ESTTA Tracking number: **ESTTA343634**
Filing date: **04/22/2010**

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

Proceeding	91190654
Party	Defendant Hidden Creations
Correspondence Address	SMITH, GAIL E. HIDDEN CREATIONS 1000 LINCOLN RD STE H # 123 YUBA CITY, CA 95991-6598 UNITED STATES hiddencreations@comcast.net
Submission	Other Motions/Papers
Filer's Name	Gail E. Smith
Filer's e-mail	gailhiddencreations@comcast.net
Signature	/Gail E. Smith/
Date	04/22/2010
Attachments	SDOC0865.pdf (46 pages)(1926917 bytes)

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

In the matter of Application Serial No.: 77/520947
For the mark: SHAKE-N-GROW
Published: December 16, 2008

OMS Investments. Inc.,	)
	) Opposition No. 91190654
OPPOSER,	)
	) REQUEST 30 DAY EXTENSTION
v.	)
	)
Hidden Creations,	)
	)
Applicant.	)
	)

April 22, 2010

Dear Trial and Appeal Board,

I am requesting an extension of time for filing a response to the Initial Disclosures By Opposers; Opposer's First Set of Interrogatories to Applicant; Opposer's First Set of Requests For Admissions to Applicant. I have been diagnosed with rheumatoid arthritis and have swelling in my hands, fingers, joints and lesions that only allow me to use the computer two hours a day , per doctor's orders. Please see attached Addendum-Doctor's Note.

As I am a small business owner, I am the only person taking care of my business as well as representing myself in this matter.

I am requesting that the Trial and Appeal Board grant an additional 30 days to respond to the above request and that the date is extended from May 2, 2010 to June 2, 2010.

I have also informed OMS of a need for an extension and have received an email from the OMS attorney Shannon King stating that they had received my request and that the client has been travelling this week, but will respond as soon as they are able.

Because of time and health restraints, I am unable to meet this deadline. Enclosed please find a copy of the information OMS has requested so that you may take this into consideration when considering my request.

Thank you for your consideration in this matter. If you have any further questions please contact me.

Gail Smith

459 Wilder Ave.

Yuba City CA 95993

530-755-1514

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

In the matter of Application Serial No.: 77/520947
For the mark: SHAKE-N-GROW
Published: December 16, 2008

OMS Investments. Inc.,	)
	) Opposition No. 91190654
OPPOSER,	)
	) Request For 30 Day Extension of Time
v.	)
	)
Hidden Creations,	)
	)
Applicant.	)
	)

April 19, 2010

Dear Ms. Shannon King,

I am requesting an extension of time for filing a response to the Initial Disclosures By Opposers; Opposer's First Set of Interrogatories to Applicant; Opposer's First Set of Requests For Admissions to Applicant. I have been diagnosed with Rheumatoid Arthritis and have swelling in my hands, fingers, joints and lesions that only allow me to use the computer two hours a day. I am a small business owner and use the computer daily for my business as well as to respond to the court reports. I am also the only person who is answering, typing the questions and representing myself so I will need more time.

I am requesting that you give me an additional 30 days to respond to the above request and that the date be extended from May 2, 2010 to June 2, 2010.

Please respond back to me within 48 hours. Thank you for your prompt response in this matter.

Gail Smith

Gail Smith,

459 Wilder Ave.,

Yuba City, CA

95993

gailhiddencreations@comcast.net

hiddencreations@comcast.net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Extension of Time has been properly served on the OPPOSER via email addressed to ssking@manatt.com and patradmarks@manatt.com on this 19st day of April, 2010.

Gail Smith

Gail Smith

Daniel J. Brink, M.D.

Feather Down Family Practice Associates

1590 Poole Blvd
Yuba City, CA 95993
TEL: 1-530-751-1800 FAX: 1-530-751-3901

PATIENT: **Gail Smith**
Address: 459 Wilder Ave
Yuba City Ca 95993 5307551514
MRN: 1140
Birthdate: 8/10/1958

Date: 4/13/2010

Disability Note

Disability - This patient was diagnosed with rheumatoid arthritis and cannot type for more than 2 hours a day due to arthritis in her fingers.

SUPERVISOR:

Please call if clarification of these orders is needed; please obtain written consent from the patient. Please notify me if the patient's symptoms worsen or if prescribed limits need modification, thank you.

Daniel J. Brink, M.D.

Excuse.rpt Crystal 10 CW 7.5 SQL 2005729

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Gail Smith

From: "King, Shannon" <SSKing@manatt.com>
Date: Wednesday, April 21, 2010 11:48 AM
To: "Gail Smith" <gailhiddencreations@comcast.net>
Subject: RE: OMS vs Hidden Creations Request for Extension Letter 91190654

Ms. Smith,
I wanted to let you know that we received your request My client has been travelling this week, but we will respond as soon as we are able

---

From: Gail Smith [mailto:gailhiddencreations@comcast.net]
Sent: Monday, April 19, 2010 4:57 PM
To: King, Shannon; Trademarks - PA
Cc: Gail Smith
Subject: OMS vs Hidden Creations Request for Extension Letter 91190654

IRS CIRCULAR 230 DISCLOSURE: To comply with requirements imposed by recently issued treasury regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written by us, and cannot be used by you, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another person any transaction or matter addressed herein. For information about this legend, go to

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

In the matter of Application Serial No.: 77/520947
For the mark: SHAKE-N-GROW
Published: December 16, 2008

OMS Investments, Inc.,	)	
	)	Opposition No. 91190654
Opposer,	)	
	)	**OPPOSER'S FIRST SET OF REQUESTS**
v.	)	**FOR PRODUCTION TO APPLICANT**
	)	
Hidden Creations,	)	
	)	
Applicant.	)	
	)	

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer OMS Investments, Inc. ("OMS") hereby requests that Applicant Hidden Creations ("Applicant") produce for inspection and copying each of the documents and things identified below within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "Applicant," "You" or "Your" means the sole proprietorship Hidden Creations comprised of Gail E. Smith ("Smith") and any company under which Applicant or Smith is doing business under a different name, including but not limited to "Gail's Hidden Creations," and includes, without limitation, each of Applicant's predecessors and successors, parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

2. "Opposer" means OMS Investments, Inc., and any company under which OMS is doing business under a different name, including but not limited to "Scotts" and "Scotts Miracle-

Gro" and includes, without limitation, each of OMS' predecessors and successors, parent organizations, related groups and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

3. "SHAKE-N-GROW Mark" means the mark SHAKE-N-GROW, which is the subject of Trademark Application Serial No. 77/520,947, filed on July 16, 2008.

