

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

Index No. 11-cv-3153 (PAE)

HEART ATTACK GRILL LLC, HAG LLC,
JON BASSO, DIET CENTER LLC (TEXAS) AND
DIET CENTER LLC (DELAWARE)

Defendants.

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**PLAINTIFFS' ANSWERS AND OBJECTIONS TO
DEFENDANTS' REQUESTS TO ADMIT NOS. 1-114**

Pursuant to Fed. R. Civ. P. Rule 36, Plaintiffs JACK LEBEWOHL, JEREMY LEBEWOHL, UNCLE ABIES DELI INC. d/b/a 2ND AVE DELI, UNCLE ABIES DELI ON FIRST INC. d/b/a 2ND AVE DELI, AND UNCLE ABIES DELI SANDWICH TRADEMARKS LLC serve the following answers to Defendants' Requests To Admit Nos. 1-114. Where required in order to respond to these requests to admit, Plaintiffs represent that they have undertaken good faith efforts to identify the information that would allow it to admit or deny such requests.

GENERAL OBJECTIONS

1. Plaintiffs object to Defendants' requests for admissions to the extent they fail to seek an admission of the truth of matters relevant to the pending proceedings.
2. Plaintiffs object to Defendants' requests for admissions to the extent they fail to relate to statements or opinions of fact or of the application of law to fact and thereby exceed the scope of Fed. R. Civ. P. Rule 36.
3. Plaintiffs object to Defendants' requests for admissions to the extent they seek information prepared in anticipation of litigation or which seek disclosure of the theories and opinions of Plaintiffs, or Plaintiffs' consultants or agents on the grounds that such information is protected from disclosure by the attorney work product privilege
4. Plaintiffs object to Defendants' requests for admissions to the extent that Defendants have improperly posed multiple requests for admissions within a single enumerated

request, without the use of discrete subparts , thereby understating the total number of requests for admission actually made.

GENERAL RESPONSES

1. Plaintiffs' responses are made subject to all objections as to competence, relevance, privilege, materiality, propriety, admissibility, and any and all other objections and grounds that would require the exclusion of any statement contained herein if any requests were asked of, or if any statements contained herein were made by, or if any documents referenced here were offered by a witness present and testifying in court, all of which objections are reserved and may be interposed at the time of the hearing.
2. The fact that Plaintiffs have responded to any request for admission in whole or in part is not intended and shall not be construed as a waiver by Plaintiffs of all or any part of any objection to any request for admission.
3. Plaintiffs have not completed their investigation in this case, and additional facts may be discovered that are responsive to Defendants' requests for admissions.
4. Plaintiffs reserve the right to amend these responses as discovery continues.

RESPONSES TO REQUESTS TO ADMIT NOS 1-114

1. Admit that Plaintiffs have no documents relating to sales of 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH prior to April 2008.

ADMIT.

2. Admit that Plaintiffs have no documents relating to the income from sales of 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH prior to April 2008.

ADMIT.

3. Admit that Plaintiffs have no documents relating to the receipts, profits, losses, capital expenditures, investments and equipment, materials, and inventory of 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT. Plaintiffs have produced documents sufficient to show the income and sales of the Instant Heart Attack Sandwich on a quarterly and annual basis.

4. Admit that Plaintiffs have no documents relating to sales of 2ND AVE DELI's TRIPLE BYPASS SANDWICH.

ADMIT.

5. Admit that Plaintiffs have no documents relating to income, receipts, profits, losses, capital expenditures, investments and equipment, materials, and inventory of 2ND AVE DELI's TRIPLE BYPASS SANDWICH.

ADMIT.

6. Admit that Plaintiffs have no documents relating to contracts or agreements for the Instant Heart Attack Sandwich.

ADMIT.

7. Admit that Plaintiffs have no documents relating to sales by 2ND AVE DELI of any goods under or in connection with 2ND AVE DELI's TRIPLE BYPASS SANDWICH.

ADMIT.

8. Admit that Plaintiffs have no documents relating to purchase orders, invoices, receipts, contracts, agreements, and/or sales summaries in connection with any TRIPLE BYPASS SANDWICH goods.

ADMIT.

9. Admit that Plaintiffs have never sold any TRIPLE BYPASS SANDWICH goods.

ADMIT.

10. Other than the press release 2ND AVE DELI Bates pgs. 431-432, admit that Plaintiffs have no documents relating to advertising efforts by or for 2ND AVE DELI using INSTANT HEART ATTACK SANDWICH.

