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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91276953
Party	Defendant Amoy Food Limited
Correspondence address	OTTO O. LEE INTELLECTUAL PROPERTY LAW GROUP LLP 1871 THE ALAMEDA, SUITE 250 SAN JOSE, CA 95126 UNITED STATES Primary email: tm_docket@iplg.com 408-286-8933
Submission	Motion for Discovery Sanctions
Filer's name	Kevin Viau
Filer's email	tm_docket@iplg.com
Signature	/Kevin Viau/
Date	02/25/2024
Attachments	2024.02.25_Motion for Sanctions_AMOY.pdf(175860 bytes) 2024.02.25_KV Decl_AMOY.pdf(136003 bytes) Final_Ex. A.pdf(60969 bytes) Final_Ex. B.pdf(63863 bytes) Final_Ex. C.pdf(69331 bytes) Final_Ex. D.pdf(213763 bytes) Final_Ex. E.pdf(175330 bytes) Final_Ex. F.pdf(1662165 bytes) Final_Ex. G.pdf(521289 bytes) Final_Ex. H.pdf(137439 bytes)

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

MAY FLOWER INTERNATIONAL, INC.,

Opposer,

v.

AMOY FOOD LIMITED,

Applicant.

Mark: AMOY

Opposition No.: 91276953

Serial No.: 90757571

**APPLICANT’S MOTION FOR
SANCTIONS**

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

Pursuant to TMBP § 527.01, Applicant AMOY FOOD LIMITED (“Amoy”) hereby moves for sanctions against Opposer MAY FLOWER INTERNATIONAL, INC. (“May Flower”) for its failure to comply with the Board’s order (Dkt. No. 16) (“Compel Order”) compelling Opposer’s appearance for deposition under Fed. R. Civ. P. 30(b)(6).¹ Opposer has consistently engaged in dilatory and bad faith tactics to avoid its deposition, and has failed at every stage in its obligations to genuinely participate in these opposition proceedings. Applicant thus moves herein for sanctions consisting of grant of judgment in Applicant’s favor and against Opposer.

¹ In consideration of the Board’s suspension order (Dkt. No. 19), Applicant submits that this motion is highly relevant and related to the pending motion to extend (Dkt. No. 17) as both motions address the same issues of whether Opposer was justified in failing to timely comply with the Compel Order, whether Opposer willfully evaded its deposition and the Compel Order, and whether and what consequences Opposer should face for failure to comply with the Compel Order. The present motion and the motion to extend should be considered and decided together.

The Board allows motions for sanctions for failure to comply with a Board order under TBMP § 527.01(a). “If a party fails to comply with an order of the Board relating to discovery, including a protective order or an order compelling discovery, the Board may enter appropriate sanctions, as defined in 37 C.F.R. § 2.120(h)(1).” TBMP § 527.01(a). “The sanctions that may be entered by the Board include, inter alia, striking all or part of the pleadings of the disobedient party; refusing to allow the disobedient party to support or oppose designated claims or defenses; prohibiting the disobedient party from introducing designated matters in evidence; and entering judgment against the disobedient party. Default judgment is a harsh remedy, but may be justified where no less drastic remedy would be effective and there is a strong showing of willful evasion.” *Id.*

Without question, May Flower has violated the Compel Order by failing to make its witness available for deposition within thirty days of the order. May Flower has further repeatedly engaged in bad faith and dilatory tactics to resist the taking of its deposition, which can only be understood as a vehement attempt by May Flower to completely avoid a damaging deposition. Judgment sanctions against May Flower are warranted, as May Flower has engaged in willful evasion and a persistent pattern of dilatory conduct, and a less drastic remedy would not be effective.

May Flower’s bad faith and dilatory conduct firmly establish that it has willfully evaded the deposition and thus that entry of judgment is appropriate sanction. May Flower’s consistent evasion can only be understood as an attempt to avoid a damaging deposition and to continue to delay the matter. The Viau Declaration filed herewith sets out in detail the bad faith actions taken by May Flower in attempting to avoid the deposition. While Amoy is sensitive to the fact that a deponent may suffer from health issues which necessitate a delay, May Flower acted

unreasonably and in bad faith in claiming that its designee Min Liu could not attend deposition due to a migraine issue. First, May Flower only advised Amoy of an issue around one week prior to the deadline, ignoring Amoy's request for a designee and deposition dates for three weeks, and failing to advise of an issue for one week after Min Liu's doctor's note was issued. Second, the doctor's note did not state that Min Liu was disabled, incapacitated, unable to engage in office work, or unable to answer questions in the teleconference setting of the deposition noticed by Amoy; indeed considering she was the only person May Flower was willing to designate as general manager of May Flower, it can only be presumed Min Liu was still well enough to manage the day to day operation of the company. Third, knowing of Min Liu's purported condition, Amoy had ample time and opportunity to educate and designate an alternate witness. May Flower confirmed during the meet and confer process that it has other employees and is not a one-person operation run by Min Liu. Instead, as a clear tactic of avoidance, May Flower designated Min Liu and immediately made her unavailable.

