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Filing date: **12/31/2015**

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

Proceeding	91220166
Party	Defendant The Wine Group, LLC
Correspondence Address	PAUL W REIDL LAW OFFICE OF PAUL W REIDL 241 EAGLE TRACE DRIVE HALF MOON BAY, CA 94019 UNITED STATES paul@reidllaw.com
Submission	Motion to Compel Discovery
Filer's Name	Paul W. Reidl
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Signature	/pwr/
Date	12/31/2015
Attachments	Motion Final.pdf(5043350 bytes)

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

3 Application Serial No. 86/348,425

4 Mark: FLORET

5 Class: 33

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7 _____)
8 **FLOWERS VINEYARD AND WINERY,**)
9 **LLC,**)

9 Opposer,)

10 v.)

11 **THE WINE GROUP LLC.,**)

12 Applicant.)
13 _____)

Opposition No: 91220166

APPLICANT’S MOTION TO COMPEL

14 Applicant hereby moves the Board for an order compelling Opposer to respond properly
15 to Applicant’s discovery requests. Applicant engaged in a good faith attempt to seek Opposer’s
16 proper responses. Applicant detailed its concerns in a letter to Opposer dated July 22, 2015
17 which was followed-up by multiple reminders (Exhibit A). Opposer finally responded on
18 October 7, 2015 (Exhibit B). Although the parties have many disagreements, Applicant raises
19 only four (4) in this motion.

20 **SALES AND PROMOTIONAL INFORMATION**

21 Opposer alleges in its Notice of Opposition that it has used its mark continuously since
22 March 1998. (Notice of Opposition ¶ 2)(Docket No.1). It further alleges that as a result of its
23 extensive use and promotion its mark is “well-known,” is “widely known,” is “recognized” by
24 consumers and has obtained a great “reputation.” (Id. ¶¶ 1, 4). These claims are all probative on

1 the “fame” factor of *DuPont*. It is axiomatic that stronger marks are afforded a broader
2 perimeter of protection than weaker ones. *See Kenner Parker Toys v. Rose Art*, 963 F.2d 350,
3 352-353 (Fed. Cir. 1992). While Opposer has not used the term “fame” by making these
4 allegations it is in essence claiming that its mark is entitled to a broad perimeter of protection
5 because its marketing and sales efforts have made the mark “well known” to the consuming
6 public. The Board has recognized that information regarding sales and promotional activities is
7 discoverable. TBMP § 414 (18).

8 Applicant requested such information in Interrogatory Nos. 1 and 2 and Document
9 Requests Nos. 1,16, 22. (Exhibits C and D). Opposer responded by objecting to producing sales
10 information prior to the time it acquired the mark and to producing any information regarding
11 promotional expenses. (Exhibits E and F). Applicant pointed out that this information was
12 probative on Opposer’s claim that its mark has a certain degree of notoriety or fame. (Exhibit A,
13 p. 2 ¶¶ 4-5, p. 4 ¶ 9). Opposer disagreed, claiming that it had never made such an allegation and
14 that the sales figures were sufficient to show that it had priority – which misses the point of
15 Applicant’s argument based on Opposer’s Notice of Opposition. Opposer also continued its
16 refusal to produce data regarding promotional expenditures. (Exhibit B, p.2 ¶ 5).

17 Opposer’s position is untenable. It cannot on the one hand be heard to plead that its mark
18 is “well-known” and “widely known” and then object to producing the information and
19 documents that could be used to support (or rebut) that contention. Moreover, if Opposer does
20 not have such information or documents, Applicant is entitled to an unqualified statement that
21 the information does not exist.

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1 **SPECIFYING WHICH DOCUMENTS ARE RESPONSIVE TO WHICH**
2 **REQUEST/PROVIDING AN UNQUALIFIED STATEMENT OF EXISTENCE OR NON-**
3 **EXISTENCE OF THE REQUESTED DOCUMENTS**

4 Federal Rule of Civil Procedure 34 (b)(2)(B) requires a party to state affirmatively, in
5 response to each request, whether the requested documents will be produced. *See No Fear Inc.*
6 *v. Rule*, 54 U.S.P.Q. 2d 1551 (TTAB 2000). The Board and most Federal courts have amplified
7 on that requirement by insisting that a responding party specify the documents responsive to each
8 request. *Amazon Technologies v. Wax*, 95 U.S.P.Q.2d 1865 (TTAB 2010).

9 Opposer did not so respond to Applicant’s document requests. Instead, it gave equivocal
10 responses (namely, that it would do a search and produce documents “to the extent they exist”)
11 and it did not specify which documents were responsive to which request. See responses
12 1,4,5,7,10,11,12,13,16,17,18,22,25,26,27,28,29,30,31,33,34,35,36,37,38)(Exhibit F). Applicant
13 called this to Opposer’s attention and asked that it amend its responses accordingly. (Exhibit A,
14 p. 3, ¶ 1). Opposer declined to do so, claiming that “[w]e believe our responses are sufficient.”
15 (Exhibit B, p. 2, ¶ 1).

16 Since Opposer believes that its responses comply with Rule 34 and the Board’s decisions,
17 Applicant needs the Board to clarify precisely what a party producing documents is required to
18 do in the written responses. If Rule 34 and the Board’s decisions in *See No Fear* and *Amazon*
19 *Technologies* mean what they appear to say, then the Board should order Opposer to: (a) provide
20 unqualified responses to each request, and (b) state which documents are responsive to each
21 request. If not, then the Board should clarify the requirements of a producing party for its
22 written responses.

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1 **WITNESS STATEMENTS**

2 Applicant requested the production of any witness statements. (Exhibit C, request no.
3 35). Opposer responded by stating that it did not understand the meaning of that term. (Exhibit
4 response no. 35). Applicant explained that this meant a statement from an actual or potential
5 witnesses in connection with the proceeding. (Exhibit A, p. 4 ¶ 12). Opposer then responded by
6 asserting that any such statements were privileged. (Exhibit B, p. 4. ¶ 11).

7 This is not a proper response for two reasons. First, Opposer did not provide an
8 unqualified answer as to whether such documents exist as required by the Board’s rules and
9 decisions. Second, by definition a witness statement cannot be privileged. Whether it is in the
10 form of a statement or a sworn declaration, the purpose of a witness statement is to “lock down”
11 *facts* and *factual matter* to which a witness would testify prior to the summary judgment motion
12 or trial. As such, it could never reflect privileged legal advice nor could it reflect mental
13 impressions of counsel that would be protected from disclosure by attorney work product
14 immunity. These facts are fully discoverable; the decision on discoverability turns on the
15 content of the statement not on the strategic decision of counsel as to whether it will be used in
16 the case. If the statement contains facts that are helpful (or not) to Opposer’s case, Opposer
17 should not be permitted to shield those facts from discovery.¹

18 Accordingly, Opposer should be ordered: (a) to state affirmatively whether it is
19 withholding any witness statements, and (b) if so, to produce them.

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24 ¹ In its initial disclosures, Opposer disclosed only one witness as having knowledge of the facts in this case; its CEO, Augustin Huneus.

1 **DOCUMENTS CONCERNING MR. BEHMKE’S DECLARATION**
2 **FILED WITH THE PATENT AND TRADEMARK OFFICE**

3 On December 12, 2014, Opposer filed a request for a correction under Section 7 for its
4 registered mark. The request sought to correct the ownership of the registration. Opposer
5 submitted an eight paragraph sworn declaration of Jay M. Behmke, Opposer’s former attorney,
6 which explained how and why he had filed the assignment in the wrong name. (Exhibit G).
7 Opposer flagged this issue to the Board in the cover sheet of its Notice of Opposition (Docket
8 No. 1) and Applicant has asserted affirmative defenses arising from the invalidity of the
9 assignment. (Answer at pp. 2-3)(Docket No. 3).

10 With this as background, Applicant requested that Opposer produce all documents
11 regarding Mr. Behmke’s Declaration that was filed with the PTO. (Exhibit D, request no. 2) .
12 Opposer objected on privilege grounds. (Exhibit F, response no. 2). Applicant pointed out that
13 by filing a detailed Declaration Opposer had waived the privilege with respect to its subject
14 matter. (Exhibit A, p. 3, ¶ 4). Opposer’s pithy response was: “[w]e disagree.” (Exhibit B, p. 2,
15 ¶ 3).

16 Opposer should be ordered to produce the documents. This is a classic example of a
17 party impermissibly attempting to use the privilege as both a sword and a shield. Opposer
18 apparently believed that the ownership issue was so critical to preserving its registration that it
19 prepared and filed on the public record a detailed declaration by its lawyer explaining why the
20 lawyer had done what he did. This public disclosure waived the privilege for the subject matter
21 of the declaration, and Opposer now should not be permitted to shield itself from further
22 discovery on the subject matter of the declaration. This is functionally the same as asserting the
23 “advice of counsel” defense, where such a public disclosure of the attorney’s thoughts and
24 opinions constitutes a waiver of the privilege. *See, e.g., Glenmede Trust Co. v. Hutton, 56 F.3d*

1 476 (3d Cir. 1995); *Saint-Gobain/Norton Industrial Ceramics Corp. v. General Electric Co.*, 884
2 F.Supp. 31 (D. Mass. 1995). *EMI North America Inc. v. Nisson Technology, Inc.*, 837 F.Supp.
3 616 (D. Del. 1993); *see also A Genentech Inc. v. U.S. International Trade Commission*, 122 F.3d
4 1409 (Fed. Cir. 1997) (“Generally disclosure of confidential communications or attorney work
5 product to a third party, such as an adversary in litigation, constitutes a waiver of privilege as to
6 those items.”). Accordingly, Opposer should be ordered to produce the requested documents.

7 **CONCLUSION**

8 For all of the foregoing reasons, applicant respectfully requests that Opposer be required
9 to provide the requested information and produce the requested documents within thirty (30)
10 days and that the discovery period be extended accordingly.

11 Respectfully submitted,

12 LAW OFFICE OF PAUL W. REIDL

13 

14
15 Dated: December 31, 2015

16 Paul W. Reidl
17 Law Office of Paul W. Reidl
18 241 Eagle Trace Drive
19 Second Floor
20 Half Moon Bay, CA 94019
21 (650) 560-8530
22 paul@reidllaw.com

23 *Attorney for Applicant,*
24 *The Wine Group LLC*

1 **PROOF OF SERVICE**

2 On December 31, 2015 I caused to be served the following document:

3 **APPLICANT’S MOTION TO COMPEL**

4 on Opposer by placing a true copy thereof in the United States mail enclosed in an envelope,
5 postage prepaid, addressed as follows to their counsel of record at his present business address:

6 Jennifer Lee Taylor
7 Morrison & Forester LLP
8 425 Market Street
9 San Francisco, CA 94105-2482

10 Executed on December 31, 2015 at Half Moon Bay, California.

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12 
13

14 _____

EXHIBIT A



July 21, 2015

Jennifer Lee Taylor
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

Via E-Mail: jtaylor@mfo.com

Re: Discovery Meet and Confer (Opposition No. 91220166)

Dear Ms. Taylor,

The purpose of this letter is to begin the meet and confer process on your responses to my discovery requests.

I note at the outset that the CD you provided that allegedly contains the documents is encrypted so I cannot open it. Please provide me with the documents in a readable format as quickly as possible. I reserve all objections to the documents you produced.

INTERROGATORY RESPONSES

1 Your blanket objection to producing information that is publicly available is improper. (3:5-8). I am entitled to the information in the possession of your client irrespective of whether it may be publicly available. Please produce all such information or confirm in writing that no such information has been withheld.

2. Similarly, your objection to producing confidential information that “is not sufficiently protected by the standard protective order” is improper. (3:18-21). During the pre-discovery conference we agreed to apply the Board’s standard protective order to this case. It is hard for me to fathom what could be so sensitive that the standard order would not protect it adequately, and your response does not provide any insight on that question. Accordingly, please identify all such information that you have withheld and suggest what modifications to the standard protective order might be required to protect it adequately.

3. Your refusal to identify the specific documents responsive to each interrogatory is also improper. (8:25-9:4). This is a basic requirement of discovery. Moreover, while I

appreciate your commitment to identify specific documents in response to the document requests, you failed to do so. Accordingly, please supplement your interrogatory responses by identifying the documents as requested.

4. Your response to Interrogatory 1 is deficient in two ways.

a. I realize that your client claims to have used the mark since 1998, but it is hardly unduly burdensome to look at their business records and provide me with annual sales figures. This information is necessary in light of your claim that your client's mark is entitled to a broad scope of protection because it is famous and well-known. Accordingly, please produce annual data from the date of first use. If you fail to do so I will move to preclude any such data at trial.

b. Under Rule 33 (d) you are required to make a specific showing of burden and specify the exact documents which are responsive to the interrogatory. *Johnson & Johnson and RoC International S.A.R.L. v. Obschestvo s ogranitchenny; otvetstvennosti "WDS"*, 95 U.S.P.Q.2d 1567 (TTAB 2010). You have not done so. Please either answer the interrogatory fully or comply with the requirements of Rule 33 (d).

5. Your objection to Interrogatory 2 is equally misplaced. "Promotional expenses" in the trade means the amount of money that your client has spent to promote the brand. The amount spent on promoting the brand is plainly relevant to your claim that the mark is famous and well-known, and widely recognized by consumers. Accordingly, please produce this information as requested.

6. Your response to Interrogatory 4 is also deficient. The request is a basic one: who has primary responsibility for various tasks at your client's winery. I need this information in order to conduct further discovery, including depositions. Identifying only Mr. Huneeus who is the President of the company (and the only person you identified in your Rule 26 disclosure) is evasive and improper. Please provide this information.