DENY. Plaintiffs have produced the press release, website pages, menus, draft menus, and documents related thereto.

11. Other than the press release 2ND AVE DELI Bates pgs. 431-432, admit that Plaintiffs have no documents relating to promotional efforts by or for 2ND AVE DELI using INSTANT HEART ATTACK SANDWICH.

DENY. Plaintiffs have produced the press release, website pages, menus, draft menus, and documents related thereto.

12. Other than the press release 2ND AVE DELI Bates pgs. 431-432, admit that Plaintiffs have no documents relating to marketing efforts by or for 2ND AVE DELI using INSTANT HEART ATTACK SANDWICH.

DENY. Plaintiffs have produced the press release, website pages, menus, draft menus, and documents related thereto.

13. Admit that Plaintiffs have no invoices related to the placement of advertising, promotional or marketing efforts by or for 2ND AVE DELI using INSTANT HEART ATTACK SANDWICH.

DENY. Plaintiffs produced an invoice with the company that issued the press release regarding this lawsuit.

14. Admit that Plaintiffs have no documents relating to the placement of any advertising, promotional or marketing efforts by or for 2ND AVE DELI in connection with 2ND AVE DELI's TRIPLE BYPASS SANDWICH.

DENY. Plaintiffs have produced the press release, website pages, draft menus, and documents related thereto.

15. Admit that Plaintiffs have no documents sufficient to identify the amount of profit earned in connection with the sale of any goods under 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

16. Admit that Plaintiffs have no documents relating to material costs, labor costs, general and administrative costs, overhead and profit earned in connection with the sale of any goods under 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

17. Admit that Plaintiffs have no documents relating to any licenses, assignments, agreements, contracts, and/or arrangements between 2ND AVE DELI and any third-party which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

18. Admit that Plaintiffs have no documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between JEREMY LEBEWOHL and any of the named Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

19. Admit that Plaintiffs have no documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between UNCLE ABIES DELI INC. d/b/a 2ND AVE DELI and any of the named Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

20. Admit that Plaintiffs have no documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between UNCLE ABIES DELI ON FIRST INC. and any of the named Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

21. Admit that Plaintiffs have no documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between UNCLE ABIES DELI SANDWICH TRADEMARKS LLC and any of the named Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

22. Admit that Plaintiffs have no documents relating to any asset purchase agreements between JEREMY LEBEWOHL and any of the Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

23. Admit that Plaintiffs have no documents relating to any asset purchase agreements between UNCLE ABIES DELI INC. d/b/a 2ND AVE DELI and any of the Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

24. Admit that Plaintiffs have no documents relating to any asset purchase agreements between UNCLE ABIES DELI ON FIRST INC. and any one of the Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

25. Admit that Plaintiffs have no documents relating to any asset purchase agreements between UNCLE ABIES DELI SANDWICH TRADEMARKS LLC and any of the Plaintiffs which relate in any manner to 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH.

ADMIT.

26. Admit that Plaintiffs have no documents relating to any licenses, assignments, agreements, contracts, and/or arrangements between 2ND AVE DELI and any third-party which relate in any manner to 2ND AVE DELI's TRIPLE BYPASS SANDWICH.

ADMIT.

27. Admit that Plaintiffs have no documents relating to 2ND AVE DELI's use of the term TRIPLE BYPASS SANDWICH to designate goods or as a source-indicator used by 2ND AVE DELI.

ADMIT. Plaintiffs never sold any goods under the Triple Bypass Sandwich trademark. However, the proposed use is shown in produced draft menus, website pages using the term "Triple Bypass Sandwich" and documents relating thereto.

28. Admit that Plaintiffs have no documents which record, refer to, or relate to any corporate relationship between JEREMY LEBEWOHL and any of the Plaintiffs.

DENY. This request is vague and confusing and therefore cannot be answered in that it suggests a corporate relationship between a natural person and a corporation, and between two natural persons.

29. Admit that Plaintiffs have no documents which record, refer to, or relate to any corporate relationship between UNCLE ABIES DELI INC. d/b/a 2ND AVE DELI and any of the Plaintiffs.

ADMIT that Plaintiffs have no document which record, refer to, or relate to any corporate relationship between UNCLE ABIES DELI INC. d/b/a 2ND AVE DELI and any of the corporate Plaintiffs. This request is vague and confusing and therefore cannot be answered to the extent it suggests a corporate relationship between a natural person and a corporation.

