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

Proceeding	91255466
Party	Defendant Red Bear Provisions LLC
Correspondence Address	D JAMES NAHIKIAN NAHIKIAN GLOBAL INTELLECTUAL PROPERTY ET AL 1636 NORTH WELLS STREET SUITE 415 CHICAGO, IL 60614-6009 UNITED STATES Primary Email: jnahikian@nahikianglobal.com Secondary Email(s): info@nahikianglobal.com 312-399-3099
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	D. James Nahikian
Filer's email	jnahikian@nahikianglobal.com , info@nahikianglobal.com
Signature	/djamesnahikian/
Date	02/01/2021
Attachments	motion to compel discovery.pdf(186102 bytes) exhibits 1 to 16.pdf(6035694 bytes) nahikian declaration.pdf(81326 bytes)

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

<u>BLACK BEAR ENTERPRISES, INC.,</u>)	
)	
Opposer,)	
)	
v.	)	Opposition No.: 91255466 (parent case)
	)	Opposition No.: 91255467
	)	Opposition No.: 91255790
	)	Opposition No.: 91255793
RED BEAR PROVISIONS, LLC)	
d/b/a RED BEAR,)	
)	
Applicant.)	

APPLICANT'S MOTION TO COMPEL

Pursuant to 37 C.F.R. § 2.120(f), Fed. R. Civ. P. 26(b), and Sections 523 and 524 of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), Applicant Red Bear Provisions, LLC (“Applicant”), through the undersigned legal counsel of record, does hereby move the Trademark Trial and Appeal Board (“Board”) to compel Opposer Black Bear Enterprises, Inc. (“Opposer”) to produce, admit or deny, answer and otherwise respond to Applicant’s requests for production of documents and things, requests for admissions, and interrogatories in full. Applicant also moves under Fed. R. Civ. P. 36(a)(6) to determine the sufficiency of each of Opposer’s objections to Applicant’s requests for admissions. Applicant further moves, without consent by Opposer, to extend the discovery period by ninety days and reset the trial calendar.

Applicant has attached Exhibits 1-16 hereto as well as the Declaration of D. James Nahikian dated February 1, 2021.

As of filing this motion, Applicant has not received a single document, admission, denial, answer, written description, or thing in response to its timely discovery requests. *Please see* Declaration of D. James Nahikian dated February 1, 2021. Opposer is maintaining objections to

each and every discovery means propounded by Applicant on the general basis that each trademark registration or application and good identified in connection with this consolidated action itself counts independently towards the unenlarged statutory limitations of seventy-five per document requests, seventy-five requests for admissions, and seventy-five interrogatories. (Exhibits 9-11, 13) Thus, Opposer has objected to a single interrogatory, No. 9, because Opposer claims this interrogatory itself contains more than 810 discrete parts, each to be counted separately towards the limits. (Exhibit 9 at ¶ 4) (In a parallel opposition proceeding between the parties and/or their affiliates, No. 91245797 for the Red Bear Logo promoted with the marks at issue here, Opposer initially objected to Applicant's interrogatories on the false legal basis that the Advisory Committee Notes appurtenant to Fed. R. Civ. P. 33, the 1993 Amendment, mandate "[e]ach party is allowed to serve 25 interrogatories" and not the 75 actually permitted under law.) (Exhibit 15) Given Opposer's behavior in the parallel opposition proceeding, for example Opposer recently introduced an undeclared trial witness, Michael Eni who gave ambush testimony, please see Exhibit 16, Applicant directed true copies of TBMP §§ 405.0337 C.F.R. § 2.120(c-d), 406.05/37 C.F.R. 2.120(e), and 407.05/37 C.F.R. §2.120(i) to counsel for Opposer in connection with Applicant's discovery requests on November 23, 2020. (Exhibit 2) Applicant has also provided Opposer's legal counsel with TBMP § 405.03(c), and related, which states that discovery directed to multiple registrations asserted in a consolidated action are to be counted as unitary. (Exhibits 2, 12 and 14) Opposer maintains its general counting objection, and discovery is set to close soon. (Exhibit 13) Applicant has reached out to Opposer in good faith, particularly in the parallel opposition proceedings, and it has been nipped on the nose at most junctures with begrudging cooperation by Opposer. (Exhibits 12 and 14; see also Exhibit 16, which shows

Declarant Michael Eni was not disclosed in Opposer's pre-trial disclosures but testified anyway; Exhibit 16) Applicant is entitled to receive its reasonable discovery evidence.

LEGAL BACKGROUND

The Board has the power to compel a party to comply with the other party's reasonable discovery requests. 37 C.F.R. § 2.120(e), TBMP § 523.01. The motion to compel must be filed prior to the deadline for pretrial disclosures. 37 C.F.R. § 2.120(f), TBMP § 523.03. The moving party's motion must contain a copy of the discovery requests and answers or objections made to those requests. 37 C.F.R. § 2.120(f), TBMP 523.02. The moving party also must assert that it has made a good-faith effort to resolve the discovery dispute with the opposite party by conference or correspondence. *Id.*

Each of these requirements is met here. The discovery period has not yet closed and Applicant has proposed various extensions of the discovery and trial deadlines, which Opposer has ignored, thus, this motion is timely filed. Attached are copies of the relevant discovery requests and responses together with the associated formal correspondence: Applicant Red Bear Provisions, LLC's First Set of Interrogatories Nos. 1-30 (Applicant subsequently amended to split No. 1 into two separate interrogatories pursuant to Opposer's objection and so there are thirty-two interrogatories outstanding in total), Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35, Applicant Red Bear Provisions, LLC's Second Set of Requests for Production of Documents and Things Nos. 36-45, Applicant Red Bear Provisions, LLC's First Set of Requests for Admissions Nos. 1-34, and Applicant Red Bear Provisions, LLC's Second Set of Requests for Admissions Nos. 35-38. (Exhibits 3-5 and 7-8) Attached as the associated formal correspondence which appears in the form of three separate letters: Opposer's General Objections to Applicant's Interrogatories of December 22, Opposer's

General Objections to Applicant's Requests for Production of Documents and Things of December 22, and Opposer's General Objections to Applicant's Requests for Admissions of December 22. (Exhibits 9-11) Additional formal communications addressing discovery, including Applicant's attempts to jointly extend the discovery period and address Opposer's reasonable objections, is attached. (Exhibit 12 and 14) Applicant has made a good-faith effort to resolve these discovery disputes with Opposer, but Opposer is unwilling to provide the relevant information Applicant has sought. (Please see attached Declaration of D. James Nahikian dated February 1, 2021) Applicant includes copies of the relevant correspondence with Opposer's counsel, as summarized below. Finally, Applicant observes there is a parallel opposition co-pending between the parties and/or their affiliates, and Opposer initially objected to Applicant's interrogatories on the false legal basis that the Advisory Committee Notes appurtenant to Fed. R. Civ. P. 33, the 1993 Amendment, mandate "[e]ach party is allowed to serve 25 interrogatories" and not the seventy-five actually permitted under law. (Exhibit 15)

FACTUAL BACKGROUND

The Board directed the parties to hold their discovery conference by August 3, 2020. (TTABVUE 8) For reasons still not fully understood by the undersigned attorney, Applicant's legal counsel timely showed up for a telephonic discovery conference scheduled for August 3 but Opposer's counsel failed to show. (Exhibit 1) The parties actually held their discovery conference on August 24, and settlement was discussed with positions being offered by both parties. *Id.*

Applicant plans to rely upon substantial evidence learned in the co-pending Opposition No. 91245797, nonetheless, Applicant propounded new interrogatories and discovery requests to counsel for Opposer on November 23 and 24, 2020. (Exhibits 3-5) Applicant requested that

Opposer acknowledge receipt of the requests but did not receive confirmation until days later. (Exhibit 6) Applicant propounded a subsequent set of interrogatories and discovery requests to Opposer on December 1, 2020. (Exhibits 7-8) Applicant's interrogatories and discovery requests numbered far fewer than the seventy-five for each type permitted by law. (Exhibits 3-5 and 7-8)

Applicant included a "Definitions and Instructions" section for all discovery propounded. (Exhibits 3-5 and 7-8) This section defines "Black Bear" as meaning:

Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

Id. The section defines "Red Bear" as meaning "the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793." *Id.* The section also defines "Black Bear's Trademarks" as meaning all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear." *Id.* The section defines "Red Bear's Trademarks" as meaning "the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear." *Id.* The section defines "Black Bear's Goods" as meaning "the goods identified as being used in United States commerce in connection with Black Bear's Trademarks." *Id.* The section further defines "Red Bear's Goods" as meaning "the goods identified as being used in United States commerce in connection with Red Bear's Trademarks." *Id.*

Concurrently with its November 23 and 24 interrogatories and discovery requests, Applicant transmitted copies of TBMP §§ 405.03(a)/37 C.F.R. § 2.120(d), 406.05(a)/37 C.F.R. 2.120(e), and 407.05(a)/37 C.F.R. §2.120(i) to counsel for Opposer, so there could be no

ambiguity that seventy-five interrogatories are permitted, seventy-five requests for admissions are permitted, and seventy-five document requests are permitted. (Exhibit 2)

On December 22, 2020, Opposer transmitted three separate letters which contained general objections to all of Applicant's interrogatories and discovery requests. (Exhibits 9-11) Through the three letters Opposer objected to all of Applicant's discovery queries on the basis that Applicant's interrogatories and discovery requests exceed the seventy-five part limitation per type. For example, Opposer's General Objections to Applicant's Request for Admission accurately states that Applicant's "Request No. 1 states '[a]dmit that Black Bear is aware of no instances of actual confusion occurring between Black Bear Trademarks and Red Bear Trademarks.'" (Exhibit 10 at ¶3)) Opposer then observes "[i]n the Notice of Opposition No. 91255793, Black Bear asserted nine registrations." *Id.* Opposer continues, "[a]ccordingly, Request for Admission No. 1, asks for identification of confusion involving nine separate registrations of Black Bear and consists of nine questions that seek information about discrete subjects which count as nine subparts." *Id.* Farther down, Opposer states:

Plaintiff's (sic) answers to these requests and other Request for Admissions in Nos. 6-26 will have to take into account each of Plaintiff's (sic) nine trademark registrations defined under Black Bear Trademarks according to Paragraph 5 of the Definitions and Instructions I the Requests for Admissions. As noted above, **Request for Admissions Nos. 4 and 5 each contain nine separate subparts because they contain questions that seek information about nine separate registrations.** This same calculation of subparts also applies to Request Nos. 6-26. On this basis alone, Request Nos. 4-26 are determined to have over 200 subparts. (emphasis added)

***Id.* Opposer is thus counting each and every trademark registration at issue in this consolidated proceeding, multiplying the sum by the number of goods identified, and multiplying this number by each interrogatory or discovery request.** *Id.* This same reasoning

is the sole basis offered in support of Opposer's objections to Applicant's requests for admissions, requests for production of documents and things, and interrogatories. (Exhibits 9-11)

On January 11, 2021, Applicant responded with an eight-page substantive letter addressing each and every objection contained in Opposer's three December 22, 2020 letters. (Exhibit 12) That letter is incorporated by reference here. In good faith, Applicant provided Opposer with illustrative descriptions of responses that would comply with Applicant's requests and interrogatories. *Id.*, at pages 2-7; *see also* Declaration of D. James Nahikian dated February 1, 2021. Applicant also provided opposer with the applicable law, including TBMP §§ 405.03(c), 406.05(c) and 407.05(c). *Id.*

In its January 11th response, Applicant acknowledged that it had undercounted an interrogatory by mistake. (Exhibit 12 at page 5, ¶3 sub a)) Consequently, Applicant admits that its total count of interrogatories numbers thirty-one as applied towards the limitation of seventy-five.

On January 15, 2021, Opposer replied with a renewal of its objections on the same grounds and without providing illustrative examples or counterproposals to help the parties resolve their dispute. (Exhibit 13) On January 25, 2021, Applicant transmitted its revised explanation to Opposer which Applicant believes should have clarified the proper counting methodology to be used under discovery law. (Exhibit 14) As of February 1, 2021, Applicant has not received a substantive change of position from Opposer in reply to Applicant's January 25th correspondence nor has Applicant received a single affirmative response to any of its propounded discovery. *Please see* Declaration of D. James Nahikian dated February 1, 2021.

ARGUMENT

A motion to compel discovery responses should be granted by the Board where the moving party demonstrates that the non-moving party has failed to fully respond to properly served discovery requests and interrogatories. 37 C.F.R. § 2.120 *et seq.*, TBMP §§ 523 and 524 *et seq.*; consider 37 C.F.R. § 2.120(e), TBMP § 523.01.

When determining the number of interrogatories and discovery requests, each subpart must be counted separately. *Kellogg Co. v. Nugget Distrib. Coop. of Am. Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990). The Board will look to the substance of each interrogatory or request to identify whether it actually asks multiple distinct questions (*e.g.*, sales figures and advertising figures), in which case each question is counted as a separate query, or whether it asks a single question, or all relevant facts and circumstances concerning a single issue, applicable to all pleaded marks or all asserted goods and services (such as, sales figures for each of a party's marks for multiple years), in which case it is counted as a single query. *Jan Bell Mktg., Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990). *See also* NOTICE OF FINAL RULEMAKING, 54 Fed. Reg. 34886, 34893 (August 22, 1989).

The discovery rules do not provide for additional queries in cases where more than one mark is pleaded and/or attacked by a party, whether in a single proceeding or in consolidated proceedings, because the propounding party may simply request that each query be addressed with respect to each involved mark of the responding party, and the queries will be counted the same as if they pertain to only one mark. TBMP §§ 405.03/37 C.F.R. § 2.120(d), 406.05/37 C.F.R. 2.120(e), and 407.05/37 C.F.R. §2.120(i).

The count of queries is not driven by the number of goods and services named in involved applications or registrations. Rather, as noted above, the Board looks to the text of the

queries and it counts the substance of each question as a separate query. *Kellogg Co.*, 16 USPQ2d at 1469; *see also* TBMP § 405.03(d) and cases cited therein.

Applicant's motion to compel should be granted by the Board. Opposer has not furnished a single piece of discovery to Applicant and, Opposer's creative counting, or "math," does not pass the sniff test and, in any event violates applicable law. (Exhibits 9-11, and 13) In each of its December 22, 2020 letters objecting to Applicant's discovery queries, Opposer supports its objections solely by counting each query multiplied by each registration and, apparently, by each good identified and by each of the four opposition proceedings consolidated under this parent opposition, No. 91255466. (Exhibits 9-11) For example, Opposer's General Objections to Applicant's Request for Admission accurately states that Applicant's "Request No. 1 states '[a]dmit that Black Bear is aware of no instances of actual confusion occurring between Black Bear Trademarks and Red Bear Trademarks.'" (Exhibit 10 at ¶3)) Opposer then observes "[i]n the Notice of Opposition No. 91255793, Black Bear asserted nine registrations." *Id.* Opposer continues, "[a]ccordingly, Request for Admission No. 1, asks for identification of confusion involving nine separate registrations of Black Bear and consists of nine questions that seek information about discrete subjects which count as nine subparts." *Id.* Farther down, Opposer states:

Plaintiff's (sic) answers to these requests and other Request for Admissions in Nos. 6-26 will have to take into account each of Plaintiff's (sic) nine trademark registrations defined under Black Bear Trademarks according to Paragraph 5 of the Definitions and Instructions I the Requests for Admissions. As noted above, **Request for Admissions Nos. 4 and 5 each contain nine separate subparts because they contain questions that seek information about nine separate registrations.** This same calculation of subparts also applies to Request Nos. 6-26. On this basis alone, Request Nos. 4-26 are determined to have over 200 subparts. (emphasis added)

This math is wrong, and fails to support Opposer's objections, because the count of queries is not driven by the number of proceedings in this consolidation, registrations at issue or the goods and

services named in involved applications or registrations. Rather, as noted above, discovery law looks to the text of the queries and it counts only the substance of each question as a separate query and not illustrative information or descriptions appurtenant. *Kellogg Co.*, 16 USPQ2d at 1469; *see also* TBMP § 405.03(d) and cases cited therein. Applicant's discovery queries, with the exception of its Interrogatory No.1, which Applicant accepted should be split in two separate interrogatories, are in their substance, unitary queries under the applicable law and each therefore must be counted as one. *Kellogg Co. v. Nugget Distrib. Coop. of Am. Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990). Applicant's queries do not actually seek multiple distinct questions but, rather, they provide illustrative examples and descriptions to clarify the root request. (Exhibits 3-5 and 7-8) *Jan Bell Mktg., Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990).

Opposer is mistaken when it asserts each trademark registration multiplied by each of the four actions consolidated under 91255466 times each registration and each good identified in a registration for a total count of "subparts" per each discovery query. Applicant included a "Definitions and Instructions" section for all discovery propounded. (Exhibits 3-5 and 7-8) This section defines "Black Bear" as meaning:

Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

Id. The section defines "Red Bear" as meaning "the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793." *Id.* The section also defines "Black Bear's

Trademarks" as meaning all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.” *Id.* The section defines "Red Bear’s Trademarks" as meaning “the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.” *Id.* The section defines "Black Bear's Goods” as meaning “the goods identified as being used in United States commerce in connection with Black Bear’s Trademarks.” *Id.* The section further defines “Red Bear's Goods" as meaning “the goods identified as being used in United States commerce in connection with Red Bear’s Trademarks.” *Id.*

The above definitions comply with TBMP §§ 405.03/37 C.F.R. § 2.120(d), 406.05/37 C.F.R. 2.120(e), and 407.05/37 C.F.R. §2.120(i) because they pertain only to one defined “mark” and not as Opposer claims discrete subparts. Opposer’s objections to Applicant’s interrogatories raised in its December 22 letter, for example, cannot sustain given Opposer’s impermissible counting:

Interrogatory No. 17 requires a description of all facts and circumstances concerning the use of nine Black Bear’s Trademarks in the United States by Dietz & Watson. The definition of Black Bear’s Trademarks in Paragraph 5 of the Definitions and Instructions in the First Set of Interrogatories identify nine trademark registrations. Hence, this Interrogatory has nine subparts as each of the nine registrations raises questions that seek information about discrete separate subjects.

(Exhibit 9 at ¶8) Similarly, Opposer’s objections to Applicant’s document requests cannot sustain under that December 22 correspondence counting.

Applicant’s January 11th response to Opposer’s December 22 objections addressed each and every objection with citations to the applicable law. Under “PURPORTED OBJECTIONS TO APPLICANT RED BEAR PROVISIONS, LLC’S REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-45”, Applicant explained:

1) We concur that our Requests for Production of Documents and Things Nos. 1-45 count towards the seventy-five request limitation as forty-five parts.

2) The Advisory Notes to the 1993 Amendment to Rule 33 you rely upon have been superseded by TTAB law which enlarges the number of permissible document requests from twenty-five to seventy-five, as you have acknowledged in your letter. Specifically, 37 C.F.R. § 2.120(e) “does not provide for extra requests for production of documents and things in cases where more than one mark is pleaded and/or attacked by the plaintiff (whether in a single proceeding, or in consolidated proceedings), because in such cases the propounding party may simply request that each request for production be answered with respect to each involved mark of the responding party, and the requests for production will be counted the same as if they pertained to only one mark.” See TTAB Manual of Procedure § 406.05(c) “Application of Limit: Multiple Marks, Etc.”

My client’s discovery requests expressly define “Black Bear Trademarks” and “Red Bear Trademarks” exactly as provided for under 37 C.F.R. § 2.120(e); § 406.05(c). The propounding party in this consolidated opposition proceeding is therefore entitled to have each of its enumerated requests “counted the same as if they pertained to only one mark” and not, as you claim, separately counted by each and every trademark and good at issue. All of your purported objections are unsustainable.

3) Same as 2) above.

4) Same as 2) above. In addition, the plain meaning of Request No. 10 is that my client wants to review the bulk sales records for each of your client’s goods allegedly sold under the trademarks asserted. Your client was in full control of the number of trademarks and goods placed at issue. They are to be counted as one. The remainder of the request merely suggests the types of records that may or may not be maintained by your client – logically, we cannot know what the information comprises until you produce it, never having examined the evidence before. Aspects trailing the root request are only illustrative and read by its plain meaning the request cannot reasonably be interpreted to include discrete subparts. Your purported objection to this request is unsustainable.

5) Same as 2) above. In addition, the plain meaning of Request No. 13 is that my client wants to review any evidence concerning expected profitability of the goods requested under No. 10. What is the profit anticipated for a branded good? The language “estimates, budgets, forecasts and projection” are not subparts but exemplary. Request No. 13 thus counts as a single request and not the thirty-six discrete requests counted by you. Your purported objection to this request is unsustainable.

6) Same as 2) above. In addition, the plain meaning of Request No. 15 is that my client wants to review any evidence in your client’s possession that informs us as to your client’s perceived market for its goods or in the alternative, since your client opted to challenge my client’s individual applications for both goods and services, your client’s services. This constitutes a unitary request, however, even if we were to count exemplary

language a-g as subparts and treat them separately as goods or services the fourteen requests added to the forty-five propounded would sum up to fifty-nine – which is well under the seventy-five request limitation imposed. Your purported objection to this request is unsustainable.

7) Same as 2) above. In addition, the plain meaning of Request No. 19 seeks any evidence, and presently we have only speculation about what information your client may have in its possession, concerning the prospective purchasers who might see the trademarks on the goods and choose to buy or not buy your client's products asserted in this action. The illustrative language contained in this request does not qualify as a subpart, let alone "117 subparts" as you purport and, instead, it merely exemplifies the types of evidence about your client's prospective buyers sought. The client may have the pertinent information in its possession or else not but we are obviously interested in learning more about your client's prospective customers. Your purported objection to this request is unsustainable.

I observe there are no other objections to my client's document requests Nos. 1-45 raised in your letter nor did you provide a valid foundation for a general objection. Even if I granted the hypothetical counts presupposed above, the total number of supported document requests is well under the seventy-five request limitation. Therefore, your client must comply with TTAB Manual of Procedure § 406 et seq. and produce the requested documents in advance of the February 1 discovery closure or else arrange to extend the time by which to comply.

(Exhibit 12, at page 2) Under "PURPORTED OBJECTIONS TO APPLICANT RED BEAR PROVISIONS, LLC'S REQUESTS FOR ADMISSIONS NOS. 1-38", Applicant explained the mistaken nature of Opposer's counting subparts. *Please see Exhibit 12*, at page 3. Under "PURPORTED OBJECTIONS TO APPLICANT RED BEAR PROVISIONS, LLC'S INTERROGATORIES NOS. 1-30", Applicant conceded an extra interrogatory in good faith to bring the count up to thirty-one, but Applicant also showed Opposer that Opposer was in error as to its counting methodology there. *Please see Exhibit 12*, at page 5.

Applicant, as the propounding party has through its definitions requested that each discovery query be addressed with respect to each involved mark of Opposer, and the queries should be counted the same as if they pertain to only one mark. TBMP §§ 405.03/37 C.F.R. § 2.120(d), 406.05/37 C.F.R. 2.120(e), and 407.05/37 C.F.R. §2.120(i). Applicant has responded to

Opposer's objections in good faith, albeit with some rancor, and offered Opposer to extend the discovery period. (Exhibit 14; Declaration of D. James Nahikian dated February 1, 2021)

Applicant's motion to compel should be granted by the Board.

Applicant respectfully moves the Board for an order compelling Opposer, within fifteen days from the date of such order, to fully and completely respond without objection to all of Applicant Red Bear Provisions, LLC's First Set of Interrogatories Nos. 1-31, Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35, Applicant Red Bear Provisions, LLC's Second Set of Requests for Production of Documents and Things Nos. 36-45, Applicant Red Bear Provisions, LLC's First Set of Requests for Admissions Nos. 1-34, and Applicant Red Bear Provisions, LLC's Second Set of Requests for Admissions Nos. 35-38.

Applicant also moves under Fed. R. Civ. P. 36(a)(6) to determine the sufficiency of each of Opposer's objections to Applicant's requests for admissions and, if determined inadequate, deemed admitted.

Applicant further moves the Board to reset the remaining deadlines, beginning with a ninety-day discovery period as of the date of the Board's order.

WHEREFORE, Applicant respectfully requests the Board grant this Motion to Compel and grant all other appropriate relief.

DATED: February 1, 2021

Respectfully submitted,



/s/djamesnahikian/

D. James Nahikian
ATTORNEY OF RECORD
FOR APPLICANT

CERTIFICATE OF SERVICE

I, D. James Nahikian, attorney for Applicant, hereby certify that on this first day of February, 2021 the foregoing **MOTION TO COMPEL** was filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) and a true and correct copy thereof was served upon the following by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

Dickran James Nahikian

EXHIBIT 1

Subject: RE: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul No. 3154-19
From: "D. James Nahikian" <jnahikian@nahikianglobal.com>
Date: 8/21/2020, 3:38 PM
To: John Child <johnchild@paulandpaul.com>
CC: Alex Sluzas <asluzas@paulandpaul.com>

I accept. I understand you will place the call to: 312.399.3099.

NAHIKIAN GLOBAL

Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD
Attorney at Law
Registered to Practice Before the U.S. Patent Office

(312) 399-3099

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you. On Aug 21, 2020, at 3:35 PM, John Child <johnchild@paulandpaul.com> wrote:

Dear Mr. Nahikian;

I suggest 11:00 a.m. EST on Monday, August 24, 2020.

Sincerely

John S. Child, Jr.

