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

Proceeding	92047976
Party	Defendant Sylvester J. Arena
Correspondence Address	Sylvester J. Arena P.O. Box 3570 Paso Robles, CA 93447 UNITED STATES
Submission	Answer
Filer's Name	Sylvester J. Arena
Filer's e-mail	vendors@sylarenaphoto.com
Signature	/syl arena /
Date	03/31/2008
Attachments	Hiraga - 080327 response to First Set of Requests for Admissions.pdf (7 pages) (889272 bytes)

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 REQUEST FOR ADMISSIONS

Respondent:

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

REQUEST FOR ADMISSION NO. 1:

“Admit that Respondent filed application serial number 78/608724 on April 14, 2005 for “Garden Organics” in international class 001, claiming use of such mark in connection with “fertilizers, soil conditioners and soil amendments for domestic use”.”

REPLY TO No. 1 – Respondent admits that he filed application serial number 78/608724 on or about April 14, 2005 for “Garden Organics” in international class 001, claiming use of such mark in connection with “fertilizers, soil conditioners and soil amendments for domestic use”.

REQUEST FOR ADMISSION NO. 2:

“Admit that Respondent had not used the mark in commerce (as defined by the Act) on April 14, 2005.”

REPLY TO No. 2 – Respondent denies. Respondent’s first used the mark in commerce occurred on or about November 1, 2003 upon the publication of the *Arena Roses 2004 Catalog* in which GARDEN ORGANICS products were offered for sale on the back cover.

REQUEST FOR ADMISSION NO. 3:

“Admit that Respondent ceased operations of Respondent’s business known as “Arena Roses” on or about May 31, 2006.”

REPLY TO No. 3 – Respondent acknowledges that “Arena Roses” ceased operations on or about May 31, 2006.

REQUEST FOR ADMISSION NO. 4:

“Admit that Respondent ceased using the mark in commerce as of the close of operations of Respondent’s business known as “Arena Roses” on or about May 31, 2006.”

REPLY TO No. 4 – Respondent denies. The mark is the property of Sylvester Arena, an individual, as shown on the registration. The mark is not the property of “Arena Roses” – a business operated by the Respondent. Respondent denies that the closing of “Arena Roses” indicates that Respondent stopped use of the mark GARDEN ORGANICS in commerce or that he abandoned the mark. Subsequent to the closing of “Arena Roses”, Respondent endeavored to find and eventually secured an alternative means of distribution for GARDEN ORGANICS products. Further, Respondent has not abandoned the mark or his intent to use the mark at any time.

REQUEST FOR ADMISSION NO. 5:

“Admit that no product offered by Respondent appeared in any Edmunds’ Roses mail order catalog prior to November 2007.”

REPLY TO No. 5 – Respondent admits that no product offered by Respondent appeared in any Edmunds’ Roses mail order catalog prior to the publication of the Edmunds Roses Spring 2008 catalog in November, 2007.

REQUEST FOR ADMISSION NO. 6:

“Admit that Edmunds’ Roses mail order catalog for 2007 was not published until late November 2007”

REPLY TO No. 6 – Respondent does not know the date of publication for the “Edmunds’ Roses mail order catalog for 2007”. Typically annual garden catalogs are published in the autumn preceding the date on the cover. Respondent guesses that the “Edmunds’ Roses mail order catalog for 2007” was published in the autumn of 2006.

REQUEST FOR ADMISSION NO. 7:

“Admit that Respondent made no commercial use of the mark “GARDEN ORGANICS” for a period of at least one year prior to November 2007.”

REPLY TO No. 7 – Respondent denies. Respondent endeavored to find alternative means of distribution for GARDEN ORGANICS products during the winter of 2006 and the spring of 2007. Respondent entered into negotiations with Edmunds Roses during late September, 2007. Further, Respondent has not abandoned the mark nor his intent to its continued use in commerce.

REQUEST FOR ADMISSION NO. 8:

“Admit that Petitioner began providing its goods and services before Respondent.”

REPLY TO No. 8 – Respondent denies. Based on the records filed by each party at the UPSTO, the Respondent began providing its goods and services under the mark GARDEN ORGANICS prior to Petitioner.

REQUEST FOR ADMISSION NO. 9:

“Admit that Petitioner has the right to market and sell every type of good marketed and sold by Petitioner or Respondent and to display the words “Garden Organics” on its products.”

REPLY TO No. 9 – Respondent does not agree that Petitioner has the right to market and sell products that display the words “Garden Organics”.

REQUEST FOR ADMISSION NO. 10:

“Admit that Respondent has no right to prevent Petitioner from using the words “Garden Organics” in conjunction with the sale of its goods and services.”

REPLY TO No. 10 – Respondent continues to believe that he has the right to prevent Petitioner from using the words “Garden Organics” in conjunction with the sale of its goods and services.

REQUEST FOR ADMISSION NO. 11:

“Admit that Respondent would suffer no harm by Petitioner’s registration of GARDEN ORGANICS.”

REPLY TO No. 11 – Respondent continues to believe that he would be harmed by Petitioner’s registration of GARDEN ORGANICS.”

REQUEST FOR ADMISSION NO. 12:

“Admit that Respondent has no right to prevent Petitioner from registering GARDEN ORGANICS.”

REPLY TO No. 12 – Respondent believes that Petitioner’s use of the mark GARDEN ORGANICS infringes upon his rights and that Petitioner should not be granted rights to the same or a similar mark.