7. Your response to Interrogatory 9 is vague and ambiguous. You disclosed one firm with whom your client has recently worked and then said that other persons may have been involved in promoting the brand but your client is unaware of them – the implication being that these persons were retained by the former owner. While I can understand that your client does not know the identity of those who were retained by the former owner, the response begs the question as to whether your client has retained someone other than C. Milan Communications. Please clarify your response.

8. You did not respond to Interrogatory 11. I asked you to identify the documents supporting your claim in the Notice of Opposition that your client would be injured by the registration of my client's mark. Instead of identifying specific documents, you provided lawyer's argument and referred generally to the PTO file, third party wine reviews and other materials. As stated above, I am entitled to a specific response to my request identifying the

documents by number. I should not be required to cull through the documents and guess which documents you believe are responsive to my request. Please supply this information.

9. I have the same issues with your response to Interrogatory 13 as I had with your response to Interrogatory 1. You have not provided the information required to invoke Rule 36 (d) nor have you provided the requested information. As for your burden objection, you forfeited the right to object on burden grounds when you pleaded that your client's mark was well-known and entitled to the broadest possible protection. And as for your claim that "nine (9) liter case equivalents is vague and ambiguous," that is laughable. As your client well knows that is the standard way to measure case sales in the wine business. It is also the way that every winery in the world maintains their sales data. Accordingly, please provide the requested information.

DOCUMENT REQUESTS

1. Your responses repeatedly state that you will do a "reasonable search for documents" and produce documents "to the extent they exist." (See, e.g., responses to requests 1, 4, 5, 7, 10, 11, 12, 13, 16, 17, 18, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 36, 37, 38). This does not comply with Rule 34 in two respects. First, you are required to produce the documents "as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." *Amazon Technologies v. Wax*, 95 U.S.P.Q.2d 1865 (TTAB 2010). Second, you are required to state affirmatively whether or not you have responsive documents. *See No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551 (TTAB 2000). Please amend your responses accordingly.

3. Your responses also repeatedly assert attorney-client privilege yet you did not produce a privilege log despite your agreement to do so. (2:20-24). Please do so promptly or confirm that no such documents have been withheld from production.

4. Your response to Request No. 2 is deficient. Mr. Behmke filed a Declaration with the PTO regarding his filing of the documents with the PTO and it is improper for you to invoke the privilege to shield discovery on that subject. By providing a detailed explanation of why he did what he did the privilege has been waived. Please produce all communications with Mr. Behmke on this subject.

5. Your objection to Request No. 5 is not well-taken. While you are entitled to rely on your priority filing date, I am entitled to test whether your claim of continuous use is true especially since you claim that the mark is well-known and famous, and entitled to the broadest scope of protection, because of that use. Accordingly, please withdraw the objection and produce the requested documents.

6. Your responses to Request Nos. 8 and 9 imply that you have withheld documents on privilege grounds. Please confirm whether such documents have been withheld and, if so, please produce a privilege log.

7. Your objection to Request No. 14 is not well taken. The term “consumer research” is not “vague and ambiguous;” it means research conducted to determine consumer opinion. (In this regard I note that you had no problem understanding the term when I used it in Request No. 17). It is plainly relevant to the issues in the case, in particular, to your claim that your mark has widespread recognition among consumers. If your client has such documents I am entitled to see them. If it does not I am entitled to know that, too. Accordingly, please respond to the Request. (Note that I am not interested at this time in any expert research you may have done in connection with this case.)

8. You did not answer Request No. 15. Either you have such documents or you do not. Your ruminations on whether my client has begun selling wine bearing that mark or why I might have asked the question are non-responsive. Please answer the Request properly.

9. Your objection to Request No. 22 is not well taken. As mentioned previously, you have claimed that your mark has been used since 1998 and that it is entitled to a broad perimeter of protection because of that use. I am entitled to test that argument in discovery, and it is improper for you to limit my discovery to the past six years. Please produce the requested documents. Otherwise, I will move to strike any such documents or testimony at trial.

10. Your objection to Request No. 23 is not well-taken. The Board has held repeatedly that a party’s sales data must be placed in context. *See, e.g., Vanity Fair, Inc. v. Ilyil Entertainment, LLC*, Opposition No. 91201657 (TTAB 2014) (not precedential). This request seeks documents that make that comparison, i.e., how does your client’s sales level/history compare to that of other wine brands. Accordingly, please answer the Request.

11. Your limitation on Request Nos. 30, 31, 33 and 38 is improper. I did not request “representative samples.” I requested all materials actually used by your client and all of the reviews. Again, you have pleaded that your mark is entitled to a broad scope of protection because it is widely recognized among consumers, due both to your promotional efforts and due to wine writer reviews. I am entitled to see all documents on which that claim is based, not on cherry-picked samples that you deem to be “representative.” Accordingly, please produce all such documents.

12. Your objection to Request No. 35 is not made in good faith. A “witness statement” is a written statement made by an actual or potential witness in a legal proceeding that has been obtained in the course of that proceeding. Please withdraw the objection and answer the Request properly.

13. Your objections to Request Nos. 36 and 37 are not well-taken. I want a copy of your client’s web site and Facebook pages for the wine. The fact that I can download them myself is not a proper basis for objecting to producing them. A copy provided by your client is easier to use in a deposition and easier to authenticate, as you surely know. Accordingly, please answer the Request properly.

14. Finally, I note that you repeatedly object on “burden” grounds yet you did not provide any information that would permit me or the Board to evaluate that claim. My strong sense is that your client does not want to be bothered producing the documents required to substantiate the claims that it has made in the Notice of Opposition. While I can certainly understand why that would be the case, the fact is that your client chose to initiate this case and make the claims that it made. It is improper for it now to claim that complying with discovery requests designed to explore that claim is somehow a burden.

I look forward to your prompt response. Absent that, I will seek the assistance of the Board in resolving this matter.

Yours sincerely,

A handwritten signature in black ink that reads "Paul W. Reidl". The signature is written in a cursive, slightly slanted style.



PAUL W. REIDL
ATTORNEY AT LAW

October 6, 2015

Jennifer Lee Taylor
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

Via E-Mail: jtaylor@mofa.com

Re: Discovery Meet and Confer (Opposition No. 91220166)

Dear Ms. Taylor,

On July 21, 2015, I sent you a letter detailing the issues with your responses to my discovery requests.

On August 10, I asked if you planned on responding to my letter. Later that day you wrote: "As for your meet and confer letter, Sabrina and I need to confer with the client and we both left to wn for work/vacations shortly after you sent it. We can talk toward the end of this month when I am back."

On September 14, I again asked when and if you planned to respond to my letter. Later that day you responded: "We have a letter drafted that just needs final review"

As of today I still have not received a response. Accordingly, I feel as if I have done everything I can to engage in the meet and confer process and am prepared to take matters up with the Board.

If your client does not want to finance an opposition proceeding then perhaps we should begin working on a co-existence agreement and save both parties and the Board the time and trouble of this proceeding.

Yours sincerely,

EXHIBIT B

October 7, 2015

Writer's Direct Contact
+1 (415) 268.6348
SLarson@mof.com

Via email (reidl@sbcglobal.net)

Paul W. Reidl
Law Office of Paul W. Reidl
241 Eagle Trace Drive
Half Moon Bay, CA 94019

Re: *Flowers Vineyard and Winery, LLC, v. The Wine Group, LLC*;
Opposition No. 91220166; Application Serial No. 86/348,425

Dear Paul:

We write in response to your July 22, 2015 letter regarding Opposer's discovery responses.

INTERROGATORY RESPONSES

1. We address this concern in response to your objections regarding specific interrogatories.
2. We have not withheld any documents on this basis.
3. We address this concern in response to your objections regarding specific interrogatories.
4. Regarding Interrogatory 1:
 - a. Our client has not made any claim that its mark is "famous"; if you believe to the contrary, please point to where you assert we made that claim.
 - b. We provided sales figures for the past six years. We were able to go back six years because that is when our client acquired the winery. Contrary to your assumptions that our client can simply look at its sales records to provide you information back to 1998, our client does not have reasonable access to sales records that pre-date its acquisition of the winery and believes that they are not relevant because six years is well prior to any use by your client of the FLORET mark. Please explain why you need additional information.

October 7, 2015

Page Two

- c. We note that you drafted your letter before viewing the documents. The response identified that the information is in the "financial spreadsheet documents" that were produced. Only three spreadsheets were produced. We assume that you have had no difficulty locating them in the production.
5. Opposer stands on its objections. We have not made any claim that the mark is "famous"; if you believe to the contrary, please point to us to where you assert we made that claim.
6. The request asked who has "primary responsibility" for the listed categories. Opposer has provided this information, as Mr. Huneus has primary responsibility and has information and can provide testimony on all of the categories.
7. Opposer believes that its response is sufficient.
8. Federal Rule of Civil Procedure 33(d) requires a party to identify the documents "in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could." See also TBMP § 405.04(b). Opposer refers Applicant to these documents: dictionary entries for the term FLORET; trademark prosecution files for the FLOWERS and FLORET marks; third-party press and reviews; Opposer's marketing and sales documents. We note that you drafted this objection before viewing the documents. We believe these categories should be readily apparent in the 345 pages produced.
9. Opposer identified the "Excel spreadsheet showing the number of cases of FLOWERS wine sold by year." Opposer produced this information as kept in the usual course of business. We note that you drafted this objection before viewing the documents, and trust that with only three Excel spreadsheets produced, this one was readily apparent.

DOCUMENT REQUESTS

1. We believe our responses are sufficient. Opposer has produced its documents as they are kept in the usual course of business.
2. We believe our responses are sufficient and objection proper. [Note your letter skips from point 1 to point 3, so starting here, these numbers are one below your numbers.]
3. We disagree.
4. Opposer has provided evidence of use that well predates Applicant's use. We have not made any claim that the mark is "famous"; if you believe to the contrary, please

October 7, 2015

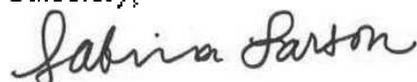
Page Three

point to us to where you assert we made that claim. We believe that our objection is appropriate.

5. All emails between Morrison & Foerster and its client, Opposer, are attorney-client privileged communications. We are preparing a privilege log.
6. Opposer will provide an amended response to reflect that it has produced documents after a reasonable search sufficient to show consumer research, but maintains all of its objections as set forth.
7. We believe our response is sufficient.
8. We believe our response is sufficient.
9. We believe our response is sufficient.
10. We believe our response is sufficient.
11. Thank you for your clarification on what you mean by "witness statement." Opposer will amend its answer to state that this request seeks information protected by attorney client privilege and it will not produce any documents in response.
12. We note that you drafted this objection before viewing our documents. Opposer has produced these pages, and believes its response is sufficient.

Finally, we note the contents of your letter from yesterday. You should not assume a lack of interest in the opposition from the time it took to respond to your letter. Not only have we been extremely busy on other cases, but also the tone of your letter, including the snide comments, does not inspire one to respond quickly. In fact, it does the opposite.

Sincerely,



Sabrina Larson

EXHIBIT C

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

3
4 Application Serial No. 86/348,425

5 Mark: FLORET

6 Class: 33

7
8 **FLOWERS VINEYARD AND WINERY, LLC,**
9 Opposer,
10 v.
11 **THE WINE GROUP LLC,**
12 Applicant.

Opposition No: 91220166

APPLICANT'S FIRST SET OF INTERROGATORIES

13 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120, The
14 Wine Group, LLC ("TWG") hereby serves its First Set of Interrogatories. Opposer's written
15 response is due thirty (30) days from the date of service. It must be signed under oath by an
16 authorized representative of Opposer.

17 **DEFINITIONS AND INSTRUCTIONS**

- 18 1. The term "PERSON" means any individual, corporation, partnership, association,
19 or other commercial or legal entity.
- 20 2. The term "YOU" or "YOUR" means Flowers Vineyard and Winery, LLC, and its
21 present and former officers, directors, employees, agents, representatives, subsidiaries, affiliates,
22 divisions, departments, predecessors in interest, or any other PERSON acting or purporting to act
23 on its behalf.

1 3. The term ""APPLICANT"" means TWG and its present and former officers,
2 directors, employees, agents, representatives, subsidiaries, affiliates, divisions, departments,
3 parents, predecessors in interest, or any other PERSON acting or purporting to act on its behalf.

4 4. The term ""YOUR MARK"" means the mark registered as no. 3,105,412 for
5 FLOWERS for wine, all related common law rights therein, and all of the goodwill associated
6 therewith.

7 5. The term ""DOCUMENT"" or ""DOCUMENTS"" has the full extent of its meaning
8 as provided in Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation,
9 any written recorded, computerized, filed, printed or graphic matter, however produced or
10 reproduced, and any drafts, revisions, or amendments thereof.

11 6. The terms ""and"" as well as ""or"" shall be construed either disjunctively or
12 conjunctively so as to require the broadest response to any interrogatory.

13 7. The singular shall always include the plural and the present tense shall always
14 include the past tense.

15 8. Each request shall be answered separately and fully in writing and shall state
16 unequivocally whether the requested information exists. If YOU refuse to answer a request, in
17 whole or in part, YOU must state each specific ground for YOUR refusal. If YOU claim
18 privilege as a ground for not answering any request in whole or in part, describe the factual basis
19 for YOUR claim of privilege in sufficient detail so as to permit the Board to adjudicate the
20 validity of the claim. If YOU object in part to any request, answer the remainder completely.

21 9. As required by the Rules, YOUR obligation to supplement YOUR responses is
22 continuing.

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1 10. To the extent any information called for by these interrogatories is unknown to
2 YOU, so state, and set forth such remaining information as is known. If any estimate can
3 reasonably be made in place of unknown information, also set forth YOUR best estimate, clearly
4 designated as such, in place of unknown information, and describe the basis upon which the
5 estimate is made.