Fourth, and perhaps most tellingly, Min Liu was plenty healthy enough to give a deposition in its case with third party Shandong Shinho Food Industries Co., Ltd. on January 26, 2024, precisely the time Amoy was seeking to take her deposition in the present case. May Flower never claimed to Amoy that Min Liu was unavailable due to commitments in another case. The only logical conclusion is that Min Liu was well enough to give a deposition pursuant to the Board's Compel Order, as evidenced by the fact she gave the deposition in the Shandong case, but that May Flower refused to timely produce her based on its failure to participate in good faith in the discovery process.

May Flower's evasion in the face of the Board's Compel Order is in addition to its previous attempts to avoid deposition before Amoy had to resort to involving the Board to seek

May Flower's compliance. After Amoy duly noticed May Flower's deposition under Rule 30(b)(6), May Flower violated its duties under TBMP § 404.06(b) as its witness failed to appear at deposition. In response to persistent attempts by Applicant to schedule Opposer's deposition, Opposer delayed in each response, if it responded at all, and affirmatively stated that it agreed to schedule a deposition in July 2023, then failed to provide any specific availability in July 2023 even after Applicant's repeated follow ups. May Flower was served with its Notice of Deposition on May 30, 2023, and over two months later on August 9, 2023, effectively refused to attend the deposition by serving only objections to the Notice of Deposition. In the meantime, May Flower strung Amoy along, indicating multiple times that it intended to schedule a deposition, but never providing any specific dates of availability; and until August 9, 2023, May Flower never indicated that it objected to the substantive topics of examination. May Flower's conduct constitutes a pattern of dilatory tactics to apparently run out the clock on the discovery cutoff before its deposition could occur. May Flower's untimely objections were improper, unreasonable, and could not shield May Flower from deposition, which the Board later compelled. May Flower had no reasonable basis not to attend deposition, and its attempts to avoid were worthy of an order to compel and constitute bad faith and willful evasion.

May Flower further failed in its discovery obligations pursuant to Rule 30(b)(6) to confer in good faith about the matters for examination. Amoy's notice of deposition was reasonable and timely under the applicable rules. Amoy requested to meet and confer with May Flower on the matters for examination, but May Flower failed to respond. (Viau Decl. (Dkt. No. 12) ¶ 4). May Flower's attempt to raise objections to the deposition topics over two months after receiving the notice of deposition was not only untimely, but clearly unreasonable considering its refusal to meet and confer on the topics in response to Amoy's request early in the process. Again, May

Flower's attempts to hide from deposition, behind unreasonable objections, further evidence a lack of good faith basis in its conduct and a pattern of willful evasion.

The supposed need to take the deposition of Eric Liu and the state court case mentioned by May Flower further evidence more bad faith conduct by May Flower. The time for May Flower to pursue the Eric Liu deposition has long passed as the deposition, which Amoy reasonably objected to, was to occur on August 28, 2023, which is the same date discovery closed. May Flower never attempted to meet and confer regarding the Eric Liu deposition until January 24, 2024, when it was readily apparent it was seeking to use the Eric Liu deposition merely as collateral for extending and avoiding its own Rule 30(b)(6) deposition. Pursuant to the Board's Compel Order, "The close of discovery is therefore reset for the *sole purpose* of completing the Rule 30(b)(6) deposition of Opposer." (emphasis added) (Dkt. No. 16 at 8). May Flower's attempt to pursue the Eric Liu deposition, in direct defiance of the Board's Compel Order regarding the limited reopening of discovery, while defying the Board's order to timely complete the Rule 30(b)(6) deposition, is pure gamesmanship, bad faith, and willful evasion.

Moreover, the state court case, lacking in any identifying detail from May Flower, is a non-sequitur and intended solely to muddy the waters. Based on Amoy's research, the case is apparently between Amoy's distributor KND Global LLC and May Flower in New York state court. Based on counsel's description, Amoy understood this case to involve non-payment / breach of contract by May Flower. May Flower contends this case may affect the timing and outcome of the pending opposition case. However, the case has no bearing as it is a state court case which cannot affect federal trademark registration rights, the subject matter does not involve federal trademark registrations or rights, and Amoy is not a party to the action. May Flower has never provided a copy of any operative complaint nor any confirming information about the case

whatsoever. The case should have no effect on this opposition case schedule, status, or outcome, and has been raised by May Flower solely to evade.

