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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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RESTAURANT TECHNOLOGIES,  
INC.,  
Plaintiff, Civil File No. 05-5356 (MLC)  
v.  
JERSEY SHORE CHICKEN,  
Defendant.

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RESTAURANT TECHNOLOGIES,  
INC.,  
Plaintiff, Civil File No. 05-5356 (MLC)  
v.  
KLEE'S BAR & GRILL,  
Defendant.

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OILMATIC SYSTEMS, LLC,  
Plaintiff, Civil File No. 06-363 (MLC)  
v.  
RESTAURANT TECHNOLOGIES,  
INC.,  
Defendant.

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**RTI'S STATEMENT OF UNCONTESTED FACTS  
PURSUANT TO LOCAL RULE 56.1**

I. The Alleged AFS Hard-Plumbed System

1. Oilmatic has asserted that the '511 patent is invalid in view of an alleged system by Advantage Food Systems ("AFS"). Oilmatic contends (a) that the alleged system was in public use or on sale in this country more than a year prior to the date of the application that issued as the '511 patent, and (b) that the alleged system satisfied all

of the limitations found in claims 1-5, 8, and 11 of the '511 patent. Brown Decl., Exs. A, at 6; Ex. B at 11.

2. More specifically, Oilmatic contends that a hard-plumbed system of the configuration depicted in Fig. 1 of U.S. Patent No. 4,646,793 (the Sherratt patent), but using a fryer with an integrated filter – collectively referred to as the AFS hard-plumbed system -- was installed at a Wendy's restaurant more than a year before the February 9, 1993, filing date of the application that became the '511 patent. *Id.*

3. The Sherratt patent discloses two kinds of systems. One is hard-plumbed and consists of two tanks, a fryer, and piping (possibly with pumps) connecting the new oil tank to the fryer, and the fryer to the used oil tank. Manual valves are included in the hard piping. The preferred embodiments for the hard-plumbed systems disclosed in the Sherratt patent lack at least two express limitations of the '511 patent claims – a filter and a “means for metering” (trigger valve with a nozzle for metering oil in predetermined amounts into the fryer. The second system is a portable unit that contains only a small used oil tank. It is designed to suck used oil from the frying vat with either a hose or pipe. When the tank is full, the cart is moved to a holding tank where the used oil is transferred out of the portable unit and into the holding tank. Brown Decl., Ex. C. With respect to the systems allegedly offered by AFS, it is only the hard-plumbed system of the Sherratt patent, modified by the use of a fryer with a built-in filter, that Oilmatic has identified as rendering the '511 patent invalid. *Id.* Brown Decl., Exs. A, at 6; Ex. B at 11; Ex. H at 15.

## II. Lack of Corroboration

4. Oilmatic learned of the alleged AFS hard-plumbed system at least as far back as March 2006. Brown Decl., Ex. I. During discovery, Oilmatic subpoenaed and deposed four individuals formerly associated with Advantage Food Systems: John Hadfield; Albert Gallardo; Sergio Perez; and Michael O'Connor – collectively the AFS witnesses. Brown Decl., Exs. D-G. Oilmatic chose not to depose the designer of the alleged AFS hard-plumbed system – James Sherratt – even though it did speak with him. Brown Decl., Ex. I.

5. Neither the AFS witnesses nor Oilmatic has produced any drawings of the AFS hard-plumbed system. Brown Decl. ¶ 11.

6. Neither the AFS witnesses nor Oilmatic has produced any photographs of the AFS hard-plumbed system. Brown Decl. ¶ 12.

7. Neither the AFS witnesses nor Oilmatic has produced any contracts for the AFS hard-plumbed system. Brown Decl. ¶ 13.

8. Neither the AFS witnesses nor Oilmatic has produced any literature for the AFS hard-plumbed system. Brown Decl. ¶ 14.

9. Neither the AFS witnesses nor Oilmatic has produced any business records for AFS. Brown Decl. ¶ 15.

10. Oilmatic has not produced any testimony, documents, or other evidence, from an employee of a restaurant where the AFS hard-plumbed system allegedly was installed. Brown Decl. ¶ 16.

11. Oilmatic subpoenaed Wendy's for documents evidencing the use of the AFS hard-plumbed system in any Wendy's located in the vicinity of where Oilmatic contends the AFS hard-plumbed system was used. Brown Decl., Ex. J. Wendy's was unable to produce any evidence that the AFS hard-plumbed system ever had been used at a Wendy's location. Brown Decl., Ex. K.

12. Neither the AFS witnesses nor Oilmatic has produced any documents prepared prior to the depositions of the AFS witnesses from which one can deduce the design or configuration of the AFS hard-plumbed system. Brown Decl. ¶ 19.

