

ESTTA Tracking number: **ESTTA707017**

Filing date: **11/06/2015**

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

Proceeding	92061096
Party	Plaintiff Shirley A. Dicko
Correspondence Address	SHIRLEY A DICKO 4121 OAK HILL ROAD OAKLAND, CA 94605 UNITED STATES everettandjonesbarbeque@gmail.com, everettdicko@yahoo.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Shirley A. Dicko
Filer's e-mail	everettdicko@yahoo.com, everettandjonesbarbeque@gmail.com
Signature	/Shirley Dicko/
Date	11/06/2015
Attachments	Shirley Dicko Amended Petition to Cancel.pdf(278893 bytes) Exhibit List For Amended Pleading.pdf(175033 bytes) EXHIBIT LIST FOR AMENDED PETITION FOR CANCELLATION.pdf(1210305 bytes)

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

Shirley A. Dicko,)	Cancellation No. 92061096
)	
Plaintiff,)	Registration No.: 3747512
)	
vs.)	Filed: March 12, 2015
)	
Everett and Jones Barbeque-Jack)	Mark: EVERETT AND JONES
)	
London LLC,)	
Defendant		

AMENDED PETITION FOR CANCELLATION

Shirley Dicko ("Plaintiff"), a resident of the City of Oakland, County of Alameda, having her principle place of business at 4121 Oak Hill Road, in Oakland, California 94605, believes that she is damaged by Registration No. 3747512, and hereby petitions to cancel the same under the provisions of 15 U.S.C. 1064(3). The grounds for cancellation are Fraud 808 F.2d 46, 1USPQ2d 1483 (Fed. Cir. 1986) Torres v Cantine Torresella S.r.l. Petitioner asserts that: the Registrant Everett and Jones Barbeque-Jack London LLC, did not have the right to register the mark EVERETT AND JONES in Registration No. 3747512.

1. Plaintiff, Shirley A. Dicko, co-owned the famous EVERETT AND JONES BARBEQUE mark in restaurant services with her eight siblings and late mother and was the trustee and the person held responsible for the debts of Everett and Jones Barbeque Inc., listed owner of U.S.

Registration No. 2612132. Plaintiff filed an application to register the "EVERETT AND JONES BARBEQUE" mark on the Principal Register on March 14, 2001, Serial No. 76224396 for restaurant services. The first use date was May 31, 1973 and the first use date in commerce was May 31, 1973. The listed owner was Everett and Jones Barbeque Inc. a California Corporation at 300 A Street, Hayward, California 94541. The mark was registered on August 8, 2002, U.S. Registration No. 2612132. See Exhibit A (The USPTO electronic record of U.S. Registration 2612132)

2. Defendant, Everett and Jones Barbeque-Jack London LLC, a limited liability Company organized in October 1996, with twenty-seven non-family members as investors had a license agreement, signed September 11, 1998, with an amendment added to the agreement October 16, 1998, with Everett and Jones Barbeque Inc., the listed owner of U.S. Registration No. 2612132, to use the EVERETT AND JONES BARBEQUE tradename, trademark, recipes and trade secrets to open a new barbecue restaurant at 126 Broadway in Oakland, California. As a condition for the license the Defendant's employees were required to wear the logo branded Everett and Jones Barbeque t-shirts as part of their uniforms. The new restaurant called, Everett and Jones Barbeque-Jack London, opened its doors for business in January 1999, joining six other outlets. See Exhibits B (License agreement with the Defendant March 12, 1996, September 11, 1998 and October 16, 1998

3. The Defendant filed an application for the EVERETT AND JONES mark in clothing on August 26, 2008. See Exhibit C (the USPTO electronic record for U.S. Registration No. 3747512). Plaintiff began

use of the EVERETT AND JONES BARBEQUE mark in 1973; the Defendant listed a first use date on its application of January 1, 1980. Defendant's listed date of first use is seven years after plaintiff began operating her business. At the time of the Defendant's application Plaintiff had used the mark for 35 years and the mark had become famous. Plaintiff had promoted the 'EVERETT AND JONES BARBEQUE' mark widely through her restaurants, catering and concession services, promotional materials, advertisements, community service activities, press releases, television and radio interviews, celebrity endorsements, website, social media post and tweets, a food blog, public appearances and book collaborations. See Exhibit D (digital media websites)

4. Defendant's application on August 26, 2008, to register the EVERETT AND JONES mark should have been refused by the USPTO because of Plaintiff's U.S. Registration NO. 2612132 for the similar mark EVERETT AND JONES BARBEQUE on the Principle Register; and the likelihood of confusion. Trademark Act Section 2(d) bars registration of an applied-for-mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and services of the applicant and registrant. See 15 U.S.C. 1052(d). The court in *In re E. I. du Point de Nemours & Co.*, 476 F .2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP 1207.01.

5. On December 4, 2008, Defendant made the misrepresentation that it was the owner of Plaintiff's U.S. Registration No. 2612132 which was material to the determination by the USPTO to grant the registration at issue and the misrepresentation was made by the Defendant with the intent to deceive the USPTO into issuing the registration. The Defendant had a duty to object to the proposed USPTO Examiner's Amendment that stated "In accordance with the authorization granted by Ralph C. Francis on December 4, 2008, the application has been AMENDED below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary TMEP 707. Claim of Ownership- Applicant claims ownership of U. S. Registration No. 2612132". Defendant made no objections and the mark was registered on February 9, 2010, U.S. Registration No. 3747512. See Exhibit E (USPTO Examiner's Amendment dated December 4, 2008).

6. The Defendant intentionally misled and suppressed information that it had a duty to report to the USPTO - See in *Alphaville Design, Inc. v. Knoll, Inc., 2009*. Defendant had a duty to object to the proposed Examiner's Amendment because of the Plaintiff's senior rights in the "EVERETT AND JONES BARBEUE" mark which were "clearly established" and known to the Defendant. Defendant falsely claimed ownership of Plaintiff's "EVERETT AND JONES BARBEQUE" mark and registration. Defendant did not believe that it was the owner of U.S. Registration No. 2612132 because the Defendant had a license agreement with the listed owner on the registration; Everett and Jones Barbeque Inc.