4. "Opposition" means Opposition No. 91190654 entitled, *OMS Investments, Inc. v. Hidden Creations.*

5. "OMS Marks" means, collectively, the SHAKE 'N FEED Marks and the GRO Marks as defined in OMS' Notice of Opposition filed on June 15, 2009.

6. "Person" has the meaning set forth in 15 U.S.C. § 1127.

7. "Document" or "documents" shall have the full meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, or otherwise visually, mechanically, or electronically reproduced materials, whether copies or originals, in the possession, custody or control of Applicant or its officers, agents, employees, consultants or attorneys, including but not limited to labels, letters, e-mails, cables, memoranda, intracorporate communications, reports, notes, minutes, bulletins, circulars, instructions, work assignments, invoices, recordings, sketches, drawings, charts, photographs, prints, artwork, designs, drafts, work sheets, printouts, information stored in computers or other information retrieval systems, other non-paper information storage means such as tape or film, agreements, published material of any kind, annual reports, and advertising or promotional literature. Where a copy of a document contains any marking not appearing on the original or is altered from the original, then such item shall be considered to be a separate original document.

8. Any word written herein in the singular shall be construed as plural and vice versa when necessary to facilitate the answer to a discovery request.

9. "And" and "or" shall be construed disjunctively or conjunctively as plural and vice versa when necessary to facilitate the answer to a discovery request.

10. If a claim of privilege is made as to any document responsive to a request herein, state the following for each such document: the (i) date created or conceived; (ii) authors, addressees, and recipients; (iii) persons now in possession of the item; (iv) basis as to the claim of privilege as to each item; and (v) the subject matter, and provide a summary of the document for which a privilege is claimed, and produce those portions of the document not subject to the claimed privilege.

11. If any document responsive to a request herein was at one time was in existence, but has been lost, destroyed, discarded or otherwise disposed of, identify such document as completely as possible, providing as much of the following information as possible: (i) the type of document; (ii) its date; (iii) its authors, addressees, and recipients; (iv) the subject matter of the document; (v) the approximate date of disposal; (vi) the reasons for disposing of or discarding the document; (vii) the person authorizing the disposal; (viii) the person disposing of the document or other physical evidence; and (ix) the identity of any person with knowledge of the contents thereof.

12. These requests are continuing and impose upon Applicant the obligations stated in Rule 26(a) of the Federal Rules of Civil Procedure.

DOCUMENTS AND THINGS TO BE PRODUCED

Please produce the following documents and things:

1. All documents identified, referred to or depended upon in responding to Opposer's First Set of Interrogatories served herewith.

2. All documents identified, referred to or depended upon in responding to Opposer's First Set of Requests for Admission served herewith.

3. Documents sufficient to identify all names under which Applicant does business relating to the SHAKE-N-GROW Mark.

4. Documents sufficient to identify Applicant's organizational structure.

5. Documents sufficient to identify the address, including any website address, of each location operated by Applicant in which goods or services bearing the SHAKE-N-GROW Mark were, are or are intended to be sold.

6. Documents sufficient to identify use of any variation of the SHAKE-N-GROW Mark, including variations in the spelling in any advertisements, brochures and/or websites, and all documents which refer or relate to the reason for any such variation of the SHAKE-N-GROW Mark.

7. One sample of each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, including any and all labeling, packaging and product information therefore.

8. One copy of each label, tag, sticker, container, packaging ,point of sale display, signage, brochure, catalog or other material bearing the SHAKE-N-GROW Mark.

9. All documents, including online literature, describing any good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

10. All documents that reflect the channels of trade in which Applicant distributes or sells products bearing the SHAKE-N-GROW Mark.

11. All documents that reflect any instances of actual confusion that have occurred between Applicant and OMS, Applicant's goods and OMS' goods or the SHAKE-N-GROW Mark and any of the OMS Marks.

12. Documents sufficient to identify the date of first use anywhere of the SHAKE-N-GROW Mark.

13. Documents sufficient to identify the date of first use in commerce of the SHAKE-N-GROW Mark.

14. Documents sufficient to identify all ways in which Applicant has used, currently uses, or intends to use the SHAKE-N-GROW Mark.

15. Documents sufficient to show any and all use by Applicant of a trademark other than the SHAKE-N-GROW Mark in connection with the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

16. All documents identifying Applicant's advertising or promotion expenditures for each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month since such good or service was introduced.

17. All documents identifying the number of units sold for each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month since such good or service was introduced.

18. All documents referring or relating to any customer complaints received by Applicant for the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

19. All documents identifying the revenues derived from the sales of each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month such good or service was introduced.

20. All documents identifying the profits derived from the sales of each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month such good or service was introduced.

21. All documents identifying every sale of goods or services under the SHAKE-N-GROW Mark, including but not limited to invoices, purchase orders, receipts, bills of sale, sales summaries and state and/or federal tax filings for each month since Applicant's first use anywhere of the SHAKE-N-GROW Mark.

22. All documents referring or relating to any current intention or plans to use the SHAKE-N-GROW Mark on goods or services other than those goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

23. Documents sufficient to identify each person or outside agency that has assisted Applicant in the advertising, promotion, distribution or sale of any good or service bearing the SHAKE-N-GROW Mark.

