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Argument

1. 'Piilu' is the taxonomic and generic name for a specific cultivar of *Clematis*.

The Royal Horticulture Society ("RHS"), as the International Registration Authority charged with the specific responsibility of registering taxonomic names for new cultivars of *Clematis*, registered 'Piilu' as a cultivar name. (See Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment ("Brief" or "Brf.") Ex. 2 at 253.) As discussed in the Brief at pp.1-3, the RHS used the *International Code of Botanical Nomenclature* and the *International Code of Nomenclature for Cultivated Plants* to register 'Piilu' as the generic name for a particular cultivar of *Clematis*.¹ Basically, *Clematis* 'Piilu' was set aside as the taxonomic name for a cultivar to give the worldwide community a uniform way to identify a specific plant.² As a result, 'Piilu' is ineligible for registration as a federal trademark or service mark under T.M.E.P. § 1202.12. This fact alone compels summary judgment.

Nevertheless, Applicant attempts to minimize the registration of *Clematis* 'Piilu' as a cultivar in a number of ways.³ First, Applicant argues that 'Piilu' does not appear in the "right" databases. For example, Applicant at one point erroneously states that the RHS does not list 'Piilu' "anywhere in its plants keyword database." (Pride of Place Plants, Inc.'s Opposition to Motion for Summary Judgment ("Opposition" or "Opp.") at p.16 n.19.) As another example, Applicant renames T.M.E.P. § 1202.12's examples of "sources of evidence," choosing instead to

¹ Given the unambiguous identification of *Clematis* 'Piilu' as a registered cultivar name in *The International Clematis Register and Checklist 2002* (Brf. Ex. 2 at 253), Applicant's statement that "Opposer's exhibits do not show PIILU used as a cultivar name" is ridiculous. (See Pride of Place Plants, Inc.'s Opposition to Motion for Summary Judgment at 10.)

² Walters Gardens notes that Applicant is unable to provide a generic name for the cultivar(s) of *Clematis* sold in association with PIILU. (See Brf. Ex. 14, Interrog. #3 (Applicant did not know the taxonomic, cultivar, common, or commercial name for the cultivar(s) of *Clematis* sold using PIILU).)

³ When asked "where and how to register a new cultivar of *Clematis* in order to establish a biological and generic name," Applicant stated that "it does not know the answer to this interrogatory." (See Reply Brf. Ex. 21, Interrog. 17.) Despite its professed ignorance regarding *Clematis* cultivar registration, Applicant apparently believes that e-mailing a paragraph entitled "notification of name change" is sufficient to establish and even change the generic name for a *Clematis* cultivar. (See Brf. Ex. 17 (purporting to unilaterally change the taxonomic identity of the 'Piilu'/PIILU cultivar by e-mail).)

characterize them as “specific verified cultivar name databases.” (*See* Opp. at 15.) Second, Applicant incorrectly concludes that events outside the United States are irrelevant to its attempt to register PIILU. (*See* Opp. at 16.) The doctrine of foreign equivalents and the cases implementing it expose this mistake. The following subsections of this Brief address and expose the futility of these attacks.

A. *Applicant’s Misleading Database Arguments*

Applicant makes a number of disingenuous arguments regarding databases that do not identify *Clematis* ‘Piilu’ as a cultivar name. For example, the Opposition at p.16 n.19 states that the RHS “does not list PIILU anywhere in its plants keyword search database.” (*See also* Opp. at 23.) In support of this claim, Applicant cites Opposition Exhibit B-8, an internet printout of a search for “piilu” in the RHS’s “Plant Selector” database.⁴ Though “piilu” does not appear in that database, a search for the term in the “Plant Finder” database yields a citation to *Clematis* ‘Piilu’ as a registered cultivar. (*See* Reply Brf. Ex. 20: Declaration of Richard Harper at ¶ 39 and Ex. 20-A (Plant Finder query for “piilu”).) Applicant argues that ‘Piilu’ does not appear “anywhere in [the RHS’s] plants keyword search database” by citing the newer and narrower Plant Selector database, but ignores the ‘Piilu’ entry in the broader “Plant Finder” index (listing available types of plants). Instead of qualifying its claim, Applicant exaggerated the significance of its cited search and falsely claims that ‘Piilu’ is not listed anywhere in the RHS’s “plants keyword search database.” (*See* Reply Brf. Ex. 20-A.)

Applicant also distorts the importance of several other databases. T.M.E.P. § 1202.12 specifies that an examining attorney should conduct an “independent investigation of any evidence that would support a refusal to register, using sources of evidence that are appropriate for the particular goods specified in the application...” § 1202.12 (emphasis added). Section 1202.12 then identifies, using the “e.g.” signal, several examples of “sources of

⁴ The Plant Selector database, labeled “new” at the RHS website, was created to determine what plants are best-suited for a garden based on characteristics such as climate and soil type. (*See* Opp. Ex. B-8.)

evidence.” Applicant points to the fact that *Clematis* ‘Piilu’ does not appear in any of the sources expressly listed as examples to argue that ‘Piilu’ is not a cultivar. (See Opp. at 11 ¶ 6.) Applicant’s claim ignores the fact that the “sources of evidence” identified by § 1202.12 were general examples, and not necessarily the best source for a “particular” inquiry. Since § 1202.12 addresses “varietal and cultivar names” for all seed and plant marks, the “sources of evidence” listed as examples were understandably very broad in their scope. Applicant incorrectly identifies these potential sources of evidence, including the plant patent records of the USPTO, as “specific verified cultivar name databases” without bothering to document the basis for this conclusion. (See Opp. at 15.) The USPTO’s plant patent information clearly is not a “specific verified cultivar name database.” On the contrary, § 1202.12 recommends using sources “that are appropriate for the particular goods specified in the application.” Since a cultivated type of *Clematis* plant is at issue, the most appropriate source of evidence would be a database or list concentrated on cultivars of *Clematis*. The RHS, as the International Registration Authority for cultivars of *Clematis*, is clearly the best resource “for this particular good.”

B. Foreign Evidence that ‘Piilu’ is Generic

Applicant brashly states that Walters Gardens submitted evidence “from everywhere in the world except the United States.” (Opp. at 16.) Applicant misstates the facts unless New York, Oregon, Ohio, Michigan, New Jersey, Kansas, and South Carolina seceded from the Union. (See, e.g., Brf. Exs. 6-9 (NY), 7-2 & 7-7 (OR), 7-3 & 7-13 (OH), 7-5 & 7-12 (MI), 7-10 (NJ), 7-16 (KS), and 11 (SC).) Applicant also ignores newspaper articles from the Alexandria, Louisiana-based *Daily Town Talk* and *The Star-Ledger*, based in Newark, New Jersey. (See Brf. Exs. 9-5 & 9-6.) Finally, Applicant concludes that the American Clematis Society, based in Irvine, California, is a foreign source. (See Brf. Ex. 6-2.) Quite simply, a significant amount of Walters Gardens’ evidence comes from the United States.

In addition to domestic sources, Walters Gardens properly cites foreign evidence for additional support. Applicant announces that “any evidence of foreign use of applicant’s mark is irrelevant in opposition proceedings” on its way to arguing that a number of Opposer’s exhibits are irrelevant. (See Applicant’s Objection to Evidence Submitted by Walters Gardens (“Objection” or “Obj.”) at 4.) Applicant’s misstatement of the law is obvious in light of the doctrine of foreign equivalents. Although the courts do not appear to have considered this precise set of cultivar-related facts before, instructive cases exist.

