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Filing date: **11/18/2008**

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

Proceeding	92047976
Party	Plaintiff Kathleen Hiraga
Correspondence Address	Don Thornburgh Don Thornburgh Law Corporation 466 Foothill Boulevard, Suite 220 La Canada Flintridge, CA 91011 UNITED STATES uspto@donthornburgh.com
Submission	Brief on Merits for Plaintiff
Filer's Name	Don Thornburgh
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Signature	/don thornburgh/
Date	11/18/2008
Attachments	Petitioner's Brief 11.17.2008.pdf (53 pages)(2440388 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Kathleen Hiraga,)	
	)	Cancellation No. 92/047976
Petitioner,)	
	)	Reg. No.: 3125129
v.	)	Serial No.: 78608724
	)	Mark: GARDEN ORGANICS
Sylvester J. Arena,	)	Filed: April 14, 2005
	)	Registered: August 1, 2006 (Supplemental)
Respondent)	
)	
)	
)	

PETITIONER’S BRIEF IN SUPPORT OF PETITION TO CANCEL

Pursuant to Trademark Rule 2.128(a) and T.B.M.P. § 801.02(a), Petitioner, Kathleen Hiraga, an individual (hereinafter “Petitioner”) hereby submits this Brief in Support of her Petition to Cancel United States Trademark Registration No. 3,125,129, GARDEN ORGANICS, for “fertilizers, soil conditioners and soil amendments for domestic use” (“Registration”), filed and owned by Sylvester J. Arena, (“Respondent”).

I. INTRODUCTION

On April 14, 2005, Respondent filed an application with the United States Patent and Trademark Office for the mark GARDEN ORGANICS. The Registration was completed on August 1, 2006. On May 19, 2005, Petitioner filed an application, serial number 78632995, with the United States Patent and Trademark Office for the mark GARDEN ORGANICS for “agricultural and horticultural products, namely, living plants, plant seeds, and seedlings” and “educational services, namely, conducting workshops and seminars in the fields of methods for growth and maintenance of edible herbs, flowers, vegetables and fruits, the design and implementation of organic culinary beds, nutrition, recipes and distributing course material in connection therewith” (“Application”).

On February 21, 2007, the Registration was cited as grounds for refusal of the Application. Petitioner filed the Petition to Cancel on August 20, 2007. As stated in the Petition to Cancel, Petitioner contends that Respondent fraudulently obtained the Registration because Respondent had not used the mark in commerce (as defined by the Act) on the date indicated on Respondent’s application.

II. DESCRIPTION OF THE RECORD

A. Petitioner’s Evidence

1. Respondent’s Trademark File

The file of Respondent's application to register GARDEN ORGANICS, Registration No. 3,125,129, is the subject of this cancellation proceeding and forms parts of the record, hereinafter referred to as the "Trademark File". 38 C.F.R. 2.122(b); T.B.M.P. § 704.03(a).

2. Petitioner's Notices of Reliance

On June 5, 2008, pursuant to 37 C.F.R. § 2.120(j), Petitioner filed a Notice of Reliance with the Board, along with certain of Respondent's responses to Petitioner's First Set of Interrogatories ("Respondent's Interrogatories Responses") and portions of Respondent's Responses to Petitioner's First Set of Requests for Production of Documents, as follows:

Interrogatory No. 1 and Response

Interrogatory No. 12 and Response

Interrogatory No. 13 and Response

Request for Production of Documents No. 3 and Response

Request for Production of Documents No. 23 and Response

Request for Production of Documents No. 24 and Response

Request for Production of Documents No. 25 and Response

Request for Production of Documents No. 36 and Response

Request for Production of Documents No. 37 and Response

Copies of the relevant portions of Petitioner's First Set of Interrogatories to Respondent are attached hereto as Exhibit A. Copies of the relevant portions of Respondent's Responses to Petitioner's First Set of Interrogatories are attached hereto as Exhibit B. Copies of the relevant portions of Petitioner's First Set of Requests for Production of Documents to Respondent are attached hereto as Exhibit C. Copies of the relevant portions of Respondent's Responses to Petitioner's First Set of Requests for Production of Documents are attached hereto as Exhibit D.

On June 6, 2008, pursuant to 37 C.F.R. § 2.122(e), Petitioner filed a Notice of Reliance with the Board, making of record in this proceeding certain documents obtained from the internet archive of web pages located at www.web.archive.org, as follows:

http://web.archive.org/web/*/http://arenaroses.com – archive / site update summary

www.arenaroses.com – home page – archive date 12/01/2003

www.arenaroses.com – online shopping page – archive date 12/01/2003

www.arenaroses.com – home page – archive date 01/05/2005

www.arenaroses.com – online shopping page – archive date 01/05/2005

Copies of these documents are attached hereto as Exhibit E.

B. Respondent's Evidence

1. Respondent's Notice of Reliance

On August 5, 2008, Respondent filed three Notices of Reliance with the Board, (1) seeking to make of record portions of Respondent's Application for Registration, Petitioner's Application for Registration, Petitioner's Petition for Cancellation and certain correspondence with the USPTO relating to these applications and this proceeding; (2) improperly seeking to make of record certain of Respondents' Responses to Petitioner's First Set of Interrogatories; and (3) seeking to make of record certain documents obtained from the internet archive of web pages located at www.web.archive.org. Respondent's attempt to introduce his own discovery responses into evidence was improper pursuant to 37 CFR § 2.120(j)(5). Copies of the internet archives which Respondent seeks to introduce into evidence are attached hereto as Exhibit F.

III. STATEMENT OF THE ISSUES

The issue before the Board is whether Respondent's U.S. trademark registration No. 3,125,129 for GARDEN ORGANICS covering "fertilizers, soil conditioners and soil amendments for domestic use" should be cancelled based on Respondent's fraud on the Patent and Trademark Office, for claiming a false date of first use in commerce.

IV. FACTS

1. On April 14, 2005, Respondent filed an application with the United States Patent and Trademark Office for the mark GARDEN ORGANICS, claiming a date of first use in commerce of November 1, 2003. See, Trademark File. The date of registration was August 1, 2006.

2. On February 29, 2008, Petitioner served Petitioner's First Set of Interrogatories to Respondent. [Exh. A.]

3. On February 29, 2008, Petitioner served Petitioner's First Set of Requests for Production of Documents to Respondent. [Exh. C.]