24. One copy of each advertisement and/or commercial created by Applicant or on Applicant's behalf to promote the SHAKE-N-GROW Mark or any good or service bearing the SHAKE-N-GROW Mark, whether in print, video, audio or electronic format, including but not limited to flyers, brochures, newsletters, coupons, websites, Internet pop-up ads, or written copy relating to advertising, posters or point of sale displays.

25. All press, including but not limited to articles from newspapers, magazines, third party websites, or any other publications, whether distributed in print, broadcast or electronic form, not

prepared or solicited by Applicant or on Applicant's behalf, which refer or relate to, discuss, mention or concern the SHAKE-N-GROW Mark.

26. Documents sufficient to show the geographic scope of Applicant's advertising and promotional activities relating to the SHAKE-N-GROW Mark.

27. A sample of each catalog, price list, webpage or other publication where the availability and/or price of any good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories was or is advertised or made known.

28. A complete printout of each website identified in response to Interrogatory No. 16 of Opposer's First Set of Interrogatories.

29. All documents that refer or relate to any plans to advertise, promote or market any products under the SHAKE-N-GROW Mark.

30. All Your actual or prospective customer lists and mailing lists, including email lists.

31. Documents sufficient to identify the intended customers or users for each of the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

32. All documents referring or relating to any search or investigation of records, including but not limited to the United States Patent & Trademark Office records, state trademark records, trademark or trade publications, business directories or the records of any trademark service organization, conducted at any time in connection with the SHAKE-N-GROW Mark.

33. All documents that refer or relate to any opinion, including any opinion by legal counsel, as to the availability of the SHAKE-N-GROW Mark as a trade name or trademark.

34. All documents referring or relating to any outside vendors, such as suppliers or packagers, which Applicant used in connection with manufacturing any of the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

35. All documents referring or relating to any outside party, such as graphic designers, which Applicant used in connection with creating or preparing any container, label, sticker, tag, or any other packaging used in connection with any good identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

36. All documents which refer or relate to Applicant's first knowledge of OMS' rights in and to the OMS Marks.

37. All communications between Applicant and OMS.

38. All communications between Applicant and any third party relating to the SHAKE-N-GROW Mark or any of the OMS Marks.

39. All documents referring or relating to Opposer.

40. All documents referring or relating to the OMS Marks or Opposer's goods or services.

41. All documents which refer or relate to Applicant's conception, selection process, and/or adoption of the SHAKE-N-GROW Mark.

42. All documents which refer or relate to Applicant's conception, selection process, and/or adoption of the packaging used for products bearing the SHAKE-N-GROW Mark.

43. All documents which refer or relate to any marketing study, survey or public opinion poll concerning either the SHAKE-N-GROW Mark or the OMS Marks, or both.

44. All documents which refer or relate to any instance of actual confusion, mistake or deception as to source or origin of goods or services sold under the SHAKE-N-GROW Marks and goods or services sold under the OMS Marks, or as to association or affiliation of goods or services sold under the SHAKE-N-GROW Mark with those sold under the OMS Marks.

45. All documents referring or relating to Application Serial No. 77/520947 which is the subject of this Opposition, including the file history.

46. All documents referring or relating to any attempts or negotiations by Applicant to license, transfer, assign or sell the SHAKE-N-GROW Mark.

47. All documents referring or relating to any name, trademark, domain name or other designation which Applicant uses, has ever used or intends to use, other than the SHAKE-N-GROW Mark, which contains the term "SHAKE" together with the term "GRO" or "GROW."

48. Documents sufficient to identify every state in the U.S. in which Applicant has made sales of goods or services bearing the SHAKE-N-GROW Mark.

49. All documents and things upon which Applicant intends to rely on in order to demonstrate that there is no likelihood of confusion between the SHAKE-N-GROW Mark and the OMS Marks.

50. To the extent not already produced, all documents and things Applicant intends to rely on at trial in this proceeding.

Dated: March 31, 2010

By: _____
Shannon S. King

Susan E. Hollander
Shannon S. King
MANATT, PHELPS & PHILLIPS, LLP
Manatt Phelps & Phillips, LLP
1001 Page Mill Road, Bldg. 2
Palo Alto, California 94304
Telephone: (650) 812-1300
Facsimile: (650) 213-0260
Email: patrademarks@manatt.com
Email: ssking@manatt.com

Attorneys for Opposer
OMS Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION** has been properly served on the Applicant via email addressed to gailhiddencreations@comcast.net and hiddencreations@comcast.net on this 31st day of March, 2010.

Shannon S. King

300078480 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 77/520947
For the mark: SHAKE-N-GROW
Published: December 16, 2008

OMS Investments, Inc.,	)	
	)	Opposition No. 91190654
Opposer,	)	
	)	**OPPOSER'S FIRST SET OF**
v.	)	**INTERROGATORIES TO APPLICANT**
	)	
Hidden Creations,	)	
	)	
Applicant.	)	
	)	

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer OMS Investments, Inc. ("OMS") hereby requests that Applicant Hidden Creations ("Applicant") answer the following interrogatories fully and under oath within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "Applicant," "You" or "Your" means the sole proprietorship Hidden Creations comprised of Gail E. Smith ("Smith") and any company under which Applicant or Smith is doing business under a different name, including but not limited to "Gail's Hidden Creations," and includes, without limitation, each of Applicant's predecessors and successors, parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

2. "Opposer" means OMS Investments, Inc., and any company under which OMS is doing business under a different name, including but not limited to "Scotts" and "Scotts Miracle-

Gro," and includes, without limitation, each of OMS' predecessors and successors, parent organizations, related groups and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

3. "SHAKE-N-GROW Mark" means the mark SHAKE-N-GROW, which is the subject of Trademark Application Serial No. 77/520,947, filed on July 16, 2008.

4. "Trade Dress" means the overall appearance of the packaging for a product.

5. "Opposition" means Opposition No. 91190654 entitled, *OMS Investments, Inc. v. Hidden Creations*.

