

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

FLOWERS BAKERIES BRANDS, INC.,)	
)	
Opposer,)	Opposition No. 91167151
)	
v.)	Serial No. 78/432,642
)	
INDEPENDENT MARKETING)	Published 9/20/2005
ALLIANCE LP,)	
)	
Applicant.)	

TTAB

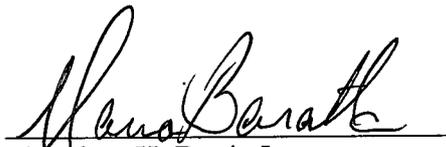
OPPOSER'S NOTICE OF FILING TRIAL TESTIMONY

Pursuant to Trademark Rules of Practice 2.123(h) and 2.125(c), Opposer Flowers Bakeries Brands, Inc. hereby files the enclosed testimony deposition of Janice Anderson and the exhibits annexed thereto.

The confidential portion of the deposition transcript has been redacted and is being filed under separate cover.

This 28th day of September, 2007.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on this date, the foregoing document was served upon Applicant by depositing a copy thereof in the United States mail as first class mail, postage pre-paid, addressed as follows:

Martyn B. Hill, Esq.
Pagel, Davis & Hill, P.C.
1415 Louisiana, 22nd Floor
Houston, Texas 77002

This the 28th day of September, 2007.


Olivia Maria Baratta

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

3 FLOWERS BAKERIES BRAND,)
4 INC.,)

5 Opposer,)

6) In re: Serial No.
7) 78/432642

8 v.)

9 INDEPENDENT MARKETING)
10 ALLIANCE LP,)

11) Mark: COBBLESTONE MARKET

12) Opposition No. 91167151

13 Applicant.)

14) Volume II

15 -----

16 Deposition of JANICE ANDERSON, called by
17 the OPPOSER, taken pursuant to the Georgia Civil
18 Practice Act, was reported by Elzbieta A. Sirois,
19 Certified Court Reporter, at the Quality Inn &
20 Suites Conference Center, 15138 US Highway 19 South,
21 Thomasville, Georgia, commencing at approximately 9
22 a.m. on the 18th day of September 2007 and concluded
23 on the same date.
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A P P E A R A N C E S

For the Opposers,
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Also Present: Bob Fontana, Robert D. Planck

PRELIMINARIES:

(Disclosure submitted to all counsel.)

DISCLOSURE

Deposition of Janice Anderson

STATE OF GEORGIA,
COUNTY OF TIFT:

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as an employee of Mixon Reporting Service, Inc.

Mixon Reporting Service, Inc., was contacted by the offices of Esquire Deposition Services.

Mixon Reporting Service, Inc., has made inquiry of Esquire Deposition Services, as to whether any contract prohibited by O.C.G.A. 15-14-37(a) and (b) exists regarding the taking of this deposition. Mixon Reporting Service, Inc., has been informed that no prohibited contract exists regarding the same.

Mixon Reporting Service, Inc., will charge its usual and customary fees regarding all orders placed in connection with this deposition, and a financial discount will not be given to any party in this litigation. An invoice for services provided will be sent to Esquire Deposition Services, by Mixon Reporting Service, Inc.

Dated this 18 day of Sept. 2007.

Elzbieta A. Sirois
Elzbieta A. Sirois, CCR-B-2605

Attorney for Plaintiff [Signature]
Attorney for Plaintiff [Signature]
Attorney for Plaintiff Holland C. Keils
Attorney for Defendant [Signature]
Attorney for Defendant _____
Attorney for Defendant _____



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JANICE ANDERSON,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY: MS. BARATTA

Q. My name is Maria Baratta. I'm here with Kilpatrick Stockton, and we're here on behalf of the opposer, Flowers Foods. This is going to be the deposition of Janice Anderson.

Janice, could you please state your name and complete title for the record.

A. Janice Anderson, vice president of marketing, Flowers Bakeries.

Q. Now, as you and I have discussed, the parties have agreed that we're going to rely on the prior discovery depositions that have been taken. So, there's going to be a lot of information that we're not going to go over again because that's already been covered.

Since that time, when we took the last deposition in August of 2006, has there been any change in your title or your job or your job responsibilities?

A. There hasn't been any change in my title, but I have additional responsibility in that

1 our R & D department now reports to me. And there
2 are two individuals that work in our R & D
3 department that are now in the marketing leadership.

4 Q. And have you been deposed since your
5 last deposition in this case in August of 2006?

6 A. No.

7 Q. Now, just as a reminder, the court
8 reporter needs you to answer verbally. So, if you
9 could say yes or no instead of nodding, that would
10 be helpful to all of us.

11 A. Okay.

12 Q. I'd like to show you this document.
13 It's been bates labeled as FBI 2393.

14 MS. BARATTA: Marty, I have a copy
15 for you.

16 MR. HILL: Okay. Thank you. We're
17 going to call these -- just go by bates number or
18 exhibit numbers?

19 MS. BARATTA: We can enter it as
20 Exhibit A in this deposition.

21 MR. HILL: Exhibit A, okay.

22 MS. BARATTA: And we'll provide you
23 with another set of copies or a full set of copies
24 of these.

25

1 (Anderson Exhibit 4 was marked for
2 identification by the Ms. Baratta.)

3 BY: MS. BARATTA

4 Q. Janice, if you could just tell us a
5 little bit about this document.

6 A. Well, what this represents is numbers
7 that have been pulled from our internal sales data
8 warehouse, and the sales numbers and the units are
9 for wholesale dollars, their actual units sold, net
10 units sold and wholesale dollars.

11 We look at our brands in terms of retail
12 so in order to get a retail value for these numbers,
13 you would divide them by .75 factor and look at the
14 retail value of the brand.

15 Q. What can you tell us about the sales
16 projections for the rest of 2007?

17 A. We anticipate that we'll end the year
18 somewhere in the neighborhood of 90 million retail
19 dollars. That is based on where we are after the
20 end of quarter two, and our anticipation of
21 additional marketing activity and new product
22 introductions we have scheduled for the balance of
23 the year. We expect to end the year at about
24 \$90 million.

25 Q. That's for Cobblestone Mill products

1 only?

2 A. That's correct, Cobblestone Mill
3 products only.

4 MS. BARATTA: And if I could also
5 just state, we're waiting on a couple of other
6 documents, so we may revisit sales once we have
7 those documents.

8 MR. HILL: Okay.

9 BY: MS. BARATTA

10 Q. With respect to food service sales, what
11 are the typical customers to whom Flowers sells its
12 products to in the foods service category?

13 A. That can vary significantly. We have
14 some food service sales that are local sandwich
15 shops. We have some food service sales that would
16 be used in a deli in a major supermarket, and then
17 we have some food service sales that go into larger
18 distribution. And all I'm representing right now is
19 Cobblestone Mill, not food service sales for Flowers
20 Foods or Flowers Bakeries.

21 So, our food service sales can vary
22 depending on location. It can vary depending on
23 route, but typically they can show up anywhere.
24 They're in government institutions. They're in
25 hospital cafeterias. They are in commissaries. So,

1 they can vary fairly significantly.

2 Q. So, the Cobblestone Mill products could
3 be offered in local sandwich shops, deli
4 supermarkets, larger distribution outlets, such as
5 hospital cafeterias, commissaries, and then I think
6 you also mentioned in government?

7 A. In government institutions.

8 Q. Government institutions?

9 A. Government offices, if you will.

10 Q. Is there anything else besides those?

11 A. Don't recall anything else right now.

12 There may be others, but nothing else comes to mind
13 right now.

14 Q. Moving to advertising. What can you --
15 what can you tell us about current advertising for
16 the Cobblestone Mill brand and products offered
17 under that brand?

18 A. We have a budget this year of about
19 \$600,000 to spend on the Cobblestone Mill brand.
20 That is a combination of packaging as well as we
21 have a fairly strong magazine advertising plan for
22 the last half of 2007. We will be advertising in
23 Paula Deen magazine, Cooking Light and Southern
24 Living.

25 And in conjunction with that, we've had

1 several road shows, if you will, where we have
2 participated in on-site Bar-B-Q events and cooking
3 events where we are a sponsor of a cooking show.

4 Q. You mentioned 600,000 budgeted for 2007
5 advertising?

6 A. That's correct.

7 Q. What were those, if you recall, what
8 were the advertising expenditures for 2006?

9 A. As I recall, Maria, the advertising for
10 2006 was in the neighborhood of 400,000.

11 Q. Now, you mentioned that one of the food
12 service providers would be a deli in a local
13 supermarket. What do you think -- do you think it
14 would have any impact if the Cobblestone Mill
15 products are offered in this deli supermarket or in
16 a supermarket and the Cobblestone Market products
17 are also offered in that deli in that supermarket?

18 A. I definitely believe that it would. If
19 I were a shopper not familiar with a Cobblestone
20 Market deli meat and saw it in a deli next to
21 Cobblestone Mill, I would certainly think there were
22 relationships.

23 In fact, I suppose the relationship not
24 unlike the fact that Sara Lee, who is a major bread
25 brand competitor to us also has an arm that sells

1 deli meats, and they have deli meats. So, it would
2 not be uncommon to see Sara Lee bread and Sara Lee
3 meats in a deli. So, it would stand to reason that
4 the Cobble -- there could be some confusion with
5 Cobblestone.

6 Q. We talked about the different food
7 service providers or food service customers. On a
8 more general basis, how would you describe
9 Cobblestone Mill customers, generally? Who would
10 that include?

11 A. From a retail standpoint?

12 Q. That would be -- would it include just
13 retailers or would it include anybody else?

14 A. The Cobblestone Mill customer, we look
15 at in terms of customers and consumers. The
16 customers, the major customers are retailers, the
17 Publix, the HEB's, the Kroger's of the world. Those
18 are the Cobblestone Mill major customers, and of
19 course within that there are Cobblestone Mill
20 consumers.

21 As far as the customers are concerned,
22 our Cobblestone Mill brand has very high
23 distribution among all of our customers. In other
24 words, when we go into the supermarket, we take
25 Nature's Own and Cobblestone Mill and Sunbeam and

1 White Wheat and Blue Bird and whatever our brands
2 may happen to be as part of the Flowers product mix.
3 Of course within that, the actual consumers are
4 segmented based on what their purchase habits are,
5 their income, the demographics.

6 (Mr. Davis exited the deposition room.)

7 A. The other side of that is that we may
8 also deliver Cobblestone Mill to the same
9 supermarkets I just listed, and they may choose to
10 use our bread in their deli. We would not sell
11 directly to their deli. They would make an internal
12 purchase and transfer product from the bread rack to
13 their deli for use in their deli.

14 Q. So the Cobblestone Mill brand then is
15 viewed by consumers which include not only retail
16 consumers, such as grocery store purchasers, but
17 also the grocery stores themselves who are
18 wholesalers?

19 A. Right.

20 MR. HILL: Objection. Leading.

21 BY: MS. BARATTA

22 Q. Now, you mentioned that for the grocery
23 stores, that if a product is offered in the grocery
24 deli then it would be purchased by the grocery
25 itself; is that correct?

1 A. That is correct with the exception of
2 Wal-Mart. And we created a deli program, we call it
3 a deli knee-board program for Wal-Mart, about three
4 or four months ago, and the brand is Cobblestone
5 Mill Selects, and it shows up only on the deli knee
6 board. It is not on the bread rack.

7 And it replaced a brand we had called
8 Artisan Mill that was on the deli knee board, but we
9 were not particularly successful with the Artisan
10 Mill brand, and we felt like the Cobblestone Mill
11 brand had better awareness. So, with Wal-Mart's
12 permission, we replaced Artisan Mill with
13 Cobblestone Mill Selects.

14 Q. When you say "the deli knee board", what
15 exactly does that mean?

16 A. That is, I guess that's a bakers term,
17 but that is the shelf in front of the deli. It
18 typically has chips, breads, other things that you
19 might buy in connection with a deli purchase.

20 Q. You mentioned that the Cobblestone Mill
21 brand is being used in some places instead of the
22 Artisan Mill brand; is that correct?

23 A. That is correct.

24 Q. What types of new products or any
25 expansion is being done with the Cobblestone Mill

1 brand right now?

2 A. The Cobblestone Mill brand has -- well
3 actually in about, I guess, six weeks we'll be
4 coming out with Cobblestone Mill stuffing for the
5 holidays. And then in 2008 we have a number of new
6 bun and roll products scheduled for introduction
7 during the year.

8 Q. Could you give us a list of the products
9 then, a complete list that would be offered under
10 the Cobblestone Mill brands both now and say within
11 the next six months or between now and 2008?

12 (Mr. Davis reentered the deposition
13 room.)

14 A. A list of everything we're selling now?

15 Q. Under the Cobblestone Mill brand.

16 A. That's an extensive list, and I probably
17 won't remember them all, but I can certainly give it
18 a shot.

19 MS. BARATTA: Actually, if we can go
20 off the record for just one moment.

21 (A discussion ensued off the record.)

22 BY: MS. BARATTA

23 Q. Let's strike the last question, and
24 instead, Janice, if you could just tell us the list
25 of products that currently is being offered under

1 the Cobblestone Mill brand.

2 A. Okay. We have three loaves of what we
3 refer to as half-ovals, which is Jewish rye,
4 sourdough and pumpernickel. Under the butter and
5 roll category, we have the Philly style hoagie. We
6 have three different sub rolls: A white, a wheat
7 and a multigrain. And by the way, our sub roll is
8 the number one sub in the United States.

9 We have a seeded sandwich roll, onion
10 roll, french bread, wheat baguettes, kaiser rolls,
11 bratwurst buns, hot dug buns. Under the breakfast
12 category we have English muffins, cinnamon raisin
13 bread, cinnamon bread, white bagels, multigrain
14 bagels, cinnamon raisin bagels. We have potato
15 bread, potato buns, potato rolls, Italian bread. I
16 probably have omitted something, but that's close to
17 all of them.

18 Q. It's a pretty long list. And would any
19 of those products be used in connection with
20 sandwiches --

21 A. Absolutely.

22 Q. -- and deli items?

23 A. Absolutely would be used in connection
24 with sandwich and deli. In fact, the sandwich
25 rolls, hoagies, onion rolls, kaiser rolls are

1 intended for a more upscale sandwich. That's who
2 their -- that's the way they're priced, and that's
3 who they're merchandised to.

4 (A discussion ensued off the record.)

5 (Bob Fontana and Robert D. Planck not
6 present in the deposition room.)

7 MR. HILL: I think we ought to go on
8 the record. You guys ought to say what you intend
9 on doing, both in terms of your documents and in
10 terms of discovery and in terms of the stipulation
11 in the confidentiality agreement, and then I will
12 lay out my position on it. And then it says we're
13 supposed to negotiate, which I'm happy to do.

14 MS. BARATTA: Okay.

15 MR. DAVIS: Do you want to negotiate
16 on the record?

17 MR. HILL: Well, first let's get the
18 record of where we are, because you guys have some
19 new items that have come up today, that as you
20 probably can tell, I'm not real happy about.

21 MS. BARATTA: We have some documents
22 that have just become available, recent documents,
23 that are relevant to some of the questions today and
24 might be responsive to some of the previous
25 discovery requests that we received, and we'd like

1 to start going through those documents.

2 Also for the record, I'd like to go back
3 and renumber the exhibit that we previously
4 referenced as Exhibit A as Anderson Exhibit Number
5 4, and we're just continuing from Janis's previous
6 discovery deposition.

7 MR. HILL: That's fine. So in her
8 previous deposition we had exhibits 1 through or A
9 through C or?

10 MS BARATTA: We had 1 through 3.

11 MR. HILL: 1 through 3, okay. So A
12 now becomes 4?

13 MS. BARATTA: Correct.

14 MR. HILL: I don't have any objection
15 to that renumbering. I think that makes sense.

16 Here are my issues on behalf of the IMA:
17 First, I never received a signed copy of the
18 stipulation of confidentiality or the
19 confidentiality agreement. I did sign it. I did
20 agree to it back in February of 2006.

21 When you called me last week, Maria, and
22 said that you didn't have a copy signed, I sent you
23 a copy. I take it that you signed it, because I see
24 it on your computer, and I assume you filed it with
25 the TTAB recently. I still haven't seen --

1 MS. BARATTA: We have filed and
2 served a copy.

3 MR. HILL: I have not seen it come
4 back yet, but I think I just sent it to you on
5 Friday, and then I had to get on a plane Monday and
6 come here. So, I'm not saying you didn't file it,
7 but the point is we've had this issue for -- since
8 2006, January or February of 2006, and it wasn't
9 until Friday that the issue comes up.

10 I'm still happy to have signed it
11 because I agreed to it back in 2006. I did not,
12 however, know that there was going to be any of
13 these kind of issues coming up today as to
14 attorneys-eyes only, as to my clients being able to
15 participate in the deposition testimony, one way or
16 the other. Nobody said anything about it.

17 Secondly, as to the documents and
18 extending discovery, you guys were outside of your
19 time frame. You were beyond it for taking trial
20 deposition testimony. I had agreed, though, to
21 extend the dates to try to schedule Ms. Anderson's
22 deposition until here in September, which is where
23 we are. What are we, September 17th today, 18th?

24 MS. BARATTA: 18th.

25 MR. HILL: So we scheduled those a

1 month ago because everybody was tied up in August or
2 whatever. So, I agreed with you on Friday last
3 week, yes, I'm not trying to trick you. I'm going
4 to be a person of my word. I will agree to sign an
5 extension so that you can take her deposition
6 testimony.

7 Otherwise, you guys would have been out
8 of time and you would have no case. I did what was
9 the right thing to do, but unfortunately, you guys
10 apparently have turned it around and now are saying
11 you can introduce documents which you've never
12 produced before.

13 About five minutes before I got on a
14 plane on Monday I received an e-mail from you,
15 Maria, which included as attachments, a number of
16 documents, that I did not and was not able to open
17 or see until I got here this morning.

18 And this morning you gave me a stack,
19 but you said those documents are not going to be
20 used for purposes of Ms. Anderson's trial deposition
21 testimony today. So, I object to those documents as
22 being introduced or used in this proceeding because
23 they weren't turned over to me until I was getting
24 on a plane on Monday and this thing is almost
25 two years old.

1 Then, in the middle of this hearing, you
2 guys have more documents that apparently were sent
3 to you by Flowers Bakery at midnight last night. I
4 think you had told me at 12:30 last night they sent
5 you additional documents; is that right?

6 MS. BARATTA: That's when we arrived,
7 and that's when we received the documents. That's
8 when counsel received the documents.

9 MR. HILL: Well, Flowers must not
10 think that this is very important to not be turning
11 over documents two years into a proceeding and
12 giving it to their lawyers at midnight on the day
13 before a hearing is to proceed.

14 So, I object to the introduction of any
15 of those documents or to the use of any of them.
16 And it's not a federal court. It's the TTAB, but
17 for a federal court, I'm pretty sure a federal judge
18 would not only exclude those documents but would
19 probably sanction Flowers for waiting to the last
20 minute to try to bring such documents in.

21 So, for those reasons, I don't intend on
22 talking about any of those documents today. And you
23 can get a ruling from the TTAB if you want.

24 Now, because the confidentiality was
25 agreed to a long time ago, if you can tell me what

1 part or what issues you want Ms. Anderson to talk
2 about, that you think are attorneys-eyes only so
3 much so that my clients who flew to Thomasville,
4 Georgia to participate in this hearing --

5 I got two people with me who are
6 representatives of the company who are happy to sign
7 whatever confidentiality agreement you want. They
8 are not competitors of Flowers. They buy product
9 from Flowers and resell it. Their participation is
10 important today.

11 You may not have known that I was going
12 to bring them with me, but it's an important matter
13 to them. And nobody that I know of told me that we
14 were going to talk about anything today that would
15 be so confidential they could not participate in the
16 hearing.