4. In response to Petitioner's First Set of Interrogatories, No. 1, Respondent stated, in relevant part, "The initial offering of Garden Organics products occurred in November, 2003 on the back cover of the Arena Roses catalog for spring 2004. Respondent has provided evidence in the Response to Request for Documents that 19,555 copies of this catalog were mailed on December 8, 2003." [Exh. B at page 2]

5. In response to Petitioner's First Set of Requests for Documents, No. 3, Respondent stated, in relevant part, "RESPONDENT is providing a copy of Invoice #139573, dated December 15, 2003, from Colorgraphics, Inc. (PO Box 51490, Los Angeles, CA 90051-5790). The Petitioner will note that the invoice specifies that CG Job Number 110312/1066 is for the printing of 50,000 copies of the

Arena Roses 2004 catalog." The referenced document is attached hereto on Exhibit D. Respondent further stated "Respondent is providing a copy of Postage Statement filed with the US Postal Service on December 8, 2003 for the mailing of 19,555 catalogs". The referenced document is attached hereto on Exhibit D. Respondent further stated "Respondent is providing a copy of Invoice #5521 from Accurate Mailing Service for list management and handling services for the mailing of 19,555 catalogs on December 8, 2003". The referenced document is attached hereto on Exhibit D. [Exh. D at page 4]

6. In response to Petitioner's First Set of Requests for Documents, No. 23, Respondent stated "RESPONDENT replies that he has no business form, letterhead or business card used in connection with 'Garden Organics' or any other name or mark that specifically includes 'Garden Organics'.". [Exh. D at page 24]

7. In response to Petitioner's First Set of Requests for Documents, No. 24, Respondent stated "RESPONDENT replies that he has not taken out telephone book advertisements or placed listings that specifically refer to 'Garden Organics' or any other names or marks including 'Garden Organics'.". [Exh. D at page 25]

8. In response to Petitioner's First Set of Requests for Documents, No. 36, Respondent stated "RESPONDENT replies that he has provided all documents which support his claims and assertions in this matter as part of his other responses to the Admissions, the Interrogatories and this Request for Documents – with the exception of those that Respondent he has indicated he has not been able to locate in storage relating to sales figures.". [Exh. D at page 37]

9. In response to Petitioner's First Set of Requests for Documents, No. 37, Respondent stated "RESPONDENT replies that to the best of his knowledge and foresight he has provided all documents upon which he intends to rely in this matter as part of his responses to this Request, the Interrogatories and the Admissions – with the exception of those that Respondent he has indicated he has not been able to locate in storage relating to sales figures.". [Exh. D at page 38]

V. ARGUMENT

A. Respondent Committed Fraud upon the Patent and Trademark Office

Fraud in obtaining a trademark registration occurs when an applicant knowingly makes a false, material misrepresentation of fact in connection with his application, or in connection with a declaration or in connection an application filed for renewal. *Maids to Order v. Maids-to-Order*, 2006 TTAB LEXIS 106, 17, 78 U.S.P.Q. (BNA) 1899 (TTAB 2006), quoting, *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48 (Fed. Cir. 1986).

Respondent obtained the Registration by fraudulently stating in his application that to the date of his first use of the mark in commerce was November 1, 2003. See, Trademark File. Respondent's fraudulent acts in obtaining the Registration required that it be cancelled.

In his responses to Petitioner's discovery requests in this proceeding, Respondent has provided evidence that his first use of the mark in commerce could not have occurred on the date of earliest use claimed in the application (November 1, 2003). To the contrary, the evidence provided by Respondent indicates that (1) Respondent's first use of the mark in commerce followed distribution of the Arena Roses 2004 Catalog; (2) that the invoice for printing of such catalogs was dated December 15, 2003; (3)

that the postage statement filed with the U.S. Postal Service for the mailing of such catalogs was December 8, 2003; (4) that the invoice from the mailing service for the distribution of such catalogs also was dated December 8, 2003". [Exh. D. at page 4] Respondent relies upon the distribution of these catalogs as the basis for his claim of first use in commerce, and yet consumers could not have received the catalogs until, at the earliest, sometime in December 2003, several weeks after the date of first use in commerce claimed by Respondent. Respondent offers no other evidence of use of the mark in commerce.

Other than Arena Roses 2004 Catalog, the only other use of the mark claimed by Respondent is the promotion and sales of the associated goods through Respondent's website located at www.arenaroses.com. Petitioner has introduced unrefuted evidence that, as of November 1, 2003, Respondent had not made any use of the registered mark on that website. Likewise Petitioner has introduced evidence that Respondent had not made any use of the registered mark on that website as of December 1, 2003 or even by January 5, 2005. [Exh. E] Archival evidence obtained by both Petitioner and Respondent indicates that the mark GARDEN ORGANICS did not appear on Respondent's website at any time during 2003 or 2004. [Exh. E] In response to such evidence as introduced by Petitioner, Respondent introduced evidence of his earliest online use of the mark, namely, archival web pages from www.arenaroses.com, from April 14, 2005. [Exh. F]

In an effort to determine if Respondent may have used his mark in some manner other than the 2004 Arena Roses catalog or Respondent's website, Petitioner submitted broad discovery requests asking Respondent to identify other uses of the mark. No such evidence has been entered into the record. Respondent stated that "he has no business form, letterhead or business card used in connection with 'Garden Organics' or any other name or mark that specifically includes 'Garden Organics'." [Exh. D, response to Petitioner's First Set of Requests for Documents, No. 23] Respondent stated that "he has not taken out telephone book advertisements or placed listings that specifically refer to 'Garden Organics' or any other names or marks including 'Garden Organics'." [Exh. D, response to Petitioner's First Set of Requests for Documents, No. 24] There can be no other evidence of Respondent's use of the mark, as Respondent has stated that "he has provided all documents which support his claims and assertions in this matter as part of his other responses to the Admissions, the Interrogatories and this Request for Documents – with the exception of those that Respondent he has indicated he has not been able to locate in storage relating to sales figures." [Exh. D, response to First Set of Requests for Documents, No. 36] Respondent cannot rely on any other evidence in support of his claims. Respondent has stated "that to the best of his knowledge and foresight he has provided all documents upon which he intends to rely in this matter as part of his responses to this Request, the Interrogatories and the Admissions – with the exception of those that Respondent he has indicated he has not been able to locate in storage relating to sales figures." [Exh. D, response to Petitioner's First Set of Requests for Documents, No. 37]

In short, Respondent has presented no evidence of any use of the mark in commerce at any time in November of 2003. To the contrary, Respondent has provided compelling evidence that use of the mark in commerce did not occur as of that date. As such, the mark was not in use in commerce (as defined in § 1(a) of the Trademark Act) as of November 1, 2003.