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

From: Alex Sluzas

Sent: Friday, August 21, 2020 4:20 PM

To: John Child

Subject: FW: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul

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

From: D. James Nahikian <jnahikian@nahikianglobal.com>

Sent: Friday, August 21, 2020 3:39 PM

To: John Child <johnchild@paulandpaul.com>

Cc: Alex Sluzas <asluzas@paulandpaul.com>; info@nahikianglobal.com

Subject: Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul

Further, I have left a voice message in the vox mailbox for Dr. Sluzas requesting confirmation the message below and its a

On 8/21/2020 1:31 PM, D. James Nahikian wrote:

Dear Mr. Child,

No other contactee has ever brought to my attention any inability to receive messages or attachments from me or my of

I urge you to retain competent IT personnel to manage your email servers because any issue arising from your inability

My messages are getting through to your server, please consider the attached exhibits 1-3 and the meta data contained

Fix your system since the issue is a known one. I propose this Monday, August 24, 2020 at 9:30 a.m. EST/8:30 a.m. CS

As always, please do not hesitate to contact me for any reason.

Very truly yours,

D. James Nahikian

Attorney of Record, Red Bear Provisions LLC

(312) 399-3099

On 8/21/2020 12:58 PM, John Child wrote:

Dear Mr. Nahikian;

This is in reply to your communication copied below. I know of this communication only because it was received in the fi

In response to the request in your communication for an extension of the trial dates, I agree to an extension of the tri

As to the failure to hold the discovery conference on August 3rd, my communication to you dated July 30, 2020 proposing

I suggest that you propose the date and time of the next discovery conference.

Sincerely

John S. Child, Jr.

From: D. James Nahikian [mailto:jnahikian@nahikianglobal.com]
Sent: Friday, August 21, 2020 12:00 PM
To: John Child; Info; info@nahikianglobal.com <mailto:info@nahikianglobal.com>
Subject: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Dear Mr. Child,

As you may recall, our discovery conference was scheduled in the referenced TTAB proceeding for August 3 at 3:00 p.m.

I have not heard from you or your office since July 30 until August 19, when we appeared jointly before an interlocu

We are past the August 3 opening of discovery and, yet, I have not received any communication from you regarding the

Please take notice that, in order to progress the matter, we intend to file a motion to compel your participation in

You are, of course, welcome to contact me if there is some reason for your delay that we are unaware of and should k

Very truly yours,
D. James Nahikian
Attorney of Record, Red Bear Provisions LLC

(312) 399-3099

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD

Attorney at Law

Registered to Practice Before the U.S. Patent Office

(312) 399-3099

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, p

--

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group D. James Nahikian, MSCS JD Attorney at Law Registered to Pra

Subject: Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul No. 3154-19
From: "D. James Nahikian" <jnahikian@nahikianglobal.com>
Date: 8/21/2020, 2:39 PM
To: John Child <johnchild@paulandpaul.com>
CC: Alex Sluzas <asluzas@paulandpaul.com>, "info@nahikianglobal.com" <info@nahikianglobal.com>

Further, I have left a voice message in the vox mailbox for Dr. Sluzas requesting confirmation the message below and its accompanying attachments were indeed received by John Child and Dr. Sluzas. Please reply via email or voice (312) 399-3099 to confirm receipt. Thank you.
-James Nahikian

On 8/21/2020 1:31 PM, D. James Nahikian wrote:

Dear Mr. Child,

No other contactee has ever brought to my attention any inability to receive messages or attachments from me or my office via email service in well more than one year with the exception of yourself. These past few days I was exchanging email messages and files with small businesses located within Armenia, a dirt-poor backwater country, some would say, with a terrible digital backbone. All of my messages always were received. Not a single bounce but for your claims.

I urge you to retain competent IT personnel to manage your email servers because any issue arising from your inability to manage a spam email folder is your responsibility. Since you acknowledge having a spam folder, I further urge you to review it on daily basis. So you do not continue to "overlook" legally material communications from me or my law firm in cases that you have instituted.

My messages are getting through to your server, please consider the attached exhibits 1-3 and the meta data contained therein. You have a duty to check a known digital location, that you alone have implemented and maintain, to ascertain whether your system is trapping important legal messages and files. Continued failure on your part to manage crucial IT functionality may be grounds to lodge formal action against you and your law firm under applicable legal ethics rules and precedent in addition to plaguing TTAB with unnecessary motions to get you to do the right thing.

Fix your system since the issue is a known one. I propose this Monday, August 24, 2020 at 9:30 a.m. EST/8:30 a.m. CST to conduct our discovery conference. Please confirm this is acceptable. I will rely upon and handle extending time by thirty days additional pursuant to your stipulation.

As always, please do not hesitate to contact me for any reason.

Very truly yours,
D. James Nahikian

Attorney of Record, Red Bear Provisions LLC

(312) 399-3099

On 8/21/2020 12:58 PM, John Child wrote:

Dear Mr. Nahikian;

This is in reply to your communication copied below. I know of this communication only because it was received in the firm's spam email file. None of the emails that you have addressed to me have reached me. I suggest that your next email to me be attached to this email to resolve that problem.

In response to the request in your communication for an extension of the trial dates, I agree to an extension of the trial dates by thirty days. If the extension is granted, the new deadline for the discovery conference is September 2, 2020.

As to the failure to hold the discovery conference on August 3rd, my communication to you dated July 30, 2020 proposing the date and time for the conference included the statement- "Let me know if that is convenient for you." A copy of that communication is transmitted herewith for your convenience. As you never let me know whether my proposed date and time for the discovery conference was convenient, we assumed that the time was not convenient for you.

I suggest that you propose the date and time of the next discovery conference.

Sincerely

John S. Child, Jr.

From: D. James Nahikian [<mailto:jnahikian@nahikianglobal.com>]

Sent: Friday, August 21, 2020 12:00 PM

To: John Child; Info; info@nahikianglobal.com

Subject: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Dear Mr. Child,

As you may recall, our discovery conference was scheduled in the referenced TTAB proceeding for August 3 at 3:00 p.m. EST/2:00 p.m. CST, which was the deadline for the parties to have held their discovery conference. You arranged the date and time. I waited one-half hour for you to engage and, for whatever reason, you did not participate in the call.

I have not heard from you or your office since July 30 until August 19, when we appeared jointly before an interlocutory attorney in a separate matter between our respective clients. You sounded well.

We are past the August 3 opening of discovery and, yet, I have not received any communication from you regarding the case despite our attempts.

Please take notice that, in order to progress the matter, we intend to file a motion to compel your participation in a discovery conference and to enlarge time in the case by an additional thirty days time after the close of business this Monday, August 24.

You are, of course, welcome to contact me if there is some reason for your delay that we are unaware of and should know about. I will appreciate your stipulation to the extension of time proposed. We look forward to cooperating together in resolving this dispute.

Very truly yours,
D. James Nahikian
Attorney of Record, Red Bear Provisions LLC

(312) 399-3099

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD
Attorney at Law
Registered to Practice Before the U.S. Patent Office
(312) 399-3099

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NAHIKIAN GLOBAL Intellectual Property & Technology Law Group D. James Nahikian, MSCS JD Attorney at Law Registered to Practice Before the U.S. Patent Office (312) 399-3099 NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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Subject: Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul No. 3154-19
From: "D. James Nahikian" <jnahikian@nahikianglobal.com>
Date: 8/21/2020, 1:31 PM
To: John Child <johnchild@paulandpaul.com>
CC: Alex Sluzas <asluzas@paulandpaul.com>, "info@nahikianglobal.com" <info@nahikianglobal.com>

Dear Mr. Child,

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Attorney of Record, Red Bear Provisions LLC

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I suggest that you propose the date and time of the next discovery conference.

Sincerely

John S. Child, Jr.

From: D. James Nahikian [<mailto:jnahikian@nahikianglobal.com>]

Sent: Friday, August 21, 2020 12:00 PM

To: John Child; Info; info@nahikianglobal.com

Subject: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Dear Mr. Child,

As you may recall, our discovery conference was scheduled in the referenced TTAB proceeding for August 3 at 3:00 p.m. EST/2:00 p.m. CST, which was the deadline for the parties to have held their discovery conference. You arranged the date and time. I waited one-half hour for you to engage and, for whatever reason, you did not participate in the call.

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Very truly yours,
D. James Nahikian
Attorney of Record, Red Bear Provisions LLC

(312) 399-3099

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD
Attorney at Law
Registered to Practice Before the U.S. Patent Office
(312) 399-3099

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NAHIKIAN GLOBAL Intellectual Property & Technology Law Group D. James Nahikian, MSCS JD Attorney at Law Registered to Practice Before the U.S. Patent Office (312) 399-3099 NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

— Attachments: —

exhibit 1.pdf	170 kB
exhibit 2.pdf	168 kB
exhibit 3.pdf	168 kB

Subject: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

From: "D. James Nahikian" <jnahikian@nahikianglobal.com>

Date: 8/21/2020, 10:59 AM

To: John Child <johnchild@paulandpaul.com>, info@paulandpaul.com, "info@nahikianglobal.com" <info@nahikianglobal.com>

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case)

Dear Mr. Child,

As you may recall, our discovery conference was scheduled in the referenced TTAB proceeding for August 3 at 3:00 p.m. EST/2:00 p.m. CST, which was the deadline for the parties to have held their discovery conference. You arranged the date and time. I waited one-half hour for you to engage and, for whatever reason, you did not participate in the call.

I have not heard from you or your office since July 30 until August 19, when we appeared jointly before an interlocutory attorney in a separate matter between our respective clients. You sounded well.

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Please take notice that, in order to progress the matter, we intend to file a motion to compel your participation in a discovery conference and to enlarge time in the case by an additional thirty days time after the close of business this Monday, August 24.

You are, of course, welcome to contact me if there is some reason for your delay that we are unaware of and should know about. I will appreciate your stipulation to the extension of time proposed. We look forward to cooperating together in resolving this dispute.

Very truly yours,

D. James Nahikian

Attorney of Record, Red Bear Provisions LLC

(312) 399-3099

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD
Attorney at Law
Registered to Practice Before the U.S. Patent Office
(312) 399-3099

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Subject: 2:00 p.m. Telephone Call Today

From: "D. James Nahikian" <jnahikian@nahikianglobal.com>

Date: 8/3/2020, 2:20 PM

To: John Child <johnchild@paulandpaul.com>, info@paulandpaul.com, "info@nahikianglobal.com" <info@nahikianglobal.com>

Mr. Child,

I have been awaiting your telephone call since the scheduled 2:00 p.m. EST time. I have 2:20 p.m. now. Please call me at 312.399.3099 before 2:30. Thank you.

James Nahikian

Attorney of Record, Red Bear

--

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group D. James Nahikian, MSCS JD Attorney at Law Registered to Practice Before the U.S. Patent Office (312) 399-3099 NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Subject: Re: Dietz & Watson, Inc./ Red Bear Provisions, LLC.

From: "D. James Nahikian" <jnahikian@nahikianglobal.com>

Date: 7/30/2020, 10:08 PM

To: John Child <johnchild@paulandpaul.com>, "info@nahikianglobal.com" <info@nahikianglobal.com>

Mr. Child,

Yes, the day and time are fine by me. We have calendared this Monday for 3:00p EST/2:00p CST. I understand you will place the call. 312.399.3099

James Nahikian

On 7/30/2020 4:25 PM, John Child wrote:

Dear Mr. Nahikian:

The deadline for the Discovery Conference in the Consolidated Opposition proceeding is August 3, 2020.

I propose scheduling the Discovery Conference for 3:00 p.m. August 3rd. That will be 2:00 p.m. Illinois time. Let me know if that is convenient for you.

Sincerely

John Child

--

NAHIKIAN GLOBAL Intellectual Property & Technology Law Group D. James Nahikian, MSCS JD Attorney at Law Registered to Practice Before the U.S. Patent Office (312) 399-3099 NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

EXHIBIT 2

Subject: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul No. 3154-19
From: "D. James Nahikian" <jnahikian@nahikianglobal.com>
Date: 8/24/2020, 10:27 AM
To: John Child <johnchild@paulandpaul.com>, Alex Sluzas <asluzas@paulandpaul.com>, "info@nahikianglobal.com" <info@nahikianglobal.com>

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions LLC – Opposition No. 91255466 (parent case); Paul & Paul No. 3154-19

Dear Mr. Child,

During our discovery conference today, you requested a citation to the Board rules that specify the maximum number of interrogatories which may be propounded during the discovery period without permission of the Board or stipulation by the adverse party. Below trails the citation to TBMP 405 et seq.:

<https://tmep.uspto.gov/RDMS/TBMP/current#/current/sec-d84cf81a-61ed-4fc9-8015-5827899d9749.html>

In relevant part, TBMP 405 reads:

TBMP 405.03(a) Description of Limit

37 C.F.R. § 2.120(d) Interrogatories. The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served.

The total number of interrogatories which a party may serve on another party, in a proceeding, may not exceed 75, counting subparts, except that the Board may allow additional interrogatories on motion therefor showing good cause, or on stipulation of the parties. [Note 1.] See TBMP § 519. Parties may also stipulate that the limit on interrogatories shall be fewer than 75. [Note 2.]

NOTES:

1. See Baron Phillippe De Rothschild S.A. v. S. Rothschild & Co., 16 USPQ2d 1466, 1467 n.5 (TTAB 1990) ("good cause will generally be found only where a legitimate need for further discovery by means of interrogatories is shown . . . the fact that the additional

interrogatories served by opposer may be relevant and narrowly drawn to a single issue is insufficient, in and of itself, to demonstrate good cause.").

2. 37 C.F.R. § 2.120(a)(2)(iv).

* * * * *

Accordingly, each party is limited to seventy-five requests for admission, seventy-five requests for the production of documents and things, and seventy-five interrogatories without leave from the Board or stipulation.

Please do not hesitate to contact me if you have any questions in connection with this matter.

Very truly yours,

D. James Nahikian

(312) 399-3099

Counsel of Record for Red Bear Provisions LLC (Applicant)

NAHIKIAN GLOBAL

Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD

Attorney at Law

Registered to Practice Before the U.S. Patent Office

(312) 399-3099

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Subject: Black Bear v. Red Bear Opposition Nos. 91255466 (parent case), 91255467, 91255790 and 91255793 - Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35

From: "D. James Nahikian" <jnahikian@nahikianglobal.com>

Date: 11/23/2020, 10:26 PM

To: John Child <johnchild@paulandpaul.com>

CC: info@paulandpaul.com

BCC: "info@nahikianglobal.com" <info@nahikianglobal.com>

Dear Mr. Child,

Attached please find Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35 propounded this day, November 23, 2020.

As a courtesy, we attach true and correct copies of Rule 405.03(a) [37 CFR Sec. 2.120(d)], Rule 406.05(a) [37 CFR Sec. 2.120(d)], and Rule 407.05(a) [37 CFR 2.120(i)]. The Rules allow each party seventy-five requests for documents and things, seventy-five requests for admissions, and seventy-five interrogatories. Red Bear intends to avail itself of the maximum number of discovery requests and interrogatories permitted.

Please do not hesitate to contact me if you have any questions concerning our discovery.

Very truly yours,

D. James Nahikian

Counsel of Record, Applicant Red Bear Provisions, LLC

NAHIKIAN GLOBAL

Intellectual Property & Technology Law Group

D. James Nahikian, MSCS JD

Attorney at Law

Registered to Practice Before the U.S. Patent Office

(312) 399-3099

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— Attachments: —

Red Bear document requests nos 1 through 35.pdf	143 kB
notice.pdf	597 kB



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- ▶ 1000 - INTERFERENCES

Inc. v. Sanyo Electric Co., 179 USPQ 313, 314 (TTAB 1973) ("interrogatories may relate to any matters which can be inquired into under FRCP 26(b)").

405.03 Limit on Number

405.03(a) Description of Limit

37 C.F.R. § 2.120(d) Interrogatories. *The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. ****

The total number of interrogatories which a party may serve on another party, in a proceeding, may not exceed 75, counting subparts, except that the Board may allow additional interrogatories on motion therefor showing good cause, or on stipulation of the parties. [[Note 1.](#)] See [TBMP § 519.](#) Parties may also stipulate that the limit on interrogatories shall be fewer than 75. [[Note 2.](#)]

NOTES:

1. See *Baron Philippe De Rothschild S.A. v. S. Rothschild & Co.*, 16 USPQ2d 1466, 1467 n.5 (TTAB 1990) ("good cause will generally be found only where a legitimate need for further discovery by means of interrogatories is shown . . . the fact that the additional interrogatories served by opposer may be relevant and narrowly drawn to a single issue is insufficient, in and of itself, to demonstrate good cause.").

2. [37 C.F.R. § 2.120\(a\)\(2\)\(iv\).](#)

405.03(b) Application of Limit: Sets of Interrogatories

The numerical limit specified in [37 C.F.R. § 2.120\(d\)](#) pertains to the total number of interrogatories that one party may serve on another party over the course of an entire proceeding, not just per set of interrogatories. Thus, if a party to a proceeding before the Board serves, over the course of the proceeding, two or more separate sets of interrogatories directed to the same party, the interrogatories in the separate sets would be added together for purposes of determining whether the numerical limit specified in the rule has been exceeded. [[Note 1.](#)]

Accordingly, a party which is preparing a first set of interrogatories should reserve a portion of its allotted 75 interrogatories (counting subparts) to use for follow-up discovery, unless it is sure that it will not be serving follow-up interrogatories.



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264-65 (D. Md. 2008) (discussing form of privilege logs under Fed. R. Civ. P. 26(b)(5)).

17. *Emilio Pucci International BV v. Sachdev*, 118 USPQ2d 1383, 1385 (TTAB 2016).

406.05 Limit on Number

406.05(a) Description of Limit

37 C.F.R. § 2.120(e) Requests for production. *The total number of requests for production which a party may serve upon another party pursuant to Rule 34 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional requests upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional requests must be filed and granted prior to the service of the proposed additional requests and must be accompanied by a copy of the requests, if any, which have already been served by the moving party, and by a copy of the requests proposed to be served. * * * **

The total number of requests for production of documents and things which a party may serve on another party, in a proceeding, may not exceed 75, counting subparts, except that the Board may allow additional requests for production on motion therefor showing good cause or on stipulation of the parties. [[Note 1.](#)] See [TBMP § 519](#). Parties may also stipulate that the limit on requests for production shall be fewer than 75. [[Note 2.](#)]

NOTES:

1. [37 C.F.R. § 2.120\(e\)](#); MISCELLANEOUS CHANGES TO TRADEMARK TRIAL AND APPEAL BOARD RULES OF PRACTICE, 81 Fed. Reg. 69950, 69951, 69961 (October 7, 2016). *Cf. Baron Philippe De Rothschild S.A. v. S. Rothschild & Co.*, 16 USPQ2d 1466, 1467 n.5 (TTAB 1990) (the Board stating in the context of interrogatories in excess of the limit that "good cause will generally be found only where a legitimate need for further discovery by means of interrogatories is shown . . . the fact that the additional interrogatories served by opposer may be relevant and narrowly drawn to a single issue is insufficient, in and of itself, to demonstrate good cause.").

2. [37 C.F.R. § 2.120\(a\)\(2\)\(iv\)](#).

406.05(b) Application of Limit: Sets of Requests for Production

The numerical limit specified in [37 C.F.R. § 2.120\(e\)](#) pertains to the total number of requests for production of documents and things that one party may serve on another party over the course of an entire proceeding, not just per set of production requests. Thus, if a party to a proceeding before the Board serves, over the course of the proceeding, two or more separate sets of requests for production directed to the same party, the requests in the separate sets would be



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407.05 Limit on Number

407.05(a) Description of Limit

37 C.F.R. § 2.120(i) Requests for admission. *The total number of requests for admission which a party may serve upon another party pursuant to Rule 36 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts. . . . However, independent of this limit, a party may make one comprehensive request for admission of any adverse party that has produced documents for an admission authenticating specific documents, or specifying which of those documents cannot be authenticated.*

The total number of requests for admission which a party may serve on another party in a proceeding may not exceed 75, counting subparts, except that the Board, may allow additional requests for admission upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. [[Note 1](#).] See [TBMP § 519](#). Independent of this numerical limit, a party may make one additional comprehensive request for admission of any adverse party that has produced documents, for authenticating specific documents, or specifying which of those documents cannot be authenticated. [[Note 2](#).]

NOTES:

1. [37 C.F.R. § 2.120\(i\)](#): MISCELLANEOUS CHANGES TO TRADEMARK TRIAL AND APPEAL BOARD RULES OF PRACTICE, 81 Fed. Reg. 69950, 69951, 69961 (October 7, 2016). *Cf. Baron Phillippe De Rothschild S.A. v. S. Rothschild & Co.*, 16 USPQ2d 1466, 1467 n.5 (TTAB 1990) (the Board stating in the context of interrogatories in excess of the limit that "good cause will generally be found only where a legitimate need for further discovery by means of interrogatories is shown . . . the fact that the additional interrogatories served by opposer may be relevant and narrowly drawn to a single issue is insufficient, in and of itself, to demonstrate good cause.").
2. [37 C.F.R. § 2.120\(j\)](#): MISCELLANEOUS CHANGES TO TRADEMARK TRIAL AND APPEAL BOARD RULES OF PRACTICE, 81 Fed. Reg. 69950, 69951, 69961 (October 7, 2016).

407.05(b) Application of Limit: Sets of Requests for Admission

The numerical limit specified in [37 C.F.R. § 2.120\(i\)](#) pertains to the total number of requests for admission that one party may serve on another party over the course of an entire proceeding, not just per set of requests for admission. Thus, if a party to a proceeding before the Board serves, over the course of the proceeding, two or more separate sets of requests for admission directed to the same party, the requests in the separate sets would be added together for purposes of determining whether the numerical limit specified in the rule has been exceeded. [[Note 1](#).]

EXHIBIT 3

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

BLACK BEAR ENTERPRISES, INC.,)		
)	
Opposer,)	
)	
v.	)	Opposition No.: 91255466 (parent case)
	)	Opposition No.: 91255467
RED BEAR PROVISIONS, LLC	)	Opposition No.: 91255790
d/b/a RED BEAR,	)	Opposition No.: 91255793
)	
Applicant.)	

**APPLICANT RED BEAR PROVISIONS, LLC'S
FIRST SET OF INTERROGATORIES NOS. 1-30**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant Red Bear Provisions, LLC ("Red Bear") hereby requests that Opposer Black Bear Enterprises, Inc. ("Black Bear") answer the following interrogatories in writing, under oath and in accordance with the following Definitions and Instructions within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. Red Bear hereby incorporates by reference the Definitions and Instructions set forth in its Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35.

1. "Black Bear", "Opposer", "you", or "your" means Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity

controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

3. "Red Bear" and/or "Applicant" means the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793.

4. "Red Bear American Charcuterie" means Red Bear American Charcuterie, LLC and all of its members, directors, officers, employees, agents, representatives, attorneys and all others acting on Red Bear American Charcuterie's behalf, including but not limited to Mike Rodenbaugh and Justin Brunson.

5. "Black Bear's Trademarks" means all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

6. "Red Bear's Trademarks" means the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

7. "Black Bear's Goods" means the goods identified as being used in United States commerce in connection with Black Bear's Trademarks.

8. "Red Bear's Goods" means the goods identified as being used in United States commerce in connection with Red Bear's Trademarks.

9. "Red Bear's Services" means the services identified as being used in United States commerce in connection with Red Bear's Trademarks.

10. "Board" means the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

11. "Document," "documents," "thing," or "things" irrespective of capital letters shall have the full meanings prescribed by the Federal Rules of Civil Procedure, and includes the terms "writings and recordings," "photographs," "originals," and "duplicate" as defined in Federal Rule of Evidence 1001, and means any document or thing in the possession or control of Black Bear or its counsel, or known to Black Bear or its counsel, and is used in its customarily broad sense to include the following items, whether printed, recorded, microfilmed, or reproduced by any process, or written or produced by hand or electronically, and whether or not claimed to be privileged or confidential or personal: letters; memoranda; reports; records; agreements; working papers; communications (including intradepartmental and interdepartmental communications); correspondence; summaries or records of personal conversations; diaries; forecasts; statistical statements; graphs; laboratory or research reports and notebooks; charts; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports of or summaries of interviews; reports of or summaries of investigations; opinions or reports of consultants; trademark appraisals; opinions of counsel; reports of or summaries of either negotiations within or without the corporation or preparations for such; brochures; manuals;

pamphlets; advertisements; promotions; circulars; press releases; drafts of any documents; books; instruments; accounts; bills of sale; invoices; tapes; electronic communications including email messages, email attachments and email metadata; blog entries and comments; Twitter Tweets; telephone and cell phone records; and all other communications of any tangible or intangible medium of expression irrespective of medium. Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document." A draft or non-identical copy is a separate "document" within the meaning of this term.

12. "Director," "officer," "employee," "agent," "member," or "representative" means any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in that capacity.

13. "Thing" can refer to any tangible or intangible object other than a document.

14. "Concerning," "relating to," "relate to," "relates to," "related to," "referring" or "relating to," "referring to," "regarding," and "refer or relate to" shall mean in whole or in any part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of, constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon.

15. "Including" and "includes" irrespective of capitalization means including

but not limited to.

16. "Communication" or "communicate" irrespective of capitalization or plurality means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

17. "Date" irrespective of capitalization or plurality means the exact day, month and year, if ascertainable, or, if not, the best approximation thereof.

18. "Person" irrespective of capitalization or plurality means (a) natural persons; (b) legal entities, including but not limited to corporations, partnerships, firms, associations, professional corporations, licensors, licensees, trust or other beneficiaries, and proprietorships; and (c) governmental bodies or agencies.

19. "All," "any," and "each" shall each be construed as encompassing any and all.

20. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

21. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The pronoun includes all possible past and contemporary pronouns.

22. Upper case lettering means lower case lettering, and vice-versa.

23. With regard to each interrogatory, should the answer require the identification of a person or entity, state the full name, title, business address, occupation

and telephone number of the person or entity, the person or entity's relationship to Black Bear, and describe in detail all facts pertaining to the subject matter of this action known by each such person or entity.