17 The confidentiality agreement does
18 contemplate certain documents could be marked as
19 attorneys-eyes only, but again, you can't bring
20 documents at the day of the hearing and say this is
21 going to be our evidence and raise these kinds of
22 issues.

23 So, if you want to describe what you
24 want her to testify about, just narrow it to
25 something that seems to make some kind of sense as

1 to attorneys-eyes only, then please describe it and
2 then I can object on the record and then we can try
3 to negotiate in good faith, which is what we're
4 required to do under the confidentiality agreement.

5 Can you tell me what it is she's going
6 to testify about? For the record, our clients -- my
7 clients were asked to leave the room, and they have
8 left the room while we're having this discussion; is
9 that correct?

10 MS. BARATTA: They were asked not to
11 return to the room. We have been on break. The
12 first -- going back to a couple of the comments you
13 made. We have no objection to their participation
14 at these depositions, the president and the director
15 of marketing of IMA, however, with respect to
16 certain confidential information, which we will
17 identify and discuss, we do have objections to them
18 being present for that part of the deposition.

19 We were not aware that they were going
20 to be here. Had we had any idea that they were
21 going to be here, we would be happy to discuss this
22 in advance, but we did not know that they were going
23 to be here until they walked in the room today.

24 You mentioned that we agreed to the
25 extension just recently, but that was actually

1 something that we verbally agreed to some time
2 before that, and it was only recently that we made
3 it of record.

4 MR. HILL: Right.

5 MS. BARATTA: But it had been
6 something that we had discussed and agreed to prior
7 to that.

8 MS. HILL: I agree the extension was
9 verbally agreed to for purposes of taking
10 Ms. Anderson's trial deposition testimony.
11 Otherwise, you'd be out of time, and I honored it.
12 You're right, we did come to that verbal agreement a
13 month ago, but nothing about documents coming in.

14 You have to admit, there was never a
15 discussion about any new documents being brought,
16 right? That's right. I'd like you to be as honest
17 as I have been, Maria.

18 MS. BARATTA: We agreed to extend the
19 trial testimony period.

20 MR. HILL: And nothing about any new
21 documents?

22 MS. BARATTA: And with respect to
23 your comment about some of the documents being --
24 this matter -- this being an issue for two years or
25 the stipulated protective order two years, many of

1 these documents which we have now, that recently or
2 that we are trying to produce today were not
3 available two years ago.

4 These are recent documents that might be
5 responsive to your discovery request that were not
6 available two years ago. They weren't in existence
7 two years ago. So there was no way, of course, to
8 produce them. We understand that you have every
9 right to object, and our interest is just to proceed
10 on the record with those objections.

11 MR. HILL: Well, I would rather
12 proceed than not proceed, because if we don't
13 proceed, then we have to come back and do this again
14 at a later time. And this thing has drug on long
15 enough, but I would like it to be clear that at no
16 time did I tell you in the last week or two that I
17 was extending the deadline to produce documents, nor
18 did you ask to be able to produce new documents;
19 isn't that true?

20 MS. BARATTA: We did not discuss the
21 production of documents.

22 MR. HILL: So wouldn't you think I'd
23 be surprised today to see a bunch of new documents?

24 MS. BARATTA: I couldn't answer that,
25 whether you'd be surprised or not.

1 MR. HILL: Do I look surprised?

2 MS. BARATTA: With respect to what
3 the documents discuss and why they're confidential
4 and attorneys-eyes only, they relate to proposed
5 advertising and marketing and product offerings
6 under the Cobblestone Mill brand that's proprietary
7 to our client and doesn't need to be shared with
8 IMA.

9 What we intend to cover that we would
10 like for the director of marketing and the president
11 to be excluded from that portion of the trial
12 testimony deposition only relates to that and we
13 don't expect it to take more than 5 to 10 minutes in
14 the entire deposition.

15 MR. HILL: I will object to them not
16 being here for it because there was no provision
17 made ahead of time nor discussion about it. I
18 understand I didn't specifically tell you my clients
19 were coming with me, although, actually I think I
20 did, because that's why we had -- we scheduled one
21 at least delay, because my clients were out of the
22 country, and that's why we couldn't do it in July,
23 and I think you were not available in August or else
24 your client was not available in August, which is
25 why we're now in September.

1 So, the whole reason we're doing it in
2 September is because of your clients availability
3 and my clients availability to sit here for your
4 client's trial testimony. But you're right, I did
5 not specifically tell you last week, I will have
6 client representatives with me. But at the same
7 time, you also did not tell me that there was going
8 to be any portion of this that was going to be
9 designated as attorneys-eyes only.

10 So, I object to that portion of the
11 testimony, and it makes it very difficult for me, if
12 I'm not as familiar with the food service industry
13 or the retail industry, to be able to compare and
14 contrast what the advertising is.

15 But with those objections on the record
16 and the objection of this whole area of testimony
17 because of the way it's handled and certainly the
18 objection to any documents being introduced at this
19 late date, I will agree to you -- with you to
20 proceed only for purposes of making a record.

21 And ultimately a ruling will be made as
22 to whether my objection is sustained or whether they
23 overrule my objection and allow either the
24 introduction of Ms. Anderson's testimony or the
25 introduction of documents that I have objected to,

1 both for their timeliness and for the fact that
2 they're outside the discovery period, and it
3 operates as a surprise and a prejudice to me and my
4 client, and without my client to participate to
5 review those documents, it makes it difficult for me
6 to cross-examine your client.

7 But with that, I would say if you have
8 five minutes worth of discussion about that, or 10,
9 let's proceed with just that category, and then we
10 can go back on the record for whatever else it is
11 that Ms. Anderson is going to testify about that
12 would not be this future marketing campaign. Is
13 that fair?

14 MS. BARATTA: To confirm, all of this
15 would be on the record. It would only be that
16 portion of it during which your clients would not be
17 present.

18 You mentioned going back on the record
19 after we discussed the confidential material, and
20 it's our intention that when we discuss it,
21 everything will be part of the record and in the
22 deposition transcript. It would only be that your
23 client representatives could not be present during
24 that particular portion of the deposition.

25 MR. HILL: Okay. I think we're

1 saying the same thing now. At one time I said we're
2 going to talk about this and then go off the record
3 and negotiate, but I think we've negotiated on the
4 record as Ted said, asked if that's what I was
5 looking for. We have successfully done that, I
6 guess. So, the negotiation ended that there's not
7 agreement. Is that fair?

8 MS. BARATTA: That would be fair.

9 MR. HILL: But in the interest of
10 time and not having to have everybody travel back to
11 Thomasville, Georgia for subsequent testimony,
12 you're going to proceed over the next five to
13 10 minutes to ask Ms. Anderson about future
14 advertising marketing as it relates to Cobblestone
15 Mill, and I am honoring your request that my clients
16 not be in the room so that we can get this testimony
17 taken care of.

18 And then we'll go back on the record --
19 I'm sorry. Then we'll take a break and then my
20 clients will return to the room, and we'll do
21 whatever else we need to do for purposes of her
22 trial testimony; is that fair?

23 MS. BARATTA: That's fair.

24 MR. HILL: Okay. Go ahead.

25 (A discussion ensued off the record.)

1

(CONFIDENTIAL TESTIMONY BEGINS)

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(SEALED UNDER SEPARATE COVER.)

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22 (CONCLUSION OF CONFIDENTIAL TESTIMONY.)

23 (A discussion ensued off the record.)

24 (Bob Fontana and Robert D. Planck

25 reentered the deposition room.)

1 MS. BARATTA: Marty, you already have
2 a set of the documents that we have that we'd like
3 to discuss today; is that correct?

4 MR. HILL: I don't know which
5 documents we're talking about.

6 MS. BARATTA: The smaller set of
7 documents that I handed to you during one of the
8 last breaks.

9 MR. HILL: Oh, I left them back with
10 you. I thought these were your secret documents.

11 MS. BARATTA: That's the set that
12 we're giving to you.

13 MR. HILL: Are these the secret
14 documents?

15 MS. BARATTA: What we're going to do
16 with these, we are probably -- a couple of the sales
17 documents are going to be indicated as
18 attorneys-eyes only. Unfortunately, we've just hand
19 numbered them for bates labeling right now, but
20 you're welcome to use that set today during the
21 deposition and then --

22 MR. HILL: So let's just go over.
23 You just handed me what's bates labeled, and I
24 didn't look because you've done it by hand, but I
25 assume you can count. So, it looks like it starts

1 with FBI 2394 and ends with FBI 2428; is that
2 consistent?

3 MS. BARATTA: I believe that's
4 correct.

5 MR. HILL: So you handed me those
6 documents about what, 20 minutes into today's
7 testimony period, and so I just want to know what do
8 these represent or what am I supposed to do with
9 them?

10 MS. BARATTA: These are documents
11 that might be responsive to your previous discovery
12 request that have only recently come into existence,
13 and we wanted to provide to you the most current and
14 updated information available to us including with
15 respect to sales and advertising and marketing, and
16 that's what these documents reflect.

17 MR. HILL: And these documents are
18 not marked as confidential or as attorneys-eyes
19 only?

20 MS. BARATTA: I believe all the
21 documents in this proceeding are being marked
22 confidential, but none of these are attorneys-eyes
23 only. And that's just consistent with what our
24 practice has been for production throughout this
25 proceeding with respect to marking them

1 confidential.

2 MR. HILL: So even though they don't
3 say confidential on them, it's a deeming, so to
4 speak, that everything is confidential. Is that
5 what we agreed to?

6 MS. BARATTA: Yes.

7 MR. HILL: But not attorneys-eyes
8 only?

9 MS. BARATTA: Correct.

10 MR. HILL: So the basis for my
11 objection of these documents being introduced so you
12 can share them with me is that they weren't produced
13 previously. And then the rest of the objection I
14 went through earlier, which we don't need to repeat.
15 I will incorporate by reference. So with that, I
16 guess, go ahead.

17 CONTINUED DIRECT EXAMINATION

18 BY: MS. BARATTA

19 Q. I'm looking at document bates labeled
20 FBI 2425, and if we can enter this as Anderson
21 Exhibit Number 5.

22 (Anderson Exhibit 5 was marked for
23 identification by the Ms. Baratta.)

24 Q. Janice, can you tell us a little bit
25 about this document.

1 A. This document reflects our sales numbers
2 for 2005, 2006 and through second quarter of 2007.
3 This is a document that is pulled internally from
4 our sales data warehouse, and it represents net
5 sales units and net sales dollars and percent of
6 total units, total dollars by outlet.

7 And just starting at the top line, if
8 you will, 3 percent of our Cobblestone Mill sales
9 are in convenient stores; 1 percent in government
10 commissaries; 2 percent in food service; and on down
11 the line, grocery outlets, mass merchandise, private
12 institutions, restaurants, state and local
13 government, just gives you an idea of the places
14 that the Cobblestone Mill brand appears.

15 Q. And what would food service encompass?

16 A. Food service is only that part of our
17 Cobblestone Mill sales that go -- all of our product
18 on the bakeries division is delivered by direct
19 store delivery by independent distributors. And
20 when we refer to food service on the bakeries side,
21 we are referring to what we may deliver to Denny's,
22 Cracker Barrel, Waffle House, whatever it may happen
23 to be, that is not intended for resale. That is
24 food service.

25 And then our -- it may go into a

1 hospital cafeteria. It could go into a nursing
2 home, but another part of the food service is
3 products that we deliver to a grocery store that a
4 portion of that delivery is taken from the bread
5 rack and used in their deli or other -- if some food
6 -- some grocery stores have actual restaurants
7 inside and the product could also show up in that
8 food service environment although that's not where
9 we delivered it.

10 Q. So the -- so where -- which of these
11 categories would encompass grocery store
12 delicatessens or other in-store delicatessens?

13 A. Well, the grocery outlet or the mass
14 merchandiser, which represents 77 percent of the
15 total, either of those could be a deli use inside a
16 grocery store or a restaurant use inside a grocery
17 store.

18 Q. And all of these sales figures are for
19 products offered under the Cobblestone Mill brand
20 only?

21 A. That is correct. And those are
22 wholesale dollars. Those are not retail dollars.

23 Q. Would you remind us what the formula is
24 for calculating the retail dollars?

25 A. You divide the wholesale dollars by .75.

1 Q. Thank you. Moving to the next document.
2 We're looking at document bates labeled FBI 2426.

3 MR. HILL: So that's going to be
4 Exhibit 6? Is that what you said?

5 MS. BARATTA: It will be, yes. I
6 haven't gotten there yet, but it's going to be
7 Exhibit 6, yes.

8 MR. HILL: Just for the record, I
9 have objected to all of these, Exhibits 5 and 6,
10 right?

11 (Anderson Exhibit 6 was marked for
12 identification by the Ms. Baratta.)

13 BY: MS. BARATTA

14 Q. Janice, if you can tell us a little bit
15 about this document.

16 A. Okay. This is a document that comes
17 from syndicated data, and this provides information
18 as to what the sales were every 4-week period
19 beginning in 2002. These are retail dollars.

20 Because of the way syndicated data
21 works, this does not represent 100 percent of the
22 retail sales. We know that there is a slippage
23 number, and we can't tell you exactly what that is,
24 but there's no way for our IRI to capture all of the
25 data, but that's what this is. This is our

1 Cobblestone Mill sales every four weeks since our
2 early 2002 in units and dollars.

3 Q. How recent is this information or how
4 recently does it include?

5 A. The latest time period is August of
6 2007.

7 Q. You mentioned this was syndicated data.
8 What does that mean exactly?

9 A. That means it is data that is captured
10 out of our control. There are a couple of different
11 companies that do that. Nielsen and Information
12 Resources both, and it is information captured at
13 the cash register in the grocery store.

14 When a sale is made, it is downloaded
15 into either Nielsen or IRI's database and then
16 accumulated by retailer, by time period, and it is
17 not captured in 100 percent of the retailers in the
18 United States, therefore, it is extended. If you're
19 in the Atlanta market, they may be in 30 percent of
20 the public stores, and they extend the data to reach
21 the rest of the public stores.

22 Q. So this is information that's captured
23 and maintained not by Flowers but by a third party?

24 A. That is correct.

25 (Anderson Exhibit 7 was marked for

1. identification by the Ms. Baratta.)

2. Q. Moving to the next document, this is
3. going to be Anderson Exhibit Number 7, and it's
4. bates labeled FBI 2414 and 2415. If you can tell us
5. a little bit about this one.

6. A. Okay. This is a program we had several
7. weeks ago where we applied coupons on our Jewish rye
8. bread that was good for a free package of
9. Cobblestone Mill seeded sandwich roll. And then the
10. Cobblestone Mill seeded sandwich rolls had a sticker
11. that said this product is free with the purchase of
12. Cobblestone Mill Jewish rye. It was actually a very
13. successful program for us and drove a fairly
14. significant sales increase.

15. We had off rack displays up in our major
16. retailers. We had retailer support, and it was very
17. good for us.

18. Q. Is this typical of the promotions that
19. Flowers would use for its Cobblestone Mill brand?

20. A. We do a lot of Cobblestone Mill
21. programs. We don't do that many buy one, get one
22. frees just because of the cost, but we have off rack
23. displays up on a fairly frequent basis.

24. (Anderson Exhibit 8 was marked for
25. identification by the Ms. Baratta.)

1 Q. Next document is Anderson Exhibit Number
2 8. Documents bates labeled FBI 2394 to 2410?

3 MR. HILL: 2394 to -- what is that?

4 MS. BARATTA: 2394 to 2410.

5 BY: MS. BARATTA

6 Q. Janice, could you just describe these
7 documents for us, please.

8 A. Yes, this is a document, like this
9 previous one, I don't think I said this is the
10 document that is communicated to our plant
11 presidents, vice presidents and our national account
12 managers. And this is to let them know of an
13 advertising campaign that we have coming up where we
14 have a print campaign in the magazines I mentioned
15 earlier: Cooking with Paula Deen, Cooking Light and
16 Southern Living.

17 And as a part of this campaign, we also
18 had some additional perks where we -- I'm not sure
19 if that's in here or not, but we participated in
20 some cooking shows and sponsored us some cooking
21 tours, and of course these were all magazines on the
22 newsstands during the time periods that were
23 indicated, and I believe behind this is a sample of
24 the ads that we ran in those magazines. Yes, that
25 is correct.

1 Q. And what are some of those magazines?

2 A. Cooking with Paula Deen, Cooking Light
3 and Southern Living. Our magazine selections,
4 advertising selections are made based on the
5 demographics of our consumer.

6 Q. And about how many people are these
7 advertisements going to reach through this magazine
8 campaign?

9 A. Well, let's see, the cooking -- the
10 Cooking with Paula Deen has a circulation of
11 750,000, Cooking Light is 1.7 million and Southern
12 Living is 2.8 million, and we ran in three issues of
13 the Paula Deen, three issues of Cooking Light, and
14 two issues of Southern Living.

15 (Anderson Exhibit 9 was marked for
16 identification by the Ms. Baratta.)

17 Q. The next document is Anderson Exhibit
18 Number 9. Bates labeled -- document is bates
19 labeled FBI 2417 through 2419. Janice, could you
20 tell us tell us about those documents, please.

21 A. This is reflective of our English muffin
22 business. For a number of years Flowers purchased
23 their English muffins from an outside supplier under
24 the Cobblestone Mill brand, but it was produced by
25 an outside baker, and we made a capital investment

1 to be able to produce English muffins ourselves.

2 And this is a communication, an internal
3 communication to our folks to let them know that we
4 were up and running with our English muffin line in
5 Montgomery, Alabama and encouraging their continued
6 support of the item.

7 Q. So, would this be a recent investment
8 that Flowers has made in the Cobblestone Mill brand?

9 A. We actually began -- of course, the plan
10 began for this investment in 2006. The equipment
11 was in place some time in April of 2007, and we were
12 on the market, I believe it probably indicates on
13 here the actual market day, but it would have been
14 some time in June.

15 Q. Let's enter this as Anderson Exhibit
16 Number 10. It's document bates labeled FBI 2428.

17 (Anderson Exhibit 10 was marked for
18 identification by the Ms. Baratta.)

19 A. And this is just a fairly simple
20 statement that we developed through the assistance
21 of our advertising agency to be clear that we
22 understood exactly where we wanted the Cobblestone
23 Mill brand to go, who our target was, what its
24 position was, and it says that the Cobblestone Mill
25 brand provides the premium sandwich buns, sandwich

1 rolls, and breads that make every occasion a special
2 occasion.

3 Q. So, with respect to the positioning
4 statement, it's inherent within that statement that
5 the mark or that the Cobblestone Mill products are
6 used in connection with sandwich buns, sandwich
7 rolls and breads, and where would these products be
8 offered again?

9 A. They are offered on the bread aisle.

10 Q. On the bread aisle. Any place else?

11 A. We know that some of them are also used
12 by the retailer themselves in their delis for making
13 sandwiches or serving dinners.

14 (Anderson Exhibit 11 was marked for
15 identification by the Ms. Baratta.)

16 Q. Next document I have is Anderson Exhibit
17 Number 11, bates number is FBI 2418 to FBI 2424.
18 And Janice, with these documents, the first thing I
19 want to talk about is the brand that's depicted on
20 document bates labeled FBI 2418, and this is the --
21 can you tell us a little bit about the logo that's
22 depicted on this page.

23 A. Sure. If I could back up just a moment,
24 Maria. We were providing -- this is a Wal-Mart
25 program right now, and we were providing them with a

1 brand called Artisan Mill on their deli knee board,
2 and we were not particularly pleased with the sales,
3 nor was Wal-Mart, and because we knew that
4 Cobblestone Mill had a significantly higher
5 awareness than Artisan Mill did, we offered them a
6 program that would be -- and the reason we added the
7 Selects on there is because it sets it apart. These
8 items are not sold on the typical bread aisle.
9 They're sold only in the deli.

