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

Proceeding	91252638
Party	Defendant Mastronardi Produce Ltd.
Correspondence Address	MARK D SCHNEIDER DINSMORE & SHOHL LLP 900 WILSHIRE DRIVE SUITE 300 TROY, MI 48084 michiganpattm@dinsmore.com no phone number provided
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Date	01/10/2020
Attachments	2020-01-10 Answer and Counterclaim Opp. No. 91252638 - WOW.pdf(95479 bytes ) Exhibit A.pdf(666181 bytes )

Registrations Subject to the filing

Registration No.	3055528	Registration date	01/31/2006
International Registration No.	NONE	International Registration Date	NONE
Registrant	Gardens Alive! Inc. 5100 Schenley Place Lawrenceburg, IN 47025 UNITED STATES		

Goods/Services Subject to the filing

Class 031. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are requested, namely: Roses

Grounds for Cancellation

The mark is or has become generic	Trademark Act Sections 14(3), or Section 23 if on Supplemental Register		
Registration No.	5122304	Registration date	01/17/2017
Registrant	Gardens Alive, Inc. 5100 Schenley Place Lawrenceburg, IN 47025 UNITED STATES		

Goods/Services Subject to the filing

Class 031. First Use: 2010/05/14 First Use In Commerce: 2010/05/14

All goods and services in the class are requested, namely: Flower bulbs and corms; rhizomes; tubers; natural flowering plants and flowers;all of the foregoing excluding roses

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

GARDENS ALIVE, INC.,	)	
	)	
Opposer,	)	Opposition No.: 91252638
v.	)	Serial No.: 86434363
	)	Mark: WOW
MASTRONARDI PRODUCE LTD.	)	
	)	
Applicant.	)	
	)	
	)	

**ANSWER TO NOTICE OF OPPOSITION**

Applicant (“**Mastronardi**” or “**Applicant**”), a Canadian entity with a place of business at 2100 Rd 4 E, Kingsville, Ontario, Canada, answers the Notice of Opposition filed December 2, 2019 by Opposer, Gardens Alive, Inc. (“**Gardens Alive**” or “**Opposer**”).

Mastronardi has applied to register the mark WOW in International Class 31 for “Fresh Fruits, Namely, Fresh Strawberries, Raw Strawberries; Unprocessed Strawberries, Not For Use With Fruit Based Beverages” (“**the Application**”). The Application was filed October 24, 2014, and assigned Serial No. 86434363. Mastronardi, through its counsel, answers the Notice of Opposition as follows:

Any allegations not expressly admitted herein are denied.

### **Opposer's Goods and WOW Marks**

1. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 1, and therefore denies same.

2. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 2, and therefore denies same.

3. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 3, and therefore denies same.

4. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 4, and therefore denies same.

5. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 5, and therefore denies same.

6. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 6, and therefore denies same.

### **The Opposed Mark**

7. Mastronardi admits that on October 24, 2014, Mastronardi applied to register the mark WOW. Mastronardi denies the remaining allegations contained in Paragraph 7 for the reason they are untrue.

8. Mastronardi admits the allegations contained in Paragraph 8.

9. Mastronardi admits the allegations contained in Paragraph 9.

10. Mastronardi denies the allegations contained in Paragraph 10 for the reason they are untrue.

### **Likelihood of Confusion**

11. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 11, and therefore denies same.

12. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Mastronardi denies the allegations of this paragraph.

13. Mastronardi is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 13, and therefore denies same.

14. No response is required to this paragraph to the extent it sets forth legal conclusions and questions of law. To the extent a response is required, Mastronardi denies the allegations contained in Paragraph 14 for the reason they are untrue.

15. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Mastronardi denies the allegations of this paragraph.

16. Mastronardi denies the allegations contained in Paragraph 16 for the reason they are untrue.

Mastronardi denies the allegations contained in the unnumbered, WHEREFORE clause at the end of Garden Alive's Notice of Opposition.

