

ESTTA Tracking number: **ESTTA649208**

Filing date: **01/09/2015**

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

Proceeding	92059657
Party	Defendant Boardwalk Pizza, Inc.
Correspondence Address	JUSTIN M KLEIN JOYANN KENNY 63 RIVERSIDE AVENUE RED BANK, NJ 07701 UNITED STATES justin@marksklein.com, joyann@marksklein.com, louis@marksklein.com
Submission	Other Motions/Papers
Filer's Name	Justin M. Klein
Filer's e-mail	justin@marksklein.com, joyann@marksklein.com, louis@marksklein.com
Signature	/Justin M. Klein/
Date	01/09/2015
Attachments	TTAB Interrogatogs to NJTA.pdf(279925 bytes) TTAB Requests for Admissions to NJTA.pdf(241953 bytes) TTAB Requests for Production to NJTA.pdf(265817 bytes)

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

NEW JERSEY TURNPIKE
AUTHORITY,

Petitioner,

v.

BOARDWALK PIZZA, INC.,

Respondent.

Cancellation No. 92059657

REGISTRANT'S FIRST SET OF REQUESTS FOR ADMISSION

Please take notice that Registrant Boardwalk Pizza, Inc. ("Registrant") hereby demands that Petitioner New Jersey Turnpike Authority ("Petitioner") provide certified answers to the following interrogatories, in accordance with Federal Rule of Civil Procedure 33 and 37 C.F.R. 2.120 by serving written responses to the offices of Registrant's counsel, Justin M. Klein, Esq., Marks & Klein, LLC, 63 Riverside Avenue, New Jersey, 07701, within thirty (30) days from the date of service hereof. These requests are continuing in nature and Petitioner has a duty to disclose any responsive information that is discovered subsequent to service of productions hereto, by submission of supplemental productions to Registrant's counsel.

**DEFINITION AND INSTRUCTIONS APPLICABLE TO ALL
INTERROGATORIES**

The following definitions and instructions are pertinent to all answers to said interrogatories:

A. The terms “Petitioner” or “You” as used herein, include, without limitation not only New Jersey Turnpike Authority, but also any subsidiary and/or parent organization or agency of the New Jersey Turnpike Authority and any other predecessor or previous entity in which Petitioner has or had an interest, which entity is or was involved in any activities relating to this proceeding, such should be stated, and such entity should be fully identified by name.

B. The term “Registrant” as used herein means Boardwalk Pizza, Inc.

C. The term “Documents” as used herein includes all writings of any kind, in paper or electronic form or stored on any other media, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation correspondence, memoranda, notes, diaries, appointment books, statistics, letters, electronic mail agreements, reports, studies, checks, Statements, receipts, returns, summaries, pamphlets, books, prospectuses, certificates, drawings, plans, interoffice and intraoffice communications, offers, notations and any form made of conversations, telephone calls, meetings or other communications, bulletins, or printed matter (including newspapers magazines and other publications, and articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, invoices, ledgers, worksheets (and all other drafts, alterations, modifications, and changes in amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, charts, graphs, and microfiche, tape for voice recordings, microfilm, videotape, or film recordings) and electronic, mechanical or electrical recordings or representations of any kind (including without limitation tapes, cassettes, discs, recordings, or transcription thereof), whether or not the writing is privileged or within Petitioner’s custody, possession, or control.

D. As used herein the term “all documents” means every doctrine, as defined in Paragraph C, above, which can be located, discovered, or obtained by reasonably diligent efforts, including, without limitation, all documents possessed by: (a) you or your counsel; or (b) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

E. The term “person” as used herein includes, without limitation, any individual, agency, association, partnership, corporation, limited liability company, organization, firm, or any other entity.

F. As used herein, “identify,” “identity,” or “identification” means when used in reference to:

- a. a natural person, if his or her:

- i. full name;
 - ii. present or last known home and business address (including street name and number, city or town, and state); and
 - iii. present or last known position, business affiliation, and job description.
- b. a company, corporation, association, partnership, or any legal entity other than a natural person, it's:
 - i. full name and type of organization or entity;
 - ii. address or principal place of business;
 - iii. dating state of organization or corporation; and
 - iv. line or lines of business
- c. a document:
 - i. its description (e.g., letter, memorandum, report, etc.);
 - ii. its title and date, and the number of pages thereof;
 - iii. its subject matter;
 - iv. the identity of its author or signor;
 - v. the identity of its addressee or recipient;
 - vi. the identity of each person to whom copies were sent and each person by whom copies were received; and
 - vii. its present location and identity of its custodian. (If any such document was, but is no longer in your possession or subject to control, state what and when disposition was made of it.)
- d. an oral communication;
 - i. its date and the place where it occurred;
 - ii. its substance; and
 - iii. the identity of each person to whom such communication was made, each person by whom such communication was made, and each person who was present when such communication was made.