10 And we felt like the Cobblestone Mill
11 Selects designated that it's something unique and
12 special and the products are in fact different from
13 the items that they would find typically on the
14 bread aisle. We have a sub roll, but it's a
15 different sub roll. We have an onion roll in the
16 Selects but it is a different onion roll. We have a
17 very small, like a mini sub roll that is not sold on
18 the Cobblestone regular brand at all, and we have a
19 fourth item which escapes me. But all of the items
20 that are under this are unique and different from
21 what we sell on the bread aisle.

22 Q. And on page -- on the page that's bates
23 labeled FBI 2420, if you could read the second and
24 third sentences of the second paragraph?

25 A. The second paragraph. Okay.

1 "Cobblestone Mill is an established Flowers Foods
2 brand with much better brand awareness. It is a
3 brand our retailers, sales team, distributors, and
4 consumers know and trust. We will be mixing up the
5 product line and the packaging will be much more
6 attractive and eye catching."

7 Q. And what's your -- what's meant by the
8 fact that it's an established brand with a better
9 brand awareness?

10 (Answer marked for read back.)

11 A. Well, Artisan Mill, which was the
12 previous brand that we were using there, was an
13 unknown and you're asking consumers to pay a fairly
14 high price and invest money in a brand that they've
15 perhaps never heard of. And we knew that that would
16 not be an issue with Cobblestone Mill. It has very
17 good brand awareness.

18 Research has proven to us that consumers
19 always recognize the Cobblestone Mill brand, and we
20 felt like that they would have a comfort level in
21 making a purchase of Cobblestone Mill buns or rolls
22 in the deli because they've already spent a fairly
23 significant amount of money on what's going to go
24 inside it. And they need the confidence that what
25 they're going to put it on is going to meet their

1 expectations.

2 MR. HILL: Could you mark that.

3 THE COURT REPORTER: Sure.

4 BY: MS. BARATTA

5 Q. You mentioned that this document relates
6 to the Cobblestone Mill Selects products that are
7 being offered in Wal-Mart; is that correct?

8 A. That's correct.

9 Q. And where are these products offered in
10 Wal-Mart?

11 A. They're on what we refer to as the deli
12 knee board, which I think is probably an inside
13 bakery term, but it is the shelf in front of the
14 deli, typically will carry bread items as well as
15 condiments, sauces, potato chips, dinner rolls,
16 anything that might accompany whatever your purchase
17 is from behind the deli.

18 (A discussion ensued off the record.)

19 (Anderson Exhibit 12 was marked for
20 identification by the Ms. Baratta.)

21 BY: MS. BARATTA

22 Q. Last document that we have. It's going
23 to be Anderson Exhibit Number 12. It's bates
24 labeled FBI 2429. Janice, tell us a little bit
25 about this document.

1 A. Okay. We decided in probably early --
2 late 2005, early 2006 that it was time for the
3 Cobblestone Mill brand to have a facelift. We went
4 to consumer research and asked them to critique the
5 package design for us, and they're always very happy
6 to do that.

7 And based on that feedback, several
8 things that we learned was that the Cobblestone Mill
9 needed to be bold, it needed to stand out more, and
10 that the small mill we had on there was a little bit
11 busy and didn't help the package design that much.
12 And our overall takeaway was that there was an
13 opportunity for us to enhance the Cobblestone Mill
14 brand and make the package cleaner.

15 That effort started in 2006 and was
16 actually completed in 2007 with some of the SKU's
17 got on the market in 2006 in the new design and some
18 of it carried over to 2007.

19 Q. And I believe you said that one of the
20 issues, one of the changes was that the Cobblestone
21 Mill needed to be bigger?

22 A. That's correct.

23 Q. When you say the "Cobblestone Mill",
24 what part exactly of the entire logo?

25 A. The letters themselves. The consumers

1 told us that it was a little bit hard to read, and
2 that we need -- it would be easier for them and a
3 quicker read for them if we made the letters larger.

4 Q. So looking at the two, the one that's
5 indicated as past and present and the one under what
6 tomorrow brings, would you say that the wording
7 "Cobblestone Mill" is more or less prominent?

8 A. Definitely more prominent, and that was
9 our goal.

10 MS. BARATTA: That's all I have.

11 (Off-the-record discussion.)

12 MR. HILL: As I understand,
13 Ms. Baratta, you're passing the witness because that
14 closes the direct testimony of Ms. Anderson?

15 MS. BARATTA: That is correct.

16 MR. HILL: And as I also understand
17 it, she's your only witness, right?

18 MS. BARATTA: That's correct.

19 CONTINUED CROSS-EXAMINATION

20 BY: MR. HILL

21 Q. So, I'm going to jump around a little
22 bit, Ms. Anderson. I think you know I'm Marty Hill
23 and I represent the Applicant in this case,
24 Independent Marketing Alliance.

25 I haven't seen any evidence introduced,

1 and I don't believe I have seen any prior documents,
2 any national studies showing brand recognition. Is
3 that -- do you think you've produced documents to us
4 that show any national studies of brand recognition?

5 A. I have not produced anything that shows
6 national recognition, and I could not produce that
7 specific document. The references I have made to
8 recognition have been in consumer focus groups that
9 we have done where one of the questions we always
10 ask is whether or not they're familiar with the
11 brand, but the national documents you have asked for
12 is not available from Flowers.

13 Q. And I've also actually asked for any
14 surveys or studies whatsoever that would show in
15 writing what the brand recognition is for
16 Cobblestone Mill, and I have not seen any. Is that?

17 A. We have not done that as a specific
18 survey.

19 Q. So there are no surveys. There is no
20 research that's documented anywhere that shows brand
21 awareness for Cobblestone Mill?

22 A. That is correct.

23 Q. All there is is anecdotal evidence,
24 meaning you sat around with four or five people and
25 talked to them and said what?

1 A. No, it would be significantly more than
2 four or five people, but it is, depending on the
3 research project that we are conducting, it can be
4 anywhere from 25 people to 600 people. It depends
5 on the study, but the studies are specific to a
6 topic.

7 Q. What kind of topic would that be?

8 A. It could be the redesigning of our
9 packaging. It could be new products that we're
10 thinking about introducing and what do they think
11 about them. It could be, just could be a taste
12 panel. It could be a number of different things.
13 It could be a concept where we were considering
14 taking Cobblestone Mill into a new category of the
15 bread aisle. A number of different topics.

16 Q. So you've had some focus groups?

17 A. Absolutely. Focus groups and also
18 internet studies.

19 Q. And there have not been any documents
20 produced to either show what the focus group or what
21 the internet studies were in this proceeding; is
22 that right?

23 A. That is correct.

24 Q. Why is that?

25 A. We were not asked to produce it. I

1 suppose we didn't consider it relevant to this
2 particular discussion.

3 Q. When I look at Exhibit 12, I believe
4 that that is either the same document or something
5 somewhat similar to what you showed me in your
6 deposition on, I don't know, a year, year and a half
7 ago, whatever it was, a long time ago, where I think
8 you said that there was some kind of a focus group
9 that looked at the old Cobblestone Mill, which where
10 you've called past and present, which is on the left
11 side of Exhibit 12, and by the way, I will withdraw
12 my objection to 12.

13 I don't think this is exactly the
14 document, but I saw something similar to it. So, I
15 will withdraw my objection to Exhibit 12, okay. So
16 for purposes of discussing Exhibit 12, the left side
17 shows past and present, which is the old brand that
18 didn't have the wheel featured nearly as much as the
19 right side, which is the new packaging; is that
20 right?

21 A. That's correct.

22 Q. And I think you said that the old
23 packaging, one the lettering was smaller on
24 Cobblestone Mill. Secondly, it was busy, and by
25 that did you mean it was harder to see the old

1 fashioned mill?

2 A. The logo was busy, yes.

3 Q. Whereas the new logo that you're going
4 with now makes it, the wheel, dramatic and that you
5 can easily see it and you recognize it, right?

6 A. That's correct.

7 Q. And that's a mill wheel, that's what
8 it's supposed to be?

9 A. That's correct.

10 Q. In the new Exhibit 12, the new logo that
11 goes with the Cobblestone Mill mark, I see the mill
12 being the wheel, that's pretty prominent, right?

13 A. Right.

14 Q. I don't see any cobblestones, which
15 would be actually depicted stones, that would
16 somehow look like cobblestone, do you?

17 A. I do not.

18 Q. In the old, it was so busy it's actually
19 hard for me to see it, but did the old have any
20 cobblestone other than the cobblestone house?

21 A. No, it did not.

22 Q. So the house looked like a
23 cobblestone-type house that was set next to the
24 mill?

25 A. Actually, it was not -- it would have

1 been difficult to take your mind there. We could
2 provide you with a cleaner rendition, but I would
3 not go so far as to say the mill structure was made
4 out of cobblestones.

5 Q. Did it look like a stone house to you?

6 A. A little bit.

7 Q. I mean, that's what it was supposed to
8 be, right?

9 A. Well, cobblestones are also streets.

10 Q. I didn't see a street there, but maybe
11 there was a street in the old brand, was there?

12 A. It was sort of a suggestion.

13 Q. Of a cobblestone street?

14 A. Right.

15 Q. And sort of a suggestion of a stone
16 house although you couldn't see for sure if it was
17 really cobblestone, right?

18 A. Correct.

19 Q. And then the new mark that you're going
20 with now doesn't have any cobblestone house, no
21 cobblestone street and no cobblestones period other
22 than just the word "Cobblestone," right?

23 A. That's correct.

24 Q. Now, I would like you to -- I'd like to
25 have the court reporter read back something you

1 said, and I think you already know where I'm going
2 since your testimony would indicate that.

3 MR. HILL: Go ahead.

4 (The record was read by the court
5 reporter: Pg. 51.)

6 Q. Repeating the relevant portion of that,
7 I gathered that what your testimony suggested,
8 actually stated was: Research has proven to us that
9 consumers always recognize the Cobblestone brand.
10 Is that a fair summation of what you said on the
11 record?

12 A. That is fair.

13 Q. Is that in any way proven by any
14 records, documents that you have provided to us
15 during two years of this opposition proceeding?

16 A. No.

17 Q. Are there any such documents that
18 actually exist that would in any way support such a
19 statement?

20 A. When we do consumer research, when we
21 recruit our participants, we do not identify to them
22 that they are coming to Cobblestone Mill research.
23 We ask them certain questions that qualify them to
24 fit the Cobblestone Mill demographic, but there are
25 other, certainly other breads on the market that fit

1 the same demographic.

2 When we began the research, we began
3 with the moderator acting as if he could be
4 representing Pepperidge Farm or Arnold or
5 Cobblestone Mill or Bakers Inn or Sara Lee or any
6 number of different brands, and from that we learned
7 whether or not these are brands, all of the brands
8 are brands that the consumers are familiar with.

9 Understanding the research always takes
10 place within our footprint. So we're not talking to
11 consumers in California that would have no reason to
12 be familiar with Cobblestone Mill, and most people
13 that shop the bread aisle, whether they have made a
14 physical purchase of Cobblestone Mill or not, are
15 very familiar with the brand and know what -- have a
16 very good idea of what it stands for.

17 MR. HILL: I object as nonresponsive.

18 Q. The simple question is this: Are there
19 any documents or are there any studies that in any
20 way support your statement that all -- that
21 consumers always recognize the Cobblestone brand?

22 A. No.

23 Q. And in fact, that's an untrue statement,
24 isn't it?

25 A. I don't believe so.

1 Q. You think all consumers recognize the
2 Cobblestone brand?

3 A. No.

4 Q. And you also know that in fact and in
5 truth there are no studies that in any way support
6 that, right?

7 A. The studies that we have done support
8 that.

9 Q. You said research studies. And you
10 haven't produced any of those studies in this
11 proceeding?

12 A. I have not produced anything.

13 Q. Do you think that might be something
14 that would be important? Because we've spent a lot
15 of time and effort talking about how well known your
16 brand is, and if there was such a national study or
17 even a local study that was documented that showed
18 3,000 people were asked what brand do you recognize
19 for bread, and if all of them always recognized the
20 Cobblestone brand, you would know that would be
21 important, right?

22 A. It was not a study we have ever
23 conducted. Had we conducted that specific study, I
24 could produce that document for you. The studies we
25 have conducted were not -- the intent was not to

1 determine the consumer recognition of the brand.
2 I'm simply saying that our experience has been that
3 consumers do recognize the brand.

4 Q. Okay. So a more truthful statement
5 would have been in the nature of we at Flowers think
6 that a lot of consumers recognize the Cobblestone
7 brand?

8 A. We at Flowers think that a majority of
9 the consumers recognize the Cobblestone Mill brand.

10 Q. Staying with Exhibit Number 12 for a
11 moment. If I'm right, those are plastic bags, and
12 maybe I'm using the term "plastic" too generally.
13 So if you want to say it's a polysynthetic something
14 or other, that's fine. But it looks like those are
15 plastic bags and in each plastic bag there's like
16 either three or six rolls?

17 A. That's correct.

18 Q. It looks like there's actually six. I
19 just see the number on the right. It says six
20 Philly style rolls, right?

21 A. That's correct.

22 Q. Is that your typical bag for Cobblestone
23 Mill brand or products?

24 A. Yes, it is.

25 Q. So the ones I'm looking at have six

1 rolls in them. You have, I assume, sliced bread
2 that has more slices?

3 A. That's correct.

4 Q. It would be one loaf?

5 A. One loaf.

6 Q. What other type of packaging do you
7 have?

8 A. Cobblestone Mill, the only -- all
9 packaging is -- all of the products are in a similar
10 package. The only variable is that our English
11 muffins are in a tray. They go inside a bag.

12 Q. Inside like a paper tray or a cardboard
13 tray?

14 A. It's a cardboard tray, right.

15 Q. How long is it?

16 A. It's probably 12 inches long, 10 or
17 12 inches long, about four inches wide.

18 Q. How many --

19 A. It holds six muffins.

20 Q. Six muffins, okay. And that all
21 Cobblestone Mill packaging then is either designed
22 to hold a single loaf of bread, six, what would you
23 call those? What are these deli Philly rolls,
24 hoagie rolls?

25 A. Hoagie rolls.

1 Q. Okay. You've got English muffins that
2 hold six. Is that it for packaging?

3 A. No, bagels are six. Sandwich rolls
4 often times are eight. French bread is one unit.

5 Q. Is that pretty much it for packaging?

6 A. As far as packaging count, yes.

7 Q. So in every, every plastic bag that has
8 the Cobblestone Mill brand on it, it would be in the
9 nature of what we would call a retail pack, is that
10 fair?

11 A. That is fair.

12 Q. In fact, there are no food service packs
13 that have the Cobblestone Mill brand on those packs;
14 is that also true?

15 A. That is true.

16 Q. Are you familiar with -- you said --
17 well, I don't want to get into what you said
18 previously because it was during a confidential --
19 let me just ask you a different question.

20 At Flowers, as I understand it, there is
21 a food service division which is separate from, I
22 think you call it Flowers Specialties; is that
23 right?

24 A. That's correct.

25 Q. And the area of the business that you

1 work for is called Flowers brands?

2 A. Flowers Bakeries.

3 Q. Flowers Bakeries. The Flowers Bakeries,
4 is that the entity or the division that handles the
5 Cobblestone Mill brand?

6 A. That is correct. They handle it
7 exclusively.

8 Q. Meaning that the food service division
9 of Flowers, which is actually called Flowers
10 Specialties, does not and never has used in any way
11 the Cobblestone Mill brand products, right?

12 A. That's correct.

13 Q. In fact, in the national food service
14 list -- are you familiar with the food service lists
15 that are provided by your Flowers Specialties
16 company?

17 A. As far as who their customers are?

18 Q. As far as what products they sell?

19 A. Vaguely. I mean, we do a lot of special
20 products. We do things for Denny's that are special
21 to Denny's. We do Olive Garden breadsticks. We do
22 things proprietary to Applebee's. We do things for
23 Fazzoli's, but to be specific about it, no, I
24 couldn't help you there.

25 Q. And you've talked about the fact that

1 Flowers as a company does -- is it a subsidiary or
2 is it a division, the specialties, Flowers
3 Specialities?

4 A. It's a division of Flowers Foods.

5 Q. So the Flowers Specialties division of
6 Flowers Foods does sell to restaurants and food
7 service like you've talked about, right?

8 A. That's correct.

9 Q. But if I looked at their food service
10 price list, I would not see any Cobblestone Mill
11 branded products on that price list, right?

12 A. That is correct.

13 Q. And they never have sold any food -- any
14 Cobblestone Mill brand in the food service division
15 of Flowers, correct?

16 A. That's correct.

17 Q. And you have not produced any evidence
18 to suggest that they have any intention of doing so?

19 A. That's correct.

20 Q. Is that because the Cobblestone Mill
21 brand is a little higher priced on the market and
22 that food service generally wouldn't go with that
23 expensive of a brand or is there some other reason?

24 A. No, there are a number of reasons.

25 First of all, the food service product is produced

1 and frozen, and it is put in warehouses and shipped
2 nationwide to different frozen distribution outlets
3 with U.S. Food Service and some of the big guys.

4 All of their product is unbranded. It's
5 in plain bags. It has no branded identification on
6 it at all unless an Olive Garden asks that their
7 name be on there. And the other part of that is
8 that the Cobblestone Mill brand is distributed by
9 independent distributors who own the rights to that
10 brand in a certain area.

11 And a distributor in Thomasville owns
12 the rights to exclusively sell Cobblestone Mill in
13 his territory. So a food service distributor could
14 not come in frozen with the Cobblestone Mill brand
15 in his territory.

16 Q. Have you read the application by IMA to
17 see what goods it is that they sell and intended to
18 sell with the Cobblestone Market brand?

19 A. I've read it prior to the earlier
20 deposition. I have not read it recently.

21 Q. I'm going to read from the application's
22 amended certain -- I'll let you look at it first,
23 and then I'll ask you questions about it. It is the
24 Applicant's Unopposed Motion for Leave to Amend the
25 Application, which was granted, and it lists certain

1 categories of goods that IMA, the Applicant in this
2 proceeding, intends to use under the brand
3 Cobblestone Market. If you look at that for a
4 moment. It's point A within that section.

5 A. Okay.

6 Q. You're generally familiar with that
7 because you said you read it before your prior
8 deposition, right?

9 A. Right.

10 Q. Are any of the goods identified in the
11 application as amended by IMA competitive goods with
12 any of the goods that Flowers sells?

13 A. They are not competitive with any of the
14 goods that Flowers sells.

15 Q. Have you, since this case has been going
16 on now for approximately two years, right, almost
17 two years?

18 A. Right.

19 Q. Well, first of all, some proceedings go
20 fast, some proceedings go slow. Would you say this
21 is slower than most of the other proceedings you've
22 been involved in?

23 A. Not necessarily, no.

24 Q. Was it important to you to get this
25 proceeding completed quickly?

1 A. It was more important to me to get it
2 completed in a manner that was comfortable for
3 Flowers.

4 Q. What kind of factors would that take
5 into consideration?

6 A. That we could protect our Cobblestone
7 Mill brand.

8 Q. Were you concerned that during the
9 2-year interim from the time that the opposition was
10 filed to today that IMA might begin selling products
11 that are listed in the application?

12 A. Well, we would be concerned if anyone
13 were introducing a product that we felt like had the
14 potential to conflict with our Cobblestone Mill
15 registration. And I think that if Flowers decided
16 that we wanted to come out with a Boar's Head brand
17 of bread, I'm fairly confident that Boar's Head meat
18 folks would have a problem with that.

19 Q. But my specific question is to the
20 timing issue. Do you know -- you knew, at least by
21 your last deposition, and you knew even at the time
22 of the opposition, and at the time that the
23 application was filed or shortly thereafter, that in
24 fact IMA was actually selling, at least some of
25 these products, under the name Cobblestone Market,

1 right?