In *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 445, 54 U.S.P.Q.2d 1497 (5th Cir. 2000), the court held that the term “chupa” was a generic Spanish word for lollipop when addressing the strength of the CHUPA CHUPS mark. The court reasoned that even though “chupa” translated to “to lick” or “to suck,” the word “chupa” was still generic if it signified “lollipop” in foreign countries. 210 F.3d at 444. ‘Piilu’ is not just synonymous with a specific cultivar of *Clematis* in foreign nations like Great Britain and Holland, but around the entire world (including the U.S.). Under *Enrique Bernat*, ‘Piilu’’s generic meaning (for a cultivar of *Clematis*) in foreign countries clearly is relevant to PIILU’s registrability. See *id.* at 445 (“the policy of international comity has substantial weight in this situation”).

Similarly, *Otokoyama Co. Ltd. v. Wine of Japan Import, Inc.*, 175 F.3d 266, 272, 50 U.S.P.Q.2d 1626 (2d Cir. 1999), held that evidence that OTOKOYAMA was generic for a particular type of sake in Japan was relevant to the mark’s eligibility for registration in the U.S. The court took an expansive view of the doctrine of foreign equivalents:

Generic words for sub-classifications or varieties of a good are similarly ineligible for [federal] trademark protection.... A word may also be generic by virtue of its association with a particular region, cultural movement, or legend.

Id. at 271 (internal citations omitted). In other words, the foreign understanding of a word may constitute a generic description even if the foreign word does not translate into a generic English word. The *Otokoyama* court expressly rejected the argument that “the meaning of the term ‘otokoyama’ in Japan is not relevant to this action.” *Id.* at 271-72. The court specifically approved the defendant’s right to introduce evidence of meaning and usage from another country to prove a mark was ineligible for registration in the U.S. *See id.* at 272. Like “otokoyama” for sake, ‘Piilu’ generically identifies a specific type of *Clematis*. Unlike “otokoyama,” ‘Piilu’ has generic meaning to a worldwide audience, including the U.S., rather than a single country.

The establishment of a taxonomic (and therefore generic) name for a specific plant must necessarily be an international effort in order to create any uniformity. If American courts grant trademark rights without regard for the remainder of the world, the resulting confusion in the global economy is obvious. The *Enrique Bernat* court explained:

because U.S. Companies would be hamstrung in international trade if foreign countries granted trademark protection to generic English words, the U.S. reciprocates and refuses trademark protection to generic foreign words.

Id. at p.443 (citing *In re Le Sorbet, Inc.*, 228 U.S.P.Q. 27, 31, 1985 WL 71953 (T.T.A.B. 1985)).

The plant market is an international one that depends on uniformity of taxonomic nomenclature to ensure its proper function. (*See* Brf. at 1-2 & 4-6.) To allow individuals in any country to override the international treaties and taxonomic conventions would achieve little more than creating marketplace confusion.

2. Applicant’s statements and documents prove that ‘Piilu’ is a cultivar name.

The statements of Applicant and the Kivistik family provide some of Opposer’s best evidence that ‘Piilu’ is the name of a cultivar of *Clematis*.⁵ While some of Applicant’s

⁵ Applicant’s attempts to dismiss the Kivistik family’s statements as inadmissible hearsay statements (e.g., Obj. at 4) do not square with the fact than Applicant claims its right in PIILU came from the

actions since January of 2001 indicate Applicant's wish to convert PIILU into a U.S. trademark, the majority of Applicant's and the Kivistik family's statements treat *Clematis* 'Piilu' as a cultivar name.⁶ For instance, Applicant's statement on p.8 of its Opposition, that "the mark PIILU is almost always denoted with an explicit 'TM' notice or encased within double quotes," is contradicted by the corresponding citation for support.⁷ Additionally, a number of Applicant's interrogatory responses illustrate the shell game Applicant is playing with its use of 'Piilu' as a cultivar name. This section of the Reply Brief looks some of Applicant's statements that corroborate, if not independently prove, Walters Gardens' case.

Exhibit 15 to Walter's Gardens' Brief provides some great examples of Applicant treating 'Piilu' as a cultivar name. In the September 17, 1998 letter on Applicant's letterhead, Mr. Sorenson (the president of Pride of Place Plants) thanks a representative of Wayside Gardens for inquiring about Applicant's press releases. (See Brf. Ex. 15.) After discussing the opening of Eastern European markets after the Cold War, Sorenson writes:

Kivistiks. For example, Applicant did not produce a written agreement between itself and the Kivistik family, but claims that the "agreement" to grant Applicant its licensing rights came via conversations and e-mail with the family. (See Brf. Ex. 14, Interrog. 4; Opp. Ex. C ¶ 4.) Furthermore, Aili Kivistik identifies herself as the "owner" and "breeder" of "Piilu" in documents produced by Applicant. (See Brf. Ex. 13.) Exhibit A to the Opposition also confirms the Kivistik family's ownership of the cultivar. (See Opp. Ex. A (POP196) (the Kivistik family calls the plant "our *Clematis* cultivar").)

⁶ On p.21 of the Opposition, Applicant states that Aili Kivistik has used "PIILU" since 1992 without providing a citation or documentation. Though the Kivistiks have used 'Piilu' since as early as 1988, Walters Gardens has yet to see any evidence of the Kivistiks using the term as a trademark before 2002.

⁷ At p.8 n.2 of its Opposition, Applicant cites various documents for support of its claim that the term "piilu" is "almost always" denoted with a trademark disclaimer. (See also Opp. at 22 n.52.) A review of Applicant's cited exhibits demonstrates that Exhibits 6-4, 6-5, 6-7, 7-2, 7-3, 7-6, 8-1, 9-1, 9-2, 9-3, 9-6, 11-1, 11-2, and 11-3 use 'Piilu' within single quotes and without trademark notice. Two additional cited exhibits, 7-10 and 9-4, use Piilu without any quotations or trademark notice. In sum, 14 of the 18 exhibits Applicant references contradict the claim that Applicant attempts to substantiate.

When documents reference Uno Kivistik as the cultivator of the first *Clematis* 'Piilu', this does not equate to a TM notification. On the contrary, the unique single quotation marks surrounding the name (i.e., 'Piilu'), usually following the italicized species name (i.e., *Clematis*), clearly designates a cultivar name according to accepted taxonomic conventions. (See Brf. at 2.) Furthermore, the fact that Mr. Kivistik is identified as the first breeder of 'Piilu' does not mean that Mr. Kivistik, who died in 1998, is being identified as the commercial source for 'Piilu'. Citing to the same unresponsive exhibits, Applicant suggests that a reference to 'Piilu', followed by the identification of cultivar's deceased inventor, equates to identifying the plant's commercial source. (See Opp. at 9 (citing the same 14 exhibits).) This is wrong.

Consequently, species and cultivars became available not seen prior to this exploration. **Clematis Piilu** is an excellent example of a great find from the region of Astonia [sic]. I will send to you, photos and promotion of all three listings. It is our hope to sell to you or your chosen growers, liners of these cultivars to promote in your annual catalogue mailing.

(*Id.* (underlined emphasis added).) No reference is made to ‘Piilu’ as a trademark anywhere in the letter, and the very next sentence of the letter affixes a ™ notification to a different plant.

(*See id.*) Applicant’s “Press Release,” faxed to Wayside Gardens 41 minutes earlier that same day, similarly identifies “Clematis ‘Piilu’” with single quotes, without a trademark notice, and despite providing a ™ notice for two other marks on the same page. (*See id.*) The final part of Exhibit 15 is another one of Applicant’s summaries for “Clematis ‘Piilu’” that uses single quotes and does not provide a trademark notice.⁸ The combination of the date (September of 1998), the “single-quotes” cultivar convention used (e.g., ‘Piilu’), the express reference to ‘Piilu’ as a “cultivar,” and the use of ™ notices elsewhere on the same page prove Applicant’s knowledge that ‘Piilu’ is a cultivar name.