### **AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION**

Mastronardi states as follows for its affirmative defenses and other defenses:

17. First Defense. The **Wow!** mark of U.S. Reg. No. 3055528 (“**the ‘528 Registration’**”) fails to function as a mark for at least the reason that WOW! is a variety of rose as disclosed in U.S. Plant Patent No. 6469 (1988), **Exhibit A**. The **Wow!** mark associated with the ‘528 Registration, and the corresponding ‘528 Registration, are invalid because WOW! is a varietal name for the goods, roses, and, thus WOW! does not function as a trademark to indicate the source of Opposer goods, roses, or identify and distinguish them from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; see TMEP §1202.12. See, e.g., *In re Pennington Seed Co.*, 466 F.3d 1053, 80 USPQ2d 1758 (Fed. Cir. 2006); *Dixie Rose Nursery v. Coe*, 131 F.2d 446, 447, 55 USPQ 315 (D.C. Cir. 1942).

18. Second Defense. Gardens Alive does not have priority and/or priority of use. The Application, filed October 24, 2014, claims priority to Mastronardi's Canadian application dated October 6, 2014. If the Application proceeds to registration, Mastronardi will have at least constructive priority over U.S. Registration No. 5122304 (“**the ‘304 Registration’**”), filed on May 4, 2016. Mastronardi may also have adopted, and used and/or promoted its mark in commerce, in good faith and without knowledge of the mark of the ‘304 Registration, prior to use and/or registration of the mark of the ‘304

Application in connection with one or more of the goods identified in that registration. See 15 U.S.C. § 1115(b)(5); See also *Tea Rose Rectanus* doctrine / Concurrent Use.

19. Third Defense. On information and belief, Gardens Alive did not have a *bona-fide* use in commerce of all the goods identified in the ‘304 Registration as of May 4, 2016, the filing date of the application for that registration. See e.g., 15 U.S.C. § 1051. The ‘304 Registration is directed to “flower bulbs and corms; rhizomes; tubers; natural flowering plants and flowers; all of the foregoing excluding roses.” The single specimen of record for the ‘304 Registration does not show use of all the goods recited in the registration. Therefore, on information and belief, the ‘304 Registration is at least partially invalid due to a failure to use the mark in connection with all the goods identified in the registration as of May 4, 2016, the filing date of the application for that registration.

20. Fourth Defense. The opposition is barred by the equitable doctrines of laches and/or estoppel, and/or acquiescence in light of numerous third party uses and/or registrations of the word “WOW”, and/or variations thereof. The asserted marks also coexist with many other “WOW” marks used and/or registered in connection with a wide variety of goods and services.

21. Fifth Defense. Mastronardi’s WOW mark creates a different commercial impression from Garden Alives’ asserted marks, particularly when considered, on information and belief, in connection with at least the relevant goods, flower plants versus fresh fruits, the channels of trade, conditions of

sale, market interface, and the use of punctuation, such that confusion is not likely to occur.

22. Sixth Defense. Given the narrow scope of protection afforded to Garden Alive's pleaded marks, confusion between Garden Alive's asserted marks and Mastronardi's mark is not likely to occur.

23. Seventh Defense. Mastronardi's proposed goods are sufficiently distinct from any of the goods identified in Garden Alive's pleaded marks such that Mastronardi's use and registration of its Mastronardi's mark is not likely to cause any confusion.

24. Eighth Defense. The USPTO Examiner examining the Application did not cite Garden Alive's pleaded registrations as a bar to registration of Mastronardi's mark under Section 2(d) of the Lanham Act, finding no likelihood of confusion between Mastronardi's mark and Garden Alive's asserted marks.

25. Ninth Defense. The USPTO Examiner's position in the examination and publication of the Application is consistent with Mastronardi's position that there is no likelihood of confusion with respect to Mastronardi's mark and the pleaded registrations and applications asserted by Garden's Alive.

26. Tenth Defense. Gardens Alive will not be damaged in any way by registration of the Application.

Mastronardi reserves the right to assert additional affirmative defenses and defenses and counterclaims as they may become known through the

process of discovery. For example, Mastronardi has alleged certain defenses and counterclaims for non-use, which may be expanded to include fraud following an opportunity for discovery.