2 A. That is correct.

3 Q. And we've delayed and extended this
4 thing, it's now taken two years to get to this
5 point, and certainly will be two years by the time
6 we get any kind of ruling. And I'm just wondering
7 if you had any concerns that during that 2-year time
8 period the sale of certain products or goods by
9 Cobblestone -- excuse me, by IMA under the
10 Cobblestone Market brand would cause any kind of
11 harm to the Flowers brand, namely Cobblestone Mill?

12 A. I'm sorry. I thought I answered that,
13 but yes, we would always have a concern. If it was
14 Cobblestone Market or if it was another brand that
15 we felt like was too similar to ours to the point
16 where it could cause consumer confusion.

17 Q. I understand that you were concerned
18 about them, about IMA receiving the Cobblestone
19 Market registration, right, because you have
20 concerns about that, right?

21 A. Right.

22 Q. What I want to know is, forget about it.
23 Just assume there was no such thing as registration.
24 It's just a question of common law and who was able
25 to use the brand, and who was going to be harmed by



1 somebody else using the brand, a brand. Okay.

2 Did you fear any specific good by IMA
3 that they were selling under the Cobblestone Market
4 brand would in any way harm Cobblestone Mill sales?

5 MS. BARATTA: Objection on the ground
6 that that's already been asked and answered, and
7 also on the ground that this opposition was timely
8 filed.

9 MR. HILL: I don't know that the
10 opposition was timely filed. It may be untimely
11 ended, but if it was timely filed, we wouldn't be
12 here.

13 Q. So, could you answer the question.

14 A. Would you ask the question one more
15 time.

16 Q. The question focuses not on the legal
17 technicalities of whether the opposition was timely
18 filed. That's not an issue. The issue is:
19 Ignoring registration and technicalities for a
20 moment of the registration process, my point to you
21 is simply: Is the fact that Cobblestone Market
22 branded products are being sold by IMA in this case,
23 is that causing or has that caused any harm to
24 Flowers over the last two years we've been waiting
25 for this proceeding to be completed?

1 MS. BARATTA: Objection on the ground
2 this proceeding relates to registration of the mark
3 only. It does not relate to use or any common law
4 rights whatsoever.

5 If you can still answer the question, go
6 ahead.

7 A. I'd rather not based on what Maria has
8 just said. I'm not sure I can add anything else,
9 but did I get up every morning and say, Gee, I
10 wonder what Cobblestone Market is going to do to
11 Cobblestone Mill today, no. But am I concerned that
12 Cobblestone Mill could not damage the brand but
13 cause confusion, yes.

14 Q. Let's not talk about every day. How
15 about any one day where you woke up where you heard
16 from anybody over two years?

17 A. No.

18 MS. BARATTA: Objection on the ground
19 that it's been asked and answered.

20 BY: MR. HILL

21 Q. So there has not been any actual
22 confusion over the last two years, right?

23 A. Not that I'm aware of, but I can't say
24 that I would know.

25 Q. Has anybody at Flowers, to the best of

1 your knowledge, learned of any actual confusion?

2 A. No.

3 Q. Has anybody at Flowers said to you, We
4 need to hurry up and get this proceeding finished
5 because we need to stop IMA from selling their goods
6 under the Cobblestone Market brand name because
7 that's going to diminish our value or that's going
8 to harm our sales?

9 A. We have had a number of internal
10 discussions regarding this specific topic. No one
11 has said exactly what you said, but yes, there is
12 overall concern within marketing and within upper
13 management.

14 Q. And would you say the concern is more
15 the way Ms. Baratta has described it as concern over
16 the technical protection of the Cobblestone Mill
17 brand as it's owned by Flowers Bakeries rather than
18 actual common law issues or actual
19 in-the-marketplace issues?

20 MS. BARATTA: Objection on the ground
21 that it mistakes my objection, which was with
22 respect to this proceeding being related to
23 registration, not with respect to any concern on the
24 part of Flowers being with registration only and not
25 related to use or any common law rights that it may

1 have.

2 BY: MR. HILL

3 Q. As I characterized her objection, which
4 I think is reasonably clear, but she thinks it's
5 different, but just answer my question.

6 A. And your question again is?

7 Q. My question is: I understand there's a
8 concern with the technical legal process of
9 registering trademarks and protecting that
10 registration, right, that's a concern that Flowers
11 has, right?

12 A. Right.

13 Q. I'm sorry. You have to verbalize so she
14 can.

15 A. Yes.

16 Q. But outside of that, in the real world
17 of business, is there any indication that you've
18 seen or heard of that the Cobblestone Market, sale
19 of its products, is in any way either -- you've
20 already answered the question, it's not confusing,
21 -- but harming in any way the sales of Cobblestone
22 Mill branded products?

23 A. Not that I'm aware of.

24 Q. You gave us an example a moment ago of
25 some magazines that you advertised in. Do you

1 remember what those were off the top of your head?

2 A. Paula Deen, Southern Living and Cooking
3 Light.

4 Q. Paula Deen's, Southern Living and
5 Cooking Light. L-i-t-e?

6 A. g-h-t.

7 Q. L-i-g-h-t. Okay. Would that be light as
8 in the nature of shedding light on something or is
9 that light, it's not light like --

10 A. It's light as in healthy, low calorie.

11 Q. And I think you testified earlier that
12 in the past you spent \$400,000 for advertising the
13 Cobblestone Mill brand, and in 2007 you believe the
14 total budget is about \$600,000?

15 A. That's correct.

16 Q. So that would be the advertising budget
17 for the Cobblestone Mill brand, correct?

18 A. That's correct.

19 Q. And you've identified three magazines
20 that you do advertising in?

21 A. That's correct.

22 Q. So let's just call those the Paula
23 Deen's, the Southern Living and Cooking Light as the
24 three magazines, fair?

25 A. Fair.

1 Q. Okay. Other than those three magazines,
2 what other advertising has Flowers undertaken to
3 promote or market the Cobblestone Mill brand?

4 A. We do in-store advertising. We do
5 couponing. We have off rack displays that carries
6 advertising material.

7 Q. You talk very fast for a southern lady.
8 Let's do -- either that or I don't write very
9 quickly. In-store advertising is the first. What's
10 the next?

11 A. Yes. I said, yeah, in-store advertising
12 which would include couponing. I think I referenced
13 earlier some cross couponing we did, that's
14 considered advertising. We build off rack displays,
15 which is an off-site display, off the bread aisle
16 that typically would have some sort of feature, a
17 buy one, get one free or some sort of seasonal
18 advertising that would carry printed advertising
19 material on the display as well as the display being
20 customized to the Cobblestone Mill brand.

21 Q. So, looking at the big picture, I'm
22 under the impression that you have two types of
23 advertising. One is magazine advertising, and the
24 other is in-store advertising?

25 A. That's correct.

1 Q. And with regard to the magazine
2 advertising, when we list Paula Deen's, Southern
3 Living and Cooking Light, is that it for magazines?

4 A. That is it for magazines.

5 Q. No other magazines that Flowers has
6 marketed or advertised its Cobblestone Mill brand in
7 to date?

8 A. That is correct.

9 Q. Nor does it have any intention to do so
10 in any future in any magazines other than the three
11 magazines we just described?

12 A. That is correct.

13 Q. How would you describe the target
14 audience of the three magazines that you have
15 described?

16 A. It's an upscale. We target incomes of
17 45,000 plus. Typically a demographic age of
18 somewhere between, I mean, income of, I said 45,000
19 plus. Age is going to be 45 to 64. Often it's
20 smaller households.

21 These products are not always what you
22 would typically feed to a child. It is special
23 occasion cookouts. You're having your neighbors
24 over, you're having your friends over, those kinds
25 of occasions are when you would typically purchase

1 Cobblestone Mill.

2 Q. Is it -- I don't want to be sexist or
3 politically incorrect, but is it generally targeted
4 to the upscale southern woman who runs her
5 household?

6 A. I wouldn't say -- it would definitely
7 target female head of household. And it would work
8 just as well outside of the south. It's just simply
9 that's what our footprint is. We are a southern
10 company. But if we were in Boulder, Colorado we
11 would target the same consumer there, and they would
12 have the same receptivity.

13 Q. But it's primarily -- when I say head of
14 household, I don't mean that there's no husband. In
15 fact, there may be a husband working, making money
16 but I mean, the decision maker --

17 A. Target is definitely female. That is
18 correct.

19 Q. So you believe that the -- for your
20 business, that being the Cobblestone Mill brand, the
21 decision maker to buy your product or not buy your
22 product is overwhelmingly female?

23 A. That is correct.

24 Q. Do you know what percentage?

25 A. I don't have a percent, but I think that

1 you would find that the female is the shopper period
2 in most households.

3 Q. Okay.

4 A. So that it naturally falls that that
5 would be who our target is. I don't think we would
6 get too many shoppers in Golf magazine.

7 Q. And that is actually, the advertising
8 you're talking about with regard to the magazines,
9 and we've already said that the three magazines are
10 the total magazine print advertising, right, except
11 for in-store?

12 A. I don't think I -- that is correct. I
13 don't think I mentioned that all of the magazine ads
14 feature a sandwich, and the consumers or the readers
15 have an opportunity to go to our website and find
16 the recipe for that sandwich.

17 Q. But that's it for the print advertising
18 other than in-store?

19 A. That is correct.

20 Q. With regard to the print advertising
21 that we've talked about in the magazines, that is
22 not intended to solicit a specific order as you do,
23 for example, you go to the internet, you buy one
24 today or you order it over the internet or
25 something?

1 It is to develop awareness and to
2 promote buying your brand, paying perhaps a little
3 more for it, focussing on the quality, so that when
4 the retail female consumer decision maker visits the
5 bread aisle in the grocery store, she looks for
6 Cobblestone Mill brand; is that generally right?

7 A. That is correct. Just for the record,
8 we don't sell over the internet. But yes, that is
9 correct. We give her a graphic that makes her think
10 gee, that looks nice. I think I'll look for it the
11 next time I go to the grocery store.

12 Q. If she looks at the rack, even if she
13 didn't specifically look for Cobblestone Mill, and
14 looks at the bread aisle and sees four or five
15 brands, if the Cobblestone Mill she's seen in a
16 magazine, she's more likely to buy the Cobblestone
17 Mill brand than a different brand she hasn't seen?

18 A. That is the anticipation.

19 Q. Was there any difference in the quality
20 of the Artisan brand that you said was in Wal-Mart
21 versus Cobblestone Mill?

22 A. The quality itself?

23 Q. Yes.

24 A. No, no difference.

25 Q. Now, with regard to in-store

1 advertising, we're talking about inside the grocery
2 stores; is that right?

3 A. That is correct.

4 Q. Now, would that include convenience
5 stores or not?

6 A. We have a small amount of business in
7 convenience stores. I think the document provided
8 to you earlier will indicate to you that it's a very
9 small amount of our overall business.

10 Q. Okay. So inside grocery stores, and
11 there was something called, something called food
12 service-vending. Is that a subject with which you
13 have some familiarity?

14 A. I do not. I think we -- could I look at
15 that document?

16 Q. Sure. That's Exhibit 5 which I've
17 objected to, but since you introduced it. We'll
18 talk about it.

19 A. I can't answer that. I'm not sure what
20 that end use would be.

21 Q. So looking at Exhibit 5, the line item
22 designated as food service-vending, you're not sure
23 what that means?

24 A. I am not.

25 Q. Well, we know for a fact it does not

1 mean sales through the food service division of --

2 A. No, I'm sorry. I know now what that is.
3 We sell to vending folks that do sandwiches. And
4 we're -- we call that vending, but there are
5 companies that have a business that puts sandwiches
6 in vending machines, and they buy our bread for
7 their sandwiches.

8 Q. So, for example, I just came in on a
9 flight, and there was a machine, and it's got some
10 packaged sandwiches in it?

11 A. Right.

12 Q. Now, did the sandwich, I never seen a
13 sandwich with a Cobblestone Mill brand on it?

14 A. No, no, it would not. We sold it in the
15 Cobblestone Mill bag to the company that made the
16 sandwiches, but they would package it in their own
17 packaging?

18 Q. So what do you call those people again,
19 deli meat or excuse me, you call them vendors?

20 A. They're just people that are in --
21 caterers, people that are in the vending business.

22 Q. They're the caterers who make the
23 sandwiches, who package it and put it into some kind
24 of a vending machine?

25 A. That is correct.

1 Q. And that has that same retail packaging
2 on the Cobblestone Mill?

3 A. When we sell it to the caterer/vend
4 person, yes. Anything that appears on that document
5 was sold under the Cobblestone Mill brand.

6 Q. Okay. When it gets to the caterer, they
7 don't come just the bags like at the grocery store
8 where I put three bags in a bigger plastic bag, and
9 carry it out, right, but I assume when you ship your
10 bread to a caterer, for example, does it come in a
11 big cardboard box?

12 A. No, it would come in a gray plastic
13 tray.

14 Q. It comes in the gray plastic tray. Just
15 like I see the big racks with the little wheels on
16 the bottom, and there's a whole bunch of bread trays
17 coming out.

18 A. That's correct.

19 Q. And that's how they refill the bread
20 aisle, right?

21 A. That's correct.

22 Q. So there is no other packaging other
23 than that plastic bag?

24 A. That is correct.

25 Q. That has the Cobblestone Mill brand on

1 it, right?

2 A. That is correct.

3 Q. How does the caterer receive the bread
4 that is in the plastic bag that says Cobblestone
5 Mill?

6 A. By our delivery person, our independent
7 distributor would deliver it to that caterer.

8 Q. Okay. So you have independent
9 distributors that you've talked about before, and
10 that's how actually all of the Flowers Bakeries
11 division products are sold, right?

12 A. That is correct.

13 Q. Your independent distributor who buys it
14 for some price from Flowers turns around and resells
15 it to the grocery stores?

16 A. Correct.

17 Q. And in some circumstances, I think
18 1.4 percent of the time, according to this one
19 chart, he sells it to what you would call caterers
20 and delivers it directly to them, right?

21 A. Right.

22 Q. And then in addition to that, I think if
23 I understood you correctly earlier, you believe that
24 there is some amount of product which starts out at
25 the bread aisle within the little plastic bag,

1 meaning the retail pack, correct?

2 A. That's correct.

3 Q. That a deli operator within a grocery
4 store may go over to the bread rack, pick up a half
5 a dozen or so sacks of bread, walk back over to his
6 deli and prepare sandwiches based on that bread; is
7 that generally?

8 A. That is correct.

9 Q. You don't have any way to track how
10 often that happens?

11 A. We do not.

12 Q. When the retail consumer buys the
13 sandwich, does the deli operator in that situation
14 put some kind of a wrap on the sandwich which in any
15 way indicates that either the sandwich or the bread
16 component of the sandwich is a Cobblestone Mill
17 product?

18 A. Not that I'm aware of.

19 Q. You have not licensed anybody to do
20 that?

21 A. No.

22 Q. And if somebody were to do it and sell a
23 product like a sandwich with the Cobblestone Mill
24 brand on it, that would bother you because it would
25 be using your trademark without a license or without

1 your specific approval, right?

2 A. I would have to think about that because
3 it is free advertising. If they are saying that we
4 used Cobblestone Mill to make this, and we hope you
5 like it, and they say, Hmm, Cobblestone Mill. So
6 there could be some benefit to that. I don't think
7 it's happening, but there's a benefit.

8 Q. There's always the possible detriment,
9 which is the sandwich has spoiled meat in it?

10 A. True.

11 Q. But as far as you know that's not
12 happening?

13 A. No.

14 Q. Who is the decision maker in the grocery
15 store who likes to go over to the bread aisle and
16 pick up some of this Cobblestone Mill bread so that
17 they can make sandwiches in the deli?

18 A. I can't answer that. I don't know.

19 Q. Have you ever advertised or marketed to
20 who that decision maker would be?

21 A. No.

22 Q. That would be hard if you don't know who
23 they are how you would target them?

24 A. Yes, it would.

25 Q. These deli operations that work inside

1 grocery stores, are they owned by the grocery store
2 or are they owned independently?

3 A. They're owned by the grocery store.

4 Q. So there is no way of tracking those
5 sales versus, for example, if you go through the
6 front register and you scan, then you get these
7 national scan reports you talked about?

8 A. Right.

9 Q. So as far as you know, you don't have
10 any hard numbers as to how often a deli worker, I
11 guess or employee, for a grocery store goes over to
12 the bread aisle, picks up some Cobblestone Mill
13 branded bread, brings it over to the deli section of
14 the grocery store and makes sandwiches for people?

15 A. We do not.

16 Q. How do you -- well, you have a category
17 identified as restaurants who allegedly use
18 Cobblestone Mill branded products. Are you familiar
19 with that?

20 A. Yes.

21 Q. How do the restaurants get their
22 Cobblestone Mill branded product?

23 A. By the same route delivery system.

24 Q. So it's your independent drivers who are
25 selling that product?

1 A. That's right.

2 Q. Based on your earlier testimony, is it
3 true that Flowers does not advertise or market to
4 those restaurants to use its Cobblestone Mill
5 branded products in any way?

6 A. That's correct.

7 Q. How then do you believe that the
8 restaurants who buy the products from your
9 independent distributors choose to buy a particular
10 bread?

11 A. We have -- I could answer that in
12 several different ways. If it's a local restaurant,
13 they may come to us. And we may be delivering more
14 than Cobblestone Mill to them. We may be delivering
15 Sunbeam and Cobblestone Mill and Nature's Own so
16 that they've got a variety of bread-type products in
17 their restaurant. That would be particularly true
18 of an independent anywhere.

19 There are also agreements that we have
20 with certain restaurants that we will serve them
21 fresh product in our DSD territory, and our food
22 service my sell to them outside our DSD territory,
23 but I would say to you without any firm proof that
24 most of the Applebee's, Ruby Tuesday's, Denny's,
25 Waffle House, those kinds of places are all served

1 with our food service division with frozen delivery,
2 and that the restaurant sales that are represented
3 there are going to be more local mom and pops
4 smaller outfits, fish houses, lunch places where you
5 go, Fish Bones or wherever you go for lunch for a
6 sandwich or whatever. Those are going to be more
7 the restaurant sales that you're seeing there.

8 Q. But to the extent that they're sold
9 through food service, you say the same product, it
10 may be the same bread, but it will not be under the
11 Cobblestone Mill brand?

12 A. Absolutely not.

13 Q. Because you want that to be a retail
14 brand, right?

15 A. Well, not only that, the distributors
16 own it. We cannot -- it would be a violation of the
17 distributor agreement for us to bring it in frozen
18 into a territory that a distributor owns the brand.

19 Q. Or sell it through the food service
20 division to restaurants?

21 A. That's correct.

22 MS. BARATTA: Marty, could we break
23 for just a minute.

24 (Recess taken.)

25 BY: MR. HILL

1 Q. Ms. Anderson, earlier you said that this
2 proceeding in terms of timing you thought was
3 similar to other proceedings. How many proceedings
4 has Flowers participated in that you can personally
5 recall? What I mean, that is, opposition to
6 registrations of trademarks?

7 A. Gee, I would be hard pressed. Maybe
8 three to six.

9 Q. Do you remember what the brands were
10 that were at issue?

11 A. Cobblestone Mill brand has been at issue
12 previously, as has Nature's Own.

13 Q. And Cobblestone Mill, what was the brand
14 that you were opposing, do you remember?

15 A. I believe it was Cobblestone Mill
16 exactly. I may need the attorneys help on that
17 because it was a while back.

18 MR. HILL: Was it the one I gave you
19 from Oklahoma?

20 MR. DAVIS: I believe you gave us
21 Nature's Grain.

22 MR. HILL: Is that what it was, okay.
23 I gave you one that looked exactly like yours, but
24 it was some kind of brand. I couldn't remember what
25 it was.

1 MR. DAVIS: That's what it was,
2 Nature's Grain.

3 BY: MR. HILL

4 Q. So they had exactly the same mark,
5 Cobblestone Mill?

6 A. You know, I'm not totally comfortable
7 saying that without going back and looking at the
8 documentation because things kind of get rusty in
9 your mind.

