

# **EXHIBIT 8**

**From:** yeej@gtlaw.com  
**Sent:** Tuesday, September 27, 2011 12:15 PM  
**To:** Tom Fasone III; joynerj@gtlaw.com  
**Cc:** Eolas; John B. Campbell; Matt Rappaport; Don Gaiser; Stefano Milito; Vicki Merideth; dougmcswane@potterminton.com; allengardner@potterminton.com; mikejones@potterminton.com; masondl@gtlaw.com  
**Subject:** RE: Eolas/Frito-Lay: Discovery Issues  
Tom,

Thanks for your email. Regarding item (1), as mentioned during our telephone conversation with you on Sep. 14, FritoLay believed it had produced relevant documents and thus far we are not aware of additional relevant non-privileged documents. In addition, you raised for the first time a website located at "[happiness.fritolay.com](http://happiness.fritolay.com)" which had not been identified in the above-referenced action until Eolas's interrogatories served this month. During our Sep. 14 telephone conversation we stated that the website was not identified in Eolas' infringement contentions and we could not find that website. "[happiness.lays.com](http://happiness.lays.com)" is identified for the first time in your email of Sep. 23. Even if Eolas had asserted a claim against the [happiness.lays.com](http://happiness.lays.com) website, which it failed to do, Eolas has never asserted what feature, if any, of the website allegedly infringes Eolas's claimed invention. Therefore, even if Eolas had properly plead a claim against the website located at [happiness.lays.com](http://happiness.lays.com), Frito-Lay would not have knowledge of what relevant non-privileged documents, if any, to cull.

For item (2), tentatively, we have identified some witnesses and are still working on coordinating the schedule because of the number and diversity of the topics. It appears, at this time, the depositions may more likely take place in the third or fourth week of October in Dallas, Texas. In addition, we had discussed with Eolas over the summer that not all 30(b)(1) witnesses Eolas sought to depose would have information Eolas is seeking. Therefore, the parties agreed to avoid unnecessary burden on Frito-Lay by reducing the number of depositions. To that end, please let us know the categories of information Eolas seeks to receive from all the 30(b)(1) witnesses so that we can coordinate on the necessary depositions and avoid undue burden and disruption on Frito-Lay's business operation.

With respect to item (3), we have confirmed that the CDs we produced contained Concordance Opticon DAT and LOG file and Summation iBlaze LST file which contain the custodian identification in the "Custodian Field." If you have used these load files to properly load the data and still encounter errors, please provide the name of the tool and version you use, and the name of the field where you found the custodian names so we can investigate further.

For item (4), we are agreeable to the proposal that only those individuals whom the parties plan to present as trial witnesses be presented for deposition. This item also relates to item (2). We believe this item will be resolved as we resolve item (2).

For item (5), regarding Interrogatory Nos. 1 and 3, as you noted in your e-mail of September 9 and we reiterated in our email of September 13, Frito-Lay supplemented its responses to these interrogatories by producing additional documents (FL-EOLAS0019027-0019102) under Fed. R. Civ. Pro., Rule 33 on June 15, 2011. With respect to Interrogatory No. 4, we stated in our September 14 email that we are confused by your statement in your Sep. 9 e-mail that Frito-Lay's response only addressed 8 of the 16 technologies identified by Eolas. Frito-Lay's response to this interrogatory provided information with respect to AJAX, JavaScript, Java/JavaFX, Flash, Quicktime, HTML5, WebM, and H.264 and objected to the remainder because they are, *inter alia*, vague, ambiguous and undefined. As mentioned above, Eolas never identified "[happiness.fritolay.com](http://happiness.fritolay.com)" or "[happiness.lays.com](http://happiness.lays.com)" in its infringement contentions. Therefore, Eolas' interrogatories did not request information about those websites so we are at a loss to understand why Eolas is requesting Frito-Lay to supplement its responses when it was never requested to provide it in the interrogatories.

Let us know if you have further questions.

Regards,

Jeffrey Yee

Greenberg Traurig LLP | 2450 Colorado Avenue | Suite 400 East | Santa Monica, CA 90404

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**From:** Tom Fasone III [mailto:tfasone@McKoolSmith.com]  
**Sent:** Friday, September 23, 2011 7:15 AM  
**To:** Yee, Jeffrey (Assoc-LA-IP-Tech); Joyner, Jeff K. (Shld-LA-IP-Tech)  
**Cc:** Eolas; John B. Campbell; Matt Rappaport; Don Gaiser; Stefano Milito; Vicki Merideth; dougmcswane@potterminton.com; allengardner@potterminton.com; mikejones@potterminton.com  
**Subject:** Eolas/Frito-Lay: Discovery Issues

Gentlemen

I write to follow up on last week's teleconference on various outstanding discovery matters.