6 11. If YOU exercise YOUR option under Fed. R. Civ. P. 33 (c) to produce business
7 records in lieu of responding to any interrogatory, YOU must do the following:

8 a. In response to each such interrogatory, YOU must explain why the burden of
9 deriving or ascertaining the answer is substantially the same for TWG as it is for YOU, and
10 identify the specific records containing the answer.

11 b. In producing such records, YOU must produce such records separately and
12 designate the interrogatory or interrogatories to which each record responds, as well as the
13 identification of the file from which the documents were obtained.

14 12. The term "IDENTIFY" when used with reference to a natural person or business
15 means to state the full name of the person or business, and their business address.

16 13. The term "IDENTIFY" when used with reference to a document means to state
17 the date and identify the author (and, if different, the signer or signers), the addressee(s), type of
18 document (e.g., letter, memorandum, e-mail, chart, PowerPoint presentation), its present or last
19 known location and custodian, and all other means of identifying it with sufficient particularity
20 to satisfy the requirements for its inclusion in a request for its production, motion to compel, or
21 subpoena duces tecum.

22 ///

23 //

1 **INTERROGATORIES**

2 **INTERROGATORY NO. 1:**

3 State, by year, the gross sales in dollars for wine bearing YOUR MARK from the date of
4 its first use until the date of these interrogatories.

5 **INTERROGATORY NO. 2:**

6 State, by year, the promotional expenses for wine bearing YOUR MARK from the date
7 of its first use until the date of these interrogatories.

8 **INTERROGATORY NO. 3:**

9 IDENTIFY each non-TWG, non-expert witness from whom you will seek testimony (by
10 affidavit, declaration or deposition) in connection with this Opposition and, for each, the specific
11 topics on which the witness will testify.

12 **INTERROGATORY NO. 4:**

13 IDENTIFY the PERSON associated with YOU who has primary responsibility for the
14 following areas with respect to wines bearing YOUR MARK in the United States:

- 15 (a) Sales;
 - 16 (b) Marketing;
 - 17 (c) Advertising and promotion;
 - 18 (d) Social media;
 - 19 (d) Strategic planning;
 - 20 (e) Customer relations;
 - 21 (f) Quality control;
 - 22 (g) Financial records; and
 - 23 (h) Compliance with health, safety, and sanitation requirements.
- 24

1 **INTERROGATORY NO. 5:**

2 State whether YOU are aware of any wine sold in the United States, other than YOURS,
3 with a trademark containing the term FLOWER(S) or any similar term and, if the answer is
4 anything other than an unequivocal "no," IDENTIFY the producer of each, and state where YOU
5 have seen it for sale.

6 **INTERROGATORY NO. 6:**

7 IDENTIFY each PERSON who supplied information for any of the answers to these
8 interrogatories, who was consulted, and whose DOCUMENTS or files were consulted in the
9 preparation of the answers to these interrogatories.

10 **INTERROGATORY NO. 7:**

11 State whether YOU have ever been involved in an adversarial proceeding before any
12 court, agency or administrative body (other than the instant proceeding) in the United States
13 involving YOUR MARK and, if the answer is anything other than an unequivocal "no", state the
14 caption, case number, and court for each.

15 **INTERROGATORY NO. 8:**

16 State whether YOU have licensed YOUR MARK to any PERSON and, if the answer is
17 anything other than an unqualified "no", IDENTIFY each such PERSON and state the licensed
18 goods or services.

19 **INTERROGATORY NO. 9:**

20 State whether YOU have ever retained a third party such as an advertising, social media
21 or public relations firm to promote or develop promotions or plans for promoting wines bearing
22 YOUR MARK in the United States and, if the answer is anything other than an unambiguous
23 "no," IDENTIFY each.

1 **INTERROGATORY NO. 10:**

2 Describe the target audience or class of consumer for wine bearing YOUR MARK in the
3 United States.

4 **INTERROGATORY NO. 11:**

5 State each fact and IDENTIFY each DOCUMENT supporting YOUR claim in Paragraph
6 12 of the Notice of Opposition that “[YOU] would thereby be injured by the use and registration
7 of Applicant’s FLORET mark.”

8 **INTERROGATORY NO. 12:**

9 State the recommended retail price per bottle and per case of wines bearing YOUR
10 MARK.

11 **INTERROGATORY NO. 13:**

12 State, by year, the number of nine (9) liter case equivalents of wine bearing YOUR mark
13 that have been sold from the date of first use until the date of these interrogatories.

14 Respectfully submitted,

15 **LAW OFFICE OF PAUL W. REIDL**

16 By: /s/ Paul W. Reidl

17 Dated: May 11, 2015

18 Paul W. Reidl
19 Law Office of Paul W. Reidl
20 241 Eagle Trace Drive
21 Second Floor
22 Half Moon Bay, CA 94019
23 (650) 560-8530
24 paul@reidl1aw.com
*Attorney for Respondent,
The Wine Group, LLC*

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PROOF OF SERVICE

On May 12, 2015 I caused to be served the following document:

APPLICANT'S FIRST SET OF INTERROGATORIES

on Opposer by placing a true copy thereof in the United States mail enclosed in an envelope,
postage prepaid, addressed as follows to their counsel of record at his present business address:

Jennifer Lee Taylor
Morrison & Forester LLP
425 Market Street
San Francisco, CA 94105-2482

Executed on May 12, 2015 at Half Moon Bay, California.



EXHIBIT D

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

3
4 Application Serial No. 86/348,425

5 Mark: FLORET

6 Class: 33

7 **FLOWERS VINEYARD AND WINERY, LLC,**
8 Opposer,
9 v.
10 **THE WINE GROUP LLC,**
11 Applicant.

Opposition No: 91220166

**APPLICANT'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS**

12 Pursuant to Rule 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, The
13 Wine Group, LLC ("TWG") hereby serves its First Set of Requests for Production of
14 Documents. Opposer's written response is due thirty (30) days from the date of service.
15 Documents are to be produced at the offices of the undersigned counsel.

16 **DEFINITIONS AND INSTRUCTIONS**

17 1. The term "PERSON" means any individual, corporation, partnership, association,
18 or other commercial or legal entity.

19 2. The term "YOU" or "YOUR" means Flowers Vineyard and Winery, LLC, and its
20 present and former officers, directors, employees, agents, representatives, subsidiaries, affiliates,
21 divisions, departments, predecessors in interest, or any other PERSON acting or purporting to act
22 on its behalf.

23 //

1 3. The term ""APPLICANT"" means TWG and its present and former officers,
2 directors, employees, agents, representatives, subsidiaries, affiliates, divisions, departments,
3 parents, predecessors in interest, or any other PERSON acting or purporting to act on its behalf.

4 4. The term ""YOUR MARK"" means the mark registered as no. 3,105,412 for
5 FLOWERS for wine, all related common law rights therein, and all of the goodwill associated
6 therewith.

7 5. The term ""DOCUMENT"" or ""DOCUMENTS"" has the full extent of its meaning
8 as provided in Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation,
9 any written recorded, computerized, filed, printed or graphic matter, however produced or
10 reproduced, and any drafts, revisions, or amendments thereof.

11 6. The terms ""and"" as well as ""or"" shall be construed either disjunctively or
12 conjunctively so as to require the broadest response to any interrogatory.

13 7. The singular shall always include the plural and the present tense shall always
14 include the past tense.

15 8. Each request shall be answered separately and fully in writing and shall state
16 unequivocally whether the requested DOCUMENT(S) exist and will be produced, whether the
17 DOCUMENT(S) exist and will not be produced due to privilege or some stated objection, or
18 whether the DOCUMENT(S) do not exist. If YOU refuse to answer a request, in whole or in
19 part, YOU must state each specific ground for YOUR refusal. If YOU claim privilege as a
20 ground for not answering any request in whole or in part, describe the factual basis for YOUR
21 claim of privilege in sufficient detail so as to permit the Board to adjudicate the validity of the
22 claim. If YOU object in part to any request, answer the remainder completely.

23 //

24

1 **REQUEST FOR PRODUCTION NO. 5:**

2 For YOUR MARK:

3 a. DOCUMENTS sufficient to show the date of first use on wine; and

4 b. DOCUMENTS sufficient to show its continuous use on wine from that date.

5 **REQUEST FOR PRODUCTION NO. 6:**

6 All license agreements for YOUR MARK.

7 **REQUEST FOR PRODUCTION NO. 7:**

8 All assignment agreements for YOUR MARK.

9 **REQUEST FOR PRODUCTION NO. 8:**

10 All DOCUMENTS concerning, discussing, or reflecting the use or registration by third
11 parties other than YOU of the term "Flowers" or of any similar mark as part of a trademark for
12 wine.

13 **REQUEST FOR PRODUCTION NO. 9:**

14 All DOCUMENTS concerning Applicant and its FLORET trademark for wine but
15 excluding: (a) communications with Respondent, and (b) TTAB pleadings.

16 **REQUEST FOR PRODUCTION NO. 10:**

17 All DOCUMENTS supporting the claim in Paragraph 1 of the Notice of Opposition that
18 wine sold under YOUR MARK has "enjoyed great success."

19 **REQUEST FOR PRODUCTION NO. 11:**

20 All DOCUMENTS supporting the claim in Paragraph 1 of the Notice of Opposition that
21 wine sold under YOUR MARK has "gained a reputation for ...quality."

22 **REQUEST FOR PRODUCTION NO. 12:**

23 All business plans for wine bearing YOUR MARK.
24

1 **REQUEST FOR PRODUCTION NO. 13:**

2 All marketing plans for wine bearing YOUR MARK.

3 **REQUEST FOR PRODUCTION NO. 14:**

4 All DOCUMENTS constituting, referencing or discussing any consumer research for
5 wine bearing YOUR MARK.

6 **REQUEST FOR PRODUCTION NO. 15:**

7 All DOCUMENTS constituting, referencing or discussing any inquiry by a third party as
8 to whether TWG's FLORET wine was made by, sponsored by, licensed by or in any way
9 affiliated with YOU.

10 **REQUEST FOR PRODUCTION NO. 16:**

11 All DOCUMENTS supporting the claim in Paragraph 4 of the Notice of Opposition that
12 wine sold under YOUR MARK has "become widely known and recognized by the public as
13 identifying [YOUR] wine."

14 **REQUEST FOR PRODUCTION NO. 17:**

15 All DOCUMENTS constituting, referencing or discussing any consumer research
16 regarding the level of recognition among consumers of wine sold under YOUR MARK.

17 **REQUEST FOR PRODUCTION NO. 18:**

18 All DOCUMENTS supporting, referencing or discussing the claim in Paragraph 8 of the
19 Notice of Opposition that "Opposer's FLOWERS mark is virtually identical to Applicant's
20 FLORET mark in sound, appearance, meaning, connotation, and commercial impression."

21 **REQUEST FOR PRODUCTION NO. 19:**

22 All DOCUMENTS referencing or discussing the number of wine consumers in the
23 United States who speak French

1 **REQUEST FOR PRODUCTION NO. 20:**

2 All DOCUMENTS referencing or discussing the use of the term FLOWER(S) by third
3 parties on or in connection with wine.

4 **REQUEST FOR PRODUCTION NO. 21:**

5 All DOCUMENTS constituting, referencing or discussing YOUR efforts to prevent third
6 parties from using the term FLOWER(S), or any similar term, on or in connection with wine.

7 **REQUEST FOR PRODUCTION NO. 22:**

8 DOCUMENTS sufficient to show the annual sales by YOU of wine bearing YOUR
9 MARK, in nine (9) liter case equivalents, since its date of first use.

10 **REQUEST FOR PRODUCTION NO. 23:**

11 All DOCUMENTS discussing, concerning, comparing or reflecting the sales volume of
12 wine bearing YOUR MARK, in nine (9) liter case equivalents, with sales by third parties of other
13 brands of wine.

14 **REQUEST FOR PRODUCTION NO. 24:**

15 All DOCUMENTS constituting, concerning or reflecting any demand made by YOU to
16 any third party to cease using or to abstain from registering a FLOWER(S) trademark, or any
17 similar trademark, for any goods or services.

18 **REQUEST FOR PRODUCTION NO. 25:**

19 All DOCUMENTS concerning or relating to any retention by YOU of any advertising
20 agency, social media consultant, or other PERSON to promote or develop plans for promoting
21 goods and or services provided under YOUR MARK.

22 **REQUEST FOR PRODUCTION NO. 26:**

23 All search reports for YOUR MARK.
24

1 **REQUEST FOR PRODUCTION NO. 27:**

2 DOCUMENTS sufficient to show the channel(s) of trade through which wine bearing
3 YOUR MARK are sold or provided.

4 **REQUEST FOR PRODUCTION NO. 28:**

5 All DOCUMENTS discussing or analyzing the demographics of purchasers of wine
6 bearing YOUR MARK.

7 **REQUEST FOR PRODUCTION NO. 29:**

8 Representative labels for wine bearing YOUR MARK.

9 **REQUEST FOR PRODUCTION NO. 30:**

10 All promotional materials for goods bearing YOUR mark in the United States, including
11 by way of example but without limitation on the generality of the foregoing:

- 12 a. Each print ad;
- 13 b. Each television ad;
- 14 c. Each radio ad;
- 15 d. Each point of sale display piece;
- 16 e. Each social media posting; and
- 17 e. A sample of each marketing accessory, such as shirts, caps, aprons, etc., that bear
18 the FLOWERS mark; and

19 **REQUEST FOR PRODUCTION NO. 31:**

20 Each media or wine writer review for wine bearing YOUR MARK.

21 **REQUEST FOR PRODUCTION NO. 32:**

22 DOCUMENTS sufficient to show the recommended retail price of wine bearing YOUR
23 MARK.

1 **REQUEST FOR PRODUCTION NO. 33:**

2 Each newspaper, magazine, blog post or trade press article discussing, describing or
3 commenting on wine bearing YOUR MARK.