Trademark Rule 2.88(c) provides, in relevant part, that

the statement of use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the notice of allowance, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the statement of use pertains.

Respondent knowingly violated this Rule, when it claimed in its application a date of first use in commerce of November 1, 2003, having full knowledge that it had not so used the mark on that date.

In Medinol Ltd. v. Neuro Vasx, Inc., 2003 T.T.A.B. LEXIS 227, 67 U.S.P.Q.2d (BNA) 1205 (T.T.A.B. 2003), the Board held that the registrant committed fraud upon the Patent and Trademark Office because it signed and submitted a Statement of Use for a registration covering "medical devices, namely neurological stents and catheters," while it should have known that the mark was used only on catheters. The Board's decision rested on the fact that "[n]otwithstanding that the mark was not in use on one of the two (stents), respondent indicated when it filed its statement of use that the mar was in use on 'those goods identified in the Notice of Allowance in this Application'." Medinol Ltd., 2003 T.T.A.B. LEXIS 227, at *16. In other words, the registrant committed fraud upon the Patent and Trademark Office because the mark was not used on all of the goods listed in the application when the registrant filed its statement of use.

Similar to the Medinol case, Respondent made a material, false statement and declaration when he filed the application claiming a date of first use of November 1, 2003, with full knowledge that he had not used the mark on the goods claimed as of that date.

Respondent signed the application and declaration under penalty of "fine or imprisonment, or both ... and [knowing] that such willful false statements may jeopardize the validity of the application or any resulting registration..." This declaration was signed by Respondent with full knowledge that the mark was not used in commerce as of the earliest date claimed. Furthermore, it is evident from Respondent's response to Petitioner's discovery requests that Respondent had knowledge that the goods listed on the application were not yet in use in commerce as of the date claimed. [Exh. B and Exh. D]

"A trademark applicant commits fraud in procuring a registration when it makes material representations of fact in its declaration which it knows or should know to be false or misleading." Medinol Ltd. v. Neuro Vasx, Inc., 67 U.S.P.Q.2d (BNA) 1205, 1209 (T.T.A.B. 2003) (citing Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 48 (Fed. Cir. 1986); see also Le Cordon Bleu, S.A. v. BPC Publ'g Ltd., 451 F. Supp. 63, 72 n.14 (S.D.N.Y 1978); Schwinn Bicycle Co. v. Murray Ohio Mfg. Co., 339 F. Supp. 973, 983 (M.D. Tenn. 1971). Statements regarding the use of the mark on goods clearly are material to the issuance of a registration. See Western Farmers Assn. v. Loblaw, Inc., 180 U.S.P.Q. 345, 347 (TTAB 1973); see also First Int'l Servs. Corp. v. Chuckles, Inc., 5 U.S.P.Q.2d 1628, 1636 (TTAB 1988).

By his own admission, Respondent had not engaged in any commerce using the mark as early as November 1, 2003. [Exh. B, Response to Interrogatory No. 1, Item 2; Exh. D, Response to Request for Documents No. 3, Items 2, 3, 4 and 5] Therefore, Respondent's statement in the application that the date of first use of the mark in commerce was November 1, 2003 was false.

The relevant inquiry to determine whether Respondent has committed fraud on the USPTO is not Respondent's subjective intent, but the objective manifestations of that intent. Medinol Ltd. v. Neuro Vasx Inc., 67 U.S.P.Q.2d 1205, 1209 (TTAB 2003). "[I]t is difficult, if not impossible, to prove what occurs in a person's mind, and that intent must often be inferred from the circumstances and related statements made by that person." First Int'l Servs. Corp. c. Chuckles, Inc., 5 U.S.P.Q.2d 1628, 1636 (TTAB 1988); see Medinol Ltd. v. Neuro Vasx Inc., 67 U.S.P.Q.2d 1205, 1209 (TTAB 2003); see also Torres, 1 U.S.P.Q.2d at 1484-85; General Car and Truck Leasing Sys., Inc. v. General Rent-A-Care Inc., 17 U.S.P.Q.2d 1398, 1400 (S.D. Fla. 1990). Furthermore, "proof of specific intent to commit fraud is not

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

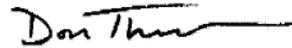
required, rather, fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knows or should have known was false." General Car and Truck, 17 U.S.P.Q.2d at 1400; see Western Farmer Assn., 180 U.S.P.Q. at 347. If fraud is shown in the procurement of a registration, the entire resulting registration is void. General Car and Truck, 17 U.S.P.Q.2d at 1401.

Through his discovery responses, Respondent has demonstrated that he has ample evidence of the dates of his first use of the mark in commerce. As a result, Respondent's representation to the Board in this proceeding that he has used the mark in commerce since November 1, 2003 was made knowingly. Respondent's knowledge or reckless disregard for the truth concerning the actual date of first use of the mark in commerce shows an intent to commit fraud in the procurement and maintenance of the Registration. See Medinol, Ltd., 67 U.S.P.Q.2d at 1210. As a result, the Registration should be cancelled due to these fraudulent representations to the USPTO and to the Board.

VI. CONCLUSION

In view of the above arguments and evidence, Petitioner submits that the Registration should be cancelled.

By: _____



Don Thornburgh – Attorney for Petitioner
Don Thornburgh Law Corporation
466 Foothill Boulevard #220
La Cañada Flintridge, California 91011
Tel: (818) 790-6547
Fax: (818) 790-6548

Date: _____

November 17, 2008

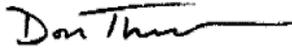
In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing PETITIONER'S BRIEF IN SUPPORT OF PETITION TO CANCEL is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Sylvester J. Arena
2070 West Highway 46
Paso Robles, CA 93446

Executed this 17th day of November, 2008, at La Cañada Flintridge, California.