Please advise as to each of the following issues:

- (1) When Eolas may expect to receive Frito-Lay's supplemental document production (including relevant documents for *happiness.lays.com*);
- (2) Proposed dates for all outstanding 30b1 and 30b6 deposition notices served to date;
- (3) The identification of custodial documents by Bates numbers for the 30b1 witnesses noticed to date to the extent that they already have been produced to Eolas or a proposed date for production of the custodial documents for each of the 30b1 witnesses noticed to date;
- (4) A response to Eolas' proposal regarding the depositions of "will call" trial witnesses (as outlined in prior correspondence to you and discussed during our September 14 teleconference); and
- (5) A proposed date for supplementation of Frito-Lay's interrogatory responses (to address deficiencies outlined in our September 9 correspondence and discussed during our September 14 teleconference, and, to the extent necessary, to provide complete supplemental responses that address *happiness.lays.com*).

As you know, the parties agreed to a November 9, 2011 Fact Discovery deadline. Given the amount of discovery which must be completed prior to that deadline, we would very much appreciate your prompt attention to these matters.

As always, we are available to discuss these matters via telephone should you care to do so -- (214) 978-4927.

Regards,

Tom

-----Original Message-----

**From:** Tom Fasone III  
**Sent:** Friday, September 16, 2011 6:42 AM  
**To:** yeej@gtlaw.com; dougmcswane@potterminton.com; joynerj@gtlaw.com; allengardner@potterminton.com; mikejones@potterminton.com  
**Cc:** Eolas; Josh Budwin; Gretchen Curran; John B. Campbell; Don Gaiser; Stefano Milito; Vicki Merideth  
**Subject:** Staples/Frito-Lay: Document Production and Custodial Documents

Gentleman

As we indicated that we would, we went back to the document production we received to date from

Frito-Lay and confirmed what we reported during our call -- which is that a single custodian is listed for almost the entirety of the production. None of the five 30b1 witnesses that Eolas has noticed to date: Kevin Johnson, Greg Scott, Ryan Baxter, Richard Blazeovich and Gannon Jones are listed as custodians of any of the documents Eolas has received.

Further, we ran a search of the metadata of the document production received to date and determined that Frito-Lay has not produced any relevant and non-privileged e-mail correspondence. We would kindly ask that you please confer with your client contact(s) about the lack of e-mail correspondence within the production to Eolas and advise as to your findings.

Thank you,

Tom

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From: Tom Fasone III  
Sent: Thursday, September 15, 2011 12:09 PM  
To: yeej@gtlaw.com; dougmcswane@potterminton.com; joynerj@gtlaw.com; allengardner@potterminton.com; mikejones@potterminton.com  
Cc: Eolas; Josh Budwin; Gretchen Curran; John B. Campbell; Don Gaiser; Stefano Milito  
Subject: RE: Eolas/Frito Lay: Request for Informal Meet and Confer on Deficient Interrogatory Responses/Discovery Matters

Gentleman

Thank you for making yourselves available yesterday for a teleconference to discuss outstanding discovery issues and a gameplan for completing discovery within the parties' agreed schedule for completing fact discovery in this matter. We certainly appreciate your willingness to cooperate in this regard.

As you work through the issues we discussed yesterday, please feel free to call us to further confer should the need arise.

Regards,

Tom

-----Original Message-----

From: Tom Fasone III  
Sent: Tuesday, September 13, 2011 7:41 PM  
To: yeej@gtlaw.com  
Cc: dougmcswane@potterminton.com; Eolas; allengardner@potterminton.com; mikejones@potterminton.com; Josh Budwin; Gretchen Curran; John B. Campbell; Don Gaiser; joynerj@gtlaw.com  
Subject: RE: Eolas/Frito Lay: Request for Informal Meet and Confer on Deficient Interrogatory Responses/Discovery Matters

Jeffrey

Thank you very much for your email of this evening. We appreciate you getting back to us on the various discovery matters Eolas has raised over the past several days.

With respect to the deficiencies in Frito-Lay's response to Common Interrogatory No. 4, we kindly ask

that you consider the language of the interrogatory again as it clearly requests information concerning 16 technologies/software types as specified in items (a)-(p). Should Frito-Lay still have concerns as to the scope of Common Interrogatory No. 4, we will be prepared to discuss this matter during tomorrow's 4 p.m. CT conference.

Thank you for letting us know that the depositions of Frito-Lay's witnesses will be held in Dallas rather than at Greenberg's Santa Monica office. Eolas very much appreciates being able to conduct the depositions of Frito-Lay's witnesses in Dallas. Although we don't believe it is necessary, we are more than happy to re-serve the deposition notices to comport with the location provided in your email of this evening. Please advise as to your preference in this regard.

Finally, given the number of discovery issues which must be addressed within a relatively compressed schedule, we would very much like to proceed with our 4 p.m. CT conference call tomorrow. We look to speaking with you then.

