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

Proceeding	91221223
Party	Defendant Farmgirl Flowers Inc.
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Date	05/04/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>BLOOM THAT, INC.,</p> <p style="text-align: right;">Opposer,</p> <p style="text-align: center;">-against-</p> <p>FARMGIRL FLOWERS INC.,</p> <p style="text-align: right;">Applicant.</p>	<p style="text-align: center;">Opposition No.: 91221223</p> <p style="text-align: center;">ANSWER</p>
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APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant FARMGIRL FLOWERS INC., a Delaware corporation with a principal place of business in San Francisco, California (“Applicant” or “FARMGIRL”), by its undersigned counsel, hereby responds to the Notice of Opposition filed in this matter by Opposer BLOOM THAT, INC. (“Opposer” or “BLOOM THAT”) as follows:

1. Applicant admits that Opposer is an online flower delivery service. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 1 of the Notice of Opposition and therefore denies them.

2. Applicant admits that burlap is used in connection with Opposer’s flowers. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 2 of the Notice of Opposition and therefore denies them.

3. Applicant admits that burlap is a more environmentally-friendly material than plastic. Except as so admitted, Applicant denies the allegations set forth in Paragraph 3 of the Notice of Opposition.

4. Applicant denies the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant admits that Opposer chose burlap for the purpose of copying the look and feel of Applicant's flower arrangements. Except as so admitted, Applicant denies the allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant admits that it is a flower delivery service that serves the San Francisco Bay Area, California and beyond. Applicant denies the remaining allegations set forth in Paragraph 6 of the Notice of Opposition.

7. Applicant admits that it was founded in 2010, that it offers, among other things, a single daily bouquet (in multiple sizes), that the flowers can be ordered for delivery in either burlap wrap or a vase, and that the burlap is reused. Applicant denies the remaining allegations set forth in Paragraph 7 of the Notice of Opposition.

8. Applicant admits that it has used burlap in connection with its bouquets since at least as early as November 2010 and that its founder is Christina Stembel. Applicant denies the remaining allegations set forth in Paragraph 8 of the Notice of Opposition.

9. Applicant admits that it sent cease and desist letters to Opposer concerning Opposer's use of burlap in connection with Opposer's bouquets, that Opposer responded to such correspondence, and that the correspondence Opposer purports to paraphrase and characterize are writings which speak for themselves such that no further response is required. Applicant denies the remaining allegations set forth in Paragraph 9 of the Notice of Opposition.

10. This paragraph purports to paraphrase and characterize a specific version of Applicant's website which speaks for itself and does not require a response. To the extent a response is required, Applicant denies the allegations set forth in Paragraph 10 of the Notice of Opposition.

11. Applicant admits that it filed an application with the United States Patent and Trademark Office to register its trademark in International Class 31 for “Live flower arrangements” which has been assigned Application Serial No. 86/060,972 and that the mark is described as follows in the application: “The mark consists of three-dimensional product packaging composed of a burlap material for packaging the goods. The drawing is lined to indicate burlap, which is a feature of the mark. The broken lines indicate position and placement of the mark and are not part of the mark” (the “Mark”). Applicant generally admits that the image reflected in Paragraph 11 appears to be the drawing submitted to the USPTO in connection with the application but states that the application is a document that speaks for itself such that no response is required. Except as expressly admitted, Applicant denies the remaining allegations in Paragraph 11 of the Notice of Opposition.

COUNT 1 - FUNCTIONALITY

12. Applicant reasserts and incorporates by this reference, Paragraphs 1 – 11 of this Answer as if set forth fully herein.

13. Applicant denies the allegations set forth Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations set forth in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations set forth in Paragraph 15 of the Notice of Opposition.

COUNT 2 – LACK OF DISTINCTIVENESS

16. Applicant reasserts and incorporates by this reference, Paragraphs 1 – 15 of this Answer as if set forth fully herein.

17. Applicant denies the allegations set forth in Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations set forth in Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations set forth in Paragraph 19 of the Notice of Opposition.

COUNT 3 – LACK OF USE IN COMMERCE

20. Applicant reasserts and incorporates by this reference, Paragraphs 1 – 19 of this Answer as if set forth fully herein.

21. Applicant states that the document submitted to the United States Patent and Trademark Office that Paragraph 21 purports to paraphrase and characterize speaks for itself such that no response is required. Applicant denies the remaining allegations set forth in Paragraph 21 of the Notice of Opposition.

22. Applicant denies the allegations set forth in Paragraph 22 of the Notice of Opposition.

23. Applicant denies the allegations set forth in Paragraph 23 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant asserts that the following affirmative defenses bar Opposer's requested relief in its Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

SECOND AFFIRMATIVE DEFENSE

As a result of Applicant's continuous use of the Mark since the time of the Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the goods offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the mark to become a valuable asset of Applicant.

THIRD AFFIRMATIVE DEFENSE

Applicant's Mark serves primarily as a source indicator, either inherently, or as a result of acquired distinctiveness.

FOURTH AFFIRMATIVE DEFENSE

Applicant's Mark is a nonfunctional, fanciful indicator of source for Applicant's goods.

FIFTH AFFIRMATIVE DEFENSE

Opposer lacks standing to oppose Applicant's application for registration of the Mark.

SIXTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Opposer seeks to wrongfully appropriate and trade on the goodwill and reputation of the Applicant by, among other things, commencing its use of burlap in connection with flower bouquets after Applicant.

EIGHTH AFFIRMATIVE DEFENSE

The Mark is utilized by the Applicant in interstate commerce.

NINTH AFFIRMATIVE DEFENSE

The unique and distinctive packaging comprised in Applicant’s Mark is not essential to the use or purpose of Applicant’s goods and Opposer has numerous comparable design alternatives available to it for use in connection with Opposer’s goods.

TENTH AFFIRMATIVE DEFENSE

Opposer has unreasonably delayed in asserting its alleged rights and is barred by the doctrine of laches from pursuing this opposition.

ELEVENTH AFFIRMATIVE DEFENSE

Opposer has acquiesced and/or consented to Applicant’s use of the Mark.

TWELFTH AFFIRMATIVE DEFENSE

The relief requested by the Opposer is barred by the doctrine of estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

The relief requested by the Opposer is barred due to Opposer’s fraud, wrongful actions and/or bad faith.

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WHEREFORE, the foregoing considered, Applicant respectfully requests:

- (1) a decision by the Trademark Trial and Appeal Board in its favor dismissing the Notice of Opposition in its entirety with prejudice;
- (2) that the involved application, Serial No. 86060972, be issued a Notice of Allowance and the Mark therein proceed to registration; and
- (3) for such further, other relief as the Trademark Trial and Appeal Board may deem just and proper.

Dated: May 4, 2015

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

/Adam R. Bialek/

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*Attorneys for Applicant
Farmgirl Flowers Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and complete copy of the foregoing
APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, to be sent via first class mail,
postage prepaid, on this 4th day of May, 2015 to:

Holly Pranger, Esq.
Pranger Law Group
88 Guy Place, Suite 405
San Francisco, CA 94105

/Kerianne Losier/
Kerianne Losier, Esq.
Attorney

May 4, 2015
(Date)