dated: 7-31-19

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Stipulation** was served on Applicant/Petitioner's attorney of record by electronic mail on August 1, 2019, addressed as follows:

Ms. Kelly K. Pfeiffer, Esq. – kpfeiffer@amalaw.net

s/ Ashley J. Earle