4 **REQUEST FOR PRODUCTION NO. 34:**

5 Each DOCUMENT concerning consumer understanding in the United States of the term
6 "Floret."

7 **REQUEST FOR PRODUCTION NO. 35:**

8 Each witness statement provided to YOU in connection with this opposition.

9 **REQUEST FOR PRODUCTION NO. 36:**

10 All DOCUMENTS referring to or constituting content for each web site for wine bearing
11 YOUR MARK.

12 **REQUEST FOR PRODUCTION NO. 37:**

13 All DOCUMENTS referring to or constituting content for each Facebook page for wine
14 bearing YOUR MARK.

15 **REQUEST FOR PRODUCTION NO. 38:**

16 Each Certificate of Label Approval (COLA) for wine bearing YOUR MARK.

17 Respectfully submitted,

18 **LAW OFFICE OF PAUL W. REIDL**

19 By: /s/ Paul W. Reidl

20 Dated: May 11, 2015

21 Paul W. Reidl
22 Law Office of Paul W. Reidl
23 241 Eagle Trace Drive
24 Second Floor
Half Moon Bay, CA 94019
(650) 560-8530
paul@reidllaw.com

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4 **PROOF OF SERVICE**

5 On May 12, 2015 I caused to be served the following document:

6 **APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

7 on Opposer by placing a true copy thereof in the United States mail enclosed in an envelope,
8 postage prepaid, addressed as follows to their counsel of record at his present business address:

9 Jennifer Lee Taylor
10 Morrison & Forester LLP
11 425 Market Street
12 San Francisco, CA 94105-2482

13 Executed on May 12, 2015 at Half Moon Bay, California.
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EXHIBIT E

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

3 FLOWERS VINEYARD AND WINERY,
4 LLC,

5 Opposer,

6 vs.

7 THE WINE GROUP, LLC,

8 Applicant.

Opposition No.: 91220166

Application Serial No.: 86/348,425

**RESPONSES TO APPLICANT'S FIRST
SET OF INTERROGATORIES**

Mark: FLORET

9
10 Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal
11 Rules of Civil Procedure, Flowers Vineyard and Winery, LLC ("Opposer") hereby submits the
12 following objections and responses to the First Set of Interrogatories propounded by The Wine
13 Group, LLC ("Applicant").

14 **PRELIMINARY STATEMENT**

15 In responding to these interrogatories, Opposer does not concede the relevancy,
16 materiality or admissibility of any information sought for any of these interrogatories or any
17 response thereto. Opposer's responses are made subject to and without waiver of any questions
18 or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence,
19 or for any other purpose, of any of the documents or information referred to or of the responses
20 given herein, or of the subject matter thereof, in any proceeding, including the trial of this action
21 or any other subsequent proceeding; and said responses are made specifically subject to the right
22 to object to any proceeding involving or relating to the subject matter of the interrogatories
23 responded to herein. Opposer further states that it is responding to Applicant's First Set of
24 Interrogatories, and each interrogatory therein, as it interprets and understands that interrogatory
25 with respect to the issues framed in connection with this proceeding.
26
27

28 Opposer has not completed its investigation of the facts related to this case. Specifically,

1 neither Opposer nor its counsel have examined all potential documents relevant to this case nor
2 interviewed all potential witnesses. Therefore, the instant responses are based only on
3 information currently known to Opposer, and are given without prejudice to Opposer' right to
4 supplement, amend or modify these responses or to argue evidence at trial on these issues.
5 Opposer specifically reserves the right to supplement, amend, or modify its objections and/or
6 responses.
7

8 Each of the following interrogatory responses is made subject to this preliminary
9 statement and Opposer's general and specific objections set forth below.

10 GENERAL OBJECTIONS

11 1. Opposer objects to each interrogatory to the extent that it seeks information
12 protected from discovery by the attorney-client privilege, the common interest privilege, the joint
13 defense privilege, the work-product doctrine, and/or any other exemptions from discovery. If
14 Opposer does not expressly object to a particular interrogatory on the basis that it seeks
15 information that is privileged or otherwise exempt from discovery, such an omission should not
16 be misconstrued as a waiver of such privilege or exemption.
17

18 2. Opposer objects to each definition, instruction, and/or interrogatory to the extent
19 that it seeks information in a manner inconsistent with the Trademark Rules of Practice and
20 Federal Rules of Civil Procedure, or seeks to impose upon Opposer discovery obligations that
21 exceed the scope of such rules and orders. Opposer will comply with the requirements of the
22 Trademark Rules of Practice and Federal Rules of Civil Procedure in responding to Applicant's
23 interrogatories.
24

25 3. Opposer objects to each interrogatory to the extent that it seeks information that
26 does not exist or is not within its possession, custody, or control and is thus beyond the scope of
27 proper discovery by Applicant. To the extent that any responsive and relevant information is not
28

1 possessed by Opposer but is in the possession, custody or control of a non-party to this case
2 which is not controlled by Opposer, Applicant will be required to seek discovery from such non-
3 party.

4 4. Opposer objects to each interrogatory to the extent that it seeks information in
5 Applicant's possession, custody or control, that is available to Applicant from public sources, or
6 that is obtainable from some other source that is more convenient, less burdensome, or less
7 expensive.

8 5. Opposer objects to each interrogatory to the extent that it assumes facts or legal
9 conclusions not yet adjudicated; by responding to these interrogatories, Opposer does not admit
10 or agree with any explicit or implicit assumption made in the interrogatories.

11 6. Opposer objects to each interrogatory to the extent that it is vague and/or
12 ambiguous.

13 7. Opposer objects to each interrogatory to the extent that it is overbroad, seeks
14 information not relevant to the claims and defenses in this action and/or is not reasonably
15 calculated to lead to the discovery of admissible evidence.

16 8. Opposer objects to each interrogatory to the extent it asks for confidential
17 information that Opposer believes is not sufficiently protected by the standing protective order in
18 this action.

19 9. Opposer objects to Applicant's definition of "YOU," and "YOUR" as overly broad
20 and unduly burdensome. In responding to the requests, Opposer interprets "YOU," and "YOUR"
21 as referring only to Opposer and any present employees who are subject to Opposer's control.

22 10. Opposer objects to Applicant's instruction that documents produced "in response
23 to these Interrogatories" must identify the specific interrogatory to which they are responsive. In
24 responding to Applicant's request for identification of documents in interrogatories, Opposer will
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1 produce only identified documents that are responsive to Applicant's First Request for the
2 Production of Documents, and as they are kept in Opposer's usual course of business pursuant to
3 Federal Rule of Civil Procedure 34(b)(2)(E).

4 11. Opposer objects to Applicant's instruction that in producing records in response to
5 an interrogatory, Opposer must identify the specific interrogatory to which they are responsive.
6 In responding to Applicant's request for identification of documents in interrogatories, Opposer
7 will produce only identified documents that are responsive to Applicant's First Request for the
8 Production of Documents, and as they are kept in Opposer's usual course of business pursuant to
9 Federal Rule of Civil Procedure 34(b)(2)(E).

10 12. Opposer objects to Applicant's definition of "Identify" when used in reference to a
11 document as overly broad and unduly burdensome in that it asks for the date, author, addressee,
12 type, and location of such document.
13
14

15 INTERROGATORIES

16 INTERROGATORY NO. 1:

17 State, by year, the gross sales in dollars for wine bearing YOUR MARK from the date of
18 its first use until the date of these interrogatories.

19 RESPONSE TO INTERROGATORY NO. 1:

20 Opposer responds pursuant to Federal Rule of Civil Procedure 33(d) that wholesale sales
21 information responsive to this interrogatory is provided in the financial spreadsheet documents
22 being produced by Opposer in response to Applicant's requests for production served in this
23 matter.

24 To the extent this request seeks information beyond what is provided in this response,
25 Opposer incorporates the foregoing general objections and asserts the following specific
26 objections: Opposer objects to this request as unduly burdensome in that it seeks annual sales
27 information since the date of first use. Opposer has been selling its FLOWERS wine since 1998,
28

1 for 17 years. Opposer further objects that the phrase “gross sales” is ambiguous because it is not
2 clear whether it is seeking information on wholesale sales or retail sales. Taking these objections
3 into account, Opposer will produce documents sufficient to show annual wholesale sales data for
4 the past 6 years, since 2009.

5 **INTERROGATORY NO. 2:**

6 State, by year, the promotional expenses for wine bearing YOUR MARK from the date of
7 its first use until the date of these interrogatories.

8 **RESPONSE TO INTERROGATORY NO. 2:**

9 Opposer objects that the phrase “promotional expenses” is ambiguous because it is not
10 clear whether Applicant is seeking information related to Opposer’s own advertisement and
11 promotion of the FLOWERS wines or information related to advertisements and promotional
12 efforts made by distributors of Opposer’s FLOWERS wines—which is in the hands of Opposer’s
13 third-party distributors. Opposer further objects that in light of how wines are promoted—
14 primarily through third-party reviews, by sommeliers in restaurants, in tastings, and by word of
15 mouth—Opposer’s actual “expenses” are not relevant to the matters at issue in this proceeding
16 and are not likely to lead to the discovery of admissible evidence.

17 **INTERROGATORY NO. 3:**

18 IDENTIFY each non-TWG, non-expert witness from whom you will seek testimony (by
19 affidavit, declaration or deposition) in connection with this Opposition and, for each, the specific
20 topics on which the witness will testify.

21 **RESPONSE TO INTERROGATORY NO. 3:**

22 Opposer responds that its investigation into this matter is ongoing and that discovery only
23 just opened. Opposer may call Agustín Huneez as a witness in this proceeding on the topics
24 identified in Opposer’s initial disclosures. Opposer reserves the right to supplement or amend this
25 response after the completion of discovery.

26 To the extent this request seeks information beyond what is provided in this response,
27 Opposer incorporates the foregoing general objections and asserts the following specific
28 objections: Opposer objects to this interrogatory as premature in that it is not required to identify

1 its trial evidence at this stage.

2 **INTERROGATORY NO. 4:**

3 IDENTIFY the PERSON associated with YOU who has primary responsibility for the
4 following areas with respect to wines bearing YOUR MARK in the United States:

- 5 (a) Sales;
- 6 (b) Marketing;
- 7 (c) Advertising and promotion;
- 8 (d) Social media;
- 9 (d) Strategic planning;
- 10 (e) Customer relations;
- 11 (f) Quality control;
- 12 (g) Financial records; and
- 13 (h) Compliance with health, safety, and sanitation requirements.

14 **RESPONSE TO INTERROGATORY NO. 4:**

15 Opposer responds that Agustín Huneus has knowledge on each of the above-listed items.

16 To the extent this request seeks information beyond what is provided in this response,
17 Opposer incorporates the foregoing general objections and asserts the following specific
18 objections: Opposer objects to this interrogatory as vague and ambiguous with respect to
19 “primary responsibility.”

20 **INTERROGATORY NO. 5:**

21 State whether YOU are aware of any wine sold in the United States, other than YOURS,
22 with a trademark containing the term FLOWER(S) or any similar term and, if the answer is
23 anything other than an unequivocal “no,” IDENTIFY the producer of each, and state where YOU
24 have seen it for sale.

25 **RESPONSE TO INTERROGATORY NO. 5:**

26 Opposer responds that it is not aware of any wine sold under the mark FLOWERS other
27 than Opposer’s.

28

1 **INTERROGATORY NO. 6:**

2 IDENTIFY each PERSON who supplied information for any of the answers to these
3 interrogatories, who was consulted, and whose DOCUMENTS or files were consulted in the
4 preparation of the answers to these interrogatories.

5 **RESPONSE TO INTERROGATORY NO. 6:**

6 Agustín Huneeus supplied information related to these interrogatories.

7 **INTERROGATORY NO. 7:**

8 State whether YOU have ever been involved in an adversarial proceeding before any
9 court, agency or administrative body (other than the instant proceeding) in the United States
10 involving YOUR MARK and, if the answer is anything other than an unequivocal “no”, state the
11 caption, case number, and court for each.

12 **RESPONSE TO INTERROGATORY NO. 7:**

13 Opposer responds that it has not been involved in any proceedings regarding FLOWERS
14 other than the current one.

15 **INTERROGATORY NO. 8:**

16 State whether YOU have licensed YOUR MARK to any PERSON and, if the answer is
17 anything other than an unqualified “no”, IDENTIFY each such PERSON and state the licensed
18 goods or services.

19 **RESPONSE TO INTERROGATORY NO. 8:**

20 Opposer has not licensed the FLOWERS mark.

21 **INTERROGATORY NO. 9:**

22 State whether YOU have ever retained a third party such as an advertising, social media or
23 public relations firm to promote or develop promotions or plans for promoting wines bearing
24 YOUR MARK in the United States and, if the answer is anything other than an unambiguous
25 “no,” IDENTIFY each.

26 **RESPONSE TO INTERROGATORY NO. 9:**

27 Opposer responds that it has recently worked with a public relations firm to promote
28 FLOWERS wine, C Milan Communications, Zoetrope Building, 916 Kearny Street, San

1 Francisco, CA 94133.

2 To the extent this request seeks information beyond what is provided in this response,
3 Opposer incorporates the foregoing general objections and asserts the following specific
4 objections: Opposer objects to this interrogatory as overly broad and unduly burdensome in that
5 it asks if Opposer has “ever” hired a third party to promote FLOWERS wine. Opposer has been
6 selling its FLOWERS wine since 1998, for 17 years, and the ownership of the winery has
7 changed over that period. Other parties may have previously been involved in promoting or
8 developing promotions and plans for the FLOWERS wine, but Opposer is currently not aware of
9 the identity of any such entities.