G. Where an interrogatory requesting application of a person or persons, state the full name, title, employment and present business, and home addresses; if unknowns, state the most recent business and home addresses of each such person or persons.

H. The term “Registrant’s Mark” means the mark BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA and design, which mark is depicted below, as identified in the Petition for Cancellation and which is the subject of United States Service Mark Registration No. 4,056,183.

I. The term “Registrant’s Amended Mark” means the mark JERSEY BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA CO. and design, which mark is depicted below, and all close variations thereof, as used by Registrant (or Registrant’s affiliates) in connection with Registrant’s restaurant services, franchising services and merchandise, and which is the subject of United States Service Mark Application Serial No. 86/268,185.

J. The term “Registrant’s Services” means any and all restaurant services and/or franchising services and/or franchising opportunities provided or offered by Registrant under Registrant’s Mark and or Registrant’s Amended Mark.

K. The term of “Registrant’s Goods” means any and all goods sold or otherwise provided by Registrant bearing Registrant’s Mark and or Registrant’s Amended Mark.

L. The term “Petitioner’s Mark” means the mark GARDEN STATE PARKWAY and design and all close variations thereof, including, but not limited to, use of the mark utilizing a green and yellow color scheme and use of the mark that is the subject of the following United States Service Mark Registrations and Trademark Applications.

- a. GARDEN STATE PARKWAY and design, Registration No. 2,452,349, in Class 37 for *highway management and maintenance services* and in Class 39 for *travel information services*;
- b. GARDEN STATE PARKWAY and design, Serial No. 85/381,415, a pending application in Class 25 for *t-shirts and hats*;
- c. GARDEN STATE PARKWAY and design, Serial No. 85/381,410, a pending application in Class 24 for *beach towels*;
- d. GARDEN STATE PARKWAY and design, Serial No. 85/381,405, a pending application in Class 21 for *coffee mugs*;
- e. GARDEN STATE PARKWAY and design, Serial No. 85/381,402, a pending application in Class 20 for *non-metal and non-leather key chains*; and
- f. GARDEN STATE PARKWAY and design, Serial No. 85/381,398, a pending application in Class 16 for *bumper stickers*.

M. The term “Petitioner’s Services” means the highway management and maintenance and travel information services provided by Petitioner under Petitioner’s Mark.

N. As used herein the term “relating to” (including any variant thereof), includes regarding, discussing, embodying, describing, referring to, alluding to, responding to, concerning, summarizing, containing, constituting, showing, mentioning, reflecting, pertaining, dealing with, in connection with, commenting on or in respect of, analyzing, touching upon, and constituting the being, including but not limited to, documents concerning the preparation of other documents and is not limited to contemporaneous events, actions, communications, or documents.

O. Whenever asked in these interrogatories to state, describe, explain, or set forth in fact, event, or allegation, you are to do so in detail, giving reasons therefore, dates, and places involved, and identifying all relevant persons and documents.

P. Wherever appropriate in these requests: the singular form shall be interpreted as plural and *vice-versa*; The present tense includes the past tense and *vice-versa*; and the masculine gender shall be interpreted as the feminine gender and *vice-versa*.

Q. If you lack knowledge necessary to answer any of the following interrogatories herein, it should be so stated. If you responsibly find information and belief, however it should be so stated in the ground percent believe should be set forth (and the source of such information identified).

R. You are to respond to each interrogatory on the basis of those facts and information within your possession or control as of the date you sign, under oath or verification, your answers to such interrogatories.

S. If any request for documents is deemed to call for the production of privilege or work product materials and such privilege or work product is asserted, provide the following information:

- a. the reason for withholding documents;
- b. a statement of the basis for work for the claim of privilege, work product, or other ground on disclosure;
- c. a brief description of the document, including:
 - i. the date of the document;
 - ii. number of pages, attachments, and appendices;
 - iii. the names of its author, authors, or prepares and an identification by employment entitled each such person;
 - iv. the name of each person who was sent, shown, or blind or top carbon copied the document, was had access to work us the other document, together with identification of each such person;
 - v. the present custodian; and
 - vi. the subject matter of the document, and in the case of any document relating to referring to a meeting or conversation, identification of such meeting of conversation.