Don Thornburgh

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

EXHIBIT A

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

_____)	
Kathleen Hiraga,	)	Cancellation No. 92/047976
)	
Petitioner,	)	Reg. No.: 3125129
	)	Serial No.: 78608724
v.	)	Mark: GARDEN ORGANICS
	)	Filed: April 14, 2005
Sylvester J. Arena,	)	Registered: August 1, 2006 (Supplemental)
)	
Respondent)	
)	
_____)	

PETITIONER’S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: Petitioner, Kathleen Hiraga

RESPONDING PARTY: Respondent, Sylvester J. Arena

SET NO.: One

PLEASE TAKE NOTICE THAT petitioner, Kathleen Hiraga (“Petitioner”) requests, pursuant to Federal Rule of Civil Procedure 36 and 37 C.F.R. § 2.120, that Sylvester J. Arena (“Respondent”), answer the following First Set of Interrogatories under oath within thirty (30) days of the date of service hereof.

I.

DEFINITIONS AND INSTRUCTIONS

1. In answering these interrogatories, the responding party is required to provide not only such information as is known to it, its agents, and its affiliates, but also

information that is in the possession of its attorneys, legal assistants, investigators, and anyone else acting on its behalf, under its control, or working cooperatively with it.

2. A request that You identify or include the identity of a person calls for You to provide the identifying information, including the person's full name, last known address, and last known telephone number; and the name, address, and telephone number of the person's employer, and the person's last known position or title.

3. As used herein, the term "document(s)" refers to documents, writings, and recordings, as defined in Federal Rule of Evidence 1001, and includes the originals and all copies of handwriting, typewriting, printing, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, magnetic impulses, electronic recordings, or combinations thereof. This definition shall apply to all documents on the particular subject of which You have any knowledge or information, irrespective of who has possession, custody, or control of the documents, and irrespective of who prepared, generated, or signed the documents.

4. A request that You include an identification of a document calls for You to describe the document with sufficient particularity such that You could locate it if requested to do so. You are requested to provide the following information in your identification:

- A. The date of the document or a best estimate of the date;
- B. The name of the author(s) and the name of the addressee(s);
- C. The substance of the document; and
- D. The location of the original document or, if unknown, the location of any copies.

5. A request that You state all facts calls for You to state each and every fact known or available to You, including, but not limited to all evidence, contentions, and

opinions that You, your attorneys, legal assistants, investigators, and all persons acting on your behalf, under your control, or working cooperatively with You, have or hold.

6. You have a duty to supplement your responses to these interrogatories at such times and to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

7. As used herein, "You" includes your subsidiary and related companies.

8. As used herein, "Your Mark" means registration number 3125129 for "GARDEN ORGANICS".

II.

INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail the circumstances of the adoption and use by You of each and every mark or trade name incorporating "GARDEN ORGANICS" as an element, including a detailed specification of each good and service offered with respect to each such mark or name and the time periods during which each such mark or name was used with respect to each such good and service.

INTERROGATORY NO. 12:

Describe in detail each inquiry You have ever received or know about as to whether the services and/or goods offered by You in connection with Your Mark are associated with, affiliated with, sponsored by, approved by, and/or connected with Petitioner.

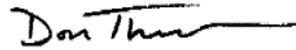
INTERROGATORY NO. 13:

If You contend that there has been any actual confusion as the result of any activities by Petitioner or by the use of any name or mark by Petitioner, please state all facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.

Dated: February 29, 2008

Respectfully submitted,

Don Thornburgh Law Corporation
Don Thornburgh, Esq.
466 Foothill Boulevard
Suite 220
La Cañada Flintridge, California 91011
Tel. 818-790-6547/Fax 818-790-6548



Don Thornburgh
Attorney for Kathleen Hiraga

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing APPLICANT'S FIRST SET OF INTERROGATORIES is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Sylvester J. Arena
2070 West Highway 46
Paso Robles, CA 93446

Executed this 29th day of February, 2008, at La Cañada Flintridge, California.



Don Thornburgh

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

EXHIBIT B

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

Kathleen Hiraga,	)	In the matter of trademark
	)	Registration No. 3125129
	)	Serial No. 78608724
Petitioner,	)	For the mark "Garden Organics"
	)	Date filed: April 14, 2005
v.	)	Date registered: August 1, 2006 (Supplemental)
	)	Cancellation No. 92/047976
Sylvester J. Arena,)	
)	
Respondent,)	
)	
)	

ANSWER TO PETITIONER'S FIRST SET OF INTERROGATORIES

Respondent:

Sylvester Arena, an individual
2070 West Highway 46
Paso Robles, California 93446

The following is submitted under oath by the Respondent.

// signed Sylvester Arena //

Sylvester Arena
March 28, 2008

INTERROGATORY NO. 1:

“Describe in detail the circumstances of the adoption and use by You of each and every mark or trade name incorporating "GARDEN ORGANICS" as an element, including a detailed specification of each good and service offered with respect to each such mark or name and the time periods during which each such mark or name was used with respect to each such good and service.

REPLY TO No. 1 –

1. Respondent started developing the Garden Organics label and line of products in September, 2003. The original product line included: *Garden Organics Organic Rose Fertilizer 7-8-4*, *Garden Organics Microbial Planting Powder*, *Garden Organics North Atlantic Seaweed Powder* and *Garden Organics Humic Acid Soil Conditioner*.
2. The initial offering of Garden Organics products occurred in November, 2003 on the back cover of the Arena Roses catalog for spring 2004. Respondent has provided evidence in the Response to Request for Documents that 19,555 copies of this catalog were mailed on December 8, 2003. {As Respondent has noted elsewhere, Arena Roses marketed and distributed rose plants, organics, garden furniture, gifts and other items through 3 channels: the annual mailorder catalog, the website ArenaRoses.com, and a retail garden center in Paso Robles, California. Arena Roses shipped items nationally. As has been acknowledged by the Respondent in other documents of this matter, Arena Roses ceased operations on or about May 31, 2006.}
3. The detailed specification of each Garden Organics product is listed on the Garden Organics Product Sheet and the individual product labels – copies of which have been provided with the documents.
4. The products were offered exclusively through the Arena Rose channels until the closing of that business in May, 2006.
5. In January 2007, Respondent contacted Star Roses – a wholesale distributor of garden roses to inquire if they would be interested in selling Garden Organics products. Bill Mann, their general manager, declined.
6. Respondent contacted Steve Bening, the sales representative for Star Roses in California. Prior to working with Star Roses, Mr. Bening sold fertilizers in southern California. During the early spring of 2007, he gave the Respondent his thoughts on potential distributors, potential products and evaluated the Garden Organics Rose Fertilizer by using it in his home garden.
7. In the early autumn of 2007, Respondent proposed the Garden Organics Rose Fertilizer (now known as Garden Organics Rose Granola) to Edmunds’ Roses – a subsidiary of JW Jung Seed Co., Randolph, Wisconsin. Edmunds’ sells roses nationally via its mailorder catalog and website. Edmunds’ added the product to their catalog and website (published November, 2007) and continues to offer the products to this day.

