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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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Submission	Motion to Suspend for Civil Action
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Date	05/28/2015
Attachments	Motion to Suspend.pdf(218891 bytes) Exhibit A to M to Suspend.pdf(2539788 bytes)

flower arrangements which the trade and consuming public have come to associate with Applicant (Applicant's "Mark"). Applicant's distinctive Mark serves to identify and distinguish the high quality flower arrangements originating with Applicant from goods originating with others. The source-identifying function of the Mark together with the significant goodwill the Mark has come to represent as a result of Applicant's substantial investment, renders the Mark an asset of immeasurable value.

Years later, and in any event not prior to June 2013, Opposer was formed. At some point after Opposer's formation and entry into the flower industry, in a deliberate attempt to unfairly capitalize on Applicant's business success and trade on Applicant's exceptional reputation in the marketplace as the premier source for distinct, high quality, locally-sourced flower arrangements, Opposer began using a wrap composed of burlap substantially identical in color, texture, size and overall appearance to Applicant's Mark in connection with Opposer's flower arrangements (the "Infringing Wrap").

As part of its efforts to protect its Mark and exemplary brand reputation its devoted years to building, Applicant filed an application to register its Mark on the Principal Register with the United States Patent and Trademark Office on September 10, 2013. The USPTO approved Applicant's Mark for registration, resulting in its publication in the *Official Gazette* on November 25, 2014. On December 23, 2014, two days before the time within which to file an opposition to the registration of the Mark was set to expire, Opposer filed a request for an extension of time to oppose the registration of Applicant's Mark.

On December 30, 2014, Applicant filed the Civil Action. In the operative pleading in the Civil Action, a copy of which is submitted as Exhibit A, Applicant alleges claims for trade dress infringement, unfair competition, and false advertising in violation of the Lanham Act and

statutory and common law of the State of California arising out of Opposer's use of the Infringing Wrap in connection with its goods. Opposer's flower arrangements are of a quality inferior to those of Applicant and, of course, do not originate with Applicant. As such, Opposer's use of the Infringing Wrap, which is nearly identical to Applicant's Mark, in such a manner, is likely to cause confusion. On April 17, 2015, Opposer filed a Motion to Dismiss the Amended Complaint in the Civil Action. A hearing on this Motion will be conducted on September 17, 2015.

On March 25, 2015, Opposer instituted the instance opposition proceeding with a Notice of Opposition regarding Applicant's Mark. (Docket No. 1). In the Opposition, Opposer appears to allege four grounds for opposition: descriptiveness, functionality, genericness, and "lack of use in interstate commerce." On May 4, 2015, Applicant filed its Answer. (Docket No. 4).

III. Argument:

The Board may suspend opposition proceedings in favor of a Civil Action pursuant to Trademark Rule 2.117(a) which provides in pertinent part:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that...parties to a pending case are engaged in a civil action...which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action...

37 C.F.R. § 2.117(a). Likewise, the Trademark Trial and Appeal Board Manual of Procedure provides that, "ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board."

T.B.M.P. § 510.012(a). To warrant suspension, the Civil Action "need only have a bearing on the issues before the Board." *New Orleans Louisiana Saints LLC, et al. v. Who Dat?, Inc.*, 99 U.S.P.Q. 2d 1550 (T.T.A.B. 2011) (explaining that the pending civil action "does not have to be dispositive of the Board proceeding to warrant suspension...") (*citing* 6 McCarthy on

Trademarks and Unfair Competition § 32:47 (4th ed. Updated June 2011) (“It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues).

Here, the parties to this opposition are engaged in a civil action which may have a bearing on the instant case. Specifically, as in *Who Dat?, Inc.*, the parties to this opposition are in reversed positions in the pending Civil Action, with Applicant in the position of Plaintiff and Opposer in the position of Defendant. *See* 99 U.S.P.Q. 2d 1550 (suspending proceedings pending disposition of civil action). The currently pending Civil Action alleges, among other claims, trade dress infringement of Applicant’s Mark, and seeks, among other remedies, to enjoin Opposer’s use of a wrap confusingly similar to Applicant’s Mark in connection with flowers. Because the district court in the Civil Action will decide, among other issues, whether Applicant’s Mark has been infringed by Opposer, the Civil Action necessarily involves Applicant’s Mark which is the basis of the opposed application in the instant case, and thus overlaps with and may bear on the instant case. As such, suspension is appropriate here, and would avoid the unnecessary litigation of one or more overlapping issues in two forums simultaneously. Accordingly, Applicant respectfully requests that the Board suspend the instant proceeding pursuant to Trademark Rule 2.117(a) and T.B.M.P. § 510.012(a) pending the disposition of the above-referenced Civil Action between the parties.

IV. Conclusion:

For the foregoing reasons, Applicant respectfully submits that its Motion to Suspend the instant opposition proceeding pending disposition of the Civil Action now pending before the U.S. District Court for the Northern District of California should be granted.

Dated: May 28, 2015

Respectfully submitted,

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EXHIBIT A

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 FARMGIRL FLOWERS, INC.
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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
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11 FARMGIRL FLOWERS, INC., a Delaware Corporation,
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 Plaintiff,
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 v.
 14 BLOOM THAT, INC., a Delaware Corporation; and DOES 1-10, inclusive,
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 Defendant(s).
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CASE NO.: 5:14-cv-05657-LHK

AMENDED COMPLAINT FOR:

1. **FEDERAL TRADEMARK / TRADE DRESS INFRINGEMENT;**
2. **COMMON LAW TRADEMARK / TRADE DRESS INFRINGEMENT;**
3. **VIOLATION OF CAL. BUS. & PROF. CODE SECTION 14200, ET. SEQ. [TRADEMARK/DRESS INFRINGEMENT];**
4. **VIOLATION OF CAL. BUS & PROF. CODE SECTION 17200, ET. SEQ. (TRADEMARK/DRESS INFRINGEMENT)**
5. **FALSE ADVERTISING IN VIOLATION OF LANHAM ACT**
6. **VIOLATION OF CAL. BUS. & PROF. CODE SECTION 17200, ET. SEQ.(FALSE ADVERTISING)**
7. **VIOLATION OF CAL. BUS. & PROF. CODE SECTION 17500, ET. SEQ. [FALSE ADVERTISING]**