Where a party engages in a pattern of dilatory conduct and willfully disregards a Board order, entry of judgment against the party is an appropriate sanction. *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000); TMBP § 527.01(a). Similar to the *Baron Philippe de Rothschild* case, Opposer here failed to timely comply with its discovery obligations in producing its witness for deposition, disregarded a Board order compelling its compliance with discovery obligations by appearing for deposition, and even sought to further delay matters by filing a motion to extend in the face of the Board's Compel Order. The Board in *Baron Philippe de Rothschild* found that "applicant and its counsel have engaged in a pattern of dilatory tactics, have purposely avoided applicant's discovery responsibilities in this case, and have willfully failed to comply with the Board's [compel] order," and thus granted a judgment sanction. Judgment should also be issued here as Opposer's conduct reveals a pattern of evasion and bad faith, and consistent disregard of Opposer's discovery obligations. Judgment is a harsh sanction, but more than warranted on account of Opposer's willful evasion.

Additionally, a less drastic remedy would not be an effective sanction against Opposer. The Board considers less drastic sanctions for failure to comply with a discovery order, including striking all or part of the pleadings of the disobedient party, refusing to allow the disobedient party to support or oppose designated claims or defenses, and prohibiting the disobedient party from introducing designated matters in evidence. *See* TMBP § 527.01(a). The discovery process which Opposer failed to satisfy is its Rule 30(b)(6) deposition, with noticed topics covering essentially all substantive matters and material facts at issue in the case. At issue are not requests

for admission, which could be deemed admitted as sanction; or interrogatories, in which negative inferences could be taken as sanction on specific un-responded questions; or requests for production, on which Opposer could be prohibited from introducing matters in evidence as sanction. Rather, Applicant attempted to take the Rule 30(b)(6) deposition of Opposer, noticing topics of examination covering essentially all substantive aspects of the case, including without limitation the rightful ownership of the subject mark, the relationship of the parties (between Amoy as brand owner and May Flower as low level distributor), and Opposer's purported use of the mark (as supposed owner of the mark and not merely as a distributor of goods bearing the mark). It can only be assumed that Opposer knew it would have to give damaging responses and information on these topics, and thus sought to delay at all costs. A sanction other than judgment is simply not appropriate as, if a lesser sanction is granted and May Flower is again ordered to give its deposition as part of sanction, then May Flower will simply be rewarded in its intention to delay. May Flower has been able to avoid and delay for far too long already as Amoy originally noticed the deposition on May 30, 2023. Further, precluding May Flower from relying on a certain claim would not be appropriate as May Flower only asserts one claim – likelihood of confusion – for opposition.

Applicant contends that, essentially, Opposer would have had to give negative testimony as to each topic noticed for the deposition which Opposer has fought so hard to willfully avoid. Judgment is thus more than warranted as a sanction as Opposer avoided having to give such negative testimony, which Applicant could have used to prove its case and obtain judgment on the merits. No other sanction would adequately address Opposer's dilatory conduct and willful avoidance. Lesser sanction would simply reward and enable Opposer's previous delay. Applicant

accordingly asks the Board to enter judgment as sanction against Opposer for its willful disregard of the Board's Compel Order.

CONCLUSION

May Flower's pattern of bad faith and willful avoidance warrant entry of judgment in Applicant's favor as sanction for failure to comply with the Compel Order. Amoy respectfully requests that the Board enter judgment for Amoy and against May Flower, and to dismiss May Flower's opposition with prejudice.

Dated: February 25, 2024

By: /Kevin Viau/
Otto O. Lee
Kevin Viau
INTELLECTUAL PROPERTY LAW GROUP LLP
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to this action. I am employed in the County of Santa Clara, California, and my business address is 1871 The Alameda, Suite 250, San Jose, California 95126.

I hereby certify that on February 25, 2024, I served the foregoing **APPLICANT’S MOTION FOR SANCTIONS** on Opposer via email by sending the document to the person(s) at the email addresses listed below.

GE LI
KEVIN KERVENG TUNG, P.C.
136-20 38TH AVENUE, SUITE 3D
FLUSHING, NY 11354
UNITED STATES
gli@kktlawfirm.com, ligouxuan@hotmail.com, ktung@kktlawfirm.com
Phone: 7189398033

Attorneys for Opposer

Dated: February 25, 2024

By: /Kevin Viau/
Kevin Viau

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

MAY FLOWER INTERNATIONAL, INC.,

Opposer,

v.

AMOY FOOD LIMITED,

Applicant.