10 **INTERROGATORY NO. 10:**

11 Describe the target audience or class of consumer for wine bearing YOUR MARK in the
12 United States.

13 **RESPONSE TO INTERROGATORY NO. 10:**

14 Opposer targets all individuals who might be interested in wine.

15 To the extent this request seeks information beyond what is provided in this response,
16 Opposer incorporates the foregoing general objections and asserts the following specific
17 objections: Opposer objects to the phrase “target audience or class of consumer” as vague and
18 ambiguous.

19 **INTERROGATORY NO. 11:**

20 State each fact and IDENTIFY each DOCUMENT supporting YOUR claim in Paragraph
21 12 of the Notice of Opposition that “[YOU] would thereby be injured by the use and registration
22 of Applicant’s FLORET mark.”

23 **RESPONSE TO INTERROGATORY NO. 11:**

24 Opposer’s FLOWERS mark is virtually identical to Applicant’s FLORET mark in
25 meaning, connotation, and commercial impression and is very similar in sound and appearance.
26 Both Opposer’s and Applicant’s marks begin with the same three letters. The term “flowers” in
27 Opposer’s FLOWERS mark refers to a seed-bearing part of a plant known as a flower. The term
28 “floret” in Applicant’s FLORET mark refers to a small flower, and thus has essentially the same

1 meaning, connotation, and commercial impression as Opposer's FLOWERS mark. (*See*
2 <http://www.merriam-webster.com/dictionary/floret>.) Accordingly, Opposer's FLOWERS mark
3 and Applicant's FLORET mark are confusingly similar in sound, appearance, meaning,
4 connotation, and commercial impression.

5 FLOWERS is also a strong mark when used in connection with wines. Not only is
6 FLOWERS considered an arbitrary term when used in connection with wines and not only has
7 FLOWERS wine gained a significant amount of acclaim, Opposer is also not aware of anyone
8 else using the FLOWERS mark on wines. Accordingly, FLOWERS is considered a strong and
9 distinctive mark when used in connection with wine and is entitled to a wide scope of protection.

10 Further, both marks are used in connection with wines. Because the goods are identical,
11 they are competing products. And because neither party's application/registration is restricted to
12 specific wines or specific channels of trade, the wines are assumed to travel through all normal
13 channels of trade to all consumers of wines, including unsophisticated consumers. Accordingly,
14 consumers of Applicant's FLORET wine are likely to consist of many of the same consumers
15 who are familiar with the FLOWERS mark used in connection with Opposer's wine, and
16 Applicant is likely to offer and distribute its FLORET wine through channels of trade that overlap
17 with those used by Opposer to offer and distribute its FLOWERS wine.

18 Regarding documents supporting Opposer's contentions, Opposer refers to the
19 prosecution files for the FLOWERS and FLORET mark being produced by Opposer or already in
20 the possession of Applicant, and to third-party press and reviews regarding Opposer's FLOWERS
21 wines and marketing and sales documents, all of which are being produced by Opposer in
22 response to Applicant's requests for production served in this matter.

23 In view of the fact that Applicant's FLORET mark is confusingly similar to Opposer's
24 FLOWERS mark, that Applicant's FLOWERS mark is strong, that Applicant's wine and
25 Opposer's wine are competitive, and that the customers and trade channels for Applicant's wine
26 and Opposer's wine are the same or overlapping, Applicant's FLORET mark is likely to cause
27 confusion with Opposer's FLOWERS mark, or to cause mistake, or to deceive as to the origin,
28

1 sponsorship, or approval of Applicant's wine. Opposer would thereby be injured by the use and
2 registration of Applicant's FLORET mark.

3 **INTERROGATORY NO. 12:**

4 State the recommended retail price per bottle and per case of wines bearing YOUR
5 MARK.

6 **RESPONSE TO INTERROGATORY NO. 12:**

7 Opposer responds that it does not control the retail prices for its FLOWERS wines and
8 that the retail price can vary greatly from location to location and from vintage to vintage with
9 recent online prices ranging from \$40 to \$80 per bottle on the www.flowerswinery.com website,
10 from \$43 to \$112 per bottle on the www.wine.com website, from \$35 to \$45 per bottle on the
11 www.wine-searcher.com website, and from \$35 to \$80 per bottle on the www.snooth.com
12 website. Further, recent in-store prices have ranged from \$25 to \$40 per bottle at national
13 retailers such as Safeway.

14 To the extent this request seeks information beyond what is provided in this response,
15 Opposer incorporates the foregoing general objections and asserts the following specific
16 objections: Opposer objects to this interrogatory as overly broad and unduly burdensome.
17 Opposer objects to this interrogatory as vague and ambiguous with respect to "recommended
18 retail price."

19 **INTERROGATORY NO. 13:**

20 State, by year, the number of nine (9) liter case equivalents of wine bearing YOUR mark
21 that have been sold from the date of first use until the date of these interrogatories.

22 **RESPONSE TO INTERROGATORY NO. 13:**

23 Opposer responds pursuant to Federal Rule of Civil Procedure 33(d) that the information
24 responsive to this interrogatory is provided in the Excel spreadsheet showing the number of cases
25 of FLOWERS wine sold by year, which is being produced by Opposer in response to Applicant's
26 requests for production served in this matter.

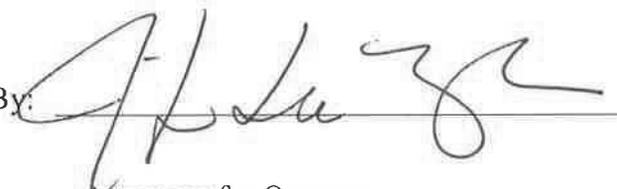
27 To the extent this request seeks information beyond what is provided in this response,
28 Opposer incorporates the foregoing general objections and asserts the following specific

1 objections: Opposer objects to this request as unduly burdensome in that it seeks sales
2 information since the date of first use. Opposer has been selling its FLOWERS wine since 1998,
3 for 17 years. Opposer is producing information on its sales of FLOWERS wines to the extent that
4 the information is reasonably available to Opposer. Opposer further objects to this interrogatory
5 as vague and ambiguous with respect to “nine (9) liter case equivalents.”

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Dated: July 14, 2015

JENNIFER LEE TAYLOR
SABRINA A. LARSON
MORRISON & FOERSTER LLP

By: 

Attorneys for Opposer
Flowers Vineyard and Winery, LLC

PROOF OF SERVICE BY OVERNIGHT

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years; and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it is placed at Morrison & Foerster for collection.

I further declare that on July 14, 2015, I served a copy of:

RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

on the following by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows for collection by UPS at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practice:

Paul W. Reidl
Law Office of Paul W. Reidl
241 Eagle Trace Drive
Half Moon Bay, CA 94019

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 14th day of July, 2015.

Lucia M. Sario
(typed)



(signature)

EXHIBIT F

1 exist or is not within its possession, custody, or control and is thus beyond the scope of proper
2 discovery by Applicant. To the extent that any responsive and relevant information is not
3 possessed by Opposer but is in the possession, custody or control of a non-party to this case
4 which is not controlled by Opposer, Applicant will be required to seek discovery from such non-
5 party.

6 4. Opposer objects to each request to the extent that it seeks information in
7 Applicant's possession, custody or control, that is available to Applicant from public sources, or
8 that is obtainable from some other source that is more convenient, less burdensome, or less
9 expensive.

10 5. Opposer objects to each request to the extent that it assumes facts or legal
11 conclusions not yet adjudicated; by responding to these requests, Opposer does not admit or agree
12 with any explicit or implicit assumption made in the requests.

13 6. Opposer objects to each request to the extent that it is overbroad, seeks
14 information not relevant to the claims and defenses in this action and/or is not reasonably
15 calculated to lead to the discovery of admissible evidence.

16 7. Opposer objects to each request to the extent it asks for confidential information
17 that Opposer believes is not sufficiently protected by the standing protective order in this action.

18 8. Opposer objects to Applicant's definition of "YOU," and "YOUR" as overly broad
19 and unduly burdensome. In responding to the requests, Opposer interprets "YOU," and "YOUR"
20 as referring only to Opposer and any present employees who are subject to Opposer's control.

21 9. Opposer objects to Applicant's instruction regarding privilege and work product
22 claims as overly broad and unduly burdensome. Where a claim of attorney-client or work
23 product privilege is asserted, Opposer will provide a privilege log in a manner consistent with the
24 Federal Rules of Civil Procedure after the completion of its written responses.

25 **REQUESTS FOR PRODUCTION**

26 **REQUEST FOR PRODUCTION NO. 1:**

27 All DOCUMENTS constituting, referencing or discussing any consumer research for wine
28 bearing YOUR MARK.

1 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

2 Opposer has engaged in a reasonable search, and has produced documents sufficient to
3 show consumer research.

4 Opposer maintains all of its objections to this request. Specifically: Opposer incorporates
5 the foregoing general objections and asserts the following specific objections: Opposer objects to
6 this request as vague and ambiguous with respect to "consumer research." Opposer objects to
7 this request as overly broad and unduly burdensome, particularly as it seeks "all documents"
8 "constituting, referencing or discussing" the requested information while Opposer has been using
9 the FLOWERS mark since 1998 through its predecessor-in-interest. Opposer objects to this
10 request to the extent it seeks to elicit information subject to and protected by the attorney-client
11 privilege, the attorney work-product doctrine and/or any other applicable privilege or immunity.

12 **REQUEST FOR PRODUCTION NO. 2:**

13 Each witness statement provided to YOU in connection with this opposition.

14 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

15 Opposer incorporates the foregoing general objections and asserts the following specific
16 objection: Opposer objects to this request because it seeks to elicit information subject to and
17 protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
18 applicable privilege or immunity.

19 Dated: October 21, 2015

JENNIFER LEE TAYLOR
SABRINA A. LARSON
MORRISON & FOERSTER LLP

20
21
22
23 By: /s/ Sabrina A. Larson

24 Attorneys for Opposer
25 Flowers Vineyard and Winery, LLC
26
27
28

Date	From/Author	To	CC	Privilege Asserted	Description
10/12/2014, 12:00pm	lhaylar@maha.com	Agustin Hurnasus	Michaela@hunasasvlnas.com; Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/15/2014, 11:05am	Taryn S. Rowson	Agustin Hurnasus	Michaela@hunasasvlnas.com; Joanna Adler; lhaylar@maha.com	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/15/2014, 11:15am	Agustin Hurnasus	Taryn S. Rowson		AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/15/2014, 12:00pm	Michaela@hunasasvlnas.com	Taryn S. Rowson	Joanna Adler; lhaylar@maha.com	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/15/2014, 1:07pm	Taryn S. Rowson	Michaela@hunasasvlnas.com		AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/15/2014, 5:11pm	lhaylar@maha.com	Agustin Hurnasus	Michaela@hunasasvlnas.com; Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/16/2014, 12:00pm	Jay Sahmska	lhaylar@maha.com	Joanna Adler; Phillip Kubshad	AC; WP	E-mail communication reflects legal advice concerning ALOWOS trademark registration.
10/21/2014, 1:01pm	lhaylar@maha.com	Agustin Hurnasus	Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
10/21/2014, 1:05pm	lhaylar@maha.com	Jay Sahmska	Phillip Kubshad; Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOWOS trademark registration.
10/22/2014, 11:08am	Jay Sahmska	lhaylar@maha.com	Phillip Kubshad; Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOWOS trademark registration.
11/12/2014, 6:11pm	lhaylar@maha.com	Jay Sahmska	Phillip Kubshad; Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOWOS trademark registration.
11/12/2014, 1:02pm	Jay Sahmska	lhaylar@maha.com	Phillip Kubshad; Joanna Adler; Taryn S. Rowson	AC; WP	E-mail communication reflects legal advice concerning ALOWOS trademark registration.
04/02/2015, 02:45am	lhaylar@maha.com	Agustin Hurnasus	Michaela@hunasasvlnas.com; Joanna Adler; darcus@maha.com	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.
04/02/2015, 02:55am	darcus@maha.com	Michaela@hunasasvlnas.com	Joanna Adler; lhaylar@maha.com	AC; WP	E-mail communication reflects legal advice concerning ALOEST trademark litigation.

Date	From/Author	To	CC	Privilege Asserted	Description
6/14/2015, 8:40p.m.	slarsam@maha.com	Agustin Hurnama	Jenna Adler; [taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/22/2015, 8:57a.m.	Kimberley Sarsun	slarsam@maha.com		AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/21/2015, 1:24p.m.	slarsam@maha.com	John Adams	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/22/2015, 8:58a.m.	slarsam@maha.com	Kimberley Sarsun	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/22/2015, 1:12a.m.	slarsam@maha.com	Kimberley Sarsun		AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/24/2015, 2:48p.m.	slarsam@maha.com	Kimberley Sarsun	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/24/2015, 2:52p.m.	slarsam@maha.com	Kimberley Sarsun	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/26/2015, 4:18p.m.	Kimberley Sarsun	slarsam@maha.com	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/27/2015, 1:26p.m.	slarsam@maha.com	Kimberley Sarsun	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.
6/27/2015, 1:27p.m.	Kimberley Sarsun	slarsam@maha.com	[taylor@maha.com]	AC; WP	E-mail communication reflects legal advice concerning AOBET trademark litigation.

PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on October 21, 2015, I served a copy of:

**FIRST AMENDED RESPONSES TO APPLICANT'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS AND
ACCOMPANYING PRIVILEGE LOG**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Paul W. Reidl
Law Office of Paul W. Reidl
241 Eagle Trace Drive
Half Moon Bay, CA 94019

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 21st day of October, 2015.

Colleen Burns
(typed)

Colleen Burns
(signature)

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

3 FLOWERS VINEYARD AND WINERY,
4 LLC,

5 Opposer,

6 vs.