### **OPPOSITION PRAYER FOR RELIEF**

WHEREFORE, Mastronardi prays that:

A. This Opposition proceeding be dismissed in its entirety with prejudice; and

B. Mastronardi be granted such other and further relief as the Board may deem just and proper.

### **COUNTERCLAIMS**

#### **CONSOLIDATED PETITIONS TO CANCEL U.S. REG. NOS. 3055528 AND 5122304**

Mastronardi believes it will be damaged by the maintenance of **Wow!**, of the '528 Registration, in International Class 31, for roses, owned by Gardens Alive, and petitions to cancel same.

Mastronardi further believes it will be damaged by the maintenance of **WOW!**, the '304 Registration, in International Class 31, for flower bulbs and corms; rhizomes; tubers; natural flowering plants and flowers; all of the foregoing excluding roses, owned by Gardens Alive, and petitions to cancel same.

The address of record for Gardens Alive Inc., for both registrations that are the subject of this/these petitions, is 5100 Schenley Place, Lawrenceburg, Indiana 47025

As grounds for cancellation, Mastronardi alleges:

27. Gardens Alive initiated Opposition No.: 91252638 (“**the Opposition**”), contesting registration of the Application, being Mastronardi’s U.S. Appl. Serial No.: 86434363 (“**the Application**”), which is directed to use of the mark WOW in International Class 31 for “Fresh Fruits, Namely, Fresh Strawberries, Raw Strawberries; Unprocessed Strawberries, Not For Use With Fruit Based Beverages”. The Application was filed October 24, 2014, and it claims priority to Mastronardi’s Canadian application no. 1696794, filed October 6, 2014, which has since matured to registration as TMA993695, issued April 4, 2018. If the Application proceeds to registration, Mastronardi will, therefore, have at least constructive priority over the ‘304 Registration, filed on May 4, 2016.

28. As part of the Opposition, Gardens Alive asserted three (3) registrations against Mastronardi, including the ‘528 Registration and the ‘304 Registration.

29. The ‘528 Registration is directed to the use of the mark **Wow!** in connection with roses.

30. The ‘528 Registration claims priority to International Registration No. 0805166A.

31. The ‘528 Registration issued from U.S. Application Serial No. 79000522 (“**the ‘522 Application**”), filed on November 26, 2003.

32. The ‘304 Registration issued from U.S. Application Serial No. 87024609 (“**the ‘609 Application**”), filed on May 4, 2016.

33. The single specimen of record for the '304 Registration does not show all the good recited in the registration.

34. As originally filed, on May 4, 2016, the '609 Application sought registration of the mark WOW! in connection with "Flower bulbs and corms; rhizomes; tubers; natural plants and flowers."

35. On information and belief, as of May 4, 2016, Gardens Alive had not used the mark of '304 Registration in connection with flower bulbs.

36. On information and belief, as of May 4, 2016, Gardens Alive had not used the mark of '304 Registration in connection with corms.

37. On information and belief, as of May 4, 2016, Gardens Alive had not used the mark of '304 Registration in connection with rhizomes.

38. On information and belief, as of May 4, 2016, Gardens Alive had not used the mark of '304 Registration in connection with tubers.

39. The prosecution history for the '609 Application shows that, on or about August 23, 2016, the Examining Attorney requested a law library search for varietal information.

40. The prosecution history for the '609 Application further shows that on September 9, 2016, the Examining Attorney entered an examiner's amendment for the description of goods that added the term "flowering" after term "natural", and added the phrase "**all the foregoing excluding roses**", to the end of the description of goods.

41. Gardens Alive is the applicant of U.S. Appl. Serial No. 87749639 ("**the '639 Application**"), which was filed on January 10, 2018, for use of the

mark WOW! in connection with “Fresh fruit and vegetables; Live bushes; Live shrubs; Live trees; Living fruit plants; Seeds for flowers; Seeds for fruit and vegetables”

42. On information a belief, Gardens Alive does not offer to sell fresh fruit, separate from a fruit plant, to consumers in the United States of America.

43. On information a belief, Gardens Alive does not offer to sell fresh vegetables, separate from a fruit plant, to consumers in the United States of America.

44. On information and belief, Gardens Alive is not a wholesale distributor of fresh fruits, for consumption by consumers, in the United States of America.

45. On information and belief, Gardens Alive is not a wholesale distributor of fresh vegetables, for consumption by consumers, in the United States of America.