Mark: AMOY

Opposition No.: 91276953

Serial No.: 90757571

DECLARATION OF KEVIN VIAU

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

I, Kevin Viau, declare as follows:

1. I am an attorney at law duly admitted in the State of California, practicing with Intellectual Property Law Group LLP (“IPLG”), counsel for Applicant in this action, AMOY FOOD LIMITED (“Amoy”). I have personal knowledge of the facts set forth herein and found within the attached documents, except as to those matters stated on information and belief, which I am informed and believe are true. I provide this declaration in support of Amoy’s Motion for Sanctions against May Flower International, Inc. (“May Flower”). If called as a witness, I could and would competently testify hereto.

2. On December 27 2023, the Board issued an order (Dkt. No. 16) (“Compel Order”) granting Amoy’s Motion to Compel and requiring May Flower to produce its witness(es) for deposition under Fed. R. Civ. P. 30(b)(6) no later than January 26, 2024.

3. Also on December 27, 2023, after immediately after receiving the Compel Order, I sent an email to counsel for May Flower requesting that May Flower identify its designee(s)

pursuant to Fed. R. Civ. P. 30(b)(6) and provide available dates for deposition prior to the Board's January 26, 2024 deadline. Attached hereto as Exhibit A is a true and correct copy of the email I sent to May Flower's counsel Ge (Gordon) Li on December 27, 2023.

4. I heard nothing from May Flower's counsel until January 18, 2024.

5. On January 18, 2024, May Flower's counsel contacted me to inform that May Flower was designating Min Liu as its sole Fed. R. Civ. P. 30(b)(6) witness, but simultaneously that Min Liu was not available because she "suffers from migraine lately and the doctor suggests she should not work." In the January 18, 2024 email, counsel provided me with a doctor's note dated January 10, 2024 from Min Liu's doctor stating "she has an active migraine attack," and recommending that "she needs rest and avoid stress and overworkings [sic]." The doctor's note was a template which contained other treatment recommendations for the doctor to check if applicable. None of the other treatment recommendations were checked, namely, that "The patient...[] Is totally disabled at this time...[] Is partially disabled at this time...[] Not to participate in gym until further notice...[] Is in need of further treatment." Attached hereto as Exhibit B is a true and correct copy of the email I received from May Flower's counsel Ge (Gordon) Li on January 18, 2024.

6. In the January 18, 2024 email, May Flower's counsel requested my consent to a thirty-day extension of time to complete the deposition in light of Min Liu's purported condition.

7. I responded to May Flower's counsel on January 19, 2024 by stating that it was not reasonable for May Flower to identify a witness, then immediately make that witness unavailable for claimed health reasons. May Flower had ample time and opportunity, between December 27, 2023 and January 18, 2024, to notify Amoy of any issues, to schedule around Min Liu's condition, to arrange any necessary accommodations, and to designate and educate an

alternative witness. Instead, May Flower again sought to delay the matter, waiting over three weeks after the Board's order and my correspondence attempting to schedule the deposition to respond at all, and waiting over a week after Min Liu's doctor's appointment to advise of her health issues. Amoy received no other communication from May Flower from the date of the Board's order until January 18, 2024, such that Amoy only had notice of a supposed problem from May Flower as the deposition deadline approached in only around one week. Attached hereto as Exhibit C is a true and correct copy of the email I sent on January 19, 2024 to May Flower's counsel Ge (Gordon) Li.

8. I clarified in the January 19, 2024 email that Min Liu's doctor's note did not state that she was totally or partially disabled at that time, or that she was precluded from any office work including answering questions in front of a webcam. I further advised that the deposition noticed and planned could accommodate Min Liu's condition as the deposition was to be conducted via Zoom (or other teleconference), which Ms. Liu could take from her own home or other comfortable location, and Min Liu had many months to consider the topics and prepare given the notice was served on May 30, 2023, so there would not be any shock or surprise about the deposition content. May Flower never attempted to discuss any accommodation for Min Liu, but rather insisted on resisting and continuing to delay the deposition. Based on the totality of circumstances, Amoy found it more than reasonable to insist the deposition occur by the deadline and demanded that May Flower produce Min Liu or an alternative witness before the January 26, 2024 deadline.

9. On January 23, 2024, May Flower's counsel requested a phone conference "for a meet and confer for Min Liu's deposition and also for Eric Liu's deposition. Until this moment, May Flower had never requested to meet and confer regarding the deposition of Eric Liu (a

witness associated with Amoy), including during the time discovery was open. The Eric Liu deposition was noticed on August 9, 2023 for August 28, 2023, and Amoy objected thereto on August 22, 2023. Discovery closed on August 28, 2023. Attached hereto as Exhibit D is a true and correct copy of notice of deposition of Eric Liu, and as Exhibit E is a true and correct copy of Amoy's objection to the notice of deposition. Amoy's belief that May Flower was acting in bad faith was confirmed by May Flower still attempting to take the Eric Liu deposition after an unreasonable delay and after the Board's Compel Order which explicitly stated that "The close of discovery is therefore reset for the *sole purpose* of completing the Rule 30(b)(6) deposition of Opposer" (emphasis added) (Dkt. No. 16 at 8), all while continuing to resist its own deposition which was compelled by the Board.