24. When used in reference to a person, "identify" means to state the person's full name and: (i) present business and home addresses, position and business affiliation, and business and home telephone numbers; or, if current information is not known, (ii) the last known business and home addresses, position and business affiliation, and business and home telephone numbers. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same person to state the name only.

25. When used in reference to an entity, "identify" means to state the entity's: (i) full name; (ii) state of incorporation; (iii) current or last known business address; and (iv) current or last known telephone number. Once any entity has been identified properly, it shall be sufficient thereafter when identifying that same entity to state the name only.

26. When used in reference to a document, "identify" means to state the (i) type of document; (ii) general subject matter; (iii) date the document was created; (iv) author(s), addressee(s) and recipient(s), and (v) document production number. Documents to be "identified" include documents in Black Bear's possession, custody or control, documents known by Black Bear to have existed but no longer exist, and other documents of which Black Bear has knowledge or information.

27. When used in reference to a product or good, "identify" means to state the

product or good name, commercial product or good name, SKU and QRC and bar code and other standard identifier, manufacturer, product number, inventory number, date of manufacture, expiration date, good type or ingredient listing or regional designation, any other representative designation, and dates on which Black Bear's Trademarks were used in connection with Black Bear's Goods in the United States.

28. When used in reference to a communication, "identify" means to state all documents referring or relating to such communication, the content and substance of the communication, when and where the communication occurred, the names of all persons who received or were involved in the communication, the names of all persons who know the facts contained within such communication, and the names of the person or persons most knowledgeable about the communication.

29. If documents are being produced in lieu of answers pursuant to Fed. R. Civ. P. 33(d), or if your answer can be found in documents produced in response to a specific document request, then identify by document production number or similar means the specific documents wherein the answer is located and, unless apparent on the face of the document, state where within the document the answer can be found.

30. The following interrogatories are being served in accordance with Rule 33 of the Federal Rules of Civil Procedure. Each interrogatory must be answered in full after a diligent search has been made to locate all the requested information. This search includes examination of all documents, as well as other information possessed by Black Bear, its attorneys, accountants, investigators, agents, employees, subsidiaries, divisions,

representatives, or other persons acting on Black Bear's behalf or under its control. If you are unable to answer any interrogatory fully and completely after exercising due diligence to secure the requested information, please so state and answer the interrogatory to the extent that you are able. As to each incomplete answer, specify the portion of the interrogatory that you claim you are unable to answer fully and completely, state the facts which support your contention that you are unable to answer that interrogatory fully and completely, and state what knowledge, information, and belief you have concerning the unanswered portion of each such interrogatory. If any interrogatory calls for information not presently known to you fully, this interrogatory shall be deemed to be a request for your best present estimate, understanding and belief as to the matter inquired about. In the event that any requested information can be obtained from a computer, such information must be accessed and provided.

31. If Black Bear objects to any interrogatory as overly broad or unduly burdensome, Black Bear shall specifically identify the respect in which the interrogatory is allegedly overly broad or burdensome and respond to those portions of the interrogatory which are unobjectionable.

32. If information concerning any document requested to be identified herein is withheld by you based on a claim of privilege, state as to each such document: the privilege(s) asserted and its basis; the date the document was created; the name and last known business and residential address and telephone number of the author of the document and each recipient of it; the relationship between the author and each of said

recipients at the time the document was received by the recipient; the reason why the document or the copy thereof was provided to each recipient; and the general description of the subject matter of the information contained in the document.

33. If information concerning any oral communication is withheld by you based on a claim of privilege, state as to each communication: the privilege(s) asserted and its basis; whether the communication was in person or by telephone; the date of the communication; the identities of the participants in the communication, all other persons present, all persons having knowledge or information concerning the communication; the identities of each document reflecting, pertaining, evidencing, describing, discussing, relating, or referring to the communication; and the general subject matter of the communication.

34. The Federal Rules of Civil Procedure and 37 C.F.R. § 2.120 *et seq.* place an affirmative duty to timely supplement these responses with (1) the identity and location of persons having knowledge of discoverable matters; and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony, and (3) any subsequently discovered information which makes the prior response incorrect, or no longer true, where the circumstances of failing to amend the response is, in substance, a knowing concealment.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe each and every one of Black Bear's Goods that are meat or meat-based goods in connection with which Black Bear's Trademarks have been used in commerce in the United States, irrespective of medium, means or mode of display, and for each such one of Black Bear's Goods, identify the following:

- (a) Product name;
- (b) Nature and type of product;
- (c) Dates Black Bear's Trademarks were used in commerce in the United States on each such one of Black Bear's Goods; and
- (d) Every party to whom Black Bear directly sold each such product in the United States from the date of service of this Interrogatory No. 1 retroactive to five (5) years past.

INTERROGATORY NO. 2:

Identify and describe in detail all instances of mistake, confusion or deception that Black Bear alleges result from the use of Red Bear's Trademarks on any products, goods or services, and for each such instance of mistake, confusion or deception, identify the: (a) names of all persons involved; (b) date on which such mistake, confusion or deception occurred; (c) the nature of the mistake, confusion or deception; (d) how Black Bear learned of such mistake, confusion or deception; (e) all communications relating to the alleged confusion, mistake or deception; and (f) all

documents that refer or relate to such alleged confusion, mistake or deception.

INTERROGATORY NO. 3:

Identify each and every communication between Black Bear and Dietz & Watson and Black Bear, Inc. relating to Red Bear's Trademarks, and for each such communication, identify: (a) the date on which the communication took place; (b) all persons involved with the communication; (c) the form of the communication (*e.g.*, in-person, telephone, e-mail, SMS, text, etc.), (d) the substance of the communication, and (e) all documents that refer or relate to such communications.

INTERROGATORY NO. 4:

Identify each and every communication between Black Bear and Red Bear American Charcuterie relating to Red Bear's Trademarks, and for each such communication, identify: (a) the date on which the communication took place; (b) all persons involved with the communication; (c) the form of the communication (*e.g.*, in-person, telephone, e-mail, SMS, text, etc.); (d) the substance of the communication; and (e) all documents that refer or relate to such communications.

INTERROGATORY NO. 5:

Describe in detail all facts and circumstances concerning when and how Black Bear first became aware of Red Bear's Trademarks, including an identification of: (a) the date Black Bear first became aware of Black Bear's Trademarks; (b) all persons involved; (c) how Black Bear first learned of Black Bear's Trademarks; (d) any activities by Black Bear in response to this information; and (e) all documents that refer or relate to this awareness.

INTERROGATORY NO. 6:

Describe in detail all facts and circumstances concerning Black Bear's rights to use Black Bear's Trademarks.

INTERROGATORY NO. 7:

Identify and describe in detail all ingredients for each of Black Bear's Goods.

INTERROGATORY NO. 8:

Identify and describe in detail the recipes for each of Black Bear's Goods including the total time required and the time for any aging steps, aging procedures or aging processes you claim.

INTERROGATORY NO. 9:

Identify and describe in detail the entire packaging for each of Black Bear's Goods promoted or sold in connection with Black Bear's Trademarks including the nature of the packaging materials, commercial grade of the packaging materials, whether the packaging materials are transparent, opaque or some combination, the discrete substances used in the construction of the packaging material, the artwork or imprints on the packaging materials, where each one of Black Bear's Trademarks is displayed on the packaging, and describe how the terms "artisan", "artisanal", "fancy", "foodie", "gourmet", "organic", "sourced", "humanely raised", "grass fed" and "award" or their equivalents are displayed on the packaging.

INTERROGATORY NO. 10:

For each of Black Bear's Goods, identify and describe in detail the gross batch size in terms of volume, weight and numerical units for each production run over the

course of one hour.

INTERROGATORY NO. 11:

For each of Black Bear's Goods, identify and describe in detail the gross batch size in terms of volume, weight and numerical units for each production run over the course of one hour.

INTERROGATORY NO. 12:

For each one of Black Bear's Goods, identify and describe in detail all certifications including government quality standards and grades as well as "artisan", "artisanal", "fancy", "foodie", "gourmet", "organic", "sourced", "humanely raised", "grass fed" certifications, claimed appellations of origin, and all national or international awards bestowed.

INTERROGATORY NO. 13:

For each one of Black Bear's Goods, identify and describe in detail all restaurants, cooking experiences, food specialty resellers, and gift bundles that promote Black Bear's Trademarks.

INTERROGATORY NO. 14:

Identify and describe in detail the handcrafting steps for all of Black Bear's Goods that Black Bear contends are handcrafted or otherwise manufactured by hand.

INTERROGATORY NO. 15:

Identify and describe in detail the hand wrapping and labeling steps for all of Black Bear's Goods that Black Bear contends are hand wrapped or otherwise wrapped by hand. If any of Black Bear's Goods is not wrapped by hand, identify and describe

the machinery that performs the wrapping.

INTERROGATORY NO. 16:

Describe in detail all facts and circumstances concerning any agreement, transfer, license, grant, or assignment of rights, in whole or in part, of any interest in Black Bear's Trademarks, and all communications relating thereto.

INTERROGATORY NO. 17:

Describe in detail all facts and circumstances concerning the use of Black Bear's Trademarks in the United States by Dietz & Watson.

INTERROGATORY NO. 18:

Describe in detail all facts and circumstances concerning the use of Black Bear's Trademarks in the United States by Black Bear, Inc.

INTERROGATORY NO. 19:

Describe in detail all facts and circumstances concerning use by any third party other than Red Bear, Red Bear American Charcuterie, Black Bear, Dietz & Watson, Inc, or Black Bear, Inc. of any mark containing the word "bear", or its equivalent in terms of sight, sound or meaning, in the United States of which you are aware, identifying when and how you first became aware of such mark, and including an identification of: (a) the date you first became aware of such mark; (b) all persons involved; (c) how you first learned of such mark; (d) any activities by you in response to this information; and (e) all documents that refer or relate to this awareness.

INTERROGATORY NO. 20:

Identify and describe in detail all sales of Black Bear's Goods complained of or returned for refund or replacement, identifying the: (a) name of each claimant; (b) date on which each such good was sold; (c) date on which each such good was complained of or returned; (d) resolution for any such good; and (e) reasons for the complaint or refund or replacement.

INTERROGATORY NO. 21:

Identify and describe in detail all product recalls of Black Bear's Goods, identifying the: (a) item; (b) number recalled; (c) date of recall; (d) reasons for recall; (e) damages claimed; and (f) press coverage and releases.

INTERROGATORY NO. 22:

Describe in detail all facts and circumstances concerning Black Bear's Trademarks in connection with Black Bear's Goods and their relationship to the Schwarzwald or Black Forest in Germany/Europe, including all communications relating thereto.

INTERROGATORY NO. 23:

Describe in detail all facts and circumstances concerning all advertising channels that Black Bear has ever used to promote, offer to sell and/or sell each of Black Bear's Goods in connection with Black Bear's Trademarks, including but not limited to all documents and things sufficient to identify all such advertising channels beginning with Black Bear's alleged date of first use and first use in commerce of Black Bear's

Trademarks and by each month thereafter through trial in these proceedings.

INTERROGATORY NO. 24:

Describe in detail all facts and circumstances concerning the channels of trade through which Black Bear has ever sold, offered for sale, marketed, advertised or promoted any good or service in connection with Black Bear's Trademarks, including but not limited to all documents and things sufficient to identify all such channels of trade beginning with Black Bear's alleged date of first use and first use in commerce of Black Bear's Trademarks and by each month thereafter through trial in these proceedings.

INTERROGATORY NO. 25:

Describe in detail all facts and circumstances concerning the classes of purchasers or types of purchasers who have purchased, or who Black Bear would expect to purchase, each and every one of Black Bear's Goods offered or sold in connection with Black Bear's Trademarks, including the age, income level, educational level, consumer preferences, price points, humane sourcing, ingredient sourcing, certifications, standards, organic or pasture-raised ingredients, religious affiliation, and gender of such actual and potential purchasers.

INTERROGATORY NO. 26:

Describe in detail all facts and circumstances concerning any poll, survey, market research, focus group, consumer awareness study, or other research, whether formal or informal, concerning Black Bear's Goods sold in connection with Black Bear's Trademarks.

INTERROGATORY NO. 27:

Identify and describe in detail any search, evaluation, investigation, or other inquiry made by or on behalf of Black Bear concerning Red Bear's Goods or Red Bear's Services identified in connection with Red Bear's Trademarks, including but not limited to all documents and communications relating to the results of said search, evaluation, investigation, trademark or trademark search, or other inquiry.

INTERROGATORY NO. 28:

Identify and describe in detail any civil actions, administrative actions, cancellation proceedings, or other proceedings involving Black Bear's Trademarks, whether fully disposed of, inactive, suspended or pending, including all agreements, licenses, assignments, settlements and concurrent use agreements.

INTERROGATORY NO. 29:

Identify and describe in detail any settlement, resolution or compromise of any dispute between Black Bear and any person who used, proposed to use, or sought registration of, Black Bear's Trademarks or any trademark that Black Bear considered to be confusingly similar with Black Bear's Trademarks, including all agreements, licenses, assignments, settlements and concurrent use agreements.

INTERROGATORY NO. 30:

Describe in detail all facts and circumstances concerning Black Bear's current organizational structure, including information sufficient to identify any parent or subsidiary, trusts, trust beneficiaries, licensors, licensees, or other related persons and

entities of Black Bear and of Black Bear's shareholders, members, officers, directors, trust beneficiaries, family beneficiaries, and employees.

DATED: November 24, 2020

Respectfully submitted,



D. James Nahikian, MSCS
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009
(312) 399-3099

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-fourth day of November, 2020, I caused a true and correct copy of the foregoing **APPLICANT RED BEAR PROVISIONS, LLC'S FIRST SET OF INTERROGATORIES NOS. 1-30** to be served upon the following counsel of record by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

D. James Nahikian

EXHIBIT 4

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

<hr/>		
BLACK BEAR ENTERPRISES, INC.,)	
)	
Opposer,)	
)	
	)	Opposition No.: 91255466 (parent case)
v.	)	Opposition No.: 91255467
)	Opposition No.: 91255790
RED BEAR PROVISIONS, LLC)	Opposition No.: 91255793
d/b/a RED BEAR,)	
)	
Applicant.)	
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**APPLICANT RED BEAR PROVISIONS, LLC'S
FIRST REQUESTS FOR ADMISSIONS NOS. 1-34**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant Red Bear Provisions, LLC ("Red Bear") hereby requests that Opposer Black Bear Enterprises, Inc. ("Black Bear") admit the following matters as true in writing, under oath and in accordance with the following Definitions and Instructions within thirty (30) days of service hereof. In accordance with the rules, each matter shall be deemed admitted unless within thirty (30) days of service hereof Black Bear serves an objection addressed specifically to the matter which is signed by Black Bear or its counsel. If you object to any or all of these requests for admissions, the reason set forth shall be stated with particularity. Otherwise, Black Bear is directed to unqualifiedly admit, or specifically deny, the matter or set forth in detail the reasons why Black Bear can either truthfully admit or deny the matter. In this regard, any denial shall

fairly meet the substance of each of the requested admissions below, and Black Bear shall specify so much of the matter as true and qualify or deny the remainder.

Black Bear may not give lack of information or knowledge for failure to admit or deny unless Black Bear states with particularity the reasonable inquiry it has made and the information known or readily obtained by Black Bear is still insufficient to enable Black Bear to admit or deny.

Red Bear reserves all rights including the right to move before the Trademark Trial and Appeal Board (“Board”) to determine the sufficiency of any answers or objections that are not in the form of unqualified admissions. Red Bear also reserves its right to seek relief in the form of an order directing Black Bear to comply with the requirements of Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120 thus where appropriate order Black Bear has admitted the matter.

All matters admitted responsive to these requests shall be deemed by Black Bear as conclusively established unless withdrawn or admitted pursuant to order of the Board.

DEFINITIONS AND INSTRUCTIONS

1. Red Bear hereby incorporates by reference the Definitions and Instructions set forth in its Applicant Red Bear Provisions, LLC’s First Set of Requests for Production of Documents and Things Nos. 1-35.

2. "Black Bear", "Opposer", "you", or "your" means Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

3. "Red Bear" and/or "Applicant" means the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793.

4. "Red Bear American Charcuterie" means Red Bear American Charcuterie, LLC and all of its members, directors, officers, employees, agents, representatives, attorneys and all others acting on Red Bear American Charcuterie's behalf, including but not limited to Mike Rodenbaugh and Justin Brunson.

5. "Black Bear's Trademarks" means all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

6. "Red Bear's Trademarks" means the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

7. "Black Bear's Goods" means the goods identified as being used in United

States commerce in connection with Black Bear's Trademarks.

8. "Red Bear's Goods" means the goods identified as being used in United States commerce in connection with Red Bear's Trademarks.

9. "Red Bear's Services" means the services identified as being used in United States commerce in connection with Red Bear's Trademarks.

10. "Board" means the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

11. "Document," "documents," "thing," or "things" irrespective of capital letters shall have the full meanings prescribed by the Federal Rules of Civil Procedure, and includes the terms "writings and recordings," "photographs," "originals," and "duplicate" as defined in Federal Rule of Evidence 1001, and means any document or thing in the possession or control of Black Bear or its counsel, or known to Black Bear or its counsel, and is used in its customarily broad sense to include the following items, whether printed, recorded, microfilmed, or reproduced by any process, or written or produced by hand or electronically, and whether or not claimed to be privileged or confidential or personal: letters; memoranda; reports; records; agreements; working papers; communications (including intradepartmental and interdepartmental communications); correspondence; summaries or records of personal conversations; diaries; forecasts; statistical statements; graphs; laboratory or research reports and notebooks; charts; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports of or summaries of

interviews; reports of or summaries of investigations; opinions or reports of consultants; trademark appraisals; opinions of counsel; reports of or summaries of either negotiations within or without the corporation or preparations for such; brochures; manuals; pamphlets; advertisements; promotions; circulars; press releases; drafts of any documents; books; instruments; accounts; bills of sale; invoices; tapes; electronic communications including email messages, email attachments and email metadata; blog entries and comments; Twitter Tweets; telephone and cell phone records; and all other communications of any tangible or intangible medium of expression irrespective of medium. Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document." A draft or non-identical copy is a separate "document" within the meaning of this term.

12. "Director," "officer," "employee," "agent," "member," or "representative" means any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in that capacity.

13. "Thing" can refer to any tangible or intangible object other than a document.

14. "Concerning," "relating to," "relate to," "relates to," "related to," "referring" or "relating to," "referring to," "regarding," and "refer or relate to" shall mean in whole or in any part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of,

constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon.

15. "Including" and "includes" irrespective of capitalization means including but not limited to.

16. "Communication" or "communicate" irrespective of capitalization or plurality means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

17. "Date" irrespective of capitalization or plurality means the exact day, month and year, if ascertainable, or, if not, the best approximation thereof.

18. "Person" irrespective of capitalization or plurality means (a) natural persons; (b) legal entities, including but not limited to corporations, partnerships, firms, associations, professional corporations, licensors, licensees, trust or other beneficiaries, and proprietorships; and (c) governmental bodies or agencies.

19. "All," "any," and "each" shall each be construed as encompassing any and all.

20. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

21. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The pronoun includes all possible past and contemporary pronouns.

22. Upper case lettering means lower case lettering, and vice-versa.

23. The following requests for admissions are being served in accordance with Rule 36 of the Federal Rules of Civil Procedure. Each request must be answered in full after a diligent search has been made to locate all the requested information. This search includes examination of all documents, as well as other information possessed by Black Bear, its attorneys, accountants, investigators, agents, employees, subsidiaries, divisions, representatives, or other persons acting on Black Bear's behalf or under its control.

REQUESTS FOR ADMISSION

REQUEST NO. 1:

Admit that Black Bear is aware of no instance of actual confusion occurring between Black Bear's Trademarks and Red Bear's Trademarks.

REQUEST NO. 2:

Admit that Black Bear has discussed Red Bear with Red Bear American Charcuterie.

REQUEST NO. 3:

Admit that black bears are not native to the Schwarzwald or Black Forest in Germany.

REQUEST NO. 4:

Admit that Black Bear's Goods have used ingredients that are not traditionally found in recipes originating from the Schwarzwald or Black Forest in Germany.

REQUEST NO. 5:

Admit that Black Bear's Goods do not contain exotic ingredients.

REQUEST NO. 6:

Admit that, as a customary practice, Black Bear does not age meat that will be used as an ingredient in Black Bear's Goods for more than ten days prior to cooking.

REQUEST NO. 7:

Admit that Black Bear's Goods are not certified organic.

REQUEST NO. 8:

Admit that Black Bear's Goods are not certified humanely raised.

REQUEST NO. 9:

Admit that Black Bear's Goods are not certified one-hundred percent grass fed.

REQUEST NO. 10:

Admit that Black Bear's Goods have not been awarded a Good Food Award.

REQUEST NO. 11:

Admit that Black Bear's Goods are not exclusively wrapped by hand.

REQUEST NO. 12:

Admit that Black Bear's Goods are manufactured according to the commercial standards of mass production.

REQUEST NO. 13:

Admit that none of Black Bear's Goods is directed exclusively to artisanal consumers.

REQUEST NO. 14:

Admit that Black Bear's Goods do contain, or they have contained in the past, artificial ingredients.

REQUEST NO. 15:

Admit that Black Bear's Goods which contain meat do exclusively contain only heritage breeds such as Angus beef and Berkshire pork.

REQUEST NO. 16:

Admit that none of Black Bear's Goods which contain meat also contain Pimenton de la Vera imported from Spain.

REQUEST NO. 17:

Admit that none of Black Bear's Goods which contain meat also contain Italian fennel pollen handpicked in Tuscany, Italy only once per year.

REQUEST NO. 18:

Admit that none of Black Bear's Goods which contain meat are customarily marinated for more than twenty-four hours.

REQUEST NO. 19:

Admit that majority of Black Bear's Goods by volume manufactured and which contain meat are sold through supermarkets or from deli cases.

REQUEST NO. 20:

Admit that Black Bear's Goods do not contain brandy.

REQUEST NO. 21:

Admit that Black Bear's Goods do not contain sea salt.

REQUEST NO. 22:

Admit that lactic acid starter culture is not added to Black Bear's Goods.

REQUEST NO. 23:

Admit that Black Bear's Goods do not contain wine.

REQUEST NO. 24:

Admit that Black Bear's Goods are promoted in connection with Black Bear's Trademarks on roadside billboards.

REQUEST NO. 25:

Admit that Black Bear's Goods are promoted for sale in connection with coupons.

REQUEST NO. 26:

Admit that Black Bear's Goods are promoted for sale in connection with advertisements which offer discounts.

REQUEST NO. 27:

Admit that Black Bear's Goods which contain meat have the good encased in plastic.

REQUEST NO. 28:

Admit that buyers have complained about the quality of Black Bear's Goods.

REQUEST NO. 29:

Admit that some of Black Bear's Goods have been returned under complaint concerning taste.

REQUEST NO. 30:

Admit that Black Bear's Goods have not been sold to any of Red Bear's customers identified in the evidence Red Bear has disclosed to Black Bear in co-pending Opposition No. 91245797 between the parties.

REQUEST NO. 31:

Admit that Black Bear has no written plan to sell Black Bear's Goods to any of Red Bear's customers identified in the evidence Red Bear has disclosed to Black Bear in co-pending Opposition No. 91245797 between the parties.

REQUEST NO. 32:

Admit that the word "black" in Black Bear's Trademarks refers to the color black.

REQUEST NO. 33:

Admit that the word "bear" in Black Bear's Trademarks refers exclusively to an animal which is a bear.

REQUEST NO. 34:

Admit that the design of any creature, if one does appear as a graphic element, in Black Bear's Trademarks refers exclusively to an animal which is a bear.

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DATED: November 24, 2020

Respectfully submitted,



D. James Nahikian, MSCS
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009
(312) 399-3099

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-fourth day of November, 2020, I caused a true and correct copy of the foregoing **APPLICANT RED BEAR PROVISIONS, LLC'S FIRST REQUESTS FOR ADMISSIONS NOS. 1-34** to be served upon the following counsel of record by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

D. James Nahikian

EXHIBIT 5

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

BLACK BEAR ENTERPRISES, INC.,)		
Opposer,)		
v.)		Opposition No.: 91255466 (parent case)
RED BEAR PROVISIONS, LLC)		Opposition No.: 91255467
d/b/a RED BEAR,)		Opposition No.: 91255790
Applicant.)		Opposition No.: 91255793

**APPLICANT RED BEAR PROVISIONS, LLC'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-35**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Red Bear Provisions, LLC ("Red Bear") hereby requests that Opposer Black Bear Enterprises, Inc. ("Black Bear") produce all documents and things responsive to Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35 (each a "Request" and a plurality "Requests" irrespective of capitalization) in accordance with the following Definitions and Instructions within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "Black Bear," "Opposer," "you," or "your" means Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity

controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

3. "Red Bear" and/or "Applicant" means the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793.

4. "Red Bear American Charcuterie" means Red Bear American Charcuterie, LLC and all of its members, directors, officers, employees, agents, representatives, attorneys and all others acting on Red Bear American Charcuterie's behalf, including but not limited to Mike Rodenbaugh and Justin Brunson.

5. "Black Bear's Trademarks" means all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

6. "Red Bear's Trademarks" means the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

7. "Black Bear's Goods" means the goods identified as being used in United States commerce in connection with Black Bear's Trademarks.

8. "Red Bear's Goods" means the goods identified as being used in United States commerce in connection with Red Bear's Trademarks.

9. "Red Bear's Services" means the services identified as being used in United States commerce in connection with Red Bear's Trademarks.