T. If any interrogatory asked for information which could at some time had been answered by producing, consulting, or front to documents no longer in existence, identify each interrogatory switch that is the case and, with respect to each such interrogatory:

- a. Identify what information was maintained;
- b. Identify all types of document(s) which contain such information;
- c. State the time period during which such documents were maintained;
- d. State the circumstances under which such documents ceased to exist;
- e. State the date such documents ceased to exist;
- f. Identify all persons having knowledge of the circumstances under which such documents ceased to exist; and
- g. Identify all persons with knowledge or had knowledge of the documents and content.

U. The term "USPTO" means the United States Patent and Trademark Office.

INTERROGATORIES

Interrogatory No. 1

Identify the person or persons were most knowledgeable about:

- a. the decision to adopt Petitioner's Mark;
- b. the past and current use of Petitioner's Mark and the circumstances in connection with which Petitioner's Mark has been and/or is currently used;
- c. research reports, opinions, and/or investigations prepared which concern Petitioner's Mark;
- d. the preparation, filing, and maintenance of any and all U.S. trademark and/or service mark applications and/or registrations which include Petitioner's Mark, or any variant thereof;
- e. Petitioner's knowledge of the existence and/or activities of Registrant;
- f. the development, distribution, and proliferation of any advertising and promotional materials for any and all goods in connection with which Petitioner's Mark is utilized;
- g. the decision to file suit against Registrant;
- h. any and all actions against other alleged violators of Petitioner's Mark;
- i. the adoption of the federal Manual on Uniform Traffic Devices;
- j. the actual losses incurred by the Petitioner;
- k. the alleged confusion has arisen;
- l. the sale or plans by Petitioner to sell merchandise;

Interrogatory No. 2

With regard to Petitioner's past and present use of Petitioner's Mark:

- a. identify any and all goods or services that are currently being sold provided by Petitioner, or that have been sold providing the past, that either bear Petitioner's Mark work are sold or provided under petitioner's more, and for any goods or services so identified, describe the circumstances of such use;
- b. identify any and all documents, including but not limited to advertising, promotional and/or marketing materials, invoice, specimens, and website pages bearing Petitioner's Mark to have prepared by or for Petitioner and/or any third party and/or disseminated by or for Petitioner and/or any third party;
- c. for each year, beginning with the date Petitioner's Mark was first use, set forth the total amount of money Petitioner and/or any third party spent on advertising, promotion, and/or marketing connection with Petitioner's Services;
- d. identify any and all geographic locations or areas where Petitioner's Mark has ever been displayed whether or not services or goods were provided in those locations or areas

Interrogatory No. 3

Identify all persons with knowledge or information blames the allegations asserted in Petitioner's petition for cancellation. As each person identified in this interrogatory, state the allegation and substance of the facts and of which the person has knowledge or information.

Interrogatory No. 4

Identify any investigations, consumer surveys, trademark searches, market research, focus groups, or other related studies conducted by Petitioner concerning any likelihood of confusion between petitioner and registrant and or their respective goods and/or services or marks

Interrogatory No. 5

Describe the circumstances surrounding the adoption of Petitioner's Mark, including, but not limited to, the date when the adoption of the mark was first proposed, identifying the person(s) who originally proposed the marked franchise of goods or services, and identify each document related to the adoption and/or the decision to adopt a mark in connection with any type of goods or services with which the mark has been or is proposed to be used to associated.

Interrogatory No. 6

Describe the circumstances surrounding the adoption of the federal Manual on Uniform Traffic Devices.

Interrogatory No. 7

For each instance in which anyone within the Petitioner's agency discussed challenging the adoption of Registrant's Mark between 2010 and now, set forth the circumstances surrounding each such instance, the identity of each such person, the substance of such advice recommendation, the date of the advisor recommendation, and each person who receives such advisor recommendation.

Interrogatory No. 8

Describe any and all instances in which Petitioner is aware in which a person or persons were confused or mistaken, or otherwise is certain, about a possible connection or affiliation between a Florida pizza shop, Registrant, and a New Jersey highway system, Petitioner, or the party's respective goods, services, trademarks or service marks; including but not limited to identifying (a) the person or persons who expresses confusion; (b) the date(s) one such incident occurred; and (c) all persons with knowledge surrounding such instances.

Interrogatory No. 9

Identify and describe each communication to, from, between, or among Petitioner concerning Registrant's Mark, setting forth the date, substance of communication, and the parties to the communication.

Interrogatory No. 10

Identify and describe each communication between Petitioner and any third parties concerning Registrant's Mark and/or Registrant's Amended Mark, setting forth the date, substance of the communication, and the parties to the communication.

