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

Proceeding no.	91285175
Party	Plaintiff Beth Barden
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Signature	/Jan Sundberg/
Date	08/26/2024
Attachments	2024.08.26 Barden Trial Declaration.pdf(176373 bytes)

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

Beth A. Barden, an individual Opposer, v. Knead Hospitality + Design, LLC Applicant.	Opposition No. 91285175 Application No. 97/031,913 Mark: SUCCOTASH

TRIAL TESTIMONY DECLARATION OF BETH BARDEN

I, Beth Barden, declare under penalty of perjury as follows:

1. I am the owner of the Succotash Restaurant in Kansas City, Missouri (the "Succotash Restaurant"). The facts set forth herein are based on my personal knowledge and on information contained in my business records regularly maintained by me in the normal course of business and to which I have regular access in the course of my work. Unless otherwise noted, the exhibits to which I refer, and which are attached to this declaration, are copies of documents and other materials from my business records kept in the ordinary course of business.

2. I submit this declaration in support of my Opposition to Trademark Application No. 97/031,913 for the mark "SUCCOTASH."

3. Knead Hospitality + Design, LLC ("Knead") filed its trademark application, U.S. Serial No. 97/031,913, for the mark "SUCCOTASH" on September 16, 2021 in IC 043 for "Catering; Restaurant and bar services, including restaurant carryout services" (the "Succotash

Application"). A true and correct copy of the Succotash Application is attached hereto as **Exhibit A** and incorporated herein by reference. The Succotash Application was filed as use based application under Section 1(a). Knead also referenced that it previously owned Registration No. 5069425 which was cancelled. See **Exhibit A**.

4. In its Succotash Application, Knead claimed a date of first use anywhere as March 14, 2015, and a date of first use in commerce as September 2015. **Exhibit A**.

5. Knead filed a lunch menu as its specimen of use of the mark. A true and correct copy of the specimen is attached hereto as **Exhibit B** and incorporation herein by reference.

6. Knead's Succotash Application was filed with a claim of concurrent use, which states as follows:

> Concurrent use information. Applicant claims the exclusive right to use the applied for mark in Minnesota, Wisconsin, Illinois, Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Indiana, Michigan, Ohio, West Virginia, Virginia, Washington DC, Pennsylvania, Delaware, Maryland, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine. The Applicant claims the right to register the mark for all services listed in the application over Application Serial No: 90335268 in the areas listed above. Applicant began its use in commerce prior to the cited applicant's filing date, and the cited applicant should be restricted as set forth above. The cited application began use in 2001, and uses the mark SUCCOTASH on Restaurant and bar services, including restaurant carryout services; Restaurant and café services; Restaurant services; Restaurant, bar and catering services. The cited applicant only uses the mark in Missouri to Applicant's knowledge. Applicant began use in 2015. The contact information for the holder of Application Serial No: 90335268 is: Beth Barden 2601 Holmes Street Kansas City MISSOURI 64108. Ms. Barden's legal

counsel is listed as: Jennifer Hamilton AVYNO LAW P.C. 6345 BALBOA BLVD, SUITE 208 ENCINO, CALIFORNIA 91316 Trademarks@avynolaw.com; jhh@avynolaw.com. Applicant claims the right to register for the modes of use listed in its application.

Exhibit A.

7. In 2001, I started using the trademark SUCCOTASH in connection with restaurant services and catering services. In particular, I opened the Succotash Restaurant in 2001 at 15 East 3rd Street, Kansas City, Missouri using the name and trademark SUCCOTASH. On or about 2009, the Succotash Restaurant moved to 2601 Holmes Street, Kansas City, Missouri and continued to use the name and trademark SUCCOTASH.

8. The Succotash Restaurant has been operated at 15 East 3rd Street, Kansas City, Missouri and 2601 Holmes, Kansas City, Missouri continuously since 2001 using the name and trademark SUCCOTASH. The Succotash Restaurant is currently located near the Kansas-Missouri state line. The Succotash Restaurant has had patrons from both Kansas and Missouri continuously since its opening in 2001.