10. "Board" means the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

11. "Document," "documents," "thing," or "things" irrespective of capital letters shall have the full meanings prescribed by the Federal Rules of Civil Procedure, and includes the terms "writings and recordings," "photographs," "originals," and "duplicate" as defined in Federal Rule of Evidence 1001, and means any document or thing in the possession or control of Black Bear or its counsel, or known to Black Bear or its counsel, and is used in its customarily broad sense to include the following items, whether printed, recorded, microfilmed, or reproduced by any process, or written or produced by hand or electronically, and whether or not claimed to be privileged or confidential or personal: letters; memoranda; reports; records; agreements; working papers; communications (including intradepartmental and interdepartmental communications); correspondence; summaries or records of personal conversations; diaries; forecasts; statistical statements; graphs; laboratory or research reports and notebooks; charts; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports of or summaries of interviews; reports of or summaries of investigations; opinions or reports of consultants; trademark appraisals; opinions of counsel; reports of or summaries of either negotiations within or without the corporation or preparations for such; brochures;

manuals; pamphlets; advertisements; promotions; circulars; press releases; drafts of any documents; books; instruments; accounts; bills of sale; invoices; tapes; electronic communications including email messages, email attachments and email metadata; blog entries and comments; Twitter Tweets; telephone and cell phone records; and all other communications of any tangible or intangible medium of expression irrespective of medium. Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document." A draft or non-identical copy is a separate "document" within the meaning of this term.

10. "Director," "officer," "employee," "agent," "member," or "representative" means any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in that capacity.

11. "Thing" can refer to any tangible or intangible object other than a document.

12. "Concerning," "relating to," "relate to," "relates to," "related to," "referring" or "relating to," "referring to," "regarding," and "refer or relate to" shall mean in whole or in any part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of, constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon.

13. "Including" and "includes" irrespective of capitalization means including

but not limited to.

14. "Communication" or "communicate" irrespective of capitalization or plurality means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

15. "Date" irrespective of capitalization or plurality means the exact day, month and year, if ascertainable, or, if not, the best approximation thereof.

16. "Person" irrespective of capitalization or plurality means (a) natural persons; (b) legal entities, including but not limited to corporations, partnerships, firms, associations, professional corporations, licensors, licensees, trust or other beneficiaries, and proprietorships; and (c) governmental bodies or agencies.

17. "All," "any," and "each" shall each be construed as encompassing any and all.

18. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

19. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The pronoun includes all possible past and contemporary pronouns.

20. Upper case lettering means lower case lettering, and vice-versa.

21. When used in reference to a person, "identify" means to produce documents or things sufficient to identify his or her full name and: (i) present business

and home addresses, position and business affiliation, and business and home telephone numbers; or, if current information is not known, (ii) the last known business and home addresses, position and business affiliation, and business and home telephone numbers. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same person to state the name only.

22. When used in reference to an entity, "identify" means to produce documents or things sufficient to identify the entity's: (i) full name; (ii) state of incorporation; (iii) current or last known business address; and (iv) current or last known telephone number. Once any entity has been identified properly, it shall be sufficient thereafter when identifying that same entity to state the name only.

23. When used in reference to a document, "identify" means to produce documents or thing sufficient to identify the (i) type of document; (ii) general subject matter; (iii) date the document was created; (iv) author(s), addressee(s) and recipient(s), and (v) document production number. Documents to be "identified" include documents in Black Bear's possession, custody or control, documents known by Black Bear to have existed but no longer exist, and other documents of which Black Bear has knowledge or information.

24. When used in reference to a good or service, "identify" means to produce documents or things sufficient to identify the good or service name, commercial good or service name, manufacturer, model number, part number, SKU or other standardized identifier, serial number, service type or goods type,

manufacturing cost, total cost to Black Bear, wholesale price, retail price, actual price delivered to a distributor or other customer, resale price, custom price, one-off price, and any other final price at the point of purchase, any other representative designation, and dates on which Black Bear's Trademarks were used in connection with Black Bear's Goods in the United States.

25. The following Requests are being served in accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice. Black Bear must respond to each Request in full after making a diligent search to locate all of the requested documents and things. This search includes examination of all documents, as well as other information possessed by Black Bear, its attorneys, accountants, investigators, agents, employees, contractors, subcontractors, subsidiaries, divisions, representatives, family members or other persons acting on Black Bear's behalf or under its control.

26. The requested documents and things must be produced (a) as they are kept in the usual course of business, or (b) organized and labeled to correspond with the categories in the request. Simply selecting certain materials from different files and producing them in one stack will not be sufficient.

27. In the event that any requested information is obtainable from a computer, Black Bear must provide that information, along with the media on which the information is stored and, if necessary, the programs required to access the information.

28. Unless specifically requested, duplicative originals or copies which are absolutely and totally identical to a produced document need not also be produced. However, any duplicate which is in any way different (*e.g.*, contains notes or has missing material) must also be produced.

29. If you refuse to produce any requested document, state the ground for such refusal in the written response. If you withhold any document on the basis of any privilege, state as to each such document: the privilege(s) asserted and its basis; the date the document was created; the name and last known business and residential address and telephone number of the author of the document and each recipient of it; the relationship between the author and each of said recipients at the time the document was received by the recipient; the reason why the document or the copy thereof was provided to each recipient; and the general description of the subject matter of the information contained in the document.

30. These Requests seek the production of information, documents and things as of the date on which Plaintiff responds, however, these Requests shall be deemed continuing and must be supplemented or corrected as required by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. If, after producing information, documents and things, Black Bear becomes aware of any additional or corrective document(s), thing(s), or information responsive to these Requests, Black Bear is required to produce such additional documents, things, and/or information to Red Bear promptly upon acquiring possession of such. Failing to do so is, in

substance, a knowing concealment.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All documents and things concerning any instance in which any person was or may have been confused, mistaken or deceived in any manner between Red Bear's Trademarks and Black Bear's Trademarks, including but not limited to all documents and things sufficient to identify all persons who have been mistaken, confused or deceived as a result of the use of Red Bear's Trademarks on any goods or services, including the names of all such individuals, the dates on which such confusion allegedly occurred, how Black Bear first learned of such confusion, the nature of the alleged confusion, mistake or deception, and all communications with such persons.

REQUEST NO. 2:

All documents and things concerning any instance in which any person was or may have been confused, mistaken or deceived in any manner about the connection or relationship between Red Bear American Charcuterie or Red Bear American Charcuterie's goods or services, on the one hand, and Black Bear's Goods, on the other hand, including but not limited to all documents describing such instances and all communications concerning such instances.

REQUEST NO. 3:

All documents and things concerning each and every good offered or sold by Black Bear, whether directly or indirectly, in connection with Black Bear's Trademarks for the period June 12, 2008 through June 12, 2018.

REQUEST NO. 4:

All documents and things concerning any policies, procedures, manuals or programs relating to Black Bear's Trademarks including Black Bear's trademark quality control, monitoring and enforcement manuals for the period November 23, 2010 through trial in these proceedings.

REQUEST NO. 5:

All documents and things concerning Red Bear American Charcuterie, including all documents and things concerning how Black Bear first became aware of Red Bear American Charcuterie.

REQUEST NO. 6:

All documents and things concerning Red Bear, including all documents and things concerning how Black Bear first became aware of Red Bear.

REQUEST NO. 7:

All communications between Black Bear and Red Bear American Charcuterie concerning Red Bear and all documents and things concerning such communications.

REQUEST NO. 8:

All communications between Black Bear and Dietz & Watson, on information and belief, headquartered at 5701 Tacony Street, Philadelphia, Pennsylvania 19135, concerning Red Bear, and all documents and things concerning such communications.

REQUEST NO. 9:

All communications between Black Bear and Black Bear, Inc. concerning

Red Bear, and all documents and things concerning such communications.

REQUEST NO. 10:

All documents and things concerning the sales of each and every one of Black Bear's Goods ever sold in connection with Black Bear's Trademarks, including but not limited to all documents and things concerning all third parties, including customers, retailers, distributors, and importers, to whom such products and goods were sold in the United States from each such product or good's inception to the present, and the total number of products or goods sold, total gross sales, total net sales, total cost of goods sold, total gross profits, and total net profits by month, by year and by customer from each such good from inception to the present.

REQUEST NO. 11:

All documents and things sufficient to show the price of each of Black Bear's Goods sold in connection with Black Bear's Trademarks from the date that Black Bear alleges first use of each such mark through trial in these proceedings.

REQUEST NO. 12:

All documents and things sufficient to show the costs of each of Black Bear's Goods sold in connection with Black Bear's Trademarks by month and by year from the date that Black Bear alleges first use of each such mark through trial in these proceedings.

REQUEST NO. 13:

All documents and things concerning expected sales and profitability of each of Black Bear's Goods sold in connection with Black Bear's Trademarks including

estimates, budgets, forecasts and projections.

REQUEST NO. 14:

All documents and things concerning all marketing, business and strategic plans or studies relating to each of Black Bear's Goods sold in connection with Black Bear's Trademarks from the date of Black Bear's alleged first use and first use in commerce of each such mark to the present.

REQUEST NO. 15:

All documents and things concerning studies, reports, industry reports, and articles that describe or pertain in any way to the market for each good and service ever sold in connection with Black Bear's Trademarks, including:

- a. Market segments
- b. Size of actual markets
- c. Growth rates
- d. Competitors, their product or service offerings, and pricing
- e. Actual market shares
- f. Customer and end-user demographics and profiles
- g. Sales channels

REQUEST NO. 16:

All documents and things concerning the advertising, promotion or marketing of each and every good and service ever offered or sold in connection with Black Bear's Trademarks, beginning with Black Bear's alleged date of first use and first use in commerce of Black Bear's Trademarks and by each month thereafter through trial in these proceedings.

REQUEST NO. 17:

All documents and things concerning all advertising channels that Black Bear has ever used to promote, offer to sell and/or sell each and Black Bear's Goods in connection with Black Bear's Trademarks, including but not limited to all documents and things sufficient to identify all such advertising channels beginning with Black Bear's alleged date of first use and first use in commerce of Black Bear's Trademarks and by each month thereafter through trial in these proceedings.

REQUEST NO. 18:

All documents and things concerning the channels of trade through which Black Bear has ever sold, offered for sale, marketed, advertised or promoted any good or service in connection with Black Bear's Trademarks, including but not limited to all documents and things sufficient to identify all such channels of trade beginning with Black Bear's alleged date of first use and first use in commerce of Black Bear's Trademarks and by each month thereafter through trial in these proceedings.

REQUEST NO. 19:

All documents and things concerning the classes of purchasers or types of purchasers who have purchased, or who Black Bear would expect to purchase, each and every one of Black Bear's Goods offered or sold in connection with Black Bear's Trademarks, including but not limited to all documents and things concerning the age, income level, educational level, consumer preferences, price points, humane sourcing, ingredient sourcing, certifications, standards, organic or pasture-raised ingredients, religious affiliation, and gender of such actual and potential purchasers.

REQUEST NO. 20:

All documents and things concerning any poll, survey, market research, focus group, consumer awareness study, or other research, whether formal or informal, concerning Black Bear's Goods sold in connection with Black Bear's Trademarks.

REQUEST NO. 21:

All documents and things concerning any search, evaluation, investigation, or other inquiry made by or on behalf of Black Bear concerning Red Bear's Goods or Red Bear's Services identified in connection with Red Bear's Trademarks, including but not limited to all documents and communications relating to the results of said search, evaluation, investigation, trademark or trademark search, or other inquiry.

REQUEST NO. 22:

All documents and things concerning any agreement, transfer, license, grant, trust benefit, or assignment of rights, in whole or in part, of any interest in Black Bear's Trademarks and all communications relating thereto.

REQUEST NO. 23:

All documents and things showing the recipes and ingredients, including their sourcing, for all of Black Bear's Goods manufactured for sale in connection with Black Bear's Trademarks.

REQUEST NO. 24:

All documents and things concerning the production means for making Black Bear's Goods manufactured for sale in connection with Black Bear's Trademarks.

REQUEST NO. 25:

All documents and things supporting or refuting Black Bear's brand contention Black Bear's Goods are associated with or otherwise bear some relation to the Schwarzwald or Black Forest in Germany/Europe.

REQUEST NO. 26:

All documents and things concerning any similarity or dissimilarity between Black Bear's Trademarks and Red Bear's Trademarks.

REQUEST NO. 27:

All documents and things concerning any civil actions, administrative actions, cancellation proceedings, or other proceedings involving Black Bear's Trademarks, whether fully disposed of, inactive, suspended or pending, including all agreements, licenses, assignments, settlements and concurrent use agreements.

REQUEST NO. 28:

All documents and things concerning the settlement, resolution or compromise of any dispute between Black Bear and any person who used, proposed to use, or sought registration of Black Bear's Trademarks or any trademark that Black Bear considered to be confusingly similar to Black Bear's Trademarks, whether alone or in combination with a design including all agreements, licenses, assignments, settlements and concurrent use agreements.

REQUEST NO. 29:

All documents and things sufficient to show Black Bear's current

organizational structure, including but not limited to all documents and things sufficient to identify any parent or subsidiary or other related companies of Black Bear and all documents and things sufficient to identify Black Bear's shareholders, members, officers, directors and employees and describe their respective duties and responsibilities.

REQUEST NO. 30:

All documents and things concerning any instance where Black Bear received notice that it did not comply fully with a regulation, code, or other requirement of a government certification inspection for Black Bear's Goods offered for sale under Black Bear's Trademarks including all documents describing such instances and further including the good by trademark, inspection authority, date/time, nature of the issue and steps taken to comply, and all communications concerning such instances.

REQUEST NO. 31:

All documents and things concerning any instance where Black Bear recalled Black Bear's Goods manufactured for sale under Black Bear's Trademarks including all documents describing such instances and further including the good by trademark, affected person, date, nature of the issue and steps taken to recall the goods, and all communications concerning such instances.

REQUEST NO. 32:

All documents and things concerning any instance where Black Bear received a complaint about the quality of any of Black Bear's Goods sold under Black Bear's

Trademarks including all documents describing such instances and further including the good by trademark, affected person, date, nature of the issue, steps taken to address the complaint, and final resolution as well as all communications concerning such instances.

REQUEST NO. 33:

All documents and things which show the entirety of the packaging for each of Black Bear's Goods sold under Black Bear's Trademarks for the period June 12, 2018 through trial in these proceedings.

REQUEST NO. 34:

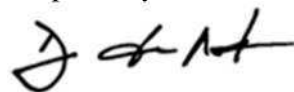
All documents and things which show the entirety of the labeling for each of Black Bear's Goods sold under Black Bear's Trademarks for the period June 12, 2018 through trial in these proceedings.

REQUEST NO. 35:

All documents and things sufficient to show Black Bear's document retention and destruction policies.

DATED: November 23, 2020

Respectfully submitted,



D. James Nahikian, MSCS
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009
(312) 399-3099

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-third day of November, 2020, I caused a true and correct copy of the foregoing **APPLICANT RED BEAR PROVISIONS, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-35** to be served upon the following counsel of record by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

D. James Nahikian

EXHIBIT 6

Black Bear v. Red Bear Opposition Nos. 91255466 (parent case), 91255467, 91255790 and 91255793 - Applicant's Discovery Requests

Sent: Tuesday, December 1, 2020 6:00 PM

From: D-James-Nahikian D-James-Nahikian@protonmail.com

To: johnchild@paulandpaul.com johnchild@paulandpaul.com, info@paulandpaul.com info@paulandpaul.com, asluzas@paulandpaul.com asluzas@paulandpaul.com, dbarlow@paulandpaul.com dbarlow@paulandpaul.com, info@nahikianglobal.com info@nahikianglobal.com

December 1, 2020

Dear Mr. Child:

Red Bear Provisions, LLC ("Red Bear") does hereby renew its prior requests for acknowledgement that Black Bear Enterprises, Inc. ("Black Bear") and Black Bear's Eni-family owned companies have received Red Bear's written discovery requests.

Please acknowledge receipt.

Very truly yours,
D. James Nahikian
Counsel of Record
Red Bear Provisions, LLC
312.399.3099
jnahikian@nahikianglobal.com

November 25, 2020

Re: **Black Bear v. Red Bear Opposition Nos. 91255466 (parent case), 91255467, 91255790 and 91255793 - Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35, Applicant Red Bear Provisions, LLC's First Set of Requests for Admissions Nos. 1-34, and Applicant Red Bear Provisions, LLC's First Set of Interrogatories Nos. 1-30**

Dear Mr. Child,

Please acknowledge receipt of the following discovery requests that I transmitted to your office on November 23 and 24, 2020:

- (1) Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35 [sent November 23];
- (2) Applicant Red Bear Provisions, LLC's First Set of Requests for Admissions Nos. 1-34 [sent November 24]; and
- (3) Applicant Red Bear Provisions, LLC's First Set of Interrogatories Nos. 1-30 [sent November 24].

We intend to propound additional discovery requests soon. We look forward to receiving your confirmation the referenced requests were received on your server side.

Very truly yours,
D. James Nahikian
Counsel of Record
Red Bear Provisions, LLC
312.399.3099
jnahikian@nahikianglobal.com

NAHIKIAN GLOBAL

Intellectual Property & Technology Law Group
D. James Nahikian, MSCS JD
Attorney at Law
Registered to Practice Before the U.S. Patent Office
(312) 399-3099

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Sent with [ProtonMail](#) Secure Email.

Subject: Re: Consolidated Opposition between Black Bear Enterprises, Inc and Red Bear Provisions, LLC. :Paul & Paul No. 3152-19
From: John Child <johnchild@paulandpaul.com>
Date: 11/30/2020, 11:44 AM
To: "D. James Nahikian" <jnahikian@nahikianglobal.com>
CC: Alex Sluzas <asluzas@paulandpaul.com>

Dear Mr. Nahikian;

This is in response to your recent inquiry as to whether we received the discovery requests of Red Bear Provisions, LLC. and when they were received.

The discovery requests that you identified were received.

The First Set of Requests for Admissions and the First Set of Interrogatories which you identified as sent on November 24, 2020 were also received on November 24, 2020.

However, the First Set of Requests for Production of Documents and Things was identified in its transmittal letter as being sent at 11:26 P.M. on November 23, 2020. Because of the one hour time difference between Chicago and Philadelphia, if the requests were sent at 11:26 P.M. November 23, 2020, the requests would not be received by us until 12:26 A.M. November 24, 2020.

Sincerely

John S. child, Jr.

EXHIBIT 7

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

<hr style="border: 0.5px solid black;"/>		
BLACK BEAR ENTERPRISES, INC.,)	
)	
Opposer,)	
)	
	)	Opposition No.: 91255466 (parent case)
v.	)	Opposition No.: 91255467
	)	Opposition No.: 91255790
RED BEAR PROVISIONS, LLC	)	Opposition No.: 91255793
d/b/a RED BEAR,)	
)	
Applicant.)	
<hr style="border: 0.5px solid black;"/>		

**APPLICANT RED BEAR PROVISIONS, LLC'S
SECOND REQUESTS FOR ADMISSIONS NOS. 35-38**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant Red Bear Provisions, LLC ("Red Bear") hereby requests that Opposer Black Bear Enterprises, Inc. ("Black Bear") admit the following matters as true in writing, under oath and in accordance with the following Definitions and Instructions within thirty (30) days of service hereof. In accordance with the rules, each matter shall be deemed admitted unless within thirty (30) days of service hereof Black Bear serves an objection addressed specifically to the matter which is signed by Black Bear or its counsel. If you object to any or all of these requests for admissions, the reason set forth shall be stated with particularity. Otherwise, Black Bear is directed to unqualifiedly admit, or specifically deny, the matter or set forth in detail the reasons why Black Bear can either truthfully admit or deny the matter. In this regard, any denial shall

fairly meet the substance of each of the requested admissions below, and Black Bear shall specify so much of the matter as true and qualify or deny the remainder.

Black Bear may not give lack of information or knowledge for failure to admit or deny unless Black Bear states with particularity the reasonable inquiry it has made and the information known or readily obtained by Black Bear is still insufficient to enable Black Bear to admit or deny.

Red Bear reserves all rights including the right to move before the Trademark Trial and Appeal Board (“Board”) to determine the sufficiency of any answers or objections that are not in the form of unqualified admissions. Red Bear also reserves its right to seek relief in the form of an order directing Black Bear to comply with the requirements of Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120 thus where appropriate order Black Bear has admitted the matter.

All matters admitted responsive to these requests shall be deemed by Black Bear as conclusively established unless withdrawn or admitted pursuant to order of the Board.

DEFINITIONS AND INSTRUCTIONS

1. Red Bear hereby incorporates by reference the Definitions and Instructions set forth in its Applicant Red Bear Provisions, LLC’s First Set of Requests for Production of Documents and Things Nos. 1-35.

2. "Black Bear", "Opposer", "you", or "your" means Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

3. "Red Bear" and/or "Applicant" means the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793.

4. "Red Bear American Charcuterie" means Red Bear American Charcuterie, LLC and all of its members, directors, officers, employees, agents, representatives, attorneys and all others acting on Red Bear American Charcuterie's behalf, including but not limited to Mike Rodenbaugh and Justin Brunson.

5. "Black Bear's Trademarks" means all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

6. "Red Bear's Trademarks" means the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

7. "Black Bear's Goods" means the goods identified as being used in United

States commerce in connection with Black Bear's Trademarks.

8. "Red Bear's Goods" means the goods identified as being used in United States commerce in connection with Red Bear's Trademarks.

9. "Red Bear's Services" means the services identified as being used in United States commerce in connection with Red Bear's Trademarks.

10. "Board" means the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

11. "Document," "documents," "thing," or "things" irrespective of capital letters shall have the full meanings prescribed by the Federal Rules of Civil Procedure, and includes the terms "writings and recordings," "photographs," "originals," and "duplicate" as defined in Federal Rule of Evidence 1001, and means any document or thing in the possession or control of Black Bear or its counsel, or known to Black Bear or its counsel, and is used in its customarily broad sense to include the following items, whether printed, recorded, microfilmed, or reproduced by any process, or written or produced by hand or electronically, and whether or not claimed to be privileged or confidential or personal: letters; memoranda; reports; records; agreements; working papers; communications (including intradepartmental and interdepartmental communications); correspondence; summaries or records of personal conversations; diaries; forecasts; statistical statements; graphs; laboratory or research reports and notebooks; charts; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports of or summaries of

interviews; reports of or summaries of investigations; opinions or reports of consultants; trademark appraisals; opinions of counsel; reports of or summaries of either negotiations within or without the corporation or preparations for such; brochures; manuals; pamphlets; advertisements; promotions; circulars; press releases; drafts of any documents; books; instruments; accounts; bills of sale; invoices; tapes; electronic communications including email messages, email attachments and email metadata; blog entries and comments; Twitter Tweets; telephone and cell phone records; and all other communications of any tangible or intangible medium of expression irrespective of medium. Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document." A draft or non-identical copy is a separate "document" within the meaning of this term.

12. "Director," "officer," "employee," "agent," "member," or "representative" means any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in that capacity.

13. "Thing" can refer to any tangible or intangible object other than a document.

14. "Concerning," "relating to," "relate to," "relates to," "related to," "referring" or "relating to," "referring to," "regarding," and "refer or relate to" shall mean in whole or in any part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of,

constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon.

15. "Including" and "includes" irrespective of capitalization means including but not limited to.

16. "Communication" or "communicate" irrespective of capitalization or plurality means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

17. "Date" irrespective of capitalization or plurality means the exact day, month and year, if ascertainable, or, if not, the best approximation thereof.

18. "Person" irrespective of capitalization or plurality means (a) natural persons; (b) legal entities, including but not limited to corporations, partnerships, firms, associations, professional corporations, licensors, licensees, trust or other beneficiaries, and proprietorships; and (c) governmental bodies or agencies.

19. "All," "any," and "each" shall each be construed as encompassing any and all.

20. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

21. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The pronoun includes all possible past and contemporary pronouns.

22. Upper case lettering means lower case lettering, and vice-versa.

23. The following requests for admissions are being served in accordance with Rule 36 of the Federal Rules of Civil Procedure. Each request must be answered in full after a diligent search has been made to locate all the requested information. This search includes examination of all documents, as well as other information possessed by Black Bear, its attorneys, accountants, investigators, agents, employees, subsidiaries, divisions, representatives, or other persons acting on Black Bear's behalf or under its control.

REQUESTS FOR ADMISSION

REQUEST NO. 35:

Admit that public offense records, criminal records, mental health records, or other public information concerning the credibility and thus the impeachability of Michael Eni exist.

REQUEST NO. 36:

Admit that public offense records, criminal records, mental health records, or other public information concerning the credibility and thus the impeachability of Lauren Eni Canseco exist.

REQUEST NO. 37:

Admit that public offense records, criminal records, mental health records, or other public information concerning the credibility and thus the impeachability of Christopher Eni exist.

REQUEST NO. 38:

Admit that public offense records, criminal records, mental health records, or other public information concerning the credibility and thus the impeachability of Louis Eni exist.