DEMAND FOR JURY TRIAL

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1 Plaintiff Farmgirl Flowers, Inc. (“Farmgirl Flowers” or “Plaintiff”), by and through its
2 attorneys, brings this Amended Complaint against Bloom That, Inc., (“Bloom That” or
3 “Defendant”) and Does 1-10, for injunctive relief and damages. Farmgirl Flowers alleges as
4 follows:

5 **NATURE OF THE ACTION**

6 1. This action arises out of Defendant’s flagrant and willful infringement of Farmgirl
7 Flower’s trade dress rights in the unique and brand-identifying burlap coffee sack flower wrapping
8 (the “Coffee Sack Burlap Wrap”) that Farmgirl Flowers uses to distinguish its flower arrangements
9 from those of its competitors.¹ Seeking to capitalize on Farmgirl Flower’s business success,
10 extraordinary goodwill in the marketplace, and exemplary reputation for quality in the flower
11 sales/delivery business, Bloom That has blatantly copied Farmgirl Flower’s Coffee Sack Burlap
12 Wrap on Bloom That’s flower arrangements, which are of an inferior quality compared to Farmgirl
13 Flower’s arrangements. Bloom That did so for the express purpose of confusing consumers into
14 believing that its flower arrangements were the product of, and/or associated with, Farmgirl
15 Flowers, and in doing so has caused substantial confusion in the marketplace and among Farmgirl
16 Flower’s customers, several of whom have begun to mistakenly associate Bloom That’s products
17 as coming from Farmgirl Flowers. This confusion has degraded and eroded Farmgirl Flower’s
18 exemplary reputation for service and quality among its customers and in the marketplace.

19 2. The use of a coffee sack style burlap wrapping for the presentation of flowers is an
20 idea that Farmgirl Flower’s founder and CEO, Christina Stembel, came up with in 2010, and
21 Farmgirl Flowers has been using this unique style of wrapping continuously in commerce since at
22 least November 2010. The Coffee Sack Burlap Wrap serves as a unique and distinctive brand-
23 identifying symbol for Farmgirl Flowers, and its customers, and the marketplace in general, have
24 come to associate this look with its high-quality, locally-sourced flower arrangements. The Coffee
25 Sack Burlap Wrap distinguishes Farmgirl Flowers from other flower brands, most of which are

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27 _____
28 ¹ A description of the trade dress and supporting documents filed with the United States
Patent and Trademark Office can be found at Paragraph 32 below and the attached Exhibit A.

1 wrapped in traditional cellophane or kraft paper, and also serves to promote, in the mind of
2 consumers, Farmgirl Flower's brand image of being associated with local farming.

3 3. In September 2013, and in acknowledgement of the fact that the Coffee Sack Burlap
4 Wrap was being closely associated with its products in the minds of consumers and the
5 marketplace, Farmgirl Flowers filed to protect its trade dress rights in the Coffee Sack Burlap Wrap
6 by registering the design with the United States Patent and Trademark Office. The USPTO
7 approved Farmgirl Flower's registration for publication on October 21, 2014, and its trade dress
8 was published for opposition in the USPTO's Official Gazette on November 25, 2014.

9 4. On information and belief, sometime after consumers and the marketplace had come
10 to associate the Coffee Sack Burlap Wrap with Farmgirl Flower's products, Bloom That opened up
11 in San Francisco and began selling and distributing lower quality flower arrangements that were
12 wrapped in a coffee sack burlap wrap that is suspiciously and remarkably similar to Farmgirl
13 Flower's unique, original and brand-identifying design, and did so in Farmgirl Flower's primary
14 geographic territory, the San Francisco Bay Area.

15 5. Bloom That's copycat tactics have caused, and continue to cause, substantial harm
16 to Farmgirl Flower's business and reputation in that consumers have mistakenly believed that
17 flower arrangements created by Bloom That actually originate from Farmgirl Flowers. Indeed,
18 Farmgirl Flowers has received numerous complaints about lower quality flowers from unhappy
19 customers of Bloom That who mistakenly believe that their deliveries came from Farmgirl Flowers.

20 6. The irreparable harm caused by Bloom That's willful and manifest infringement to
21 Farmgirl Flower's reputation and significant goodwill is massive, and, unless enjoined by the Court,
22 will continue unabated. Farmgirl Flowers brings this action to halt that harm and protect its
23 exclusive rights under applicable federal and state legal protections for its trade dress, and to
24 recover from Bloom That the substantial monetary harm that its illegal and unlawful behavior has
25 caused to Farmgirl Flowers.

26 7. As explained below, Bloom That has also engaged in false and deceptive
27 advertising practices in violation of the Federal Lanham Act and California Business and
28 Professions Code Section 17200/17500 with respect to its claim to source its products and supplies

1 locally, and these deceptive tactics have harmed Farmgirl Flowers. Specifically, Bloom That
2 advertises on its webpage and to consumers that it sources locally “whenever possible,” when, in
3 fact, on information and belief, Bloom That often does not source its products or supplies locally
4 when it would be possible to do so. As just one example, on information and belief, Bloom That
5 has sourced its roses from outside the United States when it would have been possible to source
6 roses locally. This is a materially deceptive representation because many of the customers of
7 Bloom That and Farmgirl make purchasing decisions based upon the locality of the alleged
8 sourcing of products and supplies, and, but for Bloom That’s material misrepresentations regarding
9 its sourcing locally, might or would have made different purchasing decisions including, in many
10 cases, the decision to purchase from Farmgirl Flowers. Bloom That achieves an unfair competitive
11 advantage in the marketplace through its false claims to source locally, in that, generally speaking,
12 not sourcing locally often reduces the costs to Bloom That of its products and supplies. This
13 provides Bloom That with an unfair competitive advantage over competitors that do in fact source
14 their products locally to the extent possible, including Farmgirl Flowers. On information and belief,
15 Bloom That has also engaged in false advertising by falsely inflating the number of “likes” it has
16 received on the social media website www.facebook.com by arranging, through the use of third-
17 party services known colloquially as “Like farms”, to effectively create fake “likes” on Facebook
18 for the purpose of misleading consumers and the marketplace regarding the actual number of
19 consumers/reviewers that have “liked” Bloom That on Facebook.