30. Admit that Plaintiffs have no documents which record, refer to, or relate to any corporate relationship between UNCLE ABIES DELI ON FIRST INC. and any of the Plaintiffs.

ADMIT that Plaintiffs have no document which record, refer to, or relate to any corporate relationship between UNCLE ABIES DELI ON FIRST INC. and any of the corporate Plaintiffs. This request is vague and confusing and therefore cannot be answered to the extent it suggests a corporate relationship between a natural person and a corporation.

31. Admit that Plaintiffs have no documents which record, refer to, or relate to any corporate relationship between UNCLE ABIES DELI SANDWICH TRADEMARKS LLC and any of the Plaintiffs.

ADMIT that Plaintiffs have no document which record, refer to, or relate to any corporate relationship between UNCLE ABIES DELI SANDWICH TRADEMARKS LLC. and any of the corporate Plaintiffs. This request is vague and confusing and therefore cannot be answered to the extent it suggests a corporate relationship between a natural person and a corporation.

32. Other than attorney-client documents, admit that Plaintiffs have no documents prior to 2010 which record, refer to, or relate to 2ND AVE DELI's decision to adopt the term INSTANT HEART ATTACK SANDWICH.

ADMIT.

33. Other than attorney-client documents, admit that Plaintiffs have no documents prior to 2010 which record, refer to, or relate to 2ND AVE DELI's decision to use the term INSTANT HEART ATTACK SANDWICH.

ADMIT.

34. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any investigation to use INSTANT HEART ATTACK SANDWICH.

ADMIT.

35. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any investigation to register INSTANT HEART ATTACK SANDWICH as a mark.

ADMIT.

36. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to Plaintiffs' adoption of INSTANT HEART ATTACK SANDWICH.

ADMIT that Plaintiffs have no documents relating to Plaintiffs' adoption of INSTANT HEART ATTACK SANDWICH, which took place in or about 2001.

37. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search regarding the availability of INSTANT HEART ATTACK SANDWICH.

ADMIT.

38. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search regarding the adoption of INSTANT HEART ATTACK SANDWICH.

ADMIT.

39. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search regarding the registration of INSTANT HEART ATTACK SANDWICH.

ADMIT.

40. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search regarding the use of INSTANT HEART ATTACK SANDWICH.

ADMIT.

41. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search results regarding the availability of INSTANT HEART ATTACK SANDWICH.

ADMIT.

42. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search results regarding the adoption of INSTANT HEART ATTACK SANDWICH.

ADMIT.

43. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search results regarding the registration of INSTANT HEART ATTACK SANDWICH.

ADMIT.

44. Other than attorney-client documents, admit that Plaintiffs have no documents, from January 1, 2010 through the present date, related to any search results regarding the use of INSTANT HEART ATTACK SANDWICH.

ADMIT.

45. Other than attorney-client documents, admit that Plaintiffs have no documents, which record, refer to, or relate to 2ND AVE DELI's decision to adopt the term TRIPLE BYPASS SANDWICH.

ADMIT.

46. Other than attorney-client documents, admit that Plaintiffs have no documents regarding any investigation relating to 2ND AVE DELI's decision to adopt the term TRIPLE BYPASS SANDWICH.

ADMIT.

47. Other than attorney-client documents, admit that Plaintiffs have no documents regarding any search which refers to, or relates to 2ND AVE DELI's decision to adopt the term TRIPLE BYPASS SANDWICH.

ADMIT.

48. Other than attorney-client documents, admit that Plaintiffs have no documents regarding any search results which refers to, or relates to the term TRIPLE BYPASS SANDWICH.

ADMIT.

49. Other than attorney-client documents, admit that Plaintiffs have no documents which record 2ND AVE DELI's decision to use the term TRIPLE BYPASS SANDWICH.

ADMIT.

50. Other than attorney-client documents, admit that Plaintiffs have no documents which record the selection of the term INSTANT HEART ATTACK SANDWICH as a source-identifier.

ADMIT.

51. Other than attorney-client documents, admit that Plaintiffs have no documents which record the proposed use of the term INSTANT HEART ATTACK SANDWICH as a source-identifier.

ADMIT.

51A. Other than attorney-client documents, admit that Plaintiffs have no documents which record the decision to use the term INSTANT HEART ATTACK SANDWICH as a source-identifier.