DATED: December 1, 2020

Respectfully submitted,



D. James Nahikian, MSCS
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009
(312) 399-3099

CERTIFICATE OF SERVICE

I hereby certify that on this first day of December, 2020, I caused a true and correct copy of the foregoing **APPLICANT RED BEAR PROVISIONS, LLC'S SECOND REQUESTS FOR ADMISSIONS NOS. 35-38** to be served upon the following counsel of record by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

D. James Nahikian

EXHIBIT 8

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

BLACK BEAR ENTERPRISES, INC.,)		
Opposer,)		
v.)		Opposition No.: 91255466 (parent case)
RED BEAR PROVISIONS, LLC)		Opposition No.: 91255467
d/b/a RED BEAR,)		Opposition No.: 91255790
Applicant.)		Opposition No.: 91255793

**APPLICANT RED BEAR PROVISIONS, LLC’S SECOND SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 36-45**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Red Bear Provisions, LLC ("Red Bear") hereby requests that Opposer Black Bear Enterprises, Inc. ("Black Bear") produce all documents and things responsive to Applicant Red Bear Provisions, LLC’s Second Set of Requests for Production of Documents and Things Nos. 36-45 (each a “Request” and a plurality “Requests” irrespective of capitalization) in accordance with the following Definitions and Instructions within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "Black Bear," "Opposer," "you," or "your" means Black Bear doing business as Black Bear or any other current or former assumed names, as well as any parent, subsidiary, division, affiliate, licensor, licensee, or other business entity

controlled by or on behalf of Black Bear, or owning an interest or holding a trust benefit in Black Bear, or its stakeholders or trust beneficiaries, any predecessor or successor in interest to such entities, and all directors, officers, current and former employees, agents, representatives, attorneys, trusted advisors and any other person acting on behalf of any of the foregoing.

3. "Red Bear" and/or "Applicant" means the Applicant named in these proceedings, nos. 91255466, 91255467, 91255790, 91255793.

4. "Red Bear American Charcuterie" means Red Bear American Charcuterie, LLC and all of its members, directors, officers, employees, agents, representatives, attorneys and all others acting on Red Bear American Charcuterie's behalf, including but not limited to Mike Rodenbaugh and Justin Brunson.

5. "Black Bear's Trademarks" means all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

6. "Red Bear's Trademarks" means the trademarks and applications for which registration has been opposed in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.

7. "Black Bear's Goods" means the goods identified as being used in United States commerce in connection with Black Bear's Trademarks.

8. "Red Bear's Goods" means the goods identified as being used in United States commerce in connection with Red Bear's Trademarks.

9. "Red Bear's Services" means the services identified as being used in United States commerce in connection with Red Bear's Trademarks.

10. "Board" means the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

11. "Document," "documents," "thing," or "things" irrespective of capital letters shall have the full meanings prescribed by the Federal Rules of Civil Procedure, and includes the terms "writings and recordings," "photographs," "originals," and "duplicate" as defined in Federal Rule of Evidence 1001, and means any document or thing in the possession or control of Black Bear or its counsel, or known to Black Bear or its counsel, and is used in its customarily broad sense to include the following items, whether printed, recorded, microfilmed, or reproduced by any process, or written or produced by hand or electronically, and whether or not claimed to be privileged or confidential or personal: letters; memoranda; reports; records; agreements; working papers; communications (including intradepartmental and interdepartmental communications); correspondence; summaries or records of personal conversations; diaries; forecasts; statistical statements; graphs; laboratory or research reports and notebooks; charts; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports of or summaries of interviews; reports of or summaries of investigations; opinions or reports of consultants; trademark appraisals; opinions of counsel; reports of or summaries of either negotiations within or without the corporation or preparations for such; brochures;

manuals; pamphlets; advertisements; promotions; circulars; press releases; drafts of any documents; books; instruments; accounts; bills of sale; invoices; tapes; electronic communications including email messages, email attachments and email metadata; blog entries and comments; Twitter Tweets; telephone and cell phone records; and all other communications of any tangible or intangible medium of expression irrespective of medium. Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document." A draft or non-identical copy is a separate "document" within the meaning of this term.

10. "Director," "officer," "employee," "agent," "member," or "representative" means any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in that capacity.

11. "Thing" can refer to any tangible or intangible object other than a document.

12. "Concerning," "relating to," "relate to," "relates to," "related to," "referring" or "relating to," "referring to," "regarding," and "refer or relate to" shall mean in whole or in any part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of, constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon.

13. "Including" and "includes" irrespective of capitalization means including

but not limited to.

14. "Communication" or "communicate" irrespective of capitalization or plurality means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

15. "Date" irrespective of capitalization or plurality means the exact day, month and year, if ascertainable, or, if not, the best approximation thereof.

16. "Person" irrespective of capitalization or plurality means (a) natural persons; (b) legal entities, including but not limited to corporations, partnerships, firms, associations, professional corporations, licensors, licensees, trust or other beneficiaries, and proprietorships; and (c) governmental bodies or agencies.

17. "All," "any," and "each" shall each be construed as encompassing any and all.

18. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

19. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The pronoun includes all possible past and contemporary pronouns.

20. Upper case lettering means lower case lettering, and vice-versa.

21. When used in reference to a person, "identify" means to produce documents or things sufficient to identify his or her full name and: (i) present business

and home addresses, position and business affiliation, and business and home telephone numbers; or, if current information is not known, (ii) the last known business and home addresses, position and business affiliation, and business and home telephone numbers. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same person to state the name only.

22. When used in reference to an entity, "identify" means to produce documents or things sufficient to identify the entity's: (i) full name; (ii) state of incorporation; (iii) current or last known business address; and (iv) current or last known telephone number. Once any entity has been identified properly, it shall be sufficient thereafter when identifying that same entity to state the name only.

23. When used in reference to a document, "identify" means to produce documents or thing sufficient to identify the (i) type of document; (ii) general subject matter; (iii) date the document was created; (iv) author(s), addressee(s) and recipient(s), and (v) document production number. Documents to be "identified" include documents in Black Bear's possession, custody or control, documents known by Black Bear to have existed but no longer exist, and other documents of which Black Bear has knowledge or information.

24. When used in reference to a good or service, "identify" means to produce documents or things sufficient to identify the good or service name, commercial good or service name, manufacturer, model number, part number, SKU or other standardized identifier, serial number, service type or goods type,

manufacturing cost, total cost to Black Bear, wholesale price, retail price, actual price delivered to a distributor or other customer, resale price, custom price, one-off price, and any other final price at the point of purchase, any other representative designation, and dates on which Black Bear's Trademarks were used in connection with Black Bear's Goods in the United States.

25. The following Requests are being served in accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice. Black Bear must respond to each Request in full after making a diligent search to locate all of the requested documents and things. This search includes examination of all documents, as well as other information possessed by Black Bear, its attorneys, accountants, investigators, agents, employees, contractors, subcontractors, subsidiaries, divisions, representatives, family members or other persons acting on Black Bear's behalf or under its control.

26. The requested documents and things must be produced (a) as they are kept in the usual course of business, or (b) organized and labeled to correspond with the categories in the request. Simply selecting certain materials from different files and producing them in one stack will not be sufficient.

27. In the event that any requested information is obtainable from a computer, Black Bear must provide that information, along with the media on which the information is stored and, if necessary, the programs required to access the information.

28. Unless specifically requested, duplicative originals or copies which are absolutely and totally identical to a produced document need not also be produced. However, any duplicate which is in any way different (*e.g.*, contains notes or has missing material) must also be produced.

29. If you refuse to produce any requested document, state the ground for such refusal in the written response. If you withhold any document on the basis of any privilege, state as to each such document: the privilege(s) asserted and its basis; the date the document was created; the name and last known business and residential address and telephone number of the author of the document and each recipient of it; the relationship between the author and each of said recipients at the time the document was received by the recipient; the reason why the document or the copy thereof was provided to each recipient; and the general description of the subject matter of the information contained in the document.

30. These Requests seek the production of information, documents and things as of the date on which Plaintiff responds, however, these Requests shall be deemed continuing and must be supplemented or corrected as required by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. If, after producing information, documents and things, Black Bear becomes aware of any additional or corrective document(s), thing(s), or information responsive to these Requests, Black Bear is required to produce such additional documents, things, and/or information to Red Bear promptly upon acquiring possession of such. Failing to do so is, in

substance, a knowing concealment.

REQUESTS FOR PRODUCTION

REQUEST NO. 36:

All documents and things authored by or copying Michael Eni, including all communications between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., concerning the Declaration of Michael Eni and exhibits filed December 1, 2020 in Opposition No. 91245797 before the Board.

REQUEST NO. 37:

All documents and things authored by or copying Lauren Eni Canseco, including all communications between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., concerning the Declaration of Michael Eni and exhibits filed December 1, 2020 in Opposition No. 91245797 before the Board.

REQUEST NO. 38:

All documents and things authored by or copying Christopher Eni, including all communications between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., concerning the Declaration of Michael Eni and exhibits filed December 1, 2020 in Opposition No. 91245797 before the Board.

REQUEST NO. 39:

All documents and things authored by or copying Louis Eni, including all communications between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., concerning the Declaration of Michael Eni and exhibits filed December

1, 2020 in Opposition No. 91245797 before the Board.

REQUEST NO. 40:

All documents and things created or received by Black Bear, including all communications, submitted in Opposition No. 91245797 before the Board that Black Bear submits in 91255466 (parent case), 91255467 , 91255790 and 91255793.

REQUEST NO. 41:

All documents and things authored by or copying Michael Eni, including all communications, where Black Bear references Red Bear.

REQUEST NO. 42:

All documents and things authored by or copying Lauren Eni Canseco, including between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., where Black Bear references Red Bear.

REQUEST NO. 43:

All documents and things authored by or copying Christopher Eni, including between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., where Black Bear references Red Bear.

REQUEST NO. 44:

All documents and things authored by or copying Louis Eni, including between Black Bear Enterprises, Inc., Black Bear, Inc., and Dietz & Watson, Inc., where Black Bear references Red Bear.

REQUEST NO. 45:

All documents and things concerning the public offense records, criminal records, mental health records, or other public information concerning the credibility and thus the impeachability of Michael Eni, Lauren Eni Canseco, Christopher Eni, and Louis Eni.

DATED: December 1, 2020

Respectfully submitted,



D. James Nahikian, MSCS
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009
(312) 399-3099

CERTIFICATE OF SERVICE

I hereby certify that on this first day of December, 2020, I caused a true and correct copy of the foregoing **APPLICANT RED BEAR PROVISIONS, LLC'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 36-45** to be served upon the following counsel of record by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

D. James Nahikian

EXHIBIT 9

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1957-1992

JAMES C. MCCONNON
ALEX R. SLUZAS
OURMAZD S. OJAN
JOHN S. CHILD, JR.

LAW OFFICES OF
PAUL & PAUL
THREE LOGAN SQUARE
1717 ARCH STREET
SUITE 3740
PHILADELPHIA, PA 19103
(215) 568-4900

PATENTS, TRADEMARKS, COPYRIGHTS
AND
INTELLECTUAL PROPERTY CAUSES

FAX 215-567-5057
www.paulandpaul.com
info@paulandpaul.com

DIRECT LINE: + (267) 765-0188
johnchild@paulandpaul.com

December 22, 2020

D. James Nahikian, Esq.
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009

BY EMAIL

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions, LLC
Opposition Nos. 91255466 (parent), 91255467, 91255970 and 91255793
Opposer's General Objections to Applicant's Interrogatories

Dear Mr. Nahikian:

This is in response to your discovery requests entitled Applicant Red Bear Provisions, LLC's Interrogatories Nos. 1-30.

Opposer objects to Applicant's Interrogatories in their current form as they fail to comply with 37 C.F.R. § 2.120(d) which sets forth that "the total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding shall not exceed seventy-five, counting subparts...."

Applicant's Interrogatories, when taking into account all discrete subparts, add up to far more than seventy-five parts and subparts. We came to our computation of interrogatory parts and subparts by the following determination.

- 1) Interrogatories Nos. 1-30 count as thirty parts.
- 2) An identification of the number of subparts in Interrogatories Nos. 1-30 is based on the following definition of the term "subpart."

The definition of “subpart” is provided in the Advisory Committee Notes in “Rule 33 Interrogatories” of the Federal Rules of Civil Procedure as set forth in the “1993 Amendment.” The 1993 Amendment contains the following statement:

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as ‘subparts’ questions that seek information about discrete separate subjects. [Emphasis added]

Accordingly, the identification of interrogatory subparts is determined on the basis of whether the subpart contains a question that seeks information about a discrete separate subject.

3) Interrogatories having visible subparts based on separately marked requests for information comprise the following:

- a. Interrogatory No. 1 (four subparts);
- b. Interrogatory No. 2 (six subparts);
- c. Interrogatory No. 3 (five subparts);
- d. Interrogatory No. 4 (five subparts); and
- e. Interrogatory No. 5 (five subparts).

Accordingly, Interrogatory Nos. 1-5 comprise at least twenty-five subparts.

Several other Interrogatories have large numbers of subparts.

4) Interrogatory No. 9 requires Opposer to describe ten separate characteristics of their packaging material, where the nine Black Bear Trademarks cited in at least one opposition is displayed on the packaging material. Interrogatory No. 9 further asks how the terms artisan, artisanal, fancy, foodie, gourmet, organic, humanely raised, grass fed, and award or their equivalents are displayed on the packaging. This interrogatory raises questions about ten characteristics of

packaging material in association with each of nine Black Bear Trademarks and in association with nine terms. Accordingly, this interrogatory raises questions that seek information about 810 discrete separate subjects and is calculated as having 810 subparts. Interrogatory No. 9, by itself, exceeds the seventy-five limit for parts and subparts.

5) Interrogatory No. 12 requires Opposer to describe how twelve separate types of certifications apply to each one of Black Bear's Goods. Black Bear Goods are defined as goods being used in connection with (nine) Black Bear Trademark registrations asserted in a proceeding as defined at Paragraph 7 in the Definitions and Instructions of the First Set of Interrogatories Nos. 1-30. The interrogatory raises questions about twelve separate types of certifications for each of the nine Black Bear Trademark registrations and accordingly is seeking information about 108 discrete separate subjects and is calculated as having as having 108 subparts. Interrogatory No. 12, by itself, exceeds the seventy-five limit for parts and subparts.

6) Interrogatory No. 13 covers each one of Black Bear's Goods which applies to nine separate Black Bear Trademark registrations. For each of the nine registrations, Opposer is required to "identify and describe in detail" four separate promotional mediums for promoting Black Bear's Trademarks. As this Interrogatory requires responses for nine registrations for four separate promotional mediums or activities which involves questions that seek information about discrete separate subjects, this interrogatory counts as having thirty-six subparts.

7) Interrogatory No. 16 calls for all facts and circumstances concerning any "agreement, transfer, license, grant, or assignment of rights, in whole or in part, of any interest in Black Bear's Trademarks." As agreement, transfer, license, grant or assignment constitute an evaluation of five different legal rights for each of nine Black Bear Trademark registrations, this interrogatory involves

forty-five separate questions on legal rights relating to different trademarks that seek information about discrete separate subjects and count as forty-five different subparts.

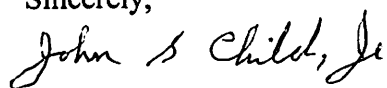
8) Interrogatory No. 17 requires a description of all facts and circumstances concerning the use of nine Black Bear's Trademarks in the United States by Dietz & Watson. The definition of Black Bear's Trademarks in Paragraph 5 of the Definitions and Instructions in the First Set of Interrogatories identify nine trademark registrations. Hence, this Interrogatory has nine subparts as each of the nine registrations raises questions that seek information about discrete separate subjects.

9) Interrogatory No. 18 is the same as Interrogatory No. 17 except that the company "Dietz & Watson" is replaced by "Black Bear, Inc." Hence, this Interrogatory also has nine subparts for the reasons described in the comments for Interrogatory No. 17 directly above. Accordingly, in Paragraphs 3-9 we have identified 1,051 subparts in Interrogatories 1-5, 9, 12-13 and 16-18.

According to the Trademark Trial and Appeal Board Manual of Procedure, § 405.03(c), 37 C.F.R. § 2.120(d) does not provide for extra interrogatories in cases where more than one mark is pleaded and/or attacked by plaintiff "whether in a single proceeding or in consolidated proceeding(s)...."

As Applicant's Interrogatories thirty parts and 1,051 subparts results in a total well above the limitation of seventy-five parts and subparts, the interrogatories fail to comply with 37 C.F.R. § 2.120(d).

Sincerely,



John S. Child, Jr.
Alex R. Sluzas

EXHIBIT 10

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1957-1992

JAMES C. McCONNON
ALEX R. SLUZAS
OURMAZD S. OJAN
JOHN S. CHILD, JR.

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December 22, 2020

D. James Nahikian, Esq.
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009

BY EMAIL

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions, LLC
Opposition Nos. 91255466 (parent), 91255467, 91255970 and 91255793
Opposer's General Objections to Applicant's Requests for Admissions

Dear Mr. Nahikian:

This is in response to your discovery requests entitled Applicant Red Bear Provisions, LLC's First and Second Requests for Admissions Nos. 1-38.

Opposer objects to Applicant's Requests for Admissions in their current form as they fail to comply with 37 C.F.R. § 2.120(i) which sets forth that "the total number of requests for admission which a party may serve upon another party pursuant to Rule 36 of the Federal Rules of Civil Procedure, in a proceeding shall not exceed seventy-five, counting subparts...."

Applicant's two sets of Requests for Admissions, when taking into account all discrete subparts, add up to far more than seventy-five parts and subparts. We came to our computation of the total number of parts and subparts in the requests for admissions on the following basis.

- 1) Requests for Admissions Nos. 1-38 count as thirty-eight parts.
- 2) An identification of the number of subparts in Requests for Admissions Nos. 1-38 is based on the following definition of the term "subpart."

The definition of “subpart” is provided in the Advisory Committee Notes in “Rule 33 Interrogatories” of the Federal Rules of Civil Procedure as set forth in the “1993 Amendment.” The 1993 Amendment contains the following statement:

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as ‘subparts’ questions that seek information about discrete separate subjects. [Emphasis added.]

Accordingly, the identification of request for admissions subparts is determined on the basis of whether the subpart contains a question that seeks information about a discrete separate subject.

3) Request No. 1 states “Admit that Black Bear is aware of no instance of actual confusion occurring between Black Bear Trademarks and Red Bear Trademarks.”

In the Definitions and Instructions of Paragraph 5 of the Requests for Admissions, “Black Bear’s Trademarks” means all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, 91255793, by Black Bear.” In the Notice of Opposition No. 91255793, Black Bear asserted nine registrations.

Accordingly, Request for Admission No. 1, asks for identification of incidents of confusion involving nine separate registrations of Black Bear and consists of nine questions that seek information about discrete separate subjects which count as nine subparts.

4) Request for Admissions Nos. 4-26 refer to “Black Bear Goods.” Paragraph 7 of the Definitions and Instructions of the First Request for Admissions provides that Black Bear Goods “means the goods identified as being used in United States commerce in connection with Black Bear’s Trademarks.”

As noted above, “Black Bear Trademarks” is defined at Paragraph 5 in the Definitions and Instructions of the Request for Admissions. “‘Black Bear Trademarks’ means all registered and applied-for trademarks asserted in these proceedings nos. 91255466, 91255467, 91255 790, and 91255793 by Black Bear”. In Proceeding No. 91255793, Black Bear asserted nine Black Bear trademark registrations.

Request No. 4 asks Plaintiff to “admit that Black Bear’s Goods have used ingredients that are not traditionally found in recipes originating from the Schwarzwald or Black Forest in Germany.” As this topic raises questions that seek information about discrete separate subjects involving each of nine Black Bear trademark registrations, Request No. 4 contains nine subparts.

Request No. 5 asks Plaintiff to “admit that Black Bear’s Goods do not contain exotic ingredients.” As this topic raises questions that seek information about discrete separate subjects involving each of nine Black Bear trademark registrations, Request No. 5 also contains nine subparts.

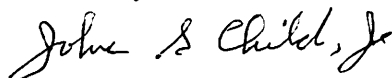
Plaintiff’s answers to these requests and other Request for Admissions in Nos. 6-26 will have to take into account each of Plaintiff’s nine trademark registrations defined under Black Bear Trademarks according to Paragraph 5 of the Definitions and Instructions in the Requests for Admissions. As noted above, Request for Admissions Nos. 4 and 5 each contain nine separate subparts because they contain questions that seek information about nine separate registrations. This same calculation of subparts also applies to Request Nos. 6-26. On this basis alone, Request Nos. 4-26 are determined to have over 200 subparts.

D. James Nahikian, Esq.
December 22, 2020
Page 4

According to the Trademark Trial and Appeal Board Manual of Procedure, § 407.05(c), 37 C.F.R. § 2.120(i) does not provide for extra requests for admission in cases where more than one mark is pleaded and/or attacked by plaintiff “whether in a single proceeding or in consolidated proceeding(s)....”

As Applicant’s Request for Admissions Nos. 1-38 with the inclusion of subparts results in a total well above the limitation of seventy-five parts and subparts, the requests fail to comply with 37 C.F.R. § 2.120(i).

Sincerely,



John S. Child, Jr.
Alex R. Sluzas

JSC:dlb

EXHIBIT 11

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1987-1992

JAMES C. McCONNOR
ALEX R. SLUZAS
OURMAZD S. OJAN
JOHN S. CHILD, JR.

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December 22, 2020

D. James Nahikian, Esq.
Nahikian Global Intellectual Property
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1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009

BY EMAIL

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions, LLC
Opposition Nos. 91255466 (parent), 91255467, 91255970 and 91255793
Opposer's General Objections to Applicant's Requests for Production of
Documents and Things

Dear Mr. Nahikian:

This is in response to your discovery requests entitled Applicant Red Bear Provisions, LLC's First and Second Requests for Production of Documents and Things Nos. 1-45.

Opposer objects to Applicant's Requests for Production of Documents and Things 1-45 in their current form as they fail to comply with 37 C.F.R. § 2.120(e) which sets forth that "the total number of requests for production which a party may serve upon another party pursuant to Rule 34 of the Federal Rules of Civil Procedure, in a proceeding shall not exceed seventy-five, counting subparts...."

Applicant's two sets of Requests for Production of Documents and Things, when taking into account all discrete parts and subparts, add up to far more than seventy-five. Our computation of the total number of parts and subparts of requests for production of documents and things are as follows.

- 1) Requests for Production of Documents and Things Nos. 1-45 count as forty-five parts.

2) A calculation of the number of subparts in the Requests for Production of Documents and Things Nos. 1-45 is based on the following definition of the term “subpart.”

The definition of “subpart” is provided in the Advisory Committee Notes in “Rule 33 Interrogatories” of the Federal Rules of Civil Procedure as set forth in the “1993 Amendment.” The 1993 Amendment contains the following statement:

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as ‘subparts’ questions that seek information about discrete separate subjects. [Emphasis added]

Accordingly, the determination of subparts is based on “questions that seek information about discrete separate subjects.”

3) Request for Production No. 1 seeks all documents and things concerning any instance in which any person was or may have been confused, mistaken or deceived in any manner between Red Bear’s Trademarks and Black Bear’s Trademarks.

Black Bear Trademarks are defined in Paragraph 5 of the Definitions and Instructions of Applicant’s First Request for Production and Things as meaning all trademarks asserted in these proceedings. There are nine Black Bear trademarks as Black Bear asserted nine trademark registrations in Proceeding No. 91255793. This part of Request for Production No. 1 raises questions that seek information about each of the nine Black Bear trademark registrations resulting in nine separate subjects which are counted as nine separate subparts.

A calculation of subparts for a few additional document requests as provided below demonstrate that the document requests substantially exceed the limit of seventy-five parts and subparts.

4) Request for Production No. 10 demands all documents and things concerning the sales of each and every one of Black Bear's goods ever sold in connection with each of the nine Black Bear Trademark registrations including but not limited to all documents and things concerning all four types of buyers, namely customers, retailers, distributors and supporters. Request for Production No. 10 involves questions that seek information about discrete separate subjects including nine separate Black Bear registrations in association with four types of buyers which count as questions that seek information about thirty-six separate subjects which counts as thirty-six subparts.

5) Request for Production No. 13 demands all documents and things concerning expected sales and profitability if each of Black Bear's goods sold in connection with Black Bear's (nine) Trademark Registrations for four types of financial information, namely estimates, budgets, forecasts and projections. The number of subparts counts as thirty-six as the Request for Production raises for each of nine Black Bear Trademark Registrations requests for information about four discrete separate types of financial information.

6) Request for Production No. 15 demands all documents and things for goods and services sold in connection with nine Black Bear Trademark Registrations including questions that seek information about at least seven discrete separate subjects, namely a) Market segments, b) Size of actual markets, c) Growth rates, d) Competitors, their product or service offerings and pricing, e)

Actual market shares, f) Customer and end-user demographics and profiles, and g) Sales channels .
Requests for documents for goods and services for each of nine Black Bear Trademark Registrations in association with seven separate subjects results in requests for information about sixty-three discrete separate subjects and counts as sixty-three subparts.

7) Request No. 19 demands all documents and things concerning purchasers of goods in connection with each of Black Bear's nine Trademark Registrations and concern in part questions that seek information about thirteen discrete separate subjects about consumer and product information with the nine registrations. This request counts as 117 subparts.

According to the Trademark Trial and Appeal Board Manual of Procedure, § 406.05(e), 37 C.F.R. § 2.120(e) does not provide for extra requests for production of documents and things in cases where more than one mark is pleaded and/or attacked by plaintiff "whether in a single proceeding or in consolidated proceeding(s)...."

Accordingly, an analysis of Request for Production Nos. 1, 10, 13, 15 and 19 alone identify at least 261 subparts which when combined with the forty-five document requests parts substantially exceeds the limit of seventy-five parts and subparts.