20 **THE PARTIES**

21 8. Farmgirl Flowers is a Delaware Corporation and has its principal place of business
22 in San Francisco, California. Farmgirl Flowers is, and was, at all relevant times referenced in this
23 Complaint, fully qualified to do business in the State of California.

24 9. Bloom That is a Delaware corporation and has its principal place of business in San
25 Francisco, California.

26 10. Does 1-10 are individual officers, directors and employees of Bloom That who
27 personally directed, controlled, ratified, or otherwise participated in Bloom That’s infringing and
28 unlawful activity, but whose identities are presently unknown. Farmgirl Flowers intends to name

1 these officers, directors and employees of Bloom That as defendants in this action after it ascertains
2 their identities through depositions and discovery.

3 **JURISDICTION AND VENUE**

4 11. The Court has subject matter jurisdiction over the Lanham Act causes of action
5 pleaded herein pursuant to 28 U.S.C. §§ 1331 (federal question) and 15 U.S.C. §§ 1051, *et seq.*
6 The Court has supplemental jurisdiction over the state law causes of action pleaded herein pursuant
7 to 28 U.S.C. § 1367.

8 12. Venue is proper in this District because Bloom That resides in the District and is
9 subject to personal jurisdiction within it, 28 U.S.C. § 1391.

10 **INTRADISTRICT ASSIGNMENT**

11 13. This is an Intellectual Property Action to be assigned on a district-wide basis
12 pursuant to Civil Local Rule 3-2(c).

13 **FACTUAL ALLEGATIONS**

14 **Farmgirl Flowers And Its Unique And Distinctive**
15 **Flower Wrapping And Design**

16 14. During the year 2010, Christina Stembel, founder and CEO of Farmgirl Flowers,
17 developed a novel idea that was substantially different from the existing business model for flower
18 sales and delivery that was then (and remains) the industry norm. Instead of offering a large
19 selection of different types of flower arrangements, at numerous different price points, with
20 arrangements consisting mostly of flowers imported from South America, Farmgirl Flowers would
21 support local Bay Area farmers by selling their products locally, and would prepare only one type
22 of bouquet per day using locally grown, seasonal flowers.

23 15. From its inception, Farmgirl Flowers has desired to be a socially and
24 environmentally conscious business, and this led Farmgirl Flowers to introduce other innovations
25 to the traditional flower sale and delivery model, including, where practicable, the utilization of
26 bicycle couriers, instead of trucks or vans, to deliver flowers, and other measures designed to
27 reduce the social and environmental impact of the traditional flower sale and delivery model.

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1 16. Consistent with its business mission of selling natural, locally farmed flowers, and
2 its desire to build a brand image in the mind of consumers that would cause the marketplace to
3 associate its products with farms and farming in general, Farmgirl Flowers developed a unique
4 product packaging for its flower arrangements. Eschewing the traditional cellophane or kraft paper
5 wrapping customarily used for flower deliveries, Farmgirl Flowers began dressing its flowers with
6 a unique wrapping made out of recycled used coffee burlap sacks (referred to herein as the “Coffee
7 Sack Burlap Wrap”). On information and belief, at the time Farmgirl Flowers began using this
8 type of wrapping, no other flower seller or distributor was using a similar form of packaging, and
9 no other flower seller or distributor was using this form of packaging within Farmgirl Flower’s
10 primary geographic market, the San Francisco Bay Area.

11 17. Farmgirl Flower’s business concept was a hit, and its revenues grew rapidly
12 during the years 2011-14. During this time it developed a loyal and expanding customer base, and
13 many of these customers, as well as many persons and businesses involved in the flower sales
14 industry, began to associate Farmgirl Flowers with its distinctive Coffee Sack Burlap Wrap. The
15 Coffee Sack Burlap Wrap became a valuable, brand-identifying symbol for Farmgirl Flowers, and
16 thus an extremely valuable business asset of the company.

17 18. During this time, Farmgirl Flower’s innovative business model also attracted a large
18 social media following, including over 30,000 Instagram followers, and over 19,000 “likes” on
19 Facebook. Farmgirl Flowers also achieved a remarkable five-star rating on the website yelp.com,
20 based on over 400 customer reviews, several of whom commented on Farmgirl Flower’s unique
21 Coffee Sack Burlap Wrap trade dress.

22 19. The success of Farmgirl Flowers, and its signature Coffee Sack Burlap Wrap,
23 quickly attracted the attention of news media both within and outside the flower industry, who
24 began writing about the company and its signature burlap packaging.

25 20. Since November 2010, Farmgirl Flowers has received a substantial amount of
26 unsolicited national media coverage that prominently features images of its Coffee Sack Burlap
27 Wrap trade dress and often comments on the trade dress. Farmgirl Flower’s Coffee Sack Burlap
28 Wrap trade dress has been featured in articles that appeared in national newspapers and magazines

1 throughout the United States, including: *Martha Stewart Living*; the *San Francisco Chronicle* and
2 online versions of the newspaper at www.sfchronicle.com and www.sfgate.com; *BizBash* magazine
3 and its website; and the *San Francisco Business Journal* and its associated website.

4 21. Farmgirl Flowers and its Coffee Sack Burlap Wrap trade dress has also been the
5 focus of much online media attention. For example, a July 8, 2011, article on the blog *The Triple*
6 *Pundit* described Farmgirl Flower's business innovations, and noted its use of burlap wrapping for
7 its flower arrangements.

8 22. A May 8, 2012, article on the blog *Hong Kong Housewife* raved about Farmgirl
9 Flower's unique burlap wrapping, use of local flowers, and environmentally friendly bicycle
10 delivery service.

11 23. A May 28, 2013, article on the blog *Kaight* noted of Farmgirl Flowers that they
12 "wrap their arrangements in re-used burlap . . . amazing right?" and contained a large photo of a
13 Farmgirl Flower's arrangement prominently featuring its burlap wrapping.

14 24. A July 10, 2013, article on the blog *Such is Life* discussed Farmgirl Flowers, praised
15 the burlap wrapping, and contained numerous photographs of bouquets of flowers wrapped in the
16 Coffee Sack Burlap Wrap.

17 25. An article in the September 2013 edition of the *Society of American Florists*
18 *Magazine* noted Farmgirl Flower's environmentally friendly and socially conscious business model,
19 and also noted that its flowers were delivered in "trademarked burlap wraps."

