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

Proceeding	91235706
Party	Defendant Ziebarth Holdings, LLC
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Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Kelly K. Pfeiffer
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Signature	/Kelly K. Pfeiffer/
Date	11/13/2017
Attachments	ZHs MTC Discovery 11-13-17.pdf(112396 bytes) ZHs MTC Discovery - Pfeiffer Decl 11-13-17 w exh.pdf(3722908 bytes)

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

In the matter of United States Trademark Application Serial No. 85040746

Mark: “NAUGLES”

DEL TACO, LLC,)	
Opposer,)	
)	
v.)	Opposition No. 91235706
)	
ZIEBARTH HOLDINGS, LLC,)	
Applicant.)	

APPLICANT ZIEBARTH HOLDINGS, LLC’S MOTION TO COMPEL DISCOVERY

Pursuant to 37 C.F.R. §2.120(f) and Rule 37 of the Federal Rules of Civil Procedure, Applicant ZIEBARTH HOLDINGS, LLC (“Applicant”) hereby moves to compel Opposer DEL TACO, LLC (“Del Taco”) to comply with its discovery obligations as follows: 1) provide amended responses to Applicant’s Interrogatories, Set One (“the Interrogatories”); 2) provide amended responses to Applicant’s Requests for Production of Documents, Set One (“the RPD”); and, 3) to the extent it has not already done so, make a full and complete document production in response to the RPD.

FACTUAL BACKGROUND

Applicant served the Interrogatories and the RPD on Del Taco on September 29, 2017. Declaration of Kelly K. Pfeiffer, Esq., filed concurrently herewith (“Pfeiffer Declaration”), ¶ 3. Copies of the Interrogatories and the RPD are attached to the Pfeiffer Declaration as Exhibits A and B, respectively. On October 30, 2017, Del Taco served written responses to the

Interrogatories and the RPD.¹ Pfeiffer Declaration, ¶ 4. Del Taco's responses are attached to the Pfeiffer Declaration as Exhibits C and D, respectively. After thoroughly evaluating Del Taco's written responses, Applicant concluded they were incomplete, evasive and withheld information and documents based on numerous, inappropriate objections. *Id.* While Del Taco's responses were not accompanied by a document production, Applicant did receive a late-served production via email on the afternoon of Friday, November 3, 2017. Pfeiffer Declaration, ¶ 5, Exhibit E. Although the email contained the erroneous subject line of "Naugles v. Del Taco," which is a different proceeding currently pending and actively being litigated before the TTAB, Applicant assumed the document production pertained to this proceeding, Del Taco, LLC v. Ziebarth Holdings, LLC, and treated it is such. *Id.*

Applicant has made a good-faith effort to informally resolve the issues contained in this motion. Pfeiffer Declaration, ¶ 6. On November 3, 2017, Applicant's counsel, Kelly Pfeiffer, emailed a comprehensive, 8-page letter to all three attorneys who have been acting as Del Taco's counsel detailing Del Taco's failure to comply with its discovery obligations. *Id.*, Exhibit F. Among other things, the letter noted the application of the Board's standard protective order to this case, the inappropriateness of Del Taco's objections based on relevance, and the fact that

¹ Although Applicant initially questioned the timeliness of the service of Del Taco's discovery responses, after an exchange of emails with Del Taco's counsel, Applicant accepted Del Taco's position and notified Del Taco's counsel on the morning of October 31, 2017 via email that Del Taco's responses were deemed timely served, thus successfully, quickly and informally resolving the issue. Pfeiffer Declaration, ¶ 4.

Del Taco had failed to produce any documents.² Pfeiffer Declaration, ¶ 7. In her letter, Ms. Pfeiffer asked Del Taco to provide amended responses to the Interrogatories and the RPD by Friday, November 10, 2017. The November 10th deadline passed without Ms. Pfeiffer or anyone in her office hearing from any of the three attorneys acting as counsel for Del Taco. *Id.*

Because Del Taco ignored Applicant's attempt to resolve this discovery dispute informally, Applicant had no choice but to file this motion to compel. Pfeiffer Declaration, ¶ 8. Del Taco's failure to make a good-faith effort to participate in meaningful discovery is unacceptable.

ARGUMENT

Applicant cannot reasonably conduct depositions, file a motion for summary judgment, or issue follow-up discovery requests until Del Taco has fully complied with its outstanding discovery obligations.

I. DEL TACO'S RESPONSES CONTAIN NUMEROUS, IMPROPER "RELEVANCE" OBJECTIONS.

Del Taco's discovery responses assert many improper objections such "irrelevant," "outside the scope of this proceeding," and "not at issue in this proceeding." Pfeiffer Declaration, Exhibits C and D. Specifically, Del Taco asserted some form of "relevance" objection in response to Interrogatories Nos. 2, 4, 5, 6, 7, 8, 16, 17, 18, 21, 23, 24, and 25, and in response to

² Ms. Pfeiffer's November 3, 2017 letter addressed the issue of Del Taco's lack of a document production because, at the time the letter was sent, Applicant had yet to receive any documents. A few hours after sending the November 3rd letter, however, Ms. Pfeiffer received a link to a document production from someone at Del Taco's counsel's office. Pfeiffer Declaration, ¶¶ 5, 7.

RPD Nos. 3, 4, 5, 6, 7, 9, 10, 11, 12 13, 14, 30, 31, 32, 33, and 35. Withholding information and documents on this basis is improper.

“Relevance” is a very broad concept in discovery. Each party generally has the right to “obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case,” considering the following factors:

- the importance of the issues at stake in the action,
- the amount in controversy,
- the parties' relative access to relevant information,
- the parties' resources,
- the importance of the discovery in resolving the issues, and
- whether the burden or expense of the proposed discovery outweighs its likely benefit.

Fed. R. Civ. P. 26(b)(1).

Whether the information sought would be admissible evidence at trial is not the test under Rule 26. “Information within this scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1). Each party is entitled to discovery of nonprivileged information that is “relevant to any party's claim or defense” so long as it is “proportional to the needs of the case” in light of the factors set forth in Rule 26(b)(1).

Del Taco’s pleadings, i.e., the Notice of Opposition, by making the allegations that it does, gives Applicant the right to obtain related discovery and mandatory disclosures from Del Taco. The issues contained in Applicant’s discovery requests are tailored to the allegations in the Notice of Opposition. As such, Del Taco’s objections on this basis are not well-taken.

Notwithstanding the foregoing, even if Del Taco raises a relevance objection, it is *still* required under the Federal Rules of Civil Procedure to permit inspection of the remaining, non-objectionable documents. Fed. R. Civ. P. 34(b)(2)(C).

Federal Rule of Civil Procedure 37(a)(3) provides that an incomplete or evasive answer or response to a discovery request, including a request for production of documents, “is to be treated as a failure to disclose, answer, or respond.” A responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto (provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is supplemented in a timely fashion pursuant to Rule 26(e). *See Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 U.S.P.Q.2d 1789, 1791-92 (T.T.A.B. 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718, 1720 (T.T.A.B. 1987); *see also* T.B.M.P. § 527.01(e) (“Estoppel Sanction”).

In short, Del Taco “relevance” objections are in violation of Del Taco’s discovery obligations if information or documents are being withheld on this basis.

II. DEL TACO’S RESPONSES TO THE INTERROGATORIES MUST BE AMENDED.

A. Del Taco’s Responses to Interrogatories Nos. 7, 8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 41, 43, 45, and 47 Must be Amended.

Instead of providing a substantive response to Interrogatories Nos. 7, 8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 41, 43, 45, and 47, Del Taco merely refers Applicant to another response provided to a separate interrogatory, i.e., “Del Taco directs Applicant to its response to Interrogatory No. X.” Pfeiffer Declaration, Exhibit C. These responses are in violation of the Federal Rules of Civil Procedure and the Trademark Rules and, therefore, must be amended.

Federal Rule of Civil Procedure 33(b)(3) states, “Each interrogatory must, to the extent it is not objected to, be answered *separately and fully* in writing under oath.” (emphasis added); TBMP § 405.04(b). A response that consists of nothing but directing Applicant to a different response does not constitute a “separate” nor “full” response. As such, Del Taco’s responses to Interrogatories Nos. 7, 8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 41, 43, 45, and 47 violate the Federal Rules of Civil Procedure and the Trademark Rules and, therefore, must be amended.

B. Interrogatories Nos. 20, 21, 22 and 23 Must Be Answered.

These interrogatories seek information and witnesses regarding signs that Mr. Ziebarth, Applicant’s managing member, saw on display at a Del Taco restaurant in or about April of 2014. Pfeiffer Declaration, Exhibit A. Applicant provided Del Taco with an exhibit to the Interrogatories containing copies of pictures taken by Mr. Ziebarth which show the signs at issue. *Id.* Del Taco gave no substantive responses to these interrogatories, asserting only that its “discovery is ongoing” and that it will supplement the responses “as we complete our search.” Pfeiffer Declaration, Exhibit C.

First and foremost, Del Taco brought this Opposition against Applicant and, therefore, should be ready with the necessary evidence to make its case, especially evidence that is so clearly within its own possession, custody or control. In fact, Del Taco’s various other discovery responses tout these signs at issue as some kind of “advertising campaign” that supports Del Taco’s assertion that it has rights in the NAUGLES trademark. Pfeiffer Declaration, Exhibit C. As such, information regarding these signs seen in Del Taco’s own restaurant should be readily available. A statement that “discovery is ongoing” is unacceptable at this stage.

Second, a party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, *and to provide such information to the*

requesting party within the time allowed for responding to the request. See No Fear Inc. v. Rule, 54 U.S.P.Q.2d 1551, 1555 (T.T.A.B. 2000) (emphasis added).

Third, Federal Rule of Civil Procedure 37(a)(3) provides that an incomplete or evasive answer or response to a discovery request “is to be treated as a failure to disclose, answer, or respond.” A responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto (provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is supplemented in a timely fashion pursuant to Rule 26(e). *See Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 U.S.P.Q.2d 1789, 1791-92 (T.T.A.B. 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718, 1720 (T.T.A.B. 1987); *see also* T.B.M.P. § 527.01(e) (“Estoppel Sanction”).

Applicant is permitted to seek discovery on matters that are relevant to the proceeding’s claims and defenses. The Notice of Opposition specifically alleges that Del Taco claims rights in the NAUGLES mark. *See* Notice of Opposition, ¶¶ 1-4, 78-80 at Dkt. 1. These interrogatories seek information directly related to this issue. For Del Taco to skirt these questions and fail to provide the information requested is an improper stall tactic. Given the foregoing, Del Taco must amend its responses to Interrogatories Nos. 20, 21, 22 and 23.

C. Del Taco’s Responses to Interrogatories Nos. 24 and 25 Must Be Amended.

These interrogatories seeks information regarding Del Taco’s most recent use of the NAUGLES mark in connection with restaurant services, including specific dates of said use. Pfeiffer Declaration, Exhibit A. Instead of providing a good-faith and substantive response, Del Taco directed Applicant to its response to Interrogatory No. 10. Pfeiffer Declaration, Exhibit C.

First, such a response is in violation of the Federal Rules of Civil Procedure, as discussed in detail above in Section II. A. Second, Del Taco's response to Interrogatory 10 provides no dates, and, therefore, is nonresponsive to Interrogatories Nos. 24 and 25. If Del Taco is claiming that its most recent usage was the alleged "advertising campaign" from April of 2014 depicted in Mr. Ziebarth's photos, then it must, in fact, state as much. If, however, Del Taco is claiming that it has used the NAUGLES mark in connection with restaurant services more recently than April of 2014, it must amend its responses to reflect the same.

Again, Applicant can seek discovery on matters that are relevant to the proceeding's claims and defenses. The Notice of Opposition specifically alleges that Del Taco claims rights in the NAUGLES mark. *See* Notice of Opposition, ¶¶ 1-4, 78-80 at Dkt. 1. Given the foregoing, Del Taco must amend its responses to Interrogatories Nos. 24 and 25.

D. Interrogatory No. 33 Must Be Answered.

This interrogatory seeks information regarding Del Taco's allegation in the Notice of Opposition that it "continues to sell menu items associated with NAUGLES" in its Del Taco restaurants today. Pfeiffer Declaration, Exhibit A. Del Taco gave no substantive response, asserting only that its "discovery is ongoing" and that it will supplement the response "as we complete our search." Pfeiffer Declaration, Exhibit C.

Again, Del Taco brought this Opposition and, at this stage, there is no good-faith reason why it cannot answer a basic interrogatory directly relate to an assertion in its Notice of Opposition. Surely Del Taco did its due diligence prior to initiating this action and is prepared to turn over evidence supporting its claims. A statement that "discovery is ongoing" is a blatant stall tactic.

Further, Del Taco's response to Interrogatory No. 34, which asks for witnesses on the same subject, actually *identifies two witnesses* that have information regarding Del Taco's claimed menu items. Pfeiffer Declaration, Exhibit C. This begs the inquiry: how does Del Taco know these individuals have information regarding this topic if counsel has not already asked them? If these two individuals have already been asked about Del Taco's menu items, why was the information they gave to counsel not provided in response to Interrogatory No. 33? It stands to reason that Del Taco could only have identified witnesses with information regarding menu items by asking said witnesses if they do, in fact, have knowledge of the claimed menu items, and then the witnesses responded in the affirmative. A response that "discovery is ongoing" is nonsensical.

There is no good-faith reason for Del Taco's failure answer Interrogatory No. 33. Del Taco must be ordered to amend its response and provide the requested information.

III. DEL TACO'S RESPONSES TO THE RPD MUST BE AMENDED.

As an initial matter, Applicant notes that Del Taco's responses to the RPD make reference to "General Objections asserted on May 12, 2017," a date which precedes the filing of the Notice of Opposition. Pfeiffer Declaration, Exhibit D. Del Taco's responses also state that it is providing "Supplemental Responses to Applicant's First Set of Request for Documents," which is also nonsensical. *Id.* Applicant assumes these statements are typographical errors and/or were inadvertently left in the document after being copied from responses from a different proceeding. As such, Applicant has given these statements no weight.

A. Request No. 2 Must Be Answered.

Request No. 2 seeks documents related to Del Taco's closure of any and all NAUGLES restaurants. Pfeiffer Declaration, Exhibit B. Del Taco provided no response, only meritless

objections, namely that this request “contains no limitation in scope or time.” Pfeiffer Declaration, Exhibit D.

First, Del Taco may not raise this objection, and then altogether fail to answer the request or produce responsive documents. If objecting to a request, Del Taco must state the grounds, then the production must be completed no later than the time specified in the request. Fed. R. Civ. P. 34(b)(2)(B). An objection must state whether any responsive materials are being withheld on the basis of that objection. *An objection to part of a request must specify the part and permit inspection of the rest.* Fed. R. Civ. P. 34(b)(2)(C) (emphasis added). In response to Request No. 2, Del Taco did not attempt to provide even a partial response or production, in violation of Federal Rule of Civil Procedure 34.

Second, a responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto (provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is supplemented in a timely fashion pursuant to Rule 26(e). *See Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 U.S.P.Q.2d 1789, 1791-92 (T.T.A.B. 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718, 1720 (T.T.A.B. 1987); *see also* T.B.M.P. § 527.01(e) ("Estoppel Sanction").

Del Taco has asserted rights in the NAUGLES trademark. *See* Notice of Opposition, ¶¶ 1-4, 78-80 at Dkt. 1. As such, Applicant has the right to conduct discovery regarding NAUGLES restaurants owned or operated by Del Taco, including closures of the same. While Del Taco may take issue with the fact that no limitation was placed on the scope or time of this request, it is not

an excuse or reason to fail to answer altogether. As such, Del Taco must provide a substantive response to Request No. 2 and produce responsive documents if any exist.