ADMIT.

52. Other than attorney-client documents, admit that Plaintiffs have no documents which record the first use of the term INSTANT HEART ATTACK SANDWICH as a source-identifier.

ADMIT.

53. Other than attorney-client documents, admit that Plaintiffs have no documents which record, refer to, or relate to the selection of the term INSTANT HEART ATTACK SANDWICH as a trademark.

ADMIT.

54. Other than attorney-client documents, admit that Plaintiffs have no documents which record the proposed use of the term INSTANT HEART ATTACK SANDWICH as a trademark.

ADMIT.

55. Other than attorney-client documents, admit that Plaintiffs have no documents which record, refer to, or relate to the decision to use the term INSTANT HEART ATTACK SANDWICH as a trademark.

ADMIT.

56. Other than attorney-client documents, admit that Plaintiffs have no documents which record the first use of the term INSTANT HEART ATTACK SANDWICH as a trademark.

ADMIT.

57. Other than attorney-client documents, admit that Plaintiffs have no documents which record, refer to, or relate to the selection of the term TRIPLE BYPASS SANDWICH as a trademark.

ADMIT.

58. Other than attorney-client documents, admit that Plaintiffs have no documents which record, refer to, or relate to the proposed use of the term TRIPLE BYPASS SANDWICH as a trademark.

DENY. Plaintiffs have produced draft menus, website pages relating to the Triple Bypass Sandwich, and documents related thereto. Publicly available documents on the United States Patent and Trademark Office relating Plaintiffs' application and exhibits for the mark "Triple Bypass Sandwich" relate to the proposed use of the term "Triple Bypass Sandwich."

59. Other than attorney-client documents, admit that Plaintiffs have no documents which record, refer to, or relate to the decision to use the term TRIPLE BYPASS SANDWICH as a trademark.

ADMIT.

60. Other than attorney-client documents, admit that Plaintiffs have no documents which record the first use of the term TRIPLE BYPASS SANDWICH as a trademark.

ADMIT that TRIPLE BYPASS SANDWICH was never sold and was therefore never used as a trademark, but the proposed use of the mark has been demonstrated in documents such as the website pages, draft menus, and the publicly-available filings with the United States Trademark and Patent Office.

61. Admit that Plaintiffs have no documents relating to any advertisement by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have produced the press release, website pages, and documents related thereto.

62. Admit that Plaintiffs have no documents relating to any intended advertisement by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have produced a press release, menus, draft menus, website pages, and documents related thereto.

63. Admit that Plaintiffs have no documents relating to any promotional material by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have produced a press release, menus, draft menus, website pages, and documents related thereto.

64. Admit that Plaintiffs have no documents relating to any intended item of promotional material by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have produced a press release, menus, draft menus, website pages, and documents related thereto.

65. Admit that Plaintiffs have no documents relating to any advertisement printed or disseminated by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have produced a press release, menus, draft menus, website pages, and documents related thereto.

66. Admit that Plaintiffs have no documents relating to any promotional material printed or disseminated by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have produced a press release, menus, draft menus, website pages, and documents related thereto.

67. Admit that Plaintiffs have no documents relating to any advertisement by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

DENY. Plaintiffs have produced a press release, draft menus, website pages, and documents related thereto.

68. Admit that Plaintiffs have no documents relating to any promotional material by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

DENY. Plaintiffs have produced a press release, draft menus, website pages, and documents related thereto.

69. Admit that Plaintiffs have no documents relating to any intended item of promotional material by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

DENY. Plaintiffs have produced a press release, draft menus, website pages, and documents related thereto.

70. Admit that Plaintiffs have no menu used in any restaurant in which the term TRIPLE BYPASS SANDWICH appears.

ADMIT.

71. Admit that Plaintiffs have no photographs showing 2ND AVE DELI's "instant heart attack sandwich".

DENY. A photograph of the Instant Heart Attack Sandwich was produced.

72. Admit that Plaintiffs have no photographs showing 2ND AVE DELI's "triple bypass sandwich".

DENY. A photograph of the Triple Bypass Sandwich was produced.

73. Admit that Plaintiffs have no documents showing interior signage of 2ND AVE DELI's "instant heart attack sandwich".

ADMIT.

74. Admit that Plaintiffs have no documents showing interior signage of 2ND AVE DELI's "triple bypass sandwich".

ADMIT.