20 26. A January 10, 2014, article on the blog *cocoonhome.com* observed of Farmgirl
21 Flowers that:

22 Daily floral arrangements are artfully composed with seasonal materials,
23 ultimately wrapped in burlap and delivered to businesses and residence
24 throughout San Francisco via bicycles, remaining true to the company's
25 mission: simple, local and beautiful.

26 27. A February 7, 2014, article on the blog *Fullospohie* wrote of Farmgirl Flowers:
27 "From crafting beautiful anemones into bouquets to packing up *their signature burlap* to go out on
28 bike, courier - - it's a busy day. But a beautiful one at that." (emphasis added.)

1 composed of a burlap material for packaging the goods. The drawing is lined to indicate burlap,
2 which is a feature of the mark. The broken lines indicate position and placement of the mark and
3 are not part of the mark. See Exhibit A. This is the trade dress referred to in this Action as the
4 “Coffee Sack Burlap Wrap” Trade Dress.

5 33. The Coffee Sack Burlap Wrap trade dress constitutes an inherently distinctive and
6 non-functional packaging for Farmgirl Flower’s arrangements. The use of burlap serves no special
7 function, other than to identify the product as coming from Farmgirl Flowers, and aiding with the
8 development of Farmgirl Flower’s goodwill and brand recognition. Specifically, the Coffee Sack
9 Burlap Wrap does not serve to protect the flowers, aid in providing water to the flowers, shield the
10 flowers from sun, heat, rain or cold, or serve any functional purpose other than as a brand identifier
11 for Farmgirl Flowers. This is evidenced by the fact that despite the use of the Coffee Sack Burlap
12 Wrap, Farmgirl Flowers continues to use a paper wrapping underneath the Coffee Sack Burlap
13 Wrap for its flower arrangements.

14 34. Farmgirl Flower’s use of the Coffee Sack Burlap Wrap as trade dress has been
15 substantially continuous and exclusive (excepting infringing conduct) since at least November
16 2010. Farmgirl Flowers has attained strong name recognition among consumers and the
17 marketplace in general with the Coffee Sack Burlap Wrap trade dress, which has come to be
18 associated with Farmgirl Flowers, and which identifies Farmgirl Flowers as the source of its
19 products. Farmgirl Flowers has spent significant sums marketing, advertising and promoting its
20 products in connection with the Coffee Sack Burlap Wrap trade dress, and considers its property
21 right in this trade dress to be a vitally important, valuable asset for the company. Typically,
22 Farmgirl Flowers spends approximately \$20,000 per month on advertising expenses and features
23 the Coffee Sack Burlap Wrap prominently as a core feature of its advertising message.

24 35. Farmgirl Flowers vigorously seeks to enforce trade dress and trademark rights
25 against infringers, as evidenced by this action.

26 **Bloom That’s Unauthorized Use Of Farmgirl Flower’s Trade Dress**

27 36. Seeking to capitalize on the success and reputation for quality that Farmgirl Flowers
28 had earned in the minds of consumers and the marketplace, and without having to re-create the

1 work and effort required to develop and build its own reputation or brand-identifying symbol,
2 sometime after Farmgirl Flower's became associated with the Coffee Sack Burlap Wrap trade dress,
3 Bloom That began to unlawfully replicate the inherently distinctive trade dress of Farmgirl
4 Flower's Coffee Sack Burlap Wrap by using a nearly identical burlap sack wrapping on its own
5 products. Bloom That did so primarily in the City and County of San Francisco, which serves as
6 Farmgirl Flower's primary geographic market. Bloom That's burlap wrapping is nearly identical
7 in appearance to the Coffee Sack Burlap Wrap trade dress of Farmgirl Flowers. It is made from the
8 same material, and is substantially identical in color, texture and size to Farmgirl Flower's Coffee
9 Sack Burlap Wrap trade dress

10 37. Consumers are highly likely, and, indeed, have on several occasions, been confused
11 as to the source, association, affiliation, endorsement or sponsorship of Bloom That's flower
12 arrangements, and have mistakenly believed that products sourced from Bloom That actually came
13 from Farmgirl Flowers.

14 38. Upon information and belief, by using a burlap sack wrapping that is nearly
15 identical to Farmgirl Flower's Coffee Sack Burlap Wrap, Bloom That has willfully and deliberately
16 sought to profit from Farmgirl Flower's good name and reputation - - a reputation that Farmgirl
17 Flowers spent substantial time and resources developing.

18 39. On information and belief, Bloom That's copycat tactics continue unheeded to this
19 day, and its unlawful activities continue to create confusion in the minds of consumers and the
20 marketplace regarding the origin of its flowers.

21 40. Moreover, as Bloom That's products are of inferior quality to those of Farmgirl
22 Flowers, this misassociation in the minds of consumers and the marketplace is harming Farmgirl
23 Flower's business and reputation by diluting and eroding their exemplary reputation for quality.

24 **ALLEGATIONS RE BLOOM THAT'S FALSE ADVERTISING**

25 41. In addition to violating Farmgirl Flower's trade dress rights under federal and state
26 law, Bloom That has also engaged in false and deceptive advertising practices in violation of the
27 Federal Lanham Act and California Business and Professions Code Section 17200/17500.

28

1 42. Bloom That's false advertising includes, for example, its claim on its webpage and
2 to consumers that it sources its products and supplies locally, "whenever possible." On
3 information and belief, this claim by Bloom That is false, deceptive and misleading because Bloom
4 That often does not source its products or supplies locally when it would be possible to do so. As
5 just one example, on information and belief, Bloom That has sourced its roses from outside the
6 United States when it would have been possible to source roses locally.

7 43. Bloom That's false claim to source its products and/or supplies locally "whenever
8 possible" is a materially deceptive representation because many of the customers of Bloom That
9 and Farmgirl make purchasing decisions based upon the locality of the alleged sourcing of products
10 and supplies, and, but for Bloom That's material misrepresentations regarding its sourcing locally
11 would have made different purchasing decisions including, in many cases, the decision to purchase
12 from Farmgirl Flowers.