10 Q. That's fair. All I can ask you to do is
11 give me your best testimony that you can today. You
12 think that was a couple of years ago?

13 A. At least.

14 Q. Any other opposition proceedings
15 involving the Cobblestone Mill other than the one
16 that you mentioned a moment ago?

17 A. Not that I recall.

18 Q. Have you had any litigation seeking
19 injunctive relief to stop anyone from using the
20 Cobblestone Mill mark or anything similar?

21 In other words, not just at the
22 registration issue or at the patent and trademark
23 office, but actually in a court proceeding?

24 A. No.

25 Q. And I know a lot of documents have been

1 exchanged in this case. So, neither you nor I
2 probably remember all the documents that we've seen
3 that were actually exchanged prior to today --

4 A. That's correct.

5 Q. -- but do you recall if you have
6 produced any letters that were sent to anyone using
7 the Cobblestone Mill mark or anything similar?

8 A. I don't believe I have.

9 Q. You said, if I understand it correctly,
10 I'm pretty sure this doesn't have to do -- the
11 Select issue didn't have anything to do with
12 confidential or attorneys-eyes only, did it?

13 MS. BARATTA: The Cobblestone Mill
14 Selects that are offered at Wal-Mart?

15 MR. HILL: Yeah.

16 MS. BARATTA: No, there's nothing,
17 no.

18 A. No.

19 MR. HILL: Nothing confidential about
20 that?

21 A. That's correct.

22 Q. I wanted to ask you a question, but I
23 had to remember what section of the depo that was.
24 Okay. Cobblestone Mill Select is offered, I think
25 you testified, at Wal-Mart?

1 A. That's correct.

2 Q. I think you were saying that that brand
3 was actually developed for Wal-Mart?

4 A. That is correct.

5 Q. Is that brand available to any retailer
6 other than Wal-Mart?

7 A. Yes, it is. It is available only on the
8 deli knee board, though. It is not available on the
9 bread shelf. It's a deli product only.

10 Q. Is the Select, is that not a term -- I
11 don't know if it's a trademark, but at least a term
12 that's used a lot in Wal-Mart to add to different
13 kind of brands where they add the word "select"?

14 A. Select is not an uncommon term for --
15 I've seen it on a lot of different products. I
16 can't say that it's peculiar just to Wal-Mart. I
17 think Selects is used fairly widely to sort of say
18 there's something extra special about this product,
19 but it is not registered, no.

20 Q. And no intention to register?

21 A. No.

22 Q. I assume that by using the Cobblestone
23 Mill Select brand for Wal-Mart, you're able to price
24 it differently if you want to to Wal-Mart?

25 A. That is correct.

1 Q. And that's one of the advantages to
2 using the Select as part of the Cobblestone Mill
3 mark?

4 A. That is correct.

5 Q. If you say it's available at the knee
6 board, would that be, I mean, could I get that at
7 Kroger's?

8 A. If we have a program with Kroger, yes.
9 You can't today. But we are talking to a number of
10 our retailers about supplying the deli knee boards
11 with Cobblestone Mill Select.

12 Q. So if you're doing this at the knee
13 board, would that then replace the Cobblestone Mill
14 brand that you currently use on the bread aisle that
15 sometimes I think you said there may be a display or
16 a knee board over in the deli section?

17 A. Right now our Cobblestone Mill main
18 line, if you will, is not merchandised or intended
19 to be merchandised on the knee board. We would not
20 prohibit it, but we do not sell it that way. That
21 is, our position for Cobblestone Mill today is on
22 the bread rack, except for the Selects.

23 Q. So, in an ideal world in the future, if
24 there's bread relating to the Cobblestone Mill
25 brand, it would be Cobblestone Mill Select on a knee

1 board in a deli?

2 A. That is correct, but now, it is not
3 uncommon if we are having a feature on a specific
4 Cobblestone Mill bun or roll to have an off rack
5 display in the deli of our regular Nature's Own, not
6 the Selects, but just if we have a buy one, get one
7 free or it's summertime or fourth of July when
8 people are typically making special sandwiches, then
9 we might have an off rack display near the deli.

10 MS. BARATTA: To confirm, I think you
11 said that was Nature's Own. That's with respect to
12 the Cobblestone Mill?

13 THE WITNESS: Yes, for the displays,
14 yes.

15 Q. You said Nature's Own.

16 A. I'm sorry. Hello.

17 Q. So you do both, Nature's Own and
18 Cobblestone Mill?

19 A. Right.

20 Q. On the knee board?

21 A. No, no, no. Cobblestone Mill Selects is
22 all that goes on the knee board, but we may have off
23 rack displays of Cobblestone Mill or Nature's Own in
24 the deli during a specific period of time.

25 Q. Okay. And that's just like you see a

1 lot of times in stores if I go to the bread aisle I
2 know I'm looking for bread --

3 A. Right.

4 Q. -- but I run into these other specials
5 or things that are to prompt me to think about
6 buying bread?

7 A. That is correct. And if you have a
8 feature on English muffins you're going to try to
9 get it close to where the eggs are.

10 Q. So it's not that you're trying to put it
11 in the deli, it's just it may be anywhere in the
12 store?

13 A. That is correct.

14 Q. Could be in the deli, could be in the
15 fruit section?

16 A. Could be in produce, that's right.

17 Q. So just to clarify, if it's in -- if
18 Flowers sells Cobblestone Mill products with an
19 intention of being near the deli, it's going to be
20 with the Cobblestone Mill Select brand on that
21 product?

22 A. No. If we are having an off rack
23 display near the deli, it's going to be the original
24 Cobblestone Mill. The Cobblestone Mill Selects
25 would not be on a display. They would only be on

1 the deli knee board.

2 Q. I think that's what I was trying to say.

3 A. I'm sorry.

4 Q. If Flowers had product that they wanted
5 to sell that was targeted to be on a knee board in
6 the deli, it would be the Cobblestone Mills Select
7 product?

8 A. That's correct.

9 Q. It would not be Cobblestone Mill brand?

10 A. That's correct.

11 Q. But to do promotions, you use some kind
12 of a promotional display rack in addition to the
13 bread aisle where you sometimes put Cobblestone Mill
14 branded product, and that might be over toward the
15 deli, it might be near the fruit section, it might
16 be anywhere?

17 A. That is correct.

18 Q. And as I understand it, you do not --
19 your previous testimony, I believe, was that you do
20 not have these delis sell a Cobblestone Mill branded
21 sandwich when they sell the sandwich?

22 A. That is correct.

23 Q. And I didn't ask you, but I assume the
24 same is true with restaurants since you're not even
25 targeting at least the restaurant?

1 A. Right.

2 Q. So neither restaurants nor delis nor
3 anybody is currently selling a Cobblestone Mill
4 branded sandwich?

5 A. That is correct.

6 Q. And is it also true that no one is
7 selling a Cobblestone Mill Select branded sandwich
8 product?

9 A. That is correct.

10 MR. HILL: I'll pass the witness.

11 MS. BARATTA: We're going to try to
12 go through some redirect questions just to confirm a
13 few issues, and I think we can be pretty quick on
14 these.

15 REDIRECT EXAMINATION

16 BY: MS. BARATTA

17 Q. To confirm, does Flowers market its
18 Cobblestone Mill products only to retail consumers.

19 A. Well, we've talked about the consumer
20 advertising is -- I mean, we target our advertising
21 to the end user. But our -- of course we don't
22 consider food service retail. Retail is just where
23 someone goes in and makes a purchase of the product
24 in its package. So, did I answer your question?

25 Q. Partly.

1 Does Flowers also consider as part of
2 its customers to be the wholesalers and grocery
3 stores and other in-store delis?

4 MR. HILL: I'm going to object as
5 leading and somewhat contradictory.

6 A. Ask the question again, please.

7 BY: MS. BARATTA

8 Q. Does Flowers consider its customers to
9 include retail and wholesale customers?

10 MR. HILL: Same objection.

11 A. Well, our retailers, retail customers we
12 sell to them wholesale. So, you know, whatever we
13 sell to the retailer is at a wholesale price, and
14 it's the same wholesale price that we might sell to
15 a restaurant or that we might sell to someone else.

16 Q. So if you sell to wholesalers that -- an
17 example of a wholesaler could be a grocery store?

18 A. Yes. They're not -- we sell to them at
19 a wholesale price as does Del Monte and Heinz and
20 anyone else that sells to them sells at a wholesale
21 price and they mark it up.

22 MR. HILL: Kroger does not typically
23 pay retail.

24 Q. Something else that we talked about was
25 the presence of the mill or the wheel design and the

1 exhibit that's FBI 2429. Was there always a mill or
2 a wheel design as part of the mark?

3 A. Yes. From its inception in the early
4 80's it always had a mill of some kind on the
5 package until this last evolution that has just the
6 wheel.

7 Q. And with respect to the last evolution,
8 would you consider to be more prominent the wording
9 Cobblestone Mill or the mill design?

10 A. Cobblestone Mill.

11 Q. You said earlier that Flowers thinks a
12 majority of consumers recognized the Cobblestone
13 Mill brand. Why do you think that Flowers thinks a
14 majority of consumers recognize the Cobblestone Mill
15 brand?

16 MR. HILL: I will object as asked and
17 answered and also contradicted several times, but go
18 ahead.

19 A. As stated previously, we have not done a
20 research study that is purely an awareness study,
21 but we have never had any difficulty finding
22 consumers to participate in research that were
23 familiar with the brand.

24 They are screened before they come in to
25 be familiar with the category of premium specialty

1 brands which includes multiple brands, and we have
2 not had any difficulty. We always make sure that we
3 have a proportionate number of our sales, our
4 brands, as well as the competitors, and we have not
5 had any difficulty finding those consumers that are
6 aware of the brand.

7 Q. We also talked a little bit about the
8 packaging or you were asked about the packaging that
9 is used for sales to food service providers and also
10 the -- I'm sorry, the packaging that's used for the
11 retail products. The packaging that is depicted on
12 FBI 2429.

13 (Ms. Kirbo exited the deposition room.)

14 Q. If an in-store grocery deli were to use
15 Cobblestone Mill products, which they do, would it
16 use products in its packaging or would it use
17 products in different packaging?

18 A. If it were Cobblestone Mill packaging,
19 it would be the same exact packaging that appears on
20 the bread shelf. We only have one Cobblestone Mill
21 package design.

22 (Ms. Kirbo reentered the deposition
23 room.)

24 Q. We also talked about the food service
25 customers of Flowers. Do Flowers -- does Flowers

1 food service customers, does that also include
2 in-store grocery delis?

3 A. I don't know of a case where we would
4 service just an in-store grocery deli and not
5 service the store. And when we make a delivery to
6 the grocery store, we have one ticket. And we have
7 sold x amount to that retailer.

8 Q. But the in-store deli wouldn't be
9 considered to fall within the category of food
10 service; is that correct?

11 A. We don't count it that way. When you
12 look at our food service numbers, it is not
13 included, no.

14 Q. Is that also correct for in-store delis?

15 A. That's correct.

16 Q. And for mom and pop sandwich shops?

17 A. That's correct. Well, excuse me, the
18 mom and pop sandwich shops would show up in the
19 restaurant category or somewhere like that. They
20 would not show up as a super center or a retail
21 grocery outlet.

22 Q. What are some of the products that you
23 would consider to be either related or offered in
24 connection with breads and sandwiches?

25 MR. HILL: Object as speculative and

1 related. I don't understand. Go ahead.

2 A. Well, if you're going to have some sort
3 of a deli sandwich, there are certain things that
4 are going to be a part of that deli sandwich:
5 Condiments, your mustard, your ketchup, your
6 mayonnaise, your lettuce, your pickles, your
7 tomatoes, your onions, your meat, whatever your main
8 filler is. Lots of different things would go, would
9 be connected to a deli sandwich. Cheese.

10 Q. On the subject of the advertising, we
11 talked about some of the advertising that Flowers
12 does for the Cobblestone Mill products. Does it do
13 any advertising to wholesalers or wholesaler
14 headquarters?

15 A. Don't know that you would specifically
16 identify it as advertising as such, but any time we
17 have something new to introduce, and I believe in
18 one of these documents here there is a page, an 8
19 and a half by 11 page showing the introduction of
20 our new Cobblestone Mill muffins, and when we have
21 new rolls coming out, if we have stuffing coming
22 out, whatever we may have coming out that's new,
23 then we do prepare a one page flyer that our
24 national accounts --

25 We have a national account person

1 assigned to all of our major accounts, and they are
2 responsible for communicating with that account.
3 And they would take this piece of paper in with all
4 the information, UPC numbers, pricing, size of the
5 package, all those kinds of things, to call on the
6 retailer and deliver that information.

7 We also provide that same information to
8 all of our distributors. We have about 3,200
9 distributors, and we provide them that same
10 information.

11 Q. For the delis and grocery stores, we
12 talked about not having any wrap packaging for the
13 sandwiches. Would the -- is the packaging and the
14 product visible in the deli?

15 A. It's going to vary by deli and, you
16 know, it's easy to have tunnel vision, but in the
17 Publix in Thomasville the -- their bread is -- it's
18 not ours, but their bread is visible.

19 There's a little sandwich shop downtown
20 that they use our bread, and it's -- you come in and
21 order and the bread's right there on the counter.
22 That's not to say that that's what you find every
23 time you go into a sandwich shop, but I think it
24 happens on frequent occasions.

25 Q. Was Flowers concerned about the use of

1 the Cobblestone Market brand?

2 A. Yes.

3 Q. Was Flowers concerned about the
4 registration of the Cobblestone Market brand?

5 A. Yes.

6 Q. With respect to the proximity of the, of
7 any in-store grocery delis to the bread aisle, what
8 is your experience about the relation, the proximity
9 or the relationship between the two?

10 A. It varies significantly by retailer
11 because the store layout can be so different. So I
12 don't think there's a specific answer to that. It's
13 going to be too varied.

14 Q. Are the Cobblestone Mill products sold
15 -- can they be sold on a display near a deli but a
16 display other than a knee board?

17 A. Yes.

18 Q. And if they were displayed other than on
19 --

20 A. Only Cobblestone Mill, not Selects.

21 Q. That was my next question. Exactly. So
22 if they were displayed on a display other than a
23 knee board, which product would that be?

24 A. It could be the Cobblestone Mill
25 original line and not the Selects.

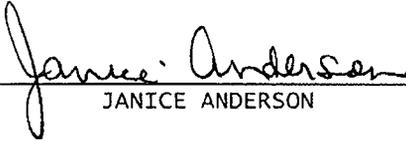
23 Anderson 9-18-07
knee board, which product would that be?

24 A. It could be the Cobblestone Mill
25 original line and not the selects.

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1 MS. BARATTA: That's all we've got.
2 (Whereupon, the deponent or a party
3 having specifically reserved reading and signing of
4 the deposition, the taking of the deposition was
5 concluded at 12:25 p.m. the same date.)
6

7 
8 _____
9 JANICE ANDERSON

10
11 Sworn and subscribed before me this
12 28th day of September 2007
13 Notary Public
14 My Commission Expires:
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C E R T I F I C A T E

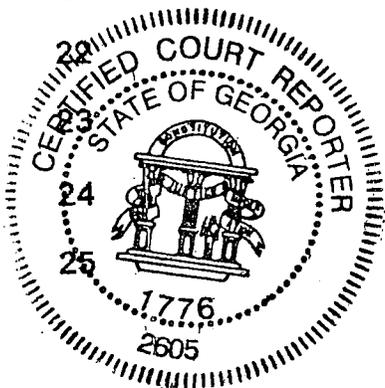
1
2 STATE OF GEORGIA,
3 COUNTY OF TIFT:

4 I hereby certify that the foregoing
5 transcript was taken down, as stated in the caption,
6 and the questions and answers thereto were reduced
7 to typewriting by computer-aided transcription under
8 my direction; that the foregoing pages 1 through 107
9 represent a true, complete, and correct transcript
10 of the evidence given; and I further certify that I
11 am not of kin or counsel to the parties in the case,
12 am not in the regular employ of counsel for any of
13 said parties, and am in no wise interested in the
14 result of said case.

15 I certify that a certain portion of this
16 deposition, marked "Confidential Testimony," has
17 been sealed under separate cover.

18 I further certify that the original of
19 this deposition will be filed with Ms. Baratta,
20 Counsel for the Opposer.

21 This the 26th day of September 2007.



Elzbieta A. Sirosis
ELZBIETA A. SIROIS, CCR-B-2605

Anderson 9-18-07

1 Deposition of JANICE ANDERSON

2

ERRATA SHEET

3

4 I do hereby certify that I have read all
5 questions propounded to me and all answers given by
6 me and that:

- 7 _____ 1) There are no changes noted.
- 8 _____ 2) The following changes are noted:
9 Corrections to be made pursuant to Rule 30(7)(e) of
10 the Federal Rules of Civil Procedure and/or Georgia
11 Code Annotated 9-11-30(e), both of which read in
12 part: Any changes in form or substance which you
13 desire to make shall be entered upon the
14 deposition...with a statement of the reasons
15 given...for making them. Accordingly, to assist you
16 in effecting corrections, please use the form below:

17 Page No. 14 Line No. 4 should read: Under
the Gun And Roll category

18 And the reason for the change is: _____

19 Page No. 15 Line No. 5 should read: JANICE'S

20 And the reason for the change is: TYPO

21 Page No. 40 Line No. 20/21 should read: Dublix

22 And the reason for the change is: TYPO

23 Page No. 42 Line No. 20 should read: omit 45

24 And the reason for the change is: TYPO

25 Page No. 16 Line No. 12 should read: Cobblestone
MARKER could

And the reason for the change is: TYPO

Page No. _____ Line No. _____ should read: _____

And the reason for the change is: _____

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1 Page No. _____ Line No. _____ should read: _____

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Anderson 9-18-07

And the reason for the change is: _____

Page No. ____ Line No. ____ should read: _____

And the reason for the change is: _____

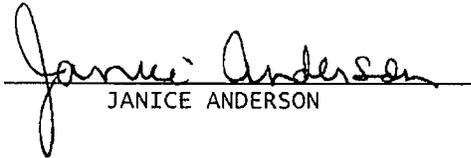
Page No. ____ Line No. ____ should read: _____

And the reason for the change is: _____

Page No. ____ Line No. ____ should read: _____

And the reason for the change is: _____

If supplemental or additional pages are necessary,
please furnish same in typewriting annexed to this
deposition.


