

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY LEBEWOHL, UNCLE ABIES DELI
INC. d/b/a 2nd AVE DELI, UNCLE ABIES DELI
ON FIRST INC., UNCLE ABIES DELI
SANDWICH TRADEMARKS LLC, and JACK
LEBEWOHL

CIVIL ACTION NO: 11-CIV-3153-PAE-
JCE

Plaintiffs,

v.

HEART ATTACK GRILL LLC, HAG LLC,
JON BASSO, and DIET CENTER LLC (Texas),
and DIET CENTER LLC (Delaware)

Defendants.

**JON BASSO'S DECLARATION IN SUPPORT OF
DEFENDANTS' MOTION TO VOLUNTARILY DISMISS COUNTERCLAIMS**

I, JON BASSO, declare:

1. I am one of the Defendants in the captioned matter. I am the owner of all the federally registered trademarks listed in Defendants' counterclaims. I am the owner and manager of HEART ATTACK GRILL LLC, HAG LLC, DIET CENTER LLC (a Texas corporation), and DIET CENTER LLC (a Delaware corporation)(partly owned by others). Herein, I refer to HEART ATTACK GRILL LLC, HAG LLC, DIET CENTER LLC (Texas), and DIET CENTER LLC (Delaware) collectively as either "Defendants" or "HAG".
2. I have reviewed the documents collected in this case.
3. Based upon the present collection of information, there is no likelihood of confusion solely by use of the term "Instant Heart Attack Sandwich" as currently used by 2nd AVE DELI solely in

New York City. The documents show use of the term "Instant Heart Attack Sandwich" on menus and menus posted on the 2nd AVE DELI website, but NO USE of the term "Instant Heart Attack Sandwich" on signs, no use on displays, no use in ads on TV, no use in ads on the radio, no use in ads on the Internet, no use in ads on any social media, no use in ads or articles in newspapers, no use in ads or articles in magazines, and no use in ads or articles in any other publication.

4. To date, HAG has suffered no monetary damages.

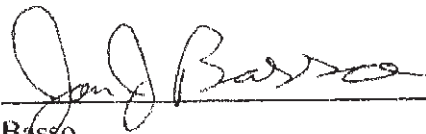
5. The documents show that the Trademark Office (part of the U.S. Patent and Trademark Office (USPTO)) has rejected 2nd AVE DELI's federal trademark applications "Instant Heart Attack Sandwich" and for "Triple Bypass Sandwich." I agree with the Trademark Examining Attorney's current opinion. I reserve the right to question and challenge his or her opinion in the future.

6. If the Trademark Office approves 2nd AVE DELI's federal trademark applications, I will oppose such registration since 2nd AVE DELI's rights will then involve U.S. commerce. If registration proceeds, there may be a likelihood of consumer confusion if the Trademark Office (USPTO) approves 2nd AVE DELI's federal trademark applications. I reserve the right to petition the USPTO with respect to the federal applications for "Instant Heart Attack Sandwich" and "Triple Bypass Sandwich."

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001.

Dated: 12-5-11

Respectfully submitted,

By: 
 Jon Basso