13 44. Bloom That and Farmgirl Flowers compete in a segment of the market in which
14 consumers place a high premium when making purchasing decisions on the local nature of the
15 products (and underlying supplies for the products) they are purchasing. Bloom That achieves an
16 unfair competitive advantage in the marketplace through its false claims to source locally
17 "whenever possible", in that, generally speaking, not sourcing locally often reduces the costs to
18 Bloom That of its products and supplies. This provides Bloom That with an unfair competitive
19 advantage over competitors.

20 45. Farmgirl Flowers has in fact been harmed by Bloom That's false and deceptive
21 advertising in that, on information and belief, but for Bloom That's false claims about sourcing
22 locally "whenever possible," many customers that purchased products from Bloom That would
23 have purchased products from Farmgirl Flowers.

24 46. On information and belief, Bloom That has also separately engaged in false
25 advertising by falsely inflating the number of "likes" it has received on the social media website
26 www.facebook.com by arranging, through the use of third-party services known colloquially as
27 "Like farms", to effectively create fake "likes" on Facebook for the purpose of misleading
28 consumers and the marketplace regarding the actual number of consumers/reviewers that have

1 “liked” Bloom That on Facebook. As a result, on information and belief, the number of real
2 consumers/reviewers that have actually “liked” Bloom That’s products on Facebook is materially
3 lower than the number represented to the public by Bloom That. Bloom That’s false advertising
4 has injured Farmgirl Flowers in that, but for Bloom That’s deceptive practices, certain consumers
5 that were mislead and or relied upon Bloom That’s false representations regarding the number of
6 consumers/reviewers that have liked Bloom That, might or would have forgone a purchase of
7 Bloom That’s products or services in favor of products or services offered by Farmgirl Flowers.

8
9 **Bloom That’s Conduct Causes Immediate And Irreparable**
10 **Harm To Farmgirl Flowers**

11 47. The significant harm caused by Bloom That’s unlawful infringement on Farmgirl
12 Flower’s trade dress rights and other unlawful conduct described above is both immediate and
13 irreparable.

14 48. Bloom That’s unlawful activities have caused, and will continue to cause,
15 irreparable injuries by hurting the goodwill and reputation earned by Farmgirl Flowers. Bloom
16 That has been previously notified in writing that Farmgirl Flowers owns and asserts trade dress
17 rights in its Coffee Sack Burlap Wrap and that Bloom That’s continued infringement of Farmgirl
18 Flower’s trade dress rights is unlawful. Nonetheless, Bloom That has willfully, wantonly, and
19 intentionally continued to infringe upon the trade dress rights of Farmgirl Flowers. Farmgirl
20 Flowers is also being irreparably harmed by Bloom That’s false advertising.

21 49. An injunction is necessary to prevent Bloom That from continuing to infringe upon
22 Farmgirl Flower’s trade dress rights, and remedy the ongoing consumer confusion created by
23 Bloom That’s unlawful behavior. An injunction is in the public interest as well as it is necessary to
24 protect consumers from the deception Bloom That’s infringing conduct and other unlawful
25 behavior is causing in the marketplace.

FIRST CAUSE OF ACTION
(TRADE DRESS INFRINGEMENT
15 U.S.C. SECTIONS 1125 *et. seq.*)

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50. Farmgirl Flowers incorporates by reference the allegations of paragraph 1- 49 above as if fully set forth herein.

51. Farmgirl Flowers owns federally protected trade dress rights respecting its Coffee Sack Burlap Wrap for wrapping its flower arrangements. Farmgirl Flower’s registration of its trade dress rights with the USPTO has been assigned serial number 86/060,972. The USPTO approved of Farmgirl Flower’s trade dress for publication on October 21, 2014, and its was published for opposition in the USPTO’s Official Gazette on November 25, 2014.

52. The protected trade dress of Farmgirl Flowers in its Coffee Sack Burlap Wrap is inherently distinctive, and is non-functional.

53. Farmgirl Flowers has expended much effort and resources in the form of advertising, promotion, marketing, and web-site design in the trade dress configuration of its Coffee Sack Burlap Wrap. Typically, Farmgirl Flowers spends approximately \$20,000 per month on advertising expenses and features the Coffee Sack Burlap Wrap prominently as a core feature of its advertising message.

54. As a result of such extensive and exclusive use and promotion of the Coffee Sack Burlap Wrap trade dress configuration, the configuration has, in addition to being inherently distinctive, also developed secondary meaning as an indicator to consumers and the marketplace that Farmgirl Flowers is the source of its goods.

55. Farmgirl Flower’s trade dress represents valuable goodwill owned by Farmgirl Flowers.

56. Bloom That has knowingly and willfully infringed on Farmgirl Flower’s trade dress rights and such infringement has had an effect on interstate commerce. Consumers and the marketplace have believed, and are likely to believe, that Bloom That’s products are actually products of Farmgirl Flowers. Bloom That did so both before and after it was notified by Farmgirl Flowers that its conduct was unlawful and infringing.

1 57. Bloom That's unlawful conduct detailed herein also constitutes a false designation
2 of origin or false representation that wrongfully and falsely designates products as originally from
3 or connected with Farmgirl Flowers and constitutes the use of false descriptions or representations
4 in interstate commerce.

5 58. Upon information and belief, Bloom That has engaged in such conduct willfully,
6 deliberately and in conscious disregard of Farmgirl Flower's rights, making this an "exceptional
7 case" within the meaning of 15 U.S.C. Section 1117.

8 59. By reason of the forgoing, Farmgirl Flowers has been injured in amount not yet
9 ascertained and is entitled to relief, including all of the relief provided for in 15 U.S.C. 1117 and
10 other provisions of the Lanham Act.

11 60. Bloom That's conduct described herein has caused, and if not enjoined will continue
12 to cause, irreparable damage to Farmgirl Flower's rights in its trade dress and to the business,
13 reputation and goodwill of Farmgirl Flowers, which cannot be compensated solely by money
14 damages. Farmgirl Flowers therefore has no adequate remedy at law and seeks preliminary and
15 permanent injunctive relief to halt Bloom That's unlawful infringement upon Farmgirl Flower's
16 trade dress rights.

17 **SECOND CAUSE OF ACTION**
(COMMON LAW TRADE DRESS INFRINGEMENT)

18 61. Farmgirl Flowers incorporates by reference the allegations of paragraph 1 to 60 as if
19 fully set forth herein.