JANICE ANDERSON

Sworn and subscribed before me this

28th day of September 2007

Notary Public.
My Commission Expires:

MIXON REPORTING SERVICE, INC. (229) 382-8512

Cobblestone Mill Brand Sales

Fiscal Year	2007 Through Q2	2006	2005	2004	2003	2002	2001	2000	1999
Net Sales Dollars	\$36,325,445	\$ 74,440,805	\$ 79,285,711	\$ 75,375,313	\$ 72,816,046	\$ 64,642,880	\$ 60,085,990	\$ 60,085,990	\$ 55,939,353
Net Sales Units	21,942,307	46,392,797	50,189,977	50,104,968	51,859,291	45,463,466	39,962,383	41,709,450	41,038,143

EXHIBIT
4
 9-18-07

4

FBI 2393



**Cobblestone Mill (Label 103 & 116)
through 2nd Quarter, 2007**

Channel Desc	Net Sales Units	Net Sales Dollars	% of Total
Convenience Stores	560,811	\$940,837	3%
Co Pack	5,560	\$5,724	0%
Drug Stores	42,352	\$62,190	0%
Export	55,103	\$87,904	0%
Fed Govt Excl Cmsary	184,133	\$236,680	1%
Food Service-Vending	415,290	\$662,875	2%
Grocery Outlets	11,646,103	\$19,704,679	53%
Mass Merch/Discounts	5,336,230	\$9,001,206	24%
Private Institutions	390,772	\$673,194	2%
Restaurants	2,450,547	\$3,937,133	11%
State and Local Govt	855,406	\$1,013,023	4%
Sum:	21,942,307	\$36,325,445	100%

2005

Channel Desc	Net Sales Units	Net Sales Dollars	
Convenience Stores	1,088,054	\$1,775,147	2.3%
Co Pack	12,727	\$12,447	0.0%
Drug Stores	94,835	\$130,140	0.2%
Export	241,441	\$367,992	0.5%
Fed Govt Excl Cmsary	297,568	\$365,696	0.6%
Food Service-Vending	718,387	\$1,164,355	1.5%
Grocery Outlets	24,980,399	\$41,358,468	53.8%
Mass Merch/Discounts	11,846,574	\$18,642,228	25.5%
Private Institutions	763,258	\$1,283,033	1.6%
Restaurants	4,675,341	\$7,430,459	10.1%
State and Local Govt	1,674,213	\$1,910,839	3.6%
Sum:	46,392,797	\$74,440,805	100.0%

2006

Channel Desc	Net Sales Units	Net Sales Dollars	
Convenience Stores	1,195,829	\$1,823,406	2.4%
Co Pack	14,626	\$13,853	0.0%
Drug Stores	93,723	\$126,629	0.2%
Export	250,701	\$355,955	0.5%
Fed Govt Excl Cmsary	397,403	\$495,586	0.8%
Food Service-Vending	705,800	\$1,122,537	1.4%
Grocery Outlets	28,379,965	\$46,080,032	56.5%
Mass Merch/Discounts	12,683,355	\$19,638,962	25.3%
Private Institutions	750,761	\$1,203,300	1.5%
Restaurants	4,492,998	\$7,043,495	9.0%
State and Local Govt	1,224,816	\$1,381,956	2.4%
Sum:	50,189,977	\$79,285,711	100.0%

EXHIBIT
5
9-18-07

5

FB2 425



TOTAL COBBLESTONE MILL		SOURCE: INFORMATION RESOURCES SCAN DATA			
TOTAL U.S.-F/D/M - FD/DG/MM	Dollar Sales	Dollar Share	Unit Sales	Unit Share	Avg Weekly ACV Weighted Distribution
4 Week Ending Feb 3, 2002	\$ 4,326,208	0.67	2,143,294	0.54	24.15
4 Week Ending Mar 3, 2002	\$ 4,070,510	0.65	1,966,963	0.51	23.81
4 Week Ending Mar 31, 2002	\$ 4,146,739	0.65	2,035,397	0.52	23.90
4 Week Ending Apr 28, 2002	\$ 4,073,066	0.64	2,019,382	0.51	23.63
4 Week Ending May 26, 2002	\$ 4,206,715	0.63	2,181,567	0.52	23.69
4 Week Ending Jun 23, 2002	\$ 4,162,864	0.62	2,182,796	0.51	23.63
4 Week Ending Jul 21, 2002	\$ 4,511,387	0.65	2,377,749	0.53	23.79
4 Week Ending Aug 18, 2002	\$ 4,481,107	0.68	2,344,613	0.56	23.68
4 Week Ending Sep 15, 2002	\$ 4,378,943	0.66	2,298,617	0.55	23.84
4 Week Ending Oct 13, 2002	\$ 4,232,406	0.67	2,206,773	0.56	23.78
4 Week Ending Nov 10, 2002	\$ 4,085,520	0.65	2,120,654	0.55	23.57
4 Week Ending Dec 8, 2002	\$ 4,071,288	0.62	2,138,658	0.53	23.49
4 Week Ending Jan 5, 2003	\$ 4,185,855	0.64	2,171,877	0.55	23.50
4 Week Ending Feb 2, 2003	\$ 4,354,614	0.67	2,180,692	0.55	23.44
4 Week Ending Mar 2, 2003	\$ 4,603,974	0.71	2,331,712	0.60	23.53
4 Week Ending Mar 30, 2003	\$ 4,733,707	0.74	2,443,912	0.63	23.51
4 Week Ending Apr 27, 2003	\$ 4,646,531	0.71	2,418,816	0.61	23.59
4 Week Ending May 25, 2003	\$ 4,625,654	0.69	2,374,358	0.57	23.63
4 Week Ending Jun 22, 2003	\$ 4,570,328	0.68	2,367,677	0.56	23.80
4 Week Ending Jul 20, 2003	\$ 4,773,233	0.68	2,501,121	0.56	23.83
4 Week Ending Aug 17, 2003	\$ 4,587,837	0.68	2,413,609	0.58	23.92
4 Week Ending Sep 14, 2003	\$ 4,702,585	0.70	2,482,305	0.60	24.13
4 Week Ending Oct 12, 2003	\$ 4,542,932	0.71	2,381,770	0.62	24.42
4 Week Ending Nov 9, 2003	\$ 4,507,566	0.73	2,358,006	0.63	24.57
4 Week Ending Dec 7, 2003	\$ 4,476,298	0.69	2,337,689	0.60	24.69
4 Week Ending Jan 4, 2004	\$ 4,617,779	0.71	2,375,969	0.62	24.69
4 Week Ending Feb 1, 2004	\$ 4,648,995	0.72	2,278,034	0.59	24.86
4 Week Ending Feb 29, 2004	\$ 4,680,545	0.75	2,310,720	0.63	25.07
4 Week Ending Mar 28, 2004	\$ 4,782,108	0.75	2,336,999	0.63	25.10
4 Week Ending Apr 25, 2004	\$ 4,727,299	0.73	2,306,079	0.60	25.19
4 Week Ending May 23, 2004	\$ 4,660,094	0.71	2,263,541	0.58	25.12
4 Week Ending Jun 20, 2004	\$ 4,980,101	0.72	2,506,357	0.60	25.06
4 Week Ending Jul 18, 2004	\$ 4,766,254	0.69	2,359,701	0.56	25.08
4 Week Ending Aug 15, 2004	\$ 4,732,245	0.70	2,308,514	0.57	25.08
4 Week Ending Sep 12, 2004	\$ 4,800,168	0.71	2,287,729	0.57	24.98
4 Week Ending Oct 10, 2004	\$ 4,680,815	0.72	2,199,701	0.58	25.30
4 Week Ending Nov 7, 2004	\$ 4,628,808	0.72	2,124,717	0.58	25.37
4 Week Ending Dec 5, 2004	\$ 4,621,650	0.70	2,075,178	0.54	25.12
4 Week Ending Jan 2, 2005	\$ 4,782,163	0.72	2,147,564	0.57	24.90
4 Week Ending Jan 30, 2005	\$ 4,739,652	0.70	2,083,290	0.55	24.89
4 Week Ending Feb 27, 2005	\$ 4,703,933	0.73	2,110,989	0.58	24.72
4 Week Ending Mar 27, 2005	\$ 4,807,743	0.72	2,190,474	0.59	25.14
4 Week Ending Apr 24, 2005	\$ 4,762,849	0.72	2,142,710	0.57	25.30
4 Week Ending May 22, 2005	\$ 4,754,490	0.71	2,098,060	0.55	25.42

EXHIBIT
6
9-18-07

FBI 2926

4 Week Ending Jun 19, 2005	\$ 4,881,074	0.70	2,165,398	0.53	25.44
4 Week Ending Jul 17, 2005	\$ 4,677,025	0.67	2,083,650	0.51	25.36
4 Week Ending Aug 14, 2005	\$ 4,559,442	0.67	2,058,343	0.53	25.26
4 Week Ending Sep 11, 2005	\$ 4,652,998	0.68	2,087,484	0.54	25.22
4 Week Ending Oct 9, 2005	\$ 4,357,625	0.68	1,971,904	0.55	25.36
4 Week Ending Nov 6, 2005	\$ 4,327,132	0.68	1,907,635	0.54	25.89
4 Week Ending Dec 4, 2005	\$ 4,338,577	0.66	1,909,251	0.52	25.87
4 Week Ending Jan 1, 2006	\$ 4,550,801	0.69	1,981,828	0.55	25.63
4 Week Ending Jan 29, 2006	\$ 4,607,382	0.71	1,976,804	0.56	25.36
4 Week Ending Feb 26, 2006	\$ 4,664,234	0.71	2,020,950	0.58	25.29
4 Week Ending Mar 26, 2006	\$ 4,736,184	0.72	2,059,656	0.59	25.18
4 Week Ending Apr 23, 2006	\$ 4,664,288	0.69	2,031,677	0.56	25.33
4 Week Ending May 21, 2006	\$ 4,505,982	0.66	2,009,318	0.54	25.24
4 Week Ending Jun 18, 2006	\$ 4,604,207	0.64	2,070,095	0.52	25.44
4 Week Ending Jul 16, 2006	\$ 4,506,206	0.62	2,026,076	0.50	25.64
4 Week Ending Aug 13, 2006	\$ 4,232,523	0.60	1,909,989	0.50	25.50
4 Week Ending Sep 10, 2006	\$ 4,147,475	0.59	1,875,032	0.49	25.50
4 Week Ending Oct 8, 2006	\$ 3,939,241	0.58	1,747,393	0.50	25.17
4 Week Ending Nov 5, 2006	\$ 3,330,082	0.50	1,419,275	0.41	25.58
4 Week Ending Dec 3, 2006	\$ 3,277,243	0.47	1,381,386	0.38	26.00
4 Week Ending Dec 31, 2006	\$ 3,413,104	0.49	1,433,601	0.40	26.02
4 Week Ending Jan 28, 2007	\$ 3,474,788	0.50	1,484,369	0.42	26.18
4 Week Ending Feb 25, 2007	\$ 3,663,105	0.53	1,570,947	0.45	26.78
4 Week Ending Mar 25, 2007	\$ 3,790,569	0.55	1,609,146	0.46	26.97
4 Week Ending Apr 22, 2007	\$ 3,715,609	0.53	1,611,795	0.45	27.12
4 Week Ending May 20, 2007	\$ 3,766,315	0.53	1,635,358	0.45	27.38
4 Week Ending Jun 17, 2007	\$ 3,761,420	0.50	1,624,907	0.41	27.15
4 Week Ending Jul 15, 2007	\$ 3,798,191	0.50	1,580,933	0.40	27.20
4 Week Ending Aug 12, 2007	\$ 3,627,065	0.50	1,487,921	0.40	26.57



Brent Bradshaw/Flowers
05/15/2007 01:19 PM

To FBI VP's
FBI Regional Vice Presidents, FBI Presidents, FBI National
cc Account Managers, Janice Anderson/Flowers@Flowers,
David Roach/Flowers@Flowers, Donna R
Subject Cobblestone Mill BOGO Promotion!!



BOGO PROMOTION!!

Team,

This note is to inform you of an upcoming Cobblestone Mill BOGO Promotion. In weeks 25 & 26, we will be applying instant redeemable coupons to our Cobblestone Mill 16oz & 20oz Ryes for a free Seeded Sandwich Roll.

In addition to the on pack coupons on the Rye, we will also have stickers on the Seeded Sandwich Rolls stating "Free with purchase of Cobblestone Mill Rye Bread".

Marketing will be funding the redemption for this promotion and the cost for printing and distributing 5 thousand danglers.

We have also developed a header card to be used in conjunction with our current orange Nature's Own/Cobblestone Mill corrugated displays, which we have been using for various promotions and now have more in stock. The headers are \$2 each and the displays are \$35 if you need new ones. I will need to know how many headers and/or displays you will need for this promotion by Friday 5/25.

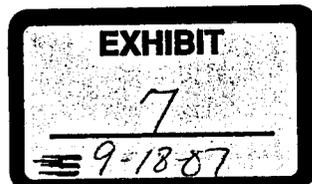
I encourage you to work to get up displays wherever you can. National Accounts are already working with their buyers and will have updates for you this week. I have already seen letters of support from some accounts and am excited about the opportunity for this promotion to generate trial and help us drive sales. If successful, we will continue to execute these sorts of promotions in the future.

Attached below is a sales piece showing the materials offered:



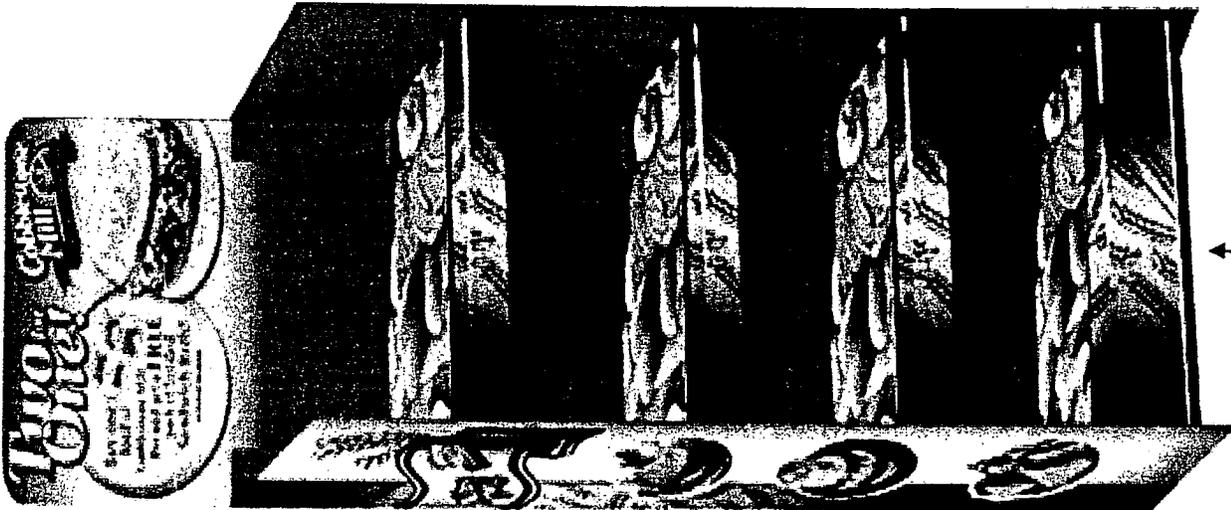
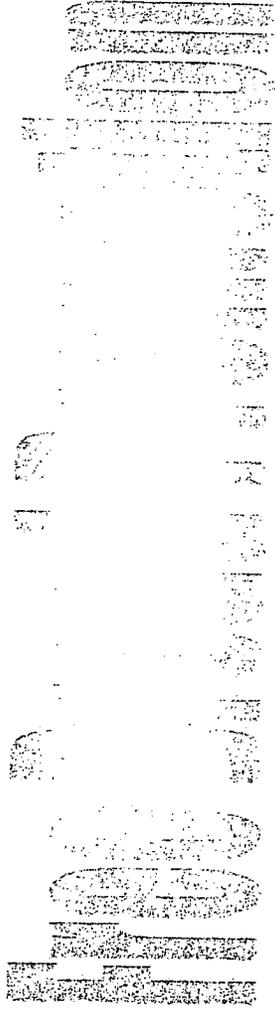
CM Free Bread Promotion.ppt

Please let me know if you have any questions.

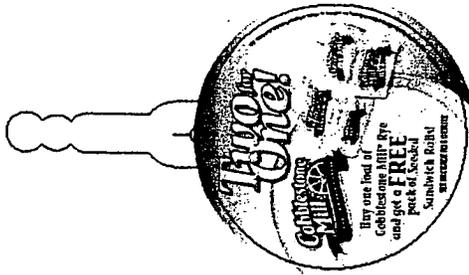


*Cobblestone mill
BOGO promotion.*

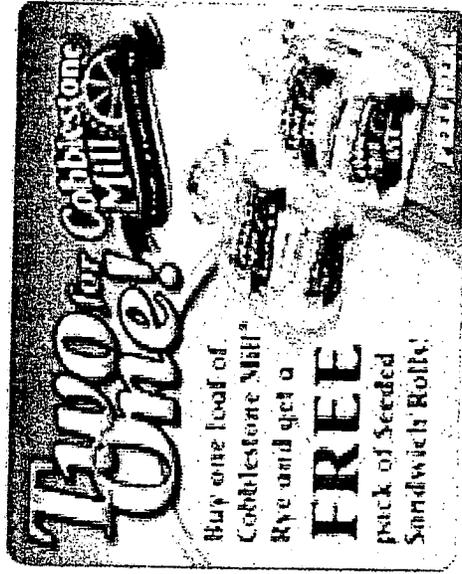
FBI 2419



display utilizing header



dangler



on-pack coupon

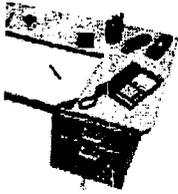
Offer Lasts June 18th – June 30th

FBI 245
272

Thanks,
Brent Bradshaw
Flowers Foods
Office: 229-227-2034
Cell: 229-221-6279

FBI 2416
2413





Brent Bradshaw/Flowers
07/03/2007 04:27 PM

To FBI Regional Vice Presidents, FBI Presidents, FBI VP's, FBI
National Account Managers
Janice Anderson/Flowers@Flowers, David
cc Roach/Flowers@Flowers, Sherry Harper/Flowers@Flowers,
Donna R Greek/Flowers@Flowers, Chad S
Subject Cobblestone Mill Advertising Campaign



Advertising Campaign

Team,
I wanted to inform you of some exciting activity we have going on for Cobblestone Mill. Beginning now, through the remainder of the year, Cobblestone Mill print advertising will appear in several very well known and well read ladies magazines.

Cooking with Paula Deen
Issues (3 issues): July/August, September/October, November/December
Distribution/Readership: 750 Thousand
*Extra Benefit: Sponsor of Cooking with Paula Deen Live Tour in Charlotte (6/30), Nashville (8/4), Dallas (8/25), and Atlanta (9/8). Sponsorship includes 30 second video spot, coupons, samples, and an ad in the program.

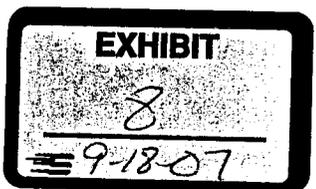
Cooking Light
Issues (3 issues): September, October, November
Distribution/Readership: 1.7 Million
*Extra Benefit: Additional ad in their Special Interest Newsstand Issue in October

Southern Living
Issues (2 issues): October & November
Distribution/Readership: 2.8 Million
*Extra Benefit: Sponsor of Southern Living BBQ Tour with Troy Black (a renown chef). We are handing out recipe cards and our logo will be on their promotional materials. Upcoming events in Birmingham, AL on 8/24 & 8/26 and Lynchburg, TN on 10/26 & 10/27.

The focus of the ads is on buns and rolls and the attachment below shows you what they will look like:



FLOW-CobbleConsumer.pdf



Cobblestone Mill
Ad Campaign

FBI 2354

This is exciting news for Cobblestone Mill with the first real advertising for the brand in some time. We believe this new initiative will excite consumers and our retailers about the brand.

Please let me know if you have any questions.