Sincerely,

John S. Child, Jr.
Alex R. Sluzas

EXHIBIT 12

January 11, 2021

By E-mail (johnchild@paulandpaul.com)

John S. Child, Jr., Esq.
Paul & Paul
Three Logan Square
1717 Arch Street, Suite 3740
Philadelphia, Pennsylvania 19103

Re: *Black Bear Enterprises, Inc. v. Red Bear Provisions, LLC*
Opposition Nos. 91255466 (parent), 91255467, 91255970 and 91255793
Applicant's Response to Opposer's Objections to Applicant's Discovery
Requests and Interrogatories

Dear Mr. Child:

Your purported objections to my client's discovery requests in these consolidated cases – you have refused to respond materially to any request – are unreasonable, unfounded, contrary to law, counter-factual, and illogical. Applying the approach you advocate, if your client had asserted seventy-six or more trademark registrations against my client's consolidated applications then your client either would be justified in refusing to produce or answer the requests or else my client could only direct one request for production, one interrogatory and one admission request to a single Section 2(d) likelihood of confusion factor since, according to your logic, each such request per each registration individually would count toward the cumulative limitation of seventy-five per type. (You even claim, further, that the seventy-five request limitation should be multiplied by each of my client's trademark applications that your client has opted to contest, which leads to your utterly wild claim that my client propounded more than 1,051 discrete requests in its Interrogatories Nos. 1-30 alone.) This is not federal discovery law. Your approach argued in federal court would be dismissed, and the judge would likely rebuke you for the attempt to sell it with a straight face.

According to my information, Mr. Child, you have argued a considerable number of trademark opposition proceedings over the course of the past thirty years including recently against third parties. In a pending, parallel opposition proceeding which concerns my client's design mark, you once based a refusal to answer my client's interrogatories on the asserted grounds my client was restricted by law to a mere twenty-five interrogatories instead of the seventy-five actually permitted, and your bad faith refusal was particularly astonishing given you did not protest my client's right to propound seventy-five document requests together with its seventy-five requests for admission. Here at this juncture, you are certainly not operating out of ignorance and, thus, we may unfortunately conclude that you are once again acting in bad faith.

You could have objected to my client's discovery requests sooner than the next-to-last day before the deadline, regardless, I will in good faith attempt to establish a constructive dialogue with you or, if you prefer, with your co-counsel Dr. Sluzas, who is copied on this letter, in order to advance this opposition proceeding forward by specifically addressing each one of your stated objections, below, with reference to the paragraph numbers set forth in your three separate objecting letters of the same date. Observe my client is willing to stipulate to an extension of time in order for your client to have additional opportunity to transmit a compliant response to my client's discovery requests. In addition, we are willing to cooperate with your client by lodging a joint motion to request time by as many reasonable days as your client may require. Nonetheless, I will need to receive your written assurances of timely compliance by the close of business this Thursday, January 14.

**PURPORTED OBJECTIONS TO APPLICANT RED BEAR PROVISIONS, LLC'S
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-45**

1) We concur that our Requests for Production of Documents and Things Nos. 1-45 count towards the seventy-five request limitation as forty-five parts.

2) The Advisory Notes to the 1993 Amendment to Rule 33 you rely upon have been superseded by TTAB law which enlarges the number of permissible document requests from twenty-five to seventy-five, as you have acknowledged in your letter. Specifically, 37 C.F.R. § 2.120(e) "does not provide for extra requests for production of documents and things in cases where more than one mark is pleaded and/or attacked by the plaintiff (whether in a single proceeding, or in consolidated proceedings), because in such cases the propounding party may simply request that each request for production be answered with respect to each involved mark of the responding party, and the requests for production will be counted the same as if they pertained to only one mark." See TTAB Manual of Procedure § 406.05(c) "Application of Limit: Multiple Marks, Etc."

My client's discovery requests expressly define "Black Bear Trademarks" and "Red Bear Trademarks" exactly as provided for under 37 C.F.R. § 2.120(e); § 406.05(c). The propounding party in this consolidated opposition proceeding is therefore entitled to have each of its enumerated requests "counted the same as if they pertained to only one mark" and not, as you claim, separately counted by each and every trademark and good at issue. All of your purported objections are unsustainable.

3) Same as 2) above.

4) Same as 2) above. In addition, the plain meaning of Request No. 10 is that my client wants to review the bulk sales records for each of your client's goods allegedly sold under the trademarks asserted. Your client was in full control of the number of trademarks and goods placed at issue. They are to be counted as one. The remainder of the request merely suggests the types of records that may or may not be maintained by your client – logically, we cannot know what the information comprises until you produce it, never having examined the evidence before. Aspects trailing the root request are only illustrative and read by its plain meaning the request

cannot reasonably be interpreted to include discrete subparts. Your purported objection to this request is unsustainable.

5) Same as 2) above. In addition, the plain meaning of Request No. 13 is that my client wants to review any evidence concerning expected profitability of the goods requested under No. 10. What is the profit anticipated for a branded good? The language “estimates, budgets, forecasts and projection” are not subparts but exemplary. Request No. 13 thus counts as a single request and not the thirty-six discrete requests counted by you. Your purported objection to this request is unsustainable.

6) Same as 2) above. In addition, the plain meaning of Request No. 15 is that my client wants to review any evidence in your client’s possession that informs us as to your client’s perceived market for its goods or in the alternative, since your client opted to challenge my client’s individual applications for both goods and services, your client’s services. This constitutes a unitary request, however, even if we were to count exemplary language a-g as subparts and treat them separately as goods or services the fourteen requests added to the forty-five propounded would sum up to fifty-nine – which is well under the seventy-five request limitation imposed. Your purported objection to this request is unsustainable.

7) Same as 2) above. In addition, the plain meaning of Request No. 19 seeks any evidence, and presently we have only speculation about what information your client may have in its possession, concerning the prospective purchasers who might see the trademarks on the goods and choose to buy or not buy your client’s products asserted in this action. The illustrative language contained in this request does not qualify as a subpart, let alone “117 subparts” as you purport and, instead, it merely exemplifies the types of evidence about your client’s prospective buyers sought. The client may have the pertinent information in its possession or else not but we are obviously interested in learning more about your client’s prospective customers. Your purported objection to this request is unsustainable.

I observe there are no other objections to my client’s document requests Nos. 1-45 raised in your letter nor did you provide a valid foundation for a general objection. Even if I granted the hypothetical counts presupposed above, the total number of supported document requests is well under the seventy-five request limitation. Therefore, your client must comply with TTAB Manual of Procedure § 406 et seq. and produce the requested documents in advance of the February 1 discovery closure or else arrange to extend the time by which to comply. Your client also has an ongoing duty to supplement its responses to my client’s discovery requests and interrogatories.

**PURPORTED OBJECTIONS TO APPLICANT RED BEAR PROVISIONS, LLC’S
REQUESTS FOR ADMISSIONS NOS. 1-38**

1) We concur that our Requests for Admissions Nos. 1-38 count towards the seventy-five request limitation as thirty-eight parts.

2) The Advisory Notes to the 1993 Amendment to Rule 33 you rely upon have been superseded by TTAB law which enlarges the number of permissible requests for admission from

twenty-five to seventy-five, as you have acknowledged in your letter. The applicable law for admissions requests, however, is Rule 36 and not Rule 33, which applies only to interrogatories and document requests. See 37 C.F.R. § 2.120(i); TTAB Manual of Procedure § 407.05(c) Application of Limit: Multiple Marks, Etc.” Thus, all of your purported objections are unsustainable given they are only supported by an inapplicable rule of law.

3) Same as 2) above. The plain meaning of Request No. 1 is to admit your client is not aware of any instances of actual confusion in the marketplace between our clients’ respective trademarks. We both know from the parallel opposition proceeding concerning our clients’ respective logos there have not been any instances of actual confusion reported and, thus, an admission here by your client would promote economy because we can dispense with the related document request. Your purported objection to this request is unsustainable and, given the purported objection is clearly frivolous, my client does hereby deem Request No. 1 as having been admitted in full.

4) Same as 2) above. In addition, your client trades on a faux identity purportedly associated with a “black bear of the black forest” which supposedly originates from the Schwarzwald, or Black Forest region, in present-day Germany. There are no actual black bears living in the Schwarzwald.

My client’s Request for Admission No. 4 states in full: “Admit that Black Bear’s Goods have used ingredients that are not traditionally found in recipes originating from the Schwarzwald or Black Forest in Germany.” We know, for example, your client’s Old Fashioned Boneless Smoked Ham that is sold under the “black bear of the black forest” logo asserted against my client’s trademark applications and it has been manufactured inter alia with sodium erythorbate and sodium phosphate – chemicals that my client would never consider injecting into its artisan meat products and that Schwarzwald Germans would never consider to be “traditionally found” in their recipes. This admission is relevant to distinguishing our clients’ respective goods in the marketplace on a qualitative basis.

Request for Admission No. 5 states in full: “Admit that Black Bear’s Goods do not contain exotic ingredients.” As you are aware already through the parallel opposition proceeding pending between our clients’ respective logos, my client actually does incorporate exotic ingredients into some of its goods, for example, a rare pollen handpicked only once per year, conditions permitting. Our belief is that your client does not employ any exotic ingredients and, thus, the goods at issue are readily distinguishable on this qualitative basis. An admission would promote economy in resolving this matter given it would obviate the related document request which is directed to the same evidence.

For these reasons, your purported objections to Request No. 4 and No. 5 are frivolous and counterproductive, and they are unsustainable, thus, my client does hereby deem Request No. 4 and No. 5 as having been admitted in full.

Accordingly, there were exactly thirty-eight discrete requests for admissions propounded to your client and not the “over 200 subparts” you claim to have counted. I observe there are no other objections to my client’s requests for admissions Nos. 1-38 raised in your letter nor did you notice up a general objection. Therefore, your client’s responses are hereby deemed to constitute

full admissions. As you know, your client has an ongoing duty to supplement its responses to all of my client's discovery requests and interrogatories.

**PURPORTED OBJECTIONS TO APPLICANT RED BEAR PROVISIONS, LLC'S
INTERROGATORIES NOS. 1-30**

1) We concur that Applicant Red Bear Provisions, LLC's Interrogatories Nos. 1-30 count towards the seventy-five interrogatories limitation as thirty parts.

2) The Advisory Notes to the 1993 Amendment to Rule 33 you rely upon have been superseded by TTAB law which enlarges the number of permissible document requests from twenty-five to seventy-five, as you have acknowledged in your letter. Specifically, 37 C.F.R. § 2.120(d) "does not provide for extra interrogatories in cases where more than one mark is pleaded and/or attacked by the plaintiff (whether in a single proceeding, or in consolidated proceedings), because in such cases, the propounding party may simply request that each interrogatory be answered with respect to each involved mark of the responding party, and the interrogatories will be counted the same as if they pertained to only one mark." See TTAB Manual of Procedure § 405.03(c) "Application of Limit: Multiple Marks, Etc."

My client's interrogatories expressly define "Black Bear Trademarks" and "Red Bear Trademarks" exactly as provided for under 37 C.F.R. § 2.120(d); § 405.03(c). The interrogating party in this consolidated opposition proceeding is therefore entitled to have each of its enumerated requests "counted the same as if they pertained to only one mark" and not, as you claim, separately counted by each and every trademark and good at issue. All of your purported objections are unsustainable or else they are remedied below.

3) Same as 2) above. In addition:

a. Subject to a single exception, Interrogatory No. 1 is unitary and not divided into subparts. Attributes (a)-(c) simply ask your client to "identify and describe" its meat-based goods asserted in this consolidated proceeding including the product name, general type (for example, salami) and dates of use.

We concur that item (d) constitutes a distinct and separate subpart which is directed to materially different subject matter, and we agree it should be counted as an extra interrogatory thereby bringing the actual number of interrogatories propounded to thirty-one.

b. The plain language of Interrogatory No. 2 seeks a description of all instances of actual confusion, if any, detected by your client. You objected to the related request for admission that, insofar as your client is aware, there have not been any instances of actual confusion. Please either admit there has been no actual confusion or else provide my client with the evidence that actual confusion has indeed occurred to include, for each claimed event, the known names of all persons involved, date on which such mistake, confusion or deception occurred, the nature of the event, how the client learned of it, supporting communications, and all records of the event. (a)-(f) merely list the attributes of each instance queried and not subparts

directed to discrete separate subject matter. Your purported objection to this interrogatory is unsustainable.

c. The Eni family owns and operates Black Bear Enterprises, Black Bear Inc. and Dietz & Watson. On information and belief, these companies are closely held interlocking entities. The plain language of Interrogatory No. 3 is directed to a unitary query: What have these entities said internally about my client's trademarks? Attributes (a)-(e) do not constitute subparts directed to discrete separate subject matter but instead they simply ask that for each such communication your client set forth its date, communicants, form of communication (for example, e-mail), what the communication was about, and disclosure of any documents that concern the communication. Your purported objection to this interrogatory is unsustainable.

d. We know that your client has communicated with the former Red Bear American Charcuterie inter alia because your client filed an opposition against Red Bear American Charcuterie proximate to the time when your client initially noticed my client. Interrogatory No. 4 is directed to a unitary query: What did your client learn about my client from Red Bear American Charcuterie? Attributes (a)-(e) do not constitute subparts directed to discrete separate subject matter but instead they simply ask that, for each such communication, your client identify and describe its date, communicants, form of communication (for example, e-mail), what the communication was about, and disclosure of any documents that concern the communication. Your purported objection to this interrogatory is unsustainable.

e. The plain language of Interrogatory No. 5 is directed to a unitary query: How did your client first discover my client's trademarks? Attributes (a)-(e) do not constitute subparts directed to discrete separate subject matter but instead they simply ask that your client to describe the date your client first learned of my client's trademarks, who participated in the event, how they learned about my client, what they did about the event, and the identity of any document relating to the event. Interrogatory No. 5 is hardly an unanticipated interrogatory in view of the fact your client opposed my client's applied-for trademarks. Your purported objection to this interrogatory is unsustainable.

Accordingly, your purported objections on grounds Interrogatories Nos. 1-5 comprise at least twenty-five subparts are unsupported since there are no "visible subparts" but rather a list of attributes necessary to fully answer each unitary query. Interrogatories Nos. 1-5 merely comprise five distinct queries each directed to five unitary subjects. Your purported objections to all of these interrogatories are unsustainable.

4) Same as 2) above. In addition, you have objected to Interrogatory No. 9 on grounds it contains "810 subparts" when, in fact, it only seeks information regarding the appearance of the packaging for the goods your client sells. My client's defense depends not only on the asserted trademarks as perceived in the sterile environment of the TTAB but it also depends upon the Board understanding the total presentation of your client's goods in the marketplace. Your client's product packaging is a material aspect of this presentation. Interrogatory No. 9 merely asks your client to identify and describe its various product packaging in terms of the attributes set forth after the root query. There are no subparts. Your purported objection to this interrogatory is unsustainable.

5) Same as 2) above. In addition, you have objected to Interrogatory No. 12 on grounds it contains “108 subparts” when, in fact, it only seeks information regarding a unitary subject. The interrogatory asks your client to furnish relevant information concerning certifications, if any, that the client claims have been bestowed on its goods. The terms listed after the root query are clearly exemplary in nature and not distinct and separate subparts or interrogatories. The term “certifications” is trailed by examples of various possible certifications for purposes of illustration. Moreover, even if each and every exemplary term was to be counted toward the seventy-five interrogatory limit, my client’s full set of thirty-one interrogatories would remain under the limit by a large margin. Your purported objection to this interrogatory is unsustainable.

6) Same as 2) above. In addition, Interrogatory No. 13 clearly is not comprised of subparts but instead it is directed to a unitary query: How does your client promote its goods through trade channels of the type set forth in the interrogatory? We know your client positions some of its goods at issue in deli showcases for example. Tell us the ways your client promotes its goods in the pertinent channels, for example, does it sell through restaurant channels? Moreover, even if each and every exemplary term was to be counted toward the seventy-five interrogatory limit, my client’s full set of thirty-one interrogatories would remain under the limit by a large margin. Your claim this interrogatory counts as thirty-six discrete separate subject is unfounded, and the purported objection to this interrogatory is unsustainable.

7) Same as 2) above. In addition, Interrogatory No. 13 clearly is not comprised of subparts, let alone your claimed forty-five subparts, and instead it is directed to a unitary query: Are your client’s trademark registrations asserted in this opposition proceeding encumbered by any agreement and, if so, tell us how so. We know your client’s registrations are held by Black Bear and licensed out to Dietz & Watson, therefore, please identify and describe the licensing arrangement as well as all communications relating to it. Ditto for all other encumbering agreements. In lieu of a description, you may simply produce the actual contracts if they appear in written form. Interrogatory No. 13 is a common one in trademark cases, as you probably know already. Your purported objection to this interrogatory is unsustainable.

8) Same as 2) above. In addition, Interrogatory No. 17 states in its entirety: “Describe in detail all facts and circumstances concerning the use of Black Bear’s Trademarks in the United States by Dietz & Watson.” There is nothing more to Interrogatory No. 17. Since Dietz & Watson is owned and operated by the Eni family, we need to know how the various corporate entities, including Dietz & Watson, are using the asserted trademarks. Your purported objection to this interrogatory is unsustainable.

9) Same as 2) above. In addition, your objection to Interrogatory No. 18 is essentially the same one set forth at 8) above for Interrogatory No. 17 except you have replaced “Dietz & Watson” with “Black Bear, Inc.” and erroneously counted up an additional nine subparts somehow despite the absence of any conceivable subpart given the brevity of this interrogatory.

Your count of “thirty parts and 1,051 subparts” has been demonstrated to be unsupported by the facts. I observe there are no other objections to my client’s interrogatories Nos. 1-30, now Nos. 1-31, raised in your letter nor did you provide a valid foundation for a general objection. Your client is dutybound to answer my client’s interrogatories by the February 1 discovery

John S. Child, Jr., Esq.
January 11, 2021
Page 8

closure or else arrange to extend the time by which to comply. Your client also has an ongoing duty to supplement its answers to these interrogatories.

* * * * *

I look forward to timely receiving the requested assurances or a request for a reasonable extension of time if your client should need it. Of course, your client is welcome to respond by producing the requested documents, admitting or denying my client's requests for admissions, and answering our interrogatories in full this week, ideally by Thursday if you will.

Very truly yours,



D. James Nahikian
Counsel of Record
Red Bear Provisions, LLC

cc: Alex R. Sluzas, Esq. (asluzas@paulandpaul.com)

EXHIBIT 13

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1957-1992

JAMES C. MCCONNON
ALEX R. SLUZAS
OURMAZD S. OJAN
JOHN S. CHILD, JR.

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DIRECT LINE: + (267) 765-0188
johnchild@paulandpaul.com

January 15, 2021

D. James Nahikian, Esq.
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009

BY EMAIL

Re: Black Bear Enterprises, Inc. v. Red Bear Provisions, LLC
Opposition Nos. 91255466 (parent), 91255467, 91255970 and 91255973
Reply to Applicant's Response to Opposer's Objections to Discovery Requests

Dear Mr. Nahikian:

This is in reply to your letter dated January 11, 2021 which responds to our letters objecting to your document requests, interrogatories and request for admissions as not compliant with the rules because they each exceed seventy-five parts and subparts.

We were hoping that you would propose a revised set of requests of a more reasonable scope rather than just stoking the flames of litigation with accusations of bad faith. What is the point of asking about your client's opponents' "criminal records" and "mental health records" other than to embarrass or annoy? We must also observe that the excessive number is just one aspect of the overbreadth of your requests compared with the nature of the trademark dispute.

With respect to our letters relating to the document requests and interrogatories, you have contended that the number of subparts is fewer than our calculation because references to your definition of Black Bear Trademarks do not create subparts for each of the nine pertinent Black Bear

D. James Nahikian, Esq.
January 15, 2021
Page 2

trademarks. We disagree, but even if we were to count the Black Bear Trademarks as unitary, the document requests and interrogatories are still objected to as exceeding seventy-five parts and subparts.

Although we have raised a similar objection to your client's request for admissions, certain issues that were not covered in your letter raise a greater concern that must be addressed. Request Nos. 35-38 ask whether Louis Eni, the CEO of Dietz & Watson, his brother, Christopher Eni, his daughter, Lauren Eni Canseco and his son, Michael Eni have criminal records and/or mental health records. These requests comprise the Second Request for Admissions.

However, this is not a proper request for admission but rather a further, albeit illegitimate, attempt to circumvent the discovery rules. You are seeking information that should have been sought by a genuine discovery device, such as by interrogatory or document request, and not by a request for admission, which is not a discovery device per se. A proper request for admission seeks to avoid for the parties the necessity of producing evidence as to basic facts which the parties do not dispute. Of course, seeking this information by a proper discovery device would be objectionable on a host of grounds, which we can delineate in response to such an attempt. Similarly, Document Request No. 45 is improper because it is based on your improper admission requests.

With respect to the document requests and interrogatories, the number of parts and subparts remains over seventy-five because of the large number of subparts. To determine what constitutes a subpart, we used the definition in Rule 33 of the Federal Rules of Civil Procedure. The Advisory Committee notes of the 1993 Amendment addressed this limitation when each party was allowed to

serve twenty-five interrogatories upon any other party. The Advisory Committee's comment on subparts, which was provided in my letters to you, is as follows:

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as 'subparts' questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication.

In contrast to our reliance on the interpretation of subpart taken from the Federal Rules of Civil Procedure, you appear to have coined your own rules. We do not understand your apparent contention that when the limit on the number of requests was raised, the rule of interpretation provided by the Advisory Committee flew out the window.

In paragraphs 2-7 of your letter regarding Applicant's Request for Production of Documents and Things, you claim that our client's goods are also counted the same and by extension, the bulk sales records for each of our client's goods allegedly sold under the trademarks asserted or counted as one part. In paragraph 5, you assert that the language "estimates, budgets, forecasts and projections" are not subparts but exemplary. The terms are used in Request No. 13 which reads as follows:

All documents and things concerning expected sales and profitability of each of Black Bear's Goods sold in connection with Black Bear's Trademarks including estimates, budgets, forecasts and projections.

The estimates, budgets, forecasts and projections are not exemplary of a general request but seek information about discrete separate subjects. Accordingly, Request No. 13 has four separate subparts. Did you intend “such as” rather than “including” or redefine the latter in your Definitions?

In your comment with respect to Request No. 10, you state that “aspects trailing the root request are only illustrative and read by its plain meaning the request cannot reasonably be interpreted to include discrete subparts.”

Request No. 10 reads as follows:

All documents and things concerning the sales of each and every one of Black Bear’s Goods ever sold in connection with Black Bear’s Trademarks, including but not limited to all documents and things concerning all third parties, including customers, retailers, distributors, and importers, to whom such products and goods were sold in the United States from each such product or good’s inception to the present, and the total number of products or goods sold, total gross sales, total net sales, total cost of goods sold, total gross profits, and total net profits by month, by year and by customer from each such good from inception to the present.

The request for information about customers, retailers, distributors, and importers seeks information about discrete separate subjects and counts as four separate subparts. What is the general category here that these classes are supposed to exemplify? “All third parties”? The request for total number of products or goods sold, total gross sales, total net sales, total cost of goods sold, total gross profits and total net profits by month, by year and by customer from each such good is seeking information about nine discrete separate subjects and counts as nine subparts. Accordingly, Request No. 10 has thirteen subparts. While we can understand your request for sales information,

D. James Nahikian, Esq.
January 15, 2021
Page 5

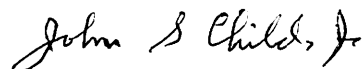
for the purposes of this proceeding it appears that a summary of the requested data would suffice, and we are certainly open to a proper request on this topic.

Paragraph 6 of your letter defines exemplary language a-g as a unitary request but states that even if they are considered subparts, the total does not reach seventy-five. Paragraph 6 refers to Request No. 15. Items a-g request information about discrete separate subjects and thus we count them as comprising seven subparts.

This is only a few of the document requests and interrogatories that contain several subparts that collectively exceed the limits of seventy-five. From the explanations above, there is no need to cover them all.

Accordingly, our reliance upon the definition of subparts in the Federal Rules of Civil Procedure leads to a continuation of our objection to your client's document requests and interrogatories as exceeding seventy-five parts and subparts. Nevertheless, we remain open to considering your proposal for discovery of a properly limited scope.

Sincerely,



John S. Child, Jr.
Alex R. Sluzas

JSC:dlb

EXHIBIT 14

January 25, 2021

By E-mail (johnchild@paulandpaul.com)

John S. Child, Jr., Esq.
Paul & Paul
Three Logan Square
1717 Arch Street, Suite 3740
Philadelphia, Pennsylvania 19103

Re: *Black Bear Enterprises, Inc. v. Red Bear Provisions, LLC*
Opposition Nos. 91255466 (parent), 91255467, 91255970 and 91255793
Applicant's Response to Opposer's Objections to Applicant's Discovery
Requests and Interrogatories

Dear Mr. Child:

Discussions in this case and its advanced parallel case for the logo have failed to produce any movement on your client's part in a single material aspect of discovery. Instead, you continue to impose new conditions and introduce surprises, including now by proposing to substitute your summations, or conclusions, for actual records that have been properly requested under applicable law.

I quote from your letter, "[w]hile we can understand your request for sales information, for the purposes of this proceeding it appears that a summary of the requested data would suffice and we are certainly open to a proper request on this topic." Since your client is the objecting party, why did not you not offer an exemplary request that would comply as an acceptable proposal to your client? Our request for sales information should be easy to produce given the digitization of your client's sales records, in fact, accurately summarizing the information almost certainly would involve greater time and expense, and we have no intention of relying on your judgment in terms of the information that my client believes necessary to put on its defense versus the summary contents you would choose to make available for our inspection and consideration.

Our correspondence of January 11th painstakingly, and successfully, addressed each and every one of your original and subsequent objections in detail. Unlike your discussion, we even listed examples of compliant discovery responses that would be acceptable to my client. In terms of your sales information, in combination with information to be produced pursuant to our separate discovery requests, we need to determine what sales levels on the part of your client by product show market power or lack thereof for comparison with my client's goods and their market presence. This evidence is not for you or your client to determine for our reliance purposes.