13. Other than photographs of a pump, which Oilmatic contends was used by AFS, but which photographs do not depict any other components of the system, Oilmatic has not produced a single document evidencing the existence or use of an AFS hard-plumbed system. Brown Decl. ¶ 20.

14. None of the AFS witnesses was aware of any documentation for the AFS hard-plumbed system. Brown Decl., Ex. D at 85:16-25 and 94:4-95:2; Ex. F at 35:21-36:1.

15. The only evidence Oilmatic has of the existence and configuration of the AFS hard-plumbed system is the deposition testimony of John Hadfield. Brown Decl. ¶ 21.

### **III. Uncertainties Regarding the Alleged AFS Hard-Plumbed System**

#### **A. All But One AFS Witness Has No Knowledge of the System**

16. No one other than John Hadfield has testified that the AFS hard-plumbed system ever existed. Hadfield claims to have seen only one hard-plumbed system, which

allegedly was at a Wendy's in La Habra, California. Brown Decl., Ex. D at 77:24-78:22; 79:2-7)

17. The other AFS witnesses, all of whom were more closely associated with AFS than Hadfield, had no knowledge of such a system. Albert Gallardo was with AFS during its entire existence. Brown Decl., Ex. G at 61:7-62:1. He assembled portable units offered by AFS, delivered and picked up oil, and installed the portable units. *Id.* at 47:1-3; 11:1-8; 59:2-13. Gallardo testified that AFS did not install any AFS hard-plumbed systems at Wendy's. *Id.* at 32:14-33:23. He does not know of any installations of a hard-plumbed system. *Id.* at 12:6-9; 59:2-13. Gallardo doesn't even know Hadfield, which suggests that Hadfield was not heavily involved in AFS. *Id.* at 39:9-10. In fact, unlike the other AFS witnesses, Hadfield was never an employee of AFS. He worked for Lowell Sherratt's company Honeyville Grain, which was located 65 miles from AFS. Hadfield did not make it to AFS more than once or twice a month. Brown Decl., Ex. D at 13-14, 46.

18. Sergio Perez worked at AFS from 1990 to 1994. Brown Decl., Ex. F at 7:12-25. Perez never saw an installed AFS system, whether a portable or the alleged AFS hard-plumbed system. *Id.* at 9:17-20.

19. Michael O'Connor was with AFS from the summer of 1988 to April 1990 as general manager. Brown Decl., Ex. G at 7:3-15. Nobody was marketing any systems by AFS when he was there. *Id.* at 45:5-19; 53:7-9. By the time he got to AFS, it was no longer using any such systems. *Id.* at 18:18-19:2. O'Connor has never seen either of the

units in the Sherratt patent installed. He's never seen the system in Figure 1 (the hard-plumbed unit referred to by Hadfield). *Id.* at 56:1-22.

**B. The Testimony by Hadfield Has Gaps**

20. Hadfield was on the sales rather than operations side of AFS, so he wasn't that familiar with the internal workings of the AFS hard-plumbed system. Brown Decl., Ex. D at 93:13-94:3.

21. Hadfield was unable to testify that he saw filtration going on at any of the alleged installations of the AFS hard-plumbed system. He was not certain whether he saw the filter drawer ever being used with the alleged AFS hard-plumbed system. *Id.* at 90:2-7. When he testified to what he actually observed, he omitted any reference to filtration. *Id.* at 91:18-92:15.

22. Hadfield was uncertain whether there were one or two pumps in the AFS hard-plumbed system. *Id.* at 38:7-11. Hadfield was even uncertain of how the pump depicted in the photographs, Brown Decl., Ex. L, was connected in the system. Brown Decl., Ex. D at 36:4-14.

23. Hadfield did not testify to whether there were valves in any of the pipe lines of the AFS hard-plumbed system. With respect to the portable unit, he thought there were valves, but was not certain. *Id.* at 33:10-13.

24. Hadfield gave no testimony regarding how oil was delivered to the fryer with built-in filter in the AFS hard-plumbed system. Fryers with built-in filters are sold as stand-alone units. Incorporation of such a fryer into the AFS hard-plumbed system would have required modifications to the fryer. Duke Decl. ¶ 10. Hadfield never

described how the fryer had been modified to incorporate it into the AFS hard-plumbed system. Nor did Hadfield ever suggest or imply that the AFS hard-plumbed system contained a trigger valve with a nozzle that was used to meter oil to the fryer. See Brown Decl., Ex. D.

#### **IV. The Testimony by Hadfield Lacks Credibility**

##### **A. There Are Inconsistencies in Hadfield's Testimony**

25. Hadfield testified that O'Connor was hired by AFS in the early 1980's and that Perez was hired in the '86-'87 timeframe. *Id.* at 22:10-23:12. O'Connor actually was hired in 1988 and Perez in 1990. Brown Decl., Ex. G at 7; Ex. F at 7, 20.