INTERROGATORY NO. 12:

“Describe in detail each inquiry You have ever received or know about as to whether the services and/or goods offered by You in connection with Your Mark are associated with, affiliated with, sponsored by, approved by, and/or connected with Petitioner.”

REPLY TO No. 12 – Respondent has not received inquiries in the manner described in this question.

INTERROGATORY NO. 13:

“If You contend that there has been any actual confusion as the result of any activities by Petitioner or by the use of any name or mark by Petitioner, please state all facts, including an identification of all relevant documents and all persons with knowledge of such facts, which support your contention.”

REPLY TO No. 13 – Respondent reasserts the facts presented in question 10 above.

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing ANSWER TO PETITIONER'S FIRST SET OF INTERROGATORIES is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Don Thornburgh Law Corporation
Don Thornburgh, Esq.
466 Foothill Boulevard, Suite 220
La Cañada Flintridge, California 91011

Executed this 28th day of March, 2008, at Paso Robles, California.

A handwritten signature in black ink, appearing to read "Sylvester Arena", with a horizontal line extending to the right.

Sylvester Arena
2070 West Highway 46
Paso Robles, California 93446

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Kathleen Hiraga,)	
)	Cancellation No. 92/047976
)	
Petitioner,)	Reg. No.: 3125129
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v.)	Mark: GARDEN ORGANICS
)	Filed: April 14, 2005
Sylvester J. Arena,)	Registered: August 1, 2006 (Supplemental)
)	
Respondent)	
)	
)	

PETITIONER’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to provisions of the Federal Rules of Civil Procedure Rule 34 and 37 C.F.R. §2.120, petitioner, Kathleen Hiraga (“Petitioner”) hereby requests that Sylvester J. Arena (“Respondent”) respond to each of the requests set forth below within thirty (30) days of service of such requests and produce the requested documents.

DEFINITIONS AND INSTRUCTIONS

A. “Document” means any written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer disks, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Fed. R. Civ. P. 34.

This definition expressly includes, without limitation, all originals, drafts, non-conforming copies, reproductions, facsimiles of written, typed, or printed material of any kind (for example: books, letters, contracts, minutes of a meeting, memoranda, notes on desk calendars and appointment books, canceled checks, invoices, correspondence, telegrams, telex messages, e-mail, intra-office communications, etc.), photographs and films, art work, and information stored on tape, computer disk, or any other type of data storage device. If copies of a document are not identical by reason of hand notations, initials, identification marks, or any other modification, each such non-identical copy is a separate document within the meaning of this definition.

B. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, You are instructed to produce documents as they are kept in the usual course of business or the documents shall be organized and labeled to correspond with the categories in this request. In addition, documents are to be produced in full and unexpurgated form; redacted documents will not constitute compliance with this request.

C. Selection of documents from the files and other sources and the numbering of such documents shall be performed in such a manner as to ensure that the source of each document may be determined, if necessary.

D. All documents and things are to be produced in the form, manner, and order in which they are maintained in Your files. Documents and things are to be produced in the folders, cartons, or containers in which they have been maintained, stored, clipped, stapled, or otherwise arranged in the same form and manner in which they are found.

E. Documents attached to each other should not be separated.

F. You are to produce an original of each document or thing, where available. Where the original of a document is not available, You are to produce a true and correct copy of that document.

G. Electronic records and computerized information should be produced in an intelligible format or together with a description of the system from which it derived sufficient to permit rendering the material intelligible.

H. If any requested documents or things cannot be produced in full, produce them to the extent possible, specifying each reason for Your inability to produce the remainder and stating whatever information, knowledge, or belief You do have concerning the unproduced portion.

I. If any documents or things requested were at one time in existence, but are no longer in existence, then so state, specifying for each document or thing:

- (a) the type of document or thing;
- (b) the type(s) of information contained thereon;
- (c) the date upon which it ceased to exist;
- (d) the circumstances under which it ceased to exist;
- (e) the identity of all persons having knowledge of the circumstances under

which it ceased to exist, and

- (f) the identity of all persons having knowledge or who had knowledge of the contents thereof.

J. In the event that You seek to withhold any document or information on the basis that it is properly entitled to some limitation of discovery, You are instructed to supply the requesting party with a numerical list of the documents and things for which limitation of discovery is claimed, indicating:

- (a) the identity of each author, writer, sender, or initiator of such document or thing, if any;
- (b) the identity of each recipient, addressee, or party for whom such document or thing was intended, if any, including the identity of all “cc”‘s and “bcc”‘s;

(c) the date of such document, if any, or an estimate thereof and so indicated as an estimate if no date appears on said document;

(d) the general subject matter as described on such document, or, if no such description appears, then such other description sufficient to identify said document;

(e) the paragraph and subparagraph of this request to which the document or thing is responsive; and

(f) the claimed grounds for limitation of discovery (e.g., “attorney-client privilege”).

K. Each of the categories in this Request should be construed independently and not by reference to any other category for purposes of limitation.

L. To the extent permitted by Fed. R. Civ. P. 26, these requests are continuing in nature and, if after the date of production, You become aware of further documents responsive to these requests, or if such documents come into existence, You are directed to produce such additional documents promptly for inspection and copying.

3. The invoices or other documents that evidence Your date of first use and Your date of first use in interstate or foreign commerce for “GARDEN ORGANICS” for each of the product and/or service categories for which You claim trademark or service mark rights.

23. Samples of each and every business form, letterhead, and business card used by You in connection with “GARDEN ORGANICS” or any other name or mark that includes “GARDEN ORGANICS”.

24. Representative samples of all telephone book advertisements and listings placed with respect to “GARDEN ORGANICS” or any other names or marks including “GARDEN ORGANICS”.

25. All documents relating to any and all radio or television advertising spots placed with respect to “GARDEN ORGANICS” or any other names or marks including “GARDEN ORGANICS”.

...

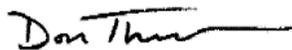
36. All documents which support any claim asserted by You in this action.