20 62. The general consuming public in San Francisco and/or California widely recognizes
21 the Coffee Sack Burlap Wrap trade dress configuration on flowers and flower deliveries as
22 designating Farmgirl Flowers as the source of services or goods. Farmgirl Flowers has common
23 law trade dress rights in its Coffee Sack Burlap Wrap trade dress.

24 63. Bloom That has knowingly infringed upon Farmgirl Flower's trade dress rights by
25 offering for sale goods or services, in overlapping geographic markets also serviced by Farmgirl
26 Flowers, that are likely to cause confusion, mistake or deception as to the source of origin,
27 sponsorship, or approval of its products, in that consumers and the marketplace are likely to believe
28 that Bloom That's products are products of Farmgirl Flowers.

1 damages. Farmgirl Flowers therefore has no adequate remedy at law and seeks preliminary and
2 permanent injunctive relief.

3 **FOURTH CAUSE OF ACTION**
4 **(CAL BUS. & PROF. CODE SECTIONS 14200 *et. seq.*)**

5 73. Farmgirl Flowers incorporates by reference the allegations of paragraphs 1- 72
6 above.

7 74. Bloom That's unlawful infringement of Farmgirl Flower's trade dress rights in
8 commerce in California has caused, and will likely cause, confusion or mistake and to deceive the
9 public into believing that Defendant's products originate from, are affiliated with, or sponsored by,
10 Farmgirl Flowers, in violation of California Business and Professions Code Sections 14200 *et. seq.*

11 75. Bloom That's unlawful conduct was undertaken with the intent to misappropriate
12 Farmgirl Flower's goodwill in violation of the California Business and Professions Code.

13 76. Bloom That has been previously notified in writing that Farmgirl Flowers owns and
14 asserts trade dress rights in its Coffee Sack Burlap Wrap and that Bloom That's continued
15 infringement of Farmgirl Flower's trade dress rights is unlawful. Nonetheless, Bloom That has
16 willfully, wantonly, and intentionally continued to infringe upon the trade dress rights of Farmgirl
17 Flowers.

18 77. Bloom That's infringing conduct has caused, and likely will continue to cause, both
19 irreparable harm and monetary damages to Farmgirl Flowers. The amount of monetary damages to
20 Farmgirl Flowers cannot be ascertained at this time, but it is substantial, continuing, and ongoing.
21 Unless this Court restrains Bloom That from further wrongful infringing conduct, Farmgirl Flowers
22 will continue to suffer irreparable harm, for which it has no adequate remedy at law.

23 **(FIFTH CAUSE OF ACTION)**
24 **(FALSE ADVERTISING - 15 U.S.C. 1125 *et. seq.*)**

25 78. Farmgirl Flowers Incorporates by referece the allegations of Paragraphs 1-77 above.

26 79. Bloom That has stated in its commercial advertising and to consumers that its
27 sources its products and supplies locally "whenever possible."
28

1 80. On information and belief, this statement is materially false, deceptive and
2 misleading because Bloom That does not source its products and supplies locally “whenever
3 possible.”

4 81. Bloom That’s claim to source its products locally “whenever possible” is a
5 materially deceptive representation because many of the customers of Bloom That and Farmgirl
6 make purchasing decisions based upon the locality of the alleged sourcing of products and supplies,
7 and, but for Bloom That’s material misrepresentations regarding its sourcing locally might or
8 would have made different purchasing decisions including, in many cases, the decision to purchase
9 from Farmgirl Flowers.

10 82. Bloom That and Farmgirl Flowers compete in a segment of the market in which
11 consumers place a high premium when making purchasing decisions on the local nature of the
12 products (and underlying supplies for the products) they are purchasing. Bloom That achieves an
13 unfair competitive advantage in the marketplace through its false claims to source locally, in that,
14 generally speaking, not sourcing locally often reduces the costs to Bloom That of its products and
15 supplies. This provides Bloom That with an unfair competitive advantage over competitors.

16 83. Farmgirl Flowers has in fact been harmed by Bloom That’s false and deceptive
17 advertising in that, on information and belief, but for Bloom That’s false claims about sourcing
18 locally “whenever possible,” many customers that purchased products from Bloom That might or
19 would have purchased products from Farmgirl Flowers.

20 84. On information and belief, Bloom That has also separately engaged in false
21 advertising by falsely inflating the number of “likes” it has received on the social media website
22 www.facebook.com by arranging, through the use of third-party services known colloquially as
23 “Like farms”, to effectively create fake “likes” on Facebook for the purpose of misleading
24 consumers and the marketplace regarding the actual number of consumers/reviewers that have
25 “liked” Bloom That on Facebook. As a result, on information and belief, the number of real
26 consumers/reviewers that have actually “liked” Bloom That’s products on Facebook is materially
27 lower than the number represented to the public by Bloom That. Bloom That’s false advertising
28 has injured Farmgirl Flowers in that, but for Bloom That’s deceptive practices, certain consumers

1 that were mislead and or relied upon Bloom That's false representations regarding the number of
2 consumers/reviewers that have liked Bloom That, might or would have forgone a purchase of
3 Bloom That's products or services in favor of products or services offered by Farmgirl Flowers.

4 85. On information and belief, Bloom That has made these materially deceptive
5 representations, willfully, intentionally and in bad faith. Bloom That knew or should have known
6 that it claims were likely to mislead. Bloom That's wrongful conduct described herein had an
7 effect in interstate commerce.

8 86. As a direct, proximate and actual result of Bloom That's wrongful and deceptive
9 advertising practices, Farmgirl Flowers has suffer damages in an amount to be proven at trial.

10 87. Pursuant to 15 U.S.C. Section 1117, Farmgirl Flowers is also entitled to an
11 accounting of profits on all sales made by Bloom That through its materially false and deceptive
12 advertising practices, permitting a recovery by Farmgirl Flowers of the costs of this action, and, in
13 light of the willful and intentional nature of Bloom That's conduct, to an award of reasonable
14 attorney's fees.

15 (SIXTH CAUSE OF ACTION)
16 (FALSE ADVERTISING – CAL. BUS. & PROF. CODE
SECTION 17200 *et. seq.*)

17 88. Farmgirl Flowers Incorporates by reference the allegations of Paragraphs 1-87
18 above.

19 89. Bloom That has stated in its commercial advertising and to consumers that its
20 sources its products and supplies locally "whenever possible."