B. Request No. 33 Must Be Answered.

Request No. 33 seeks documents related to any consumer or marketing testing Del Taco has received or conducted relating to Del Taco's use of the NAUGLES trademark for any services or products. Pfeiffer Declaration, Exhibit B. Del Taco provided no response, only meritless objections, namely that this request "seeks production of documents unrelated to any claim or defense." Pfeiffer Declaration, Exhibit D.

The Notice of Opposition alleges that Del Taco enjoys residual goodwill in the NAUGLES trademark and Del Taco has based its claim of Misrepresentation of Source on this allegation. *See* Notice of Opposition, ¶¶ 4, 60, 67, 69, 81 at Dkt. 1. Any consumer or marketing tests Del Taco has received or conducted relating to the NAUGLES trademark would directly speak to the veracity of this allegation. Therefore, the documents sought are, in fact, related to a claim or defense. As such, Del Taco must provide a substantive response to Request No. 33 and produce responsive documents if any exist.

C. Request No. 34 Must Be Answered.

Request No. 34 seeks documents related to Applicant's NAUGLES mark, "including without limitation news articles about Applicant and/or Naugles Corp., communication with third parties, social media pages, social media comments, blogs and blog comments." Del Taco provided no response, only meritless objections, namely that this Request "seeks production of documents unrelated to any claim or defense."

If objecting to a request, Del Taco must state the grounds, then the production must be completed no later than the time specified in the request. Fed. R. Civ. P. 34(b)(2)(B). An

objection must state whether any responsive materials are being withheld on the basis of that objection. *An objection to part of a request must specify the part and permit inspection of the rest.* Fed. R. Civ. P. 34(b)(2)(C) (emphasis added). In Response to Request No. 34, Del Taco did not attempt even a partial response or production, in violation of Federal Rule of Civil Procedure 34.

Not only does the Notice of Opposition make reference to Applicant's Twitter Account as well as specific news articles about Applicant and/or Naugles Corp.'s use of its NAUGLES mark, **but it actually attaches as exhibits copies of these types of news articles and tweets to the Notice.** See Notice of Opposition, ¶¶ 22-24, 27, 28 and Exhibits H, I, J and K thereto at Dkt. No. 1. It is disingenuous for Del Taco to now claim that the types of documents it attached as exhibits to its own Notice of Opposition are now "unrelated" to this proceeding.

The documents sought in Request No. 34 are clearly relevant. Without question, responsive documents are within Del Taco's possession, custody or control. As such, there is no credible reason for Del Taco's failure to answer or produce responsive documents. Del Taco must provide a substantive response to Request No. 34 and produce responsive documents if any exist.

D. Del Taco's Response to Request No. 35 Is Non-Responsive And, Therefore, Must Be Amended.

Request No. 35 seeks documents related to "discussions, correspondence, disputes, controversies or proceedings of any kind or nature between Del Taco and any third party which involved Del Taco's NAUGLES mark, including without limitation, communication on social media pages and blogs." Pfeiffer Declaration, Exhibit B. (emphasis added). Instead of providing a response regarding documents related to third parties, Del Taco states that it will produce documents relating to "Applicant and Christian Ziebarth's infringing use of the NAUGLES

trademark” - two parties that do not constitute “third parties.” Del Taco’s response then goes on to state that “it is unaware of any third party use of NAUGLES in restaurant services,” but does not state whether or not any responsive documents exist. Pfeiffer Declaration, Exhibit D. Del Taco’s lengthy response fails to give a straightforward answer to RPD No. 35.

Request No. 35 specifically asks for documents between Del Taco and any third party. There are only three appropriate responses to a request for production of documents: 1) a statement that there are responsive documents and that either they will be produced or will be withheld on a claim of privilege; 2) a statement of an objection with appropriate reasons; or 3) a statement that no responsive documents exist (e.g., lost or destroyed or that the documents are not within its possession, custody, or control). *See No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1556 (T.T.A.B. 2000); Fed. R. Civ. P. 34. Del Taco’s response does not fall under any one of these three categories because it does not clearly state whether or not responsive documents exist.

Because Applicant and Mr. Ziebarth are not “third parties,” this response is non-responsive. Del Taco must provide a response that answers the request and produce responsive documents if any exist. If no responsive documents exist, Del Taco must state as such.

IV. TO THE EXTENT THAT DEL TACO HAS FAILED TO PRODUCE DOCUMENTS BASED ON IMPROPER OBJECTIONS OR A FAILURE TO RESPOND, IT MUST MAKE A FULL AND COMPLETE DOCUMENT PRODUCTION.

As noted above, Del Taco made a document production in response to the RPD on November 3, 2017. Pfeiffer Declaration, ¶¶ 5, 7. However, Del Taco’s responses to RPD Nos. 2, 33, 34, and 35 either require amending or fail to provide a substantive response altogether.

A party may be compelled to produce records or other evidence in its possession or control in response to a demand for inspection. 37 C.F.R. §2.120(f); Fed. R. Civ. P. 37. Further,

the Federal Rules specifically state, “The production must then be completed no later than the time specified in the request.” Fed. R. Civ. P. 34(b)(2)(B).

To the extent that Del Taco has failed to produce documents in response to RPD Nos. 2, 33, 34, and/or 35, or has withheld documents on the basis of an improper objection, Del Taco’s November 3rd document production is incomplete and requires supplementation. As such, Del Taco must be ordered to make a full and complete document production.

V. CONCLUSION

Applicant cannot reasonably conduct depositions, file a motion for summary judgment, or issue follow-up discovery requests until Del Taco has fully complied with its outstanding discovery obligations. Each party has a duty to make a good faith effort to satisfy the discovery needs of its adversary. Fed. R. Civ. P. 26(g); *see Emilio Pucci International BV v. Sachdev*, 118 U.S.P.Q.2d 1383, 1387 (T.T.A.B. 2016) (taking into account the grounds for opposition and proportionality, the Board found discovery requests tailored to the claims and framed to seek information that is clearly relevant); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303, 1305 (T.T.A.B. 1987); T.B.M.P. §402.01.

Del Taco’s discovery responses fall well short of what is required to comply with its discovery obligations. To the extent that Del Taco failed to produce documents in response to unanswered RPDs or based on improper objections, Del Taco’s failure to make a good-faith and complete document production is unacceptable.

REQUEST FOR RELIEF

Applicant moves this Board for an Order compelling Del Taco, within fifteen (15) days from the date of the Order, to fully and completely respond to all of Applicant’s September 29, 2017 Interrogatories and Requests for Production of Documents, including Interrogatory Nos. 7,

8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 33, 41, 43, 45, and 47 and Requests Nos. 2, 33, 34, and 35, without objections.

Applicant moves this Board to direct Del Taco to serve, within fifteen (15) days from the date of the Order, electronic copies of all further responsive documents and things to counsel for Applicant at the expense of Del Taco.

Applicant moves this Board to direct Del Taco to withdraw its objections based upon irrelevance due to their inappropriateness and Del Taco's failure to support any basis for the objections.

Applicant further moves this Board for any other relief it deems appropriate.

WHEREFORE, Applicant respectfully request that the Trademark Trial and Appeal Board grant Applicant's Motion to Compel Discovery and grant all other appropriate relief.

Dated: November 13, 2017

Respectfully Submitted,



By: _____
Kelly K. Pfeiffer
Amezcu-Moll & Associates, P.C.
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Orange, CA 92865

Attorneys for Applicant
ZIEBARTH HOLDINGS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **APPLICANT ZIEBARTH HOLDINGS, LLC'S MOTION TO COMPEL DISCOVERY** was served upon DINSMORE & SHOHL LLP, counsel for Del Taco, by emailing one copy on November 13, 2017 to the following individuals listed as counsel of record for Registrant Del Taco, LLC in this proceeding:

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In the matter of United States Trademark Application Serial No. 85040746

Mark: “NAUGLES”

_____ DEL TACO, LLC,)	
Opposer,)	
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v.)	Opposition No. 91235706
)	
ZIEBARTH HOLDINGS, LLC,)	
Applicant.)	

**DECLARATION OF KELLY K. PFEIFFER FILED IN SUPPORT OF
APPLICANT’S MOTION TO COMPEL DISCOVERY**

I, Kelly K. Pfeiffer, hereby declare as follows:

1. I am the attorney of record for Applicant Ziebarth Holdings, LLC (“Applicant”) in this pending Opposition Proceeding No. 91235706.
2. This declaration is submitted to show that Applicant’s instant motion is supported by good cause and is not for the purpose of delay.
3. On September 29, 2017, I served Applicant’s Interrogatories, Set One (“the Interrogatories”) and Applicant’s Requests for Productions of Documents, Set One (“the RPD”) on Opposer DEL TACO, LLC (“Del Taco”). True and correct copies of the Interrogatories and the RPD are attached hereto as Exhibits A and B, respectively.
4. On October 30, 2017, Del Taco served written responses to the Interrogatories and the RPD. True and correct copies of Del Taco’s responses to the Interrogatories and the RPD are attached hereto as Exhibits C and D, respectively. Del Taco’s responses were not accompanied by a document production. Although I initially questioned the timeliness of the service of Del

Taco's discovery responses, after an exchange of emails with Ms. April Besl, counsel for Del Taco, I accepted Del Taco's position and notified Ms. Besl on the morning of October 31, 2017 via email that Del Taco's responses were deemed timely served, thus successfully, quickly and informally resolving the issue. After thoroughly evaluating Del Taco's written responses, however, I concluded that they were incomplete, evasive and withheld information and documents based on numerous, inappropriate objections.

5. While Del Taco's responses were not accompanied by a document production, I did receive a late-served production via email on the afternoon of Friday, November 3, 2017. Although the email contained the erroneous subject line of "Naugles v. Del Taco," which is a different proceeding currently pending and actively being litigated before the TTAB, I assumed it pertained to this proceeding, Del Taco, LLC v. Ziebarth Holdings, LLC, and treated it as such. A true and correct copy of the email I received is attached hereto as Exhibit E.

6. I have made a good-faith effort to informally resolve the issues contained in this motion. On November 3, 2017, I sent to Ms. Besl a comprehensive, 8-page letter detailing Del Taco's failure to comply with its discovery obligations. While the letter, itself, was addressed to Ms. Besl, I also emailed copies of the letter to the two other attorneys at the same law firm with whom I have been communicating concerning this proceeding – Ms. Govinda Davis and Mr. Leanthony Edwards. A true and correct copy of my November 3, 2017 letter is attached hereto as Exhibit F.

7. Among other things, my letter noted the application of the Board's standard protective order to this case, the inappropriateness of Del Taco's objections based on relevance, and the fact that Del Taco had produced no documents. I asked Del Taco to provide amended responses to the Interrogatories and the RPD by Friday, November 10, 2017. In the afternoon on November 3,

2017, *after* I sent my letter, I received an email from someone in Del Taco's counsel's office containing a link to a document production, as detailed above in paragraph 5. However, with respect to my letter's request for amended discovery responses to the Interrogatories and RPD, the November 10th deadline passed without me or anyone in my office hearing from any of the three attorneys acting as Del Taco's counsel.

8. Because Del Taco ignored my attempt to resolve this discovery dispute informally, I had no choice but to file this motion to compel.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct. Executed on the 13th day of November 2017, at Laguna Beach, California.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.



Kelly K. Pfeiffer

Attorney for Applicant ZIEBARTH HOLDINGS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECLARATION OF KELLY K. PFEIFFER FILED IN SUPPORT OF APPLICANT'S MOTION TO COMPEL DISCOVERY** was served upon DINSMORE & SHOHL LLP, counsel for Del Taco, by emailing one copy on November 13, 2017 to the following individuals listed as counsel of record for Registrant Del Taco, LLC in this proceeding:

April Besl
april.besl@dinsmore.com
Govinda Davis
govinda.davis@dinsmore.com
Leanthony Edwards
leanthony.edwards@dinsmore.com

DINSMORE & SHOHL LLP
255 E 5th Street, Ste. 1900
Cincinnati, Ohio 45202-1971



Kelly K. Pfeiffer
AMEZCUA-MOLL & ASSOCIATES
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865
Attorneys for Applicant
ZIEBARTH HOLDINGS, LLC

EXHIBIT A

(to Applicant's Motion to Compel Discovery)

***This Exhibit is a set of Interrogatories which
contains 3 exhibits itself (Exhibits A-C)**

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

In the matter of United States Trademark Application Serial No. 85040746

Mark: “NAUGLES”

DEL TACO, LLC,)	
Opposer,)	
)	
v.)	Opposition No. 91235706
)	
ZIEBARTH HOLDINGS, LLC,)	
Applicant.)	

APPLICANT’S FIRST SET OF INTERROGATORIES NOS. 1-56

Pursuant to the Trademark Rules, the Rules of Practice of the Trademark Trial and Appeal Board (“TTAB”), and the applicable Federal Rules of Civil Procedure (“FRCP”), Del Taco, LLC (“Del Taco”) is hereby required to answer separately and fully, in writing and under oath, each of the following Interrogatories.

DEFINITIONS

The following definitions and instructions shall apply to each of the Interrogatories herein:

1. The phrase “Del Taco” shall mean Opposer Del Taco, LLC, and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company either within the United States or a foreign country.

2. “Identify” means provide the name of the individual or entity as well as any known contact information, including without limitation, a physical address, a phone number and/or an email address.

3. The terms “trademark” or “mark” include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

4. The phrase “Notice of Opposition” shall mean Del Taco’s Notice of Opposition filed July 21, 2017.

5. The term “Answer” shall mean Applicant’s Answer filed August 29, 2017.

6. The terms “all” and “each” shall be construed to include all and each.

7. The term “and” shall be construed to include “or” and vice versa, and shall be the logical equivalent of “and/or.”

8. The use of the singular form of any word also includes the plural and vice versa.

GENERAL INSTRUCTIONS

1. If you claim that any information requested is privileged, please state the nature of the privilege claimed and the nature of the information over which the privilege is claimed.

2. Del Taco’s responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the FRCP.

INTERROGATORIES

INTERROGATORY NO. 1:

Provide the physical address for all restaurants open to the public between December 31, 1995 and the present that were or are named “NAUGLES” and owned by Del Taco.

INTERROGATORY NO. 2:

Describe all facts and circumstances which led to Del Taco's decision to file USPTO application serial no. 85340660. A copy of said application is attached hereto as Exhibit A for ease of reference.

INTERROGATORY NO. 3:

Identify all witnesses with knowledge of, who contributed to the drafting of, or were part of the decision to file USPTO application serial no. 85340660 (Exhibit A).

INTERROGATORY NO. 4:

Identify the source of the drawing filed on June 8, 2011 in connection with USPTO application serial no. 85340660, including but not limited to the name of and contact information for the artist, if known. A copy of said drawing is attached hereto as Exhibit B for ease of reference.

INTERROGATORY NO. 5:

Describe in detail the activities undertaken by Del Taco which illustrate its *bona fide* intent to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services identified in USPTO application serial no. 85340660 prior to filing said application (Exhibit A).

INTERROGATORY NO. 6:

Identify all witnesses with information regarding the activities undertaken by Del Taco which illustrate its *bona fide* intent to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services identified in USPTO Application Serial No. 85340660 prior to filing said application (Exhibit A).

INTERROGATORY NO. 7:

Does Del Taco presently still have a *bona fide* intent to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services listed in USPTO application serial no. 85340660 (Exhibit A)?

INTERROGATORY NO. 8:

If the answer to Interrogatory No. 7 is in the affirmative, provide all facts and explain all circumstances that support Del Taco's *bona fide* intent as it exists today to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services listed in USPTO application serial no. 85340660 (Exhibit A).