7. The Defendant knew and believed that the Plaintiff possessed 'clearly established' superior rights in the "EVERETT AND JONES BARBEQUE" mark, because the managing member of the Defendant, John Jernegan, sent the Plaintiff an email two days later on December 6, 2008, offering to help the Plaintiff register her trademarks and pay for the attorney. See Exhibit F (Email from Defendant John Jernegan December 6, 2008).

8. The Defendant omitted to tell the Plaintiff that an application to register the Plaintiff's mark had been filed by the Defendant and that the Defendant had claimed ownership of the Plaintiff's mark and registration. Defendant concealed its application from the Plaintiff and continued to do business with the Plaintiff, hosting Plaintiff's business anniversary party, acting as the headquarters for the organizing committee for the Obama Presidential Inaugural bus trip and sharing Thanksgiving and Christmas meals with the Plaintiff in 2008.

9. The Defendant could not and did not have a "good faith" belief that it was the senior user of the mark. The Defendant intended that the USPTO rely on the misrepresentation and the false statement of claiming ownership of U.S. Registration No. 2612132 and the Plaintiff's "EVERETT AND JONES BARBEQUE" mark to issue a trademark registration to the Defendant for the similar mark "EVERETT AND JONES". The Defendant tried to gain an advantage over the Plaintiff after the death of her mother, Dorothy Everett-Ellington, the matriarch of the family business. The Defendant intended to protect its continued use of the EVERETT AND JONES BARBEQUE tradename and

trademark by appropriating the Plaintiff's senior priority right to the trademark after the death of the Plaintiff's mother October 8, 2007.

10. The USPTO reasonably relied on the misrepresentation that the Defendant was the owner of both the "EVERETT AND JONES BARBEQUE" mark and U.S. Registration No. 2612132, and granted U.S. Registration No. 3747512 to the Defendant and the Plaintiff's U.S. Registration No. 2612132. The Defendant had no authority to act on behalf of the Plaintiff. The Defendant's unauthorized transfer of the Plaintiff's registration to the Defendant by the USPTO caused the Plaintiff injury and damages. The Defendant's registration infringed on the Plaintiff's senior rights; and diluted the Plaintiff's famous mark; and created actual confusion under Trademark Act Section 2(d). 15 U.S.C. 1052(d); TMEP 704.02. See Exhibit G (Email from David Hutchison to Shirley Everett-Dicko for catering order for the visiting New Orleans Pelicans NBA Basketball team dated October 20, 2015). See Exhibit H (Email from Shirley Everett-Dicko to the Defendant about the visiting New Orleans Pelicans NBA Basketball team catering order dated October 20, 2015). See Exhibit I (Email from g sasaki to Shirley Everett-Dicko for purchase of black logo t-shirt dated October 29, 2015). See Exhibit J (Email from Brian Duhe to Shirley Everett-Dicko inquiry about the Everett and Jones Barbeque Super Q sauce being sold in Oakland and Berkeley dated October 31, 2015). See Exhibit K (Trademark infringement Motown ad unauthorized use of Plaintiff's round black copyrighted Everett and Jones Barbeque logo for Motown the Musical sponsored by the Defendant).

11. The Plaintiff had "clearly established" and demonstrated her senior rights to the mark 35 years prior to the Defendant's application on August 26, 2008, that Defendant's failure to disclose Plaintiff's superior rights to the USPTO would have to constitute fraud. In *Robi*, the Ninth Circuit found that a mark should be canceled because "clearly established" rights to the mark had been demonstrated prior to the application - in *ECash Technologies, Inc. v. Guagliardo, 2000*. In *Rosso*, the Federal Circuit indicated that rights may be "clearly established" by "a court decree, by ... a settlement agreement, or by a [trademark] registration." *Id.* See *Rosso & Mastracco, Inc. v. Giant Food, Inc., 720 F.2d 1263, 1266 (Fed.Cir.1983)* It is only when another's rights, not just use, are "clearly established," that "good faith" is eliminated. The other user's rights must be at least equivalent to, if not superior to, the applicant's own rights to the mark. See *Armstrong Cork Co. v. Armstrong Plastic Covers Co., 434 F.Supp. 860, 872 (E.D.Mo.1977)* (requiring a "superior right). If the Plaintiff's mark is federally registered and has become incontestable, then validity, legal protectability, and ownership are proved. See *Ford Motor Co. v. Summit Motor Prods., 930 F.2d 277, 292 (3d Cir.1991)*.

WHEREFORE, Plaintiff prays that in the interest of justice a de novo review to rectify the USPTO register is requested because of clear errors, and the Defendant be removed as a listed owner of U.S. Registration No. 3747512 and 2612132, and that the Plaintiff and all of her eight siblings be listed as the owners of U.S. Registration No. 3747512 and 2612132, and U.S. Registration No. 2612132 be restored to

active status, and or U.S. Registration No. 3747512 be cancelled pursuant to 15 U.S.C. 1064(3) and Trademark Act Section 2(d). 15 U.S.C. 1052(d); TMEP 704.02.

Dated: November 5, 2015

Respectfully submitted,

By: _____
Shirley A. Dicko
Proper
(510) 379-6519
everettdicko@yahoo.com
www.everettandjonesbarbeque.com

Electronic Filing Certificate

I hereby certify that Plaintiff's Amended Petition to Cancel U.S. Registration No. 3747512 was submitted to the United States Patent & Trademark Office electronically via ESTTA on November 5, 2015

By: _____
Shirley A. Dicko
Plaintiff Proper

Certificate of Service

I hereby certify that a true and correct copy of the Plaintiff's Amended Petition to Cancel U.S. Registration No. 3747512 was deposited with the U.S. Postal Mail as First Class Mail, postage affixed, in an envelope addressed to Defendant Everett and Jones Barbeque-Jack London LLC at rcf@francislaw.com on November 5, 2015, at the following address:

Ralph C. Francis, Esq
FRANCIS LAW GROUP
512 Westline Drive, Ste. 301
Alameda, CA 94501
Email: rcf@francislaw.com
(510) 523-6200

By: _____
Milton Johnson

active status, and or U.S. Registration No. 3747512 be cancelled pursuant to 15 U.S.C. 1064(3) and Trademark Act Section 2(d). 15 U.S.C. 1052(d); TMEP 704.02.