10. I conducted the meet and confer phone conference with May Flower's counsel on January 24, 2024. Counsel confirmed that Min Liu, May Flower's designee, was physically unfit to give the deposition due to the migraine issue. Counsel advised that May Flower is a small company and that no other person would supposedly be proper for designation; and that Min Liu is general manager and the "person most knowledgeable." Counsel further advised that May Flower does have other employees and is not a one-person operation conducted by Min Liu. I advised that Amoy did not agree to any extension of the January 26, 2024 deadline given that May Flower could have educated an alternate witness or advised of any health issues much earlier such that accommodations could have been made for Min Liu. I stated that Amoy believed we would simply be met with more reasons to avoid and delay in thirty days if we agreed to any extension. At the end of the call, we understood our respective positions that Amoy did not agree to extension; and May Flower was not going to produce its witness before January 26, 2024, and Amoy could thus move for sanctions due to noncompliance with the Board's

order. Amoy intends to move for sanctions essentially contemporaneously with opposing the Motion for Extension. Attached hereto as Exhibit F is a true and correct copy of the email I sent to May Flower's counsel Ge (Gordon) Li on January 24, 2024 summarizing the parties' phone conference.

11. During the parties' phone conference, I further confirmed that Eric Liu would not be available for deposition because the Board reopened discovery "for the sole purpose of completing the Rule 30(b)(6) deposition of Opposer," because May Flower failed to meet and confer on the matter during discovery or within a reasonable time of the intended deposition date, and because any motion to compel would be untimely as such motion must be made within a reasonable time of the scheduled event. Amoy believes May Flower's attempt to raise the deposition of Eric Liu, while failing to fulfill its own compelled deposition, was a mere bad faith attempt to muddy the waters with whataboutism and escape a damaging deposition or continue to delay for the sole purpose of delay.

12. Further during the parties' January 24, 2024 phone conference, May Flower's counsel mentioned an ongoing case between Amoy's distributor KND Global LLC and May Flower in New York state court. Based on counsel's description, Amoy understood this case to involve non-payment / breach of contract by May Flower. Counsel stated that May Flower believed this case may affect the timing and outcome of the pending opposition case. However, Amoy believes the case has no bearing as it is a state court case which cannot affect federal trademark registration rights, the subject matter does not involve federal trademark registrations or rights, and Amoy is not a party to the action. Amoy confirmed to May Flower that the case should have no effect whatsoever on the opposition case schedule, status, or outcome. May

Flower has never provided a copy of any operative complaint or any confirming information about the case whatsoever.

13. May Flower is separately involved in a series of cases against the third party Shandong Shinho Food Industries Co., Ltd. (“Shandong”). Similarly as here, May Flower has brought opposition claims against Shandong when in fact it appears that May Flower is attempting to use and register marks which copy and usurp the marks of the legitimate brand owner and manufacturer, Shandong. Attached hereto as Exhibit F is a true and correct copy of the current docket sheet for consolidated TTAB Case No. 91252185 between May Flower and Shandong, as well as copies of the notice of opposition and answer thereto.

14. On information and belief, May Flower has engaged in similar bad faith and dilatory tactics in the Shandong case as it has engaged in here. The Shandong case has been going on for more than four years. As the most recent example, May Flower attempted to improperly notice depositions of Shandong by written questions less than two weeks before the discovery cutoff. Attached hereto as Exhibit G is a true and correct copy of Shandong’s motion to quash the notices of deposition by written questions, which describes May Flower’s bad faith efforts, and of the Board’s order granting the motion to quash.

15. On information and belief, as in this case, Shandong sought for a significant length of time to take the deposition of Min Liu, in her individual capacity and as the Fed. R. Civ. P. 30(b)(6) designee for May Flower. Attached hereto as Exhibit H is a true and correct copy of Shandong’s request for Board participation in a meet and confer with May Flower concerning its failure to produce Min Liu and cooperate in the discovery process in good faith.

16. On information and belief, Shandong did in fact take the deposition of Min Liu *on January 26, 2024*. May Flower’s counsel never advised Amoy that Min Liu was unavailable due

to commitments in this other case, or that an extension was needed based on an already scheduled deposition in the Shandong case. Min Liu was apparently well enough to give a deposition in the Shandong case, yet May Flower continued to advise Amoy that Min Liu was not well enough to give a deposition in the Amoy case. May Flower's sole reason to resist the deposition, that Min Liu was not well, is simply not credible. May Flower has acted in bad faith to avoid and delay the Min Liu deposition. The deposition should not be extended, discovery should not be extended to conduct the Eric Liu deposition, and May Flower should be sanctioned for failure to comply with the Board's Compel Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct.