7 THE WINE GROUP, LLC,

8 Applicant.

Opposition No.: 91220166

Application Serial No.: 86/348,425

**RESPONSES TO APPLICANT'S FIRST
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS**

Mark: FLORET

9 Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal
10 Rules of Civil Procedure, Flowers Vineyard and Winery, LLC ("Opposer") hereby submits the
11 following objections and responses to the First Set of Requests for Production of Documents
12 propounded by The Wine Group, LLC ("Applicant").

13 **GENERAL OBJECTIONS**

14 1. Opposer objects to each request to the extent that it seeks information protected
15 from discovery by the attorney-client privilege, the common interest privilege, the joint defense
16 privilege, the work-product doctrine, and/or any other exemptions from discovery. If Opposer
17 does not expressly object to a particular request on the basis that it seeks information that is
18 privileged or otherwise exempt from discovery, such an omission should not be misconstrued as a
19 waiver of such privilege or exemption.

20 2. Opposer objects to each request, incorporated definition and instruction to the
21 extent that it seeks information in a manner inconsistent with the Trademark Rules of Practice and
22 Federal Rules of Civil Procedure, or seeks to impose upon Opposer discovery obligations that
23 exceed the scope of such rules and orders. Opposer will comply with the requirements of the
24 Trademark Rules of Practice and Federal Rules of Civil Procedure in responding to Applicant's
25 requests.

26 3. Opposer objects to each request to the extent that it seeks information that does not
27 exist or is not within its possession, custody, or control and is thus beyond the scope of proper
28

1 discovery by Applicant. To the extent that any responsive and relevant information is not
2 possessed by Opposer but is in the possession, custody or control of a non-party to this case
3 which is not controlled by Opposer, Applicant will be required to seek discovery from such non-
4 party.

5 4. Opposer objects to each request to the extent that it seeks information in
6 Applicant's possession, custody or control, that is available to Applicant from public sources, or
7 that is obtainable from some other source that is more convenient, less burdensome, or less
8 expensive.

9 5. Opposer objects to each request to the extent that it assumes facts or legal
10 conclusions not yet adjudicated; by responding to these requests, Opposer does not admit or agree
11 with any explicit or implicit assumption made in the requests.

12 6. Opposer objects to each request to the extent that it is overbroad, seeks
13 information not relevant to the claims and defenses in this action and/or is not reasonably
14 calculated to lead to the discovery of admissible evidence.

15 7. Opposer objects to each request to the extent it asks for confidential information
16 that Opposer believes is not sufficiently protected by the standing protective order in this action.

17 8. Opposer objects to Applicant's definition of "YOU," and "YOUR" as overly broad
18 and unduly burdensome. In responding to the requests, Opposer interprets "YOU," and "YOUR"
19 as referring only to Opposer and any present employees who are subject to Opposer's control.

20 9. Opposer objects to Applicant's instruction regarding privilege and work product
21 claims as overly broad and unduly burdensome. Where a claim of attorney-client or work
22 product privilege is asserted, Opposer will provide a privilege log in a manner consistent with the
23 Federal Rules of Civil Procedure after the completion of its written responses. Opposer will
24 exclude communications with Morrison & Foerster LLP, outside counsel retained by Opposer.

25 **REQUESTS FOR PRODUCTION**

26 **REQUEST FOR PRODUCTION NO. 1:**

27 All DOCUMENTS consulted or used to prepare YOUR responses to TWG's First Set of
28 Interrogatories.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

2 Opposer will produce non-privileged documents used in preparing responses to TWG's
3 First Set of Interrogatories.

4 To the extent this request seeks information beyond what is provided in this response,
5 Opposer incorporates the foregoing general objections and asserts the following specific
6 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
7 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
8 applicable privilege or immunity

9 **REQUEST FOR PRODUCTION NO. 2:**

10 All DOCUMENTS constituting, reflecting or discussing any communications with Jay
11 Behmke concerning the subject matter of the Declaration executed by him on November 12, 2014
12 and filed with the United States Patent and Trademark Office on December 12, 2014.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

14 Opposer incorporates the foregoing general objections and asserts the following specific
15 objection: Opposer objects that this request seeks information subject to and protected by the
16 attorney-client privilege, the attorney work-product doctrine and/or any other applicable privilege
17 or immunity. Opposer has no non-privileged responsive documents.

18 **REQUEST FOR PRODUCTION NO. 3:**

19 All DOCUMENTS constituting, reflecting or discussing the Assignment of Registration
20 No. 3,105,412 from Camp Meeting Ridge Winery to YOU.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

22 Opposer will produce non-privileged documents, to the extent they exist and are located
23 after a reasonable search, constituting the assignment documents for all assignments of
24 Registration No. 3,105,412 as recorded with the U.S.P.T.O.

25 To the extent this request seeks information beyond what is provided in this response,
26 Opposer incorporates the foregoing general objections and asserts the following specific
27 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
28 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other

1 applicable privilege or immunity. Opposer objects to this request as overly broad and unduly
2 burdensome, particularly as it seeks “all documents” “constituting, reflecting or discussing” an
3 assignment that occurred in 2008. Opposer no longer knows who might have such documents or
4 in which files they might be located. Opposer further objects to this request to the extent it seeks
5 documents that are equally available to Applicant from public sources. Opposer also objects to
6 this request as vague and ambiguous with respect to the phrase “the Assignment of Registration
7 No. 3,105,412 from Camp Meeting Ridge Winery to YOU” as there was no assignment from
8 Camp Meeting Ridge Winery to Opposer.

9 **REQUEST FOR PRODUCTION NO. 4:**

10 All DOCUMENTS constituting, reflecting or discussing the tangible evidence of the
11 goodwill in the mark registered as no. 3,105,412 that YOU received from Camp Meeting Ridge
12 Winery.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

14 Opposer will produce non-privileged documents, to the extent they exist and are located
15 after a reasonable search, constituting the assignment documents for all assignments of
16 Registration No. 3,105,412 as recorded with the U.S.P.T.O.

17 To the extent this request seeks information beyond what is provided in this response,
18 Opposer incorporates the foregoing general objections and asserts the following specific
19 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
20 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
21 applicable privilege or immunity. Opposer objects to this request as vague and ambiguous with
22 respect to “tangible evidence of the goodwill in the mark registered as no. 3,105,412.” Opposer
23 objects to this request as overly broad and unduly burdensome, particularly as it seeks “all
24 documents” “constituting, reflecting or discussing” the requested information. Opposer objects to
25 this request to the extent it seeks documents that are not within its possession, custody, or control.
26 Opposer also objects to this request as vague and ambiguous with respect to the phrase “that
27 YOU received from Camp Meeting Ridge Winery” as there was no assignment from Camp
28 Meeting Ridge Winery to Opposer.

1 **REQUEST FOR PRODUCTION NO. 5:**

2 For YOUR MARK:

- 3 a. DOCUMENTS sufficient to show the date of first use on wine; and
4 b. DOCUMENTS sufficient to show its continuous use on wine from that date.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

6 Opposer will produce non-privileged documents, to the extent they exist and are located
7 after a reasonable search, sufficient to show its use of the FLOWERS mark on wine.

8 To the extent this request seeks information beyond what is provided in this response,
9 Opposer incorporates the foregoing general objections and asserts the following specific
10 objections: Opposer objects to this request as unduly burdensome and as seeking information that
11 is not relevant to this proceeding and is not likely to lead to the discovery of admissible evidence.
12 Through its predecessor-in-interest, Opposer has been using the FLOWERS mark continuously
13 since 1998, and has owned a federal registration for the FLOWERS mark since almost exactly a
14 decade prior to the filing date for the opposed application. Accordingly, Opposer is entitled to
15 rely on its filing date to establish priority in this proceeding. Thus, evidence of its first use of the
16 FLOWERS mark in 1998 is not relevant to this proceeding and it would be unduly burdensome to
17 require Opposer to search through files to locate evidence of its use of the FLOWERS mark in
18 1998, and continuously since that time. Opposer further objects to this request to the extent it
19 seeks documents that are equally available to Applicant from public sources.

20 **REQUEST FOR PRODUCTION NO. 6:**

21 All license agreements for YOUR MARK.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

23 Opposer responds that it has no documents responsive to this request.

24 **REQUEST FOR PRODUCTION NO. 7:**

25 All assignment agreements for YOUR MARK.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

27 Opposer will produce non-privileged documents, to the extent they exist and are located
28 after a reasonable search, constituting the assignment documents for all assignments of

1 Registration No. 3,105,412 as recorded with the U.S.P.T.O. There are no other assignments of
2 the FLOWERS mark.

3 **REQUEST FOR PRODUCTION NO. 8:**

4 All DOCUMENTS concerning, discussing, or reflecting the use or registration by third
5 parties other than YOU of the term “Flowers” or of any similar mark as part of a trademark for
6 wine.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

8 Opposer responds that it has no non-privileged documents responsive to this request

9 To the extent this request seeks information beyond what is provided in this response,
10 Opposer incorporates the foregoing general objections and asserts the following specific
11 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
12 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
13 applicable privilege or immunity. Opposer objects to this request as overly broad and unduly
14 burdensome, particularly as it seeks “all documents” “constituting, reflecting or discussing” the
15 requested information. Opposer objects to this request as vague and ambiguous with respect to
16 “the term ‘Flowers’ or . . . any similar mark.” Opposer construes this request to be limited to the
17 FLOWERS trademark itself. Opposer objects to this request to the extent it seeks documents that
18 are not within its possession, custody, or control.

19 **REQUEST FOR PRODUCTION NO. 9:**

20 All DOCUMENTS concerning Applicant and its FLORET trademark for wine but
21 excluding: (a) communications with Respondent, and (b) TTAB pleadings.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

23 Opposer responds that it has no non-privileged documents responsive to this request.

24 Opposer incorporates the foregoing general objections and asserts the following specific
25 objection: Opposer objects to this request as vague and ambiguous with respect to “Respondent,”
26 which term is not defined. Opposer construes this to mean Applicant for purposes of this
27 response. Opposer objects to this request to the extent it seeks to elicit information subject to and
28 protected by the attorney-client privilege, the attorney work-product doctrine and/or any other

1 applicable privilege or immunity.

2 **REQUEST FOR PRODUCTION NO. 10:**

3 All DOCUMENTS supporting the claim in Paragraph 1 of the Notice of Opposition that
4 wine sold under YOUR MARK has “enjoyed great success.”

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

6 Opposer will produce non-privileged documents, to the extent they exist and are located
7 after a reasonable search, reflecting the success of Opposer’s wine bearing the mark FLOWERS.

8 To the extent this request seeks information beyond what is provided in this response,
9 Opposer incorporates the foregoing general objections and asserts the following specific
10 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
11 as it seeks “all documents” “supporting” the requested information and Opposer has been selling
12 its FLOWERS wines since 1998 through its predecessor-in-interest. Opposer objects to this
13 request to the extent it seeks documents that are equally available to Applicant from public
14 sources.

15 **REQUEST FOR PRODUCTION NO. 11:**

16 All DOCUMENTS supporting the claim in Paragraph 1 of the Notice of Opposition that
17 wine sold under YOUR MARK has “gained a reputation for ...quality.”

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

19 Opposer will produce non-privileged documents, to the extent they exist and are located
20 after a reasonable search, reflecting the reputation of Opposer’s wine bearing the mark
21 FLOWERS.

22 To the extent this request seeks information beyond what is provided in this response,
23 Opposer incorporates the foregoing general objections and asserts the following specific
24 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
25 as it seeks “all documents” “supporting” the requested information and Opposer has been selling
26 its FLOWERS wines since 1998 through its predecessor-in-interest. Opposer objects to this
27 request to the extent it seeks documents that are equally available to Applicant from public
28 sources.

1 **REQUEST FOR PRODUCTION NO. 12:**

2 All business plans for wine bearing YOUR MARK.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

4 Opposer will produce non-privileged documents, to the extent they exist and are located
5 after a reasonable search, sufficient to show business plans for Opposer's FLOWERS wine
6 created since 2010.

7 To the extent this request seeks information beyond what is provided in this response,
8 Opposer incorporates the foregoing general objections and asserts the following specific
9 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
10 as it seeks "all business plans" with no limitation as to time while Opposer has been using the
11 FLOWERS mark since 1998 through its predecessor-in-interest. Opposer objects to this request
12 as vague and ambiguous with respect to "business plans." Opposer objects to this request to the
13 extent it seeks to elicit information subject to and protected by the attorney-client privilege, the
14 attorney work-product doctrine and/or any other applicable privilege or immunity.

15 **REQUEST FOR PRODUCTION NO. 13:**

16 All marketing plans for wine bearing YOUR MARK.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

18 Opposer will produce non-privileged documents, to the extent they exist and are located
19 after a reasonable search, sufficient to show marketing plans for Opposer's FLOWERS wine.

20 To the extent this request seeks information beyond what is provided in this response,
21 Opposer incorporates the foregoing general objections and asserts the following specific
22 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
23 as it seeks "all marketing plans" with no limitation as to time while Opposer has been using the
24 FLOWERS mark since 1998 through its predecessor-in-interest. Opposer objects to this request
25 as vague and ambiguous with respect to "marketing plans." Opposer objects to this request to the
26 extent it seeks to elicit information subject to and protected by the attorney-client privilege, the
27 attorney work-product doctrine and/or any other applicable privilege or immunity.

28

1 **REQUEST FOR PRODUCTION NO. 14:**

2 All DOCUMENTS constituting, referencing or discussing any consumer research for wine
3 bearing YOUR MARK.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

5 Opposer incorporates the foregoing general objections and asserts the following specific
6 objections: Opposer objects to this request as vague and ambiguous with respect to “consumer
7 research.” Opposer objects to this request as overly broad and unduly burdensome, particularly
8 as it seeks “all documents” “constituting, referencing or discussing” the requested information
9 while Opposer has been using the FLOWERS mark since 1998 through its predecessor-in-
10 interest. Opposer objects to this request to the extent it seeks to elicit information subject to and
11 protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
12 applicable privilege or immunity.