Dated: November 5, 2015

Respectfully submitted,

By: *Shirley Dicko*
Shirley A. Dicko
Proper
(510) 379-6519
everettdicko@yahoo.com
www.everettandjonesbarbeque.com

Electronic Filing Certificate

I hereby certify that Plaintiff's Amended Petition to Cancel U.S. Registration No. 3747512 was submitted to the United States Patent & Trademark Office electronically via ESTTA on November 5, 2015

By: *Shirley Dicko*
Shirley A. Dicko
Plaintiff Proper

Certificate of Service

I hereby certify that a true and correct copy of the Plaintiff's Amended Petition to Cancel U.S. Registration No. 3747512 was deposited with the U.S. Postal Mail as First Class Mail, postage affixed, in an envelope addressed to Defendant Everett and Jones Barbeque-Jack London LLC at rcf@francislaw.com on November 5, 2015, at the following address:

Ralph C. Francis, Esq
FRANCIS LAW GROUP
512 Westline Drive, Ste. 301
Alameda, CA 94501
Email: rcf@francislaw.com
(510) 523-6200

By: *Milton Johnson*
Milton Johnson

Amended Petition For Cancellation Exhibit List

- A. Exhibit A The USPTO electronic record of U.S. Registration
2612132
- B. Exhibits B License agreement with the Defendant March 12, 1996,
September 11, 1998 and October 16, 1998)
- C. Exhibit C The USPTO electronic record for U.S. Registration No.
3747512
- D. Exhibit D www.everettandjones.com
<https://www.facebook.com/everettandjonesbarbeque/>
<https://www.pinterest.com/everettjonesbbq/>
<https://youtube.com/user/everettandjones/>
- E. Exhibit E USPTO Examiner's Amendment dated December 4, 2008
- F. Exhibit F Email from Defendant John Jernegan December 6, 2008
- G. Exhibit G Email from David Hutchison to Shirley Everett-Dicko
everettandjonesbarbeque@gmail.com for catering order for the
visiting New Orleans Pelicans NBA Basketball team dated October
20, 2015
- H. Exhibit H Email from Shirley Everett-Dicko
everettandjonesbarbeque@gmail.com to the Defendant about the
visiting New Orleans Pelicans NBA Basketball team catering order
dated October 20, 2015
- I. Exhibit I Email from g sasaki to Shirley Everett-Dicko
everettandjonesbarbeque@gmail.com for purchase of black logo t-
shirt dated October 29, 2015
- J. Exhibit J Email from Brian Duhe to Shirley Everett-Dicko
everettandjonesbarbeque@gmail.com inquiry about the Everett and

Jones Barbeque Super Q sauce being sold in Oakland and Berkeley dated October 31, 2015

K. Exhibit K (Trademark infringement Motown ad unauthorized use of Plaintiff's round black copyrighted Everett and Jones Barbeque logo for Motown the Musical sponsored by the Defendant).

L. Exhibit M Everett and Jones Barbeque-Jack , LLC Private Investment Offering 1998

M. Exhibit P USPTO emails to and from the Plaintiff

Exhibit A

The USPTO electronic record of U.S. Registration No 2612132

EVERETT AND JONES BARBEQUE mark

EXHIBIT B

Everett & Jones - Jack London

4132 39th Ave., Oakland, CA 94619
(510) 482-9787

March 12, 1996

Dorothy Turner-Ellington, President
c/o Board of Directors
Everett & Jones Barbeque, Inc.
300 A Street
Hayward, CA 94541

Re: Use of corporate assets
by Everett & Jones - Jack London

Dear Ms. Turner-Ellington,

We are making a formal request to secure rights to use the Everett & Jones name and logo and recipes in our new restaurant location in Jack London Square. We propose that these use rights would extend until such time as the restaurant outlet were to cease operation.

We propose that these rights are non-transferable. In the event of any change in ownership, regardless of the circumstances, these rights shall be renegotiated.


Furthermore we would like to acquire the rights to manufacture and distribute the Everett & Jones barbeque sauce and beef links through retail outlets. In return we are prepared to negotiate payment of a percentage of the net proceeds to Everett & Jones, Incorporated.

We recognize that use of these recipes does not permit us to divulge or sell the recipes to any person(s) or entities and that Everett & Jones, Incorporated and the Everett family members are the only legal owners. We recognize that the future viability of Everett & Jones, Incorporated rests on the exclusive knowledge of the corporation's recipes and we will make all efforts to keep the recipes confidential from all other individuals and entities.

We propose that in the event that Everett & Jones were to sell the rights to person(s) or entities that Everett & Jones - Jack London use rights would remain in force unless the terms of the agreement were changed by mutual consent.

This letter is a basis for discussion and not a legal document.

Respectfully,


Dorothy King Jernegan
owner


John Jernegan
owner

ED00557

EXHIBIT B

Everett & Jones Barbeque - Jack London, LLC

4132 39th Avenue, Oakland, Ca 94619
(510) 336-7021

September 11, 1998

Helen M. Bellamy, President
Everett and Jones Barbeque, Inc.
300 A Street
Hayward, Ca 94541

Re: Everett & Jones Barbeque- Jack London, LLC
Use of Corporate Assets

In March of 1996 we initially asked permission to use corporate assets at our new location in Jack London Square, (see enclosed letter dated March 12, 1998). We understood and still understand that the corporation retains all rights to the bottling and marketing of the Super Q sauce and the Super Q beef links. The corporation granted us verbal permission for the use of the following:

1. Use of the name Everett & Jones Barbeque
2. Use of the Super Q logo
3. Use of the Everett & Jones Barbeque recipes; including the sauce, seasonings and links.