INTERROGATORY NO. 9:

If the answer to Interrogatory No. 7 is in the affirmative, identify all witnesses with information about Del Taco's *bona fide intent* as it exists today to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services listed in USPTO application serial no. 85340660 (Exhibit A).

INTERROGATORY NO. 10:

Does Del Taco contend that it currently holds rights in the NAUGLES trademark (as seen in Exhibit B or in any other format or style) for "restaurant services?"

INTERROGATORY NO.11:

If the answer to Interrogatory No. 10 is in the affirmative, provide all facts and explain all circumstances that support Del Taco's contention that it currently holds rights in the NAUGLES trademark (as seen in Exhibit B or in any other format or style) for "restaurant services."

INTERROGATORY NO.12:

If the answer to Interrogatory No. 10 is in the affirmative, identify all witnesses with information about Del Taco's contention that it currently holds rights in the NAUGLES trademark (as seen in Exhibit B or in any other format or style) for "restaurant services."

INTERROGATORY NO. 13:

Does Del Taco contend that it has actually used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services?"

INTERROGATORY NO. 14:

If the answer to Interrogatory No. 13 is in the affirmative, provide all facts and explain all circumstances that support Del Taco's contention that it has actually used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

INTERROGATORY NO. 15:

If the answer to Interrogatory No. 13 is in the affirmative, identify all witnesses with information about Del Taco's contention that it has actually used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

INTERROGATORY NO. 16:

If the answer to Interrogatory No. 13 is in the affirmative, provide Del Taco's date of first use of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with "restaurant services."

INTERROGATORY NO. 17:

If the answer to Interrogatory No. 13 is in the affirmative, provide Del Taco's date of first use in U.S. commerce of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with "restaurant services."

INTERROGATORY NO. 18:

If the answer to Interrogatory No. 13 is in the affirmative, provide all facts and explain all circumstances surrounding Del Taco's date of first use in U.S. commerce of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with "restaurant services."

INTERROGATORY NO. 19:

If the answer to Interrogatory No. 13 is in the affirmative, identify all witnesses with information about Del Taco's date of first use in U.S. commerce of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with "restaurant services."

INTERROGATORY NO. 20:

Attached hereto as Exhibit C is a series of photographs taken by Applicant and/or its predecessor in interest in or about April of 2014 depicting signs seen at a Del Taco restaurant. List all locations by address, including but not limited to Del Taco restaurants, at which the same signs or similar signs also bearing the word NAUGLES were displayed.

INTERROGATORY NO. 21:

For each location identified in response to Interrogatory No. 20, provide the dates during which the same signs as seen in Exhibit C or similar signs also bearing the word NAUGLES were on display.

INTERROGATORY NO. 22:

Provide all facts and explain all circumstances surrounding Del Taco's decision to display the signs seen in Exhibit C or similar signs also bearing the word NAUGLES.

INTERROGATORY NO. 23:

Identify all witnesses with information about Del Taco's decision to display the signs seen in Exhibit C or similar signs also bearing the word NAUGLES.

INTERROGATORY NO. 24:

If the answer to Interrogatory No. 13 is in the affirmative, describe in detail the most recent use by Del Taco of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

INTERROGATORY NO. 25:

If the answer to Interrogatory No. 13 is in the affirmative, provide the dates during which Del Taco most recently used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

INTERROGATORY NO. 26:

If the answer to Interrogatory No. 13 is in the affirmative, identify all witnesses with information regarding Del Taco's most recent use of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

INTERROGATORY NO. 27:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 2 of the Notice of Opposition that "Opposer owns and maintains common-law rights in the NAUGLES mark in connection with its clothing and food items."

INTERROGATORY NO. 28:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 2 of the Notice of Opposition that "Opposer owns and maintains common-law rights in the NAUGLES mark in connection with its clothing and food items."

INTERROGATORY NO. 29:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 4 of the Notice of Opposition that "Opposer has expended substantial amounts of time, money and effort in advertising and promoting its NAUGLES mark over the years and in preserving the goodwill associated therewith."

INTERROGATORY NO. 30:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 4 of the Notice of Opposition that "Opposer has expended substantial amounts of time, money and effort in advertising and promoting its NAUGLES mark over the years and in preserving the goodwill associated therewith."

INTERROGATORY NO. 31:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 5 of the Notice of Opposition that "Opposer's NAUGLES mark has become distinctive of, and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of goods and services listed above and offered by Opposer under the NAUGLES mark."

INTERROGATORY NO. 32:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 5 of the Notice of Opposition that "Opposer's NAUGLES mark has become distinctive of, and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of goods and services listed above and offered by Opposer under the NAUGLES mark."

INTERROGATORY NO. 33:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 7 of the Notice of Opposition that "Opposer continues to sell menu items associated with NAUGLES in Opposer's restaurants today."

INTERROGATORY NO. 34:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 7 of the Notice of Opposition that "Opposer continues to sell menu items associated with NAUGLES in Opposer's restaurants today."

INTERROGATORY NO. 35:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 11 of the Notice of Opposition that "[s]ince filing the Application, Applicant and Applicant's principal and predecessor in interest, Ziebarth, have attempted to secure the NAUGLES trademark by any means necessary, including the commission of fraud on the US Trademark Office."

INTERROGATORY NO. 36:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 11 of the Notice of Opposition that "[s]ince filing the Application, Applicant and Applicant's principal and predecessor in interest, Ziebarth, have attempted to secure the NAUGLES

trademark by any means necessary, including the commission of fraud on the US Trademark Office.”

INTERROGATORY NO. 37:

Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 19 of the Notice of Opposition that “[u]pon information and belief, neither Applicant nor Ziebarth actually used the applied for mark in commerce and in connection with cafeteria and restaurant services as of March 20, 2012.”

INTERROGATORY NO. 38:

Identify all witnesses with information regarding Del Taco’s allegation in paragraph 19 of the Notice of Opposition that “[u]pon information and belief, neither Applicant nor Ziebarth actually used the applied for mark in commerce and in connection with cafeteria and restaurant services as of March 20, 2012.”

INTERROGATORY NO. 39:

Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 32 of the Notice of Opposition that “[u]pon information and belief, the ‘Naugles Preview Night’ referenced in the specimen submitted with Ziebarth's Amendment to Allege Use did not occur until at least 2014 or 2015.”

INTERROGATORY NO. 40:

Identify all witnesses with information regarding Del Taco’s allegation in paragraph 32 of the Notice of Opposition that “[u]pon information and belief, the ‘Naugles Preview Night’ referenced in the specimen submitted with Ziebarth's Amendment to Allege Use did not occur until at least 2014 or 2015.”

INTERROGATORY NO. 41:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 33 of the Notice of Opposition that "[u]pon information and belief, Ziebarth did not advertise a 'Naugles Preview Night' until 2014."

INTERROGATORY NO. 42:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 33 of the Notice of Opposition that "[u]pon information and belief, Ziebarth did not advertise a 'Naugles Preview Night' until 2014."

INTERROGATORY NO. 43:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 34 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' menu depicted in the specimen submitted with Ziebarth's Amendment to Allege Use did not exist as of March 2012, and was not created until approximately 2014 or 2015."

INTERROGATORY NO. 44:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 34 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' menu depicted in the specimen submitted with Ziebarth's Amendment to Allege Use did not exist as of March 2012, and was not created until approximately 2014 or 2015."

INTERROGATORY NO. 45:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 35 of the Notice of Opposition that "[u]pon information and belief, neither Ziebarth nor Applicant were knowingly using the NAUGLES mark referenced in the Application for cafeteria or restaurant services as of March 2012."

INTERROGATORY NO. 46:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 35 of the Notice of Opposition that "[u]pon information and belief, neither Ziebarth nor Applicant were knowingly using the NAUGLES mark referenced in the Application for cafeteria or restaurant services as of March 2012."

INTERROGATORY NO. 47:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 37 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark on or around March 20, 2012, did not amount to 'use in commerce' under the meaning of 15 U.S.C. § 1051(a)."

INTERROGATORY NO. 48:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 37 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark on or around March 20, 2012, did not amount to 'use in commerce' under the meaning of 15 U.S.C. § 1051(a)."

INTERROGATORY NO. 49:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 38 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark in connection with a 'Naugles Preview Night' did not constitute 'bona fide use of a mark in the ordinary course of trade' as defined by 15 U.S.C. § 1127."

INTERROGATORY NO. 50:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 38 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark in connection with a 'Naugles Preview Night' did not constitute 'bona fide use of a mark in the ordinary course of trade' as defined by 15 U.S.C. § 1127."

INTERROGATORY NO. 51:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 68 of the Notice of Opposition that "[a]pplicant's ownership of a federal registration for the mark identified in the Application would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest."

INTERROGATORY NO. 52:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 68 of the Notice of Opposition that "[a]pplicant's ownership of a federal registration for the mark identified in the Application would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest."

INTERROGATORY NO. 53:

Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 79 of the Notice of Opposition that "[a]pplicant's applied-for services in International Class 43 for cafeteria and restaurant services, as recited in the Application, are sufficiently related to Opposer's Trademark Registration No. 4,261,951 for NAUGLES in connection with clothing, namely, shirts, t-shirts, and hats since Opposer's clothing merchandise is promoted to the same or a similar class of restaurant consumers to which Applicant offers its applied-for restaurant services to."

INTERROGATORY NO. 54:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 79 of the Notice of Opposition that "[a]pplicant's applied-for services in International Class 43 for cafeteria and restaurant services, as recited in the Application, are sufficiently related to Opposer's Trademark Registration No. 4,261,951 for NAUGLES in connection with clothing, namely, shirts, t-shirts, and hats since Opposer's clothing merchandise is promoted to the same or a similar class of restaurant consumers to which Applicant offers its applied-for restaurant services to."

INTERROGATORY NO. 55:


Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 84 of the Notice of Opposition that "[r]egistration of the NAUGLES mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's Trademark Application Serial No. 85/340660 and Trademark Registration No. 4,261,951, previously used by Opposer and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake, or to deceive."

INTERROGATORY NO. 56:

Identify all witnesses with information regarding Del Taco's allegation in paragraph 84 of the Notice of Opposition that "[r]egistration of the NAUGLES mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's Trademark Application Serial No. 85/340660 and Trademark Registration No. 4,261,951, previously used by Opposer and not abandoned, as to be likely,

when used in connection with the goods of Applicant, to cause confusion, mistake, or to deceive.”

Dated: September 29, 2017


By: _____
Kelly K. Pfeiffer
Amezcua-Moll & Associates, P.C.
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865

Attorneys for Applicant
ZIEBARTH HOLDINGS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **APPLICANT'S FIRST SET OF INTERROGATORIES NOS. 1-56** was served upon DINSMORE & SHOHL LLP, counsel for Del Taco, by emailing one copy on September 29, 2017 to the following individuals listed as counsel of record for Registrant Del Taco, LLC in this proceeding:

April Besl
april.besl@dinsmore.com
Govinda Davis
govinda.davis@dinsmore.com

DINSMORE & SHOHL LLP
255 E 5th Street, Ste. 1900
Cincinnati, Ohio 45202-1971

By: 

Kelly K. Pfeiffer
AMEZCUA-MOLL & ASSOCIATES
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865
Attorneys for Applicant
ZIEBARTH HOLDINGS, LLC

EXHIBIT A

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85340660

Filing Date: 06/08/2011

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	\\TICRS\EXPORT11\IMAGEOUT11\853\406\85340660\xml1\FTK0002.JPG
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	NAUGLES
*COLOR MARK	NO
*COLOR(S) CLAIMED (If applicable)	
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a design of five adjacent lines above and below the word "NAUGLES" with the letter "N" cutting into the design.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	436 x 472
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Del Taco LLC
*STREET	25521 Commercentre Drive
*CITY	Lake Forest
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	92630
LEGAL ENTITY INFORMATION	
*TYPE	LIMITED LIABILITY COMPANY
*STATE/COUNTRY WHERE LEGALLY ORGANIZED	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	

* INTERNATIONAL CLASS	043
IDENTIFICATION	Restaurant services
* FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS SECTION	
* TRANSLATION (if applicable)	
* TRANSLITERATION (if applicable)	
* CLAIMED PRIOR REGISTRATION (if applicable)	The applicant claims ownership of U.S. Registration Number(s) 1043729.
* CONSENT (NAME/LIKENESS) (if applicable)	
* CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Joshua A. Lorentz
FIRM NAME	Dinsmore & Shohl LLP
INTERNAL ADDRESS	Suite 1900
STREET	255 East 5th Street
CITY	Cincinnati
STATE	Ohio
COUNTRY	United States
ZIP/POSTAL CODE	45202
PHONE	513-977-8200
FAX	513-977-8141
EMAIL ADDRESS	joshua.lorentz@dinslaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	April L. Besl, Lynda E. Roesch, Kathryn K. Przywara
CORRESPONDENCE INFORMATION	
* NAME	Joshua A. Lorentz
FIRM NAME	Dinsmore & Shohl LLP
INTERNAL ADDRESS	Suite 1900
* STREET	255 East 5th Street
* CITY	Cincinnati
* STATE (Required for U.S. applicants)	Ohio
* COUNTRY	United States
* ZIP/POSTAL CODE	45202
PHONE	513-977-8200
FAX	513-977-8141
* EMAIL ADDRESS	joshua.lorentz@dinslaw.com

* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
* TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/jack tang/
* SIGNATORY'S NAME	Jack T. Tang
* SIGNATORY'S POSITION	Associate General Counsel
* DATE SIGNED	06/07/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85340660

Filing Date: 06/08/2011

To the Commissioner for Trademarks:

MARK: NAUGLES (stylized and/or with design, see [mark](#))

The literal element of the mark consists of NAUGLES.

The applicant is not claiming color as a feature of the mark. The mark consists of a design of five adjacent lines above and below the word "NAUGLES" with the letter "N" cutting into the design.

The applicant, Del Taco LLC, a limited liability company legally organized under the laws of California, having an address of

25521 Commercentre Drive
Lake Forest, California 92630
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 043: Restaurant services

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 1043729.

The applicant's current Attorney Information:

Joshua A. Lorentz and April L. Besl, Lynda E. Roesch, Kathryn K. Przywara of Dinsmore & Shohl LLP
Suite 1900
255 East 5th Street
Cincinnati, Ohio 45202
United States

The applicant's current Correspondence Information:

Joshua A. Lorentz
Dinsmore & Shohl LLP
Suite 1900
255 East 5th Street
Cincinnati, Ohio 45202
513-977-8200(phone)
513-977-8141(fax)
joshua.lorentz@dinslaw.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /jack tang/ Date Signed: 06/07/2011

Signatory's Name: Jack T. Tang

Signatory's Position: Associate General Counsel

RAM Sale Number: 7439

RAM Accounting Date: 06/08/2011

Serial Number: 85340660

Internet Transmission Date: Wed Jun 08 09:19:23 EDT 2011

TEAS Stamp: USPTO/FTK-XX.XXX.XX.XX-20110608091923886

103-85340660-4802f7a9bd49ce0ea1be54a5172

ad5ee271-CC-7439-20110607150143351250

A large, stylized letter 'L' graphic composed of multiple parallel lines in various shades of gray, some with a distressed or textured appearance. The 'L' is positioned on the left side of the page, with its vertical stem extending from the top and its horizontal base extending towards the right, partially overlapping the text.

NAUGLES

EXHIBIT B

NAUGLES

EXHIBIT C



Del Taco & NAUGLES CLASSICS

Back for a limited time!

Cheese Burrito	\$1.25
Bun Taco	\$2.00
Small Taco Salad	\$2.00
Orange Shake	\$2.90



ORDER HERE



NAUGLES[®]
CLASSICS

Back for a limited time!