Interrogatory No. 11

Identify any periods of non-enforcement of Petitioner's Mark, and for each, set forth in detail the reasons for such non-use.

Interrogatory No. 12

Describe in detail any and all plans Petitioner has for future use of Petitioner's Mark in connection with any goods and services.

Interrogatory No. 13

Identify any and all third parties that Petitioner is aware of that have or previously utilized Petitioner's Marks or any variation thereof in the United States.

Interrogatory No. 14

Describe how Petitioner handled the incidents identified in Interrogatory No. 13.

Interrogatory No. 15

Identify the earliest date petitioner knew about registrants use of registrants Mark and describe the circumstances surrounding how petitioner learned a registrant's use of registrants Mark

Interrogatory No. 16

Identify each person who Petitioner plans to call as a witness and for each such witness, describe the nature of the anticipated testimony.

Interrogatory No. 17

State whether you are aware of any admissions or declarations against interest made by any person, including, but not limited to, Petitioner and or registrant or any current or former employee of Petitioner or Registrant concerning any matter relating to this action. If so, set forth give them the address of each person making such submission or declaration against interest, the identity and address of each person receiving such admission or declaration of interest, date and place of each such admission or declaration of interest, intending address of each such person present when each such admission or declaration against interest is made the manner in which each such admission or declaration against interest was made whether or where both and the substance of each such admission or declaration against interest. Identify and annexed hereto any and all documents containing such admissions or declarations against interest for referring or relating thereto in any way.

Interrogatory No. 18

If any interrogatory asked for information which could have sometimes been answered by producing, consulting, or for the documents which are no longer in existence, identify each interrogatory for which that is the case and, with respect to each such interrogatory, identify what information was maintained, identify all the types of documents which contain such information, state the time period during which such documents were maintained, state the circumstances under which such document ceased to exist, state the date with when such documents ceased to exist, identify all persons having knowledge of the circumstances under which such documents

ceased to exist and identify all persons with knowledge or had knowledge of documents and content thereof

Interrogatory No. 19

Identify each document, if any, which is being withheld from document production pursuant to Registrant's Request for Production of Documents to Petitioner on the ground of privilege or otherwise and state, for each stock withheld:

- a. the type of document;
- b. the date;
- c. the person who prepared the document;
- d. all persons who received a copy;
- e. the reason for nonproduction; and
- f. the subject matter.

Interrogatory No. 20

Identify each person who assisted in the preparation of the responses to these interrogatories and state the number of each interrogatory in connection with which such person rendered such assistance.

Interrogatory No. 21

Identify all persons to assist in the collection of documents in response to Registrant's Request for Production of Documents, indicating for each such person, each set request for which he or she assist in the collection of documents.

Dated: January 9, 2015

Respectfully Submitted,

MARKS & KLEIN, LLP

/s/ Justin M. Klein

Justin M. Klein, Esq.

JoyAnn Kenny, Esq.

63 Riverside Avenue

Red Bank, New Jersey 07701

Phone: 732-747-7100

Fax: 732-219-026

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2015, I filed the within Registrant's First Set of Interrogatories to Petitioner via the USPTO's electronic filing system. I have also served a copy to Counsel for Petitioner, Peter E. Nussbaum, Esq., Wolff & Samson PC, via electronic mail and first class mail at the following address:

Peter E. Nussbaum, Esq.
Wolff & Samson PC
The Offices at Crystal Lake
One Boland Drive
West Orange, New Jersey 07052
E-Mail: risrael@wolffsamson.com

By: /s/Justin M. Klein
Justin M. Klein

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

NEW JERSEY TURNPIKE
AUTHORITY,

Petitioner,

v.

BOARDWALK PIZZA, INC.,

Respondent.

Cancellation No. 92059657

REGISTRANT’S FIRST SET OF REQUESTS FOR ADMISSION

Please take notice that Registrant Boardwalk Pizza, Inc. (“Registrant”) hereby demands that Petitioner New Jersey Turnpike Authority (“Petitioner”) provide certified answers to the following Requests for Admission, in accordance with Federal Rule of Civil Procedure 36 and 37 C.F.R. 2.120 by serving written responses to the offices of Registrant’s counsel, Justin M. Klein, Esq., Marks & Klein, LLC, 63 Riverside Avenue, New Jersey, 07701, within thirty (30) days from the date of service hereof.