We propose that the above rights are non-transferable and that in the event of any change in ownership of Everett & Jones Barbeque - Jack London, LLC that such rights would be renegotiated. Further, that these rights are limited to business conducted at the restaurant site at Broadway and 2nd Street in Oakland, California.

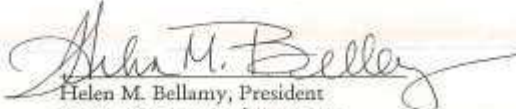
To meet the lending requirement of the two banks funding the restaurant project (California Korea Bank and California Economic Development Lending Initiative (CEDLI) we would like to include the following provision: In the event of the death of managing member, Dorothy King-Jernegan, the remaining managing member, John Jernegan in partnership with the all surviving children shall automatically maintain the rights to use the above assets. This provision would remain in effect for the term of the loan agreement and cease upon termination of the loan agreement, currently projected to expire in July 2003.

EXHIBIT B

Helen M. Bellamy, President
Everett & Jones Barbeque, Inc.
September 11, 1998
Page 2

We the undersigned do agree to the provisions of this agreement for the use of the assets of Everett & Jones Barbeque, Inc. as stated above.

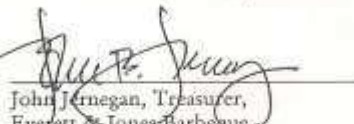
This 24th day of Sept, 1998


Helen M. Bellamy, President
Everett & Jones Barbeque, Inc.

This 24 day of September, 1998


Dorothy King Jernegan, President,
Everett & Jones Barbeque
Jack London, LLC

This 25th day of September, 1998


John Jernegan, Treasurer,
Everett & Jones Barbeque
Jack London, LLC

Everett & Jones Barbeque - Jack London, LLC

4132 39th Avenue, Oakland, Ca 94619
(510) 336-7021

October 16, 1998

Helen M. Bellamy, President
Everett and Jones Barbeque, Inc.
300 A Street
Hayward, CA 94541

Re: Everett & Jones Barbeque- Jack London, LLC
Use of Corporate Assets

In March, 1996, Everett & Jones Barbeque, Inc. gave Everett & Jones Barbeque - Jack London, LLC as presently constituted and at our present location in Jack London Square, a license to use certain corporate assets. (See our letter of March 12, 1998.) Specifically, the assets are:

1. The name, Everett & Jones Barbeque.
2. The "Super Q" name and logo
3. The Everett & Jones Barbeque recipes, including the sauce, seasonings and links.

We recognize and agree that (a) the license cannot be transferred and a change in the membership of the LLC would be to transfer; (b) the license applies only to our business at the Jack London location; and (c) the corporation retains and holds all rights to the bottling and marketing of the Super Q sauce and the Super Q beef links.

The two lenders funding the restaurant project (California Korea Bank and California Economic Development Lending Initiative) consider the license essential to our successful operation, and have asked for clarification of the rights given, and assurance that the rights will not be lost should our managing member, Dorothy King-Jernegan, pass on.

Accordingly, we are asking that by acknowledging this letter, the corporation agrees to the following, to apply until the loans (including any extensions or additional advances) are fully paid (currently projected to be July, 2003.):

- A. The license is coupled with an interest, and therefore cannot be revoked by the corporation except for cause.
- B. The death or disability of Dorothy King-Jernegan will not be considered a transfer of the LLC, as long as John Jernegan is the successor manager, and the other members of the LLC are all the surviving children.

EXHIBIT B

Everett & Jones Barbeque, Inc.
October 16, 1998
Page 2 of 2

- C. The success of the Jack London Square operation would be beneficial to the corporation, and the license is given and letter agreement is made for that reason.
- D. Although this letter agreement is in part for the benefit of the two lenders, neither the corporation nor the LLC intends to grant the lenders any interest in the license itself.

ACKNOWLEDGED AND AGREED.
Everett & Jones Barbeque, Inc.


By 
Helen M. Bellamy, President
Everett & Jones Barbeque, Inc.

EXHIBIT C

The USPTO electronic record of U.S. Registration No 3747512

EVERETT AND JONES BARBEQUE mark

EXHIBIT D

www.everettandjones.com

<https://www.facebook.com/everettandjonesbarbeque/>

<https://www.pinterest.com/everettjonesbbq/>

<https://youtube.com/user/everettandjones/>

EXHIBIT E

To: Everett and Jones Barbeque - Jack London ETC. (rcf@francislaw.com)
Subject: TRADEMARK APPLICATION NO. 77556026 - EVERETT AND JONES - EJ-04-003
Sent: 12/4/2008 2:18:27 PM
Sent As: ECOM105@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/556026

MARK: EVERETT AND JONES

77556026

CORRESPONDENT ADDRESS:
RALPH C. FRANCIS
FRANCIS LAW GROUP
1942 EMBARCADERO
OAKLAND, CA 94606-5213

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Everett and Jones Barbeque -
Jack London ETC.

CORRESPONDENT'S REFERENCE/DOCKET
NO: EJ-04-003

CORRESPONDENT E-MAIL ADDRESS:
rcf@francislaw.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 12/4/2008

OFFICE SEARCH: The examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §704.02.

EXHIBIT E

AMENDMENT: In accordance with the authorization granted by Ralph C. Francis on December 4, 2008, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods and/or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

Claim of Ownership

Applicant claims ownership of U.S. Registration No. 2612132.

/Charles L. Jenkins, Jr./
Trademark Examining Attorney
Law Office 105
571-272-9305

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT F

--- On Sat, 12/6/08, John Jernegan <superque@gmail.com> wrote:

From: John Jernegan <superque@gmail.com>
Subject: Trademarks
To: "Shirley" <everettdicko@yahoo.com>
Date: Saturday, December 6, 2008, 12:14 PM

Hi Shirley,

I mentioned to Helen that the trademarks need to be registered. She said she turned the job over to you.