Dated: February 25, 2024

By: /Kevin Viau/
Kevin Viau

EXHIBIT A



Kevin Viau <kviau@iplg.com>

May Flower v. Amoy, TTAB Case No. 91276953

1 message

Kevin Viau <kviau@iplg.com>

Wed, Dec 27, 2023 at 12:13 PM

To: Ge Li <gli@kktlawfirm.com>, ligouxuan@hotmail.com, ktung@kktlawfirm.com

Cc: Trademark Department <tm@iplg.com>

Dear Counsel,

Per the attached order issued today, the Board has compelled the attendance of May Flower's witness for deposition. Please identify May Flower's Rule 30(b)(6) designee(s), and provide available dates prior to the Board's January 26, 2024 deadline. As previously noticed, we intend to take the deposition by videoconference for the convenience of all parties.

Best regards,
Kevin Viau

INTELLECTUAL PROPERTY LAW GROUP LLP
Attorneys for Applicant
San Jose Office (Silicon Valley)
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: 408-286-8933
Fax: 408-286-8932
www.iplg.com


 **ttabvue-91276953-OPP-16.pdf**
129K

EXHIBIT B



Kevin Viau <kviau@iplg.com>

Re: May Flower v. Amoy, TTAB Case No. 91276953

1 message

Ge Li <gli@kktlawfirm.com>

Thu, Jan 18, 2024 at 11:22 AM

Reply-To: Ge Li <gli@kktlawfirm.com>

To: Kevin Viau <kviau@iplg.com>

Cc: Trademark Department <tm@iplg.com>, "Hsong ." <hsong@kktlawfirm.com>

Hi Kevin:

May Flower designates Min Liu as the 30(b)(6) witness. However, because Min Liu suffers from migraine lately and the doctor suggests she should not work (**see attached doctor's note**), Min Liu is unable to testify before the January 26, 2024 deadline because of the constant migraine. I believe the Board will not force anyone in her condition to testify. I am asking for your consent of **a 30-day extension of the deadlines**. I follow up on her condition on daily basis right now and will give you dates for her deposition once her medical condition is allowed her to attend the deposition. Thank you for your courtesy in advance. We can have a phone call to discuss if you think necessary.

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law
[136-20 38th Avenue, Suite 3D](#)
[Flushing, NY 11354](#)
Tel: (718)939-8033

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On Wednesday, December 27, 2023 at 03:13:47 PM EST, Kevin Viau <kviau@iplg.com> wrote:

Dear Counsel,

EXHIBIT C



Kevin Viau <kviau@iplg.com>

Re: May Flower v. Amoy, TTAB Case No. 91276953

1 message

Kevin Viau <kviau@iplg.com>

Fri, Jan 19, 2024 at 11:30 AM

To: Ge Li <gli@kktlawfirm.com>

Cc: Trademark Department <tm@iplg.com>, "Hsong ." <hsong@kktlawfirm.com>

Dear Gordon,

It is not reasonable for May Flower to identify a witness, then immediately make that witness unavailable for claimed health reasons. Since the Board's order compelling the deposition, there has been ample time and opportunity for May Flower to notify us of any issues, to schedule around Ms. Liu's condition, to arrange any necessary accommodations, and to designate an alternative. Instead, we receive another apparent attempt to delay the matter, over three weeks after the Board's order and our correspondence attempting to schedule the deposition and only just over a week before the January 26 date. We have received no other communication from you since the date of the Board's order until this late moment, so we only have notice of a supposed problem from your end now that we are getting up against the deadline.

We have further reviewed the doctor's note which recommends to "rest, and avoid stress and overworking." The note does not state Ms. Liu is totally disabled or unable to engage in desk/office based work. We believe the deposition we have planned and noticed accommodates Ms. Liu's condition. The deposition is to be conducted via Zoom (or other teleconference), which Ms. Liu may take from her own home or other comfortable location. Ms. Liu has had many months to consider the topics and prepare given the notice was served on May 30, 2023, so there will not be any shock or surprise about the deposition content. Further, the deposition should not last more than 4 hours or so.

We again demand that May Flower produce its witness for deposition to occur by January 26, 2024 in accordance with the Board's order compelling the deposition. At this time, we understand that you are not putting forward Ms. Liu for deposition by January 26. If we do not hear from you, we will take it that you are not complying with the Board's order compelling May Flower to produce its witness for deposition by January 26, and we will be seeking sanctions.