13 **REQUEST FOR PRODUCTION NO. 15:**

14 All DOCUMENTS constituting, referencing or discussing any inquiry by a third party as
15 to whether TWG’s FLORET wine was made by, sponsored by, licensed by or in any way
16 affiliated with YOU.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

18 Opposer is not aware that Applicant has started to market or sell wine under the FLORET
19 mark. Accordingly, Opposer wonders why Applicant believes that Opposer might have received
20 inquiries from third parties about a wine that is not yet on the market.

21 To the extent this request seeks information beyond what is provided in this response,
22 Opposer incorporates the foregoing general objections and asserts the following specific
23 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
24 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
25 applicable privilege or immunity. Opposer objects to this request to the extent it seeks documents
26 that are not within its possession, custody, or control. Opposer objects to this request to the
27 extent it seeks expert discovery prematurely.

28

1 **REQUEST FOR PRODUCTION NO. 16:**

2 All DOCUMENTS supporting the claim in Paragraph 4 of the Notice of Opposition that
3 wine sold under YOUR MARK has “become widely known and recognized by the public as
4 identifying [YOUR] wine.”

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

6 Opposer will produce non-privileged documents, to the extent they exist and are located
7 after a reasonable search, reflecting the wide recognition of Opposer’s wine bearing the mark
8 FLOWERS.

9 To the extent this request seeks information beyond what is provided in this response,
10 Opposer incorporates the foregoing general objections and asserts the following specific
11 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
12 as it seeks “all documents” “supporting” the requested information while Opposer has been using
13 the FLOWERS mark since 1998 through its predecessor-in-interest. Opposer objects to this
14 request to the extent it seeks documents that are equally available to Applicant from public
15 sources. Opposer objects to this request to the extent it seeks to elicit information subject to and
16 protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
17 applicable privilege or immunity.

18 **REQUEST FOR PRODUCTION NO. 17:**

19 All DOCUMENTS constituting, referencing or discussing any consumer research
20 regarding the level of recognition among consumers of wine sold under YOUR MARK.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

22 Opposer will produce non-privileged documents, to the extent they exist and are located
23 after a reasonable search, sufficient to show consumer research for Opposer’s FLOWERS wine.

24 To the extent this request seeks information beyond what is provided in this response,
25 Opposer incorporates the foregoing general objections and asserts the following specific
26 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
27 as it seeks “all documents” “constituting, referencing or discussing” the requested information
28 while Opposer has been using the FLOWERS mark since 1998 through its predecessor-in-

1 interest. Opposer objects to this request as vague and ambiguous with respect to “consumer
2 research” and “level of recognition.” Opposer objects to this request to the extent it seeks expert
3 discovery prematurely. Opposer objects to this request to the extent it seeks to elicit information
4 subject to and protected by the attorney-client privilege, the attorney work-product doctrine
5 and/or any other applicable privilege or immunity.

6 **REQUEST FOR PRODUCTION NO. 18:**

7 All DOCUMENTS supporting, referencing or discussing the claim in Paragraph 8 of the
8 Notice of Opposition that “Opposer’s FLOWERS mark is virtually identical to Applicant’s
9 FLORET mark in sound, appearance, meaning, connotation, and commercial impression.”

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

11 Opposer will produce non-privileged documents, to the extent they exist and are located
12 after a reasonable search, regarding the similarity between Opposer’s and Applicant’s marks.

13 To the extent this request seeks information beyond what is provided in this response,
14 Opposer incorporates the foregoing general objections and asserts the following specific
15 objections: Opposer objects to this request to the extent it seeks expert discovery prematurely.
16 Opposer objects to this request to the extent it seeks to elicit information subject to and protected
17 by the attorney-client privilege, the attorney work-product doctrine and/or any other applicable
18 privilege or immunity.

19 **REQUEST FOR PRODUCTION NO. 19:**

20 All DOCUMENTS referencing or discussing the number of wine consumers in the United
21 States who speak French.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

23 Opposer incorporates the foregoing general objections and asserts the following specific
24 objections: Opposer objects to this request to the extent it seeks information not relevant to any
25 party’s claims or defenses or reasonably calculated to lead to the discovery of admissible
26 evidence. Opposer objects to this request to the extent it seeks to elicit information subject to and
27 protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
28 applicable privilege or immunity.

1 **REQUEST FOR PRODUCTION NO. 20:**

2 All DOCUMENTS referencing or discussing the use of the term FLOWER(S) by third
3 parties on or in connection with wine.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

5 Opposer responds that it has no documents responsive to this request.

6 To the extent this request seeks information beyond what is provided in this response,
7 Opposer incorporates the foregoing general objections and asserts the following specific
8 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
9 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
10 applicable privilege or immunity. Opposer objects to this request to the extent it seeks
11 information not relevant to any party's claims or defenses or reasonably calculated to lead to the
12 discovery of admissible evidence.

13 **REQUEST FOR PRODUCTION NO. 21:**

14 All DOCUMENTS constituting, referencing or discussing YOUR efforts to prevent third
15 parties from using the term FLOWER(S), or any similar term, on or in connection with wine.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

17 Opposer responds that it is not aware of any non-privileged document responsive to this
18 request other than documents related to this proceeding and Applicant's application for the
19 FLORET mark.

20 To the extent this request seeks information beyond what is provided in this response,
21 Opposer incorporates the foregoing general objections and asserts the following specific
22 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
23 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
24 applicable privilege or immunity. Opposer objects to this request as overly broad and unduly
25 burdensome, particularly as it seeks "all documents" "constituting, referencing or discussing" the
26 requested information while Opposer has been using the FLOWERS mark since 1998 through its
27 predecessor-in-interest. Opposer is not fully aware of what steps its predecessor-in-interest took
28 to enforce and protect the FLOWERS trademark prior to Opposer's acquisition of the Flowers

1 Winery in 2009. Opposer objects to this request to the extent it seeks documents that are not
2 within its possession, custody, or control. Opposer objects to this request to the extent it seeks
3 information not relevant to any party's claims or defenses or reasonably calculated to lead to the
4 discovery of admissible evidence. Opposer further objects to this request as vague and
5 ambiguous with respect to "FLOWER(S), or any similar term."

6 **REQUEST FOR PRODUCTION NO. 22:**

7 DOCUMENTS sufficient to show the annual sales by YOU of wine bearing YOUR
8 MARK, in nine (9) liter case equivalents, since its date of first use.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

10 Opposer will produce non-privileged documents, to the extent they exist and are located
11 after a reasonable search, sufficient to show annual wholesale sales of FLOWERS wine.

12 To the extent this request seeks information beyond what is provided in this response,
13 Opposer incorporates the foregoing general objections and asserts the following specific
14 objections: Opposer objects to this request as vague and ambiguous with respect to "nine (9) liter
15 case equivalents." Opposer will produce annual wholesale sales information as it is kept in the
16 ordinary course of business. Opposer objects to this request as unduly burdensome in that it seeks
17 annual sales information since the date of first use while Opposer has been using the FLOWERS
18 mark since 1998 through its predecessor-in-interest. Opposer will produce documents sufficient
19 to show annual wholesale sales data for the past 6 years, since 2009.

20 **REQUEST FOR PRODUCTION NO. 23:**

21 All DOCUMENTS discussing, concerning, comparing or reflecting the sales volume of
22 wine bearing YOUR MARK, in nine (9) liter case equivalents, with sales by third parties of other
23 brands of wine.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

25 Opposer incorporates the foregoing general objections and asserts the following specific
26 objections: Opposer objects to this request as vague and ambiguous in asking for documents
27 "discussing, concerning, comparing or reflecting the sales volume of wine . . . with sales by third
28 parties of other brands of wine." Opposer further objects to this request as vague and ambiguous

1 with respect to “nine (9) liter case equivalents. Opposer objects to this request as overly broad
2 and unduly burdensome, particularly as it seeks “all documents” “discussing, concerning,
3 comparing or reflecting” the requested information. Opposer objects to this request to the extent
4 it seeks information not relevant to any party’s claims or defenses or reasonably calculated to lead
5 to the discovery of admissible evidence. Opposer objects to this request to the extent it seeks to
6 elicit information subject to and protected by the attorney-client privilege, the attorney work-
7 product doctrine and/or any other applicable privilege or immunity.

8 **REQUEST FOR PRODUCTION NO. 24:**

9 All DOCUMENTS constituting, concerning or reflecting any demand made by YOU to
10 any third party to cease using or to abstain from registering a FLOWER(S) trademark, or any
11 similar trademark, for any goods of services.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

13 Opposer responds that it is not aware of any non-privileged document responsive to this
14 request other than documents related to this proceeding and Applicant’s application for the
15 FLORET mark.

16 To the extent this request seeks information beyond what is provided in this response,
17 Opposer incorporates the foregoing general objections and asserts the following specific
18 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
19 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
20 applicable privilege or immunity. Opposer objects to this request as overly broad and unduly
21 burdensome, particularly as it seeks “all documents” “constituting, referencing or discussing” the
22 requested information while Opposer has been using the FLOWERS mark since 1998 through its
23 predecessor-in-interest. Opposer is not fully aware of what steps its predecessor-in-interest took
24 to enforce and protect the FLOWERS trademark prior to Opposer’s acquisition of the Flowers
25 Winery in 2009. Opposer objects to this request to the extent it seeks information not relevant to
26 any party’s claims or defenses or reasonably calculated to lead to the discovery of admissible
27 evidence. Opposer objects to this request as vague and ambiguous with respect to “FLOWER(S),
28 or any similar term.” Opposer objects to this request as duplicative of Request No. 21.

1 **REQUEST FOR PRODUCTION NO. 25:**

2 All DOCUMENTS concerning or relating to any retention by YOU of any advertising
3 agency, social media consultant, or other PERSON to promote or develop plans for promoting
4 goods and or services provided under YOUR MARK.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

6 Opposer will produce non-privileged documents, to the extent they exist and are located
7 after a reasonable search, sufficient to show retention by Opposer of any third party to promote
8 FLOWERS wine.

9 To the extent this request seeks information beyond what is provided in this response,
10 Opposer incorporates the foregoing general objections and asserts the following specific
11 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
12 as it seeks “all documents” “concerning or relating to” the request information with no limitation
13 as to time while Opposer has been using the FLOWERS mark only since 1998 through its
14 predecessor-in-interest.

15 **REQUEST FOR PRODUCTION NO. 26:**

16 All search reports for YOUR MARK.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

18 Opposer will produce non-privileged documents, to the extent they exist and are located
19 after a reasonable search, sufficient to show search reports for FLOWERS.

20 To the extent this request seeks information beyond what is provided in this response,
21 Opposer incorporates the foregoing general objections and asserts the following specific
22 objections: Opposer objects to this request to the extent it seeks to elicit information subject to
23 and protected by the attorney-client privilege, the attorney work-product doctrine and/or any other
24 applicable privilege or immunity. Opposer further objections to this request as unduly
25 burdensome and as seeking information that is not relevant and not likely to lead to the discovery
26 of admissible information. Opposer has been using the FLOWERS mark since 1998 through its
27 predecessor-in-interest and filed the application to register the mark in 1999. Any searches that
28 Opposer may have done prior to its use and registration of the FLOWERS mark in the 1990s is

1 not relevant to this proceeding in 2015. It would be unduly burdensome for Opposer to have to
2 search for records of searches done by its predecessor in interest prior to its 2008 acquisition of
3 the Flowers Winery.

4 **REQUEST FOR PRODUCTION NO. 27:**

5 DOCUMENTS sufficient to show the channel(s) of trade through which wine bearing
6 YOUR MARK are sold or provided.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

8 Opposer will produce non-privileged documents, to the extent they exist and are located
9 after a reasonable search, sufficient to show recent channels of trade for FLOWERS wine.

10 To the extent this request seeks information beyond what is provided in this response,
11 Opposer incorporates the foregoing general objections and asserts the following specific
12 objections: Opposer objects to this request to the extent it seeks information from Opposer that is
13 equally available to Applicant from public sources. Opposer objects to this request as unduly
14 burdensome because it has no limitation as to time, and Opposer has been using the FLOWERS
15 mark only since 1998 through its predecessor-in-interest.

16 **REQUEST FOR PRODUCTION NO. 28:**

17 All DOCUMENTS discussing or analyzing the demographics of purchasers of wine
18 bearing YOUR MARK.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

20 Opposer will produce non-privileged documents, to the extent they exist and are located
21 after a reasonable search, discussing consumers of FLOWERS wine.

22 To the extent this request seeks information beyond what is provided in this response,
23 Opposer incorporates the foregoing general objections and asserts the following specific
24 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
25 as it seeks “all documents” “discussing or analyzing” the requested information while Opposer
26 has been using the FLOWERS mark since 1998 through its predecessor-in-interest. Opposer
27 objects to this request to the extent it seeks to elicit information subject to and protected by the
28 attorney-client privilege, the attorney work-product doctrine and/or any other applicable privilege

1 or immunity.

2 **REQUEST FOR PRODUCTION NO. 29:**

3 Representative labels for wine bearing YOUR MARK.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

5 Opposer will produce non-privileged documents, to the extent they exist and are located
6 after a reasonable search, showing recent representative labels for Opposer's wine bearing the
7 FLOWERS mark.

8 To the extent this request seeks information beyond what is provided in this response,
9 Opposer incorporates the foregoing general objections and asserts the following specific
10 objections: Opposer objects to this request to the extent it seeks documents that are equally
11 available to Applicant from public sources. Opposer further objects to this request as unduly
12 burdensome to the extent it seeks past labels as Opposer has been using the FLOWERS mark
13 only since 1998 through its predecessor-in-interest.