Can I help you get this done? I can have Super Que pay an attorney (we have used Ralph Francis in the past) to draw up the papers in the trust's name and then run the paperwork by you.

Let me know.

John

--

Super Que, LLC
14444 Wicks Blvd.
San Leandro, CA 94577
www.super-que.com

EXHIBIT G

11/5/2015

Gmail - New Orleans Pelicans



Shirley Everett-Dicko <everettandjonesbarbeque@gmail.com>

New Orleans Pelicans

David Hutchison <aircraftconciiergecharters@gmail.com>
To: Shirley Everett-Dicko <everettandjonesbarbeque@gmail.com>

Tue, Oct 20, 2015 at 12:04 PM

Hello,
Next order for the Pelicans.

Thank you
David Hutchison
Director of Operations
Aircraft Concierge
Sports and Private Charters
Cell 802-315-2324
Fax 802-277-1300

 10-27-15 PELICANS LOCKER ROOM DINNER IN OAK.pdf
8K

EXHIBIT H

Shirley Everett-Dicko <everettandjonesbarbeque@gmail.com>
to John, bcc: everettdicko

Oct 20

Hi John,

I believe that this email order belongs to Everett and Jones Barbeque-Jack London.

Shirley
379-6519

----- Forwarded message -----

From: **David Hutchison** <aircraftconciiergecharters@gmail.com>
Date: Tue, Oct 20, 2015 at 12:04 PM
Subject: New Orleans Pelicans
To: Shirley Everett-Dicko <everettandjonesbarbeque@gmail.com>

Hello,
Next order for the Pelicans.

Thank you

David Hutchison
Director of Operations
Aircraft Concierge
Sports and Private Charters
Cell [602-315-2324](tel:602-315-2324)
Fax [602-277-1300](tel:602-277-1300)

Attachments area

Preview attachment 10-27-15 PELICANS LOCKER ROOM DINNER IN OAK.pdf



10-27-15 PELICANS LOCKER ROOM DINNER IN OAK.pdf

AIRCRAFT CONCIERGE LLC
9228 ASHTON RD
PHILADELPHIA, PA 19114

802-316-2324 DAVID HUTCHISON
DIRECTOR OF OPERATIONS
EMERGENCY NUMBER TO CALL 941-504-0485

CATERING INFORMATION SHEET
Team NEW ORLEANS PELICANS

DATE
27-Oct-15

AIRCRAFT CONCIERGE 1513B

FOOD NEEDS TO ARRIVE FOR SET UP ONE HOUR AND 30 MINUTES AFTER START OF THE GAME

FOOD DELIVERED HOT AND SET UP BY THE START OF THE 4TH PERIOD

PLEASE MAKE SURE YOU ARE NOT LATE, CHECK TO MAKE SURE YOU KNOW THE ADDRESS

EVERETT AND JONES

PLEASE MAKE SURE TO BRING DISPOSABLE CHAFING DISHES, STERNOS, PLATES, SERVING UTENS
SIGNAGE FOR EACH ITEM, NAPKINS AND ALL SERVICE ITEMS, ARENA WILL ONLY PROVIDE THE TAB

Caterer Information

OAK WARRIORS ARENA

PLEASE SET THIS EVENT UP TO FEED 45PPL

PLEASE SEND IN A FEW LARGE DISPOSABLE BOWLS

1 LARGE BOWL HOUSE SALAD, NO AVOCADOES, DRESSING ON THE SIDE

ENTREES

PLEASE CLEARLY LABEL ALL MEAL PORTIONS, PER PANS

EVERYTHING IS SET UP FOR BUFFET STYLE

PLEASE USE ALL HALF PANS FOR THE FOOD SO THEY ARE NOT TOO HEAVY AND STAY WARM

PLEASE MAKE SURE THE SIDES AND PORTION ARE VERY LARGE ATHLETIC PORTIONS

PLEASE MAKE SURE THESE ARE ALL DINNER PORTIONS (10OZ EACH)

18 ORDERS HALF ROASTED CHICKEN
18 ORDERS ST LOUIS STYLE BBQ RIBS
18 ORDERS BRISKET

ALL HALF PANS
ALL HALF PANS
ALL HALF PANS

4 PANS YAMS
4 PANS SOUTHERN GREEN BEANS
4 PANS MACARONI AND CHEESE

ALL HALF PANS
ALL HALF PANS
ALL HALF PANS

EVERYTHING NEEDS TO BE HEALTHY, NO BUTTERS OR CREAM SAUCES

PLASTIC DINNER PLATES

DINNER NAPKINS

CUTLEY KITS

SERVING UTENSILS

PLEASE SET THIS EVENT UP TO FEED 45 PPL

PLEASE PROVIDE TO GO CONTAINERS SO PPL CAN LOAD UP AND GO TO THE BUS

EXHIBIT I

10/30/2015

Gmail - everett & jones t-shirts?



Shirley Everett-Dicko <everettandjonesbarbeque@gmail.com>

everett & jones t-shirts?

g sasaki <avayas@aol.com>
To: everettandjonesbarbeque@gmail.com

Thu, Oct 29, 2015 at 8:02 PM

I've absolutely loved everett & jones BBQ for over twenty years (mostly Berkeley location)

Where can I buy one of the black everett & jones t-shirts with the round logo? (see attachment)

The online store says it's not accepting orders
The Berkeley location doesn't seem to sell shirts
The Oakland store doesn't have the shirt with the round logo

Is there anyway I can buy on these shirts?