**DEFINITION AND INSTRUCTIONS APPLICABLE TO ALL REQUESTS
FOR ADMISSION**

The following definitions and instructions are pertinent to all answers to said request for admission:

A. The terms “Petitioner” or “You” as used herein, include, without limitation not only New Jersey Turnpike Authority, but also any subsidiary and/or parent organization or agency of the New Jersey Turnpike Authority and any other predecessor or previous entity in which Petitioner has or had an interest, which entity is or was involved in any activities relating to this proceeding, such should be stated, and such entity should be fully identified by name.

B. The term “Registrant” as used herein means Boardwalk Pizza, Inc.

C. The term “Documents” as used herein includes all writings of any kind, in paper or electronic form or stored on any other media, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation correspondence, memoranda, notes, diaries, appointment books, statistics, letters, electronic mail agreements, reports, studies, checks, Statements, receipts, returns, summaries, pamphlets, books, prospectuses, certificates, drawings, plans, interoffice and intraoffice communications, offers, notations and any form made of conversations, telephone calls, meetings or other communications, bulletins, or printed matter (including newspapers magazines and other publications, and articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, invoices, ledgers, worksheets (and all other drafts, alterations, modifications, and changes in amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, charts, graphs, and microfiche, tape for voice recordings, microfilm, videotape, or film recordings) and electronic, mechanical or electrical recordings or representations of any kind (including without limitation tapes, cassettes, discs, recordings, or transcription thereof), whether or not the writing is privileged or within Petitioner’s custody, possession, or control.

D. The term “Registrant’s Mark” means the mark BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA and design, which mark is depicted below, as identified in the Petition for Cancellation and which is the subject of United States Service Mark Registration No. 4,056,183.

E. The term “Registrant’s Amended Mark” means the mark JERSEY BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA CO. and design, which mark is depicted below, and all close variations thereof, as used by Registrant (or Registrant’s affiliates) in connection with Registrant’s restaurant services, franchising services and merchandise, and which is the subject of United States Service Mark Application Serial No. 86/268,185.

F. The term “Petitioner’s Mark” means the mark GARDEN STATE PARKWAY and design and all close variations thereof, including, but not limited to, use of the mark utilizing

a green and yellow color scheme and use of the mark that is the subject of the following United States Service Mark Registrations and Trademark Applications.

- a. GARDEN STATE PARKWAY and design, Registration No. 2,452,349, in Class 37 for *highway management and maintenance services* and in Class 39 for *travel information services*;
- b. GARDEN STATE PARKWAY and design, Serial No. 85/381,415, a pending application in Class 25 for *t-shirts and hats*;
- c. GARDEN STATE PARKWAY and design, Serial No. 85/381,410, a pending application in Class 24 for *beach towels*;
- d. GARDEN STATE PARKWAY and design, Serial No. 85/381,405, a pending application in Class 21 for *coffee mugs*;
- e. GARDEN STATE PARKWAY and design, Serial No. 85/381,402, a pending application in Class 20 for *non-metal and non-leather key chains*; and
- f. GARDEN STATE PARKWAY and design, Serial No. 85/381,398, a pending application in Class 16 for *bumper stickers*.

REQUESTS FOR ADMISSION

1. Admit that Petitioner does not sell pizza, cheesesteaks, calzone, subs, salads, desserts, or any beverages similar to that of registrant.

2. Admit that Petitioner does not conduct any business in the State of Florida, particularly near Tavernier or Florida City, Florida.

3. Admit that Petitioner has not suffered any quantifiable financial losses from Registrant's use of their Mark.

4. Admit that Petitioner did not contest Registrant's original application to register his Mark.

5. Admit that Petitioner did not contest Registrant's Mark for over two years after the registration of the subject Mark.

6. Admit that other individuals and businesses use designs similar to that of Petitioner.

7. Admit that the Petitioner has adopted the federal Manual on Uniform Traffic Devices.

8. Admit that such adoption renders Petitioner's Mark in the public domain.

9. Admit that Petitioner has not sold any merchandise bearing Petitioner's Mark prior to Petitioner's registration of his Mark.

10. Admit that Petitioner has only begun selling and/or planning to sell merchandise recently bearing Petitioner's Mark.

11. Admit that Petitioner's Mark is only for "highway management and maintenance services" and for "travel information services."