21 90. On information and belief, this statement is materially false, deceptive and
22 misleading because Bloom That does not source its products and supplies locally "whenever
23 possible."

24 91. Bloom That's claim to source is products locally "whenever possible" is a
25 materially deceptive representation because many of the customers of Bloom That and Farmgirl
26 make purchasing decisions based upon the locality of the alleged sourcing of products and supplies,
27 and, but for Bloom That's material misrepresentations regarding its sourcing locally, customers
28

1 might or would have made different purchasing decisions including, in many cases, the decision to
2 purchase from Farmgirl Flowers.

3 92. Bloom That and Farmgirl Flowers compete in a segment of the market in which
4 consumers place a high premium when making purchasing decisions on the local nature of the
5 products (and underlying supplies for the products) they are purchasing. Bloom That achieves an
6 unfair competitive advantage in the marketplace through its false claims to source locally, in that,
7 generally speaking, not sourcing locally often reduces the costs to Bloom That of its products and
8 supplies. This provides Bloom That with an unfair competitive advantage over competitors.

9 93. Farmgirl Flowers has in fact been harmed by Bloom That's false and deceptive
10 advertising in that, on information and belief, but for Bloom That's false claims about sourcing
11 locally "whenever possible," many customers that purchased products from Bloom That might or
12 would have purchased products from Farmgirl Flowers.

13 94. On information and belief, Bloom That has also separately engaged in false
14 advertising by falsely inflating the number of "likes" it has received on the social media website
15 www.facebook.com by arranging, through the use of third-party services known colloquially as
16 "Like farms", to effectively create fake "likes" on Facebook for the purpose of misleading
17 consumers and the marketplace regarding the actual number of consumers/reviewers that have
18 "liked" Bloom That on Facebook. As a result, on information and belief, the number of real
19 consumers/reviewers that have actually "liked" Bloom That's products on Facebook is materially
20 lower than the number represented to the public by Bloom That. Bloom That's false advertising
21 has injured Farmgirl Flowers in that, but for Bloom That's deceptive practices, certain consumers
22 that were misled and or relied upon Bloom That's false representations regarding the number of
23 consumers/reviewers that have liked Bloom That, might or would have forgone a purchase of
24 Bloom That's products or services in favor of products or services offered by Farmgirl Flowers.

25 95. On information and belief, Bloom That has made these materially deceptive
26 representations, willfully, intentionally and in bad faith. Bloom That knew or should have known
27 that it claims were likely to mislead.

28

1 103. Bloom That and Farmgirl Flowers compete in a segment of the market in which
2 consumers place a high premium when making purchasing decisions on the local nature of the
3 products (and underlying supplies for the products) they are purchasing. Bloom That achieves an
4 unfair competitive advantage in the marketplace through its false claims to source locally, in that,
5 generally speaking, not sourcing locally often reduces the costs to Bloom That of its products and
6 supplies. This provides Bloom That with an unfair competitive advantage over competitors that do
7 in fact source their products locally to the extent possible, including Farmgirl Flowers.

8 104. Farmgirl Flowers has in fact been harmed by Bloom That's false and deceptive
9 advertising in that, on information and belief, but for Bloom That's false claims about sourcing
10 locally "whenever possible," many customers that purchased products from Bloom That might or
11 would have purchased products from Farmgirl Flowers.

12 105. On information and belief, Bloom That has also separately engaged in false
13 advertising by falsely inflating the number of "likes" it has received on the social media website
14 www.facebook.com by arranging, through the use of third-party services known colloquially as
15 "Like farms", to effectively create fake "likes" on Facebook for the purpose of misleading
16 consumers and the marketplace regarding the actual number of consumers/reviewers that have
17 "liked" Bloom That on Facebook. As a result, on information and belief, the number of real
18 consumers/reviewers that have actually "liked" Bloom That's products on Facebook is materially
19 lower than the number represented to the public by Bloom That. Bloom That's false advertising
20 has injured Farmgirl Flowers in that, but for Bloom That's deceptive practices, certain consumers
21 that were misled and or relied upon Bloom That's false representations regarding the number of
22 consumers/reviewers that have liked Bloom That, might or would have forgone a purchase of
23 Bloom That's products or services in favor of products or services offered by Farmgirl Flowers.

24 106. On information and belief, Bloom That has made these materially deceptive
25 representations, willfully, intentionally and in bad faith. Bloom That knew or should have known
26 that its claims were likely to mislead. Bloom That also knew, or by the exercise of reasonable care
27 should have known, that its statements were untrue and misleading.

28

- 1 Bloom That has violated California Business and Professions Code Sections 14330
- 2 *et. seq.*, and 17200 *et. seq.*
- 3 D. For money damages in an amount to be proven at trial, but in excess of \$300,000,
- 4 and an order that this amount be trebled in accordance with law;
- 5 E. For an order of restitution and/or disgorgement against Bloom That running in favor
- 6 of Farmgirl Flowers for all monies that Bloom That has made through the unlawful
- 7 and infringing conduct alleged in this Complaint, and an order that the amount be
- 8 trebled in accordance with law;
- 9 F. For an order requiring Bloom That to provide notice by publication on its website
- 10 that its use of burlap wrapping for its flower sales and deliveries was unlawful,
- 11 unauthorized and in violation the trade dress rights Farmgirl Flowers; and also,
- 12 requiring Bloom That to provide direct notice, via email or otherwise where
- 13 available, to any of its customers who purchased or received any of Bloom That's
- 14 products wrapped in burlap sack material, that the use of such material by Bloom
- 15 That was unlawful and infringed upon the trade dress rights of Farmgirl Flowers;
- 16 G. For an order that, because of the willful and deliberate nature of Bloom That's acts,
- 17 and the willful disregard for the rights of Farmgirl Flowers, Bloom That be required
- 18 to pay over to Farmgirl Flowers punitive/exemplary damages in an amount to be
- 19 determined by at trial;
- 20 H. For an order that Bloom That be required to pay over to Farmgirl Flowers its
- 21 reasonable attorney's fees and costs;
- 22 I. For all legally available remedies respecting Bloom That's false advertising detailed
- 23 herein;
- 24 J. For all legally available pre-judgment and post-judgment interest on any award
- 25 determined by the Court;
- 26 ///
- 27 ///
- 28 ///

1 K. For special damages, according to proof;

2 L. For such other and further relief as the Court may deem proper.

3 DATED: March 10, 2015

4 THE LAW OFFICES OF THOMAS V. CHRISTOPHER

5
6 By: /s/ Thomas Christopher
7 THOMAS CHRISTOPHER
8 thomas@thomaschristopherlaw.com
9 Attorney for Plaintiff
10 FARMGIRL FLOWERS, INC.