Thanks,
Greg



t-shirt.jpg
31K

EXHIBIT J

10/31/2015

Gmail - Bardeque Sauce



Shirley Everett-Dicko <everettandjonesbarbeque@gmail.com>

Bardeque Sauce

Brian Duhe <duhebrian@yahoo.com>

Sat, Oct 31, 2015 at 4:00 PM

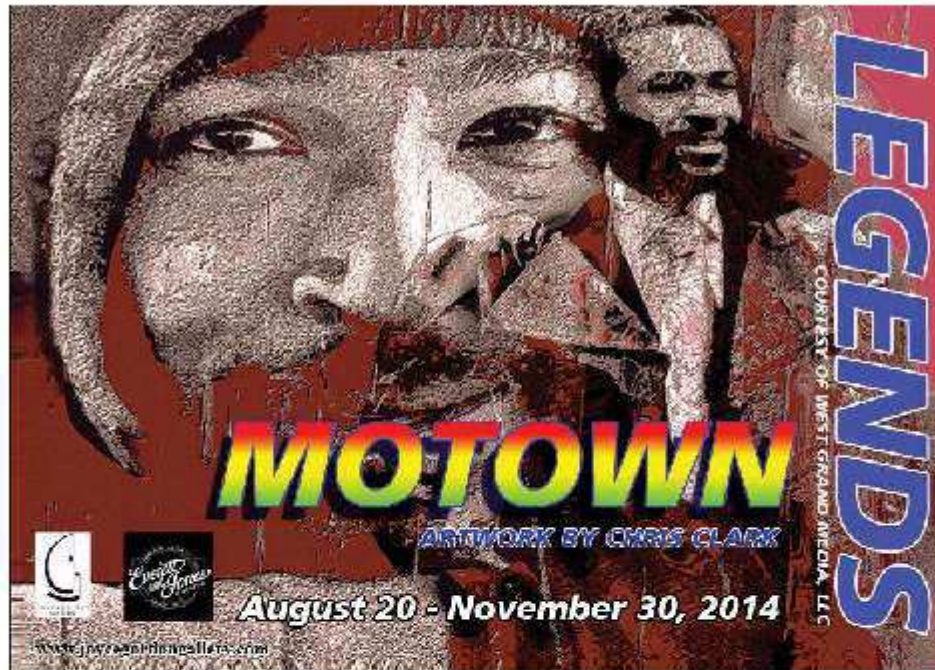
Reply-To: Brian Duhe <duhebrian@yahoo.com>

To: "everettandjonesbarbeque@gmail.com" <everettandjonesbarbeque@gmail.com>

Do you carry your barbeque sauce most of the Safeway stores in the Oakland/Berkeley area?

Thank you,
Brian

EXHIBIT K



Don't miss the "Motown Legends" exhibit, a collection of mixed media pieces by Motown artist Chris Clark taken from Berry Gordy's private collection. Including images of The Temptations, Diana Ross, Smokey Robinson, Marvin Gaye and Stevie Wonder, the exhibit is now on display at the Joyce Gordon Gallery (406 14th St, Oakland, CA) and Dorothy King's popular landmark restaurant Everett & Jones (126 Broadway, Oakland, CA). [Click here for details.](#)

<http://motownthemusical.com/sanfrancisco.php>

<http://oaklandartmurmur.org/events/motown-legends-artwork-by-chris-clark-2014-11-07/>

EXHIBIT L

Everett & Jones Barbeque - Jack London, LLC
Private Investment Offering

March 15, 1998



1/2 GAL (1.89 L)

Label of Everett & Jones barbeque saucos.

EVERETT & JONES BARBEQUE - JACK LONDON, LLC

(A California Limited Liability Company)

\$150,000 of Class A Member Interests

30 Units of Member Interests at

\$5,000 Per Unit

[THIS OFFERING HAS BEEN EXTENDED UNTIL JUNE 15, 1998]

Dorothy King Jernegan
and John Jernegan
(Managing Members)

Date of this Offering:
March 1, 1998

**EVERETT & JONES
BARBEQUE RESTAURANT**
Jack London Square
126 Broadway
Oakland, CA 94607
(510) 336-7021

BUSINESS PLAN

SEPTEMBER 15, 1997

our product. This new outlet will dramatically increase the business visibility and capitalize on the family's well known reputation. E&JB-Jack London, LLC is proud of its tradition as an African-American woman-owned enterprise and feel that they have successfully extended "down-home" hospitality to customers of all ethnic and cultural backgrounds. Dorothy Everett brought the hospitality and culinary skills of the African-American experience rooted in Mississippi and Alabama to Oakland. The business intends to maintain this outlook, never forgetting its roots but always welcoming the uninitiated to the ways of "Super Que" Everett & Jones style. For good food and for barbeque aficionados, the Bay Area's largest family owned barbeque chain must be included on the itinerary of anyone visiting Oakland. Everett & Jones has become a community asset and their loyal customers are a part of their extended family. The family feels a sense of personal accomplishment when a customer decides to eat at one of its restaurants and returns again and again. This validates and motivates them to consistently serve up the best "Que" in the Bay Area.

C. METHOD OF FINANCING

Everett & Jones Barbeque - Jack London, LLC has combined a private equity fundraising effort with a traditional bank loan to raise the necessary startup capital for the venture.

Everett & Jones Barbeque - Jack London, LLC has initiated a private offering (private placement memorandum) to investors to raise \$150,000 in equity capital. In return for this investment the LLC will disburse 30% the restaurant's annual net income for eight years. Investment returns will be made on an annual basis. Additionally, a capital payback program will be instituted to repay investor's capital within the first four years.

Everett & Jones Barbeque - Jack London, LLC has secured financial commitment from the California Korea Bank and the California Economic Development Lending Initiative for a loan of \$300,000. The loan has a five year term at an interest rate of prime plus 3%.