9. Since 2001, I have also provided catering services under the name and trademark SUCCOTASH. For example, from 2001 to 2015, I provided catering services under the name and trademark SUCCOTASH for several national accounts (music bands and national touring acts), including but not limited to, Live Nation, Up to Eleven, ZZ Top, Rufus Wainwright, Ben Lee, Fall Out Boy Moby Wilco Evanescence. This list is not exhaustive. I have extensively provided catering services in the states of Kansas and Missouri using the name and trademark SUCCOTASH. Some of the more notable recent catering events are: (i) in 2018, I catered a full season for Netflix Queer Eye (Scout Productions); (ii) In 2019 the Succotash Restaurant did backstage catering for Thundergong with Jason Sudeikis, Will Forte, Wynonna Judd, Ben Harper and others; (iii) in March of 2022, I catered for Yeah Yeah Yeah's video "Spitting Off the Edge of

the World" featuring Performing Genius; (iv) in 2022, I also catered for three months for the Peacock/Scout Production show "The Gentle Art of Swedish Death Cleaning;" (v) in 2023, I provided catering and craft services for Epoch (LA based production company) commercial shoot for Bud Light featuring Travis Kelce.

10. Since 2001, I have continuously and extensively used the trademark SUCCOTASH in interstate commerce in connection with the Succotash Restaurant for restaurant services and for my food and beverage catering services. The mark SUCCOTASH has become intimately connected with me and my Succotash Restaurant for restaurant services and food and beverage catering services nationwide, throughout the United States. The mark SUCCOTASH has become a distinctive and well-known mark for my restaurant services and catering services with nationwide recognition throughout the United States.

11. On or about December 2, 2013, my Succotash Restaurant was featured on the Food Network program, Diners, Drive-in and Dives ("DDD") with Guy Fieri. Attached hereto as **Exhibit F** and incorporated herein by reference, is a true and correct copy of an article from www.pitch.com about the DDD program featuring the Succotash Restaurant. Since on or about December 2013, my Succotash Restaurant has also been (and still am) featured on Food Networks' website – www.foodnetwork.com. Attached hereto as **Exhibit G**, and incorporated herein by reference, is a true and correct copy of one of the webpages from www.foodnetwork.com featuring the Succotash Restaurant. The article listed under related content on **Exhibit G**, The Best Pancakes in Every State, also features my Succotash Restaurant. A true and correct copy of the page of the article, The Best Pancakes in Every State, that features my Succotash Restaurant, is attached hereto as **Exhibit H** and incorporated herein by reference.

12. Since on or about December 2013, my Succotash Restaurant was also featured on the DDD website - www.dinersdriveinsdiveslocations.com (the website is currently not in

operation). Attached hereto as **Exhibit I**, and incorporated herein by reference, is a true and correct copy of one of the webpages from www.dinersdriveinsdiveslocations.com featuring the Succotash Restaurant. The Succotash Restaurant is currently featured on Guy Fieri's Flavor Town website – www.flavortownusa.com. A true and correct copy of a webpage from flavortownusa.com is attached hereto as **Exhibit J** and incorporated herein by reference.

13. Food Network is a national cable TV network, and the DDD show that featured my Succotash Restaurant was broadcast nationally in the United States on Season 18, Episode 10 on December 2, 2013. Attached hereto as **Exhibit K**, and incorporated herein by reference, is a true and correct copy of a webpage from www.dinersdriveinsdiveslocations.com showing that Season 18, Episode 10 was aired in December 2013.

14. The DDD show that featured my Succotash Restaurant has, to date, been re-broadcasted at least 90-100 times after the initial broadcast on Food Network on December 2, 2013. The DDD show that featured my Succotash Restaurant has been and is also available for viewers to watch on the following streaming services: Max, Food Network, DirectTV, Apple TV, Amazon Video and Google Play Movies. Attached hereto as **Exhibit L**, and incorporated herein by reference, is a true and correct copy of the search webpage from www.google.com showing the streaming services where Season 18, Episode 10 can be viewed.

15. Since the show on DDD that featured my Succotash Restaurant aired on December 2, 2013, other than during the pandemic and some time thereafter, sales numbers for the Succotash Restaurant have increased by 2-3 times.