Respectfully Submitted,

Dated: January 9, 2015

MARKS & KLEIN, LLP

/s/ Justin M. Klein
Justin M. Klein, Esq.
JoyAnn Kenny, Esq.
63 Riverside Avenue
Red Bank, New Jersey 07701
Phone: 732-747-7100
Fax: 732-219-026

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2015, I filed the within Registrant's First Requests for Admission to Petitioner via the USPTO's electronic filing system. I have also served a copy to Counsel for Petitioner, Peter E. Nussbaum, Esq., Wolff & Samson PC, via electronic mail and first class mail at the following address:

Peter E. Nussbaum, Esq.
Wolff & Samson PC
The Offices at Crystal Lake
One Boland Drive
West Orange, New Jersey 07052
E-Mail: risrael@wolffsamson.com

By: /s/Justin M. Klein
Justin M. Klein

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

NEW JERSEY TURNPIKE
AUTHORITY,

Petitioner,

v.

BOARDWALK PIZZA, INC.,

Respondent.

Cancellation No. 92059657

REGISTRANT'S FIRST SET OF REQUESTS FOR ADMISSION

Please take notice that Registrant Boardwalk Pizza, Inc. ("Registrant") hereby demands that Petitioner New Jersey Turnpike Authority ("Petitioner") provide certified answers to the following Requests for Production, in accordance with Federal Rule of Civil Procedure 34 and 37 C.F.R. 2.120 by serving written responses to the offices of Registrant's counsel, Justin M. Klein, Esq., Marks & Klein, LLC, 63 Riverside Avenue, New Jersey, 07701, within thirty (30) days from the date of service hereof. These requests are continuing in nature and Petitioner has a duty to disclose any responsive information that is discovered subsequent to service of productions hereto, by submission of supplemental productions to Registrant's counsel.

**DEFINITION AND INSTRUCTIONS APPLICABLE TO ALL REQUESTS
FOR PRODUCTION**

The following definitions and instructions are pertinent to all answers to said request for production:

A. The terms “Petitioner” or “You” as used herein, include, without limitation not only New Jersey Turnpike Authority, but also any subsidiary and/or parent organization or agency of the New Jersey Turnpike Authority and any other predecessor or previous entity in which Petitioner has or had an interest, which entity is or was involved in any activities relating to this proceeding, such should be stated, and such entity should be fully identified by name.

B. The term “Registrant” as used herein means Boardwalk Pizza, Inc.

C. The term “Documents” as used herein includes all writings of any kind, in paper or electronic form or stored on any other media, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation correspondence, memoranda, notes, diaries, appointment books, statistics, letters, electronic mail agreements, reports, studies, checks, Statements, receipts, returns, summaries, pamphlets, books, prospectuses, certificates, drawings, plans, interoffice and intraoffice communications, offers, notations and any form made of conversations, telephone calls, meetings or other communications, bulletins, or printed matter (including newspapers magazines and other publications, and articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, invoices, ledgers, worksheets (and all other drafts, alterations, modifications, and changes in amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, charts, graphs, and microfiche, tape for voice recordings, microfilm, videotape, or film recordings) and electronic, mechanical or electrical recordings or representations of any kind (including without limitation tapes, cassettes, discs, recordings, or transcription thereof), whether or not the writing is privileged or within Petitioner’s custody, possession, or control.

D. As used herein the term “all documents” means every doctrine, as defined in Paragraph C, above, which can be located, discovered, or obtained by reasonably diligent efforts, including, without limitation, all documents possessed by: (a) you or your counsel; or (b) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

E. The term “person” as used herein includes, without limitation, any individual, agency, association, partnership, corporation, limited liability company, organization, firm, or any other entity.

F. As used herein, “identify,” “identity,” or “identification” means when used in reference to:

- a. a natural person, if his or her:

- i. full name;
 - ii. present or last known home and business address (including street name and number, city or town, and state); and
 - iii. present or last known position, business affiliation, and job description.
 - b. a company, corporation, association, partnership, or any legal entity other than a natural person, it's:
 - i. full name and type of organization or entity;
 - ii. address or principal place of business;
 - iii. dating state of organization or corporation; and
 - iv. line or lines of business
 - c. a document:
 - i. its description (e.g., letter, memorandum, report, etc.);
 - ii. its title and date, and the number of pages thereof;
 - iii. its subject matter;
 - iv. the identity of its author or signor;
 - v. the identity of its addressee or recipient;
 - vi. the identity of each person to whom copies were sent and each person by whom copies were received; and
 - vii. its present location and identity of its custodian. (If any such document was, but is no longer in your possession or subject to control, state what and when disposition was made of it.)
 - d. an oral communication;
 - i. its date and the place where it occurred;
 - ii. its substance; and
 - iii. the identity of each person to whom such communication was made, each person by whom such communication was made, and each person who was present when such communication was made.

G. The term “Registrant’s Mark” means the mark BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA and design, which mark is depicted below, as identified in the Petition for Cancellation and which is the subject of United States Service Mark Registration No. 4,056,183.