Applicant’s discovery responses also bolster Walters Gardens’ case. First, Applicant admits that it is “using PIILU as a trademark in association with the sale and promotion of one type of cultivar of Clematis.” (*See* Reply Brf. Ex. 21, Interrog. 8.) Yet, when asked to identify the “genus, species, subspecies, varietal, cultivar, common, and commercial names, if any, for the cultivar of *Clematis* sold and promoted in association with the PIILU mark,” Applicant responded that it “does not know the answer to this Interrogatory Request.” (*See* Brf. Ex. 14, Interrog. 3.) If PIILU is only used for a single cultivar, and Applicant cannot provide another name for that cultivar, how does Applicant identify the cultivar being sold in

⁸ Despite Applicant’s repeated use of “Clematis ‘Piilu’” in Exhibit 15, Applicant objected and refused to answer a number of Walters Gardens’ interrogatories because it claimed that the phrase “...Clematis ‘Piilu’” is an “unintelligible phrase prevent[ing Applicant] from formulating an answer....” (*See, e.g.,* Reply Brf. Ex. 21: Applicant’s Response to Opposer’s First Set of Interrogatories at Interrog. 11.)

connection with PIILU?⁹ Even if Applicant contradicts its admission that only one cultivar of *Clematis* is sold in association with PIILU, the fact that Applicant cannot provide another name of any kind indicates that there is no other name for what it is selling. One cannot have a trademark brand if there is no generic description for the item being sold.

3. Walters Gardens provides ample admissible evidence in support of its motion.

Walters Gardens provided admissible evidence justifying summary judgment.¹⁰ T.B.M.P § 528.05(a) instructs a party to attach discovery responses and printed publications as exhibits to the brief for summary judgment. The T.B.M.P. goes on, in § 528.05(c) and § 528.05(e), to discuss these two types of evidence. For discovery responses, T.B.M.P. § 528.05(c) cites 37 CFR 2.127(e)(2) and instructs:

an answer to an interrogatory, or a document or thing produced in response to a request for production...will be considered by the [T.T.A.B.] if any party files, with the party's brief...a copy of the interrogatory and answer thereto...or a copy of the request for production and the documents or things produced in response thereto....

Brief Exhibit 4 (POP115, POP194-95, POP202-03, and POP221), Exhibit 13 (POP217), Exhibit 14 (Response to Opposer's Second Set of Discovery Requests), and Reply Brief Exhibit 21 each meet this criterion and are therefore admissible.

⁹ By contrast, the Opposition declares (without citation) that it sells various cultivars using the PIILU mark. (See Opp. at 8; compare Opp. Ex. C ¶7.) If true, this clearly contradicts Applicant's discovery response as well as the Applicant's and the Kivistik family's consistent use of 'Piilu' to describe a particular plant. (See, e.g., Brf. Ex. 15 (Applicant identifying 'Piilu' as a cross between *Clematis* Hagley Hybrid and *Clematis* Mahrouyi); Brf. Ex. 4 (POP221) (Kivistik family confirming the same parentage).) This is part of Applicant's pattern of self-contradiction. (See, e.g., Opp. Ex. C ¶ 16 (Sorenson affidavit stating that "PIILU" plants have "received numerous awards") and Opp. at 21; compare Brf. Ex. 14, Interrog. 7 (Applicant stating that it does not know of any "awards, designations, or honors bestowed on the cultivar of *Clematis* sold and promoted in association with the PIILU mark").) Even if Applicant did use PIILU in association with several plants, it does not change the effect of T.M.E.P. § 1202.12 and only increases the likelihood of confusion for consumers ordering plants sold under PIILU.

¹⁰ At p.13 of the Opposition, Applicant falsely alleges that Walters Gardens submitted documents in violation of the parties' Protective Order. Applicant fails to even attempt to explain or substantiate this unfounded accusation.

Contrary to Applicant's claims, Brief Exhibits 1, 2, 9, 10, 11, 16, and parts of 6 and 7 clearly meet the definition of "printed publications" and are therefore admissible. For printed publications, 37 CFR 2.122(e) and T.B.M.P. § 528.05(e) require identification of "information sufficient to identify the source and date of the publication... and the pages to be read." For Brief Exhibits 1, 2, 6-1 (fully provided at Ex. 2), 7-1, 7-8, 7-12, 7-14, 9, 10, and 11, the necessary information was provided in the Brief's "List of Exhibits," the corresponding text of the Brief, and by the attached exhibit. Taken together, these three sources of information easily meet the self-authentication standard for offering printed publications as evidence under part 2.122(e) and § 528.05(e). Thus, these exhibits are also admissible.

To the extent that portions of Brief Exhibits 6, 7, and 8 are *not* self-authenticating or otherwise admissible, the attached Declaration of Richard Harper confirms what the documents represent and when they were obtained. (*See* Reply Brf. Ex. 20.) In other words, for each of the referenced exhibits, the website and date already identified on each page is verified as the correct source and date. (*See id.*) Furthermore, the printouts provided accurately reflect the web page content. (*See id.*)

Brief Exhibits 15 and 17 are clearly self-authenticating and admissible.¹¹ Despite the obvious implications of Applicant's failure to produce these documents, they easily satisfy the self-authentication standards of Fed. R. Evid. 901 and 902. Brief Exhibit 15 is printed on Applicant's letterhead, contains Applicant's signature, shows the facsimile header for Applicant's business on it, and contains claims and information unique to Applicant. (*See* Brf. Ex. 15.) Similarly, Brief Exhibit 17 came from Mr. Sorenson's recognized e-mail account and attempts to take the uniquely self-serving step of renaming a plant he claims proprietary rights in.

¹¹ Notably, neither document was identified or produced to Walters Gardens despite its Second Set of Interrogatories (Nos. 3, 5, 6, & 8) and Requests for Production (Nos. 1, 2, & 3), which expressly ask for this information and these documents. (*See* Brf. Ex. 14.) But since both exhibits were sent to Applicant and respond to Applicant's discovery requests, they are also admissible under T.B.M.P. 528.05(c) as well. (*See* Reply Brf. Ex. 23: Opposer's Responses to Applicant's First Set of Document Requests, at Requests 2-8, 10-11, 15, 17-19, & 28.)

(See Brf. Ex. 17.) To further address this issue, the attached Supplemental Affidavit of Clarence Falstad confirms the authenticity of Brief Exhibits 15 and 17. (See Reply Brf. Ex. 22.) Coupled with the fact that Applicant does not deny the contents of these extremely prejudicial documents, these documents clearly came from Mr. Sorenson and easily provide the necessary indicia of authenticity.

To the extent that any of Applicant's objections to the original Falstad Affidavit (Brf. Ex. 5) merit a response, the Supplemental Affidavit attached as Reply Brief Exhibit 22 addresses those concerns.

Conclusion

For these reasons, Walters Gardens respectfully requests that the USPTO grant its Motion for Summary Judgment and deny Applicant's registration of PIILU.

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5. On September 02, 2003, I visited the Internet site at <http://www.clematis.hull.ac.uk/clemdetail.cfm?dbkey=374> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-4.

6. On August 28, 2003, I visited the Internet site at http://www.clematis.com.pl/wms.wmsg.php/3271.html&plant_number=349 and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-5.

7. On September 03, 2003 I visited the Internet site at <http://hortiplex.gardenweb.com/plants/nph-ind.cgi?name=Piilu&f=d> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-6.

8. On September 03, 2003, I visited the Internet site at <http://homepage.ntlworld.com/laumas/history5.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-7.

9. On September 03, 2003, I visited the Internet site at <http://21.183.telia.com/~u183096/listan/vaxter.doc> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-8.

10. On September 03, 2003, I visited the Internet site at www.waysidegardencenter.com/pdf/perennials.pdf and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-9.

11. On September 03, 2003, I visited the Internet site at <http://www.chiritan.net/garden/woody.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 6-10.