D. USE OF INVESTED AND BORROWED CAPITAL (First 6 months)

1.	<u>Capital Requirements</u>	<u>Amount</u>	<u>%</u>
	Private investors	\$150,000.00	33.33%
	Loan	\$300,000.00	66.66%
	Total Capital Required	\$450,000.00	100%
2.	<u>Less: Expenditures</u>		
	Legal, Consulting Accounting	\$ 5,000.00	-1.11%
	Fees, Permits	\$ 3,000.00	0.67%
	Project Manager	\$ 20,000.00	4.44%
	Tenant Improvement (Construction)	\$150,000.00	33.33%
	Building Lease Deposit	\$ 15,000.00	3.33%
	Kitchen Equipment (Purchase)	\$135,000.00	30.0%
	Restaurant Equipment (Purchase)	\$ 20,000.00	4.44%
	Working Capital	\$ 85,000.00	18.88%
	Sales & Marketing	\$ 10,000.00	2.22%
	Miscellaneous	\$ 7,000.00	1.55%
	Total Use of Capital	\$450,000.00	100%

E. PROJECTED REVENUE

The new restaurant will generate net sales of \$1,294,157 during the first twelve months of operation and will reach the break even point at the end of the first year. By year 5 the business will produce annual gross sales of \$2,557,615 and a net income of \$602,211; (for more complete projections over the first five years see section "VI. Financial Plan & Projections").

These projections are based only on food and beverage sales out of the restaurant outlet. Additional sales will be generated through sales of souvenirs, and catering/festival service.

II. THE BUSINESS

A. BUSINESS DESCRIPTION

Everett & Jones Barbeque - Jack London, LLC is organized as a limited liability company under the Laws of the State of California. E&JB-Jack London, LLC is a woman-owned, minority-owned business. The members of the company are Dorothy King-Jernegan with a 60% ownership interest and her husband, John Jernegan who owns 40% of the company. Dorothy King-Jernegan will manage the day-to-day operations and marketing of the new enterprise, while John Jernegan will oversee the finances and facilities maintenance and planning of the business.

E&JB-Jack London, LLC is the latest of the family's informal franchises. Currently there are a total of 8 other outlets in the Bay Area. Each one is operated and managed by a family member and though each is independently operated and owned, all share the trademarked rights to the name logo and family recipes that are owned by Everett & Jones, Inc. whose stock is owned by Dorothy Everett Sr.

History of the family business

Dorothy Everett Sr. opened her first outlet in 1973. Having to provide for eight daughters and one son she gathered together her recipes, a \$700 loan from her best friend, a week's line of credit from her suppliers and started out. An old dilapidated building on the corner of 92nd Avenue in Oakland served as the first outlet which the whole family pitched in to repair.

The name Everett & Jones Barbeque was chosen to reflect the whole family involvement and the only daughter married at the time was now Annie Jones. Her husband James Jones later became a partner in one of the outlets.

With very little money for advertising, the business depended on word of mouth for customers. Family members would hand out fliers and free samples to local businesses and bars. With long hours and low pay the business survived and grew.

In 1974 the family opened its second outlet on the corner of San Pablo and University Avenue in Berkeley and the third outlet the following year on Fruitvale Avenue in Oakland. Despite setbacks along the way (fire and earthquake took their tolls on two outlets) new popularity created new opportunities for the business.

In 1993 Everett & Jones took it product to the Oakland Coliseum and Sports Arena. It has the largest sales of any concession stand and the long lines attest to its

popularity. Bill Graham Productions at the Shoreline Theater discovered Everett & Jones and has introduced its barbeque to the music fans. When the Warriors went South to San Jose during renovations they insisted on an Everett & Jones concession stand. The San Jose Sharks fans are glad they did. The sports and entertainment concessions and Everett & Jones barbeque are a perfect marriage and other sports centers will soon be hearing from Everett & Jones.

Everett & Jones grew up and prospered in the neighborhood outlets. The popular acclaim it has received indicates that its fans live throughout the Bay Area. It is this track record that let the Family know it is ready to expand into new markets.

There are now 9 outlets and soon to be a tenth in the Jack London Square area. The locations are 7083 Village Parkway in Dublin, 2676 Fruitvale Avenue in Oakland, 296 A Street in Hayward, 1955 San Pablo Avenue in Berkeley, 3415 Telegraph Avenue in Oakland, 8740 East 14th Street in Oakland, the Oakland Coliseum and Arena, the San Jose Arena and the Shoreline Amphitheater in Mountain View.

B. MANAGEMENT TEAM

Because the business is embarking on a new stage of business growth a new management team will be assembled that has the vision and skills to advance the business.

Donald White, CPA will structure the financial operations and maintain the venture on solid economic footing. He has his own consulting business and is currently serving as the Treasurer of Alameda County.

William Taylor will continue to serve as the business' attorney.

Lillian Lea, EA will serve as tax advisor.

Dorothy King-Jernegan will bring her operational management and public relations skills.

John Jernegan will bring technical design and operations capabilities.

Finally, the LLC will seek other professional expertise as required, including those listed below. Dorothy Everett, the founder and the guiding force behind the business will serve to anchor the vision of the business. Shirley Dicko (sister #5) who heads up the catering and concession components will bring her experience in operations and marketing.

Owner's Resumes

Dorothy King-Jernegan is the managing partner of E&JB-Jack London, LLC. She grew up working in Everett & Jones restaurants and has over 10 years experience managing the restaurant at Fruitvale Avenue in Oakland. She has extensive

experience and intimate knowledge of the day-to-day operations of the business from preparation and production of the product to the marketing and public relations functions of the business.

Her recent experience was as the founder and executive director of Dignity Housing West, a non-profit housing and program development agency for homeless and formerly homeless people in Oakland, California. In this role, she spearheaded the funding, design, construction and operation of two multi-unit housing facilities. She was responsible for developing, funding staffing and overseeing the operations of a number of innovative social support programs that complimented the housing programs. The agency had a staff of 21 employees and an annual operating budget of over \$2 million. This position gave her experience in overseeing large operating budgets and all aspects of personnel hiring, training and oversight of their work.

John Jernegan is the business manager and facilities planner of E&JB - JL, LLC. Mr. Jernegan has had experience in business finance and organization. As manager of FITS Printing Company in San Francisco from 1978 to 1980, he implemented a reorganization of the failing business. He successfully restructured the production process, and the finances and revised the personnel and employee management systems.