46. On information and belief, Gardens Alive does not import fresh fruits or vegetables into the United States of America.

47. On information and belief, Gardens Alive does not sell or distribute fresh tomatoes in the United States of America.

48. On information and belief, Gardens Alive does not sell or distribute fresh peppers in the United States of America.

49. On information and belief, Gardens Alive does not sell or distribute fresh cucumbers in the United States of America.

50. On information and belief, Gardens Alive does not sell or distribute fresh berries in the United States of America.

51. The prosecution history of the '639 Application shows that, on or about April 27, 2018, an Office Action issued that included, in relevant part, a refusal to register under Trademark Act Sections 1, 2, and 45 because the applied-for mark was a varietal name for the identified goods and, thus, did not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others. More specifically, the Office Action indicated that WOW! was at least a variety of rose as disclosed by U.S. Plant Patent No. 6469 (1988), see **Exhibit A**.

52. The prosecution history for the '639 Application further shows that on July 23, 2018, the Examining Attorney entered an examiner's amendment for the description of goods that added the phrase "the aforementioned expressly excluding roses and tulips", to the end of the description of goods.

53. On information and belief, WOW! is a variety of rose.

54. On information and belief, WOW is a variety of tulip.

55. On information and belief, WOW! is a variety of rose as disclosed by U.S. Plant Patent No. 6469 (1988).

56. On information and belief, Gardens Alive has actual knowledge that WOW! is a variety of rose as disclosed by U.S. Plant Patent No. 6469 (1988).

57. On information and belief, Applicant had actual knowledge that WOW! was a variety of rose at the time it filed the '639 Application.

**CLAIM I – GENERIC / FAILURE TO FUNCTION AS A MARK  
ONLY AS TO THE '528 REGISTRATION**

Mastronardi repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

58. WOW! is a variety of rose disclosed in at least U.S. Plant Patent No. 6469 (1988), **Exhibit A**.

59. The mark of the '528 Registration, and the associated registration, that is directed exclusively to roses, fails to function as a mark, and the '528 Registration should be cancelled pursuant to at least 15 U.S.C. § 1064(3), for at least the reason that WOW! was and is a generic term and/or name for a variety of rose since well before the filing date, or any priority date, of the '528 Registration. See also Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; *In re Pennington Seed Co.*, 466 F.3d 1053, 80 USPQ2d 1758 (Fed. Cir. 2006); *Dixie Rose Nursery v. Coe*, 131 F.2d 446, 447, 55 USPQ 315 (D.C. Cir. 1942).

**CLAIM II – NON-USE WITH ALL THE GOODS  
ONLY AS TO THE '304 REGISTRATION**

Mastronardi repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

60. On information and belief, Gardens Alive did not have a *bona-fide* use in commerce of all the goods identified in the '304 Registration as of May 4, 2016, the filing date of the application for that registration. See e.g., 15

U.S.C. § 1051. The ‘304 Registration is directed to “flower bulbs and corms; rhizomes; tubers; natural flowering plants and flowers; all of the foregoing excluding roses.” The specimen of record for the ‘304 Registration does not show all the good recited in the registration. Therefore, on information and belief, ‘304 Registration is at least in part invalid due to a failure to use the mark in connection with all the goods identified in the registration as of May 4, 2016, the filing date of the application for that registration.

**ALTERNATIVE CLAIM III – PRIORITY  
ONLY AS TO THE ‘304 REGISTRATION**

Mastronardi repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

61. The Application was filed October 24, 2014 under Section 1(b), and it claims priority to Mastronardi’s related Canadian application dated October 6, 2014. To date, no evidence of use for the mark in commerce has been recorded in the file wrapper for the Application. However, on information and belief, the Application could, absent the Opposition, proceed to registration under at least Section 44E basis. The ‘304 Registration issued from an application filed on May 4, 2016, which is after the priority date of the Application. Therefore, if, in the alternative, the Board finds a likelihood of confusion between the mark of the Application, and the mark of the ‘304 Registration, the Board should also cancel the ‘304 Registration in view of the Application having priority over the ‘304 Registration.