37. All documents upon which You intend to rely upon in connection with this action.

Dated: February 29, 2008

Respectfully submitted,

Don Thornburgh Law Corporation
Don Thornburgh, Esq.
466 Foothill Boulevard
Suite 220
La Cañada Flintridge, California 91011
Tel. 818-790-6547/Fax 818-790-6548



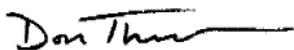
Don Thornburgh
Attorney for Kathleen Hiraga

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Sylvester J. Arena
2070 West Highway 46
Paso Robles, CA 93446

Executed this 29th day of February, 2008, at La Cañada Flintridge, California.



Don Thornburgh

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

EXHIBIT D

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

Kathleen Hiraga,	)	In the matter of trademark
	)	Registration No. 3125129
	)	Serial No. 78608724
Petitioner,	)	For the mark "Garden Organics"
	)	Date filed: April 14, 2005
v.	)	Date registered: August 1, 2006 (Supplemental)
	)	Cancellation No. 92/047976
Sylvester J. Arena,)	
)	
Respondent,)	
)	
)	

ANSWER TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Respondent:
Sylvester Arena, an individual
2070 West Highway 46
Paso Robles, California 93446

3. The invoices or other documents that evidence Your date of first use and Your date of first use in interstate or foreign commerce for “GARDEN ORGANICS” for each of the product and/or service categories for which You claim trademark or service mark rights.

[Item 2] RESPONDENT is providing a copy of Invoice #139573, dated December 15, 2003, from Colorgraphics, Inc. (PO Box 51490, Los Angeles, CA 90051-5790). The Petitioner will note that the invoice specifies that CG Job Number 110312/1066 is for the printing of 50,000 copies of the Arena Roses 2004 catalog.

[Item 3] Respondent is providing a copy of the Arena Roses 2004 catalog. Petitioner will note that ‘Garden Organics’ products appear on the back cover. Petitioner will also note that the original design of the ‘Garden Organics’ mark is identical to the current design of the ‘Garden Organics’ mark.

[Item 4] Respondent is providing a copy of Postage Statement filed with the US Postal Service on December 8, 2003 for the mailing of 19,555 catalogs

[Item 5] Respondent is providing a copy of Invoice #5521 from Accurate Mailing Service for list management and handling services for the mailing of 19,555 catalogs on December 8, 2003

23. *Samples of each and every business form, letterhead, and business card used by You in connection with “GARDEN ORGANICS” or any other name or mark that includes “GARDEN ORGANICS”.*

RESPONDENT replies that he has no business form, letterhead or business card used in connection with ‘Garden Organics’ or any other name or mark that specifically includes ‘Garden Organics’

24. *Representative samples of all telephone book advertisements and listings placed with respect to “GARDEN ORGANICS” or any other names or marks including “GARDEN ORGANICS”.*

RESPONDENT replies that he has not taken out telephone book advertisements or placed listings that specifically refer to ‘Garden Organics’ or any other names or marks including ‘Garden Organics’.

25. *All documents relating to any and all radio or television advertising spots placed with respect to “GARDEN ORGANICS” or any other names or marks including “GARDEN ORGANICS”.*

RESPONDENT replies that Arena Roses seasonally advertised on KPRL, a small AM radio station in Paso Robles, California. He does not recall that these advertisements mentioned ‘Garden Organics’.

36. *All documents which support any claim asserted by You in this action.*

RESPONDENT replies that he has provided all documents which support his claims and assertions in this matter as part of his other responses to the Admissions, the Interrogatories and this Request for Documents – with the exception of those that Respondent he has indicated he has not been able to locate in storage relating to sales figures.

37. All documents upon which You intend to rely upon in connection with this action.

RESPONDENT replies that to the best of his knowledge and foresight he has provided all documents upon which he intends to rely in this matter as part of his responses to this Request, the Interrogatories and the Admissions – with the exception of those that Respondent he has indicated he has not been able to locate in storage relating to sales figures.

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing ANSWER TO PETITIONER'S FIRST SET OF INTERROGATORIES is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Don Thornburgh Law Corporation
Don Thornburgh, Esq.
466 Foothill Boulevard, Suite 220
La Cañada Flintridge, California 91011

Executed this 28th day of March, 2008, at Paso Robles, California.

A handwritten signature in black ink, appearing to read "Sylvester Arena", with a horizontal line extending to the right.

Sylvester Arena
2070 West Highway 46
Paso Robles, California 93446

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

EXHIBIT E

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

_____)	
Kathleen Hiraga,	)	Cancellation No. 92047976
)	
Petitioner,	)	Reg. No.: 3,125,129
	)	Serial No.: 78/608724
v.	)	Mark: GARDEN ORGANICS
	)	Filed: April 14, 2005
Sylvester J. Arena,	)	Registered: August 1, 2006 (Supplemental)
)	
Respondent)	
_____)	

Petitioner's Notice of Reliance

Pursuant to 37 C.F.R. § 2.122(e), Petitioner hereby makes of record in this proceeding that attached documents obtained from the internet archive of web pages located at www.web.archive.org, as follows:

http://web.archive.org/web/*/http://arenaroses.com – archive / site update summary

www.arenaroses.com – home page – archive date 12/01/2003

www.arenaroses.com – online shopping page – archive date 12/01/2003

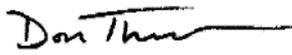
www.arenaroses.com – home page – archive date 01/05/2005

www.arenaroses.com – online shopping page – archive date 01/05/2005

Copies of these documents are attached hereto as Exhibit A. Petitioner intends to rely upon these documents to show that Respondent had not used the mark on Respondent's website as of the dates of the documents, contrary to Respondent's allegations.

Respectfully submitted,

Date: June 6, 2008

By: 

Don Thornburgh – Attorney for Petitioner
Don Thornburgh Law Corporation
466 Foothill Boulevard #220
La Cañada Flintridge, California 91011
Tel: (818) 790-6547
Fax: (818) 790-6548

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

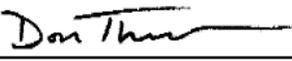
_____)	
Kathleen Hiraga,	)	Cancellation No. 92047976
)	
Petitioner,	)	Reg. No.: 3,125,129
	)	Serial No.: 78/608724
v.	)	Mark: GARDEN ORGANICS
	)	Filed: April 14, 2005
Sylvester J. Arena,	)	Registered: August 1, 2006 (Supplemental)
)	
Respondent)	
)	
_____)	

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing Petitioner's Notice of Reliance is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Sylvester J. Arena
2070 West Highway 46
Paso Robles, CA 93446

Executed this 6th day of June, 2008, at La Cañada Flintridge, California.