6. "OMS Marks" means, collectively, the SHAKE 'N FEED Marks and the GRO Marks as defined in OMS' Notice of Opposition filed on June 15, 2009.

7. "Person" has the meaning set forth in 15 U.S.C. § 1127.

8. "Identify," when used herein with respect to a person, means to supply the following information separately as to each person:

If a natural person:

(a) state the natural person's full name;

(b) state the business position/title of such person at the relevant time;

(c) state the employer of such person at the relevant time;

(d) state the business address of such person at the relevant time:

(e) state the present or last known business position/title of such person;

(f) state the last known or present employer of such person;

(g) state the last known or present business address and telephone number of such person; and

(h) state the last known or present home address and telephone number of such person.

If a juristic person:

(a) state the person's full name;

(b) state the state, territory, or country in which the person was organized and/or under whose laws it was formed or exists;

(c) state the nature of the business entity (*i.e.*, form);

(d) state the business address at the relevant time; and

(e) state the last known or present business address and telephone number.

9. "List" or "identify," with respect to documents, means to supply the following information separately as to each document:

(a) the type of document (*e.g.*, letter, notebook, etc.) and the number of pages of which it consists;

(b) the date of the document, if any; if no date appears, the answer shall so state and shall supply the date or approximate date that such document was prepared;

(c) the date on which the document came into Applicant's possession or control;

(d) the names and titles of the persons who signed the document; if not signed, the answer shall so state and supply the names and titles of the persons who prepared the document, if known, or, if not known, the answer shall so state;

(e) the names and titles of the persons to whom the document is addressed and to whom copies were furnished (whether specifically named therein or not);

(f) the business entity or entities with which each person was associated at the date of the preparation of the document;

(g) the present whereabouts of the document and the name and address of the custodian thereof; and

(h) a brief summary of the subject matter of the document.

10. "Document" or "documents" shall have the full meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, or otherwise visually, mechanically, or electronically reproduced materials, whether copies or originals, in the possession, custody or control of Applicant or its officers, agents, employees, consultants or attorneys, including but not limited to labels, letters, e-mails, cables, memoranda, intracorporate communications, reports, notes, minutes, bulletins, circulars, instructions, work assignments, invoices, recordings, sketches, drawings, charts, photographs, prints, artwork, designs, drafts, work sheets, printouts, information stored in computers or other information retrieval systems, other non-paper information storage means such as tape or film, agreements, published material of any kind, annual reports, and advertising or promotional literature. Where a copy of a document contains any marking not appearing on the original or is altered from the original, then such item shall be considered to be a separate original document.

11. Any word written herein in the singular shall be construed as plural and vice versa when necessary to facilitate the answer to a discovery request.

12. "And" and "or" shall be construed disjunctively or conjunctively as plural and vice versa when necessary to facilitate the answer to a discovery request.

13. Pursuant to Federal Rule of Civil Procedure 33, in lieu of describing or identifying a document, you may produce a copy of that document and identify the interrogatory to which it is furnished in response.

14. If a claim of privilege is made as to any information or document responsive to an interrogatory herein, identify such information or document in your response to such interrogatory, and for each such item, identify, as applicable, the (i) date created or conceived; (ii) authors, addressees, and recipients; (iii) persons now in possession of the item; (iv) basis as to the claim of privilege as to each item; and (v) the subject matter, and provide a summary of the information or document for which a privilege is claimed, and produce those portions of the information or document not subject to the claimed privilege.

15. If any information responsive to an interrogatory herein was in a document, which at one time was in existence, but has been lost, destroyed, discarded or otherwise disposed of, identify such document as completely as possible, providing as much of the following information as possible: (i) the type of document; (ii) its date; (iii) its authors, addressees, and recipients; (iv) the subject matter of the document; (v) the approximate date of disposal; (vi) the reasons for disposing of or discarding the document; (vii) the person authorizing the disposal; (viii) the person disposing of the document or other physical evidence; and (ix) the identity of any person with knowledge of the contents thereof.

16. If you cannot answer an interrogatory in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the

unanswered portions. The fact that a full answer cannot be given is not a basis for you to fail to provide such information as is available to you at the time of your response to these interrogatories.

17. These interrogatories are continuing and impose upon Applicant the obligations stated in Rule 26(a) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1

For each interrogatory propounded by Opposer, identify (by name, address, telephone number) each and every person who answered, assisted in answering, or was consulted in preparing the answers to each interrogatory and the corresponding interrogatory number.

INTERROGATORY NO. 2

Describe Applicant's business, including its line of business, product offerings, organizational structure, key individuals involved, total number of employees (if any) and gross revenues since beginning operations.

INTERROGATORY NO. 3

State Applicant's current assets and liabilities to the nearest hundred dollars.

INTERROGATORY NO. 4

Describe the process by which Applicant selected the SHAKE-N-GROW Mark, and identify all persons who participated in the process of selecting the SHAKE-N-GROW Mark.

INTERROGATORY NO. 5

Describe how and when Applicant first learned of the OMS Marks.

INTERROGATORY NO. 6

Identify any search or investigation of any records such as, but not limited to, the United States Patent and Trademark Office ("USPTO") records, state trademark records, trademark or trade

publications, business directories, or the records of any trademark service organization, conducted by Applicant or on Applicant's behalf prior to the adoption and use of the SHAKE-N-GROW Mark.

INTERROGATORY NO. 7

Identify any and all person(s) who participated in the decision to file Application Serial No. 77/520947 for the SHAKE-N-GROW Mark at the USPTO.

INTERROGATORY NO. 8

Identify any and all person(s) who participated in preparing Application Serial No. 77/520947 for the SHAKE-N-GROW Mark for filing at the USPTO.

INTERROGATORY NO. 9

Identify any and all goods and services bearing the SHAKE-N-GROW Mark which have been advertised, distributed or offered for sale at any time by Applicant.