REQUEST FOR ADMISSION NO. 13:

“Admit that Respondent is aware of no instance of a consumer being deceived, confused, or mistaken as the result of Petitioner’s use of GARDEN ORGANICS.”

REPLY TO No. 13 – As recently as the date of this response, Respondent has observed that:

- Petitioner features GARDEN ORGANICS products in the same photograph with Petitioner’s organic fertilizer products on Petitioner’s website (http://www.organicrx.com/product_shots.html).
- Petitioner states on her website (http://www.mygardenorganics.com/about_us.html) that “We are continually developing organic garden products that include culinary container pots and window boxes, potting kits, organic custom potting soil, nutrition, tools and lifestyle items.”
- Petitioner states on her website (http://www.mygardenorganics.com/about_us.html) “GARDEN ORGANICS inc. NEWS // ORGANICS Rx GARDEN NUTRITION LINE LAUNCHES IN 2007 //

ORGANICS Rx, a parent company of Garden Organics Inc. will be rolling out the first products of a full line of plant and garden nutrition and support in February 2007.

Screen captures of these pages appear below. Based on these observations Respondent feels that the basis exists for consumers to be confused or mistaken as the result of Petitioner's use of GARDEN ORGANICS.



http://www.organicsrx.com/product_shots.html as of March 27, 2008 (11:15 PDT)



GARDEN ORGANICS

ABOUT US

**G.O. IN THE NEWS**

Santa Monica Mirror

LINKS

OrganicsRx.com
 JohnJeavons.info
 SlowFood.com
 Santa Monica Farmer's Market
 GraceRestaurant.net
 Bordergrill.com
 Copia.org
 Zinggmanns.com
 AIDentePaasta.com
 FairViewGardens.org
 Vefonews.com

CONTACT

Kathleen Hraga (Garden Director)
info@mygardenorganics.com

EMPLOYMENT

Garden Organics Inc. is always looking for qualified people to join our garden team. Please e-mail a resume and cover letter to info@mygardenorganics.com

OPEN POSITIONS

Experienced Double Diggers

ORGANICS Rx

Experienced Sales Rep
 Northern California

Office Assistant
 Part to full-time
 Start Date: February 2007

ABOUT GARDEN ORGANICS INC.

GARDEN ORGANICS INC. is a specialty grower based out of Santa Monica, California and registered as certified organic with the State of California and The USDA - National Organic Program (NOP). Our greenhouse seedlings are cultivated for culinary garden design projects, garden nurseries and fine retail stores including Whole Foods, quality Southern California Nurseries and California Farmers Markets. We are continually developing organic garden products that include culinary container pots and window boxes, potting kits, organic custom potting soil, nutrition, tools and lifestyle items.

GARDEN ORGANICS INC. NEWS**ORGANICS Rx GARDEN NUTRITION LINE LAUNCHES IN 2007**

ORGANICS Rx, a parent company of Garden Organics Inc. will be rolling out the first products of a full line of plant and garden nutrition and support in February 2007. Look for SUPERGROW and SEA-KELP 100 garden nutrition, and check back when ORGANICS Rx launches in early spring at OrganicsRx.com

CULINARY BED DESIGN FOR THE HOME AND RESTAURANT CHEF

Growing season never stops in Southern California, and we are designing Custom Culinary Beds year round for home and restaurant chefs. Imagine replacing your empty lawn with a culinary garden bed that yields heirloom varieties of tomatoes, vegetables, herbs and edible flowers twelve months out of the year. It will reduce your water bill up to 75% from conventional lawn care watering, and pay for itself in less than 6 months. Please contact us for a site consultation, or questions regarding Culinary Garden Design Services at info@mygardenorganics.com

GARDEN ORGANICS INC. BASED OUT OF YAMAGUCHI NURSERY IN WEST LOS ANGELES

Garden Organics Inc. is based out of Yamaguchi Bonsai Nursery on 1805 Sawtelle Blvd. in West Los Angeles, between Olympic and Santa Monica Boulevard. As one of the most historical and respected family run nurseries in Los Angeles (67 years and counting), we are pleased to be a part of the Yamaguchi retail store and nursery. We have a full retail selection of Garden Organics culinary seedlings and Organics Rx plant and garden nutrition available year round.

GREENHOUSE FOR SALE**CLEARSPAN GREENHOUSE- COMMERCIAL**

We are downsizing with a couple smaller versions of this model, and could not be happier with how this greenhouse has worked in all weather conditions. No leaking, frost damage, plants thrive, great temperature control.

Specs:

20 width x 12 height x 48 length
 Sides are weatherproof 6 mil. greenhouse film
 Ends are translucent 10 oz. 22 mil. premium rip stop fabric
 Adjustable Roll up sides / 4 sided ventilation
 Front and back zipper openings
 Structure is Alkyl Gatorshield steel tubing
 TOTAL PAID = \$,500.00
 SELLING = 3,995.00 ebo

Comes with ground cloth, 50% shade cloth, all hardware and wood that was additional, cinder blocks and more. Available immediately. Needs to be disassembled at site. Can facilitate labor for take down.

[click here for images.](#)

The forgoing ANSWER TO PETITIONER'S FIRST REQUEST FOR ADMISSIONS is dated:
March 27, 2008.

Respectfully submitted,

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

Sylvester Arena
2070 West Highway 46
Paso Robles, California 93446
Tel: 805-550-4514

CERTIFICATE OF SERVICE AND MAILING

It is hereby certified that a copy of the foregoing ANSWER TO PETITIONER'S FIRST REQUEST FOR ADMISSIONS 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 27th 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