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

Proceeding	91252638
Party	Plaintiff Gardens Alive, Inc.
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Date	02/28/2020
Attachments	WOW Answer to Counterclaims.pdf(26181 bytes )

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

GARDENS ALIVE, INC.,

Opposer,

v.

MASTRONARDI PRODUCE LTD.,

Applicant.

Opposition No.: 91252638

Application Serial No. 86434363

Mark: WOW

**ANSWER TO COUNTERCLAIMS**

Opposer Gardens Alive, Inc. (“Opposer”) hereby answers the counterclaims and consolidated petitions to cancel of Applicant Mastronardi Produce Ltd. (“Applicant”) as follows:

Except as expressly admitted herein, Opposer denies any and all material allegations contained in Applicant’s counterclaims and consolidated petitions to cancel.

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

27. Opposer admits the allegations contained in the first two sentences of Paragraph 27 and denies all remaining allegations. Specifically, for the ‘304 Registration, Applicant claims a first-use date of May 14, 2010 and common-law rights that predate the filing date for the Application.

28. Opposer admits the allegations contained in Paragraph 28.

29. Opposer admits the allegations contained in Paragraph 29.

30. Opposer admits that the ‘528 Registration claims priority based on International Registration No. 0805166.

31. Opposer admits the allegations contained in Paragraph 31.

32. Opposer admits the allegations contained in Paragraph 32.

33. Opposer admits that the specimen filed with the USPTO on May 4, 2016 for the '609 Application depicts use of Opposer's WOW! mark with hanging begonias. Opposer denies all other allegations contained in Paragraph 33, including any allegation that a specimen of use filed with a trademark application must show use of a mark with all the goods identified in the application. *See* TMEP § 904.01(a).

34. Opposer admits the allegations contained in Paragraph 34.

35. Opposer denies the allegations contained in Paragraph 35.

36. Opposer denies the allegations contained in Paragraph 36.

37. Opposer denies the allegations contained in Paragraph 37.

38. Opposer denies the allegations contained in Paragraph 38.

39. Opposer admits the allegations contained in Paragraph 39.

40. Opposer denies that the examiner's amendment was entered on September 9, 2016 but admits that the examiner amendment was entered on September 19, 2016. Opposer admits all other allegations contained in Paragraph 40.

41. Opposer admits the allegations contained in Paragraph 41.

42. Opposer admits the allegations contained in Paragraph 42.

43. Opposer admits the allegations contained in Paragraph 43.

44. Opposer denies the allegations contained in Paragraph 44.

45. Opposer denies the allegations contained in Paragraph 45.

46. Opposer admits the allegations contained in Paragraph 46.

47. Opposer denies the allegations contained in Paragraph 47.

48. Opposer denies the allegations contained in Paragraph 48.

49. Opposer denies the allegations contained in Paragraph 49.

50. Opposer denies the allegations contained in Paragraph 50.

51. Opposer admits the allegations contained in Paragraph 51.

52. Opposer admits the allegations contained in Paragraph 52.

53. Opposer lacks knowledge or information sufficient to form a belief about the allegations contained in Paragraph 53, and therefore denies the allegations contained in Paragraph 53 on that basis.

54. Opposer lacks knowledge or information sufficient to form a belief about the allegations contained in Paragraph 54, and therefore denies the allegations contained in Paragraph 54 on that basis.

55. Opposer lacks knowledge or information sufficient to form a belief about the allegations contained in Paragraph 55, and therefore denies the allegations contained in Paragraph 55 on that basis.

56. Opposer admits that it is currently aware of U.S. Plant Patent No. 6469. Opposer denies all other allegations contained in Paragraph 56.

57. Opposer denies the allegations contained in Paragraph 57.

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

Opposer repeats and reasserts, as if fully set forth herein, each and every response set forth in the foregoing paragraphs.

58. Opposer lacks knowledge or information sufficient to form a belief about the allegations contained in Paragraph 58, and therefore denies the allegations contained in Paragraph 58 on that basis.

59. Opposer denies the allegations contained in Paragraph 59.

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

Opposer repeats and reasserts, as if fully set forth herein, each and every response set forth in the foregoing paragraphs.

60. Opposer admits that the ‘304 Registration is directed to “flower bulbs and corms; rhizomes; tubers; natural flowering plants and flowers; all of the foregoing excluding roses” and that the specimen of records for the ‘304 Registration depicts use of Opposer’s WOW! mark with hanging begonias. Opposer denies all other allegations contained in Paragraph 60.

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

Opposer repeats and reasserts, as if fully set forth herein, each and every response set forth in the foregoing paragraphs.

61. Paragraph 61 contains legal contentions and/or arguments to which no response is required. To the extent Paragraph 61 contains factual allegations, Opposer denies the allegations, with the exception of the first two sentences of Paragraph 61.

**PRAYER**

WHEREFORE, Opposer prays for relief as follows:

- A. That Applicant’s Counterclaims and Petitions to Cancel be denied in their entirety and that Applicant’s Petitions to Cancel be dismissed with prejudice;
- B. That judgment be entered in Opposer’s favor on all Counterclaims; and
- C. That Opposer be granted any other relief as the Board may deem just and proper.

Dated: February 28, 2020

SIDEMAN & BANCROFT LLP

By:           /Ian K. Boyd/

Ian K. Boyd  
Anna P. Chang

Attorneys for Opposer  
Gardens Alive, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2020, I served a true and correct copy of the foregoing ANSWER TO COUNTERCLAIMS via email on:

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*/Anna P. Chang/*

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