Regards,

Tom

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From: yeej@gtlaw.com [yeej@gtlaw.com]  
 Sent: Tuesday, September 13, 2011 6:59 PM  
 To: Tom Fasone III; joynerj@gtlaw.com  
 Cc: dougmcswane@potterminton.com; Eolas; allengardner@potterminton.com; mikejones@potterminton.com; Josh Budwin; Gretchen Curran; John B. Campbell; Don Gaiser  
 Subject: RE: Eolas/Frito Lay: Request for Informal Meet and Confer on Deficient Interrogatory Responses/Discovery Matters

Tom,

This responds to your e-mails of Sep. 2, 8 and 9 regarding Frito-Lay's responses to Eolas' interrogatories, production of documents and scheduling of depositions.

Regarding Interrogatory Nos. 1 and 3, as you noted in your e-mail of Sep. 9, Frito-Lay supplemented its responses to these interrogatories by producing additional documents (FL-EOLAS0019027-0019102) under Fed. R.

Civ. Pro., Rule 33 on June 15, 2011. With respect to Interrogatory No.

4, we are confused by your statement in your Sep. 9 e-mail that Frito-Lay's response only addressed 8 of the 16 technologies identified by Eolas. Interrogatory No. 4 did not specifically identify 16 technologies and, therefore, we are at loss to understand why Eolas believes that Frito-Lay should supplement its response to that interrogatory.

In response to your e-mail of Sep. 8 regarding Frito-Lay's production of documents, Frito-Lay has produced and will continue to produce relevant non-privileged documents, if any, pursuant to the discovery rules.

We are in the process identifying the Rule 30(b)(6) witness(es) and the witnesses' availability (Rules 30(b)(6) and 30(b)(1)) in response to your e-mail of Sep. 2 and the notices we recently received (three Rule

30(b)(6) deposition notices and Rule 30(b)(1) notices of depositions of Kevin Johnson, Greg Scott, Ryan Baxter, Richard Blazeovich and Gannon Jones). As a general matter, the deposition(s) of Frito-Lay individuals located in Plano, Texas should take place in Greenberg Traurig' offices in Dallas, Texas, not in California. Once we have identified witnesses and confirmed availability, we will

coordinate with Eolas to schedule the appropriate deposition(s).

We believe that we have addressed each of the issues you have raised in your e-mail but remain available to discuss these issues on tomorrow's call if you have questions.

In addition, please be prepared to discuss Eolas' availability for depositions.

Thanks.

Jeffrey Yee

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From: Tom Fasone III [<mailto:tfasone@McKoolSmith.com>]  
Sent: Friday, September 09, 2011 9:25 AM  
To: Joyner, Jeff K. (Shld-LA-IP-Tech); Yee, Jeffrey (Assoc-LA-IP-Tech)  
Cc: dougmcswane@potterminton.com; Eolas; allengardner@potterminton.com; mikejones@potterminton.com; Josh Budwin; Gretchen Curran; John B. Campbell; Don Gaiser  
Subject: Eolas/Frito Lay: Request for Informal Meet and Confer on Deficient Interrogatory Responses/Discovery Matters

Gentlemen

I understand that you are working with your co-defendants to prepare a response to Eolas' proposed Docket Control Order and to propose a schedule for completing fact and expert discovery of Frito Lay given that the parties' efforts to settle were unsuccessful. Eolas certainly appreciates Frito Lay's

efforts to prepare and propose such a schedule; however, given that the Court has set an early February 2011 trial date and that there are numerous major intervening holidays between now and the current trial date, Eolas strongly believes that counsel for the parties needs to open a dialogue on discovery matters now rather than wait to reach an agreement on a final proposed Docket Control Order.

Of the pending discovery issues that Eolas would like to discuss with Frito Lay are its current responses to Eolas' Common and Specific Interrogatories. We have analyzed Frito Lay's interrogatory responses to date and have determined that there are various deficiencies that Eolas would like addressed as soon as practicable. By way of example, and not by way of limitation, Frito Lay's most recent responses to Eolas' First Set of Common Interrogatories (Nos. 1-5) are dated July 9, 2010 -- over 14 months ago. Further, in certain instances, Frito Lay has responded to the First Set of Common Interrogatories by pointing to a "representative sample of reports" rather than providing a complete textual response and/or providing Bates numbers of all of the responsive documents within Frito Lay's production from which one could obtain complete information sought by the particular interrogatory (see, e.g., Responses to Common Interrogatory Nos. 1 and 3). In other instances, Frito Lay fails to address each component of the interrogatory in its current response (see, e.g., Response to Common Interrogatory No. 4, which only addresses eight of the 16 technologies identified by Eolas).

Please let us know your availability next week for an informal meet and confer to discuss deposition discovery, document production supplementation, interrogatory supplementation, expert submissions, and scheduling related to each of these matters.

We look forward to hearing from you.

Regards,

Tom

-----Original Message-----

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