He has 18 years experience in the architectural and engineering design field and is currently working as a senior mechanical designer for Ted Jacob Engineering Group, Inc. in Oakland, California. He has experience in all phases of mechanical engineering and the design of heating ventilating and air conditioning systems for hospital and research laboratories. He is responsible for the budgeting of the design and construction and coordination of all phases of many of these projects including government agency review and construction administration. He is intimately familiar with the requirements of the restaurant business having previously designed kitchens for hospitals and restaurants and a beer brewery. He is currently completing the construction documents for the new Everett & Jones outlet in Jack

C. OPERATIONS

The restaurant will be named "Everett & Jones - Jack London Square". It will occupy 3,700 sq.ft. of a refurbished seafood warehouse and seat approximately 100 customers. A lease has already been secured with the landlord who is currently projected to complete exterior renovation and produce a vanilla shell by January 15, 1998. E&JB-Jack London, LLC expects to overlap construction schedules with the building owner in order to begin serving barbeque by March 1, 1998.

The management team has personnel who are currently completing the design package submitting it for agency reviews and lining up a contractor to complete the work by the target date.

EXHIBIT M

Print

Page 1 of 3

Subject: RE: Communication regarding Trademark Application Serial No. 77912205 - SUPER Q
From: Chicowski, Jennifer (Jennifer.Chicowski@USPTO.GOV)
To: everettdicko@yahoo.com;
Date: Monday, August 22, 2011 5:29 AM

Ms. Everett-Dicko,

The allegations you are making involve registered trademarks. In order to challenge a registered trademark, you may either petition to cancel the registrations with the USPTO's Trademark Trial and Appeal Board or obtain an order of a federal district court. Once a registration is issued, the letter of protest process is inapplicable.

Information about the Trademark Trial and Appeal Board is available on the USPTO's website.

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

A petition to cancel requires a \$300 fee and may be filed through ESTTA – the Electronic System for Trademark Trials and Appeals - <http://estta.uspto.gov/>

You may wish to obtain the services of legal counsel to assist you in pursuing your rights. The USPTO is barred from providing any referrals to individual private-practice attorneys.

Sincerely,

Jennifer Chicowski

From: shirley dicko [mailto:everettdicko@yahoo.com]
Sent: Saturday, August 20, 2011 12:41 PM
To: Chicowski, Jennifer
Subject: Re: Communication regarding Trademark Application Serial No. 77912205 - SUPER Q

Jennifer Chicowski,

<http://us.mg5.mail.yahoo.com/neo/launch>

4/9/2012

Attorney-Advisor
Office of the Deputy Commissioner
for Trademark Examination Policy

August 19, 2011

RE: Trademark Registrations;

3747512 - Everett and Jones
3872455 - Everett and Jones Barbeque
2612132 - Everett and Jones Barbeque

Ms Chicoski,

Thank you for responding to my letter of July 12, 2011 regarding Trademark Application Serial No. 77912205 - Super Q. I will monitor your website in case the Trademark application is revived.

On another matter, I was the President and agent of process for Everett and Jones Barbeque, Inc., owner of record of Trademark Registration Number 2612132 - "EVERETT AND JONES BARBEQUE." I know for certain that we never assigned ownership of the Trademark Registration to the entity claiming ownership of it.

The applicant in Trademark Registration Number 3747512 - "EVERETT AND JONES," has claimed ownership of Trademark Registration number 2612132. The statement of ownership on their amended application is false and misleading and was knowingly made with the intent to deceive your office.

The applicant's in Trademark Registration Number 3872455 claim ownership of Trademark Registration Number 3747512 who falsely claimed ownership of Trademark Registration Number 2612132. All applicant's knowingly made false statements to secure two Trademark Registrations.

If both Trademark Registrations are not revoked they will infringe on my ability and my sibling's to continue to operate businesses utilizing the "Everett and Jones" name. We would be bared from receiving any revenue from entities using our name and products. I have included attachments regarding the above trademark registrations. Thank you for your time and I await your decision.

Sincerely,

<http://us.mg5.mail.yahoo.com/neo/launch>

4/9/2012

Shirley Everett-Dicko
Everett and Jones Barbeque
(225) 650-3424

From: "Chicoski, Jennifer" <Jennifer.Chicoski@USPTO.GOV>
To: "everettdicko@yahoo.com" <everettdicko@yahoo.com>
Sent: Tuesday, August 9, 2011 6:56 AM
Subject: Communication regarding Trademark Application Serial No. 77912205 - SUPER Q

Ms. Everett-Dicko:

Please find attached a letter responding to your communication of July 12, 2011 to the United States Patent and Trademark Office regarding the trademark application above.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jennifer Chicoski
Attorney-Advisor
Office of the Deputy Commissioner
for Trademark Examination Policy
571-272-8943



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

August 9, 2011

Shirley Everett-Dicko
Everett and Jones Barbeque

everettdicko@yahoo.com

Re: Letter of protest filed against Trademark Application Serial No. 77912205 for the mark SUPER Q

Dear Ms. Everett-Dicko:

Your email to Examining Attorney Kristina Morris was received in the United States Patent and Trademark Office (USPTO) on July 12, 2011 and was referred to me for review as a letter of protest.

Decision: The letter of protest is hereby dismissed as MOOT.

A review of the record indicates that the above-identified trademark application was abandoned as of June 2, 2011. The issues raised in the letter of protest are therefore moot.

You must continue to monitor the status of the application should you wish to be informed of any subsequent reinstatement or revival. You can find status information on all pending applications and active registrations on the USPTO website at <http://tarr.uspto.gov>.

Accordingly, although your letter of protest will be kept on file for two years, it will not be referred to the examining attorney.

Sincerely,

Jennifer Chicoski
/Jennifer D. Chicoski/
Staff Attorney
Office of the Deputy Commissioner for
Trademark Examination Policy
(571) 272-8943