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November 1, 2011

U.S. Patent & Trademark Office

VIA FEDERAL EXPRESS

U.S. Patent and Trademark Office
Letter of Protest
ATTN: Deputy Commissioner for Trademark Examination Policy
600 Dulany Street
Alexandria, VA 22314-5793

LETTER OF PROTEST

**Re: LETTER OF PROTEST to U.S. Application Serial No. 85/412053 for the
Mark EAT MORE KALE filed by Robert Muller-Moore DBA Eat More Kale
Our Reference: 26557.3**

Honorable Deputy Commissioner:

CFA Properties, Inc. ("CFA Properties") and its licensee, Chick-fil-A, Inc. ("Chick-fil-A"), (collectively, "CFA"), pursuant to TMEP §1715.01(a)(2), hereby file this Official Letter of Protest to Application Serial No. 85/412053 for the Mark EAT MORE KALE (the "EAT MORE KALE Mark") filed by Robert Muller-Moore DBA Eat More Kale (the "Applicant") for use in connection with goods and services identified by the Applicant as the following: "stickers; fabric gift bags; grocery bags; paper bags; hooded sweat shirts; infant and toddler one piece clothing; long-sleeved shirts; shirts; shirts and short-sleeved shirts; shirts for infants, babies, toddlers and children; snap crotch shirts for infants and toddlers; sweat shirts; t-shirts; t-shirts for men, women, infants, toddlers, and children; tee shirts; wearable garments and clothing, namely, shirts; women's clothing, namely, shirts, dresses, skirts, blouses; turtle neck shirts; yoga shirts; imprinting of decorative designs on t-shirts; screen printing; silk screen printing."

Chick-fil-A is the franchisor of the second-largest quick service chicken restaurant chain in the United States based on annual sales. Founded in 1967, Chick-fil-A is credited with inventing the original boneless breast of chicken sandwich as well as pioneering the establishment of restaurants in shopping malls. The Chick-fil-A system is comprised of over 1,500 locations in 39 states and the District of Columbia. The mark and slogan "EAT MOR CHIKIN" has been used by Chick-fil-A for many years in its

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advertising, very prominently. It is often used in advertisements featuring cows in self-preservation mode urging customers to "Eat Mor Chikin." The mark has acquired significant fame in connection with the Chick-fil-A brand, as discussed more fully below.

CFA files this Letter of Protest because the EAT MORE KALE Mark is confusingly similar in sight, sound, meaning, and overall commercial impression to CFA's numerous and famous EAT MOR CHIKIN registered trademarks and service marks (the "EAT MOR CHIKIN Marks" or "Marks"), and registration of the EAT MORE KALE Mark should therefore not be permitted pursuant to 15 U.S.C. § 1052(d).

The EAT MORE KALE Mark directly infringes the EAT MOR CHIKIN Marks, which are registered and used in connection with food products and services, clothing, and related merchandise. Hence, consumers who encounter the EAT MORE KALE Mark are likely to be confused. For example, they may mistakenly believe that Chick-fil-A has expanded its products, services, and associated branding to market and advertise kale under the EAT MORE KALE Mark. Also, because Chick-fil-A sells numerous items of clothing, consumers may confusingly assume that the parties' respective products and services originate from the same source. Customers also might mistakenly be led to believe that there is some affiliation between Chick-fil-A and the Applicant advertising via the EAT MORE KALE Mark. Quite simply, the misappropriation of CFA's EAT MOR CHIKIN Marks by the Applicant is obviously a play off of and attempt to benefit from the fame of CFA's EAT MOR CHIKIN Marks and the brand and goodwill of Chick-fil-A. It is likely to cause confusion of the public, dilution of the distinctiveness of CFA's EAT MOR CHIKIN Marks, and diminution of their value.

Chick-fil-A and its franchised Operators have continuously and exclusively used in commerce the EAT MOR CHIKIN Marks since at least as early as June 19, 1995. Additionally, CFA has common law trademark rights in and to the Marks and owns several trademark and service mark registrations for the EAT MOR CHIKIN Marks. Specifically, CFA owns federal trademark registrations for both EAT MOR CHIKIN (U.S. Registration Nos. 2,010,233; 2,240,326; 2,062,809; and 2,197,973) and cows holding sandwich-boards reading "EAT MOR CHIKIN" (U.S. Registration Nos. 2,538,050 and 2,538,070). See Exhibit A. The EAT MOR CHIKIN Marks are highly-recognized, and they are and have been the subject of extensive and continuous national and regional print, outdoor, television, radio, and in-store advertisements. Further, the EAT MOR CHIKIN Marks have been the subject of millions of dollars of advertising and promotion in the United States and abroad for Chick-fil-A restaurants and products. CFA has received significant recognition for its EAT MOR CHIKIN campaign including a stream of awards. As early as 1998, Chick-fil-A received the "Silver Effie for Advertising Effectiveness" Award and the

Reader's Choice Award for the "Cleverest Billboard Advertisement" for its EAT MOR CHIKIN campaign. See Exhibits B and C. By way of just another example, in 2006, Chick-fil-A received the OBIE Hall of Fame Award, also for its EAT MOR CHIKIN campaign. See Exhibit D. By any measure, CFA's EAT MOR CHIKIN Marks have achieved significant fame and notoriety. For more information and to see more examples of Chick-fil-A's high-profile use of the EAT MOR CHIKIN Marks, please see <http://www.chick-fil-a.com/Cows/Campaign-History>.