INTERROGATORY NO. 10

For all goods and services identified in response to Interrogatory No. 9, state the dates during which each such item or service has been advertised, distributed or offered for sale.

INTERROGATORY NO. 11

State the number of units of sales for each of the goods and/or services identified in response to Interrogatory No. 9, for each month since each such good or service was introduced.

INTERROGATORY NO. 12

State, to the nearest whole dollar, the revenues received from the sales of each of the goods and/or services identified in response to Interrogatory No. 9, for each month since each such good or service was introduced.

INTERROGATORY NO. 13

State, to the nearest whole dollar, the profits received from the sales of each of the goods and/or services identified in response to Interrogatory No. 9, for each month since each such good or service was introduced.

INTERROGATORY NO. 14

Identify the date the SHAKE-N-GROW Mark was first used in a commercial transaction anywhere.

INTERROGATORY NO. 15

Identify the date the SHAKE-N-GROW Mark was first used in a commercial transaction in interstate commerce.

INTERROGATORY NO. 16

Identify all websites operated by Applicant or on Applicant's behalf which advertise or promote the SHAKE-N-GROW Mark, including when each such domain name was registered and when each such website first published content.

INTERROGATORY NO. 17

Describe with particularity the channels of trade, including Internet channels, through which each good or service identified in response to Interrogatory No. 9 were, are or are intended to be distributed or offered for sale, including representative outlets for each channel identified.

INTERROGATORY NO. 18

Describe the intended consumers or users of each good or service identified in response to Interrogatory No. 9.

INTERROGATORY NO. 19

State the typical retail price for each good or service identified in response to Interrogatory No. 9.

INTERROGATORY NO. 20

Identify the geographic scope of Applicant's use of the SHAKE-N-GROW Mark, including the locations of each of Applicant's customers and where Applicant has advertised each good or service identified in response to Interrogatory No. 9.

INTERROGATORY NO. 21

Identify, by month and year, Applicant's expenditures to date on advertising of each good or service identified in response to Interrogatory No. 9.

INTERROGATORY NO. 22

Describe in detail any intention or plans to expand or modify Applicant's use of the SHAKE-N-GROW Mark, including but not limited to any plans to use the mark for additional goods or services.

INTERROGATORY NO. 23

For each good identified in response to Interrogatory No. 9, describe in detail the process by which Applicant selected the Trade Dress, including when, where, why and how it was created and identifying each label and/or packaging that has been used since each such good was introduced.

INTERROGATORY NO. 24

Identify all Persons, outside agencies and/or firms responsible for, or who participated in, the conception, creation, development or design of the Trade Dress for each good identified in response to Interrogatory No. 9.

INTERROGATORY NO. 25

Identify every third party known to Applicant what you contend is currently using, or permitted to use, any mark containing the term "SHAKE" with "GRO" or "GROW" and, for each such party, state or describe the mark and the goods or services with which the mark is being used.

INTERROGATORY NO. 26

Identify every third party known to Applicant that you contend is currently using, or permitted to us, a predominantly green and yellow color scheme for the packaging of lawn and garden related products.

INTERROGATORY NO. 27

Identify any witness Applicant expects to testify on its behalf and the nature of the testimony to be given by the witness during Applicant's testimony period.

INTERROGATORY NO. 28

Describe in detail each of the reasons Applicant began using the SHAKE-N-GROW Mark.

INTERROGATORY NO. 29

Describe in detail each of the reasons Applicant adopted a predominantly green and yellow color scheme for the packaging of its products bearing the SHAKE-N-GROW Mark.

INTERROGATORY NO. 30

Identify (by name and address) all stores or other retailers that sell to ultimate consumers or end users any product bearing the SHAKE-N-GROW Mark.

INTERROGATORY NO. 31

Identify (by name and address) all distributors or other wholesalers that distribute or sell any product bearing the SHAKE-N-GROW Mark.

INTERROGATORY NO. 32

Identify with particularity any and all instances of confusion that have occurred between Applicant and OMS, Applicant's goods and OMS' goods, and/or the SHAKE-N-GROW Mark and any of the OMS Marks.

INTERROGATORY NO. 33

Except for the current Opposition, describe every legal challenge involving the SHAKE-N-GROW Mark or products bearing the SHAKE-N-GROW Mark, including lawsuits, arbitrations, and/or administrative proceedings, letters or other threats of legal action. Your description should include the parties to the dispute, a general description of the issues involved, and the outcome of the dispute.

Dated: March 31, 2010

By: _____
Shannon S. King

Susan E. Hollander
Shannon S. King
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Attorneys for Opposer
OMS Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES** has been properly served on the Applicant via email addressed to gailhiddencreations@comcast.net and hiddencreations@comcast.net on this 31st day of March, 2010.

Shannon S. King

300078423.2

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

In the matter of Application Serial No.: 77/520947
For the mark: SHAKE-N-GROW
Published: December 16, 2008

OMS Investments, Inc.,	)	
	)	Opposition No. 91190654
Opposer,	)	
	)	**OPPOSER'S FIRST SET OF REQUESTS**
v.	)	**FOR PRODUCTION TO APPLICANT**
	)	
Hidden Creations,	)	
	)	
Applicant.	)	
	)	

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer OMS Investments, Inc. ("OMS") hereby requests that Applicant Hidden Creations ("Applicant") produce for inspection and copying each of the documents and things identified below within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "Applicant," "You" or "Your" means the sole proprietorship Hidden Creations comprised of Gail E. Smith ("Smith") and any company under which Applicant or Smith is doing business under a different name, including but not limited to "Gail's Hidden Creations," and includes, without limitation, each of Applicant's predecessors and successors, parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

2. "Opposer" means OMS Investments, Inc., and any company under which OMS is doing business under a different name, including but not limited to "Scotts" and "Scotts Miracle-

Gro" and includes, without limitation, each of OMS' predecessors and successors, parent organizations, related groups and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

3. "SHAKE-N-GROW Mark" means the mark SHAKE-N-GROW, which is the subject of Trademark Application Serial No. 77/520,947, filed on July 16, 2008.