**PRAYER FOR RELIEF**

WHEREFORE, Mastronardi prays that:

A. the '528 Registration be cancelled;

B. the '304 Registration be cancelled, at least as to those goods for which Registrant did not have a *bona-fide* use in commerce with the mark as of May 4, 2016;

C. if, in the alternative, the Board concludes that a likelihood of confusion exists between Mastronardi's mark and the mark of the '304 Registration, then cancel the '304 Registration since the Application has priority over the '304 Registration; and

D. Mastronardi be granted such other and further relief as the Board may deem just and proper.

Respectfully submitted,

DINSMORE & SHOHL LLP

Dated: January 10, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **Answer to the Notice of Opposition** and the associated **Counterclaim / Petition for Cancellation** have been served on the Opposer's attorney of record by mailing said copy on January 10, 2020, by First Class Mail, postage prepaid to the following address:

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Respectfully submitted,

DINSMORE & SHOHL LLP

Dated: January 10, 2020

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# EXHIBIT A

[54] MINIATURE ROSE PLANT NAMED WOW  
 [76] Inventor: Leslie E. Strawn, 10422 Morningside Ave., Garden Grove, Calif. 92648  
 [21] Appl. No.: 876,206  
 [22] Filed: Jun. 19, 1986  
 [51] Int. Cl.<sup>4</sup> ..... A01H 5/00  
 [52] U.S. Cl. .... Plt./7  
 [58] Field of Search ..... Plt. 7

Primary Examiner—Robert E. Bagwill

[57] ABSTRACT

The subject of the present disclosure is a new and distinct variety of miniature rose plant characterized by deep orange buds and flowers of distinctive form and further identified by the rounded, erect, drawf, compact plant.

1 Drawing Sheet

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The present invention relates to a new and distinct variety of hardy, dwarf, bush type rose plant of the miniature class, the variety being primarily characterized — as to novelty — by the deep orange buds and flowers which in general coloring effect are similar to its seed parent Anne Cocker (Floribunda — nonpatented)

The variety is further characterized by: An abundance of bloom, with flowers borne one to a stem. No side buds. Slightly fragrant.

A plant which is vigorous, of rounded bushy growth habit, very glossy foliage with pointed leaflets; the buds and flowers being similar in form and size to Tiger Butter (Miniature — U.S. Plant Pat. No. 5,329).

The plant, which has a normal height of 12 to 14 inches, can easily be maintained at lesser height by occasional trimming.

A plant which grows and blooms satisfactorily both in a greenhouse or outdoors; is good for growing in pots; and provides excellent garden decoration as well as cut flowers.

The present variety of miniature rose was originated by me in my home greenhouse, located at Garden Grove, Orange County, Calif., under conditions of careful control and observation, as a cross between Anne Cocker (Floribunda — nonpatented) as the seed parent and an unnamed seedling as the pollen parent. The unnamed seedling was derived from a cross of Puerto Rico (Floribunda—U.S. Plant Pat. No. 3,519) as the seed parent and Darling Flame (Miniature — nonpatented) as the pollen parent.

Subsequent to origination of the variety I successfully asexually reproduced it in my garden, located as fore-said, (Also propagated by Pixie Treasures Rose Nursery, 4121 Prospect Ave., Yorba Linda, Orange County, Calif.) by budding as well as by cuttings; the reproductions having run true in all respects.

The color photograph illustrates the variety, including the foliage, buds and flowers.

Referring now specifically to the new and distinct variety of miniature rose plant, the following is a detailed description thereof in outline; all major color plate indentifications being by reference to the British Colour Council Horticultural Colour Chart, except where common terms of color definition are employed.

Type: Hardy; dwarf; bushy; rounded; upright; seedling; greenhouse; outdoors; cut flowers; garden decoration; pot plant.  
 Class: Miniature.

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Variety name.—Wow!

Generic name.—Pixiwow.

Flowers borne: Singly on upright, slender stems.

Quantity of Bloom: Abundant, both outdoors and in the greenhouse.

Bud:

*Peduncle.*—Medium length, 2–2½ cm; erect, straight, slender, sturdy; bronze in color; few or many glands; no hairs.

*Size.*—Before calyx breaks — 1¾ to 2 cm length.

*Form.*—Pointed; foliaceous parts extend beyond tip of bud one third or more than its length.