H. The term “Registrant’s Amended Mark” means the mark JERSEY BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA CO. and design, which mark is depicted below, and all close variations thereof, as used by Registrant (or Registrant’s affiliates) in connection with Registrant’s restaurant services, franchising services and merchandise, and which is the subject of United States Service Mark Application Serial No. 86/268,185.

I. The term “Registrant’s Services” means any and all restaurant services and/or franchising services and/or franchising opportunities provided or offered by Registrant under Registrant’s Mark and or Registrant's Amended Mark.

J. The term of “Registrant’s Goods” means any and all goods sold or otherwise provided by Registrant bearing Registrant’s Mark and or Registrant’s Amended Mark.

K. The term “Petitioner’s Mark” means the mark GARDEN STATE PARKWAY and design and all close variations thereof, including, but not limited to, use of the mark utilizing a green and yellow color scheme and use of the mark that is the subject of the following United States Service Mark Registrations and Trademark Applications.

- a. GARDEN STATE PARKWAY and design, Registration No. 2,452,349, in Class 37 for *highway management and maintenance services* and in Class 39 for *travel information services*;
- b. GARDEN STATE PARKWAY and design, Serial No. 85/381,415, a pending application in Class 25 for *t-shirts and hats*;
- c. GARDEN STATE PARKWAY and design, Serial No. 85/381,410, a pending application in Class 24 for *beach towels*;
- d. GARDEN STATE PARKWAY and design, Serial No. 85/381,405, a pending application in Class 21 for *coffee mugs*;
- e. GARDEN STATE PARKWAY and design, Serial No. 85/381,402, a pending application in Class 20 for *non-metal and non-leather key chains*; and
- f. GARDEN STATE PARKWAY and design, Serial No. 85/381,398, a pending application in Class 16 for *bumper stickers*.

L. The term “Petitioner’s Services” means the highway management and maintenance and travel information services provided by Petitioner under Petitioner's Mark.

M. As used herein the term “relating to” (including any variant thereof), includes regarding, discussing, embodying, describing, referring to, alluding to, responding to, concerning, summarizing, containing, constituting, showing, mentioning, reflecting, pertaining, dealing with, in connection with, commenting on or in respect of, analyzing, touching upon, and constituting the being, including but not limited to, documents concerning the preparation of other documents and is not limited to contemporaneous events, actions, communications, or documents.

N. Wherever appropriate in these requests: the singular form shall be interpreted as plural and *vice-versa*; The present tense includes the past tense and *vice-versa*; and the masculine gender shall be interpreted as the feminine gender and *vice-versa*.

O. If you lack knowledge necessary to answer any of the following requests herein, it should be so stated. If you responsibly find information and belief, however it should be so stated in the ground percent believe should be set forth (and the source of such information identified).

P. If a document is responsive to a request for production and is in your control, but is not in your possession or custody, identify the person in possession or custody.

Q. If any document was, but no longer is, in your possession or subject to control, state what disposition was made of it, by whom, and the date or dates or approximate date or dates on which disposition was made, and why.

R. “Evidencing” shall mean programming, indicating, or probative of the existence or nature of certain particular subject.

S. Policy means any rule, procedure, directive, practice, course of conduct, whether formal or informal, written or unwritten, recorded or unrecorded, which was recognized by you.

T. If any request for documents is deemed to call for the production of privilege or work product materials and such privilege or work product is asserted, provide the following information:

- a. the reason for withholding documents;
- b. a statement of the basis for work for the claim of privilege, work product, or other ground on disclosure;
- c. a brief description of the document, including:
 - i. the date of the document;
 - ii. number of pages, attachments, and appendices;
 - iii. the names of its author, authors, or prepares and an identification by employment entitled each such person;
 - iv. the name of each person who was sent, shown, or blind or top carbon copied the document, was had access to work us the other document, together with identification of each such person;
 - v. the present custodian; and
 - vi. the subject matter of the document, and in the case of any document relating to referring to a meeting or conversation, identification of such meeting of conversation.

U. In the event the document is not produce that is not presently in your possession or control, or because of claim of privilege, identify the document by providing the following information:

- a. approximate date;
- b. type of document (e.g., letter, memorandum);
- c. a general description of its subject matter;
- d. the identification of author and address, if applicable;
- e. identification of all recipients;
- f. present location and custodian; and
- g. any other description necessary to enable the custodian to locate the particular document.