12. On August 28, 2003, I visited the Internet site at www.holesonline.com/pdfs/priceguide2003.pdf and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-1.

13. On August 28, 2003, I visited the Internet site at <http://www.joycreek.com/150-411-1.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-2.

14. On August 28, 2003, I visited the Internet site at <http://www.paradisegarden.com/paradise/shop/product.-php?id=PGC0056> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-3.

15. On August 28, 2003, I visited the Internet site at <http://www.rideauwoodlandramble.com/vines.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-4.

16. On August 28, 2003, I visited the Internet site at <http://gardencrossings.com/Clematis/clematis%20Web%20Pages%202003/CLEMATIS%20'piil%20u'> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-5.

17. On August 28, 2003, I visited the Internet site at <http://centrecommons.com/200044.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-6.

18. On September 03, 2003, I visited the Internet site at <http://www.greergardens.com/clematis.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-7.

19. On September 03, 2003, I visited the Internet site at <http://www.hortico.com/download/per2003.pdf> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-8.

20. On September 03, 2003, I visited the Internet site at <http://www.saska.demon.co.uk/hybridns.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-9.

21. On August 28, 2003, I visited the Internet site at http://www.thompson-morgan.com/plants/uk/product_1747.html and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-10.

22. On September 03, 2003, I visited the Internet site at <http://www.caddicks-clematis.co.uk/cat7.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-11.

23. On September 03, 2003, I visited the Internet site at www.bordines.com/catalog/pdf/ClematisVines.pdf and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-12.

24. On October 24, 2003 and , I visited the Internet site at <http://www.grimesseeds.com/cat/assort.pdf> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibits 7-13 and 7-14.

25. On September 03, 2003, I visited the Internet site at http://www.thorncroft.co.uk/Thorncroft_Clematis_Catalogue_Page_P_Q.htm and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-15.

26. On September 03, 2003, I visited the Internet site at http://www.arnoldsgreenhouse.com/perennial_vines.htm and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibits 7-16 and 7-17.

27. On September 03, 2003, I visited the Internet site at http://www.taylorsclematis.co.uk/shop_search_index.php and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-18.

28. On September 04, 2003, I visited the Internet site at <http://website.lineone.net/~andy.irving/hawthornes/featured.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 7-19.

29. On August 28, 2003, I visited the Internet site at <http://www.britishclematis.org.uk/ccpiilu.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-1.

30. On September 02, 2003, I visited the Internet site at http://personal.inet.fi/koti/lofgren/Clematis/flowering_1999.htm and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-2.

31. On August 28, 2003, I visited the Internet site at <http://www.mgovens/freeserve.co.uk/clematis%20piilu.htm> and printed the contents of the site.

A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-3.

32. On August 28, 2003, I visited the Internet site at <http://www.esveld.nl/htmldiaen/c/clpiil.htm> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-4.

33. On September 02, 2003, I visited the Internet site at <http://overthegardengate.net/garden/archives/template.asp?linkid=1510> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-5.

34. On September 03, 2003, I visited the Internet site at <http://www.btinternet.com/~rickstevens/cp/pinks.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-6.

35. On August 28, 2003, I visited the Internet site at http://www.exoticgardening.com/plants_i_am_growing_in_my_test_g.htm and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-7.

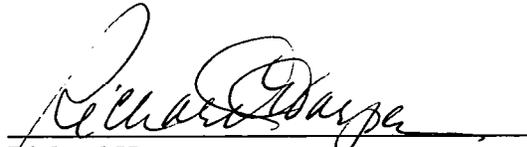
36. On August 28, 2003, I visited the Internet site at <http://davesgarden.com/j/viewentry/28551/> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-8.

37. On August 28, 2003, I visited the Internet site at <http://forums.gardenweb.com/forums/load/clematis/exch032234458679.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-9.

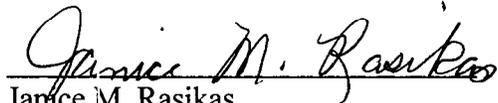
38. On August 28, 2003, I visited the Internet site at <http://www.sinunkaupat.fi/~pirkkoja/2clematisgallery.html> and printed the contents of the site. A true and correct copy of the above-identified Internet site was attached to the previously submitted Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment as Exhibit 8-10.

39. On January 5, 2004 I visited the Internet site at <http://www.rhs.org.uk/rhsplantfinder/plantfinder.asp> and searched the term "Piilu." That same day, I printed the contents of <http://www.rhs.org.uk/rhsplantfinder/plantfinder.asp>, <http://www.rhs.org.uk/rhsplantfinder/PFGenera.asp> and <http://www.rhs.org.uk/rhsplantfinder/plantfinder2.asp?crit=piilu&Genus=Clematis>. True and correct copies of the above-identified Internet sites are attached hereto as Exhibit A.

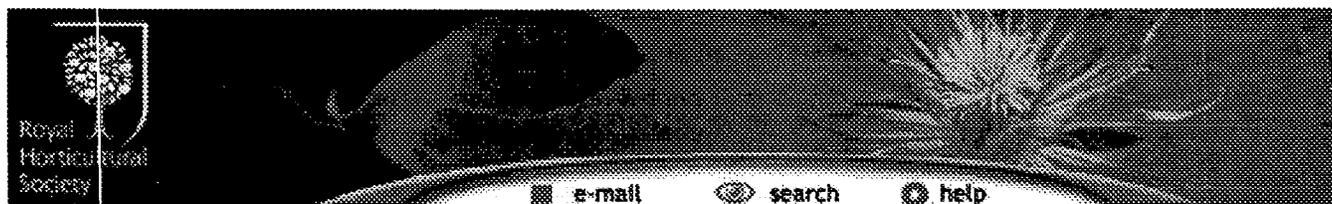
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is executed on January 6, 2004 in Grand Rapids, Michigan.


Richard Harper

Subscribed and sworn to before me this
6th day of January, 2004.


Janice M. Rasikas
Notary Public, Kent County, Michigan
My Commission Expires:05/18/07

#799831

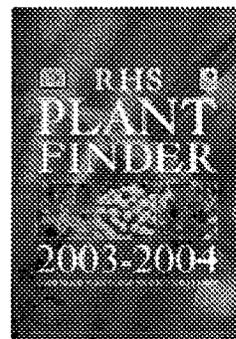


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TO SEARCH Enter the name of the plant For example: Camellia japonica 'Angel' - remember **not** to include the inverted commas around the cultivar name.

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- Naming regulations
- Finding Fruit and Vegetables by their botanical name
- Nomenclature Notes - further information about some complex or confusing names
- Classification of Genera - codes for subdivisions of large genera
- Reverse synonyms - list to find from which genus an unfamiliar plant name has been cross-referred.
- Collector's references - abbreviations following a plant name, refer to the collector(s) of the plant

Bibliography

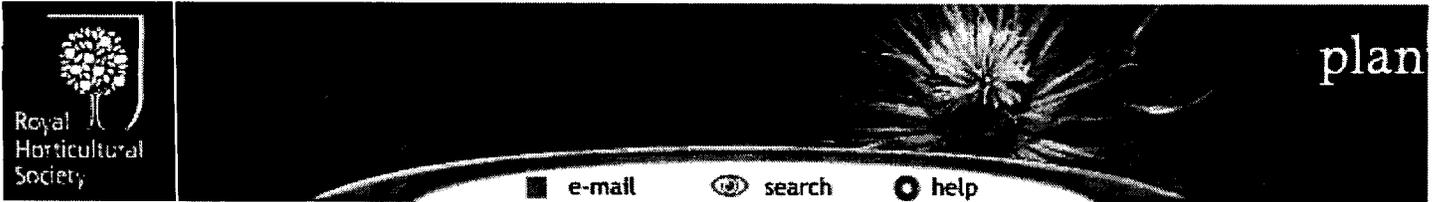
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Summary of records matching **piilu** in the RHS Plant Finder:
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Clematis: 1 record

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| Plant Name | Availability |
|-----------------|----------------|
| <i>Clematis</i> | |
| 'Piilu' (P) | 16 supplier(s) |

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JUN 02 2003

| | | |
|------------------------------|---|------------------------------------|
| Walters Gardens, Inc., |) | |
| |) | |
| |) | Opposer,) OPPOSITION NO. 91153755 |
| |) | |
| v. |) | Mark: PIILU |
| |) | Serial No.: 76/201,447 |
| Fride of Place Plants, Inc., |) | Filed: January 29, 2001 |
| |) | |
| |) | Applicant.) |
| |) | |

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: WALTERS GARDENS, INC.