14 **REQUEST FOR PRODUCTION NO. 30:**

15 All promotional materials for goods bearing YOUR mark in the United States, including
16 by way of example but without limitation on the generality of the foregoing:

- 17 a. Each print ad;
18 b. Each television ad;
19 c. Each radio ad;
20 d. Each point of sale display piece;
21 e. Each social media posting; and
22 e. A sample of each marketing accessory, such as shirts, caps, aprons, etc., that bear
23 the FLOWERS mark.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

25 Opposer will produce non-privileged documents, to the extent they exist and are located
26 after a reasonable search, representative samples of advertising for FLOWERS wine.

27 To the extent this request seeks information beyond what is provided in this response,
28 Opposer incorporates the foregoing general objections and asserts the following specific

1 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
2 as it seeks “all promotional materials.” Opposer has been selling its FLOWERS wine since 1998,
3 for 17 years, and it would be overly burdensome to produce *all* promotion materials in that time.
4 Opposer objects to this request to the extent it seeks documents that are equally available to
5 Applicant from public sources. Opposer further objects to this request to the extent it seeks
6 documents that are not within its possession, custody, or control, as much of the promotion of
7 FLOWERS wine is done by third-party distributors and those documents are not in Opposer’s
8 possession, custody, or control,

9 **REQUEST FOR PRODUCTION NO. 31:**

10 Each media or wine writer review for wine bearing YOUR MARK.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

12 Opposer will produce non-privileged documents, to the extent they exist and are located
13 after a reasonable search, representative samples of reviews for FLOWERS wine.

14 To the extent this request seeks information beyond what is provided in this response,
15 Opposer incorporates the foregoing general objections and asserts the following specific
16 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
17 as it seeks “each” review with no limitation as to time. Opposer has been selling its FLOWERS
18 wine since 1998, for 17 years, and it would be overly burdensome to produce *all* reviews in that
19 time. Opposer objects to this request to the extent it seeks documents that are equally available to
20 Applicant from public sources. Opposer objects to this request as vague and ambiguous with
21 respect to “media or wine writer review.”

22 **REQUEST FOR PRODUCTION NO. 32:**

23 DOCUMENTS sufficient to show the recommended retail price of wine bearing YOUR
24 MARK.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

26 Opposer has no responsive documents.

27 To the extent this request seeks information beyond what is provided in this response,
28 Opposer incorporates the foregoing general objections and asserts the following specific

1 objections: Opposer objects to this request as overly broad and unduly burdensome. Opposer
2 objects to this interrogatory as vague and ambiguous with respect to “recommended retail price.”

3 **REQUEST FOR PRODUCTION NO. 33:**

4 Each newspaper, magazine, blog post or trade press article discussing, describing or
5 commenting on wine bearing YOUR MARK.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

7 Opposer will produce non-privileged documents, to the extent they exist and are located
8 after a reasonable search, showing representative samples of media coverage of FLOWERS wine.

9 To the extent this request seeks information beyond what is provided in this response,
10 Opposer incorporates the foregoing general objections and asserts the following specific
11 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
12 as it seeks “each” “newspaper, magazine, blog post or trade press article discussing, describing or
13 commenting” on FLOWERS with no limitation as to time. Opposer has been selling its
14 FLOWERS wine since 1998, for 17 years, and it would be overly burdensome to produce *all*
15 media coverage in that time. Opposer objects to this request to the extent it seeks documents that
16 are equally available to Applicant from public sources.

17 **REQUEST FOR PRODUCTION NO. 34:**

18 Each DOCUMENT concerning consumer understanding in the United States of the term
19 “Floret.”

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

21 Opposer will produce non-privileged documents, to the extent they exist and are located
22 after a reasonable search, concerning consumer understanding in the United States of the term
23 “Floret.”

24 To the extent this request seeks information beyond what is provided in this response,
25 Opposer incorporates the foregoing general objections and asserts the following specific
26 objections: Opposer objects to this request to the extent it seeks documents that are equally
27 available to Applicant from public sources. Opposer objects to this request to the extent it seeks
28 to elicit information subject to and protected by the attorney-client privilege, the attorney work-

1 product doctrine and/or any other applicable privilege or immunity. Opposer further objects to
2 this request as vague and ambiguous with respect to “consumer understanding.”

3 **REQUEST FOR PRODUCTION NO. 35:**

4 Each witness statement provided to YOU in connection with this opposition.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

6 Opposer objects to this request as vague and ambiguous with respect to “witness
7 statement.” Opposer is not aware of what a “witness statement” is.

8 **REQUEST FOR PRODUCTION NO. 36:**

9 All DOCUMENTS referring to or constituting content for each web site for wine bearing
10 YOUR MARK.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

12 Opposer will produce non-privileged documents, to the extent they exist and are located
13 after a reasonable search, showing representative samples of its web site for its FLOWERS wine.

14 To the extent this request seeks information beyond what is provided in this response,
15 Opposer incorporates the foregoing general objections and asserts the following specific
16 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
17 as it seeks “all documents” “referring to or constituting content” for the requested information
18 while Opposer has been using the FLOWERS mark since 1998 through its predecessor-in-
19 interest, and dozens if not hundreds of third-party websites offer and have offered its FLOWERS
20 wines or provide reviews, commentaries or blogs related to its FLOWERS wines. It would be
21 unduly burdensome for Opposer to collect and produce information contained in such third-party
22 websites. Opposer objects to this request to the extent it seeks documents that are equally
23 available to Applicant from public sources. Opposer objects to this request as vague and
24 ambiguous with respect to “constituting content” and “web site for wine.” Opposer objects to this
25 request to the extent it seeks documents that are equally available to Applicant from public
26 sources.

27 **REQUEST FOR PRODUCTION NO. 37:**

28 All DOCUMENTS referring to or constituting content for each Facebook page for wine

1 bearing YOUR MARK.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

3 Opposer will produce non-privileged documents, to the extent they exist and are located
4 after a reasonable search, showing representative samples of its FLOWERS Facebook page.

5 To the extent this request seeks information beyond what is provided in this response,
6 Opposer incorporates the foregoing general objections and asserts the following specific
7 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
8 as it seeks “all documents” “referring to or constituting content” for “each” Facebook page, while
9 Opposer has been using the FLOWERS mark since 1998 through its predecessor-in-interest. It
10 would be unduly burdensome for Opposer to collect and produce all information contained on its
11 Facebook page to or to find third-party Facebook pages of its distributors. Opposer objects to this
12 request to the extent it seeks documents that are equally available to Applicant from public
13 sources. Opposer objects to this request as vague and ambiguous with respect to “Facebook page
14 for wine bearing YOUR MARK” and “constituting content.”

15 **REQUEST FOR PRODUCTION NO. 38:**

16 Each Certificate of Label Approval (COLA) for wine bearing YOUR MARK.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

18 Opposer will produce non-privileged documents, to the extent they exist and are located
19 after a reasonable search, showing representative samples of Certificates of Label Approval
20 (COLA) for FLOWERS wine.

21 To the extent this request seeks information beyond what is provided in this response,
22 Opposer incorporates the foregoing general objections and asserts the following specific
23 objections: Opposer objects to this request as overly broad and unduly burdensome, particularly
24 as it seeks “each” COLA for FLOWERS wine. Opposer has been selling its FLOWERS wine
25 since 1998, for 17 years, and it would be unduly burdensome to produce each COLA for all
26 FLOWERS wine for that time period. Opposer objects to this request to the extent it seeks
27 documents that are equally available to Applicant from public sources.

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Dated: July 14, 2015

JENNIFER LEE TAYLOR
SABRINA A. LARSON
MORRISON & FOERSTER LLP

BY 

Attorneys for Opposer
Flowers Vineyard and Winery, LLC

PROOF OF SERVICE BY OVERNIGHT

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years; and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it is placed at Morrison & Foerster for collection.

I further declare that on July 14, 2015, I served a copy of:

**RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

on the following by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows for collection by UPS at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practice:

Paul W. Reidl
Law Office of Paul W. Reidl
241 Eagle Trace Drive
Half Moon Bay, CA 94019

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 14th day of July, 2015.

Lucia M. Sario
(typed)



(signature)

EXHIBIT G

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the registrations of:	Flowers Vineyard and Winery, LLC
Marks:	CAMP MEETING RIDGE FLOWERS FRANCES THOMPSON PERENNIAL
Reg. Nos.:	2,312,048; 3,105,412; 3,271,094; 3,289,477

DECLARATION

I, Jay M. Behmke, declare as follows:

1. I am Of Counsel with Carle, Mackie, Power & Ross, LLP, and am former counsel and attorney of record for Flowers Vineyard and Winery, LLC (“Registrant”). I am authorized to submit this declaration on its behalf.
2. I was responsible for Registrant’s filings with the U.S. Patent and Trademark Office from 1999 until earlier this year.
3. Between April 1999 and October 2006, I filed four trademark applications on behalf of Camp Meeting Ridge Winery, Inc.: (i) the application for CAMP MEETING RIDGE that matured into Registration No. 2,312,048, filed on April 6, 1999, (ii) the application for FLOWERS that matured into Registration No. 3,105,412, filed on April 6, 1999, (iii) the application for FRANCES THOMPSON that matured into Registration No. 3,271,094, filed on October 2, 2006, and (iv) the application for PERENNIAL that matured into Registration No. 3,289,477, filed on September 22, 2006.
4. As part of the sale of its winery business, Camp Meeting Ridge Winery, Inc. assigned all of its rights in the four registrations mentioned in Paragraph 3 to FVW Acquisition,

LLC, a Delaware entity, on December 30, 2008. Counsel for FVW Acquisition, LLC recorded that assignment, but I continued to be attorney of record for the trademark registrations.

5. On January 9, 2009, FVW Acquisition, LLC changed its name to Flowers Vineyard and Winery, LLC. *See* Certificate of Amendment filed with the Delaware Secretary of State on January 9, 2009. My client told me about the change of name in early February 2009, and identified the new name as Flowers Vineyard & Winery, LLC, with an ampersand. At the time, I was aware that my client's corporate counsel had formed a California entity with that name, but, because I was not involved in the corporate filings, I was not aware that the entity had filed a Certificate of Cancellation on December 12, 2008 and no longer existed as of that time. As a result, rather than record the change of name, I prepared a document which purported to assign the trademarks and registrations to Flowers Vineyard & Winery, LLC, a California entity. I forwarded the assignment to my client, who executed it on February 5, 2009, and I recorded the assignment with the Trademark Office on February 10, 2009.

6. It has since come to my attention that I made several errors when I prepared the assignment document in February 2009. First, the marks were not assigned; instead, there was a change of name from FVW Acquisition, LLC to Flowers Vineyard and Winery, LLC. Second, there was no existing California entity named Flowers Vineyard & Winery, LLC at the time that I prepared and filed the assignment in February 2009, meaning that the assignee I designated could not have received the trademarks when the assignment document was signed. Third, the assignor, FVW Acquisition, LLC, was a Delaware entity but I described it as a California entity when I prepared the assignment document. Instead of preparing an assignment, I should have recorded the change of name to Flowers Vineyard and Winery, LLC so that the Trademark Office records would reflect the correct ownership information for all four registrations.

7. Subsequently, having no knowledge of the errors I made in preparing and recording an assignment of the four registrations to Flowers Vineyard & Winery, LLC, a California entity,

I prepared and filed post-registration documents in the name of that entity when I should have prepared them in the name of Flowers Vineyard and Winery, LLC, a Delaware entity. Specifically, I inadvertently prepared and filed the following documents in the name of Flowers Vineyard & Winery, LLC when they should have been prepared and filed in the name of Flowers Vineyard and Winery, LLC: (i) a Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark under Sections 8 & 9 for Registration No. 2,312,048, filed on February 11, 2009, (ii) a Combined Declaration of Use and Incontestability under Sections 8 and 15 (“Combined Declaration”) for Registration No. 3,105,412 for the mark FLOWERS, filed on May 9, 2012, (iii) a Combined Declaration for Registration No. 3,271,094 for the mark FRANCES THOMPSON, filed on January 28, 2013, and (iv) a Combined Declaration for Registration No. 3,289,477 for the mark PERENNIAL, filed on January 28, 2013.

8. My error in failing to note that I had not correctly recorded the name change of the Delaware entity in January 2009 prior to filing each of the above-referenced documents occurred in good faith and was only detected recently.

The undersigned being hereby warned that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he or she is properly authorized to execute this document on behalf of Flowers Vineyard and Winery, LLC, and all statements made of his or her own knowledge are true and all statements made on information and belief are believed to be true.

Signed at Santa Rosa, California, this 12th day of November, 2014.



Jay M. Behmke

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Reg. Nos. 2,312,048; 3,105,412; 3,271,094; 3,289,477
Docket Nos. 67715-6036.000, 6033.000, 6034.000, 6035.000

Delaware

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The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "FVW ACQUISITION LLC", CHANGING ITS NAME FROM "FVW ACQUISITION LLC" TO "FLOWERS VINEYARD AND WINERY, LLC", FILED IN THIS OFFICE ON THE NINTH DAY OF JANUARY, A.D. 2009, AT 5:39 O'CLOCK P.M.

4626409 8100

090022309

You may verify this certificate online
at corp.delaware.gov/authver.shtml



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 7074308

DATE: 01-09-09

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF FORMATION

OF

FVW ACQUISITION LLC

It is hereby certified that:

FIRST: The name of the limited liability company is FVW Acquisition LLC (the "Company").

SECOND: The Certificate of Formation of the Company is hereby amended by striking out Article FIRST thereof and by substituting in lieu of said Article the following new Article:

"The name of the limited liability company is Flowers Vineyard and Winery, LLC (the "Company")."

IN WITNESS WHEREOF, the undersigned, an authorized person as described in the Delaware Limited Liability Company Act, has executed this Certificate of Amendment of Certificate of Formation as of January 9, 2009.

By: /s/ Lake Grey
Lake Grey, Authorized Person