Cheese Burrito	\$1.25
Bun Taco	\$2.00
Small Taco Salad	\$2.00
Orange Shake	\$2.90



Price and participation may vary



NAUGLES[®]
CLASSICS

Back for a limited time!

Cheese Burrito	\$1.25
Bun Taco	\$2.00
Small Taco Salad	\$2.00
Orange Shake	\$2.90



Price and participation may vary

EXHIBIT B

(to Applicant's Motion to Compel Discovery)

***This Exhibit is a set of Requests for Production
of Documents which contains 1 exhibit itself
(Exhibit A)**

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

In the matter of United States Trademark Application Serial No. 85040746

Mark: “NAUGLES”

DEL TACO, LLC,)	
Opposer,)	
)	Opposition No. 91235706
v.)	
)	
ZIEBARTH HOLDINGS, LLC,)	
Applicant.)	

APPLICANT’S FIRST SET OF REQUESTS FOR

PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-37

Pursuant to the Trademark Rules, the Rules of Practice of the Trademark Trial and Appeal Board (“TTAB”), and the applicable Federal Rules of Civil Procedure (“FRCP”), Applicant ZIEBARTH HOLDINGS, LLC (“Applicant”) hereby requests that Opposer Del Taco, LLC (“Del Taco”), within 30 days of the service of these requests, electronically produce for inspection the following: 1) complete and legible copies of the original documents requested in response to Applicant’s First Set of Requests for Production of Documents and Things, Nos. 1-37 (“the Document Requests”), and 2) FRCP-complaint, written responses to the Document Requests.

DEFINITIONS

The following definitions and instructions shall apply to each of the Document Requests herein:

1. The phrase “Del Taco” shall mean Opposer Del Taco, LLC, and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting

on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company either within the United States or a foreign country.

2. The term “document” shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals, voice recording, charts, surveys, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Del Taco, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.

3. The term “thing” shall mean all tangible objects of any type, composition, construction or nature.

4. The term “concerning” means relating to, referring to, describing, evidencing, constituting and/or in connection with.

5. A document or thing “relating or referring” or which “relates” to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

6. The terms “trademark” or “mark” include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

7. The phrase “Notice of Opposition” shall mean Del Taco’s Notice of Opposition filed July 21, 2017.

8. The term “Answer” shall mean Applicant’s Answer filed August 29, 2017.

9. The terms “all” and “each” shall be construed to include all and each.

10. The term “and” shall be construed to include “or” and vice versa.

11. The use of the singular form of any word also includes the plural and vice versa.

GENERAL INSTRUCTIONS

1. If you claim that any document requested is privileged, please provide all information falling within the scope of the Document Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel each item, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author of the document, if applicable;
- c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
- d. the date of the document;
- e. the type of document (e.g., letter, memorandum, etc.) and;
- f. the general subject matter of the document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

2. If any document which you would have produced in response to any Document Request was, but is no longer, in your present possession or subject to your control or is no longer in existence, please state whether any such document is:

- a. missing or lost;
- b. destroyed;
- c. transferred to others; and/or
- d. otherwise disposed of, and in such instance, set forth the surrounding circumstances and any authorization of such disposition and state the approximate date of any such disposition, and the present location and custodian of such document.

3. The documents produced pursuant to these Document Requests shall be separately produced for each paragraph of the same or, in the alternative, shall be identified as complying with the particular paragraphs of the Document Requests to which they are responsive.

4. Del Taco's responses to the following Document Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the FRCP.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

Documents and things concerning or relating to any and all restaurants open to the public between December 31, 1995 and the present that were or are named 'NAUGLES' and owned by Del Taco.

REQUEST FOR PRODUCTION NO. 2:

Documents and things concerning or relating to Del Taco's closure of any and all NAUGLES restaurants.

REQUEST FOR PRODUCTION NO. 3:

Documents and things concerning or relating to Del Taco's plans to reopen any NAUGLES restaurants.

REQUEST FOR PRODUCTION NO. 4:

Documents and things concerning or relating to USPTO application serial no 85340660, including without limitation, documents concerning or relating to Del Taco's decision to file said application.

REQUEST FOR PRODUCTION NO. 5:

Documents and things concerning or relating to Del Taco's *bona fide* intent to use the NAUGLES mark in U.S. commerce in connection with the services identified in USPTO application serial no. 85340660 prior to filing said application.

REQUEST FOR PRODUCTION NO. 6:

Documents and things concerning or relating to Del Taco's current *bona fide* intent to use the NAUGLES mark in U.S. commerce in connection with the services identified in USPTO application serial no. 85340660.

REQUEST FOR PRODUCTION NO. 7:

Documents and things concerning, relating to, supporting or negating Del Taco's contention that it currently holds rights in the NAUGLES trademark for "restaurant services."

REQUEST FOR PRODUCTION NO. 8:

Documents and things Del Taco intends to rely upon to support Del Taco's contention that it currently holds rights in the NAUGLES trademark for "restaurant services."

REQUEST FOR PRODUCTION NO. 9:

Documents and things concerning, relating to, supporting or negating Del Taco's contention that Del Taco has actually used the NAUGLES trademark (in any format or style) in U.S. commerce in connection with "restaurant services."

REQUEST FOR PRODUCTION NO. 10:

Documents and things Del Taco intends to rely upon to support its contention that Del Taco has actually used the NAUGLES trademark (in any format or style) in U.S. commerce in connection with "restaurant services."

REQUEST FOR PRODUCTION NO. 11:

Documents and things concerning, relating to or evidencing Del Taco's alleged date of first use of the NAUGLES trademark (in any format or style) in connection with "restaurant services."

REQUEST FOR PRODUCTION NO. 12:

Documents and things concerning, relating to or evidencing Del Taco's alleged date of first use in U.S. commerce of the NAUGLES trademark (in any format or style) in connection with "restaurant services."

REQUEST FOR PRODUCTION NO. 13:

Documents and things concerning or relating to all advertising campaigns, signs, displays or commercials used or offered by Del Taco which include the NAUGLES trademark from 2000

to present including, without limitation, the items depicted in the photographs attached hereto as Exhibit A.

REQUEST FOR PRODUCTION NO. 14:

Documents and things concerning or relating to any promotional outlet, including without limitation Del Taco's website, magazines, blogs, newspapers, social media sites, television, radio, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs including signage for restaurants, sales displays including point of sale advertising for restaurants, posters and/or other materials in which Del Taco's NAUGLES restaurant services or products have been promoted and/or may be promoted in the future.

REQUEST FOR PRODUCTION NO. 15:

Documents and things concerning or relating to Del Taco's allegation in paragraph 2 of the Notice of Opposition that "Opposer owns and maintains common-law rights in the NAUGLES mark in connection with its clothing and food items."

REQUEST FOR PRODUCTION NO. 16:

Documents and things concerning or relating to Del Taco's allegation in paragraph 4 of the Notice of Opposition that "Opposer has expended substantial amounts of time, money and effort in advertising and promoting its NAUGLES mark over the years and in preserving the goodwill associated therewith."

REQUEST FOR PRODUCTION NO. 17:

Documents and things concerning or relating to Del Taco's allegation in paragraph 5 of the Notice of Opposition that "Opposer's NAUGLES mark has become distinctive of, and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of goods and services listed above and offered by Opposer under the NAUGLES mark."

REQUEST FOR PRODUCTION NO. 18:

Documents and things concerning or relating to Del Taco's allegation in paragraph 7 of the Notice of Opposition that "Opposer continues to sell menu items associated with NAUGLES in Opposer's restaurants today."

REQUEST FOR PRODUCTION NO. 19:

Documents and things concerning or relating to Del Taco's allegation in paragraph 11 of the Notice of Opposition that "[s]ince filing the Application, Applicant and Applicant's principal and predecessor in interest, Ziebarth, have attempted to secure the NAUGLES trademark by any means necessary, including the commission of fraud on the US Trademark Office."

REQUEST FOR PRODUCTION NO. 20:

Documents and things concerning or relating to Del Taco's allegation in paragraph 19 of the Notice of Opposition that "[u]pon information and belief, neither Applicant nor Ziebarth actually used the applied for mark in commerce and in connection with cafeteria and restaurant services as of March 20, 2012."

REQUEST FOR PRODUCTION NO. 21:

Documents and things concerning or relating to Del Taco's allegation in paragraph 32 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' referenced in the specimen submitted with Ziebarth's Amendment to Allege Use did not occur until at least 2014 or 2015."

REQUEST FOR PRODUCTION NO. 22:

Documents and things concerning or relating to Del Taco's allegation in paragraph 33 of the Notice of Opposition that "[u]pon information and belief, Ziebarth did not advertise a 'Naugles Preview Night' until 2014."

REQUEST FOR PRODUCTION NO. 23:

Documents and things concerning or relating to Del Taco's allegation in paragraph 34 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' menu depicted in the specimen submitted with Ziebarth's Amendment to Allege Use did not exist as of March 2012, and was not created until approximately 2014 or 2015."

REQUEST FOR PRODUCTION NO. 24:

Documents and things concerning or relating to Del Taco's allegation in paragraph 35 of the Notice of Opposition that "[u]pon information and belief, neither Ziebarth nor Applicant were knowingly using the NAUGLES mark referenced in the Application for cafeteria or restaurant services as of March 2012."

REQUEST FOR PRODUCTION NO. 25:

Documents and things concerning or relating to Del Taco's allegation in paragraph 37 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark on or around March 20, 2012, did not amount to 'use in commerce' under the meaning of 15 U.S.C. § 1051(a)."

REQUEST FOR PRODUCTION NO. 26:

Documents and things concerning or relating to Del Taco's allegation in paragraph 38 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark in connection with a 'Naugles Preview Night' did not constitute 'bona fide use of a mark in the ordinary course of trade' as defined by 15 U.S.C. § 1127."

REQUEST FOR PRODUCTION NO. 27:

Documents and things concerning or relating to Del Taco's allegation in paragraph 68 of the Notice of Opposition that "[a]pplicant's ownership of a federal registration for the mark

identified in the Application would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest.”

REQUEST FOR PRODUCTION NO. 28:

Documents and things concerning or relating to Del Taco’s allegation in paragraph 79 of the Notice of Opposition that “[a]pplicant's applied-for services in International Class 43 for cafeteria and restaurant services, as recited in the Application, are sufficiently related to Opposer's Trademark Registration No. 4,261,951 for NAUGLES in connection with clothing, namely, shirts, t-shirts, and hats since Opposer's clothing merchandise is promoted to the same or a similar class of restaurant consumers to which Applicant offers its applied-for restaurant services to.”

REQUEST FOR PRODUCTION NO. 29:

Documents and things concerning or relating to Del Taco’s allegation in paragraph 84 of the Notice of Opposition that “[r]egistration of the NAUGLES mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's Trademark Application Serial No. 85/340660 and Trademark Registration No. 4,261,951, previously used by Opposer and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake, or to deceive.”

REQUEST FOR PRODUCTION NO. 30:

Documents and things concerning or relating to any license agreements Del Taco has entered into with respect to the NAUGLES mark.

REQUEST FOR PRODUCTION NO. 31:

Documents and things concerning or relating to Del Taco's present and/or planned marketing plans for Del Taco's NAUGLES products or services including without limitation all advertising and promotional materials which relate or refer to Del Taco's NAUGLES products or services.

REQUEST FOR PRODUCTION NO. 32:

Documents and things concerning or relating to Del Taco's monthly expenditures to date and planned future expenditures with respect to Del Taco's NAUGLES restaurant services or products.

REQUEST FOR PRODUCTION NO. 33:

Documents and things concerning or relating to any consumer or marketing testing Del Taco has received or conducted relating to Del Taco's use of the NAUGLES trademark for any services or products.

REQUEST FOR PRODUCTION NO. 34:

Documents and things concerning or relating to Applicant's NAUGLES mark, including without limitation news articles about Applicant and/or Naugles Corp., communication with third parties, social media pages, social media comments, blogs and blog comments.

REQUEST FOR PRODUCTION NO. 35:

Documents and things concerning or relating to discussions, correspondence, disputes, controversies or proceedings of any kind or nature between Del Taco and any third party which involved Del Taco's NAUGLES mark, including without limitation, communication on social media pages and blogs.

REQUEST FOR PRODUCTION NO. 36:

Documents and things Del Taco relied upon in drafting its Notice of Opposition.

REQUEST FOR PRODUCTION NO. 37:

Documents and things upon which Del Taco intends to rely to argue against Applicant's affirmative defenses alleged in Applicant's Answer.

Dated: September 29, 2017



By: _____
Kelly K. Pfeiffer
Amezcu-Moll & Associates, P.C.
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865

Attorneys for Applicant
ZIEBARTH HOLDINGS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-37** was served upon DINSMORE & SHOHL LLP, counsel for Del Taco, by emailing one copy on September 29, 2017 to the following individuals listed as counsel of record for Opposer Del Taco, LLC in this proceeding:

April Besl
april.besl@dinsmore.com
Govinda Davis
govinda.davis@dinsmore.com

DINSMORE & SHOHL LLP
255 E 5th Street, Ste. 1900
Cincinnati, Ohio 45202-1971

By: _____

Kelly K. Pfeiffer
AMEZCUA-MOLL & ASSOCIATES
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865
Attorneys for Applicant
ZIEBARTH HOLDINGS, LLC

EXHIBIT A



**Del
Taco**



**NAUGLES
CLASSICS**

Back for a limited time!

Cheese Burrito	\$1.25
Bun Taco	\$2.00
Small Taco Salad	\$2.00
Orange Shake	\$2.90



**ORDER
HERE**



NAUGLES[®] CLASSICS

Back for a limited time!

Cheese Burrito	\$1.25
Bun Taco	\$2.00
Small Taco Salad	\$2.00
Orange Shake	\$2.90



Price and participation may vary



NAUGLES[®]
CLASSICS

Back for a limited time!

Cheese Burrito	\$1.25
Bun Taco	\$2.00
Small Taco Salad	\$2.00
Orange Shake	\$2.90



Price and participation may vary

EXHIBIT C

(to Applicant's Motion to Compel Discovery)

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

DEL TACO, LLC,)	
)	
-vs-)	Opposition No.: 91235706
)	
ZIEBARTH HOLDINGS,)	U.S. Serial No.: 85040746
)	
Applicant.)	Mark: NAUGLES

**OPPOSER DEL TACO, LLC’S
RESPONSE TO APPLICANT’S FIRST SET OF INTERROGATORIES**

In accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120 of the Trademark Rules of Practice and TMBP § 405, Opposer Del Taco, LLC (hereinafter “Opposer” or “Del Taco”) by and through its counsel, hereby submits its objections and responses, to Applicant Naugles Corp.’s (hereinafter “Applicant”) First Set of Interrogatories.

GENERAL OBJECTIONS

1. Del Taco generally objects to Applicant’s Interrogatories on the grounds that they seek disclosure of information protected by the attorney-client, work product, and any other applicable privileges. To the extent that Del Taco inadvertently discloses information that may arguably be protected from discovery under attorney-client privilege, the work product doctrine, or any other applicable privilege, such inadvertent disclosure does not constitute a waiver of any such privilege.

2. Del Taco generally objects to Applicant’s Interrogatories to the extent that Applicant’s definitions and instructions purport to impose requirements beyond the requirements of the Federal Rules of Civil Procedure and/or purport to give meaning to terms beyond the normal connotation.

3. Del Taco generally objects to Applicant's Interrogatories insofar as they seek information concerning matters unrelated to the subject matter of this action, on the grounds that they are overly broad, unduly burdensome, and seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

4. Del Taco generally objects to Applicant's Interrogatories insofar as they seek confidential, proprietary and/or trade secret information of Del Taco that, if disclosed, could irreparably harm Del Taco. Accordingly, Del Taco objects to producing any such information absent appropriate respect and treatment of such information by Applicant as such information is designated by Del Taco pursuant to and under a confidentiality agreement and protective order.