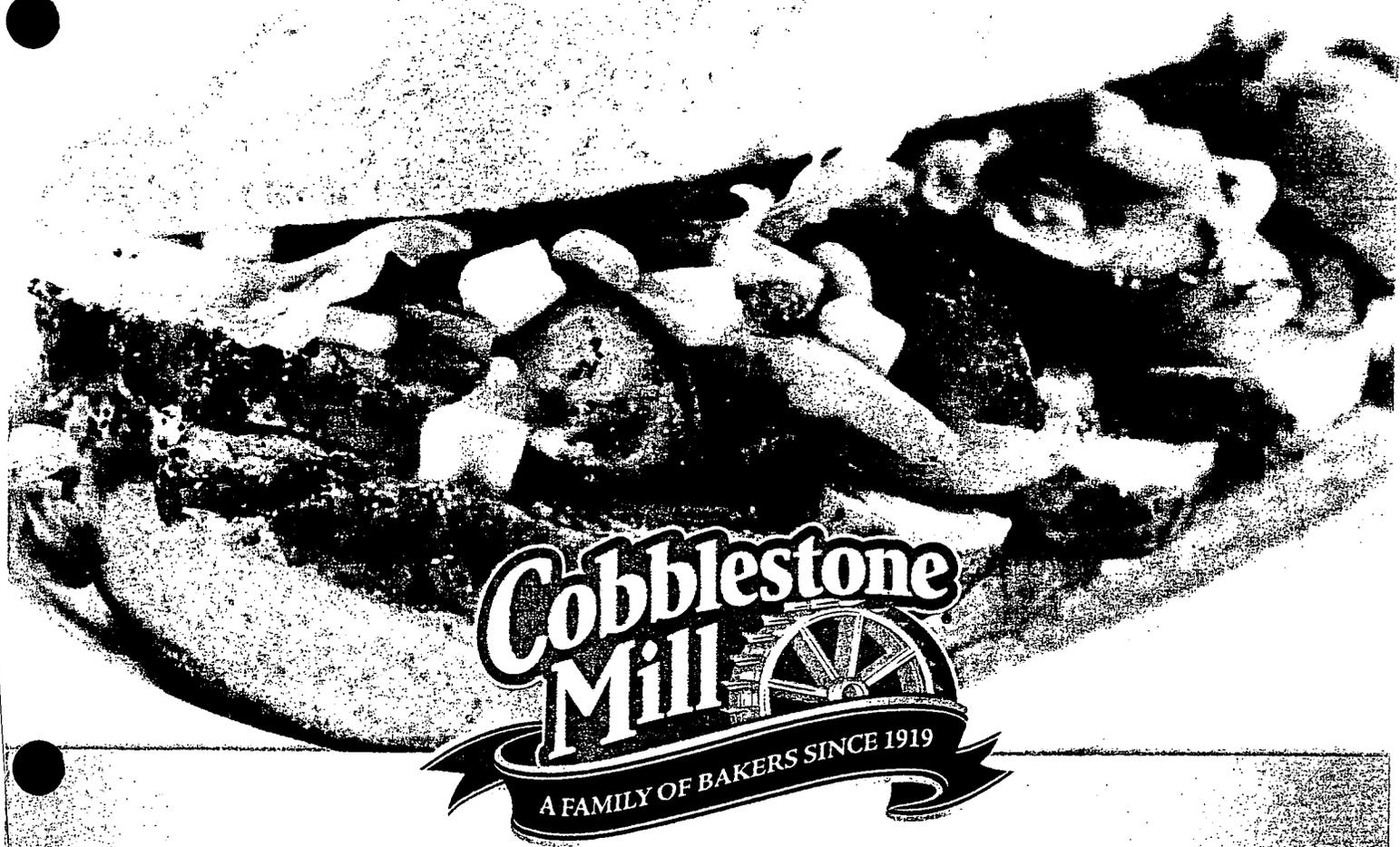
Thanks,

Brent Bradshaw

Flowers Foods

Office: 229-227-2034

Cell: 229-221-6279

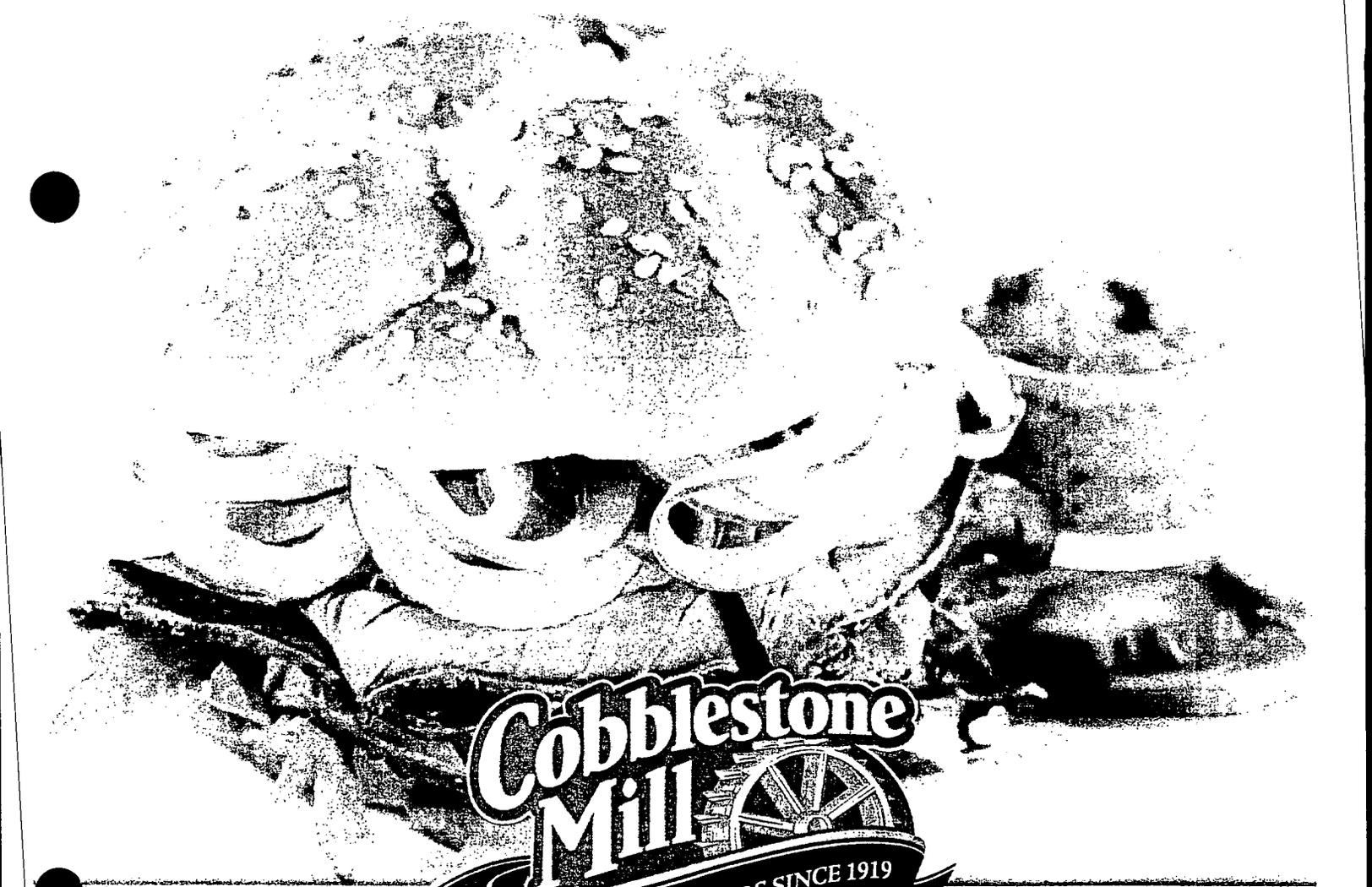


The occasion may not always call for something special. *But you do.*



Make any meal special with the hearty texture and rich taste of a Cobblestone Mill Sub Roll. Since 1919, we've been using only the finest ingredients to create premium breads, buns and rolls that both look good and taste great. Turn a simple meal into something wonderful with a complete line of premium breads and rolls, including Sub Rolls, Philly Style Hoagies, Onion Rolls and Seeded Sandwich Rolls. For a hearty Fall sandwich recipe, visit CobblestoneMill.com/cl.





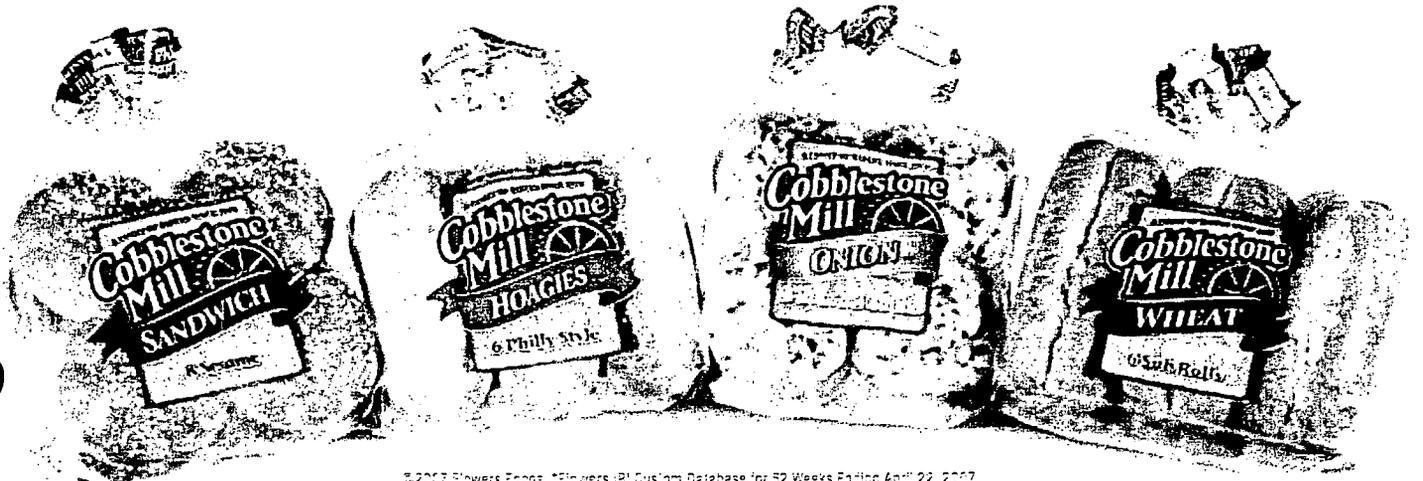
Cobblestone Mill

A FAMILY OF BAKERS SINCE 1919

Making the *simple*, simply wonderful.



Make any meal special with the hearty texture and rich taste of a Cobblestone Mill Seeded Sandwich Roll. Since 1919, we've been using only the finest ingredients to create premium breads, buns and rolls that both look good and taste great. Turn a simple meal into something wonderful with a complete line of premium breads and rolls, including Sub Rolls, Philly Style Hoagies, Onion Rolls and Seeded Sandwich Rolls. For a hearty Fall sandwich recipe, visit CobblestoneMill.com/cl.



Cobblestone Mill

A FAMILY OF BAKERS SINCE 1919

Making the *simple, simply wonderful.*



Make any meal special with the hearty texture and rich taste of a Cobblestone Mill Seeded Sandwich Roll. Since 1919, we've been using only the finest ingredients to create premium breads, buns and rolls that both look good and taste great. Turn a simple meal into something wonderful with a complete line of premium breads and rolls, including Sub Rolls, Philly Style Hoagies, Onion Rolls and Seeded Sandwich Rolls. For a hearty Fall sandwich recipe, visit CobblestoneMill.com/cl.



INVOICE

Garcia Studio, Inc.
 933 Fielder Avenue NW
 Atlanta, GA 30318
 404-892-2334

DATE	INVOICE #
08/30/2007	20060166

BILL TO
Flowers Foods, Inc.
1919 Flowers Circle
Thomasville, Ga 31757

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
1	Use of Cobblestone Mill Sub Roll beauty shot for use in Paula Dean publication - \$300.00		\$300.00	\$300.00
			Subtotal	\$300.00
Thank you.			Total	\$300.00

Vendor	No tax <input checked="" type="checkbox"/> TO	Approved
	Prod tax <input type="checkbox"/> IA UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> I1 U1	9/10/07
Co Code	GL account	Cost Ctr/Order
0100	217718	PO #
Text: Cm Ad photo fee		
Allocation code:		

M A T C H

Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Brent Bradshaw
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5971
Date 08/28/07
Job Number FLOW-084
PO# -
Charge# Active

Job Name: Cobblestone Print - Southern Living (Oct/Nov)
Agency Contact: Katie Brown

Description	Amount
-------------	--------

2nd estimate billing plus outside hard costs

TOTAL:	\$1,481.48
---------------	-------------------

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved	
	Prod tax <input type="checkbox"/> IA UA	<i>[Signature]</i>	
	Non prod tax <input type="checkbox"/> 11 U1	9/10/07	
Co Code	GL account	Cost Ctr/Order	PO #
0100	21778		
Text: <i>on SL ad costs</i>			
Allocation code:			

FBI 2900

M A T C H

Media Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Janice Anderson
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5875
Date 08/06/07
Job Number FLOW-082
PO# -
Charge# Active

Job Name: 2007 CM Media-Sou Liv (Print/BBQ/Web), CL & PD
Agency Contact: Katie Brown
Description: Pre-Billing 217718

Publication	IO#:	Issue Date	Size	Ad#/caption	Amount
Cooking Light	10319	October 07	Full Page 4C	Cobblestone Mill	\$60,308.00
Media Subtotal:					\$60,308.00
TOTAL:					\$60,308.00

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved
	Prod tax <input type="checkbox"/> 1A UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> 11 U1	8/20/07
Co Code	GL account	Cost Ctr/Order
0100	217718	
Text: <u>Cooking Light oct. 07</u>		
Allocation code:		

F35 2701

M A T C H

Media Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Janice Anderson
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5877
Date 08/06/07
Job Number FLOW-082
PO# --
Charge# Active

Job Name: 2007 CM Media-Sou Liv (Print/BBQ/Web), CL & PD
Agency Contact: Katie Brown
Description: Pre-Billing

217718

Publication	IO#:	Issue Date	Size	Ad#/caption	Amount
SOUTHERN LIVING	10324	October 07	Full Page 4C	Cobblestone Mill	\$91,928.00
Media Subtotal:					\$91,928.00
TOTAL:					\$91,928.00

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved
	Prod tax <input type="checkbox"/> 1A UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> 11 U1	8/20/07
Co Code	GL account	Cost Ctr/Order
0100	217718	
Text: Southern Living oct. 07		
Allocation code:		

FBI 202

M A T C H

Media Invoice

MATCH, Inc.
 Atlantic Center Plaza
 1180 West Peachtree Street, Suite 400
 Atlanta, Georgia 30309

Janice Anderson
 Flowers Bakeries
 230 South Madison Street
 Thomasville, Georgia 31792

Number 5876
 Date 08/06/07
 Job Number FLOW-082
 PO# -
 Charge# Active

Job Name: 2007 CM Media-Sou Liv (Print/BBQ/Web), CL & PD
 Agency Contact: Katie Brown
 Description: Pre-Billing

217715

Publication	IO#:	Issue Date	Size	Ad#/caption	Amount
Cooking with Paula D	10322	Sept/October	Full Page 4C	Cobblestone Mill	\$31,079.00
Media Subtotal:					\$31,079.00
TOTAL:					\$31,079.00

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
 Atlantic Center Plaza
 1180 West Peachtree Street, Suite 400
 Atlanta, Georgia 30309

Vendor	No tax	<input checked="" type="checkbox"/> 100	Approved
	Prod tax	<input type="checkbox"/> 1AAUSA	<i>[Signature]</i>
	Non prod tax	<input type="checkbox"/> 111U31	8/20/07
Co Code	GL account	Cost Center	PO#
0100	217718		
Text: Cooking with Paula Sept/oct			
Allocation code:			

M A T C H

Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Janice Anderson
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5749
Date 06/26/07
Job Number FLOW-074
PO# -
Charge# Active

Job Name: Cobblestone Production - Cooking Light (Sept/Oct/Nov)
Agency Contact: Katie Brown

Description Amount

2nd half of estimate

TOTAL: \$4,739.57

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved
	Prod tax <input type="checkbox"/> 1A UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> 11 U1	8/29/07
Co Code	GL account	Cost Ctr/Order
0100	217718	PO #
Text: <i>Coocking Light (Sept/Oct/Nov)</i>		
Allocation code:		

For 2704

M A T C H

Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Brent Bradshaw
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5750
Date 06/26/07
Job Number FLOW-083
PO# -
Charge# Active

Job Name: Cobblestone Print - Paula Deen (July/Aug)
Account Executive Katie Brown

Description	Amount
-------------	--------

2nd half of estimate plus additional hard costs

TOTAL:	\$1,317.45
---------------	-------------------

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved
	Prod tax <input type="checkbox"/> IA UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> 11 U1	8/29/07
Co Code	GL account	Cost Ctr/Order
0100	217718	
Text: Paula Deen (July/Aug)		
Allocation code:		

M A T C H

Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Brent Bradshaw
Flowers Bakeries

Number 5751
Date 06/26/07
Job Number FLOW-086
PO# -
Charge# Active

Job Name: General Guidebook Ad (PD Tour)
Agency Contact: Katie Brown

Description	Amount
100% estimate billing	
TOTAL:	\$1,103.89

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved
	Prod tax <input type="checkbox"/> IA UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> 11 U1	8/29/07
Co Code	GL account	Cost Ctr/Order
0100	217718	PO #
Text: General Guidebook Ad (PD Tour)		
Allocation code:		

M A T C H

Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Janice Anderson
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5753
Date 06/26/07
Job Number FLOW-091
PO# -
Charge# Active

Job Name: Cobblestone Mill Video (PD Tour)
Account Supervisor Gena Weaver

Description Amount

2nd half of estimate plus additional hard costs

TOTAL: \$1,200.22

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved
	Prod tax <input type="checkbox"/> 1A UA	<i>[Signature]</i>
	Non prod tax <input type="checkbox"/> 11 U1	5/29/07
Co Code	GL account	Cost Ctr/Order
0100	217718	
Text: Cobblestone Mill Video (PD Tour)		
Allocation code:		

M A T C H

Media Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Janice Anderson
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5878
Date 08/06/07
Job Number FLOW-082
PO# -
Charge# Active

Job Name: 2007 CM Media-Sou Liv (Print/BBQ/Web), CL & PD
Agency Contact: Katie Brown
Description: Pre-Billing

217718

Publication	IO#:	Issue Date	Size	Ad#/caption	Amount
SOUTHERN LIVING	10327	FALL 07	WEB	Cobblestone Mill	\$5,000.00
Media Subtotal:					\$5,000.00
TOTAL:					\$5,000.00

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/>	10	Approved
	Prod tax <input type="checkbox"/>	1A UA	<i>init</i>
	Non prod tax <input type="checkbox"/>	11 U1	8/20/07
Co Code	GL account	Cost Ctr/Order	PO #
0100	217718		
Text: Southern Living Fall 07			
Allocation code:			

FBI 2708

M A T C H

Media Invoice

MATCH, Inc.
 Atlantic Center Plaza
 1180 West Peachtree Street, Suite 400
 Atlanta, Georgia 30309

Janice Anderson
 Flowers Bakeries
 230 South Madison Street
 Thomasville, Georgia 31792

Number 5791
 Date 07/06/07
 Job Number FLOW-082
 PO# -
 Charge# Active

Job Name: 2007 CM Media-Sou Liv (Print/BBQ/Web), CL & PD
 Agency Contact: Katie Brown
 Description: Pre-Billing

Publication	IO#:	Issue Date	Size	Ad#/caption	Amount
Cooking Light	10318	September 07	Full Page 4C	Cobblestone Mill	\$60,308.00
Media Subtotal:					\$60,308.00
TOTAL:					\$60,308.00

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
 Atlantic Center Plaza
 1180 West Peachtree Street, Suite 400
 Atlanta, Georgia 30309

Vendor	No tax <input checked="" type="checkbox"/> 10	Approved	
	Prod tax <input type="checkbox"/> 1A UA	<i>W.M.</i>	
	Non prod tax <input type="checkbox"/> 11 U1	7/17/07	
Co Code	GL account	Cost Ctr/Order	PO #
0100	217715		
Text: <i>Cooking Light Ad cam</i>			
Allocation code:			

\$ To be paid in 3rd Qtr.

M A T C H

Media Invoice

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

Janice Anderson
Flowers Bakeries
230 South Madison Street
Thomasville, Georgia 31792

Number 5712
Date 06/05/07
Job Number FLOW-082
PO# --
Charge# Active

Job Name: 2007 CM Media-Sou Liv (Print/BBQ/Web), CL & PD
Agency Contact: Katie Brown
Description: Pre-Billing

Publication	IO#:	Issue Date	Size	Ad#/caption	Amount
Cooking with Paula D	10321	July/August	Full Page 4C	Cobblestone Mill	\$31,079.00
SOUTHERN LIVING	10328		BBQ Tour	BBQ - Cobblestone ...	\$7,500.00
Media Subtotal:					\$38,579.00
TOTAL:					\$38,579.00

PAYMENT TERMS: Net 30

Please note our new remittance address:

MATCH, Inc.
Atlantic Center Plaza
1180 West Peachtree Street, Suite 400
Atlanta, Georgia 30309

* Advertising for Q3, please hold for Q3.