4. "Opposition" means Opposition No. 91190654 entitled, *OMS Investments, Inc. v. Hidden Creations*.

5. "OMS Marks" means, collectively, the SHAKE 'N FEED Marks and the GRO Marks as defined in OMS' Notice of Opposition filed on June 15, 2009.

6. "Person" has the meaning set forth in 15 U.S.C. § 1127.

7. "Document" or "documents" shall have the full meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, or otherwise visually, mechanically, or electronically reproduced materials, whether copies or originals, in the possession, custody or control of Applicant or its officers, agents, employees, consultants or attorneys, including but not limited to labels, letters, e-mails, cables, memoranda, intracorporate communications, reports, notes, minutes, bulletins, circulars, instructions, work assignments, invoices, recordings, sketches, drawings, charts, photographs, prints, artwork, designs, drafts, work sheets, printouts, information stored in computers or other information retrieval systems, other non-paper information storage means such as tape or film, agreements, published material of any kind, annual reports, and advertising or promotional literature. Where a copy of a document contains any marking not appearing on the original or is altered from the original, then such item shall be considered to be a separate original document.

8. Any word written herein in the singular shall be construed as plural and vice versa when necessary to facilitate the answer to a discovery request.

9. "And" and "or" shall be construed disjunctively or conjunctively as plural and vice versa when necessary to facilitate the answer to a discovery request.

10. If a claim of privilege is made as to any document responsive to a request herein, state the following for each such document: the (i) date created or conceived; (ii) authors, addressees, and recipients; (iii) persons now in possession of the item; (iv) basis as to the claim of privilege as to each item; and (v) the subject matter, and provide a summary of the document for which a privilege is claimed, and produce those portions of the document not subject to the claimed privilege.

11. If any document responsive to a request herein was at one time was in existence, but has been lost, destroyed, discarded or otherwise disposed of, identify such document as completely as possible, providing as much of the following information as possible: (i) the type of document; (ii) its date; (iii) its authors, addressees, and recipients; (iv) the subject matter of the document; (v) the approximate date of disposal; (vi) the reasons for disposing of or discarding the document; (vii) the person authorizing the disposal; (viii) the person disposing of the document or other physical evidence; and (ix) the identity of any person with knowledge of the contents thereof.

12. These requests are continuing and impose upon Applicant the obligations stated in Rule 26(a) of the Federal Rules of Civil Procedure.

DOCUMENTS AND THINGS TO BE PRODUCED

Please produce the following documents and things:

1. All documents identified, referred to or depended upon in responding to Opposer's First Set of Interrogatories served herewith.

2. All documents identified, referred to or depended upon in responding to Opposer's First Set of Requests for Admission served herewith.

3. Documents sufficient to identify all names under which Applicant does business relating to the SHAKE-N-GROW Mark.

4. Documents sufficient to identify Applicant's organizational structure.

5. Documents sufficient to identify the address, including any website address, of each location operated by Applicant in which goods or services bearing the SHAKE-N-GROW Mark were, are or are intended to be sold.

6. Documents sufficient to identify use of any variation of the SHAKE-N-GROW Mark, including variations in the spelling in any advertisements, brochures and/or websites, and all documents which refer or relate to the reason for any such variation of the SHAKE-N-GROW Mark.

7. One sample of each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, including any and all labeling, packaging and product information therefore.

8. One copy of each label, tag, sticker, container, packaging ,point of sale display, signage, brochure, catalog or other material bearing the SHAKE-N-GROW Mark.

9. All documents, including online literature, describing any good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

10. All documents that reflect the channels of trade in which Applicant distributes or sells products bearing the SHAKE-N-GROW Mark.

11. All documents that reflect any instances of actual confusion that have occurred between Applicant and OMS, Applicant's goods and OMS' goods or the SHAKE-N-GROW Mark and any of the OMS Marks.

12. Documents sufficient to identify the date of first use anywhere of the SHAKE-N-GROW Mark.

13. Documents sufficient to identify the date of first use in commerce of the SHAKE-N-GROW Mark.

14. Documents sufficient to identify all ways in which Applicant has used, currently uses, or intends to use the SHAKE-N-GROW Mark.

15. Documents sufficient to show any and all use by Applicant of a trademark other than the SHAKE-N-GROW Mark in connection with the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

16. All documents identifying Applicant's advertising or promotion expenditures for each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month since such good or service was introduced.

17. All documents identifying the number of units sold for each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month since such good or service was introduced.

18. All documents referring or relating to any customer complaints received by Applicant for the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

19. All documents identifying the revenues derived from the sales of each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month such good or service was introduced.

20. All documents identifying the profits derived from the sales of each good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories, for each month such good or service was introduced.

21. All documents identifying every sale of goods or services under the SHAKE-N-GROW Mark, including but not limited to invoices, purchase orders, receipts, bills of sale, sales summaries and state and/or federal tax filings for each month since Applicant's first use anywhere of the SHAKE-N-GROW Mark.

22. All documents referring or relating to any current intention or plans to use the SHAKE-N-GROW Mark on goods or services other than those goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

23. Documents sufficient to identify each person or outside agency that has assisted Applicant in the advertising, promotion, distribution or sale of any good or service bearing the SHAKE-N-GROW Mark.

24. One copy of each advertisement and/or commercial created by Applicant or on Applicant's behalf to promote the SHAKE-N-GROW Mark or any good or service bearing the SHAKE-N-GROW Mark, whether in print, video, audio or electronic format, including but not limited to flyers, brochures, newsletters, coupons, websites, Internet pop-up ads, or written copy relating to advertising, posters or point of sale displays.

25. All press, including but not limited to articles from newspapers, magazines, third party websites, or any other publications, whether distributed in print, broadcast or electronic form, not

prepared or solicited by Applicant or on Applicant's behalf, which refer or relate to, discuss, mention or concern the SHAKE-N-GROW Mark.