5. Del Taco generally objects to Applicant's Interrogatories to the extent that they call for information that is not currently in Del Taco's possession, custody or control.

6. Del Taco generally objects to any request that calls for production of home address, home phone numbers, salary information, or dates of employment of any of Del Taco's employees not a party to this action on the basis that it is irrelevant, unduly burdensome, and an invasion of privacy interests and rights of those employees.

7. Del Taco generally objects to Applicant's Interrogatories on the grounds that they are not limited in time frame and are overly broad and unduly burdensome because they exceed the relevant time period at issue in this case.

8. The responses set forth below are made without in any manner waiving: (i) the right to object to the use of any response for any purpose, in this action or any other action, on the grounds of privilege, relevance, materiality, or any other appropriate grounds; (ii) the right to object to any other document requests involving or relating to the subject matter of the responses

herein; and (iii) the right to revise, correct, supplement or clarify any of the responses provided below, at any time. Del Taco specifically reserves the right to supplement these responses as information becomes available or is discovered throughout the course of this proceeding.

9. These General Objections are applicable to each and every one of the following responses and objections, and failure to repeat an objection in response to a specific request shall not be deemed a waiver of the objection. Further, when Del Taco specifically repeats one or more of these General Objections in response to a specific request, such specific response cannot be a waiver of these General Objections.

Subject to and without waiving these General Objections, and subject to and without waiving the specific objections noted below, Del Taco responds to Applicant's First Set of Interrogatories as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Provide the physical address for all restaurants open to the public between December 31, 1995 and the present that were or are named "NAUGLES" and owned by Del Taco.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 1 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all restaurants." Del Taco further objects to the extent that its response could be deemed an admission since there are many ways to use a trademark in connection with restaurant services apart from specific use of the mark as the name of a restaurant. Subject to and without waiving the forgoing objections, Del Taco states that it did not open any restaurants between December 31, 1995, and the present that were or are named "NAUGLES." Del Taco further states that it used the NAUGLES trademark in commerce in

connection with food items at its Del Taco restaurant locations and Applicant is aware of such use since counsel for Applicant sent Del Taco's counsel a cease and desist letter regarding such use on April 21, 2014.

INTERROGATORY NO. 2: Describe all facts and circumstances which led to Del Taco's decision to file USPTO application serial no. 85340660. A copy of said application is attached hereto as Exhibit A for ease of reference.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 2 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all facts and circumstances" and irrelevant as it seeks information regarding U.S. Trademark Application No. 85340660, the registrability of which is not at issue in this opposition proceeding. Additionally, Del Taco objects to Interrogatory No. 2 to the extent it requests that Del Taco provide information protected by attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that it filed an application for the trademark contained in U.S. Trademark Application No. 85340660 based on its *bona fide* intention to use the specific NAUGLES & Design trademark represented in U.S. Trademark Application No. 85340660 in commerce in connection with *restaurant services*.

INTERROGATORY NO. 3: Identify all witnesses with knowledge of, who contributed to the drafting of, or were part of the decision to file USPTO application serial no. 85340660 (Exhibit A).

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 3 as irrelevant and overly broad and unduly burdensome as

requesting that Del Taco provide information regarding “all witnesses.” Additionally, Del Taco objects to Interrogatory No. 3 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth and Mr. Jack Tang, Esq. have knowledge of Del Taco’s decision to file an application for the trademark contained in U.S. Trademark Application No. 85340660.

INTERROGATORY NO. 4: Identify the source of the drawing filed on June 8, 2011 in connection with USPTO application serial no. 85340660, including but not limited to the name of and contact information for the artist, if known. A copy of said drawing is attached hereto as Exhibit B for ease of reference.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 4 as overly broad, unduly burdensome and irrelevant. Additionally, Del Taco objects to Interrogatory No. 4 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that it has not yet identified the identity of the person who created the drawing filed in connection with U.S. Trademark Application No. 85340660. Del Taco will supplement this response if additional information becomes available.

INTERROGATORY NO. 5: Describe in detail the activities undertaken by Del Taco which illustrate its *bona fide* intent to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services identified in USPTO application serial no. 85340660 prior to filing said application (Exhibit A).

RESPONSE: Del Taco objects to Interrogatory No. 5 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Additionally, Del Taco Objects to Interrogatory No. 5 as overly broad, unduly burdensome, and irrelevant. Subject to and without waiving the forgoing objections, Del Taco states that, prior to filing U.S. Trademark Application No. 85340660, its *bona fide* intent to use the NAUGLES trademark is evidenced by Del Taco's offering of menu items that were originally sold in NAUGLES named restaurants owned by its predecessor in interest, Naugles, Inc. Indeed, as Applicant is fully aware, Del Taco has actually used the NAUGLES word mark in advertising for its restaurant services as Applicant's principal, Christian Ziebarth, had a cease and desist letter sent to counsel for Del Taco based on this use. Furthermore, as Applicant's principal, Christian Ziebarth, is aware, Del Taco documented its *bona fide* intent to use the NAUGLES mark in detailed marketing presentations. Del Taco maintains its *bona fide* intent to use not only the NAUGLES word mark but also the specific design version of the NAUGLES mark as set forth in U.S. Trademark Application No. 85340660.

INTERROGATORY NO. 6: Identify all witnesses with information regarding the activities undertaken by Del Taco which illustrate its *bona fide* intent to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services identified in USPTO Application Serial No. 85340660 prior to filing said application (Exhibit A).

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 6 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Del Taco further objects to Interrogatory No. 6 as irrelevant, overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all

witnesses.” Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth and Mr. Jack Tang, Esq. have knowledge of Del Taco’s decision to file an application for the trademark contained in U.S. Trademark Application No. 85340660.

INTERROGATORY NO. 7: Does Del Taco presently still have a *bona fide* intent to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services listed in USPTO application serial no. 85340660 (Exhibit A)?

RESPONSE: In addition to the General Objects asserted above, Del Taco objects to Interrogatory No. 7 as irrelevant. Subject to and without waiving the foregoing objections, Del Taco directs Applicant to its response to Interrogatory No. 5.

INTERROGATORY NO. 8: If the answer to Interrogatory No. 7 is in the affirmative, provide all facts and explain all circumstances that support Del Taco’s *bona fide* intent as it exists today to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services listed in USPTO application serial no. 85340660 (Exhibit A).

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 8 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding “all facts and explain all circumstances” and irrelevant. Additionally, Del Taco objects to Interrogatory No. 8 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 7.

INTERROGATORY NO. 9: If the answer to Interrogatory No. 7 is in the affirmative, identify all witnesses with information about Del Taco's *bona fide intent* as it exists today to use the NAUGLES mark (as seen in Exhibit B) in U.S. commerce in connection with the services listed in USPTO application serial no. 85340660 (Exhibit A).

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 9 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all witnesses." Del Taco also objects to Interrogatory No. 9 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth and Mr. Jack Tang, Esq. have knowledge of Del Taco's intent to use the NAUGLES trademark in connection with restaurant services.

INTERROGATORY NO. 10: Does Del Taco contend that it currently holds rights in the NAUGLES trademark (as seen in Exhibit B or in any other format or style) for "restaurant services?"

RESPONSE: Subject to and without waiving the General Objections asserted above, Del Taco asserts that it currently has rights to the NAUGLES trademark due to Del Taco's actual use of the NAUGLES word mark in connection with its clothing goods and in advertising for its restaurant services. Applicant is aware of Del Taco's use of the NAUGLES word mark in connection with advertising its restaurant services as Applicant's principal, Christian Ziebarth, had a cease and desist letter sent to counsel for Del Taco based on this use. Del Taco's rights to the NAUGLES trademark also stems from the residual goodwill Del Taco's owns in connection with the Naugles restaurants formerly operated by Del Taco and Naugles, Inc., Del Taco's

predecessor in interest. Furthermore, Del Taco owns pending U.S. Trademark Application No. 85340660 for NAUGLES & Design in connection with *restaurant services* that is still active and pending before the US Trademark Office.

INTERROGATORY NO. 11: If the answer to Interrogatory No. 10 is in the affirmative, provide all facts and explain all circumstances that support Del Taco's contention that it currently holds rights in the NAUGLES trademark (as seen in Exhibit B or in any other format or style) for "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 11 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all facts and circumstances." Del Taco also objects to Interrogatory No. 11 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco directs Applicant to its response to Interrogatory No. 10.

INTERROGATORY NO. 12: If the answer to Interrogatory No. 10 is in the affirmative, identify all witnesses with information about Del Taco's contention that it currently holds rights in the NAUGLES trademark (as seen in Exhibit B or in any other format or style) for "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 12 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all witnesses." Additionally, Del Taco objects to Interrogatory No. 12 to the extent it requests that Del Taco provide information protected by the

attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth and Mr. Jack Tang, Esq. have knowledge of Del Taco's current rights in the NAUGLES trademark in connection with restaurant services.

INTERROGATORY NO. 13: Does Del Taco contend that it has actually used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services?"

RESPONSE: Subject to and without waiving the General Objections asserted above, Del Taco directs Applicant to Del Taco's response to Interrogatory No. 10.

INTERROGATORY NO. 14: If the answer to Interrogatory No. 13 is in the affirmative, provide all facts and explain all circumstances that support Del Taco's contention that it has actually used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

RESPONSE: In addition to the General Objection asserted above, Del Taco further objects to Interrogatory No. 14 as overly broad and unduly burdensome as requesting that Del Taco provide "all facts and explain all circumstances." Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco's response to Interrogatory No. 10.

INTERROGATORY NO. 15: If the answer to Interrogatory No. 13 is in the affirmative, identify all witnesses with information about Del Taco's contention that it has actually used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

ANSWER: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 15 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding “all witnesses.” Additionally, Del Taco objects to Interrogatory No. 15 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth, Mr. Jack Tang, Esq., and Mr. Christian Ziebarth have knowledge of Del Taco’s use of the NAUGLES trademark in connection with restaurant services.

INTERROGATORY NO. 16: If the answer to Interrogatory No. 13 is in the affirmative, provide Del Taco’s date of first use of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with “restaurant services.”

RESPONSE: In addition to the General Objections asserted above, Del Taco Objects to Interrogatory No. 16 as overly broad, unduly burdensome, and irrelevant. Subject to and without waiving the foregoing objections, as Applicant is aware, Del Taco has used the NAUGLES trademark in connection with restaurant services at least as recent as 2014 when Applicant’s principal, Christian Ziebarth had a cease and desist letter sent to counsel for Del Taco based on this use. Del Taco’s first use and first use in commerce of the NAUGLES trademark dates back to December of 1970 when Naugles, Inc., Del Taco’s predecessor in interest, used the NAUGLES trademark in connection with its restaurants.

INTERROGATORY NO. 17: If the answer to Interrogatory No. 13 is in the affirmative, provide Del Taco’s date of first use in U.S. commerce of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with “restaurant services.”

RESPONSE: In addition to the General Objections asserted above, Del Taco Objects to Interrogatory No. 17 as overly broad, unduly burdensome, and irrelevant. Subject to and without waiving the foregoing objections, Del Taco directs Applicant to Del Taco's response to Interrogatory No. 16.

INTERROGATORY NO. 18: If the answer to Interrogatory No. 13 is in the affirmative, provide all facts and explain all circumstances surrounding Del Taco's date of first use in U.S. commerce of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco Objects to Interrogatory No. 18 as overly broad, unduly burdensome, and irrelevant as it seeks information regarding U.S. Trademark Application No. 85340660 which is not at issue in this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco directs Applicant to Del Taco's response to Interrogatory No. 16.

INTERROGATORY NO. 19: If the answer to Interrogatory No. 13 is in the affirmative, identify all witnesses with information about Del Taco's date of first use in U.S. commerce of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 19 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all witnesses." Additionally, Del Taco objects to Interrogatory No. 19 to the extent it requests that Del Taco provide information protected by the

attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco's response to Interrogatory No. 15.

INTERROGATORY NO. 20: Attached hereto as Exhibit C is a series of photographs taken by Applicant and/or its predecessor in interest in or about April of 2014 depicting signs seen at a Del Taco restaurant. List all locations by address, including but not limited to Del Taco restaurants, at which the same signs or similar signs also bearing the word NAUGLES were displayed.

RESPONSE: Subject to and without waiving the General Objections asserted above, Del Taco's discovery is ongoing and we will supplement this response as we complete our search.

INTERROGATORY NO. 21: For each location identified in response to Interrogatory No. 20, provide the dates during which the same signs as seen in Exhibit C or similar signs also bearing the word NAUGLES were on display.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 21 as overly broad, unduly burdensome, and irrelevant. Subject to and without waiving the foregoing objections, Del Taco's discovery is ongoing and we will supplement this response as we complete our search

INTERROGATORY NO. 22: Provide all facts and explain all circumstances surrounding Del Taco's decision to display the signs seen in Exhibit C or similar signs also bearing the word NAUGLES.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 22 as overly broad, unduly burdensome, and. Subject to and without waiving the foregoing objections, Del Taco's discovery is ongoing and we will supplement this response as we complete our search.

INTERROGATORY NO. 23: Identify all witnesses with information about Del Taco's decision to display the signs seen in Exhibit C or similar signs also bearing the word NAUGLES.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 23 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all witnesses," and irrelevant. Additionally, Del Taco objects to Interrogatory No. 23 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the foregoing objections, Del Taco's discovery is ongoing and we will supplement this response as we complete our search.

INTERROGATORY NO. 24: If the answer to Interrogatory No. 13 is in the affirmative, describe in detail the most recent use by Del Taco of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 24 as overly broad, unduly burdensome, and irrelevant as it seeks information regarding Del Taco's use of its NAUGLES mark which is not at issue in this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco directs Applicant to its response to Interrogatory 10.

INTERROGATORY NO. 25: If the answer to Interrogatory No. 13 is in the affirmative, provide the dates during which Del Taco most recently used the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with “restaurant services.”

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 25 as overly broad, unduly burdensome, and irrelevant as it seeks information regarding Del Taco’s use of its NAUGLES mark which is not at issue in this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 10.

INTERROGATORY NO. 26: If the answer to Interrogatory No. 13 is in the affirmative, identify all witnesses with information regarding Del Taco’s most recent use of the NAUGLES trademark (as seen in Exhibit B or in any other format or style) in U.S. commerce in connection with “restaurant services.”

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Interrogatory No. 26 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding “all witnesses,” and irrelevant. Additionally, Del Taco objects to Interrogatory No. 26 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the foregoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 15.

INTERROGATORY NO. 27: Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 2 of the Notice of Opposition that "Opposer owns and maintains common-law right in the NAUGLES mark in connection with its clothing and food items."

RESPONSE: In addition to the General Objection asserted above, Del Taco further objects to Interrogatory No. 27 as overly broad and unduly burdensome as requesting that Del Taco provide "all facts and explain all circumstances." Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco's response to Interrogatory No. 10.

INTERROGATORY NO. 28: Identify all witnesses with information regarding Del Taco's allegation in paragraph 2 of the Notice of Opposition that "Opposer owns and maintains common-law rights in the NAUGLES mark in connection with its clothing and food items."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 28 as overly broad and unduly burdensome as it requests that Del Taco identify "all witnesses." Del Taco also objects to Interrogatory No. 28 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth has information regarding Del Taco's common-law rights in the NAUGLES mark.

INTERROGATORY NO. 29: Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 4 of the Notice of Opposition that "Opposer has

expended substantial amounts of time, money and effort in advertising and promoting its NAUGLES mark over the years and in preserving the goodwill associated therewith.”

