

EXHIBIT 5

3. If any documents referred to in your response to these interrogatories were, but are no longer in your possession, custody, or control, state what disposition was made of them and when. If any documents referred to in response to these interrogatories have been lost or destroyed, describe in detail the circumstances of such loss or destruction and identify each lost or destroyed document (and all files that contained such documents).

4. If the procedure for answering interrogatories as authorized by Fed. R. Civ. P. 33(d) is used, for each interrogatory and subpart thereof, specify the production (i.e., Bates) numbers of the specific document or group of documents accompanying your response.

II. DEFINITIONS

The following terms and definitions shall apply to these Interrogatories:

1. “And” as used herein shall mean and/or.
2. “Identify,” when used with reference to:
 - (a) an individual person, means to state his full name, present or last known employer, job title, present or last known residence addresses and telephone number, and present or last known business addresses and telephone number.
 - (b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested.
 - (c) a document, means to state the type of document (letter, memorandum, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. The foregoing is unnecessary if the document is being produced to Eolas in lieu of the answer to an Interrogatory. If the document has already been produced, “identify” means to provide the

production number of the document.

3. “Person” shall refer to any natural person, firm, association, partnership, corporation, group, organization or other form of legal business entity.

4. “Frito-Lay” means Frito-Lay, Inc., and includes any officers, directors, partners, associates, employees, staff members, agents, representatives, attorneys, subsidiaries foreign or domestic, parents, affiliates, divisions, successors, predecessors, and any other related entities, and specifically includes all assets or companies that have been acquired by Frito-Lay or with respect to which it has succeeded to rights or obligations.

5. “You,” or “Your” means Frito-Lay, and includes any officers, directors, partners, associates, employees, staff members, agents, representatives, attorneys, subsidiaries foreign or domestic, parents, affiliates, divisions, successors, predecessors, and any other related entities, and specifically includes all assets or companies that Frito-Lay has acquired or with respect to which Frito-Lay has succeeded to rights or obligations.

6. As used herein, the term “document” means and includes, but is not limited to, the following items, whether typed, printed, handwritten, drawn, created, recorded, stored, or reproduced by any means or process and whether or not a claim of privilege or other bar to discovery is asserted: notes, letters, memoranda, correspondence, e-mail, drafts, books, telegrams, telexes, telephone bills, telephone logs, notebooks, charts, tables, lists, graphs, agendas, outlines, schedules, plans, studies, applications, policies, procedures, rules, guidelines, manuals, handbooks, evaluations, worksheets, minutes, bids, bid forms, promissory notes, memoranda of understanding, statements of work, requests for proposal, requests for quotation, letters of intent, contracts, agreements, journal ledgers, accounting ledgers, invoices, spreadsheets, loan agreements, tabulations, compilations, financial statements, income statements, balance sheets, checks, registers, pro-formas, budgets, projections, strategic plans,

calendars, diaries, appointment books, records and summaries of meetings, telephone conversations or interviews, investigative reports, consultant reports, credit reports, requests for information, proposals, videotapes, audio tapes, recordings, computer tapes, computer disks, DVDs, CDs, computer printouts and data stored on any computer-accessible media, databases, call tracking systems, defect tracking systems, consumer relationship systems or software, sales force automations systems, engineering notebooks, lab notebooks, drawings, sketches, designs, illustrations, diagrams, schematics, engineering drawings, blueprints, CAD, project schedules, design reviews, project reviews, status reports, bug reports, change logs, test results, data books, data sheets, user manuals, installation guides, patch release notes, white papers, application notes, bills of material, product literature, advertising documents, competitive analyses, market share studies, presentations, price lists, product lists, customer lists, catalogs, sales reports, annual reports, government filings, press releases, patents, patent applications (including abandoned applications), file histories, prior art, prior art searches or reports, foreign patent applications, trademark applications, trademark searches, source code, server code, object code, machine code, source files, library files, data files, text files, program files, directory files, and computer applications, systems or software, including my file systems back up, and all other writings or drafts thereof as defined in Federal Rule of Civil Procedure 34(a) and Federal Rule of Evidence § 1001 and all non-identical copies of the items described above.

7. As used herein, the term “Accused Products” means, but is not limited to, the following:

The websites (including the servers hosting those websites) and functionality identified in the charts titled “906 – Frito-Lay - Chart1” and “985 – Frito-Lay - Chart1” attached to Eolas’ P.R. 3-2 submission. This includes, but is not limited to the following:

- fritolay.com
- happiness.fritolay.com

8. Embedded Interactive Media means embedded audio, visual, and/or video content that allows a user to pause, play, fast-forward, rewind, advance, and/or vary the volume of the content.

9. Embedded Interactive Ads means embedded advertising content that allows a user to scroll through different ads or otherwise interact with the ad.

10. Flash and Shockwave means Adobe Flash and Adobe Shockwave (formerly Macromedia Flash and Macromedia Shockwave) used to add animation, video, and/or interactivity to web pages.

11. QuickTime means the multimedia framework developed by Apple Inc., capable of handling various formats of digital video, picture, sound, panoramic images, and interactivity.

12. Java means applets written in any Java platform (including JavaFX) used to add animation, video, and/or interactivity to web pages.

13. HTML5 means HTML used to add animation, video, audio, and/or interactivity to web pages through the use of the <video> tag, <audio> tag or some other method for including interactive multimedia and graphical content on the web without having to resort to proprietary plugins and APIs.

14. AJAX means a group of interrelated web development methods used on the client-side to create interactive web applications. With Ajax, web applications can retrieve data from the server asynchronously in the background without interfering with the display and behavior of the existing page (i.e., there is no need to “refresh” the page to update the information displayed). Data is usually (but not necessarily) retrieved using the XMLHttpRequest object. Despite the name, the use of XML is not needed, and the requests need not be asynchronous.

15. Interactive Product Viewer means any product viewer that provides zoom and/or pan functionality for viewing the image.

16. As used herein, the term “Accused Feature” means and includes, but is not limited to, the use and/or support of (a) Embedded Interactive Media (including, but not limited to, Flash, Shockwave, QuickTime, Java, and HTML5), (b) Embedded Interactive Ads, (c) AJAX or AJAX-like functionality, and (d) Interactive Product Viewers.

III. INTERROGATORIES

INTERROGATORY NO. 3 TO DEFENDANT FRITO-LAY:

Identify all print, television, internet, and radio ads Frito-Lay has run in the United States since 2003 wherein the accused products and/or the accused features of the accused products are advertised, mentioned, displayed, used in, or otherwise referenced during each print, television, internet, and radio ad, also describing when, how often, and in which markets the print, television, internet, and radio ads were run, and also providing links to the print, television, internet, and radio ads and copies of the print, television, internet, and radio ads on DVD.

Dated: September 12, 2011

Respectfully submitted,

McKool Smith, P.C.

/s/ Tom Fasone _____
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served via electronic mail on all counsel of record on this the 12th day of September, 2011.

/s/ Tom Fasone _____
Tom Fasone