

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.

DEFENDANTS' NOTICE OF FILING SUMMARY JUDGMENT ("SJ") EXHIBITS
IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

Defendants, HEART ATTACK GRILL LLC, HAG LLC, JON BASSO, DIET CENTER LLC (a Texas corporation), and DIET CENTER LLC (a Delaware corporation) (collectively, "Defendants" or "HAG"), hereby give notice of filing the Exhibits listed below in support of its motion for summary judgment.

Exh. #	Date	Description
SJ-1	2005/06/09	HAG's Federal Trademark Reg. No. 3,128,169 for HEART ATTACK GRILL; filed June 9, 2005; registered August 8, 2006, now incontestible (copy of USPTO certified copy)("USPTO" is U.S. Patent and Trademark Office).

Exh. #	Date	Description
SJ-2		Pictures of Heart Attack Grill restaurant (HAG007-022); Heart Attack Grill Photo (HAG144); Heart Attack Grill photos & ads (HAG145-156)
SJ-3	2009/03/17	www.heartattackgrill.com - Website (see online for current website); March 17, 2009; HAG076-108
SJ-4	2009/03/17	Heart Attack Grill Diet Center - www. heartattackgrill.com- photos (see also online website); March 17, 2009; HAG042- 049
SJ-5	2010/04/13	Facebook - Heart Attack Grill (see online data); April 13, 2010; HAG109-138
SJ-6	2010/01/04	Heart Attack Grill - You Tube data (see online videos); Jan. 4, 2010; HAG050-051
SJ-7	2010/04/01	Flickr: The Heart Attack Grill Pool www. flickr.com (see online photos); April 1, 2010; HAG024-041
SJ-8	2006/09/01	HAG Television Monitoring Reports; Sept. 1, 2006; HAG0659-0740
SJ-9	2010/04/13	HAG Television & Internet Monitoring Reports; Apr. 13, 2010; HAG1848-1866
SJ-10	2010/11/10	HAG Television & Internet Monitoring Reports; Nov. 10, 2010; HAG1867-1929
SJ-11	2011/07/22	DELI Printout showing IHA Sandwich sales for the period of April 2008 through July 2011; PLFS-448 (redacted to delete confidential financial sales data)

Exh. #	Date	Description
SJ-12	2004/05/19	Chowhound Review of 2ND AVE DELI mentioning the Instant Heart Attack Sandwich (identified as DELI Trial Exh. g).
SJ-13	2011/08/09	Excerpts of DELI's USPTO Trademark file for INSTANT HEART ATTACK SANDWICH, Ser. No. 85140751; filed August 9, 2011; see PLFS085 - 87 (appln) and see PLFS055 - 60 (rejection by Examiner)
SJ-14	2005/12/27	HAG's Federal Trademark Reg. No. 3,180,519 for TRIPLE BYPASS BURGER, filed Dec. 27, 2005, registered December 5, 2006, now incontestible (see USPTO email, not certified)
SJ-15		HAG Customer Mailing List (excerpts); estimate of HAG customers: 19,200 (50 entries per page, 383 pgs. see last page entry) HAG0220-0604 (redacted and truncated to 42 pgs.)

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Dated: March 26, 2012

Respectfully submitted,

By: /RobertKain/

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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