Vendor	No tax <input checked="" type="checkbox"/> 10 Prod tax <input type="checkbox"/> IA UA Non prod tax <input type="checkbox"/> 11 U1	Approved <i>[Signature]</i> 7/1/07
Co Code C100	GL account 217718	Cost Ctr/Order PO #
Text: CO Advertising in Atlanta Area		
Allocation code:		

FBI 2410



Brent Bradshaw/Flowers

05/25/2007 06:41 PM

To FBI Presidents, FBI VP's

FBI Regional Vice Presidents, Janice

cc Anderson/Flowers@Flowers, David

Roach/Flowers@Flowers, FBI National Account Managers,

Subject Cobblestone Mill English Muffin Update



English Muffin Business!!

Team,

This note is to inform you of a great new venture for Flowers Foods and Cobblestone Mill. For years, we have purchased our Cobblestone Mill English Muffins from outside suppliers. I am pleased to announce that the Cobblestone Mill English Muffins will be soon be produced in Montgomery. Montgomery has installed a new line with state of the art equipment, as well as reformulated the product to offer an outstanding new recipe.

When we made the move with our Bagels to Suwanee, we saw a great increase in sales and our business continues to increase. I am confident we will have the same, if not greater success with these great new English Muffins.

This move is expected to happen for all plants except Florida and Thomaville with June 4th sales. Florida and Thomasville will move soon and we will communicate to those plants as soon as we have a firm date.

Material Information:

Material Number: 10320462 (New)

Item UPC: 0-72250-05108-8 (Existing)

Producing Plant: Montgomery (355)

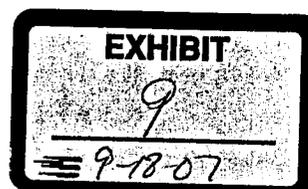
Tray count: 22

Days Available: 1,2,5,and 6 (more days available)

*Moving from cake to bread orders

We have not finalized the cost, but will soon and communicate that ASAP. Jimmy Rhodes and Len Gasset have already been working with your data personnel to set up this move at each bakery.

Attached below is a flyer we have developed, which will be distributed the week your plants make the change.



FBI 2417



CM New English Muffin POS.pdf

Montgomery has been running tests and is planning on sending a couple stacks of product on your existing relays to sell in your thrift stores if possible. They will be in Cobblestone Mill trays.

We are very excited about this venture and am sure you are as well. More info to come.

Please let me know if you have any questions.

Thanks,
Brent Bradshaw
Flowers Foods
Office: 229-227-2034
Cell: 229-221-6279

FBI 2418

Cobblestone Mill

A FAMILY OF BAKERS SINCE 1919

Rise & Shine!

Introducing a new and improved Cobblestone Mill English Muffin! With a new investment in state of the art equipment and a new recipe, our customers and sales are sure to Rise & Shine!

Cobblestone Mill

A FAMILY OF BAKERS SINCE 1919

6 Original English Muffins

PARVE

NET WT. 12 OZ. (340g)

10320462

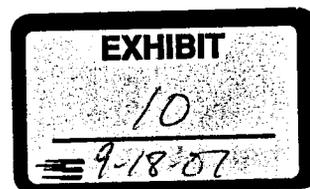
0 2250 65108 8

Tray Count: 22 6-pks



Cobblestone Mill Positioning Statement

Cobblestone Mill brand provides the premium sandwich buns, sandwich rolls, and breads that make every occasion a special occasion.





We are very excited about the opportunity for this to really drive our Cobblestone Mill and kneeboard sales. We will begin a new tracker for this program with the launch. Please let me know if you have any questions.

Brent Bradshaw
Flowers Foods
Office: 229-227-2034
Cell: 229-221-6279

— Forwarded by Brent Bradshaw/Flowers on 06/13/2007 01:46 PM —



David Roach/Flowers
06/04/2007 12:45 PM

To FBI VP's, FBI Presidents

Gene Lord, FBI Regional Vice Presidents, Brent
cc Bradshaw/Flowers@FLOWERS, Janice
Anderson/Flowers@Flowers, Allen Shiver

Subject Fw: Cobblestone Mill Selects: Coming July 2nd



We are making a bold move in changing the items that we currently carry in our Artisan Mill brand over to our **NEW Cobblestone Mill Deli Selects Brand**. We have total confidence in our Cmill brand to help our distributors carry this Walmart Deli program to another level. **THE IMPORTANCE LEVEL OF THIS PROGRAM IS "EXTREMELY HIGH"**. Communicating this program to the distributors with excitement and a must succeed attitude is very important. Not only are we changing the brand, but we are also changing many of the items. Please send in the sales teams early and make sure we talk to the Deli managers about the exciting changes we have coming while asking for additional displays over the 4th of July.

We have a new item coming that is called a Deli Roll that can be used as a small sub or a roll for a chicken plate. Guess What? **FRIED CHICKEN** is the #1 selling item in the Deli. This roll should do well if we get aggressive with it. Ask your team to get special displays for the 4th of July when a lot of chicken is bought in the deli. The other items are our Honey Wheat Hoagie, onion roll, and a sub.

This product can be used in other accounts for their deli program as well.

GET AFTER IT!! IT IS UP TO YOU TO START THE FIRE!!

David M. Roach
VP of Sales and National Accounts
Flowers Foods, Bakeries Group
Thomasville, GA 31757



605 2414

Brent Bradshaw/Flowers

06/14/2007 04:48 PM

To FBI VP's, FBI Presidents

FBI Regional Vice Presidents, Janice

cc Anderson/Flowers@Flowers, David

Roach/Flowers@Flowers, Donna R

Subject Update: Cobblestone Mill Selects: Coming July 2nd

Team,

This note is a reminder on the upcoming changes of our deli-kneeboard program at Wal-Mart. Beginning with Monday, July 2nd sales, we will roll out Cobblestone Mill *Selects* to replace Artisan Mill. Samples are being distributed next week and will consist of two trays of each item to every VP and a case of each item to each of the National Account Managers.

In Wal-Mart, many of you have seen Sara Lee have 3-4 items on the kneeboards. The new modulars only give Sara Lee one item on the kneeboards and it is steak rolls. There is regional space given to a large majority of stores, so we encourage you to meet with the store/bakery managers to ask for this additional space for this program.

Attached below is a sales flyer to be used to show your sales team and store personnel. Michael is working on a letter from the buyer we can take to explain the new program.



6268 CM_Selects_SS_v2.pdf

Attached below is an INTERNAL PIECE with all of the product spec information. THIS HAS MANUFACTURED COST, SO PLEASE KEEP INTERNAL.



Cobblestone Mill Selects Info 6-13-07.ppt

The Honey Wheat Hoagies will be produced in several bakeries. Bluefield will produce for Region 3; Bradenton for Florida, Thomasville, and Savannah; Baton Rouge for Louisiana, Villa Rica for Region 4, and El Paso for Texas. In addition to the Cobblestone Mill Selects Honey Wheat Hoagies, we will also be rolling out the regular Cobblestone Mill Honey Wheat Hoagies (material 10328300; UPC 0-72250-91516-8) which has been tested in Region 3 and done quite well. Pricing on this item should fall in line with your regular Philly Hoagies and be included in your feature schedule. Those producing bakeries will have costing information for these two items.

Michael is working on getting a price increase on the deli program and if it goes through the new wholesale will go to \$1.67 and retail will be \$2.47 in Wal-Mart.

The National Account Managers have been encouraged to present this program to other large accounts for their deli-kneeboards. It is very important that we keep this off of the normal bread racks to prevent cannibalization of our regular Cobblestone Mill products and brand erosion on shelf. The Wal-Mart deli kneeboard is handled by a different buyer than the normal bread rack and they also require us to keep it separate.

Cobblestone Mill

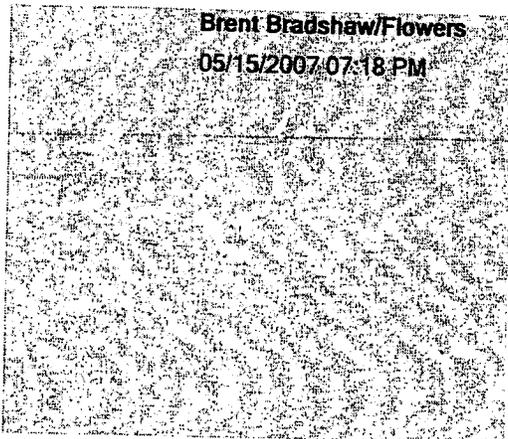
Selects

FBI 2419

229-227-2223

— Forwarded by David Roach/Flowers on 06/04/2007 12:19 PM —

— Forwarded by Brent Bradshaw/Flowers on 06/04/2007 10:48 AM —



To FBI VP's

FBI Regional Vice Presidents, FBI Presidents, Janice Anderson/Flowers@Flowers, David Roach/Flowers@Flowers, FBI National Account Managers, Greg A Jenkins/Flowers@Flowers, Tammy

cc Armitage/Flowers@Flowers, Charlie

Moon/Flowers@Flowers, Jimmy

Rhodes/Flowers@FLOWERS, Russ

Thompson/Flowers@Flowers, Miles H

Dennis/Flowers@Flowers, Doug Brown

Subject Cobblestone Mill Selects: Coming July 2nd

Team,

Please see the note below from Michael Anderson. I wanted to go ahead and convey as much information as possible on this program. We have made a valiant effort in Wal-Mart with Artisan Mill, but I think we all would agree that our sales have not been where we had hoped. In order to give this program a "shot in the arm", we proposed converting this program to Cobblestone Mill under the "Selects" sub-brand and Wal-Mart has approved.

This is exciting news. Cobblestone Mill is an established Flowers Foods brand with much better brand awareness. It is a brand our retailers, sales team, distributors, and consumers know and trust. We will be mixing up the product line and the packaging will be much more attractive and eye catching.

Attached below is a piece I have put together with information on the products. The Honey Wheat Hoagies will need to be produced in a plant within each region and Jimmy Rhodes is working to determine which plants it will be.

Effective on July 2nd, Cobblestone Mill *Selects* will replace Artisan Mill on the Wal-Mart deli kneeboards. Artisan Mill will then be discontinued upon this conversion.

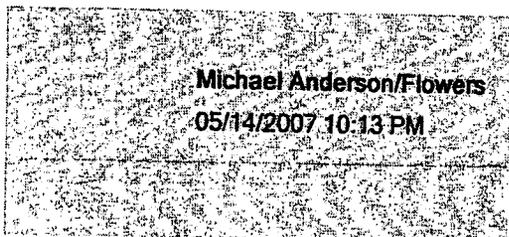
Michael is working on getting a letter from the buyer to use in your discussions with store management. I am also working on point of sale materials to help with this as well. More information to come soon.

Thank you for all of your hard work. Please let me know if you have any questions.

Brent Bradshaw
Flowers Foods
Office: 229-227-2034
Cell: 229-221-6279
Brent Bradshaw/Flowers

FBI 2420

Michael Anderson/Flowers



To Brent Bradshaw
cc
Subject Cobblestone Mill Selects

Brent,

Wal Mart has approved our transition to *Cobblestone Mill - Selects*. Effective Monday July 2, four *Cobblestone Mill - Selects* items will replace Artisan Mill on the Wal Mart Deli Kneeboard modulars. The four authorized items are:

WM			
FLO Item Number	Item Number	UPC	Item Description 1
10322520	9829359	7225002257	CM SELECT ONIONROLLS
10322530	9829366	7225002253	CM SELECTS WHITE SUB
10322550	9829373	7225002255	CM SELECTS HONEY HOAGIE
10322540	9829380	7225002258	CM SELECT DELI ROLLS

Effective July 2, we need to replace all Artisan Mill items on the Wal Mart kneeboards with the *Cobblestone Mill - Selects* items. Our sales teams should discuss this new line introduction with every store and prepare them for the transition prior to our effective date.

Pricing will remain the same (\$1.52 cost/\$2.24 retail) and Wal Mart will load pricing prior to our launch. There will be few if any changes to our position. Below is a chart to help you see the number of authorized facings for each item by modular footage. If you have any questions please let me know.

Modular Footage	White Sub Facings	Wheat Sub Facings	Kaiser Roll Facings	Onion Roll Facings
44'	3	2	2	3
36'	3	2	2	3
32'	2	2	2	2
28'	2	2	1	1
24'	2	2	1	1
20'	1	1	1	1
12'	1	1	1	1

Thanks for all your help getting this set up. The packaging and items look great!

Let me know if you need anything.

Michael Anderson
Flowers Foods
Office: 479.621.5104
Cell: 479.644.6439

FBI 2721



Will replace Artisan Mill for Wal-Mart Deli Kneeboards

Begins with July 2nd Sales

12 Ct Deli Rolls – mini sub rolls

- Net Weight: 13oz
- Material Number: 10322540
- Item UPC: 0-72250-02258-3
- Tray Count: 10
- Producing Plant: Texarcana (145)
- Days Available: 1 & 4



8ct Onion Sandwich Rolls- kaiser cut with extra poppy seeds

- Net Weight: 16oz
- Material Number: 10322520
- Item UPC: 0-72250-02257-6
- Tray Count: 6
- Producing Plant: Tucker (108)
- Days Available: All



6ct White Sub Rolls – hinge sliced with diagonal scores

- Net Weight: 18oz
- Material Number: 10322530
- Item UPC: 0-72250-02253-8
- Tray Count: 9
- Producing Plant: Tucker (108)
- Days Available: All



6ct Honey Wheat Hoagies – honey wheat version of philly hoagies

- Net Weight: 15oz
- Material Number: 10322550
- Item UPC: 0-72250-02255-2
- Tray Count: 9
- Producing Plant: Regional TBD
- Days Available: TBD



Expand your Selections...

Cobblestone Mill SELECTS

With NEW Cobblestone Mill® Select Buns and Rolls

Designed especially for deli knee boards, new Cobblestone Mill Selects offer your customers the perfect selection of Deli Rolls, Honey Wheat Hoagies, White Subs and Kaiser Cut Onion Rolls. The unique flavors and textures are just the right complement to favorite deli sandwiches. Cobblestone Mill Selects... a tasty choice and profitable selection!



10322550

10322520

10322530

10322540

0 2250 02255 2

0 2250 02257 6

0 2250 02253 8

0 72250 02258 3

HOAGIES 8CT ONION SANDWICH ROLLS TRAY CT 6

6CT WHITE SUB ROLLS TRAY CT 9

12 CT DELI ROLLS TRAY CT 10

Cobblestone Mill® is a registered trademark of Flowers Bakeries Brands, Inc. which is an affiliate of Flowers Foods Bakeries Group, LLC.

FBI 2422

Cobblestone Mill Selects Sales Report
7/2/2007 - 9/8/2007

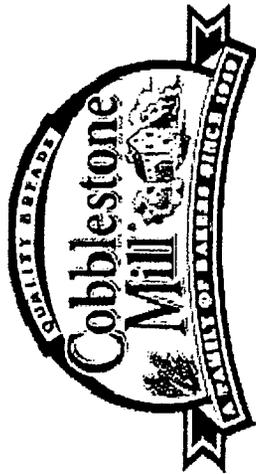
Fiscal Year	2007
Net Sales Dollars	\$525,909
Net Sales Units	349,138





Revitalizing Our Brand

Past & Present



What Tomorrow Brings

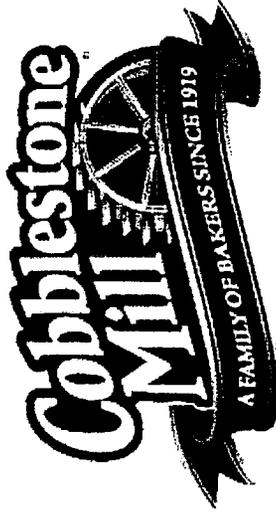


EXHIBIT
12
9-18-07

DEPOSITION OF JANICE ANDERSON, taken on 9/18/07.

<p>\$</p> <p>\$400,000 [1] - 76:12 \$600,000 [2] - 9:19, 76:14 \$90 [1] - 7:24</p>	<p>44:6, 48:11, 53:16, 53:18, 76:13, 108:21 2008 [2] - 14:5, 14:11 22nd [1] - 3:13 2393 [2] - 2:12, 6:13 2394 [4] - 39:1, 46:2, 46:3, 46:4 2394-2410 [1] - 2:17 2410 [2] - 46:2, 46:4 2414 [1] - 45:4 2414-2415 [1] - 2:16 2415 [1] - 45:4 2417 [1] - 47:19 2417-2419 [1] - 2:19 2418 [2] - 49:17,</p>	<p>5</p> <p>5 [8] - 2:3, 2:13, 25:13, 40:21, 40:22, 43:9, 82:16, 82:21 51 [2] - 2:25, 60:5 52 [1] - 2:22 54 [1] - 2:6</p>	<p>accounts [2] - 104:24, 105:1 accumulated [1] - 44:16 Act [1] - 1:14 acting [1] - 61:3 activity [1] - 7:21 actual [8] - 7:9, 12:3, 42:6, 48:13, 73:21, 74:1, 74:18 add [3] - 73:8, 94:12, 94:13</p>	<p>89:19 ahead [7] - 25:17, 28:24, 40:16, 60:3, 73:6, 101:18, 104:1 aided [1] - 108:7 aisle [18] - 49:9, 49:10, 50:8, 50:14, 50:21, 56:15, 61:13, 77:15, 81:5, 81:14, 84:20, 85:25, 87:15, 88:12, 95:14, 97:1, 98:13, 106:7</p>
<p>/</p>	<p>2415 [1] - 45:4 2417 [1] - 47:19 2417-2419 [1] - 2:19 2418 [2] - 49:17,</p>	<p>6</p> <p>6 [5] - 2:14, 43:4, 43:7, 43:9, 43:11 600 [1] - 56:4 600,000 [1] - 10:4 64 [1] - 78:19</p>	<p>added [1] - 50:6 addition [2] - 85:22, 98:12 additional [4] - 5:25, 7:21, 20:5, 46:18 admit [1] - 23:14 ads [2] - 46:24, 80:13 advance [1] - 22:22 advantages [1] - 95:1 advertise [1] - 89:3 advertised [3] - 75:25, 78:6, 87:19 advertisements [1] - 47:7 advertising [41] - 9:14, 9:15, 9:21, 9:22, 10:5, 10:8, 10:9, 25:5, 26:14, 28:14, 39:15, 46:13, 47:4, 48:21, 76:12, 76:16, 76:20, 77:2, 77:4, 77:6, 77:9, 77:11, 77:14, 77:18, 77:23, 77:24, 78:2, 80:7, 80:10, 80:17, 80:20, 82:1, 87:3, 99:20, 104:10, 104:11, 104:13, 104:16</p>	<p>Alabama [1] - 48:5 allegedly [1] - 88:17 Alliance [1] - 54:24 ALLIANCE [2] - 1:7, 3:11 allow [1] - 26:23 almost [2] - 19:24, 69:16 Amend [1] - 68:24 amended [2] - 68:22, 69:11 amount [5] - 51:23, 82:6, 82:9, 85:24, 103:7 AND [2] - 1:1, 1:1 Anderson [26] - 2:11, 5:9, 5:12, 7:1, 17:4, 21:1, 27:11, 28:13, 40:20, 40:22, 43:11, 44:25, 45:3, 45:24, 46:1, 47:15, 47:17, 48:15, 48:17, 49:14, 49:16, 52:19, 52:23, 54:14, 54:22, 91:1</p>
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