RESPONDING PARTY: PRIDE OF PLACE PLANTS, INC.

SET NUMBER: One

Applicant Pride of Place Plants, Inc. ("POPP" or "Applicant" or "Responding Party"), based on its current knowledge, understanding and belief of the facts and the information available to it on the date on which these verified responses are made, hereby objects and responds as follows to Opposer Walters Gardens, Inc.'s ("Walters" or "Opposer" or "Propounding Party") First Set of Interrogatories:

GENERAL OBJECTIONS

The following objections are deemed to apply to each of Propounding Party's Interrogatory Requests:

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1. Investigation and discovery on behalf of Responding Party are continuing and are not complete. This response is based upon the investigation and discovery conducted to date and is not intended as a complete summary of the facts upon which Responding Party will rely at trial or at other hearings in this action. As discovery and investigation proceed, facts, witnesses and evidence may be discovered which are not set forth in this response but which may be responsive to the Interrogatories set forth below.

Responding Party expressly reserves the right to offer into testimony in this matter further or different information or evidence concerning matters inquired into by the Interrogatories which are subsequently discovered. In addition, facts and evidence now known may be imperfectly understood and, in good faith, may not be included in this response. Responding Party reserves all rights to conduct investigation and discovery with reference to, or offer into testimony in this action, any and all facts, witnesses and evidence, notwithstanding the absence of references to such facts, witnesses and evidence.

2. Responding Party objects to Interrogatory Nos. 1 through 21 to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including without limitation, the attorney-client privilege, or the work product doctrine. Such information shall not be disclosed in response to Propounding Party's Interrogatories, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection which may attach thereto.

3. Responding Party objects to Interrogatory Nos. 1 through 21 to the extent that they purport to impose upon Responding Party obligations beyond those imposed under the Federal Rules of Civil Procedure.

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4. Responding Party objects to Interrogatory Nos. 1 through 21 to the extent that they request proprietary or trade secret information of third parties, or information that Responding Party is under an obligation to a third party to not disclose.

5. Responding Party objects to Interrogatory Nos. 1 through 21 to the extent that they contain sub-parts which should have been propounded as separate and distinct Interrogatories.

6. Responding Party further objects to Interrogatory Nos. 1 through 21 on the ground that each and every one is overly burdensome and oppressive to the extent that it seeks facts and information equally available to Applicant Propounding Party.

INTERROGATORY NO. 1:

If you answer to Admission #1 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 1 :

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is overly broad and unduly burdensome and, therefore, at least in part, seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, Responding Party states that PIILU is not the name of a Clematis cultivar used in the United States. Responding Party has not yet

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identified all of the witnesses it intends to use at trial. However, Responding Party contemplates using the testimony of Rick Sorenson of Pride of Place Plants during the testimony period of this proceeding.

INTERROGATORY NO. 2:

If your answer to Admission No. 2 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 2 :

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...is the 'International Registration Authority' for the genus Clematis..."

Subject to and without waiving its objections, Responding Party states that the Royal Horticulture Society of Great Britain does not have the authority to create Clematis cultivar names for use in the United States. Responding Party has not yet identified all of the witnesses it intends to use at trial. However, Responding Party contemplates using the testimony of Rick Sorenson of Pride of Place Plants during the testimony period of this proceeding.

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INTERROGATORY NO. 3:

If you answer to Admission No. 3 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 3 :

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...in the International Clematis Register..." Responding Party further objects to this request in that it is duplicative of previous requests.

Subject to and without waiving its objections, Responding Party states that the International Clematis Register cannot create a cultivar name for use in the United States. Responding Party has not yet identified all of the witnesses it intends to use at trial. However, Responding Party contemplates using the testimony of Rick Sorenson of Pride of Place Plants during the testimony period of this proceeding.

INTERROGATORY NO. 4:

If you answer to Admission No. 4 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and

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- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 4 :

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...applies to cultivar of Clematis which is distinguishable from other varieties, cultivars, or subspecies of the Clematis genus." Responding Party simply does not understand the referenced Request For Admission.

INTERROGATORY NO. 5:

If you answer to Admission No. 5 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 5:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to the referenced Request for Admission because it assumes facts not established and has incorporated incorrect legal conclusions. Responding Party further objects to this request in that it is duplicative of previous requests.

Subject to and without waiving its objections, Responding Party states that PIILU is not a cultivar name used in the United States. Propounding Party's incorporation of incorrect assumptions and conclusions into its requests necessarily requires a denial by Responding Party.

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INTERROGATORY NO. 6:

If you answer to Admission No. 6 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 6:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is not possible to respond to the referenced Request For Admission due to the fact that no exhibits were attached to the request. Responding Party further objects to this request in that it is duplicative of previous requests.

INTERROGATORY NO. 7:

If you answer to Admission No. 7 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 7:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to the referenced Request for Admission

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because it assumes facts not established and has incorporated incorrect legal conclusions. Responding Party further objects to this request in that it is duplicative of previous requests.

Subject to and without waiving its objections, Responding Party states that PIILU is not a cultivar name used in the United States. Propounding Party's incorporation of incorrect assumptions and conclusions into its requests necessarily requires a denial by Responding Party.

INTERROGATORY NO. 8:

If you answer to Admission No. 8 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 8:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the term "...describe..." Responding Party further objects to this request in that it is duplicative of previous requests.

Subject to and without waiving its objections, Responding Party states that PIILU is not a cultivar name used in the United States. Responding party is using PIILU as a trademark in association with the sale and promotion of one type of cultivar of Clematis. Responding Party has not yet identified all of the witnesses it intends to use at trial.

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However, Responding Party contemplates using the testimony of Rick Sorenson of Pride of Place Plants during the testimony period of this proceeding.

INTERROGATORY NO. 9:

If you answer to Admission No. 9 is anything other than an unqualified admission, please state the:

- a. complete legal and factual basis for your denial of the request for admission;
and
- b. identity of each witness that you intent to call in support of your denial.

RESPONSE TO INTERROGATORY NO. 9:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to the referenced Request for Admission because it assumes facts not established and has incorporated incorrect legal conclusions. Responding Party further objects to this request in that it is duplicative of previous requests.

Subject to and without waiving its objections, Responding Party states that PIILU is not a cultivar name used in the United States. Propounding Party's incorporation of incorrect assumptions and conclusions into its requests necessarily requires a denial by Responding Party.

INTERROGATORY NO. 10:

Identify the genus, species, subspecies, varietal, cultivar, trademark, common, and commercial names, if any, for Clematis 'Piilu'.

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RESPONSE TO INTERROGATORY NO. 10:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

INTERROGATORY NO. 11:

Describe the origin of Clematis 'Piilu', including the identity of the breeder, when the cultivar was created and where it was created.

RESPONSE TO INTERROGATORY NO. 11:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

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INTERROGATORY NO. 12:

Please identify how, when, and where Clematis 'Piilu' was first introduced to: (a) somebody outside the Kivistik family; (b) members of the Clematis growing or selling community; and (c) the general public.