75. Admit that Plaintiffs have no documents showing exterior signage of 2ND AVE DELI's "instant heart attack sandwich".

ADMIT.

76. Admit that Plaintiffs have no documents showing exterior signage of 2ND AVE DELI's "triple bypass sandwich".

ADMIT.

77. Admit that Plaintiffs have no documents showing in-store displays of 2ND AVE DELI's "instant heart attack sandwich".

ADMIT.

78. Admit that Plaintiffs have no documents showing in-store displays of 2ND AVE DELI's "triple bypass sandwich".

ADMIT.

79. Admit that Plaintiffs have no documents referring or relating to commercials in which the term INSTANT HEART ATTACK SANDWICH appears.

ADMIT. No television or radio commercials for the "Instant Heart Attack Sandwich" were produced.

80. Admit that Plaintiffs have no documents referring or relating to commercials in which the term "triple bypass sandwich" appears.

ADMIT. No television or radio commercials for the "Triple Bypass Sandwich" were produced.

81. Admit that Plaintiffs have no website pages prepared by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Website pages relating to the Instant Heart Attack Sandwich were produced.

82. Admit that Plaintiffs have no documents relating to FaceBook social media sites prepared by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

ADMIT.

83. Admit that Plaintiffs have no documents relating MySpace social media sites prepared by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

ADMIT.

84. Admit that Plaintiffs have no documents relating to Twitter social media sites prepared by or for 2ND AVE DELI in which the term INSTANT HEART ATTACK SANDWICH appears.

ADMIT.

85. Admit that Plaintiffs have no website pages prepared by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

DENY. Website pages regarding the "Triple Bypass Sandwich" and documents related thereto were produced.

86. Admit that Plaintiffs have no documents relating to FaceBook social media sites prepared by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

ADMIT.

87. Admit that Plaintiffs have no documents relating MySpace social media sites prepared by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

ADMIT.

88. Admit that Plaintiffs have no documents relating to Twitter social media sites prepared by or for 2ND AVE DELI in which the term TRIPLE BYPASS SANDWICH appears.

ADMIT.

89. Admit that Plaintiffs have no magazine articles in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have not had any magazine articles prepared for them in which the term Instant Heart Attack Sandwich appears, but believe that there may be magazine articles that refer to the Instant Heart Attack.

90. Admit that Plaintiffs have no magazine articles in which the term TRIPLE BYPASS SANDWICH appears.

DENY. Plaintiffs have not had any magazine articles prepared for them in which the term Triple Bypass Sandwich appears, but believe that there may be magazine articles that refer to the Triple Bypass Sandwich as a result of this lawsuit.

91. Admit that Plaintiffs have no newspaper articles in which the term INSTANT HEART ATTACK SANDWICH appears.

DENY. Plaintiffs have not had any newspaper articles prepared for them in which the term Instant Heart Attack Sandwich appears, but believe that there may be newspaper articles that refer to the Instant Heart Attack Sandwich.

92. Admit that Plaintiffs have no newspaper articles in which the term TRIPLE BYPASS SANDWICH appears.

DENY. Plaintiffs have not had any newspaper articles prepared for them in which the term Triple Bypass Sandwich appears, but believe that there may be newspaper articles that refer to the Triple Bypass Sandwich as a result of this lawsuit.

93. Admit that Plaintiffs have no documents which relate or refer to 2ND AVE DELI's past, current and expected future advertising and/or promotional expenditures for 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH goods.

ADMIT.

94. Admit that Plaintiffs have no documents which relate or refer to 2ND AVE DELI's past, current and expected future advertising and/or promotional expenditures for 2ND AVE DELI's TRIPLE BYPASS SANDWICH goods.

ADMIT.

95. Admit that Plaintiffs have no documents relating to any survey conducted by 2ND AVE DELI or any person acting for or on behalf of 2ND AVE DELI regarding any issues involved in this proceeding.

ADMIT.

96. Admit that Plaintiffs have no documents which record, refer to, or relate to any permission by 2ND AVE DELI, or by any person acting for or on its behalf, to use the term INSTANT HEART ATTACK SANDWICH.

ADMIT.

97. Admit that Plaintiffs have no documents which record, refer to, or relate to any authorization by 2ND AVE DELI, or by any person acting for or on its behalf, to use the term INSTANT HEART ATTACK SANDWICH.

ADMIT.