Don Thornburgh



Enter Web Address: All [Adv. Search](#) [Compare Archive Pages](#)

Searched for <http://arenaroses.com>

321 Results

Note some duplicates are not shown. [See all.](#)

* denotes when site was updated.

Material typically becomes available here 6 months after collection. [See FAQ.](#)

Search Results for Jan 01, 1996 - Dec 08, 2007

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
0 pages	0 pages	0 pages	0 pages	4 pages	10 pages	13 pages	20 pages	28 pages	161 pages	38 pages	8 pages
				Oct 17, 2000 * Nov 10, 2000 Dec 10, 2000 * Dec 12, 2000	Mar 02, 2001 Mar 31, 2001 * Apr 01, 2001 * Apr 05, 2001 * May 15, 2001 May 28, 2001 Jun 07, 2001 Jul 08, 2001 Jul 20, 2001 Nov 29, 2001	Jan 22, 2002 * Mar 29, 2002 * Mar 31, 2002 * May 30, 2002 * Jun 03, 2002 Jun 06, 2002 Jul 26, 2002 Aug 02, 2002 * Sep 21, 2002 Sep 26, 2002 Nov 21, 2002 * Nov 26, 2002 Nov 30, 2002 *	Jan 30, 2003 * Feb 02, 2003 * Feb 20, 2003 * Apr 03, 2003 * Apr 08, 2003 * Apr 23, 2003 Apr 25, 2003 * May 24, 2003 * May 25, 2003 May 25, 2003 * Jun 21, 2003 Jul 21, 2003 Jul 21, 2003 Aug 01, 2003 * Sep 24, 2003 * Oct 01, 2003 * Oct 02, 2003 * Dec 01, 2003 * Dec 02, 2003 * Dec 26, 2003 Dec 27, 2003 *	Feb 03, 2004 * Feb 20, 2004 * Mar 27, 2004 * Apr 10, 2004 * Apr 20, 2004 * May 25, 2004 * Jun 07, 2004 * Jun 08, 2004 * Jun 16, 2004 * Jul 01, 2004 * Jul 26, 2004 * Jul 26, 2004 * Jul 30, 2004 * Aug 12, 2004 * Aug 15, 2004 * Aug 28, 2004 * Sep 01, 2004 * Sep 04, 2004 * Sep 25, 2004 * Sep 26, 2004 * Sep 29, 2004 * Oct 15, 2004 * Oct 21, 2004 * Nov 14, 2004 * Nov 27, 2004 * Dec 04, 2004 * Dec 28, 2004 * Dec 31, 2004 *	Jan 05, 2005 * Jan 10, 2005 * Jan 17, 2005 * Feb 01, 2005 * Feb 04, 2005 * Feb 04, 2005 * Feb 07, 2005 * Feb 07, 2005 * Feb 07, 2005 * Feb 10, 2005 * Feb 11, 2005 * Feb 19, 2005 * Feb 19, 2005 * Mar 01, 2005 * Mar 03, 2005 * Mar 04, 2005 * Mar 06, 2005 * Mar 11, 2005 * Mar 13, 2005 * Mar 15, 2005 * Mar 16, 2005 * Mar 16, 2005 * Mar 18, 2005 * Mar 23, 2005 * Mar 25, 2005 * Mar 25, 2005 * Mar 30, 2005 * Mar 31, 2005 * Apr 01, 2005 * Apr 04, 2005 * Apr 06, 2005 * Apr 09, 2005 * Apr 10, 2005 * Apr 11, 2005 * Apr 13, 2005 * Apr 14, 2005 * Apr 14, 2005 * Apr 15, 2005 * Apr 16, 2005 * Apr 17, 2005 *	Jan 01, 2006 * Jan 01, 2006 * Jan 02, 2006 * Jan 02, 2006 * Jan 03, 2006 * Jan 03, 2006 * Jan 04, 2006 * Jan 10, 2006 * Jan 30, 2006 * Jan 31, 2006 * Jan 31, 2006 * Feb 02, 2006 * Feb 02, 2006 * Feb 02, 2006 * Feb 02, 2006 * Feb 07, 2006 * Feb 20, 2006 * Feb 22, 2006 * Apr 02, 2006 * Apr 03, 2006 * Apr 22, 2006 * Apr 24, 2006 * May 06, 2006 * May 17, 2006 * May 21, 2006 * Jun 10, 2006 * Jun 12, 2006 * Jun 15, 2006 * Jun 28, 2006 * Jul 01, 2006 * Jul 07, 2006 * Jul 08, 2006 * Jul 12, 2006 * Jul 19, 2006 * Jul 20, 2006 * Aug 04, 2006 * Aug 13, 2006 * Aug 24, 2006 * Aug 30, 2006 * Oct 14, 2006	Feb 09, 2007 * Feb 16, 2007 Mar 15, 2007 Apr 04, 2007 May 24, 2007 Jul 05, 2007 Aug 11, 2007 Aug 22, 2007



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Tuesday, December 2, 2003

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to our [e-newsletter](#) and [catalog](#).



Potted Roses for Fall Planting

Autumn is a great time to plant roses. The roots will get established before winter sets in. You'll have bigger blooms next spring than you'd get from a bareroot bush. Our roses are grown in 3-gallon pots that measure over 10" across.



Well-Dressed Gardener

We have a wide range of clothing for gardeners. Check out our Muck Boots, West County Waterproof Gloves and many other all-weather favorites.



Toolshed

From cleaning out the perennial border to digging in a new bio-dynamic vegetable garden -- we carry a wide range of tools for all kinds of gardening tasks.



Garden Furniture

You work hard in your garden. So, you deserve to sit back and enjoy it in one of our garden swings, adirondack chairs or benches.



Kid's Gardening

If you've ever visited our store, you know that we're surrounded by kids. Here are some great resources for smaller gardeners.



For The Birds

Our Backyard Naturalist collection of bird feeders and houses can't be beat.

Learn

[Go to our Learning Center](#)



Anatomy of a Bareroot Rose Bush

Take a very close look at how bareroot roses are structured.



Classification of the Rose

Learn about the history of the rose and how antique roses are classified.

Gardens & Artists

[More Gardens & Artists](#)



Guillot's Legacy of Excellence

Few families have contributed as much to the development of the rose as have the Guillots ("Gee-oh") of Lyon, France.