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff FARMGIRL FLOWERS, INC. hereby requests a jury trial in this action.

13 DATED: March 10, 2015

14 THE LAW OFFICES OF THOMAS V. CHRISTOPHER

15
16 By: /s/ Thomas Christopher
17 THOMAS CHRISTOPHER
18 thomas@thomaschristopherlaw.com
19 Attorney for Plaintiff
20 FARMGIRL FLOWERS, INC.

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EXHIBIT A

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, November 25, 2014 00:24 AM
To: trademark@wilsonelser.com
Cc: adam.bialek@wilsonelser.com
Subject: Official USPTO Notice of Publication Confirmation: U.S. Trademark SN 86060972: Miscellaneous Design

TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION

U.S. Serial Number: 86060972
Mark: Miscellaneous Design
International Class(es): 031
Owner: Farmgirl Flowers Inc.
Docket/Reference Number:

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Nov 25, 2014.

To Review the Mark in the TMOG:

Click on the following link or paste the URL into an internet browser: <https://tmog.uspto.gov/#issueDate=2014-11-25&serialNumber=86060972>

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. If any information is incorrect due to USPTO error, the applicant should immediately email the requested correction to TMPostPubQuery@uspto.gov. For applicant corrections or amendments after publication, please file a post publication amendment using the form available at <http://easrca.uspto.gov/ppa/>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

Significance of Publication for Opposition:

* Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a certificate of registration should issue.

To check the status of the application, go to http://tsdr.uspto.gov/#caseNumber=86060972&caseType=SERIAL_NO&searchType=statusSearch or contact the Trademark Assistance Center at 1-800-786-9199. Please check the status of the application at least every three (3) months after the application filing date.

To view this notice and other documents for this application on-line, go to http://tsdr.uspto.gov/#caseNumber=86060972&caseType=SERIAL_NO&searchType=documentSearch. NOTE: This notice will only become available on-line the next business day after receipt of this e-mail.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Nov 5, 2014

NOTICE OF PUBLICATION

1. Serial No.:
86-060,972
2. Mark:
Miscellaneous Design
(STYLIZED/DESIGN)
3. International Class(es):
31
4. Publication Date:
Nov 25, 2014
5. Applicant:
Farmgirl Flowers Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Email Address(es):

trademark@wilsonelser.com
adam.bialek@wilsonelser.com

From: TMOfficialNotices@USPTO.GOV
Sent: Wednesday, November 5, 2014 03:23 AM
To: trademark@wilsonelser.com
Cc: adam.bialek@wilsonelser.com
Subject: Official USPTO Notification of Notice of Publication: U.S. Trademark SN 86060972: Miscellaneous Design

NOTIFICATION OF "NOTICE OF PUBLICATION"

Your trademark application (Serial No. 86060972) is scheduled to publish in the *Official Gazette* on Nov 25, 2014. To preview the Notice of Publication, go to <http://tdr.uspto.gov/search.action?sn=86060972>. If you have difficulty accessing the Notice of Publication, contact TDR@uspto.gov.

PLEASE NOTE:

1. The Notice of Publication may not be immediately available but will be viewable within 24 hours of this e-mail notification.
2. You will receive a second e-mail on the actual "Publication Date," which will include a link to the issue of the *Official Gazette* in which the mark has published.

Do NOT hit "Reply" to this e-mail notification. If you have any questions about the content of the Notice of Publication, contact TMPostPubQuery@uspto.gov.

OVERVIEW

SERIAL NUMBER	86060972	FILING DATE	09/10/2013
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BESCH, JAY C	L.O. ASSIGNED	108

PUB INFORMATION

RUN DATE	10/23/2014
PUB DATE	N/A
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE
STATUS DATE	10/22/2014

LITERAL MARK ELEMENT

DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	YES	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	

MARK DRAWING CODE 2-AN ILLUSTRATION DRAWING WITHOUT ANY WORD(S)/LETTER(S)/NUMBER(S)
 COLOR DRAWING FLAG NO

CURRENT OWNER INFORMATION

PARTY TYPE 10-ORIGINAL APPLICANT
 NAME Farmgirl Flowers Inc.
 ADDRESS 2250 Van Ness Ave. #1
 San Francisco, CA 94109
 ENTITY 03-CORPORATION
 CITIZENSHIP Delaware

GOODS AND SERVICES

INTERNATIONAL CLASS 031
 DESCRIPTION TEXT Live flower arrangements

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	031	FIRST USE DATE	11/07/2010	FIRST USE IN COMMERCE DATE	11/07/2010	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION NO
 COLORS CLAIMED STATEMENT Color is not claimed as a feature of the mark.
 DESCRIPTION OF MARK 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.

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
10/22/2014	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	019
10/21/2014	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	018
09/17/2014	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	017
09/17/2014	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	016
09/10/2014	ALIE	A	ASSIGNED TO LIE	015
09/08/2014	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	014

06/21/2014	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	013
06/21/2014	GNRT	O	NON-FINAL ACTION E-MAILED	012
06/21/2014	CNRT	R	NON-FINAL ACTION WRITTEN	011
05/27/2014	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
05/27/2014	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
05/27/2014	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
12/26/2013	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	007
12/26/2013	GNRT	F	NON-FINAL ACTION E-MAILED	006
12/26/2013	CNRT	R	NON-FINAL ACTION WRITTEN	005
12/19/2013	DOCK	D	ASSIGNED TO EXAMINER	004
09/19/2013	MDSC	E	NOTICE OF DESIGN SEARCH CODE E-MAILED	003
09/18/2013	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/13/2013	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Adam R. Bialek
CORRESPONDENCE ADDRESS	ADAM R. BIALEK WILSON ELSEER MOSKOWITZ EDELMAN & DICKER 150 E 42ND ST NEW YORK, NY 10017-5612
DOMESTIC REPRESENTATIVE	NONE