We renew our challenge to your mathematical approach which, incredulously, counts your client's registrations asserted plus the goods identified in this proceeding and multiplies each one of them separately by each and every one of my client's discovery requests, thus, your tabulation that my client's Interrogatory No. 18 alone propounds "thirty parts and 1,051 subparts." To counter your misplaced reliance upon select Advisory Notes to the 1993 Amendments – recall you attempted to apply those very same Notes to support your original contention that my client was limited to a mere twenty-five interrogatories and not the seventy-five allowed -- we provided you with 37 C.F.R. § 2.120(e), TTAB Manual of Procedure § 405.03(c) which, in relevant part, states:

the propounding party may simply request that each interrogatory be answered with respect to each involved mark of the responding party, and the interrogatories will be counted the same as if they pertained to only one mark.

Under "Definitions and Instructions," my client's interrogatories and other discovery requests define "Black Bear's Trademarks" as meaning "all registered and applied-for trademarks asserted in these proceedings, nos. 91255466, 91255467, 91255790, and 91255793, by Black Bear." (The term "Black Bear" is specifically defined as being "Opposer Black Bear Enterprises, Inc.") My client's discovery requests also define "Black Bear's Goods" as meaning "the goods identified as being used in United States commerce in connection with Black Bear's Trademarks." Therefore, the plain meaning of my client's requests do comply with §§ 2.120(e) and 405.03(c), and each of the requests is entitled to be responded to as a unitary query, and not the wild counts attained by your client's math.

Out of seventy-five permitted discovery requests for each document request, interrogatory, and request for admission, my client has only propounded, including subparts:

- Requests for Documents and Things Nos. 1-45 (leaving thirty available unserved);
- Requests for Admissions Nos. 1-38 (leaving thirty-seven unserved); and
- Interrogatories Nos. 1-31 (revised upward from thirty to thirty-one; leaving forty-four unserved).

This math is valid pursuant to §§ 2.120(e) and 405.03(c) and, if the parties cannot transcend the most fundamental counting issue, then there is no point in attempting to resolve your other purported objections at this time – save one objection.

I can appreciate your concerns regarding my client's discovery requests that are directed to certain members of the Eni family in their respective employment capacities with Black Bear and related entities. Nonetheless, it was your apparent tactical decision to improperly introduce a previously undisclosed witness – who is a member of the Eni family, as are the most valuable potential witnesses – at the eleventh hour to testify in his official capacity on evidence that is material to my client's defense in the parallel opposition proceeding, No. 91245797, long after all disclosure periods had ended and which has necessitated an anticipatory reaction in this proceeding. Not only do I intend to impeach the witness and move to strike his testimony in that proceeding, but now I need to prepare for a similar eventuality in this action and, thus, several of my client's discovery requests are intended to obtain impeachment evidence.

John S. Child, Jr., Esq.
January 25, 2021
Page 3

Finally, your client has ignored my client's proposal to jointly pursue a reasonable one-time extension of the discovery period. This, and in view of our inability to agree on the most elementary discovery principle, counting, my client does not perceive a pathway forward unless a referee is involved. If you have a concrete proposal to offer by the close of business tomorrow, I shall look forward to receiving it and granting genuine consideration.

Very truly yours,



D. James Nahikian
Counsel of Record
Red Bear Provisions, LLC

cc: Alex R. Sluzas, Esq. (asluzas@paulandpaul.com)

EXHIBIT 15

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1957-1992

JAMES C. MCCONNON
ALEX R. SLUZAS
OURMAZD S. OJAN
JOHN S. CHILD, JR.

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DIRECT LINE: + (267) 765-0188
johnchild@paulandpaul.com

January 30, 2020

D. James Nahikian, Esq.
Nahikian Global Intellectual Property
& Technology Law Group
1636 North Wells Street, Suite 415
Chicago, Illinois 60614-6009

BY EMAIL

Re: Dietz & Watson v. Red Bear Provisions, Opposition No. 91245797
Opposer's Response to Applicant's First Set of Interrogatories Nos. 1-20

Dear Mr. Nahikian:

This is in response to your discovery request entitled Applicant Red Bear Provisions, LLC's First Set of Interrogatories Nos. 1-20.

Opposer objects to Applicant's Interrogatories in their current form as they fail to comply with Rule 33(a)(1) of the Federal Rules of Civil Procedure which specifies that "unless otherwise stipulated or ordered by the Court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts."

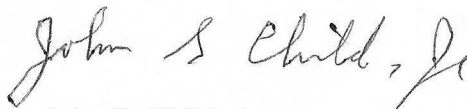
Applicant's First Set of Interrogatories, when taking into account all discrete subparts, add up to far more than 25 written interrogatories. We came to our computation of the total number of interrogatories as follows

- (i) In addition to counting Interrogatories Nos. 1-20, pursuant to 37 C.F.R. § 2.120(d) we treated each subpart as a separate interrogatory. For example, as Interrogatory No. 1 has four subparts, they are counted as four interrogatories.

(ii) For any interrogatory that did not feature subparts, but still requested distinct pieces of information, we split the initial interrogatory into separate interrogatories for counting purposes. For example, Interrogatory 13 requested Opposer to “[d]escribe in detail all facts and circumstances concerning any agreement, transfer, license, grant, or assignment of rights, in whole or in part, of any interest in Opposer’s Trademarks, and all communications relating thereto.” Accordingly, Interrogatory 13 was treated as comprising five interrogatories.

As Applicant’s Interrogatory Nos. 1-20 with the inclusion of subparts and requests for distinct pieces of information resulted in a total well above the limitation of 25 interrogatories, the interrogatories fail to comply with Rule 33(a)(1).

Sincerely,

A handwritten signature in black ink that reads "John S. Child, Jr." with a stylized flourish at the end.

John S. Child, Jr.
Alex R. Sluzas

EXHIBIT 16

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

DIETZ & WATSON, INC., Opposer,)	
	)	Opposition No.: 91245797
v.	)	Application No.: 88/043,210
	)	Mark: DESIGN OF A BEAR AND A STAR
RED BEAR PROVISIONS, LLC d/b/a RED BEAR, Applicant.)	

**OPPOSER DIETZ & WATSON’S PRETRIAL DISCLOSURES
UNDER FEDERAL RULES OF CIVIL PROCEDURE 26(a)(3)**

Pursuant to 37 C.F.R. § 2.121(e) and Rule 26(a)(3) of the Federal Rules of Civil Procedure, Opposer Dietz & Watson, Inc., hereby makes the following pretrial disclosures to Applicant, Red Bear Provisions, LLC, of the witnesses from whom Opposer may take testimony during its testimony period, of the likely testimony of such witnesses, and of the likely evidence that may be introduced as exhibits during the testimony of such witnesses. Opposer’s disclosures represent a good faith effort to identify information reasonably believed to be required by the applicable rules. Accordingly, Opposer reserves the right to supplement these disclosures.

A. The name and if known the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that Opposer may use to support its claims or defenses.

At least the following individuals are believed to have discoverable information on the indicated subject(s) that may be used to support Opposer’s claims.

1. Lauren Eni, Dietz & Watson, Inc., 5701 Tacony Street, Philadelphia, Pa 19135; (215) 831-9000 – information relevant to registrations and applications for registrations of marks relied upon by the Opposer containing or comprising the words BLACK BEAR, the use and

sales of products bearing the marks and likelihood of confusion of these marks with Applicant's mark as well as a license between Opposer and Black Bear Enterprises, Inc.

2. Officials of Dietz & Watson, Inc., 5701 Tacony Street, Philadelphia, Pa 19135; (215) 831-9000 – information relevant to the organization, preservation and classification of business records of Dietz & Watson, Inc.

B. Description by category and location of all documents, electronically stored information and tangible things that Opposer has in its possession, custody or control and may use to support its claims.

1. Documents relating to registration of Opposer's trademark registrations and applications – offices of Opposer's counsel in Philadelphia, Pennsylvania.

2. Documents relating to use of marks referenced by Opposer's trademark registrations and applications and license between Opposer and Black Bear Enterprises, Inc. – Dietz & Watson, Inc., 5701 Tacony Street, Philadelphia, Pa 19135.

Dietz & Watson makes these disclosures without waiving any argument it may have concerning the relevancy or admissibility of, or proper weight to be accorded to, any of the information contained in the documents described above.

Opposer does not consent or authorize any other party or its counsel to communicate with any of Opposer's current or former employees. Any contact with Opposer should be made through Opposer's counsel.

Respectfully submitted

March 13, 2020


John S. Child, Jr., Esq.
Alex R. Sluzas, Esq.
PAUL & PAUL
1717 Arch Street, Suite 3740
Philadelphia, PA 19103
(215) 568-4900
ATTORNEYS FOR OPPOSER

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

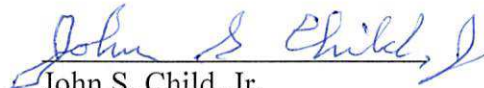
DIETZ & WATSON, INC.,)	
)	
Opposer,	)	Opposition No.: 91245797
v.	)	Application No.: 88/043,210
	)	Mark: DESIGN OF A BEAR AND A STAR
RED BEAR PROVISIONS, LLC)	
d/b/a RED BEAR,)	
)	
Applicant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true copy of the foregoing
OPPOSER DIETZ & WATSON'S PRETRIAL DISCLOSURES UNDER FEDERAL
RULES OF CIVIL PROCEDURE 26(a)(3) was served by email on the following counsel:

jnahikian@nahikianglobal.com
D. James Nahikian, Esq.
1636 North Wells Street
Suite 415
Chicago, IL 60614

March 13, 2020


John S. Child, Jr.

ESTTA Tracking number: **ESTTA1098902**

Filing date: **12/01/2020**

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

Proceeding	91245797
Party	Plaintiff Dietz & Watson
Correspondence Address	JOHN S CHILD JR PAUL & PAUL 1717 ARCH STREET, SUITE 3740 PHILADELPHIA, PA 19103 UNITED STATES Primary Email: info@paulandpaul.com Secondary Email(s): johnchild@paulandpaul.com 215-568-4900
Submission	Testimony For Plaintiff
Filer's Name	John S. Child, Jr.
Filer's email	info@paulandpaul.com, johnchild@paulandpaul.com
Signature	/John S. Child, Jr./
Date	12/01/2020
Attachments	Declaration of Michael Eni.pdf(506615 bytes)

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


_____)	
DIETZ & WATSON, INC.,)	
)	
Opposer,	)	Opposition No.: 91245797
v.	)	Application No.: 88/043,210
	)	Mark: DESIGN OF A BEAR AND A STAR
RED BEAR PROVISIONS, LLC)	
d/b/a RED BEAR,)	
)	
Applicant.)	
_____)	

TESTIMONIAL DECLARATION UNDER TBMP 703.01

Opposer submits herewith a Declaration of Michael Eni under TBMP 703.01.

Respectfully submitted,

December 1, 2020


John S. Child, Jr., Esq.
Alex R. Sluzas, Ph.D., Esq.
PAUL & PAUL
1717 Arch Street, Suite 3740
Philadelphia, PA 19103
(215) 568-4900
ATTORNEYS FOR OPPOSER

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

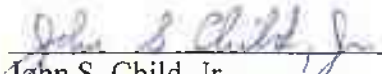
_____)	
DIETZ & WATSON, INC.,)	
)	
Opposer,	)	Opposition No.: 91245797
v.	)	Application No.: 88/043,210
	)	Mark: DESIGN OF A BEAR AND A STAR
RED BEAR PROVISIONS, LLC)	
d/b/a RED BEAR,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true copy of the foregoing
TESTIMONIAL DECLARATION UNDER TBMP 703.01 and the Declaration of Michael Eni
(with Exhibit A) were served by email on the following counsel:

jnahikian@nahikianglobal.com
D. James Nahikian, Esq.
1636 North Wells Street
Suite 415
Chicago, IL 60614

December 1, 2020


John S. Child, Jr.

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

DIETZ & WATSON, INC.,)	
)	
Opposer,	)	Opposition No.: 91245797
v.	)	Application No.: 88/043,210
	)	Mark: DESIGN OF A BEAR AND A STAR
RED BEAR PROVISIONS, LLC)	
d/b/a RED BEAR,)	
)	
Applicant.)	

DECLARATION OF MICHAEL ENI

I, Michael Eni, declare as follows:

1. I am employed by Opposer, Dietz & Watson, Inc. Part of my responsibilities are the trademark programs of Dietz & Watson, Inc. and Black Bear Enterprises, Inc.
2. In connection with those responsibilities, I have followed this Opposition Proceeding. I have reviewed the Notice of Reliance filed by Applicant, Red Bear Provisions, LLC in the Proceeding on August 4, 2020, signed by counsel for Applicant, Mr. D. James Nahikian.
3. The Notice of Reliance identifies ninety-five registrations of third-party marks which were identified in Exhibits 12-108, less Exhibits 28 and 32 in the Notice of Reliance, and characterizes each of these registration using the same language.
4. These third-party registrations are each characterized as “registered for a ‘bear’ mark in connection with meat products or other food, beverages or related goods/services.”
5. These characterizations are inaccurate or misleading, as can be seen by examination of the attached spreadsheet (Exhibit A), which collects and summarizes information from these ninety-five registrations.

6. The spreadsheet contains an identification of the Exhibits by exhibit number, registration number of the exhibit, the mark, the goods/services identified in the registration, and the owner of the registration. The column at the right-hand side of the spreadsheet contains the heading "Similarity of Goods/Services of Third-Party Marks to Opposer's and Applicant's Marks." This column contains a statement as to whether the mark for each of the exhibits is used "with meat products," as suggested in Applicant's statement and/or whether Applicant's and Opposer's Marks are similar in their entireties as to appearance, sound, connotation, and commercial impression.

7. The conclusions in the statement are based on the identification of goods in Dietz & Watson's United States Trademark Registration No. 2,200,123 for BLACK BEAR for meat and poultry products, namely, lunch meats, including ham, turkey, chicken, roast beef, liverwurst and bologna, United States Trademark Registration No. 5,040,519 for BLACK BEAR OF THE BLACK FOREST and Design of a Bear for cheese, meat and poultry and United States Trademark Registration No. 5,672,674 for BLACK BEAR for meat and poultry. The goods in the application in the Opposition for the design of a bear and star are "meat; all natural meats; prepared meats; preserved meats; dried meats; ground meats; cured meats; salted meats; smoked meats; packaged meats; encased meats; processed meats; salamis; and sausages."

8. As reported in the spreadsheet report, none of the third-party marks are both (a) as similar to and (b) have goods as similar to the application and Opposer's registered marks.

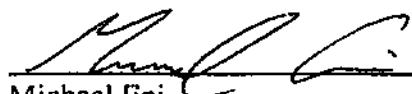
9. The list of goods and services of Exhibits 12-108 were reviewed to determine if any goods or services predominated. No goods or services appeared in as many of 20% of the exhibits. There are eight goods or services that appeared in at least 6% of the exhibits. They are listed below by type of good/service and exhibit number.

a. Non-alcoholic beverages including coffee (18 times). Exhibit Nos. 23, 25, 26, 30, 42, 44, 48, 50, 51, 60, 70, 83, 85, 86, 87, 97 and 105.

- b. Alcoholic beverages including beer and wine (13 times). Exhibit Nos. 47, 52, 53, 55, 62, 67, 69, 74, 78, 79, 84, 87 and 92.
- c. Candy and honey (13 times). Exhibit Nos. 15, 22, 46, 50, 56, 66, 71, 73, 75, 76, 95, 99 and 106.
- d. Meat (11 times). Exhibit Nos. 41, 65, 68, 101, 102, 103, 104, 105, 107 and 108.
- e. Restaurants (9 times). Exhibit Nos. 27, 31, 34, 37, 82, 88, 89, 90 and 99.
- f. Ice cream related (9 times). Exhibit Nos. 22, 33, 34, 39, 54, 58, 64, 81 and 99.
- g. Cereal (7 times). Exhibit Nos. 16, 17, 18, 19, 43, 50 and 72.
- h. Fruits (6 times). Exhibit Nos. 12, 13, 29, 75, 75 and 93.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of December, 2020 at 9:00 Am.



Michael Eni

Exhibit A

SPREADSHEET OF APPLICANT'S NOTICE OF RELIANCE EXHIBITS REGARDING THIRD-PARTY REGISTRATIONS

Def Ex. No.	U.S. Reg. No.	Mark	Goods/Services	Owner	Similarity of Goods/Services of Third-Party Marks to Opposer's and Applicant's Marks
12	77,328	BEAR BRAND and design of a bear	Citrus Fruits	Wonderful Citrus LLC, Los Angeles, CA	Goods are dissimilar. Citrus fruits compared with meat.
13	115,549	STARK TREES BEAR FRUIT and design of a bear	Fruit-trees, fruit-plants and hardy ornamentals	Stark Bro's Nurseries & Orchards Co., Louisiana, Missouri	Goods are dissimilar. Fruit trees compared with meat.
14	404,563	CALIFORNIA BEAR CALIFORNIA LETTUCE GROWERS, INC. (no design)	Fresh vegetables	Phelan & Taylor Produce Company, Oceano, CA	Goods are dissimilar. Fresh vegetables compared with meat.
15	5,512,253	BRADSHAW'S 3 BEARS HONEY and design of bears	Honey	Sioux Honey Association, Cooperative, Sioux City, Iowa	Goods are dissimilar. Honey compared with meat.
16	1,474,373	SUGAR BEAR and design of a bear	Processed cereal	Kraft Food Holdings, Inc., Lakeville, Minnesota	Goods are dissimilar. Cereal compared with meat.
17	1,744,700	GRIZZLIES BRAND and design of bears	Cereal based mixtures containing dry fruit and nuts	Green Valley Group, LLC, Eugene, Oregon	Goods are dissimilar. Cereal compared with meat.
18	1,699,912	Illustration of a bear	Breakfast cereal	Treehouse Private Brands, Inc., Oak Brook, Illinois	Goods are dissimilar. Cereal compared with meat.
19	1,893,227	Illustration of a bear	Tortilla chips	Little Bear Organic Foods, Inc., Lake Success, NY	Goods are dissimilar. Tortilla chips compared with meat.
20	1,992,074	BAKER MILLS KODIAK CAKES 100% WHOLE GRAINS and design of a bear	Mixes for making bakery goods	Kodiak Cakes, LLC, Park City, Utah	Goods are dissimilar. Baking mixes compared with meat.
21	2,377,224	BEAR CREEK DAIRY PREMIUM QUALITY	Cheese and dairy products excluding ice cream, ice milk and frozen yogurt	Gallo Cattle Company, Atwater, CA	Goods are dissimilar. Dairy products compared with meat.

22	2,744,088	BEAR FOOT and design of a bear	Ice cream and fudge	Denali Flavors, Inc., Wayland, Michigan	Goods are dissimilar. Ice cream/fudge compared with meat.
23	3,617,142	BLACK BEAR COFFEE HOUSE and design of a bear	Coffee shops	Black Bear Coffee House, Inc., Nampa, Idaho	Registration has been canceled.
24	3,553,831	BEARS BRAND and design of three bears	Flour	Bakemark USA, LLC, Pico Rivera, CA	Goods are dissimilar. Flour compared with meat.
25	4,223,611	BLACK BEAR	Carbonated soft drinks	Wit Beverage Company, Redding, CA	Goods are dissimilar. Soft drinks compared with meat.
26	3,960,298	THE BLACK BEAR MICRO ROASTERY and design of a bear	Roasted coffee beans	Wolfe's Borough Coffee, Inc., Tuftonboro, NH	Goods are dissimilar. Roasted coffee beans compared with meat.
27	3,156,011	BLACK BEAR DINER	Restaurant services	BBDI, LLC Redding, CA	Goods/Services are dissimilar. Diner compared with meat products.
28		Exhibit Removed			
29	4,957,733	BEAR and design of a bear	Loose preserved, dried, cooked and baked fruits; fruit based snack foods, namely snacks consisting of rolled baked fruit. Cereal based snack food, namely, loose processed grains	Urban Fresh Foods, Ltd, London, United Kingdom	Goods are dissimilar. Dried and baked fruits compared with meat.
30	4,468,372	Design of a Bear	Adhesive labels; book markers; boxes of cardboard or paper; calendars; picture books; post cards; posters made of paper; printed calendars	Mind Sweets, GmbH, Berlin, Germany	Goods are dissimilar. Stationery items compared with meat.
31	3,973,795	GREAT ALASKA PIZZA CO and design of a bear	Restaurant services	Gapco, LLC, Anchorage, Alaska	Goods are dissimilar. Restaurant services compared with meat.
32		Exhibit Removed			
33	4,465,086	THE BAKED BEAR	Ice cream sandwich shop services in the nature of a	The Baked Bear, San Diego, CA	Goods are dissimilar. Ice cream sandwich shops

			restaurant		compared with meat.
34	4,499,384	THE BAKED BEAR CUSTOM ICE CREAM SANDWICHES and design of a bear	Restaurant services; Ice cream parlors; Ice cream shop services in the nature of a restaurant	The Baked Bear, Rancho Santa Fe, CA	Goods are dissimilar. Ice cream parlors compared with meat.
35	4,439,591	BLACK BEAR DINER and design of a bear	Beverage glassware. Restaurant services, including sit-down service of food and take-out restaurant	BBDI, LLC, Redding CA	Goods are dissimilar. Glassware compared with meat.
36	4,682,547	WILD CALIFORNIA and design of a bear and star	Crisp bread	CGF, Inc., Santa Rosa, CA	Goods are dissimilar. Bread compared with meat.
37	4,728,204	SMOKEY MOUNTAIN B'AR BUTT BBQ and design of a bear	Barbecue sauce; Dry spice rub for meats and fish	Janice Fillmore, Townsend, Tennessee	Word portions of marks are dissimilar in their entirety, in their appearance, sound, connotation and commercial impression. Goods are dissimilar. Barbecue sauce compared with meat.
38	4,638,127	BLACK BEAR	Functional beverages, namely, vitamin, mineral, and nutritionally fortified beverages, expressly excluding soft drinks and bottled water	Black Bear Energy, LLC, Bethel, Maine	Goods are dissimilar. Functional beverages compared with meat.
39	4,674,824	THE ICE CREAM MAN WE MAKE OUR OWN and design of a bear	Ice cream; Ice-cream cakes- Pies. Ice cream parlors; Restaurant services featuring ice cream, ice cream cakes, ice cream drinks, pies, sandwiches and soups	ICM Operations, LLC, Clifton Park, NY	Goods are dissimilar. Ice cream compared with meat. Word portion of marks are dissimilar in their entirety in their appearance, sound, connotation and commercial impression.
40	4,695,183	GREAT ALASKA PIZZA KIT and design of a bear	Pizza Kits comprising of dough, sauce, cheese and toppings to make pizza	Gapco, LLC, Anchorage, Alaska	Goods are dissimilar. Pizza kits compared with meat. Word portion of marks are dissimilar in their entirety, in their appearance, sound,

					connotation and commercial impression.
41	4,921,974	EAT LIKE A GRIZZLY and design of a bear	Jerky; jerky, namely, salmon jerky, beef jerky, pork jerky, chicken jerky, lamb jerky, and turkey jerky	Trapper's Creek, Inc., Anchorage, Alaska	Word portion of marks are dissimilar in their entireties, in their appearance, sound connotation and commercial impression. .
42	5,020,184	BLACK BEAR MARKET and design of a bear	Beverages with a chocolate base sold in packaged containers, and not for sale to be consumed in restaurants	Marketing Made Simple, LLC, Riverview, Florida	Goods are dissimilar. Chocolate-based goods compared with meat.
43	4,908,106	SUGAR BEAR and design of a bear	Breakfast cereals	Post Foods, LLC, Lakeville, Minnesota	Goods are dissimilar. Breakfast cereal compared with meat.
44	5,092,343	BLACK BEAR OF MAINE	Functional beverages, namely, vitamin, mineral, and nutritionally fortified beverages, expressly excluding soft drinks and bottled water	Black Bear Energy, LLC, Bethel, Maine	Goods are dissimilar. Function beverages compared with meat.
45	5,155,915	MAMMOTH BREWING COMPANY and design of a bear	Headwear; Jackets; Shirts; Sweatshirts; T-shirts. Beer	Mammoth Beers, LLC, Mammoth Lakes, CA	Goods are dissimilar. Beer compared with meat.
46	5,438,982	BIENEN BARON and design of a bear	Honey candy; Honey based snacks	Atlantic Foods Co., Bangkok, Thailand	Goods are dissimilar. Honey/candy compared with meat.
47	5,331,216	BEAR IN MIND-ENJOY LEINIE'S RESPONSIBLY and design of a bear	Beer	Molson Coors Beverage Company USA, LLC, Chicago, Illinois	Goods are dissimilar. Beer compared with meat.
48	5,445,870	RUSLANO and design of a bear	Coffee, espresso, and tea beverages; Beverages made with a base of coffee, espresso, and tea	Ameruss of NY, Inc., Brooklyn, NY	Goods are dissimilar. Coffee and tea compared with meat.
49	5,944,482	NATURE'S YUM SIMPLE ... PURE... NATURAL ...	Barbecue sauce	Joseph Fernandes, Hialeah, Florida	Goods are dissimilar in their entireties, in their

		PREMIUM QUALITY BBQ SAUCE GILBERT APPROVED! GILBERT and design including a bear			appearance, sound, connotation and commercial impression.
50	5,373,308	DX DAIRYXMAS and bear design in shaded circle	Biscuits; Bread; Candy; Cereal based snack food; Cereal-based snack food; Cereal-based snack foods; Chocolate-based beverages with milk; Coffee; Frappes; Frozen yogurt; Frozen yogurt confections; Ice-cream; Ice cream; Rice-based snack food; Rice-based snack foods; Sandwiches; Tea	USA DX Holdings, Inc., Spokane, Washington	Marks are dissimilar in their entireties, in their appearance, sound, connotation and commercial impression. Goods are dissimilar.
51	5,408,919	TAIWAN TEA & CO and design of a bear	Tea, Oolong tea; Black tea; Green tea; Tea bags; Beverages with a tea base; Tea for infusions; Flowers or leaves for use as tea substitutes; Beverages with a coffee base; Unroasted coffee; Coffee beans; Coffee; Roasted coffee beans; Ground coffee beans	Agra Boutique Co., Ltd., Kaohsiung City, Taiwan	Marks are dissimilar in their entireties, in their appearance, sound, connotation and commercial impression. Bear in TAIWAN TEA mark is shown drinking tea. Goods are dissimilar. Tea and coffee compared with meat.
52	5,551,722	BEAR CREEK WINERY RED BLEND and design of a bear	Wine	Goldstone Land Company, LLC, Lodi, CA	Marks are dissimilar in their entireties, in their appearance, sound, connotation and commercial impression. Bear Creek Winery and Red Blend are directed to a type of wine which is dissimilar to Black Bear. Goods are dissimilar. Wine compared with meat.
53	5,394,623	Design of a bear	Beer	Nicole Smith, South Lake Tahoe, CA	Goods are dissimilar. Beer compared with meat.