RESPONSE: In addition to the General Objection asserted above, Del Taco further objects to Interrogatory No. 29 as overly broad and unduly burdensome as requesting that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 10.

INTERROGATORY NO. 30: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 4 of the Notice of Opposition that “Opposer has expended substantial amounts of time, money and effort in advertising and promoting its NAUGLES mark over the years and in preserving the goodwill associated therewith.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 30 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding “all witnesses” and as to the time frame requested. .” Additionally, Del Taco objects to Interrogatory No. 30 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth and Mr. Jack Tang, Esq. have knowledge of Del Taco’s effort in advertising and promoting its NAUGLES trademark.

INTERROGATORY NO. 31: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 5 of the Notice of Opposition that “Opposer’s NAUGLES mark has become distinctive of, and associated in the minds of the trade and

purchasing public with Opposer as a well-known provider of goods and services listed above and offered by Opposer under the NAUGLES mark.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 31 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco states that its registration for the NAUGLES trademark for clothing is *prima facie* evidence of the validity of the registered mark as a source identifier and is evidence that Del Taco’s mark functions as a source identifier for its clothing. Furthermore, Del Taco has long been connected to the NAUGLES mark for restaurant services through its recent use of the mark (as known to Applicant through Mr. Ziebarth), the “Secret NAUGLES Menu” attributable by the public to Del Taco, and through Del Taco’s known purchase of Naugles Inc. Del Taco will further supplement this response as more information becomes available.

INTERROGATORY NO. 32: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 5 of the Notice of Opposition that “Opposer's NAUGLES mark has become distinctive of, and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of goods and services listed above and offered by Opposer under the NAUGLES mark.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 32 as overly broad and unduly burdensome in requiring that Del Taco identify “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth has information regarding Del Taco’s use of its NAUGLES mark as a source identifier for its goods and services.

INTERROGATORY NO. 33: Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 7 of the Notice of Opposition that "Opposer continues to sell menu items associated with NAUGLES in Opposer's restaurants today."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 33 as overly broad and unduly burdensome in requiring that Del Taco provide "all facts and explain all circumstances." Subject to and without waiving the forgoing objections, Del Taco's discovery is ongoing and we will supplement this response as we complete our search

INTERROGATORY NO. 34: Identify all witnesses with information regarding Del Taco's allegation in paragraph 7 of the Notice of Opposition that "Opposer continues to sell menu items associated with NAUGLES in Opposer's restaurants today."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 34 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all witnesses." Additionally, Del Taco objects to Interrogatory No. 34 to the extent it requests that Del Taco provide information protected by the attorney-client privilege. Subject to and without waiving the forgoing objections, Del Taco states that Mr. Noah Chillingworth and Mr. Jack Tang, Esq. have knowledge of Del Taco's sale of menu items associated with NAUGLES.

INTERROGATORY NO. 35: Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 11 of the Notice of Opposition that "[s]ince filing the Application, Applicant and Applicant's principal and predecessor in interest, Ziebarth, have

attempted to secure the NAUGLES trademark by any means necessary, including the commission of fraud on the US Trademark Office.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 35 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco reiterates its factual allegations in Paragraphs 19-56 of the Notice of Opposition describing Applicant and Applicant’s principal and predecessor in interest Christian Ziebarth’s fraudulent actions in submitting: 1) a fraudulent allegation of first use on March 20, 2012 even though numerous articles indicate that Applicant’s restaurant did not open until well after this claimed first use date, as documented in numerous publications; 2) a fraudulent specimen submitted with the amendment to allege use that did not exist as of March 20, 2012; and 3) intentionally deficient Office Action Responses to knowingly, willfully, and falsely extend its time to respond to reach the required five year period of use to show distinctiveness when relying on the false March 20, 2012, date of first use claimed in the amendment to allege use and overcome the Trademark Office’s refusals. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 36: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 11 of the Notice of Opposition that “[s]ince filing the Application, Applicant and Applicant's principal and predecessor in interest, Ziebarth, have attempted to secure the NAUGLES trademark by any means necessary, including the commission of fraud on the US Trademark Office.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 36 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco submits that Christian Ziebarth and his partners have knowledge of the factual allegations contained in paragraph 11 of the Notice of Opposition.

INTERROGATORY NO. 37: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 19 of the Notice of Opposition that “[u]pon information and belief, neither Applicant nor Ziebarth actually used the applied for mark in commerce and in connection with cafeteria and restaurant services as of March 20, 2012.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 37 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco reiterates its claims in Paragraphs 19-56 of the Notice of Opposition where Del Taco describes Applicant and Christian Ziebarth, Applicant’s principal and predecessor in interest, fraudulent activities in submitting a first use date of March 20, 2012 to the USPTO even though Christian Ziebarth admitted under oath in the October 2013 Deposition that as of October 2013 he had no food trucks or restaurants nor had he offered any goods or services under the NAUGLES mark. Furthermore and as described in the Notice of Opposition, several articles indicate that Applicant did not even open a test kitchen until July 2015. Therefore, since Applicant did not have a restaurant or food truck to operate, Applicant could not have used the applied for mark in commerce in connection with cafeteria and

restaurant services as of March 20, 2012. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 38: Identify all witnesses with information regarding Del Taco's allegation in paragraph 19 of the Notice of Opposition that "[u]pon information and belief, neither Applicant nor Ziebarth actually used the applied for mark in commerce and in connection with cafeteria and restaurant services as of March 20, 2012."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 38 as overly broad and unduly burdensome in requiring that Del Taco provide "all witnesses." Subject to and without waiving the forgoing objections, Del Taco submits that Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 19 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 39: Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 32 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' referenced in the specimen submitted with Ziebarth's Amendment to Allege Use did not occur until at least 2014 or 2015."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 39 as overly broad and unduly burdensome in requiring that Del Taco provide "all facts and explain all circumstances." Subject to and without waiving the forgoing objections, Del Taco reiterates its claims in Paragraphs 28 and 33 of the Notice of

Opposition. In particular, the Eventbrite page for the “Naugles Preview Night” listed Saturday, October 11, 2014 as the date of the event. Furthermore, the Christian Ziebarth operated Twitter account did not advertise a “Naugles Preview Night” until 2014 and, upon information and belief, the flyer submitted in connection with Applicant’s amendment to allege use was not used until the July 2015 test kitchen’s opening. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 40: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 32 of the Notice of Opposition that “[u]pon information and belief, the ‘Naugles Preview Night’ referenced in the specimen submitted with Ziebarth’s Amendment to Allege Use did not occur until at least 2014 or 2015.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 40 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco answers that Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 32 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 41: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 33 of the Notice of Opposition that “[u]pon information and belief, Ziebarth did not advertise a ‘Naugles Preview Night’ until 2014.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 41 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 39.

INTERROGATORY NO. 42: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 33 of the Notice of Opposition that “[u]pon information and belief, Ziebarth did not advertise a ‘Naugles Preview Night’ until 2014.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 42 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco submits that Charles Karel Bouley, Gustavo Arellano, and Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 33 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 43: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 34 of the Notice of Opposition that “[u]pon information and belief, the ‘Naugles Preview Night’ menu depicted in the specimen submitted with Ziebarth’s Amendment to Allege Use did not exist as of March 2012, and was not created until approximately 2014 or 2015.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 43 as overly broad and unduly burdensome in requiring that Del

Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 39.

INTERROGATORY NO. 44: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 34 of the Notice of Opposition that “[u]pon information and belief, the ‘Naugles Preview Night’ menu depicted in the specimen submitted with Ziebarth’s Amendment to Allege Use did not exist as of March 2012, and was not created until approximately 2014 or 2015.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 44 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco submits that Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 34 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 45: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 35 of the Notice of Opposition that “[u]pon information and belief, neither Ziebarth nor Applicant were knowingly using the NAUGLES mark referenced in the Application for cafeteria or restaurant services as of March 2012.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 45 as overly broad and unduly burdensome in requiring that Del

Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 37.

INTERROGATORY NO. 46: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 35 of the Notice of Opposition that “[u]pon information and belief, neither Ziebarth nor Applicant were knowingly using the NAUGLES mark referenced in the Application for cafeteria or restaurant services as of March 2012.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 46 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco submits that Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 35 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 47: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 37 of the Notice of Opposition that “[u]pon information and belief, Ziebarth’s use of the NAUGLES mark on or around March 20, 2012, did not amount to ‘use in commerce’ under the meaning of 15 U.S.C. § 1051(a).”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 47 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco directs Applicant to Del Taco’s response to Interrogatory No. 37.

INTERROGATORY NO. 48: Identify all witnesses with information regarding Del Taco's allegation in paragraph 37 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark on or around March 20, 2012, did not amount to 'use in commerce' under the meaning of 15 U.S.C. § 1051(a)."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 48 as overly broad and unduly burdensome in requiring that Del Taco provide "all witnesses." Subject to and without waiving the forgoing objections, Del Taco submits that Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 37 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 49: Provide all facts and explain all circumstances that support Del Taco's allegation in paragraph 38 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark in connection with a 'Naugles Preview Night' did not constitute 'bona fide use of a mark in the ordinary course of trade' as defined by 15 U.S.C. § 1127."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 49 as overly broad and unduly burdensome in requiring that Del Taco provide "all facts and explain all circumstances." Subject to and without waiving the forgoing objections, since Applicant's principal, Christian Ziebarth, admitted that as of October 2013 he had no food trucks or restaurants nor had he offered any goods or services under the

NAUGLES mark, any use up October 2013 would only constitute token use insufficient for bona fide use of a mark in the ordinary course of trade as defined by 15 U.S.C. § 1127. This is especially true given that numerous publications indicate that Applicant did not even open a “test kitchen” until July 2015. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 50: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 38 of the Notice of Opposition that “[u]pon information and belief, Ziebarth's use of the NAUGLES mark in connection with a ‘Naugles Preview Night’ did not constitute ‘bona fide use of a mark in the ordinary course of trade’ as defined by 15 U.S.C. § 1127.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 48 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, submits that Christian Ziebarth and his partners have knowledge of the factual allegation contained in paragraph 19 of the Notice of Opposition. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 51: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 68 of the Notice of Opposition that “[a]pplicant's ownership of a federal registration for the mark identified in the Application would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 51 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, since Del Taco has long been connected to the NAUGLES mark as a result of Del Taco’s purchase of Naugles Inc., nearly thirty years ago and due to Del Taco’s longstanding use and ownership of the mark. Accordingly, Applicant’s ownership of a federal registration for NAUGLES would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 52: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 68 of the Notice of Opposition that “[a]pplicant's ownership of a federal registration for the mark identified in the Application would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 52 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco states that since paragraph 68 consists of a legal argument, there are no witnesses to identify.

INTERROGATORY NO. 53: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 79 of the Notice of Opposition that “[a]pplicant's

applied-for services in International Class 43 for cafeteria and restaurant services, as recited in the Application, are sufficiently related to Opposer's Trademark Registration No. 4,261,951 for NAUGLES in connection with clothing, namely, shirts, t-shirts, and hats since Opposer's clothing merchandise is promoted to the same or a similar class of restaurant consumers to which Applicant offers its applied-for restaurant services to.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 53 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco states that since Applicant is seeking to use NAUGLES to bring the Naugles Inc. operated restaurants back (as paragraph 23 in the Notice of Opposition explains) and Del Taco’s NAUGLES branded memorabilia is marketed to former patrons of Naugles Inc., Del Taco’s predecessor in interest, these goods and services are promoted to identical or similar consumers. Del Taco’s discovery is ongoing and we will supplement this response as we complete our search

INTERROGATORY NO. 54: Identify all witnesses with information regarding Del Taco’s allegation in paragraph 79 of the Notice of Opposition that “[a]pplicant's applied-for services in International Class 43 for cafeteria and restaurant services, as recited in the Application, are sufficiently related to Opposer's Trademark Registration No. 4,261,951 for NAUGLES in connection with clothing, namely, shirts, t-shirts, and hats since Opposer's clothing merchandise is promoted to the same or a similar class of restaurant consumers to which Applicant offers its applied-for restaurant services to.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 54 as overly broad and unduly burdensome in requiring that Del Taco provide “all witnesses.” Subject to and without waiving the forgoing objections, Del Taco states that since paragraph 79 consists of a legal argument, there are no witnesses to identify.

INTERROGATORY NO. 55: Provide all facts and explain all circumstances that support Del Taco’s allegation in paragraph 84 of the Notice of Opposition that “[r]egistration of the NAUGLES mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's Trademark Application Serial No. 85/340660 and Trademark Registration No. 4,261,951, previously used by Opposer and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake, or to deceive.”

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 55 as overly broad and unduly burdensome in requiring that Del Taco provide “all facts and explain all circumstances.” Subject to and without waiving the forgoing objections, Del Taco reiterates its claims in Paragraphs 65-84 in the Notice of Opposition describing Del Taco’s status as the successor in interest to Naugles, Inc., the entity that previously used and owned the NAUGLES trademark in connection with *restaurant services* in the United States and Del Taco’s priority in the NAUGLES trademark notwithstanding Applicant’s commission of fraud. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

INTERROGATORY NO. 56: Identify all witnesses with information regarding Del Taco's allegation in paragraph 84 of the Notice of Opposition that "[r]egistration of the NAUGLES mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's Trademark Application Serial No. 85/340660 and Trademark Registration No. 4,261,951, previously used by Opposer and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake, or to deceive."

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Interrogatory No. 56 as overly broad and unduly burdensome in requiring that Del Taco provide "all witnesses." Subject to and without waiving the forgoing objections Del Taco states that since paragraph 84 consists of a legal argument, there are no witnesses to identify.

Dated: October 30, 2017



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Applicant's attorney of record
by electronic mail on October 30, 2017, addressed as follows:

Amezcu-Moll Associates PC
Lincoln Professional Center
1122 E Lincoln Ave Suite 203
Orange, CA 92865
Attention: Ms. Kelly K. Pfeiffer, Esq.
E-mail: kpfeiffer@amalaw.net

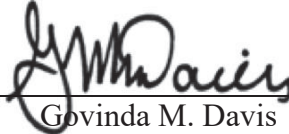

Govinda M. Davis

EXHIBIT D

(to Applicant's Motion to Compel Discovery)

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

DEL TACO, LLC,)	
)	Opposition No.: 91235706
Opposer,)	
)	U.S. Serial No.: 85040746
-vs-)	
)	
ZIEBARTH HOLDINGS, LLC,)	Mark: NAUGLES
)	
Applicant.)	

**OPPOSER’S RESPONSES TO APPLICANT’S FIRST SET OF
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120 of the Trademark Rules of Practice and TMBP § 405, Opposer Del Taco, LLC (hereinafter “Opposer” or “Del Taco”) by and through its counsel, hereby submits its objections and responses, to Applicant Naugles Corp.’s (hereinafter “Applicant”) First Set of Requests for the Production of Documents.

PRELIMINARY STATEMENTS AND GENERAL OBJECTIONS

1. These responses are based upon the best information presently available but without prejudice to the right to make modified or additional answers should better or further information become available. These responses are also made without prejudice to any right of Del Taco to offer evidence on its behalf or to object to the relevance, competence or admissibility of any document produced in response to these requests. To the extent that Applicant's Document Requests seek Del Taco's confidential information and business plans, Registrant will only produce responsive documents and things subject to the Protective Order agreed upon for this proceeding.

2. Except for the explicit facts stated herein, no incidental admissions are intended here. The fact that Del Taco responded to any of the Requests for Production of Documents and

Things is not an admission that it accepts or admits the existence of facts set forth or assumed by any Request, or that such responses constituted admissible evidence.