RESPONSE TO INTERROGATORY NO. 12:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

INTERROGATORY NO. 13:

Please describe the first sale of the Clematis 'Piilu' by POPP including (without limitation) when such sale was made, where, to whom, and the price?

RESPONSE TO INTERROGATORY NO. 13:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous,

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and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

INTERROGATORY NO. 14:

Please describe every attempt by Applicant to secure registration, official recognition, an organizational designation, or legal right (including trademark and patent) for Clematis 'Piilu', including (without limitation) what was sought, when was it sought, who sought it, from whom was it sought, how was it sought, and what was the result?

RESPONSE TO INTERROGATORY NO. 14:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

INTERROGATORY NO. 15:

Please identify any known awards, designations, or honors that have been bestowed on Clematis 'Piilu'.

RESPONSE TO INTERROGATORY NO. 15:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions.

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Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

INTERROGATORY NO. 16:

When was a symbol or disclaimer giving notice of a claimed trademark right in PIILU first affixed to the word 'Piilu'?

RESPONSE TO INTERROGATORY NO. 16:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein.

Subject to and without waiving its objections, Responding Party states that it began using PIILU as a trademark in 1998.

INTERROGATORY NO. 17:

Specify where and how to register a new cultivar of Clematis in order to establish a biological or generic name.

RESPONSE TO INTERROGATORY NO. 17:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein.

Subject to and without waiving its objections, Responding Party states that it does not know the answer to this interrogatory.

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INTERROGATORY NO. 18:

Has POPP or another representative of the Kivistik family sought a registration, trademark, or patent for a type of Clematis under the 'Kivso' designation? If so, please identify the applicant, what type of protection was sought, when was it sought, and identify any amendments made to the application.

RESPONSE TO INTERROGATORY NO. 18:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein.

Subject to and without waiving its objections, Responding Party states that it has not sought protection for a type of Clematis under the "Kivso" designation.

INTERROGATORY NO. 19:

Identify all officers and directors of POPP giving their full name on record, personal address, and telephone number.

RESPONSE TO INTERROGATORY NO. 19:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein.

Subject to and without waiving its objections, Responding Party states that the identity of all officers and directors are:

Rick Sorenson

Melinda Sorenson

674 Cromarty Avenue

Sidney, British Columbia, Canada V8L 5G6

Opposition No. 91153755

(250) 656-7963

INTERROGATORY NO. 20:

Identify the first time Clematis 'Piilu' was imported into Canada and exported to the United States by POPP.

RESPONSE TO INTERROGATORY NO. 20:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous, and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

INTERROGATORY NO. 21:

Identify the first sale of Clematis 'Piilu' in the United States and/or its territories by POPP.

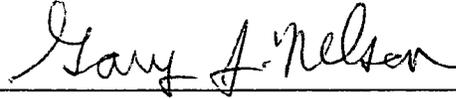
RESPONSE TO INTERROGATORY NO. 21:

Responding Party incorporates by reference General Objections Nos. 1 through 6 as if fully stated herein. Responding Party further objects to this request on the grounds that it assumes facts that have not been established and incorporates incorrect legal conclusions. Responding Party denies that PIILU is used as a cultivar name in the United States. Responding Party further objects to this request on the grounds that it is vague, ambiguous,

Opposition No. 91153755

and unintelligible as to the phrase "...Clematis 'Piilu'" The use of this unintelligible phrase prevents Responding Party from formulating an answer to the interrogatory.

Respectfully submitted,



Date: May 29, 2003

Gary J. Nelson
CHRISTIE, PARKER & HALE, LLP
350 West Colorado Boulevard, Ste. 500
Post Office Box 7068
Pasadena, California 91109-7068
(626) 795-9900

Opposition No. 91158755

VERIFICATION

I, Rick Sorenson declare that I am an officer of Pride of Place Plants, that I have read the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** and that I either know of my own knowledge or am informed and believe that the matters stated therein are true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 28, 2003, at Sidney, British Columbia, Canada.


Rick Sorenson

GJN/bbl

GJN PASFOR880.1-5/28/03 1:42 PM

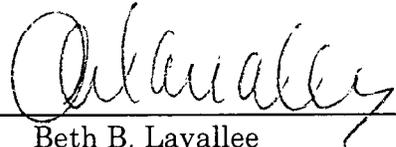
Opposition No. 91153755

CERTIFICATE OF SERVICE

I certify that on May 29, 2003, the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** is being served by mailing a copy thereof by first-class mail addressed to:

Barry C. Kane
Miller, Johnson, Snell & Cummiskey, PLC
250 Monroe Avenue, N.W., Suite 800
P.O. Box 306
Grand Rapids, Michigan 49501-0306
(616) 831-1770

By: _____



Beth B. Lavalley
Christie, Parker & Hale, LPP
P.O. Box 7068
Pasadena, CA 91109-7068
(626) 795-9900

GJN/bbl

EBL FAS506830.1-*5/29/03 11:43 AM

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|-------------------------|
| WALTERS GARDENS, INC., |) | OPPOSITION NO. 91153755 |
| |) | |
| Opposer, |) | |
| |) | |
| vs. |) | |
| |) | |
| PRIDE OF PLACE PLANTS, INC., |) | Mark: PIILU |
| |) | Serial No.: 76,201,447 |
| |) | Filed: January 29, 2001 |
| Applicant. |) | |
| |) | |
| |) | |
| <hr style="width: 30%; margin-left: 0;"/> | | |

SUPPLEMENTAL AFFIDAVIT OF CLARENCE H. FALSTAD

I, Clarence H. Falstad, having been duly sworn, state as follows:

1. I previously executed an Affidavit in support of Opposer Walters Gardens, Inc.'s Motion for Summary Judgment. This Affidavit supplements my previous one and is submitted with Walters Gardens' Reply Brief.

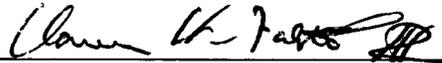
2. I am competent to testify about the matters stated in this Affidavit as well as the previous Affidavit because they are based upon my personal knowledge, unless expressly stated to the contrary.

3. Through written and verbal correspondence with Chris Hanson of Wayside Gardens, as well as my examination of the documents at issue, I understand that in September of 1998, Rick Sorenson (the President of Applicant Pride of Place Plants) sent by facsimile the commercial/promotional documents attached to Walter Gardens Summary Judgment Brief as Exhibit 15 (and attached hereto as Exhibit A) to Wayside Gardens. According to Mr. Hanson and the information on the documents themselves, these documents were transmitted to Wayside Gardens on the dates and times that are indicated by the facsimile "header" on each of the respective documents.

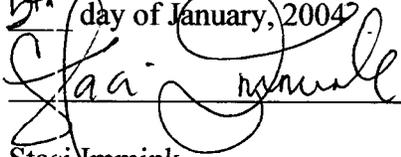
4. Through written and verbal correspondence with Chris Hanson of Wayside Gardens, as well as my examination of the documents at issue, I understand that on September 19, 2003, Rick Sorenson e-mailed the "Notification of Name Change" attached to the Summary Judgment Brief as Exhibit 17 (and attached hereto as Exhibit B) to Wayside Gardens.

5. Through my work with the International Cultivar Registration Authority for Hostas, I have organized and contributed to programs for the registration of new cultivars of Hostas. When an International Cultivar Registration Authority (e.g., the RHS with respect to

Clematis cultivars) registers a new cultivar, it does so to establish a generic, taxonomic name for that specific plant. The primary purpose for International Cultivar Registration Authorities is to provide one taxonomic name for a specific plant that can be used generically and internationally.