V. The term “Electronically Stored Information” (“ESI”) is using his customary broad sense, and includes without limitation the broadest scope given in Fed. R. Civ. Pro. 34(a), and specifically includes, but is not limited to, originals and all copies of electronic mail

(“email”); activity listings of electronic mail receipts and/or transmittals; voicemail; audio or video recordings of any kind; computer programs (whether private, commercial, or a work-in-progress); programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs, and outline; operating systems; source code of all types; image files including JPG or JPEG, TIFF, PICT, and BMP; PDF files, batch files in any format, including ASCII, XML, or CSV format, and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file, or file fragments. ESI includes any and all information stored in or on hard disk, floppy disks, CD and DVD discs, external hard drives or their equivalent, portable storage devices including USB or FireWire drives; magnetic tapes of all kinds, and computer chips (including EPROM, PROM, and ROM). ESI also includes the file, folder tabs, containers, or labels appended to any storage device containing electronic data.

W. The term “USPTO” means the United States Patent and Trademark Office.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents concerning Petitioner’s creation, selection, or adoption of Petitioner’s Mark, including but not limited to any marketing studies, search reports, opinions, trademark or copyright registration, availability or clearance searches, investigations or advice created by or for or rendered by or for Petitioner.

2. Documents sufficient to identify any and all goods or services in connection with which Petitioner's Mark has been used, that bear Petitioner's Mark, or in connection with which Petitioner’s Mark is currently used.

3. Documents sufficient to identify any and all goods or services conducted by and for Petitioner.

4. Documents demonstrating when Petitioner and/or third-party first began marketing, advertising, and/or promoting goods or services utilizing Petitioner's Mark.

5. All documents relating to any marketing or concern surveys undertaken concerning Petitioner's Mark, including individual questionnaires, pilot studies, and focus groups.

6. All documents related to any adult radio, television, newspaper, magazine, billboard, online, point-of-sale, and any other advertisers or promotional materials created or use anytime concerning Petitioner's Mark and or Petitioner's Services, including layouts, preliminary drawings, and artwork.

7. All documents relating to the actual losses suffered by Petitioner from Registrant's use of Registrant's Mark.

8. Any and all documents concerning any statements, inquiries, comments, or other communication by any person evidencing or concerning any confusion, mistake, suspicion, belief, worked out as to a possible connection or affiliation between Registrant and Petitioner on the respective marks, digital, or services.

9. All documents referring or relating to when Petitioner gained knowledge of Registrant's Mark.

10. All documents referring or relating to Petitioner's contestation of Registrant's Mark between 2010 and the present.

11. All documents referring or relating to the federal Manual on Uniform Traffic Devices.

12. Any documents relating to Petitioner's adoption of the federal Manual on Uniform Traffic Devices.

13. Any documents relating to merchandise that are or will be sold by Petitioner bearing Petitioner's Mark.

14. All documents reviewed and or relied upon in drafting Petitioner's Motion for Cancellation.

15. Any and all documents supporting or controverting any of the statements were allegations contained in Petitioner's Motion for Cancellation.

16. Any and all documents that Petitioner intends to rely upon for support each of the claims contained in their Petition for Cancellation.

17. Documents referring or relating to any admission made by any party to this proceeding referring or relating to the subject matter of this proceeding.

18. Documents referring or relating to any declarations against interest made by petitioner, registrant, or any other potential witness in this proceeding, referring or relating to the subject matter of this receiving.

19. All documents that identify all persons with knowledge or information concerning the subject matter of this proceeding.

20. All documents prepared by any person who is expected to testify as an expert witness on petitioner's behalf at trial or any potential hearing, and *curriculum vitae* of each such person is identified.

21. All documents that Petitioner's experts will introduce, explain, or comment upon during the course of this proceeding.

22. All ESI referring to were relating to the subject matter of this action.

Respectfully Submitted,

Dated: January 9, 2015

MARKS & KLEIN, LLP

/s/ Justin M. Klein
Justin M. Klein, Esq.
JoyAnn Kenny, Esq.
63 Riverside Avenue
Red Bank, New Jersey 07701
Phone: 732-747-7100
Fax: 732-219-026

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2015, I filed the within Registrant's First Requests for Production of Documents to Petitioner via the USPTO's electronic filing system. I have also served a copy to Counsel for Petitioner, Peter E. Nussbaum, Esq., Wolff & Samson PC, via electronic mail and first class mail at the following address:

Peter E. Nussbaum, Esq.
Wolff & Samson PC
The Offices at Crystal Lake
One Boland Drive
West Orange, New Jersey 07052
E-Mail: risrael@wolffsamson.com

By: /s/Justin M. Klein
Justin M. Klein