Not only are the EAT MOR CHIKIN Marks advertised extensively by CFA, the famous brand has also been the subject of numerous media articles discussing the distinctiveness, success, and widespread utilization and recognition of the EAT MOR CHIKIN Marks. A small sampling of such media articles is attached as Exhibits E-O:

- An article in OUTDOOR ADVERTISING MAGAZINE, May/June 2006, at 18-24¹;
- An article in NATION'S RESTAURANT NEWS, August 28, 1995, at 14;
- An article in ADWEEK, December 21, 1998, at 4;
- An article in ADWEEK, August 7, 1995, at 20;
- An article in ADVERTISING AGE, July 31, 1995, at 34;
- An article in QSR, April 2001;
- An article in QSR, November/December 1997, at 24-28;
- An article in SKY (DELTA AIR LINES INFLIGHT MAGAZINE), Heroes In Our Time, March 1997;
- An article in THE ORANGE COUNTY REGISTER, Monday, Feb. 2, 2004;
- An article in FAST COMPANY, October 2004, at 80-81,83-84; and
- An article in NEW MAN, November/December 2004, at 18-31

Further, there are currently no marks registered, allowed, renewed, or published by the U.S. Patent and Trademark Office (the "PTO") that include either of the prefixes "EAT MOR" or "EAT MORE" and another food or animal product, or that identify clothing products, food items, or related products or services. Thus, it is clear that CFA's EAT MOR CHIKIN Marks are very strong and non-dilute. We note that, in the context of the following uses of confusingly similar marks, the owners/users of these marks, after receiving objections from CFA, agreed to cease and permanently desist their use of, and in several instances have withdrawn federal applications to register, the marks:

¹ Certain pages of this article are not included, as such pages are advertisements unrelated to both the article and CFA.

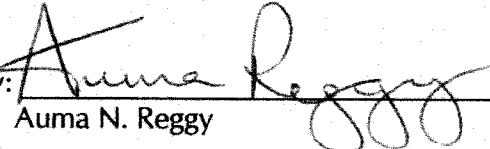
1. EAT MORE BEEF
2. EAT MORE CHICKEN
3. EATMORE CHICKEN
4. EAT MOR CHIKUN
5. EAT MORE BURGERS
6. EAT MORE BEER (including the voluntary abandonment of this infringer's federal service mark application for same)
7. EAT MORE POULTRY
8. EAT MORE PORK
9. EAT MORE POURK
10. EAT MORE HAM
11. EAT MORE BUFFALO
12. EAT MORE FISH
13. EAT MORE CATFISH
14. EAT MORE GOAT
15. EAT MORE KARIBOO
16. EAT MORE BURRITOS
17. EAT MORE DOG
18. EAT MORE MOO
19. EAT MORE BAR-B-QUE
20. EAT MORE VEGETABLES
21. EAT MORE YOGURT
22. EAT MORE ICE CREAM
23. EAT MORE CHOCOLATE! (including the voluntary abandonment of this infringer's federal service mark application for same)
24. EAT MORE CEREAL
25. EAT MORE BEER (including the voluntary abandonment of this infringer's federal service mark application for same)
26. EAT MORE AUTHENTIC
27. EAT MORE MUSIC
28. EATMORKOSHER
29. EAT MORE TREATS (including the voluntary abandonment of this infringer's federal trademark application for same)
30. EAT MORE TAIL (including the voluntary abandonment of this infringer's federal trademark application for same)
31. EATMORE (including the voluntary abandonment of this infringer's federal trademark applications for same)

CFA could submit further evidence of the extent of its use and/or the strength of the EAT MOR CHIKIN Marks upon request. But, the above information in and of itself conclusively demonstrates that the proposed EAT MORE KALE application should be denied because it creates consumer confusion as to the source, origin, sponsorship, or affiliation of Applicant's goods and services and those of CFA. Therefore, in the PTO's effort to head off any potential conflict and to avoid any public confusion, CFA hereby requests that the enclosed materials be forwarded to the Examining Attorney for consideration of these items, and that the Examining Attorney refuse registration of the trademark application for EAT MORE KALE for use in connection with goods and services identified as "stickers; fabric gift bags; grocery bags; paper bags; hooded sweat shirts; infant and toddler one piece clothing; long-sleeved shirts; shirts; shirts and short-sleeved shirts; shirts for infants, babies, toddlers and children; snap crotch shirts for infants and toddlers; sweat shirts; t-shirts; t-shirts for men, women, infants, toddlers, and children; tee shirts; wearable garments and clothing, namely, shirts; women's clothing, namely, shirts, dresses, skirts, blouses; turtle neck shirts; yoga shirts; imprinting of decorative designs on t-shirts; screen printing; silk screen printing," filed by Robert Muller-Moore DBA Eat More Kale as confusingly similar to the EAT MOR CHIKIN Marks.

If you have any questions regarding the enclosed evidence or any other matter, please do not hesitate to contact me directly at (404) 873-8736.

Sincerely,

ARNALL GOLDEN GREGORY LLP

By: 
Auma N. Reggy

Enclosures