26. Documents sufficient to show the geographic scope of Applicant's advertising and promotional activities relating to the SHAKE-N-GROW Mark.

27. A sample of each catalog, price list, webpage or other publication where the availability and/or price of any good or service identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories was or is advertised or made known.

28. A complete printout of each website identified in response to Interrogatory No. 16 of Opposer's First Set of Interrogatories.

29. All documents that refer or relate to any plans to advertise, promote or market any products under the SHAKE-N-GROW Mark.

30. All Your actual or prospective customer lists and mailing lists, including email lists.

31. Documents sufficient to identify the intended customers or users for each of the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

32. All documents referring or relating to any search or investigation of records, including but not limited to the United States Patent & Trademark Office records, state trademark records, trademark or trade publications, business directories or the records of any trademark service organization, conducted at any time in connection with the SHAKE-N-GROW Mark.

33. All documents that refer or relate to any opinion, including any opinion by legal counsel, as to the availability of the SHAKE-N-GROW Mark as a trade name or trademark.

34. All documents referring or relating to any outside vendors, such as suppliers or packagers, which Applicant used in connection with manufacturing any of the goods or services identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

35. All documents referring or relating to any outside party, such as graphic designers, which Applicant used in connection with creating or preparing any container, label, sticker, tag, or any other packaging used in connection with any good identified in response to Interrogatory No. 9 of Opposer's First Set of Interrogatories.

36. All documents which refer or relate to Applicant's first knowledge of OMS' rights in and to the OMS Marks.

37. All communications between Applicant and OMS.

38. All communications between Applicant and any third party relating to the SHAKE-N-GROW Mark or any of the OMS Marks.

39. All documents referring or relating to Opposer.

40. All documents referring or relating to the OMS Marks or Opposer's goods or services.

41. All documents which refer or relate to Applicant's conception, selection process, and/or adoption of the SHAKE-N-GROW Mark.

42. All documents which refer or relate to Applicant's conception, selection process, and/or adoption of the packaging used for products bearing the SHAKE-N-GROW Mark.

43. All documents which refer or relate to any marketing study, survey or public opinion poll concerning either the SHAKE-N-GROW Mark or the OMS Marks, or both.

44. All documents which refer or relate to any instance of actual confusion, mistake or deception as to source or origin of goods or services sold under the SHAKE-N-GROW Marks and goods or services sold under the OMS Marks, or as to association or affiliation of goods or services sold under the SHAKE-N-GROW Mark with those sold under the OMS Marks.

45. All documents referring or relating to Application Serial No. 77/520947 which is the subject of this Opposition, including the file history.

46. All documents referring or relating to any attempts or negotiations by Applicant to license, transfer, assign or sell the SHAKE-N-GROW Mark.

47. All documents referring or relating to any name, trademark, domain name or other designation which Applicant uses, has ever used or intends to use, other than the SHAKE-N-GROW Mark, which contains the term "SHAKE" together with the term "GRO" or "GROW."

48. Documents sufficient to identify every state in the U.S. in which Applicant has made sales of goods or services bearing the SHAKE-N-GROW Mark.

49. All documents and things upon which Applicant intends to rely on in order to demonstrate that there is no likelihood of confusion between the SHAKE-N-GROW Mark and the OMS Marks.

50. To the extent not already produced, all documents and things Applicant intends to rely on at trial in this proceeding.

Dated: March 31, 2010

By: _____
Shannon S. King

Susan E. Hollander
Shannon S. King
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Attorneys for Opposer
OMS Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION** has been properly served on the Applicant via email addressed to gailhiddencreations@comcast.net and hiddencreations@comcast.net on this 31st day of March, 2010.

Shannon S. King

300078480.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 77/520947
For the mark: SHAKE-N-GROW
Published: December 16, 2008

OMS Investments, Inc.,	)	
	)	Opposition No. 91190654
Opposer,	)	
	)	**OPPOSER'S FIRST SET OF REQUESTS**
v.	)	**FOR ADMISSIONS TO APPLICANT**
	)	
Hidden Creations,	)	
	)	
Applicant.	)	
	)	

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer OMS Investments, Inc. ("OMS") hereby requests that Applicant Hidden Creations ("Applicant") answer the following Requests for Admission within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "Applicant," "you" or "your" means the sole proprietorship Hidden Creations comprised of Gail E. Smith ("Smith") and any company under which Applicant or Smith is doing business under a different name, including but not limited to "Gail's Hidden Creations," and includes, without limitation, each of Applicant's predecessors and successors, parent companies, subsidiaries, and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

2. "Opposer" means OMS Investments, Inc., and any company under which OMS is doing business under a different name including but not limited to "Scotts" and "Scotts Miracle-

Gro" and includes, without limitation, each of OMS' predecessors and successors, parent organizations, related groups and divisions, as well as all directors, officers, employees, agents, distributors, jobbers, salespersons, sales representatives, licensees, franchisees, attorneys and all other persons acting or purporting to act on its or their behalf or under its or their control.

3. "SHAKE-N-GROW Mark" means the mark SHAKE-N-GROW, which is the subject of Trademark Application Serial No. 77/520,947, filed on July 16, 2008.

4. "Opposition" means Opposition No. 91190654 entitled, *OMS Investments, Inc. v. Hidden Creations*.

5. "OMS Marks" means, collectively, the SHAKE 'N FEED Marks and the GRO Marks as defined in OMS' Notice of Opposition filed on June 15, 2009.

6. "Person" has the meaning set forth in 15 U.S.C. § 1127.

7. Any word written herein in the singular shall be construed as plural and vice versa when necessary to facilitate the answer.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit that on or about May 13, 2009, Applicant received a cease and desist letter from Opposer demanding that Applicant cease using the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 2

Admit that Applicant's first use in commerce of the SHAKE-N-GROW Mark was no earlier than May 1, 2008.