16. My Succotash Restaurant has also been featured and promoted in the following nationally recognized publications: Southern Living, Feast Magazine, Delish.com (one of the top 10 food-related destinations online in the nation), Playboy.com, Spoon University (considered to be the Food Network for millennials), Food and Wine and Midwest Living. Attached hereto as

Exhibit M (Parts 1 through 6), and incorporated herein by reference, are true and correct copies of articles or publications from Feast Magazine, Delish.com, Playboy.com, Spoon University, Food and Wine and Midwest Living. My Succotash Restaurant has also been promoted in the following books: "MTV Road Trips," "Let's Go USA," and "Last Bite Cookbook."

17. After the initial broadcast of the DDD show on December 2, 2013 and recognition on social media and various publications, the trademark SUCCOTASH became well known throughout the United States in connection with my restaurant services and catering services. From on or about the early spring 2014 to present, people from all over the country visit my Succotash Restaurant. Some people from other states and even internationally even make my Succotash Restaurant their destination when traveling. Attached hereto as **Exhibit N (Part 1 through 15)**, and incorporated herein by reference, is a true and correct copy of Yelp reviews of my Succotash Restaurant from customers throughout the United States. Attached hereto as **Exhibit O (Parts 1 through 13)**, and incorporated herein by reference, is a true and correct copy of Tripadvisor reviews of my Succotash Restaurant from customers throughout the United States.

18. Numerous blogs have been written about the Succotash Restaurant by people all over the United States. Some of these blogs are: Sarah Scoop, Alfresco, Gluten Free Indie, The Daily Wild, Pen Parentis, The Happy Veggie, Best Road Trip Ever, Vegan Food Addict, In Johnna's Kitchen, Chef Amber Shea, Around the Block, Say the Damn Score, Sally's Place, Travel It Girl, Why Knot Us, Realistic Redhead, Aaron's Food Adventures, The Nerd Nest, Peace by Pastries, Avoiding Regret, The Confounded Cook, and The Raven Daily. This list is not exhaustive or all inclusive. Attached hereto as **Exhibit P (Parts 1 through 11)**, and incorporated herein by reference, are true and correct copies of these blogs featuring my Succotash Restaurant.

19. In November of 2018, the Succotash Restaurant was featured on Chew Diligence Podcast in discussions with Antoni Porowski. In January of 2019, the Succotash Restaurant was

also featured on the Travel Channel show "Best Places to Pig Out" with Antoni Porowski as a guest. In March of 2019, I appeared in a show with Antoni Porowski at the Bell House in Brooklyn, where the Succotash Restaurant was heavily discussed. In July of 2019, the Succotash Restaurant was featured on Man v. Food in one of their food challenges. In September of 2019, the Succotash Restaurant was again featured on Chew Dilligence Podcast and I appeared as a guest on a DDD episode where the Succotash Restaurant was discussed and featured. In September of 2019 Succotash was also featured on DDD "Something Sweet," Episode 96. On November 4, 2019, I appeared on "Food for Thought," Radio Cherrybombe (New York) podcast tour, where the Succotash Restaurant was heavily featured. In April of 2021, Chew Diligence Podcast again featured the Succotash Restaurant. In September of 2021, the Succotash Restaurant was discussed on Everything Happens with Kate Bowler, episode "Antoni Porowski Tastes Like Love." In 2023, the Succotash Restaurant was listed as best breakfast in Kansas City by Travel in Missouri.

20. Knead first filed for the mark SUCCOTASH, which mark was cancelled (Cancelled Registration No. 5,069,425). See **Exhibit U**. Thereafter, Knead filed for the marks SUCCOTASH PRIME (U,S. Application No. 97/030,746) and LIL' SUCCOTASH, (Registration No. 6,465,298), and has maintained this registration and application despite the cancellation of its original application for the mark SUCCOTASH. A true and correct copy of the original application filed by Knead for the mark SUCCOTASH PRIME is attached as **Exhibit C**. A true and correct copy of the original application filed by Knead for the mark LIL' SUCCOTASH is attached as **Exhibit D**.

21. SUCCOTASH PRIME (U,S. Application No. 97/030,746) and LIL' SUCCOTASH, (Registration No. 6,465,298) are currently the subject of a consolidated cancellation and opposition proceeding number 91279889.

22. I have a pending trademark for the mark SUCCOTASH in class 043 for "Restaurant and bar services, including restaurant carryout services; Restaurant and café services; Restaurant

services; Restaurant, bar and catering services", which is the subject of application serial number 90/335,268. A true and correct copy of which is attached as **Exhibit E**.