26. There were other inconsistencies in the testimony of Hadfield. Hadfield testified that he saw a single hard-plumbed installation, which was at a Wendy's in La Habra, California. Brown Decl., Ex. D at 77:24-78:22; 79:2-79:2-7. The Wendy's hard-plumbed installation, according to Hadfield, was a "prototype." *Id.* at 39:18-40:8. Oilmatic subpoenaed Wendy's for information on the Wendy's at which an installation of the hard-plumbed system allegedly occurred. Brown Decl., Ex. J. Wendy's responded to the subpoena by stating that it didn't have any record of the restaurant in La Habra that was the subject of Oilmatic's subpoena. Brown Decl., Ex. K. Thus, there is no physical evidence that a AFS hard-plumbed system ever was installed at a Wendy's.

27. Hadfield testified that the La Habra Wendy's used what was, or looked like, a Frymaster fryer with the AFS hard-plumbed system. Brown Decl., Ex. G at 47:25-48:11. Hadfield was shown a copy of a patent directed to a Frymaster fryer. Hadfield testified that Fig. 2 of the Frymaster patent depicts the same basic structure that was used

for the hard-plumbed system at Wendy's. *Id.* at 86:22-88:16; Brown Decl., Ex. M.

However, Frymaster has never supplied its fryers to Wendy's. Duke Decl. ¶ 7. Hadfield did not discuss whether any modifications had been made to the fryer he claims to have seen, the hard-plumbed system disclosed in the Sherratt patent would require modification to accommodate such a fryer. Duke Decl. ¶ 10.

28. Hadfield testified that every restaurant he went into during the time period for the installation as Wendy's in La Habra was using a fryer with a built-in filter. Brown Decl., Ex. D at 47:25-48:11; 49:16-50:17; 89:10-22. His testimony is implausible given the relative infrequency of use of filters, with fryers with built-in filters being even less frequently used during the mid-'80s. Duke Decl. ¶ 8. Fewer than 2 in 10 fryers sold by Frymaster during the mid-80's contained a built-in filter. *Id.*

29. Hadfield affirmed that the hard-plumbed unit installed at Wendy's was configured as in Fig. 1 of the Sherratt patent. Brown Decl., Ex. D at 57:24-58:16; 85:3-15. Hadfield testified that the AFS hard-plumbed system incorporated the pump whose photographs were marked as Exhibit 2 to his deposition. *Id.* at 38:19-39:6; Ex. L. However, it would not have been feasible to construct a system as in Fig. 1 of the Sherratt patent and use the pump of Ex. 2. The pump depicted in the photographs is a vacuum pump that pumps air, not oil. Duke Decl. ¶ 9. A system configured as in Fig. 1 and using Ex. 2 of the deposition for a pump would not be operative because it would not pump oil. *Id.*



**B. Hadfield Is Not a Disinterested Party**

30. AFS was formed by James Sherratt and his cousin Lowell Sherratt. Brown Decl., Ex. G at 13-15, 17-18. They jointly owned and operated AFS. *Id.* AFS ceased as a business in about 1990. *Id.* at 68-69. As part of dividing up the assets of the business, Lowell Sherratt acquired rights to the Sherratt patent. *Id.* at 76. Hadfield works for Lowell Sherratt. *Id.* Hadfield has known James Sherratt for thirty years. *Id.* at 15.

31. Hadfield agreed to meet with Oilmatic's CEO Michael Allora and its attorney. That meeting occurred in Hadfield's office approximately five weeks before November 28, 2006, the date of his deposition. *Id.* at 73-75. As of the time of the meeting, Hadfield was under the impression that it was in his employer's interest to establish early use of the AFS hard-plumbed system. *Id.* at 77. During the meeting, Hadfield gave Oilmatic his recollections of the AFS hard-plumbed system. *Id.* at 75. It is reasonable to infer that his recollections may have been influenced by his desire to protect the interests of his employer, whom he believed owned the Sherratt patent. *Id.* at 77.

32. In contrast with Hadfield's willingness to discuss his recollections with Oilmatic, Hadfield refused to do the same with representatives of RTI. RTI made repeated attempts to talk with Hadfield. None met with success because Hadfield chose not to return RTI's calls or respond to the messages that counsel for RTI left on Hadfield's phones. Torvik Decl. ¶¶ 2-7.

33. Counsel for Oilmatic attempted to elicit testimony from Hadfield that it might not otherwise have obtained with properly formed questions. Counsel for Oilmatic

persisted in asking the witness leading questions throughout the deposition, notwithstanding the objections of counsel for RTI. See Brown Decl., Ex. D at 28, 31, 32, 34, 35, 38, 39, 49, 54, 56, 57, 66, 108.

STERNS & WEINROTH

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