Monet's Giverny

Monet's garden, like his impressionist paintings, is a bold mix of color and texture.



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Monday, December 8, 2003

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Wednesday, January 5, 2005

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Bareroot Roses

We're offering over 300 varieties of bareroot roses this season. Order early for best selection. We'll hold them in cold storage until the proper planting time for your area.



Holiday Gift Ideas

We have a wide range of gift ideas for the holidays.



West County Gloves

West County Gloves make a great gift for the holidays. They're colorful, durable and versatile. We stock the Work, Landscape and Waterproof lines.



Garden-Scented Soaps & Candles

Check out our collection of garden-scented soaps and candles. They make perfect gifts for the holiday season.



Books for Rose Lovers

Here are some great titles for snowbound gardeners. You may not be able to get in the garden... but these books will help fulfill your passion anyway.



Toolshed

From cleaning out the perennial border to digging in a new bio-dynamic vegetable garden -- we carry a wide range of tools for all kinds of gardening tasks.

Learn

[Go to our Learning Center](#)



Anatomy of a Bareroot Rose Bush

Take a very close look at how bareroot roses are structured.



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Learn about the history of the rose and how antique roses are classified.

Gardens & Artists

[More Gardens & Artists](#)



Guillot's Legacy of Excellence

Few families have contributed as much to the development of the rose as have the Guillots ("Gee-oh") of Lyon, France.



Monet's Giverny

Monet's garden, like his impressionist paintings, is a bold mix of color and texture.



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Saturday, December 25, 2004

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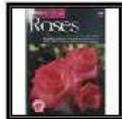
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[WELL-DRESSED GARDENER](#)



[BOTANICALS](#)



[GARDENER'S BOOKSHELF](#)



[KIDS](#)



[BACKYARD NATURALIST](#)



[HOMEGROWN FLORIST](#)



[GIFT IDEAS](#)

In the matter of trademark Registration No. 3,125,129
For the mark "Garden Organics"
Cancellation No. 92047976

EXHIBIT F

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

Kathleen Hiraga,	)	In the matter of trademark
	)	Registration No. 3125129
	)	Serial No. 78608724
Petitioner,	)	For the mark "Garden Organics"
	)	Date filed: April 14, 2005
v.	)	Date registered: August 1, 2006 (Supplemental)
	)	Cancellation No. 92/047976
Sylvester J. Arena,)	
)	
Respondent,)	
)	
)	

RESPONDENT'S NOTICE OF RELIANCE

Pursuant to 37 CFR § 2.120(e), Respondent hereby makes of record in the matter the attached documents obtained from the internet archive of web pages located at www.archive.org, as follows:

- A. http://web.archive.org/web/*/http://www.arenaroses.com
- B. www.arenaroses.com - Home Page – archive date April 14, 2005
- C. www.arenaroses.com - Garden Organics pages – archive date April 14, 2005

Respectfully submitted,

Date: August 5, 2008

By:



Sylvester J. Arena – Respondent
2070 West Hwy 46
Paso Robles, CA 93446
Tel: (805) 226-2794

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

Kathleen Hiraga,	)	In the matter of trademark
	)	Registration No. 3125129
	)	Serial No. 78608724
Petitioner,	)	For the mark "Garden Organics"
	)	Date filed: April 14, 2005
vi.	)	Date registered: August 1, 2006 (Supplemental)
	)	Cancellation No. 92/047976
Sylvester J. Arena,)	
)	
Respondent,)	
)	
)	

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing Respondent's Notice of Reliance is being deposited with the United States Postal Service, first-class postage prepaid, in an envelope addressed to:

Don Thornburgh Law Corporation
Don Thornburgh, Esq.
466 Foothill Boulevard, Suite 220
La Cañada Flintridge, California 91011

Executed this 5th day of August, 2008, at Paso Robles, California.



Sylvester Arena
2070 West Highway 46
Paso Robles, California 93446

Exhibit A.

Internet Archive Wayback Machine

http://web.archive.org/web/*/http://www.arenaroses.com

Most Visited Amazon SLB GoAn GWT FB GRdr href SAP SWLI PixSyl Px-Amn P-R P-R/Amn PRP PRP-Amn AmzA Ado B&H OneC

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USPTO TTABVUE... United States Pat... United States Pat... 37 C.F.R. 2.122, ... USPTO. ESTTA. D... Internet Archive ...

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Searched for <http://www.arenaroses.com> **322 Results**

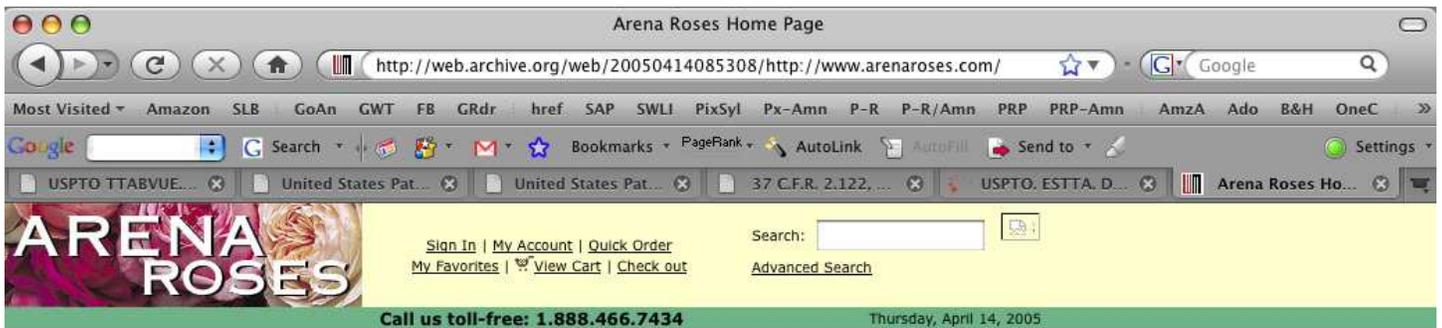
Note some duplicates are not shown. [See all.](#)
* denotes when site was updated.
Material typically becomes available here 6 months after collection. [See FAQ.](#)

Search Results for Jan 01, 1996 - Feb 07, 2008

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
0 pages	0 pages	0 pages	0 pages	4 pages	10 pages	13 pages	20 pages	28 pages	161 pages	38 pages	9 pages	0 pages
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