23. My trademark application for the mark SUCCOTASH currently remains suspended pending the outcome of the consolidated cancellation and opposition proceeding number SUCCOTASH PRIME (U,S. Application No. 97/030,746) and LIL' SUCCOTASH, (Registration No. 6,465,298) (Proceeding No. 912798889). The USPTO has suspended my trademark application for the mark SUCCOTASH as being confusingly similar to LIL' SUCCOTASH (Registration No. 6,465,298).

24. Despite my prior use of the mark SUCCOTASH and the USPTO finding my mark confusingly similar to the mark LIL' SUCCOTASH (Registration No. 6,465,298), Knead is continuing with the consolidated proceedings for the marks SUCCOTASH PRIME Registration No. 6,465,298 and LIL' SUCCOTASH.

25. Knead's SUCCOTASH mark is identical to the trademark SUCCOTASH that I have used for my restaurant services and catering services since 2001. Succotash is a very unique name for a restaurant. There has been real confusion among my patrons and customers. Several customers have asked me whether I have opened restaurants out of state or whether I am affiliated with Knead's restaurants. Even a simple Google search had Knead's restaurants and my restaurant in the same research results. Attached hereto **Exhibit Q**, and incorporated herein by reference, is a true and correct copy of a Google search for "succotash restaurant."

26. At the time Knead filed for the mark SUCCOTASH (Cancelled Registration No. 5,069,425), a simple Google search would have shown my restaurant and the DDD show featuring my Succotash Restaurant. At the time of the filing of the marks LIL' SUCCOTASH and SUCCOTASH PRIME Knead knew of my Succotash Restaurant and its national recognition from

TTAB Cancellation Proceeding No. 92064998 – Beth A. Barden v. Knead Hospitality + Design, LLC (the cancellation of Knead's U.S. Trademark Registration No. 5,069,425).

27. According to Knead's website, Knead is now operating restaurants offering restaurant and bar services under the name SUCCOTASH at two locations and under the name LIL'SUCCOTASH in two other locations. A true and correct copy of Knead's restaurant page and the restaurant locations on its website is attached hereto as **Exhibit R** and incorporated herein by reference, (https://kneadhd.com/restaurants/). A true and correct copy of Knead's restaurants' website home pages are also attached hereto as **Exhibit S** and incorporated herein by reference, (https://succotashrestaurant.com and https://www.lil-succotash.com/). It should be noted that the way Knead is using the mark LIL' SUCCOTASH, the emphasis of the mark is on the word SUCCOTASH.

28. A true and correct copy of an image of the Succotash Restaurant storefront, as operated at the 2601 Holmes Street location, is attached hereto as **Exhibit T** and incorporated herein by reference.

29. It should be noted that in the TTAB Cancellation Proceeding No. 92064998 – Beth A. Barden v. Knead Hospitality + Design, LLC, the TTAB cancelled Registrant's prior registration of the mark SUCCOTASH for "bar services, catering services and restaurant services" in IC 043, U.S. Registration No. 5,069,425. A true and correct copy of this TTAB Opinion is attached hereto as **Exhibit U**.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this submission, declares that all statements made of her own knowledge are true and that all statements made on information and belief are believed to be true. The undersigned declare under penalty of perjury under the laws of the State of Missouri and the

United States of America that the foregoing is true and correct.

Respectfully submitted,

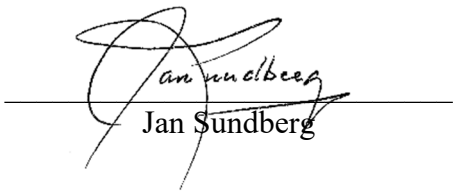
Dated: August 26, 2024 By /Beth Barden/
Beth Barden

CERTIFICATE OF SERVICE

I, Jan Sundberg, hereby certify that I caused a true and correct copy of TRIAL TESTIMONY DECLARATION OF BETH BARDEN to be served via email on:

Alexander J. Farrell
Best & Flanagan, LLP
60 S. 6th Street, STE 2700
Minneapolis, Minnesota 55402
afarrell@bestlaw.com
Attorney for Applicant/Registrant

Said service having taken place this 26th day of August, 2024.



Jan Sundberg