54	5,398,596	FREEZING POINT THAI ROLLED ICE CREAM and design of a bear	Ice cream. Ice cream shop services in the nature of a restaurant	Freezing Point, Inc., Providence, Rhode Island	Goods are dissimilar. Ice cream compared with meat. Word portion of marks are dissimilar in appearance, sound, connotation and commercial impression.
55	5,710,472	CIDER CO. ARISTOCRATS OF APPLEDOM and design of a bear	Alcoholic beverages containing fruit; Alcoholic beverages except beers; Alcoholic fruit beverages; Alcoholic carbonated beverages, except beer; Alcoholic fruit cocktail drinks; Fruit wine; Hard cider; Natural sparkling wines; Sparkling fruit wine; Still wines; Sweet wines	Black Bear Cider Company, LLC, St. Louis, Missouri	Goods are dissimilar. Alcoholic beverages compared with meat.
56	5,445,115	BORRACHO BEARS ALCOHOL INFUSED GUMMIES and design of a bear	Jelly confections infused with alcohol	Borracho Bears, LLC, Austin, Texas	Goods are dissimilar. Jelly confections infused with alcohol compared with meat.
57	5,517,220	BEAR HUB HONEY COMPANY and design of a bear	Cosmetics; Personal Care products, namely lip balm, non-medicated hand salve, hand lotion and honey soap. Honey; Honey infused with other ingredients, including one or more of the following, peppers, vanilla beans, cocoa, vinegar, lavender, rose and coffee beans	Bear Hug Honey Company, LLC, Athens, Georgia	Goods are dissimilar. Personal care products compared with meat.
58	5,538,765	TRICYCLE ICE CREAM and design of a bear	Ice cream sandwiches	Tricycle Ice Cream, LLC, Providence, Rhode Island	Goods are dissimilar. Ice cream sandwiches compared with meat.
59	5,458,224	SUPER FRUIT SYRUP PARK KODIAK CAKES CITY and design of a bear	Pancake syrup; Table syrup; Topping syrup	Kodiak Cakes, LLC, Park City, Utah	Goods are dissimilar. Pancake syrup compared with meat.

60	5,452,319	Design of a bear	Coffee, Roasted coffee beans	National Perk, LLC, Lincoln, Nebraska	Goods are dissimilar. Coffee compared with meat.
61	5,559,648	G GEL ICE and design of a bear	Ice, natural or artificial	Long O, LLC, Brandon, South Dakota	Goods are dissimilar. Ice compared with meat.
62	5,770,597	MOUNTAIN BEAR and design of a bear	Wine	Whippletree Winery, LLC, Tamworth, NH	Goods are dissimilar. Wine compared with meat. Word portions of marks are dissimilar in appearance, sound, connotation and commercial impression.
63	5,533,924	PICKLEBEAR and design of a bear	Pickled cucumbers; Pickled jalapeños; Pickled onions; Pickled peppers; Pickled vegetables; Pickles; Dill pickles; Spicy pickles	PickleBear, LLC, Morrison, Colorado	Goods are dissimilar. Pickle products compared with meat.
64	5,605,701	ARCTIC FREEZE CREAMERY and design of a bear	Ice cream; Waffles	Chase Miller, Collingswood, NJ	Goods are dissimilar. Ice cream and waffles compared with meat. Word portions of marks are dissimilar in appearance, sound, connotation and commercial impression.
65	5,615,167	BIG BEAR BEEF JERKY and design of a bear	Beef jerky	Andrew Schmid, Running Springs, CA	Word portions of marks are dissimilar in appearance, sound, connotation and commercial impression.
66	5,636,877	HOMER TRUFFLE CO. and design of a bear	Candy; Caramels; Chocolate confections; Chocolate truffles; Chocolate and chocolates; Sweets; Candy with caramel	Homer Truffle Co., LLC, Homer, Alaska	Goods are dissimilar. Candy compared with meat.
67	5,938,892	Design of a bear	Beer	Second House, LLC, Burnet, Texas	Goods are dissimilar. Beer compared with meat.
68	5,570,766	BARRERAS FAMILY FARM and design of a bear	Beef; Chicken; Goat milk; Hen eggs; Pork; Turkey	Barreras Family Farm, LLC, Omaha,	Word portions of marks are dissimilar in appearance,

				Nebraska	sound, connotation and commercial impression.
69	5,642,563	Design of a bear holding a flower	Beer	Calicraft, LLC, Walnut Creek, CA	Goods are dissimilar. Beer compared with meat.
70	5,624,277	Design of a bear	Prepared coffee; Prepared coffee-based beverages. Non-alcoholic beverages containing fruit juices; Fruit-flavored beverages; Coffee-flavored soft drinks; Soft drinks	Wandering Bear, Inc., New York, NY	Goods are dissimilar. Coffee, fruit juices and soft drinks compared with meat.
71	5,684,687	NANUK and design of a bear	Candies of chopped almonds and caramel, dipped in white chocolate and dusted with finely chopped coconut	DJF Consulting, LLC, Chapel Hill, North Carolina	Goods are dissimilar. Candies compared with meat.
72	5,695,817	BEAR NAKED and design of a bear	Granola; granola snacks; ready to eat cereals; processed cereals; breakfast cereals; preparations made from cereals, namely, cereal-based snack food; cereal-based snack foods; processed cereal-based food to be used as a breakfast food, snack food or ingredient for making food	Bear Naked, Inc., Solana Beach, CA	Goods are dissimilar. Cereals compared with meat.
73	6,059,385	RICOLINO PANDITAS LITTLE PANDA GUMMY BEARS SOUR and design of bears	Candy	Grupo Bimbo, S.A.B. de C.V., Mexico City, Mexico	Goods are dissimilar. Candy compared with meat.
74	5,968,347	Design of a bear and eagle	Vodka, Prepared alcoholic cocktail	Russian Standard Intellectual Property Holding AG, Huenenberg, Switzerland	Goods are dissimilar. Alcohol compared with meat.
75	5,699,654	Design of a bear	Fruit-based snack food. Candy	Ferrara Candy Company, Oakbrook	Goods are dissimilar. Fruit-based snack foods and candy

				Terrace, Illinois	compared with meat.
76	5,688,069	Design of a bear	Fruit-based snack food. Candy	Ferrara Candy Company, Oakbrook Terrace, Illinois	Goods are dissimilar. Fruit based snack foods and candy compared with meat.
77	6,066,627	NORDISK VILLAGE and design of a bear	Catering services; restaurant, cafeteria, wine bar, cocktail bar and bistro services; services for providing food and drink; reservation service for temporary accommodations	Nordisk Company A/S, Silkeborg, Denmark	Goods/services are dissimilar. Services for providing food and drink compared with meat.
78	5,735,607	Design of a bear	Beer; Beer, ale, lager, stout, porter, shandy. Restaurant; Restaurant and bar services; Restaurant services	.5 Liter Hospitality Group, Inc., Downers Grove, Illinois	Goods/services are dissimilar. Services for providing food and drink compared with meat.
79	5,745,539	Design of a bear	Beer; Non-alcoholic malt beverages	Duetsche Transnational Trustee Corp., Inc., Prince Edward Island, Canada	Goods are dissimilar. Beer compared with meat.
80	5,904,951	PAWPA FLAVOR and design of a bear	Seasonings and spice rubs. Retail stores and online retail stores featuring seasonings and spice rubs. Custom manufacture of seasonings and spice rubs.	Pawpa Flavor, Roseville, CA	Marks are dissimilar in their entireties as to appearance, sound, connotation and commercial impression.
81	5,933,695	POLAR TREATS and design of a bear	Ice cream and frozen confections	Wells Enterprises, Inc., Le Mars, Iowa	Goods are dissimilar. Ice cream and confections compared with meat.
82	5,910,097	HANGRY BEAR PIZZERIA and design of a bear	Pizza. Restaurant services; cafeteria services	Bernatello's Pizza, Inc., Maple Lake, Minnesota	Goods are dissimilar. Pizza and restaurant services compared with meat.
83	5,793,489	Design of a bear	Tea	Whidbey Tea Company, LLC, Indianapolis, Indiana	Goods are dissimilar. Tea compared with meat.

84	5,898,863	WHITE BEAR MEADERY and design of a bear	Mead	Honey Bear Meadery, Inc., White Bear Lake, Minnesota	Goods are dissimilar. Mead compared with meat.
85	5,958,878	Design of a bear	Hats; Sweatshirts; T-shirts; Tank-tops. Coffee; Coffee and tea; Coffee beans; Coffee beverages with milk; Coffee-based beverages; Coffee-based beverages; Coffee-based iced beverages; Beverages made of coffee; Ground coffee beans; Iced coffee; Roasted coffee beans	Jeffrey A. Clinard, San Clemente, CA	Goods are dissimilar. Clothing and tea and coffee compared with meat.
86	5,970,453	BEAR COAST and design of a bear	Coffee; Coffee and tea; Coffee based beverages; Coffee beans; Coffee beverages with milk; Coffee-based iced beverages; Beverages made of coffee; Ground coffee beans; Iced coffee; Roasted coffee beans	Jeffrey A. Clinard, San Clemente, CA	Goods are dissimilar. Coffee compared with meat.
87	5,899,111	Design of a bear	Hard seltzer	Polar Corp., Worcester, Massachusetts	Goods are dissimilar. Hard seltzer compared with meat.
88	5,910,491	Design of a bear	Restaurant and café services; Providing of food and drink	Yang Qian, San Francisco, CA	Goods/services are dissimilar. Restaurant and café services compared with meat.
89	5,872,417	TACO BEAR MEXICAN KITCHEN and design of a bear	Fast-food restaurant services; Snack-bar services	Dorian Madrigal, Santa Ana, CA	Goods/services are dissimilar. Restaurant and snack bar services compared with meat.
90	5,883,150	KISS MY ICE GOURMET SHAVED ICE and design of a bear	Providing of food and drink via a mobile truck	Kiss My Ice, Naples, Florida	Goods/services are dissimilar. Providing food and drink from a mobile truck compared with meat.

91	5,918,679	NORTHSTAR SPRING WATER and design of a bear	Spring water	Bill's Distributing, LTD, Menomonie, WI	Goods are dissimilar. Spring water compared with meat.
92	6,043,854	RASCALLION WINES and design of a bear	Wines	Rascallion Wines (Pty) Ltd, Cape Town, South Africa	Goods are dissimilar. Wines compared with meat.
93	5,948,211	MR. BEAR CLUB CALIFORNIA PROUDLY PACKED IN USA and design of a bear	<i>*See below for list of goods and services</i>	Kysin Enterprise, Inc., Chino Hills, CA	Goods are dissimilar. Word portions of marks are dissimilar in their entireties as to appearance, sound, connotation and commercial impression.

** Ex. 93-Goods and Services:* Edible bird nests in raw, processed, preserved, dried, frozen, bottled, canned and ready to eat forms; extracts of bird nests for soups; fish not live; poultry and game; meat extract; dried and cooked fruits and vegetables; jellies; jams; eggs; milk; milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats; cream; dried edible mushrooms; mushroom consommé-bouillon; mushroom puree; mushrooms being frozen; processed mushrooms; prepared meals consisting principally of mushrooms; preserved mushrooms; nutritional dietetic food preparations other than for medical use, namely, milk powder for nutritional purposes, fruit and nut-based snack bars; proteins being foodstuffs for human consumption, namely, formed textured vegetable protein for use as a meat substitute; dried sea cucumbers; frozen sea cucumbers; salted sea cucumbers; processed ginseng for use as a vegetable; processed red ginseng for use as a vegetable; non-medicated nutraceutical and function foods, namely, processed red ginseng for use as a vegetable; non-medicated nutraceutical and function foods, namely, processed ginseng for use as a vegetable; blanched nuts; bottled fruits; caffeine-coated nuts; candied fruit; candied fruit snacks; candied nuts; canned fruits; canned fruits and vegetables; canned or bottled fruits; combined fruits; combined fruit and vegetable purees; cooked fruits and vegetables; crystallized, frosted, frozen, and preserved fruit; crystallized fruit; dehydrated fruit snacks; dried beans; dried cranberries; dried dates; dried edible algae; dried edible fungi; dried edible seaweed (hoshi-wakame); dried figs; dried fruit and vegetables; dried fruit mixes; dried fruit-based snacks; dried fruits; dried lentils; dried pieces of agar jelly (kanten); dried soybeans; dried vegetables; dry or aromatized fruit; flavored nuts; freeze-dried fruits; freeze-dried vegetables; frosted fruits; frozen fruits; frozen, frosted, preserved, processed, dried, cooked or crystallized fruit and vegetables extracts for use in prepared meals or food; fruit and soy based snack food; fruit and vegetable granules for use in prepared meals or food; fruit and vegetable salads; fruit butters; fruit chips; fruit concentrates and purees used as ingredients of foods; fruit conserves; fruit juices for cooking; fruit leathers; pressed fruit paste; fruit peel; fruit peels; fruit preserves; fruit pulp; fruit pulps; fruit purees; fruit rinds; fruit salads; fruit salads and vegetable salads; fruit spreads; fruit topping; fruit-based filling for cakes and pies; fruit-based fillings for cobblers; fruit-based food beverage; fruit-based meal replacement bars; fruit based meal replacement bars for boosting energy; fruit based organic food bars; fruit-based raw food bars; fruit-based snack food; fruit based spreads; fruits in preserved form; fruits preserved in alcohol; glazed fruits; meat, fish, fruit and vegetable jellies, jams, eggs; non-alcoholic fruit extracts for use as ingredients of nutritional supplements and vitamins; nut and seed-based snack bars; nut topping; nut- and dried fruit-based snack bars; nut-based snack foods; nut-based snack foods, namely, nut clusters; nut-based snack foods, namely, nut crisps; nut-based spread; organic nut and seed-based snack bars; pickled fruits; prepared entrees consisting primarily of vegetables, soups, fruit salads and vegetable salads; prepared nuts; preserved fruit and vegetables; preserved fruits; preserved fruits and vegetables; preserved,

dried and cooked fruit and vegetables; preserved, dried and cooked olives; preserved, dried and cooked vegetables; preserved, dried, cooked and grilled vegetables; preserved, frozen, dried or cooked vegetables; processed fruit- and nut-based food bars; processed fruits; processed kiwi fruit; processed kola nuts; processed lychee fruit; processed noni fruit; processed nuts; processed pignoli pine nuts; processed vegetables and fruits; roasted nuts; seasoned nuts; shelled nuts; snack mix consisting of dehydrated fruit and processed nuts; snack mix consisting of wasabi peas, processed nuts, dehydrated fruit and/or raisins; snack mix consisting primarily of processed fruits, processed nuts and/or raisins; stewed fruit; tinned fruits; tinned meat, fish, vegetables and fruits; trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate.

94	6,020,559	Design of a bear	Beer	Everyday California Holdings, LLC, La Jolla, CA	Goods are dissimilar. Beer compared with meat.
95	6,062,425	"A" and design of a bear	Candy	Albanese Confectionery Group, Inc., Merrillville, IN	Goods are dissimilar. Candy compared with meat.
96	5,995,071	MANNY'S BUZZY GUMMIES and design of a bear	Gummies flavored with alcoholic beverage flavors	Fonseca Enterprises LLC, Mineola, NY	Goods are dissimilar. Gummies (candy) compared with meat.
97	6,078,540	COFFEE ROASTERS WÜFYRE ESTD MMXIX BOISE IDAHO and design of a bear	Ground Coffee Beans; Coffee Beans	JSC Companies, Boise, Idaho	Goods are dissimilar. Coffee beans compared with meat.
98	6,042,148	RUBS & BLENDS HIGHEST QUALITY and design of a bear	Food seasonings	Spice House, LLC, Evanston, Illinois	Goods are dissimilar. Food seasonings compared with meat.
99	6,067,430	THE BAKED BEAR CUSTOM ICE CREAM SANDWICHES and design of a bear	Restaurant services; Ice Cream parlors; Ice cream shop services in the nature of a restaurant	The Baked Bear, LLC, San Diego, CA	Goods/services are dissimilar. Restaurant services and ice cream parlors compared with meat.
100	6,071,598	Design of a bear	Side dishes consisting primarily of processed vegetables	Dr. Praeger's Sensible Foods, Inc. Elmwood Park, NJ	Goods are dissimilar. Side vegetable dishes compared with meat.
101	4,525,307	BEAR FLAG MEAT CO. and design of a bear	Meat, fish, poultry and game, not live; Processed meat; Sliced meat	Bear Flag Holdings, Newport Beach, CA	Word portion of marks are dissimilar in their entireties as to appearance, sound, connotation and commercial

					impression.
102	5,613,092	ROTHENBUHLER CHEESEMAKERS URSARIO SWISSCHEESE and design of a bear	Apple butter; Cheese; Cheese spreads; Jams; Meat	Rothenbuhler Cheesemakers, Inc. Middlefield, Ohio	Word portion of marks are dissimilar in their entireties as to appearance, sound, connotation and commercial impression.
103	5,514,630	Design of a bear	Dried meat; Meat-based snack food	KIIN Pacific Rim Sourcing, Seattle, Washington	Design portion of marks are dissimilar as to appearance, sound, connotation and commercial impression through the inclusion of the design of a fish as a significant feature of the design. Specimen of use claims use for salmon bites and not meat.
104	5,416,638	LOCAL SOCAL CALIFORNIA REPUBLIC and design of a bear	Prepared meals consisting primarily of meat, fish poultry, or vegetables	Lafferty Companies, LLC, Scottsdale, Arizona	Word portion of marks are dissimilar in their entireties as to appearance, sound, connotation and commercial impression.
105	5,172,273	Design of a bear	<i>*See below for list of goods and services</i>	The Chow Brothers, LLC, San Francisco, CA	Design portions of marks are dissimilar in their entireties in terms of appearance, sound, connotation and commercial impression. Black bears do not have horns. Chain of restaurants all closed with filing of bankruptcy on Oct. 21, 2020.

** Ex. 105-Goods and services:* Pickled vegetables; jarred vegetables; frozen pre-cooked meat based snacks; frozen pre-cooked vegetable based snacks; refrigerated pre-cooked meat based meals; refrigerated pre-cooked vegetable based meals; refrigerated pre-cooked meat based snacks; refrigerated pre-cooked vegetable based snacks; soups; frozen pre-cooked meat based meals; frozen pre-cooked vegetable based meals. Pierogies; spices; non-alcoholic beverages and bottled non-alcoholic beverages, namely, herbal teas. Non-alcoholic beverages and

bottled non-alcoholic beverages, namely, fruit and vegetable drinks, drinking water infused with fruits, vegetables, herbs, and spices, and cocktail mixers. Food consulting, namely, consulting in the field of menu planning for others. Personal chef services.					
106	5,115,012	BEAR'S ESSENTIALS	<i>*See below for list of goods and services</i>	Bear's MEAT Market, LLC, Utopia, Texas	Word portions of marks are dissimilar in their entireties in terms of appearance, sound, connotation and commercial impression.
<p><i>* Ex. 106-Goods and services:</i> Meat and poultry, not live; packaged meats; processed meat; poultry; seasoned meat, poultry and vegetables; prepared meat, poultry; prepared entrees consisting primarily of meat, game, poultry; prepared entrees consisting primarily of vegetables, soups, fruit salads, and vegetables salads; prepared food kits composed primarily of meat, poultry, fish, seafood, and/or vegetables and also including sauces or seasonings, ready for cooking and assembly as a meal; food package combinations consisting primarily of cheese, meat, and/or processed fruit; sausage; bacon; jerky; dried meat; smoked meat; smoked sausages; charcuterie; preserved meats and sausages; cheese; cheese and cracker combinations; dairy based spreads; garlic butter; potato salad; fruit salads and vegetable salads; garden salads; cooked fruits and vegetables; processed fruits and vegetables; vegetable based snack foods; coleslaw; soup; stews; pickles; preserved, dried, and cooked olives; tapenades; pickled vegetables; jellies, jams, and marmalades; trail mix, consisting primarily of processed nuts, seeds, dried fruit and also including chocolate; snack mix consisting primarily of wasabi peas, processed nuts, dehydrated fruit and/or raisins; prepared nuts; hummus; guacamole; baked beans; chile conqueso; chile rellenos; chile verde; chili, with or without beans. Sauces, seasonings; spices; dry spice rub for meat, game, poultry or seafood; seasoned coating mixture for foods; marinades; sandwiches and wraps consisting of meat, game, poultry, seafood, vegetables, and cheese; dough-enrobed foods; consisting of a dough-based wrapper with fillings consisting primarily of meats, game, poultry, seafood, fruits, vegetables, and cheese; picante sauce; salsa; hot sauce; Pico de Gallo; mustard; macaroni salad; pasta salad; rice salad; prepared pasta; macaroni and cheese; prepared corn on the cob; salad dressing; pasta sauce; pesto; dipping sauces; honey; bread and buns; corn bread; granola; granola snacks; trail mix, consisting primarily of granola; also including dried fruit, chocolate, processed nuts; trail mix, consisting primarily of pretzels, popcorn, and crackers and also including dried fruit, chocolate, processed nuts; chocolate covered nuts; chocolate covered raisins; dried fruits and vegetables; sausage rolls; breakfast burrito; pigs in a blanket; cinnamon rolls; muffins; candy; cookies; brownies; cakes, croissants; pies; tarts; bakery desserts; bakery goods; ice cream.</p>					
107	5,079,149	URSARIO SWISS CHEESE ROBUST FLAVOR and design of a bear	Apple butter, Cheese; Cheese spreads; Jams; Meat	Rothenbuhler Cheesemakers, Inc. Middlefield, Ohio	Word portions of marks are dissimilar in their entireties in terms of appearance, sound, connotation and commercial impression.
108	4,570,071	Design of a bear	Meat-based snack foods. On-line retail store services featuring meat-based snack foods	Tender Group, LLC, Swedenborg, NJ	Design portions of marks are dissimilar in their entireties in terms of appearance, sound, connotation and commercial impression in featuring three

					animals and not only a black bear.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BLACK BEAR ENTERPRISES, INC.,)	
)	
Opposer,)	
)	
v.	)	Opposition No.: 91255466 (parent case)
	)	Opposition No.: 91255467
	)	Opposition No.: 91255790
	)	Opposition No.: 91255793
RED BEAR PROVISIONS, LLC)	
d/b/a RED BEAR,)	
)	
Applicant.)	

DECLARATION OF D. JAMES NAHIKIAN

I, D. James Nahikian, declare as follows:

1. I represent Applicant Red Bear Provisions, LLC in this matter.
2. I have knowledge of the facts set forth herein and in Applicant's Motion to Compel.
3. On November 23 and 24, 2020, I served Applicant Red Bear Provisions, LLC's First Set of Interrogatories Nos. 1-30, Applicant Red Bear Provisions, LLC's First Set of Requests for Production of Documents and Things Nos. 1-35, and Applicant Red Bear Provisions, LLC's First Set of Requests for Admissions Nos. 1-34 by email upon counsel of record for Opposer Black Bear Enterprises, Inc. (Exhibits 3-5)
4. On December 1, 2020, I served Applicant Red Bear Provisions, LLC's Second Set of Requests for Production of Documents and Things Nos. 36-45, and Applicant Red Bear

Provisions, LLC's Second Set of Requests for Admissions Nos. 35-38 by email upon counsel of record for Opposer Black Bear Enterprises, Inc. (Exhibits 7-8)

5. On January 11, 2021, and again On January 25, 2021, I emailed counsel for Opposer responsive letters addressing the substance of Opposer's objections and sustained objections to Applicants interrogatories and discovery requests in this matter. I also proposed extensions of time for discovery in this matter. (Exhibits 12 and 14) All other correspondence and other communications set for in Applicant's Motion to Compel are believed true and correct.

6. As of February 1, 2021, Opposer has not delivered any documents or things responsive to any of Applicant's requests for production of documents and things.

7. As of February 1, 2021, Opposer has not answered any of Applicant's interrogatories.

8. As of February 1, 2021, Opposer has not admitted or denied any of Applicant's requests for admissions.

9. Pursuant to 37 C.F.R. § 2.120 *et seq.* and TBMP § 523 *et seq.*, and all other applicable law, I have made a good faith effort to resolve the issues presented by Opposer's objections and lack of responses to Applicant's interrogatories and discovery requests.

10. Additional detail regarding the nature and dates of these good faith efforts are contained in the Motion to Compel filed herewith.

DATED: February 1, 2021



/s/djamesnahikian/

D. James Nahikian, Esq.