*Color.*—Green and bronze. As calyx breaks — color of outside petal showing close to—Saturn red 13/1.

Bloom:

*Size.*—When fully open — small, averaging 4½ to 5 cm.

*Petalage.*—Double, averaging 25 to 30 petals, arranged symmetrically, with a few petaloids close to stamens.

*Form.*—Ovoid. As petals open symmetrically they remain in their upright position, with topmost edges of petals flaring outward. When fully open outside petals reflex back at side edges.

Petals:

*Substance.*—Moderately thick and of good substance.

*Texture.*—Smooth and satiny on both surfaces. Slightly veined. *Shape.*—Outside petals: Broad with small point at apex. Pointed base. Intermediate petals: Same as outside petals. Inside petals: Same as intermediate petals but narrower. Petaloids: Two to three close to stamens.

Color: One half to three-quarters open flowers from plants grown outdoors at Pixie Treasures Rose Nursery, Yorba Linda, Calif., April 1986.

*Outside petal.*—Outside surface: Close to Saturn red 13/2 blending deeper in the outer third to near Saturn red 13/1. Base yellow light. Inside surface: Close to Indian orange 7 13/1. Base light yellow.

*Intermediate petal.*—Outside surface: Same as outside petal. Same base Inside surface: Same as outside petal. Same base.

*Inside petal.*—Same as outside and intermediate petals. Same base.

General color effect:

*Newly open flowers.*—Symmetrically arrangement of petals of Indian orange with the lighter tones

of Saturn red of the outside surfaces giving a moderate two-tone effect; the yellow base being evident at different stages of bloom.

*Three to four days open.*—Keeps its symmetry fully open with stamens showing. Color changes to a shade close to Vermilion 18/1 or 18/2 from exposure to sunlight.

**Behavior:** Opens well in all weather. Petals tend to hang on for 5 to 6 days then fall; calyx remains and forms (usually) a hip. *Flower longevity* (April 1986).—Plant in pot — 3 to 4 days; plant in ground — 4 to 5 days; cut flowers at living room temperature — 3 to 4 days.

**Reproductive organs:**

*Stamens.*—65 to 70.

*Filaments.*—Uneven lengths; light yellow.

*Anthers.*—Golden; introse and antrose.

*Pollen.*—Moderate amount.

*Pistils.*—Projects above disc.

*Styles.*—Several, bunched; 2 mm length, reddish.

*Ovaries.*—Enclosed in calyx.

*Hips.*—Usually form from self pollenization.

*Sepals.*—Spear shaped, reflexed; three fringed, two plain.

*Seeds.*—Usually three to five.

**Foliage:**

*Leaves.*—Compound of five leaflets; length 5 to 6 mm; very glossy.

*Leaflets.*—Broad lanceolate; supported by a short petiolule.

*Rachis.*—Length 3 cm; upper side grooved; under side 2 or 3 minute thorns.

*Stipules.*—Short with slender pointed auricles, flaring outward at approx. 60 degrees.

*Color.*—Dark green; rachis and veining dark red on new foliage.

**Growth:**

*Habit.*—Dwarf, upright and rounded; 30 to 35 cm (12 to 14 in.).

*Growth.*—Vigorous; length between internodes — 2 cm or less; much branched.

*Canes.*—Slender and sturdy.

*Main stems.*—Medium green.

*Branches.*—Medium green; new growth reddish green; much branched.

*Thorns.*—3 to 5 mm length; needle declining; dilated at base; varying sizes; some branches may be thornless.

*New shoots.*—Dark reddish green.

The following is claimed:

1. A new and distinct variety of miniature rose plant, hardy, dwarf, bushy, upright, rounded, much branched habit, substantially as illustrated and described, characterized by buds and flowers which are in a color hue similar to Anne Cocker (Floribunda — non-patented) and giving the coloring effect of bright orange and resembling Tiger Butter (Miniature — U.S. Plant Pat. No. 5,329) in form and size, having buds and flowers of a distinct and unusual appearance as compared to other miniature rose plants; said flowers being fully double, unique in an ovoid form and further characterized by its vigor, abundance of bloom and foliage and ease of propagation from soft wood cuttings and by budding.

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U.S. Patent

Dec. 20, 1988

Plant 6,469