Clarence H. Falstad, III 1/5/04

Subscribed and sworn to before me this
5th day of January, 2004



Staci Immink
Notary Public, Ottawa County, Michigan
My Commission Expires: October 23, 2006

#781712v4

STACI IMMINK
Notary Public, Ottawa County, MI
My Commission Expires Oct. 23, 2006



Fine new plant introductions

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA
PHONE: (250) 656-7963 • FAX: (250) 655-0306

September 17, 1998.

Mr. John Elsley
520 Bryte St.,
Greenwood, South Carolina
29649 U.S.A.

Attention: Mr. John Elsley
Wayside Gardens

Dear John;

Thank you for your inquiry further to our **Press Releases**.

Grow you own Perennial Bouquet™ came as a result of the study of the European cut flower industry and the possible applications to the North American Trade. There are a number of major firms in Europe that grew specific perennial cultivars for the florist industry and these products became a valuable commodity at the Aalsmeer Flower Auction, for example.

As more and more end user magazines began to show the transfer of garden ornamentals to in home situations, I felt that we did need to point out to the general public the multiple value they can receive from the original purchase.

The Clematis is an interesting story as well. As the Cold War had receded a few colleagues viewed the collections specific to the genus of Clematis in these regions not particularly accessible to nurseryman's observations over any period of time. Consequently, species and cultivars became available not seen prior to this exploration. **Clematis Pillu** is an excellent example of a great find from the region of Estonia.

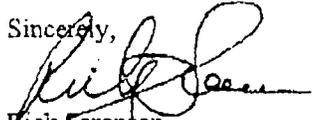
I will send to you, photos and promotion of all three listings. It is our hope to sell to you or your chosen growers, liners of these cultivars to promote in your annual catalogue mailing.

Hydrangea serrata 'Golden Sunlight'™ has been accepted quite well throughout the trial periods in Europe and to avoid a long description about the values of this plant, I will forward to you photo's and labels of this cultivar as well.

I have these for sale ourselves as 4inch round pot, one year liners priced at \$3.00 Canadian funds per unit.

Thank your for your interest in the above.

Sincerely,


Rick Sorenson.



Five new plant introductions

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA
PHONE: (250) 656-7963 • FAX: (250) 655-0306

PRESS RELEASE

Following the introduction of **Hydrangea 'Golden Sunlight'**, **Pride of Place Plants Inc.**,TM of Sidney British Columbia is proud to announce the second and third and fourth plants in the collection of:

Plants for the MillenniumTM

Clematis 'My Angel' (Tangutica group) - a *New Special* color within the Clematis assortment. The cross of Clematis orientalis var. orientalis x Clematis intricata is a climber to 2.5 m high. Leaves oblong and bluish-green. Flowers 1-7 together, nodding inside yellow, outside purple, with creamy colored edge, four tepals. The seed heads are white and numerous. Flowering time August, September and October. This unique small-flowered Clematis should not be without a special spot in your garden.

Clematis 'Blue Light' - A double sport from Clematis Mrs. Chalmondeley and a beautiful addition to the range of large flowering Clematis. This new variety produces double flowers both in spring and autumn. The flowers are a pale blue-violet to pale blue in color. An exceptionally free flowering variety producing masses of flower from June to August/September. A strong growing climber reaching up to 2 meters in height. This 'Blue Light' will make a fine addition to your garden. Can also be planted in tub or pot.

Clematis 'Piilu' (Patens Group) - A recent introduction from Astoria. **Piilu** is a cross between C. Hagley Hybrid and Clematis Mahrouyi, a climber to about 2 m in height. Leaves ovate, tapered, dull dark green, flowers light-purplish pink with wide dark purplish-red bars, six tepals overlapping at the base. First flowers in May-June are double after which single. **Piilu** is a large flowered Clematis with flowers very numerous on one year plants. It is very winter hardy.

Continue to watch for our ***Plants for the Millennium***TM if any should catch your interest please feel free to contact us.



Fine new plant introductions

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G5 CANADA
PHONE: (250) 656-7963 • FAX: (250) 655-0306 •

Clematis 'Piilu' (Patens Group)

- ❖ A recent introduction from Astoria. **Piilu** is a cross between C. Hagley Hybrid and Clematis Mahrouyi,
- ❖ A climber to about 2 m in height. Leaves ovate, tapered, dull dark green, flowers light-purplish pink with wide dark purplish-red bars, six tepals overlapping at the base.
- ❖ First flowers in May-June are double after which single.
- ❖ **Piilu** is a large flowered Clematis with flowers very numerous on one year plants.
- ❖ It is very winter hardy.

Kissling, Kurt A.

To: Kissling, Kurt A.

Pride of Place
Plants
<rsorenson@pacific
coast.net>

To: rsorenson@pacificcoast.net
cc:
Subject: Name Change

09/19/2003 01:05
PM

Notification of Name Change

Clematis ' Kivso ' " Piilu " t.m. to Clematis ' Little Duckling ' " Piilu " t.m. After lengthy discussion with the breeders family and their advisors, it has been decided that name changes are in order. The English equivalent to the Estonian word Piilu is Little Duckling. The trade name will remain "Piilu"t.m., and a Patent Application will be submitted as soon as possible. The Breeders in turn will register the cultivars with-in "The Kivistik Collection" of Clematis with the English translation from the Estonian language. For the sake of consistency please change to the above in all invoicing, catalog descriptions and web-sites under your control. I will be in further contact with you when the application is accepted for processing. Thank-You Rick

Rick
Pride of Place Plants Inc.
www.prideofplaceplants.com
www.icangarden.com/neweden
rsorenson@pacificcoast.net
1 (250) 656-7963

WG0237

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|------------------------------|---|-------------------------|
| WALTERS GARDENS, INC., |) | OPPOSITION NO. 91153755 |
| |) | |
| Opposer, |) | |
| |) | |
| vs. |) | |
| |) | |
| PRIDE OF PLACE PLANTS, INC., |) | Mark: PIILU |
| |) | Serial No.: 76/201,447 |
| |) | Filed: January 29, 2001 |
| Applicant. |) | |
| |) | |
| |) | |

**OPPOSER'S RESPONSES TO APPLICANT'S
FIRST SET OF DOCUMENT REQUESTS**

General Objections

Opposer Walters Gardens, Inc. objects to each of Applicant Pride of Place Plants, Inc.'s (PoPP's) Document Requests by stating:

1. Opposer objects to these Requests to the extent that they seek production of privileged materials. Any disclosure of privileged information is inadvertent and shall not operate as a waiver of a privilege.
2. Opposer objects to these Requests to the extent that they are oppressive, duplicative, overly burdensome, or seek irrelevant or un-discoverable information.
3. Opposer objects to these Requests to the extent that they violate the applicable rules of evidence or procedure.
4. Opposer objects to these Requests to the extent that they seek the immediate production of all described documents because Opposer's investigation is ongoing. As required, Opposer will supplement these Responses as necessary.

5. Opposer objects to these Requests to the extent that they seek the production of documents that are not in its possession or control.
6. Opposer objects to these Requests to the extent that they are vague or ambiguous.

DOCUMENT REQUEST NO. 1

All documents identified in your responses to "Applicant's First Set of Interrogatories to Opposer."