Best regards,
Kevin Viau

On Thu, Jan 18, 2024 at 12:51 PM Kevin Viau <kviau@iplg.com> wrote:

Dear Gordon,

We are disappointed to hear this. We are evaluating your request and will let you know our position shortly.

Best regards,
Kevin Viau

On Thu, Jan 18, 2024 at 11:22 AM Ge Li <gli@kktlawfirm.com> wrote:

Hi Kevin:

May Flower designates Min Liu as the 30(b)(6) witness. However, because Min Liu suffers from migraine lately and the doctor suggests she should not work (**see attached doctor's note**), Min Liu is unable to testify before the January 26, 2024 deadline because of the constant migraine. I believe the Board will not force anyone in her condition to testify. I am asking for your consent of **a 30-day extension of the deadlines**. I follow up on her condition on daily basis right now and will give you dates for her deposition once her medical condition is allowed her to attend the deposition. Thank you for your courtesy in advance. We can have a phone call to discuss if you think necessary.

EXHIBIT D

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

In the Matter of Application No. 90757571
Filed: June 7, 2021



For the mark:

Published in the Official Gazette: May 31, 2022

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May Flower International, Inc.,

Opposer,

v.

Amoy Food Limited,

Applicant.

Opposition No.: 91276953

**NOTICE TO TAKE
DEPOSITION UPON ORAL
EXAMINATION
OF ERIC LIU**

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PLEASE TAKE NOTICE, that pursuant to Fed. R. Civ. P. 30(b), defendant, by its attorneys, KEVIN KERVENG TUNG, P.C., will, before an officer authorized to administer oaths, take the deposition upon oral examination of Eric Liu, as the Senior Sales and Marketing Director of Amoy Food Limited. The deposition shall be taken on August 28, 2023, at 10:30 a.m. EST, through video conference, or at the offices of KEVIN KERVENG TUNG, P.C., 136-20 38th Avenue, Suite 3D, Flushing, New York 11354, and will continue from day to day until completed.

Dated: August 9, 2023

KEVIN KERVENG TUNG, P.C.
Attorneys for Opposer



Ge Li, Esq.
136-20 38th Avenue, Suite 3D
Flushing, New York 11354
(718) 939-4633
gli@kktlawfirm.com

To:

Otto O. Lee, Esq.
Kevin Viau, Esq.
INTELLECTUAL PROPERTY LAW
GROUP LLP
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day a true and correct copy of the foregoing was served on all counsel of record by email addressed as follows:

Otto O. Lee, Esq.
Kevin Viau, Esq.
INTELLECTUAL PROPERTY LAW
GROUP LLP
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

Dated: August 9, 2023

/s/ Ge Li
Ge Li, Esq.

EXHIBIT E

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

MAY FLOWER INTERNATIONAL, INC.,

Opposer,

v.

AMOY FOOD LIMITED,

Applicant.

Mark: AMOY

Opposition No.: 91276953

Serial No.: 90757571

**OBJECTION TO NOTICE OF
DEPOSITION OF ERIC LIU**

Pursuant Fed. R. Civ. P. 26 and 30 and TBMP § 404, Applicant AMOY FOOD LIMITED hereby objects to the Notice of Deposition of Eric Liu served by Opposer MAY FLOWER INTERNATIONAL, INC.

According to TBMP § 404.03(b), the deposition of a foreign party or its officer, director, managing agent, or Rule 30(b)(6) designee shall occur at the foreign party's location upon written questions. The Board will not order a party residing in a foreign country to come to the United States for the taking of their discovery deposition. *See id.* Applicant is organized and located in Hong Kong. Opposer has attempted to set the deposition of Eric Liu in Flushing, NY. However, as Applicant's Senior Sales and Marketing Director, Eric Liu's deposition is to occur only upon written questions at Applicant's location, Hong Kong. Neither Opposer nor the Board may compel a foreign party to come to the United States for deposition. Opposer's noticed deposition is accordingly improper, and Eric Liu is not available for the oral deposition as noticed by Opposer, either in Flushing, NY or by video conference.