3. Opposer objects generally to Applicant's document requests to the extent that they:

- a. Seek information which is neither relevant to the subject matter of the pending action, nor reasonably calculated to lead to the discovery of relevant or admissible evidence;
- b. Seek information as to the knowledge of Del Taco as an entity, where a complete response would require inquiries to be made of each and every one of Del Taco 's officers, agents, and employees;
- c. Are overly broad and unduly burdensome;
- d. Seek information as to matters immunized from discovery from the attorney/client privilege or constituting attorney-work product;
- e. Require production of documents not within Del Taco 's possession, custody or control;
- f. Require Del Taco to do more than that which is required under the Federal Rules of Civil Procedure and the Trademark Rules of Practice;
- g. Misstate or provide inaccurate or misleading description of facts;
- h. Seek to require Del Taco to produce documents in some manner other than they are kept in the course of business; and
- i. Seek documents or materials without any limitation as to time.

4. Any inadvertent production of documents shall not be construed as a waiver of any right or privilege of Del Taco. Del Taco reserves the right to demand that Applicant return any inadvertently produced documents and things and all copies thereof.

SPECIFIC RESPONSES

Subject to and without waiving the preceding Preliminary Statement and General Objections and the General Objections asserted on May 12, 2017, and subject to and without waiving the specific objections noted below, Del Taco provides Supplemental Responses to Applicant's First Set of Request for Documents as follows:

REQUEST FOR PRODUCTION NO. 1: Documents and things concerning or relating to any and all restaurants open to the public between December 31, 1995 and the present that were or are named 'NAUGLES' and owned by Del Taco.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 1 as overly broad and unduly burdensome as requesting that Del Taco provide information regarding "all restaurants." Del Taco further objects to the extent that its response could be deemed an admission since there are many ways to use a trademark in connection with restaurant services apart from use of the mark as the name of a restaurant. Subject to and without waiving the forgoing objections, Del Taco states that no responsive documents exist as Del Taco did not open any restaurants between December 31, 1995, and the present that were or are named "NAUGLES." Del Taco's discovery is ongoing and we will supplement this response as we complete our search.

REQUEST FOR PRODUCTION NO. 2: Documents and things concerning or relating to Del Taco's closure of any and all NAUGLES restaurants.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 2 as overly broad and unduly burdensome as it contains no limitation as to scope or time frame.

REQUEST FOR PRODUCTION NO. 3: Documents and things concerning or relating to Del Taco's plans to reopen any NAUGLES restaurants.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 3 on relevance grounds as it seeks information outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objection, Del Taco states that, no relevant and non-privileged documents responsive to this request exist. Del Taco's discovery is ongoing and we will supplement this response as we complete our search.

REQUEST FOR PRODUCTION NO. 4: Documents and things concerning or relating to USPTO application serial no 85340660, including without limitation, documents concerning or relating to Del Taco's decision to file said application.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 4 on relevance grounds as it seeks information outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 5: Documents and things concerning or relating to Del Taco's *bona fide* intent to use the NAUGLES mark in U.S. commerce in connection with the services identified in USPTO application serial no. 85340660 prior to filing said application.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 5 on relevance grounds as it seeks information regarding U.S. Trademark Application No. 85340660 which is outside the scope of this opposition proceeding. Subject to and without waiving the objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 6: Documents and things concerning or relating to Del Taco's current *bona fide* intent to use the NAUGLES mark in U.S. commerce in connection with the services identified in USPTO application serial no. 85340660.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 6 on relevance grounds as it seeks information regarding U.S. Trademark Application No. 85340660 which is outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 7: Documents and things concerning, relating to, supporting or negating Del Taco's contention that it currently holds rights in the NAUGLES trademark for "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 7 on relevance grounds as it seeks information regarding Del Taco's use of the NAUGLES mark which is outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 8: Documents and things Del Taco intends to rely upon to support Del Taco's contention that it currently holds rights in the NAUGLES trademark for "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 8 to the extent it seeks information protected by attorney client privilege or the work product doctrine. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 9: Documents and things concerning, relating to, supporting or negating Del Taco's contention that Del Taco has actually used the NAUGLES trademark (in any format or style) in U.S. commerce in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 9 on relevance grounds as it seeks information regarding Del Taco's use of the NAUGLES mark which is outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 10: Documents and things Del Taco intends to rely upon to support its contention that Del Taco has actually used the NAUGLES trademark (in any format or style) in U.S. commerce in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 10 on relevance grounds as it seeks information regarding Del Taco's use of the NAUGLES

mark which is outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 11: Documents and things concerning, relating to or evidencing Del Taco's alleged date of first use of the NAUGLES trademark (in any format or style) in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 11 on relevance grounds as it seeks information regarding Del Taco's use of the NAUGLES mark which is outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 12: Documents and things concerning, relating to or evidencing Del Taco's alleged date of first use in U.S. commerce of the NAUGLES trademark (in any format or style) in connection with "restaurant services."

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 12 on relevance grounds as it seeks information regarding Del Taco's use of the NAUGLES mark which is outside the scope of this opposition proceeding. Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 13: Documents and things concerning or relating to all advertising campaigns, signs, displays or commercials used or offered by Del Taco which include the NAUGLES trademark from 2000 to present including, without limitation, the items depicted in the photographs attached hereto as Exhibit A.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 13 as overly broad, unduly burdensome, and on the grounds that it seeks production of documents outside the scope of this proceeding. Subject to and without waiving the foregoing objections, Del Taco states that it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 14: Documents and things concerning or relating to any promotional outlet, including without limitation Del Taco's website, magazines, blogs, newspapers, social media sites, television, radio, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs including signage for restaurants, sales displays including point of sale advertising for restaurants, posters and/or other materials in which Del Taco's NAUGLES restaurant services or products have been promoted and/or may be promoted in the future.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 14 as overly broad, unduly burdensome, and on the grounds that it seeks production of an extensive list of documents namely, "any promotional outlet, including without limitation Del Taco's website, magazines, blogs, newspapers, social media sites, television, radio, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs including signage for restaurants, sales displays including point of sale advertising for

restaurants, posters and/or other materials.” Additionally, Del Taco objects to Request No. 14 on relevance grounds as it seeks information regarding Del Taco’s use of the NAUGLES mark which is outside the scope of this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 15: Documents and things concerning or relating to Del Taco’s allegation in paragraph 2 of the Notice of Opposition that “Opposer owns and maintains common-law rights in the NAUGLES mark in connection with its clothing and food items.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 16: Documents and things concerning or relating to Del Taco’s allegation in paragraph 4 of the Notice of Opposition that “Opposer has expended substantial amounts of time, money and effort in advertising and promoting its NAUGLES mark over the years and in preserving the goodwill associated therewith.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 17: Documents and things concerning or relating to Del Taco’s allegation in paragraph 5 of the Notice of Opposition that “Opposer’s NAUGLES mark has become distinctive of, and associated in the minds of the trade and purchasing public with

Opposer as a well-known provider of goods and services listed above and offered by Opposer under the NAUGLES mark.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 18: Documents and things concerning or relating to Del Taco’s allegation in paragraph 7 of the Notice of Opposition that “Opposer continues to sell menu items associated with NAUGLES in Opposer's restaurants today.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, no relevant and non-privileged documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 19: Documents and things concerning or relating to Del Taco’s allegation in paragraph 11 of the Notice of Opposition that “[s]ince filing the Application, Applicant and Applicant's principal and predecessor in interest, Ziebarth, have attempted to secure the NAUGLES trademark by any means necessary, including the commission of fraud on the US Trademark Office.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 20: Documents and things concerning or relating to Del Taco’s allegation in paragraph 19 of the Notice of Opposition that “[u]pon information and belief, neither Applicant nor Ziebarth actually used the applied for mark in commerce and in connection with cafeteria and restaurant services as of March 20, 2012.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 21: Documents and things concerning or relating to Del Taco's allegation in paragraph 32 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' referenced in the specimen submitted with Ziebarth's Amendment to Allege Use did not occur until at least 2014 or 2015."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 22: Documents and things concerning or relating to Del Taco's allegation in paragraph 33 of the Notice of Opposition that "[u]pon information and belief, Ziebarth did not advertise a 'Naugles Preview Night' until 2014."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 23: Documents and things concerning or relating to Del Taco's allegation in paragraph 34 of the Notice of Opposition that "[u]pon information and belief, the 'Naugles Preview Night' menu depicted in the specimen submitted with Ziebarth's Amendment to Allege Use did not exist as of March 2012, and was not created until approximately 2014 or 2015."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 24: Documents and things concerning or relating to Del Taco's allegation in paragraph 35 of the Notice of Opposition that "[u]pon information and belief, neither Ziebarth nor Applicant were knowingly using the NAUGLES mark referenced in the Application for cafeteria or restaurant services as of March 2012."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 25: Documents and things concerning or relating to Del Taco's allegation in paragraph 37 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark on or around March 20, 2012, did not amount to 'use in commerce' under the meaning of 15 U.S.C. § 1051(a)."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 26: Documents and things concerning or relating to Del Taco's allegation in paragraph 38 of the Notice of Opposition that "[u]pon information and belief, Ziebarth's use of the NAUGLES mark in connection with a 'Naugles Preview Night' did not constitute 'bona fide use of a mark in the ordinary course of trade' as defined by 15 U.S.C. § 1127."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 27: Documents and things concerning or relating to Del Taco's allegation in paragraph 68 of the Notice of Opposition that "[a]pplicant's ownership of a federal registration for the mark identified in the Application would falsely or misleadingly represent that Applicant's purported services are those of Opposer or Opposer's predecessor in interest."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 28: Documents and things concerning or relating to Del Taco's allegation in paragraph 79 of the Notice of Opposition that "[a]pplicant's applied-for services in International Class 43 for cafeteria and restaurant services, as recited in the Application, are sufficiently related to Opposer's Trademark Registration No. 4,261,951 for NAUGLES in connection with clothing, namely, shirts, t-shirts, and hats since Opposer's clothing merchandise is promoted to the same or a similar class of restaurant consumers to which Applicant offers its applied-for restaurant services to."

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 29: Documents and things concerning or relating to Del Taco's allegation in paragraph 84 of the Notice of Opposition that "[r]egistration of the NAUGLES mark by Applicant is barred by the provisions of 15 U.S.C. § 1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's Trademark Application Serial No. 85/340660 and Trademark Registration No. 4,261,951, previously used by Opposer

and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake, or to deceive.”

RESPONSE: Subject to and without waiving the General Objections, Del Taco states that, it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 30: Documents and things concerning or relating to any license agreements Del Taco has entered into with respect to the NAUGLES mark.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 30 as overly broad and unduly burdensome in requiring that Del Taco produce “any license agreements” related to the NAUGLES mark, those of which may be unrelated and irrelevant to the trademark at issue in this opposition proceeding. Subject to and without waiving the General Objections, Del Taco states that, no relevant and non-privileged documents responsive to this request exist. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

REQUEST FOR PRODUCTION NO. 31: Documents and things concerning or relating to Del Taco’s present and/or planned marketing plans for Del Taco’s NAUGLES products or services including without limitation all advertising and promotional materials which relate or refer to Del Taco’s NAUGLES products or services.

RESPONSE: In addition to the General Objections asserted above, Del Taco objects to Request No. 31 on relevance grounds as it seeks information regarding Del Taco’s use and or planned use of the NAUGLES mark which is outside the scope of this opposition proceeding. Subject to and without waiving the General Objections, Del Taco states that it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 32: Documents and things concerning or relating to Del Taco's monthly expenditures to date and planned future expenditures with respect to Del Taco's NAUGLES restaurant services or products.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 32 as overly broad and unduly burdensome and vague with respect to the term "monthly expenditures" and "future expenditures." Additionally, Del Taco objects to this request as it requests information unrelated to any claim or defense in this opposition proceeding. Subject to and without waiving the foregoing objections, Del Taco states that, no documents exist. Del Taco further notes that discovery is ongoing and reserves the right to supplement this response as more information becomes available.

REQUEST FOR PRODUCTION NO. 33: Documents and things concerning or relating to any consumer or marketing testing Del Taco has received or conducted relating to Del Taco's use of the NAUGLES trademark for any services or products.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 33 as it seeks production of documents unrelated to any claim or defense in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 34: Documents and things concerning or relating to Applicant's NAUGLES mark, including without limitation news articles about Applicant and/or Naugles Corp., communication with third parties, social media pages, social media comments, blogs and blog comments.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 34 as overly broad and unduly burdensome on the grounds that it would require Del Taco to produce thousands of documents, some of which are within Applicant's control. Additionally Del Taco objects to Request No. 34 as it seeks production of documents unrelated to any claim or defense in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 35: Documents and things concerning or relating to discussions, correspondence, disputes, controversies or proceedings of any kind or nature between Del Taco and any third party which involved Del Taco's NAUGLES mark, including without limitation, communication on social media pages and blogs.

RESPONSE: In addition to the General Objections asserted above, Del Taco further objects to Request No. 35 as overly broad and unduly burdensome as to the extent that the request seeks information regarding goods and services that are not at issue in this opposition proceeding. Additionally, Del Taco objects to this Request to the extent it seeks production of documents and things protected by attorney-client or work product privilege. Subject to and without waiving the foregoing objections, Del Taco states that it will produce all relevant and non-privileged documents responsive to this request as related to Applicant and Christian Ziebarth's infringing use of the NAUGLES trademark in connection with clothing and restaurant services. Del Taco further states that it is unaware of any third party use of NAUGLES in restaurant services and further objects to this request on the grounds that it seeks documents regarding Applicant's use that are already in Applicant's possession.

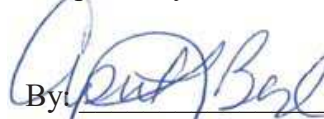
REQUEST FOR PRODUCTION NO. 36: Documents and things Del Taco relied upon in drafting its Notice of Opposition.

RESPONSE: Subject to and without waiving the foregoing objections, Del Taco states that it will produce all relevant and non-privileged documents responsive to this request.

REQUEST FOR PRODUCTION NO. 37: Documents and things upon which Del Taco intends to rely to argue against Applicant's affirmative defenses alleged in Applicant's Answer.

RESPONSE: Subject to and without waiving the foregoing objections, Del Taco states that it will produce all relevant and non-privileged documents responsive to this request.

Respectfully submitted,



By: April L. Besl

Govinda M. Davis

DINSMORE & SHOHL LLP

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Cincinnati, Ohio 45202

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Attorneys for Opposer

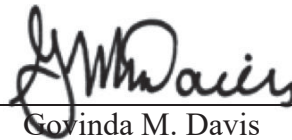
Del Taco, LLC

Dated: October 30, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of Opposer's Responses to Applicant's First Set of Requests for the Production of Documents was served on Applicant's attorney of record by electronic mail on October 30, 2017, addressed as follows:

Amezcu-Moll Associates PC
Lincoln Professional Center
1122 E Lincoln Ave Suite 203
Orange, CA 92865
Attention: Ms. Kelly K. Pfeiffer, Esq.
E-mail: kpfeiffer@amalaw.net



Corinda M. Davis

EXHIBIT E

(to Applicant's Motion to Compel Discovery)

Naugles v Del Taco

chuck.neal@dinsmore.com

Fri 11/3/2017 2:56 PM

To: Kelly Pfeiffer <kpfeiffer@amalaw.net>;

Cc: april.besl@dinsmore.com <april.besl@dinsmore.com>; govinda.davis@dinsmore.com <govinda.davis@dinsmore.com>;
leanthony.edwards@dinsmore.com <leanthony.edwards@dinsmore.com>;

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Chuck Neal
eDiscovery Analyst

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EXHIBIT F

(to Applicant's Motion to Compel Discovery)

Del Taco, LLC v. Ziebarth Holdings, LLC - Del Taco's discovery responses

Kelly Pfeiffer

Fri 11/3/2017 11:26 AM

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Cc: Rose Amezcua-Moll <rose@amalaw.net>;

1 attachments (210 KB)

Pfeiffer to Besl (Lack of document production and inadequate discovery responses) 11-3-17.pdf;

Please see attached correspondence.