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO.2

All documents and things supporting, or refuting, your allegations set forth in paragraph one of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 3

All documents and things supporting, or refuting, your allegations set forth in paragraph two of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO.4

All documents and things supporting, or refuting, your allegations set forth in paragraph four of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO.5

All documents and things supporting, or refuting, your allegations set forth in paragraph five of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO.6

All documents and things supporting, or refuting, your allegations set forth in paragraph six of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO.7

All documents and things supporting, or refuting, your allegations set forth in paragraph seven of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO.8

All documents and things supporting, or refuting, your allegations set forth in paragraph eight of the Notice of Opposition.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 9

All documents, specimens and things referring or relating to Opposer's use of PIILU in the United States in association with live plants.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 10

All documents, specimens and things referring or relating to any Third Party use of PIILU in the United States in association with live plants.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 11

All documents and things that relate to the conception, development, selection, adoption, use or intended use of PIILU in the United States by Opposer or any Third Party.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 12

All documents and things referring or relating to Opposer's communications regarding the validity or enforceability of Applicant's PIILU mark.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 13

An original of every label, tag, decal, imprint, packaging, wrapper, container, display, or other means by which Opposer has used PIILU in association with live plants in the United States.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 14

An original of every label, tag, decal, imprint, packaging, wrapper, container, display, or other means by which any Third Party has used PIILU in association with live plants in the United States.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 15

To the extent not otherwise produced, an original of all sales, advertising, marketing and promotional material, including catalogs, advertising, brochures, print or broadcast advertisements, circulars, bulletins, point of purchase materials, posters, labels, cartons, packing material, trade letters and press releases referring or relating to use of PIILU by Opposer or any Third Party in the United States.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 16

Documents sufficient to show when you first became aware of: (a) Applicant; (b) any use by Applicant of Applicant's PIILU mark; and (c) Applicant's pending application for its PIILU trademark.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 17

All documents and things referring or relating to your knowledge or awareness at any time of Applicant or Applicant's PIILU mark.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 18

All documents and things containing any discussion of or report on Applicant or its business operations, specifically including any trade or periodical articles discussing the growth of success of any Applicant business, or prospectuses, annual reports, or promotional material issued by Applicant.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 19

All documents and things referring or relating to communications between Opposer and any third party regarding Applicant or Applicant's PIILU mark.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 20

All documents and things referring or relating to communications between Opposer and any third party regarding this proceeding.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 21

All documents and things referring or relating to any study, search, investigation, opinion or request for opinion referring or relating to PIILU, including without limitation all trademark and service mark search reports and results of any computer searches.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 22

All documents and things referring or relating to the registrability of Applicants PIILU mark.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 23

All surveys, market studies, opinion polls, or other sampling of attitudes or opinions referring or relating to PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 24

All documents and things referring or relating to the number of units sold and dollar volume of sales of each type of live plant sold by Opposer and allegedly referred to as PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 25

All documents and things referring or relating to the number of units sold and dollar volume of sales of each type of live plant sold by any Third Party and allegedly referred to as PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 26

All documents and things referring or relating to Opposer's advertising and marketing expenditures referring or relating to the sale or offering for sale of live plants allegedly referred to as PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 27

All documents and things referring or relating to any Third Party advertising and marketing expenditures referring or relating to the sale or offering for sale of live plants allegedly referred to as PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 28

All documents and things referring or relating to the channels of distribution of the goods and services with which Opposer or any Third Party allegedly uses to sell live plants referred to as PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 29

All documents and things referring or relating to the alleged type or class of consumers and/or ultimate purchaser of live plants referred to as PIILU.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 30

To the extent not otherwise produced, all documents and things created before the filing of Opposer's Notice of Opposition that refer or relate to Applicant or Applicant's PIILU mark.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 31

Documents sufficient to evidence the geographic extent to which Opposer claims it and others have used the PIILU name as a generic reference to live plants.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 32

All documents not specified above, but which relate, refer to, or are identified in Opposer's answers to Applicant's First Set of Interrogatories to Opposer or which were referred to or used by Opposer in preparing such answers.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 33

To the extent not otherwise produced, all documents and things on which you intend to rely in this proceeding.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

DOCUMENT REQUEST NO. 34

To the extent not already produced, documents, things and specimens sufficient to show how Opposer and any Third Party is allegedly using PIILU as a generic reference to live plants in the United States.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

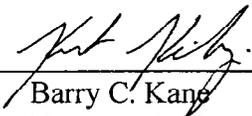
DOCUMENT REQUEST NO. 35

All documents or things relating or referring to any objection made by Opposer of any kind relating to another's use or attempts to register PIILU as a mark, or any other mark that includes any phonetically similar term, including but not limited to any opposition or cancellation proceedings before the United States Trademark Trial and Appeal Board, or lawsuits filed in any State Court or any Federal District Court or any other type of proceeding not expressly identified above, anywhere in the world.

ANSWER: Subject to Opposer's objections, the responsive documents that are not privileged are available for PoPP's inspection at the offices of Opposer's attorneys.

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
Attorneys for Opposer Walters Gardens, Inc.

Dated: September 11, 2003

By 
Barry C. Kane
Kurt A. Kissling

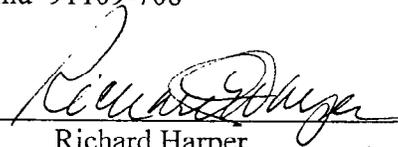
Business Address:
250 Monroe Avenue, N.W., Suite 800
PO Box 306
Grand Rapids, Michigan 49501-0306
Telephone: (616) 831-1700

CERTIFICATE OF SERVICE

I certify that on September 11, 2003, **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS** was served by mailing a copy in first-class mail addressed to:

Gary J. Nelson
CHRISTIE, PARKER & HALE, LLP
350 West Colorado Boulevard, Ste. 500
P.O. Box 7068
Pasadena, California 91109-708
(626)795-9900

By



Richard Harper

Miller, Johnson, Snell & Cummiskey, PLC
250 Monroe, N.W., Ste. 800
P.O. Box 306
Grand Rapids, MI 49501-0306

TJAB

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
Attorneys and Counselors

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JOHN F. KORYTO
FRANK M. SCUTCH III

CHARLES E. SCHOLL
CAROLINE M. DELLENBUSCH
ELIZABETH WELCH LYKINS
SUSAN GRACE DAVIS
MARK P. HUNTING
JENNIFER L. JORDAN

D. ANDREW PORTINGA
JOHN M. NOVAK
PATRICK J. SULLIVAN
RICHARD E. HILLARY II
DWIGHT K. HAMILTON
TANIA E. FULLER
NATHAN D. PLANTINGA
SARAH K. WILLEY
SUSAN H. SHERMAN
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MICHAEL E. STROSTER
MELISSA NECKERS
ROBERT W. O'BRIEN
NICHOLAS J. COUSOS
KURT A. KISSLING
WENDY M. PARR
SALVATORE W. PIRROTTA
ROBERT D. WOLFORD
MARCUS W. CAMPBELL
ROBERT M. DAVIES
CATHERINE A. TRACEY
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STEVEN J. LAURENT
MARTIN T. SHEPHERD

OF COUNSEL
JAMES A. ENGBERS
RONALD B. STEPHENS
HARRY CONTOS, JR.

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(1916-1982)
ROBERT A. JOHNSON
(1910-1978)
ARTHUR R. SNELL
(1916-1995)
JOHN W. CUMMISKEY
(1917-2002)
RICHARD F. HOOKER
(1926-1970)

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250 MONROE AVENUE NW, SUITE 800
PO BOX 306
GRAND RAPIDS, MICHIGAN 49501-0306

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 MERITAS LAW FIRMS WORLDWIDE

January 6, 2004



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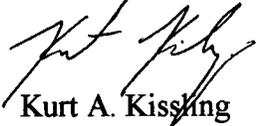
Re: Walters Gardens, Inc. v. Pride of Place Plants, Inc.
Opposition No. 91153755; Mark: PII LU
Serial No.: 76/201,447; Filed: January 29, 2001

Dear Sir or Madam:

Enclosed for filing please find an original Reply Brief of Walters Gardens, Inc. in Support of its Motion for Summary Judgment and Attached Exhibits, as well as Proof of Service regarding same.

Very truly yours,

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.

By 
Kurt A. Kissling

KAJ/rh
Enclosures
cc: Gary Nelson
Walters Gardens, Inc.

#789000