REQUEST FOR ADMISSION NO. 3

Admit that Opposer's rights in the OMS Marks are senior to Applicant's alleged rights in the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 4

Admit that Opposer first used the OMS Marks prior to Applicant's first use of the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 5

Admit that Applicant was aware of Opposer before it adopted the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 6

Admit that Applicant was aware of Opposer before it filed Application Serial No. 77/520947.

REQUEST FOR ADMISSION NO. 7

Admit that Applicant was aware of Opposer's SHAKE 'N FEED Marks before it adopted the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 8

Admit that Applicant was aware of Opposer's SHAKE 'N FEED Marks before it filed Application Serial No. 77/520947.

REQUEST FOR ADMISSION NO. 9

Admit that Applicant was aware of Opposer's GRO Marks before it adopted the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 10

Admit that Applicant was aware of Opposer's GRO Marks before it filed Application Serial No. 77/520947.

REQUEST FOR ADMISSION NO. 11

Admit that Applicant claims the color green as a feature of the SHAKE-N-GROW mark in Application Serial No. 77/520947.

REQUEST FOR ADMISSION NO. 12

Admit that Applicant's products bearing the SHAKE-N-GROW Mark uses packaging that is predominantly green and yellow.

REQUEST FOR ADMISSION NO. 13

Admit that Applicant was aware of Opposer before Applicant adopted a green and yellow color scheme for the packaging of its products bearing the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 14

Admit that Applicant was aware of Opposer's MIRACLE-GRO® product before Applicant adopted a green and yellow color scheme for the packaging of its products bearing the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 15

Admit that Opposer has not consented to Applicant's use of the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 16

Admit that Opposer has not consented to Applicant's filing of Application Serial No. 77/520947.

REQUEST FOR ADMISSION NO. 17

Admit that Opposer's OMS Marks are well-known in the United States.

REQUEST FOR ADMISSION NO. 18

Admit that Opposer's OMS Marks are famous in the United States.

REQUEST FOR ADMISSION NO. 19

Admit that Opposer's SHAKE 'N FEED Marks are well-known in the United States.

REQUEST FOR ADMISSION NO. 20

Admit that Opposer's SHAKE 'N FEED Marks are famous in the United States.

REQUEST FOR ADMISSION NO. 21

Admit that Opposer's GRO Marks are well-known in the United States.

REQUEST FOR ADMISSION NO. 22

Admit that Opposer's GRO Marks are famous in the United States.

REQUEST FOR ADMISSION NO. 23

Admit that Opposer's Registration No. 2,705,327 for SHAKE 'N FEED has achieved incontestable status.

REQUEST FOR ADMISSION NO. 24

Admit that Opposer's Registration Nos. 668,868 (MIRACLE-GRO); 1,223,038 (MIRACLE-GRO); 2,235,973 (MIRACLE-GRO); 2,820,953 (MIRACLE-GRO); 2,822,655 (MIRACLE-GRO); 2,856,922 (MIRACLE-GRO); 2,856,923 (MIRACLE-GRO); 2,856,924 (MIRACLE-GRO); 2,906,855 (MIRACLE-GRO); 2,906,856 (MIRACLE-GRO); 1,378,337 (EARTHGRO); 1,378,721 (EARTHGRO); 1,723,116 (EARTHGRO THE NATURAL CHOICE & Design); 1,726,060 (EARTHGRO THE NATURAL CHOICE & Design); 2,601,682 (MIRACLE-GRO POUR & FEED); 2,618,698 (MIRACLE-GRO GARDEN WEED PREVENTER & PLANT FOOD); 2,618,699 (MIRACLE-GRO GARDEN WEED PREVENTER); 2,787,356 (MIRACLE-GRO FAST ROOT); and 2,809,982 (MIRACLE-GRO TREE & SHRUB CARE) have achieved incontestable status.

REQUEST FOR ADMISSION NO. 25

Admit that Applicant is the owner of the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 26

Admit that Applicant provides a plant food product under the SHAKE-N-GROW Mark.

REQUEST FOR ADMISSION NO. 27

Admit that Opposer and Applicant both offer plant food products directly to consumers.

REQUEST FOR ADMISSION NO. 28

Admit that Opposer and Applicant both advertise and provide product information on the Internet.

REQUEST FOR ADMISSION NO. 29

Admit that Applicant's customers may view Opposer as a competitor or potential competitor.

REQUEST FOR ADMISSION NO. 30

Admit that Applicant views Opposer as a competitor or potential competitor.

REQUEST FOR ADMISSION NO. 31

Admit that Applicant's SHAKE-N-GROW products compete directly with Opposer's SHAKE 'N FEED products.

REQUEST FOR ADMISSION NO. 32

Admit that Applicant's SHAKE-N-GROW products compete directly with Opposer's GRO products.

REQUEST FOR ADMISSION NO. 33

Admit that Opposer is a leader in the lawn and garden industry.

REQUEST FOR ADMISSION NO. 34

Admit that Applicant's and Opposer's consumers or potential consumers are likely to overlap.

REQUEST FOR ADMISSION NO. 35

Admit that all documents produced in response to Opposer's First Set of Requests for Production of Documents and in response to Opposer's First Set of Interrogatories are authentic.

REQUEST FOR ADMISSION NO. 36

Admit that all documents produced in response to Opposer's First Set of Requests for Production

of Documents and in response to Opposer's First Set of Interrogatories are true and correct copies of the originals.

REQUEST FOR ADMISSION NO. 37

Admit that all documents produced in response to Opposer's First Set of Requests for Production of Documents and in response to Opposer's First Set of Interrogatories are admissible into evidence.

Dated: March 31, 2010

By: _____
Shannon S. King

Susan E. Hollander
Shannon S. King
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Manatt Phelps & Phillips, LLP
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Email: ssking@manatt.com

Attorneys for Opposer
OMS Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION** has been properly served on the Applicant via email addressed to gailhiddencreations@comcast.net and hiddencreations@comcast.net on this 31st day of March 2010.

Shannon S. King

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