Thank you,

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November 3, 2017

VIA EMAIL ONLY

Ms. April Besl
DINSMORE & SHOHL LLP
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Cincinnati, OH 92630

**Del Taco LLC v. Ziebarth Holdings, LLC – Opposer’s Lack of Document
Production and Insufficient/Incomplete Discovery Responses**

Dear Ms. Besl,

This letter constitutes Applicant ZIEBARTH HOLDINGS, LLC.’s (“Applicant”) good-faith attempt to resolve the following discovery disputes informally prior to filing a motion to compel as required under 37 C.F.R. §2.120(f)(1):

- Del Taco’s failure to provide any substantive response to Applicant’s Interrogatories, Nos. 20 through 23, and 33;
- Del Taco’s incomplete and/or non-responsive answers to Applicant’s Interrogatories Nos. 24 and 25;
- Del Taco’s failure to produce any responsive documents in response to Applicant’s Requests for Production of Documents, Set one; and
- Del Taco’s incomplete and/or non-responsive answers to Applicant’s Requests for Production of Documents, Nos. 2, 33, 34 and 35.

On September 29, 2017, Applicant’s Interrogatories, Set One, and Requests for Production of Documents, Set One, were served on Del Taco. When Del Taco served its responses on October 30, 2017, said responses fell short of what is considered meaningful, substantive, and in good faith. Further, Del Taco failed to provide a single, responsive document.

I. MANY OF DEL TACO’S ASSERTED OBJECTIONS ARE IMPROPER.

A. “Unrelated To The Subject Matter” And “Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence”

“Relevance” is a very broad concept in discovery. Each party generally has the right to “obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case,” considering the following factors:

- the importance of the issues at stake in the action,
- the amount in controversy,
- the parties' relative access to relevant information,
- the parties' resources,
- the importance of the discovery in resolving the issues, and
- whether the burden or expense of the proposed discovery outweighs its likely benefit.

Fed. R. Civ. P. 26(b)(1).

Whether the information sought would be admissible evidence at trial is not the test under Rule 26. “Information within this scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1). Each party is entitled to discovery of nonprivileged information that is “relevant to any party's claim or defense” so long as it is “proportional to the needs of the case” in light of the factors set forth in Rule 26(b)(1).

Del Taco’s pleadings, i.e., the Notice of Opposition, by making the allegations that it does, gives Applicant the right to obtain related discovery and mandatory disclosures from Del Taco. The issues contained in Applicant’s discovery requests are tailored to the allegations made in the Notice of Opposition. As such, Del Taco’s objections on this basis are not well-taken.

B. Objections Based On “Confidential, Proprietary And/Or Trade Secret”

The Board’s standard protective order is automatically imposed in this proceeding. Parties cannot withhold properly discoverable information on the basis of confidentiality since the terms of the Board’s standard protective order automatically apply. *See* 37 C.F.R. § 2.116(g); *see also, e.g., Intex Recreation Corp. v The Coleman Co.*, 117 U.S.P.Q.2d 1799, 1801 (T.T.A.B. 2016) (party may not redact confidential information from documents responsive to document requests); *Amazon Technologies, Inc. v. Wax*, 93 U.S.P.Q.2d 1702, 1706 n.6 (T.T.A.B. 2009).

During our discovery conference on September 25, 2017, the parties agreed to utilize the Board's standard protective order. The Board's standard protective order provides for two tiers of protected information (1) Confidential and (2) Confidential – For Attorneys' Eyes Only (trade secret/commercially sensitive). Parties and their attorneys shall have access to information designated as confidential, subject to any agreed exceptions. Outside counsel, but not in-house counsel, shall have access to information designated as trade secret/commercially sensitive.

Because we agreed to utilize the Board's standard protective order and because said order makes provisions for the discovery and handling of information and documents considered "confidential, proprietary and/or trade secret," there is no basis for Del Taco to make objections along these lines. Be advised that, in instances where a party has refused to provide discoverable information on such grounds, the Board, where appropriate, may order the party to provide such information consistent with the terms of the protective order. 37 C.F.R. §2.120(h).

II. DEL TACO'S RESPONSES TO INTERROGATORIES MUST BE AMENDED.

Interrogatories may seek any information that is discoverable under Rule 26(b) of the Federal Rules of Civil Procedure. *Gould Inc. v. Sanyo Electric Co.*, 179 U.S.P.Q. 313, 314 (T.T.A.B. 1973) ("interrogatories may relate to any matters which can be inquired into under FRCP 26(b)"). "A party may take discovery as to matters that are relevant to its claims and defenses (i.e., those specifically raised in the pleadings)." *See Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 181 U.S.P.Q. 286, 287 (T.T.A.B. 1974) (opposer must answer interrogatories concerning allegations in notice of opposition); T.B.M.P. §402.01.

A. Interrogatories Nos. 20, 21, 22 and 23

These interrogatories seek information regarding signs seen at a Del Taco restaurant in or about April of 2014 and witnesses with knowledge of the same. Del Taco gave no substantive responses, asserting only that its "discovery is ongoing" and that it will supplement the responses "as we complete our search."

First, Del Taco brought this Opposition and, therefore, should be ready with the necessary evidence to make its case, especially any evidence that is within its own possession, custody or control. Indeed, Del Taco's Notice of Opposition and various discovery responses tout this "advertising campaign" from which these pictures were apparently taken as a basis for its claim that it still has rights in the NAUGLES trademark for restaurant services. A statement that "discovery is ongoing" is unacceptable at this stage.

Second, as explained above, the Federal Rules and case law allow Applicant to seek discovery on matters that are relevant to its claims and defenses. The Notice of Opposition and Applicant's Answer thereto specifically raise the issues of Del Taco's claimed rights in the NAUGLES mark for restaurant services. As such, Del Taco must amend its responses to Interrogatories Nos. 20, 21, 22 and 23.

B. Interrogatories Nos. 24 and 25

These interrogatories seeks information regarding Del Taco's most recent use of the NAUGLES mark in connection with restaurant services, including specific dates of said use. Instead of providing a good-faith and substantive response, Del Taco directed Applicant to its response to Interrogatory No. 10.

First, such a response is in violation of the Federal Rules of Civil Procedure, as discussed in detail below in Section II. D. Second, Del Taco's response to Interrogatory 10 provides no dates, and, therefore, is nonresponsive to these interrogatories. If Del Taco is claiming that its most recent usage was the alleged "advertising campaign" from April of 2014, then it must, in fact, state as much. If, however, Del Taco is claiming that it has used the NAUGLES mark in connection with restaurant services more recently than April of 2014, it must amend its responses to reflect this allegation.

Again, Applicant can take discovery on matters that are relevant to its claims and defenses. The Notice of Opposition specifically touts Del Taco's claimed rights in the NAUGLES mark for restaurant services. Given the foregoing, Del Taco must amend its responses to Interrogatories Nos. 24 and 25.

C. Interrogatory No. 33

This interrogatory seeks information regarding Del Taco's allegation in the Notice of Opposition that it "continues to sell menu items associated with NAUGLES" in its Del Taco restaurants today. Del Taco gave no substantive response, asserting only that its "discovery is ongoing" and that it will supplement the response "as we complete our search."

Again, Del Taco brought this Opposition and, at this stage, there is no good reason why it cannot answer a basic interrogatory regard what food it serves in its own restaurants. A claim that "discovery is ongoing" is a blatant stall tactic, evidenced by the fact that the responsive information is within Del Taco's own possession, custody or control. Del Taco is in the position of the plaintiff. As such, it surely did its due diligence prior to initiating this action and is prepared to give information on this assertion made in its Notice of Opposition.

Further, Del Taco's response to Interrogatory No. 34 actually identifies two witnesses that have information regarding Del Taco's claimed menu items. This begs the questions: how does Del Taco know these individuals have information regarding this topic if counsel has not already asked them? If these two individuals have already been asked about Del Taco's menu items, why was the information they gave to counsel not provided in response to Interrogatory No. 33? Counsel could only have identified witnesses that have this information by asking said witnesses if they do, in fact, have knowledge of the claimed menu items and then obtaining the information from the witnesses. A response that "discovery is ongoing" is not even logical.

Given the foregoing, Del Taco must amend its response to Interrogatory No. 33.

D. Interrogatories Nos. 7, 8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 41, 43, 45, and 47

In response to Interrogatories Nos. 7, 8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 41, 43, 45, and 47, Del Taco merely refers Applicant to another response given to a different interrogatory, *i.e.*, "Del Taco directs Applicant to its response to Interrogatory No. X." These responses are in violation of the Federal Rules of Civil Procedure and the Trademark Rules and, therefore, must be amended.

Federal Rule of Civil Procedure 33(b)(3) clearly states, "Each interrogatory must, to the extent it is not objected to, be answered *separately* and *fully* in writing under oath." (emphasis added); TBMP § 405.04(b). A response that simply refers Applicant to a separate discovery response does not constitute a "separate" nor "full" response. As such, Del Taco's responses to Interrogatories Nos. 7, 8, 11, 13, 14, 17, 18, 19, 24, 25, 26, 27, 29, 41, 43, 45, and 47 violation the Federal Rules of Civil Procedure and must be amended.

As a reminder, a party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request. *See No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1555 (T.T.A.B. 2000). A responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto (provided that the requesting party raises the matter by objecting to the evidence in question) unless the response is supplemented in a timely fashion pursuant to Fed. R. Civ. P. 26(e). *See Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 U.S.P.Q.2d 1789, 1791-92 (T.T.A.B. 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718, 1720 (T.T.A.B. 1987); *see also* T.B.M.P. § 527.01(e) ("Estoppel Sanction").

III. DEL TACO MUST MAKE A DOCUMENT PRODUCTION.

First, it goes without saying that a party may be compelled to produce records or other evidence in its possession or control in response to a demand for inspection under the Federal Rules and the Trademark Rules of Practice. The production must be completed no later than the time specified in the request. Fed. R. Civ. P. 34(b)(2)(B). Del Taco failed to produce even a single page in response to Applicant's Requests.

To avoid a motion to compel, Del Taco must make a thorough and complete document production in response to Applicant's requests on or before **Friday, November 10, 2017**. During the telephonic conversation today between three attorneys from your firm and me, Ms. Besl indicated that a document production would be forthcoming today. Please be advised that, even if we do, in fact, receive a timely document production, Applicant still reserves the right to object if the production is incomplete.

IV. DEL TACO'S RESPONSES TO THE REQUESTS FOR PRODUCTION OF DOCUMENTS MUST BE AMENDED.

As an initial matter, we note that Del Taco's responses make reference to "General Objections asserted on May 12, 2017," a date which precedes the filing of the Notice of Opposition. Del Taco's responses also state that it is providing "Supplemental Responses to Applicant's First Set of Request for Documents," which is also nonsensical. We assume these statements are typographical errors and/or were inadvertently left in the document after being taken from responses from a previous proceeding. As such, we have given these statements no weight.

A. Request No. 2

Request No. 2 seeks documents related to Del Taco's closure of any and all NAUGLES restaurants. Del Taco provided no response, only meritless objections, namely that this Request "contains no limitation in scope or time."

Del Taco has asserted rights in the NAUGLES trademark for restaurant services. As such, Applicant has the right to discovery on any NAUGLES restaurants owned or operated by Del Taco, including closures of the same. While Del Taco takes issue with the fact that no limitation was placed on the scope or time of this request, it is not an excuse or reason to fail to answer altogether. As such, Del Taco must provide a substantive response to Request No. 2 and produce responsive documents if any exist.

B. Request No. 33

Request No. 33 seeks documents related to any consumer or marketing testing Del Taco has received or conducted relating to Del Taco's use of the NAUGLES trademark for

any services or products. Del Taco provided no response, only meritless objections, namely that this Request “seeks production of documents unrelated to any claim or defense.”

The Notice of Opposition alleges that Del Taco enjoys residual goodwill in the NAUGLES trademark and Del Taco has based its claim of Misrepresentation of Source on this allegation (§§ 4, 60, 67, 69, 81). Any consumer or marketing tests Del Taco has received or conducted relating to the NAUGLES trademark would directly speak to the veracity of this allegation. Therefore, the documents sought are, in fact, related to a claim or defense. As such, Del Taco must provide a substantive response to Request No. 33 and produce responsive documents if any exist.

C. Request No. 34

Request No. 34 seeks documents related to Applicant’s NAUGLES mark, “including without limitation news articles about Applicant and/or Naugles Corp., communication with third parties, social media pages, social media comments, blogs and blog comments.” Del Taco provided no response, only meritless objections, namely that this Request “seeks production of documents unrelated to any claim or defense.”

Del Taco’s allegations in the Notice of Opposition make reference to Applicant’s Twitter Account (§§ 22-24) as well as specific news articles about Applicant and/or Naugles Corp. (§§ 27-30). At a minimum, these referenced documents are responsive to Request No. 34. As such, there is no credible reason for Del Taco’s failure to answer or produce any responsive documents. While Del Taco takes issue with the fact that no limitation was placed on the scope this request, it is not an excuse or reason to fail to answer altogether.

The documents sought are, in fact, related to a claim or defense. As such, Del Taco must provide a substantive response to Request No. 34 and produce responsive documents if any exist.

D. Request No. 35

Request No. 35 seeks documents related to “ discussions, correspondence, disputes, controversies or proceedings of any kind or nature between Del Taco and any third party which involved Del Taco’s NAUGLES mark, including without limitation, communication on social media pages and blogs.” Del Taco’s response is non-responsive in that it states that only documents related to “Applicant and Christian Ziebarth’s infringing use of the NAUGLES trademark” will be produced. Request No. 35 specifically asks for documents between Del Taco and *any third party*. Because Applicant and Christian Ziebarth are not “third parties,” this response is non-responsive.

In addition, Del Taco's response includes a statement that "it is unaware of any third party use of NAUGLES in restaurant services," but fails to include a statement that no responsive documents exist, in violation of the Federal Rules of Civil Procedure. There are only three appropriate responses to a request for production of documents: 1) a statement that there are responsive documents and that either they will be produced or will be withheld on a claim of privilege; 2) a statement of an objection with appropriate reasons; or 3) a statement that no responsive documents exist (e.g., lost or destroyed or that the documents are not within its possession, custody, or control). *See No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1556 (T.T.A.B. 2000); Fed. R. Civ. P. 34.

Given the foregoing, Del Taco must provide a response that answers the request and produce responsive documents if any exist. If no responsive documents exist, Del Taco must state as such.

V. CONCLUSION

Each party has a duty to make a good faith effort to satisfy the discovery needs of its adversary. Fed. R. Civ. P. 26(g); *see Emilio Pucci International BV v. Sachdev*, 118 U.S.P.Q.2d 1383, 1387 (T.T.A.B. 2016) (taking into account the grounds for opposition and proportionality, the Board found discovery requests tailored to the claims and framed to seek information that is clearly relevant); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303, 1305 (T.T.A.B. 1987); T.B.M.P. §402.01. Del Taco's referenced discovery responses fall short of what is required to comply with its discovery obligations. Del Taco's failure to produce even a single document in response to Applicant's requests is unacceptable.

Based on the foregoing discussion and law, we ask that Del Taco reconsider its objections and responses to Applicant's discovery in order to avoid a motion to compel. **We ask that Del Taco provide amended responses and a document production no later than Friday, November 10, 2017.** Should Del Taco decline to do so, we will file a Motion to Compel substantive responses and a document production.

Sincerely,



Kelly K. Pfeiffer

cc: Rose Amezcua-Moll, Esq.