98. Admit that Plaintiffs have no documents which record, refer to, or relate to any license by 2ND AVE DELI, or by any person acting for or on its behalf, to use the term INSTANT HEART ATTACK SANDWICH.

ADMIT.

99. Admit that Plaintiffs have no documents which record, refer to, or relate to any permission by 2ND AVE DELI, or by any person acting for or on its behalf, to use the term TRIPLE BYPASS SANDWICH.

ADMIT.

100. Admit that Plaintiffs have no documents which record, refer to, or relate to any authorization by 2ND AVE DELI, or by any person acting for or on its behalf, to use the term TRIPLE BYPASS SANDWICH.

ADMIT.

101. Admit that Plaintiffs have no documents which record, refer to, or relate to any license by 2ND AVE DELI, or by any person acting for or on its behalf, to use the term TRIPLE BYPASS SANDWICH.

ADMIT.

102. Admit that Plaintiffs have no documents relating to expert witness reports regarding any issue in this case.

ADMIT.

103. Admit that Plaintiffs have no documents relating to the channels of trade through which 2ND AVE DELI markets INSTANT HEART ATTACK SANDWICH goods.

DENY. Plaintiffs have produced documents relating to the channels of trade through which 2ND AVE DELI markets the Instant Heart Attack Sandwich, including the press release, website pages, draft menus, and menus.

104. Admit that Plaintiffs have no documents relating to the channels of trade through which 2ND AVE DELI markets its INSTANT HEART ATTACK SANDWICH goods in New York.

DENY. Plaintiffs have produced documents relating to the channels of trade through which 2ND AVE DELI markets the Instant Heart Attack Sandwich in New York, including the press release, website pages, draft menus, and menus.

105. Admit that Plaintiffs have no documents relating to the channels of trade through which 2ND AVE DELI markets TRIPLE BYPASS SANDWICH goods.

DENY. Plaintiffs have produced documents relating to the channels of trade through which 2ND AVE DELI marketed the Triple Bypass Sandwich, including the press release, draft menus, and website pages.

106. Admit that Plaintiffs have no documents relating to the channels of trade through which 2ND AVE DELI markets TRIPLE BYPASS SANDWICH goods in New York.

DENY. Plaintiffs have produced documents relating to the channels of trade through which 2ND AVE DELI marketed the Triple Bypass Sandwich in New York, including the press release, website pages, and draft menus.

107. Admit that Plaintiffs have no documents relating to the target audience or an intended market for INSTANT HEART ATTACK SANDWICH goods.

DENY. Plaintiffs have produced documents relating to the target audience or intended audience for the Instant Heart Attack Sandwich, including the press release, website pages, draft menus, and menus.

108. Admit that Plaintiffs have no documents relating to the target audience or an intended market for TRIPLE BYPASS SANDWICH goods.

DENY. Plaintiffs have produced documents relating to the target audience or intended audience for the Triple Bypass Sandwich, including the press release, website pages, and draft menus.

109. Admit that Plaintiffs have no documents relating to any 2ND AVE DELI's business plan which refers to a TRIPLE BYPASS SANDWICH.

ADMIT.

110. Admit that Plaintiffs have no evidence of actual consumer confusion between 2ND AVE DELI's INSTANT HEART ATTACK SANDWICH goods and HAG's goods listed in the counterclaims.

ADMIT.

111. Admit that Plaintiffs have no evidence of any complaints associated with HAG's goods.

DENY. Plaintiffs are aware of news articles referring to the inferior quality of the Defendants' products.

112. Admit that Plaintiff JEREMY LEBEWOHL knew about HAG's restaurant, HEART ATTACK GRILL, prior to 2010.

DENY.

113. Admit that Plaintiff JACK LEBEWOHL knew about HAG's restaurant, HEART ATTACK GRILL, prior to 2010.

DENY.

114. Admit that Plaintiffs have no evidence of actual confusion between 2ND AVE DELI's TRIPLE BYPASS SANDWICH goods and HAG's goods.

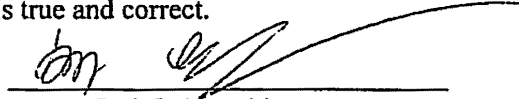
ADMIT.

VERIFICATION OF RESPONSES TO REQUESTS TO ADMIT

I, Josh Lebewohl, am the corporate counsel for the corporate Plaintiffs, and I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information and belief.

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

Dated: November 3, 2011
New York, NY



Josh Lebewohl