Further, Opposer has failed to provide adequate and reasonable notice of the deposition. First, Opposer has not designated a place for the deposition as required under Rule 30(b)(1) as Opposer's notice

specifies “through video conference, or at the offices of KEVIN KERVENG TUNG, P.C.” as the location. By designating essentially two locations for the deposition, neither Applicant nor its witness can know the precise location of the deposition. Second, Opposer noticed the deposition just nineteen days before the scheduled date and the end of the discovery period and without first contacting Applicant for scheduling. The Board provides that “It is strongly recommended that the deposing party contact the party sought to be deposed (or whose officer, director, etc., is sought to be deposed) well in advance of the proposed deposition in order to arrange a mutually convenient time for the deposition. The closing of a party’s discovery period does not constitute a compelling need for failing to provide reasonable notice of deposition.” TBMP § 404.05. Finally, Opposer attempts to take the deposition of Applicant’s witness, yet has failed to make its own witness available for deposition by Applicant pursuant to Applicant’s reasonable and proper notice of deposition under Rule 30(b)(6). Applicant served Opposer’s deposition on May 30, 2023, noticed for June 23, 2023, yet Opposer never provided availability for its witness despite affirmatively stating to Applicant on June 13, 2023 that it would provide availability for deposition in the month of July 2023 and despite Applicant’s numerous attempts to meet and confer. Opposer cannot reasonably expect to notice and proceed with Applicant’s deposition when it has flagrantly disregarded its obligations to participate in discovery and make its witness available.

Applicant reserves the right to make all further objections to the deposition of any witness of Applicant, including without limitation to subject matter, relevance, competence, and materiality, before or during any deposition.

Dated: August 22, 2023

By: /Kevin Viau/
Otto O. Lee
Kevin Viau
INTELLECTUAL PROPERTY LAW GROUP LLP
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to this action. I am employed in the County of Santa Clara, California, and my business address is 1871 The Alameda, Suite 250, San Jose, California 95126.

I certify that on August 22, 2023, I served the foregoing **OBJECTION TO NOTICE OF DEPOSITION OF ERIC LIU** on Opposer via email by sending the document to the person(s) at the email addresses listed below.

GE LI
KEVIN KERVENG TUNG, P.C.
136-20 38TH AVENUE, SUITE 3D
FLUSHING, NY 11354
UNITED STATES
gli@kktlawfirm.com, ligouxuan@hotmail.com, ktung@kktlawfirm.com

Attorneys for Opposer

Dated: August 22, 2023

By: /Kevin Viau/
Kevin Viau

EXHIBIT F



Opposition

Number: 91252185

Filing Date: 11/11/2019

Status: Pending

Status Date: 12/29/2023

General Contact Number: 571-272-8500

Interlocutory Attorney: [ANDREW P BAXLEY](#)

Paralegal Name: [NICOLE M THIER](#)

Defendant

Name: [Shandong Shinho Food Industries Co., Ltd.](#)

Correspondence: [CHRISTIANE S CAMPBELL](#)

DUANE MORRIS LLP
30 S 17TH ST
PHILADELPHIA, PA 19103-4196
UNITED STATES
ccampbell@duanemorris.com, lmatturri@duanemorris.com,
bvinci@duanemorris.com, idocketing@duanemorris.com
Phone: 215-979-1817

Serial #: [88428830](#)

[Application File](#)

[Assignment](#)

Application Status: OPPOSITION PENDING

Plaintiff

Name: [May Flower International, Inc.](#)

Correspondence: [GE LI](#)

KEVIN KERVENG TUNG PC
136-20 38TH AVE, SUITE 3D
FLUSHING, NY 11354
UNITED STATES
gli@kktlawfirm.com, ktung@kktlawfirm.com, lwyang@kktlawfirm.com
Phone: 718-939-4633

Prosecution History

#	Date	History Text	Due Date
45	01/26/2024	D APPEARANCE / POWER OF ATTORNEY	
44	01/16/2024	EXTENSION OF TIME GRANTED	
43	01/12/2024	P MOT FOR EXT W/ CONSENT	
42	01/08/2024	TRIAL DATES REMAIN AS SET	
41	01/05/2024	D REQUEST FOR BD PARTICIPATION	
40	12/29/2023	PROCEEDINGS RESUMED	
39	12/22/2023	D REPLY IN SUPPORT OF MOTION	
38	12/04/2023	P OPP/RESP TO MOTION	
37	11/13/2023	D MOT TO QUASH	
36	10/31/2023	SUSPENDED	
35	10/25/2023	NOTICE OF DEPOSITION UPON WRITTEN QUESTIONS	

34	10/25/2023	NOTICE OF DEPOSITION UPON WRITTEN QUESTIONS	
33	09/08/2023	TRIAL DATES RESET	
32	08/18/2023	D OPP/RESP TO MOTION	
31	08/14/2023	P MOT FOR EXT W/O CONSENT	
30	06/14/2023	PROCEEDINGS RESUMED	
29	04/12/2023	SUSP PEND DISP OF OUTSTNDNG MOT	
28	04/07/2023	D OPP/RESP TO MOTION	
27	04/06/2023	P MOT FOR EXT W/O CONSENT	
26	03/29/2023	TRIAL DATES REMAIN AS SET	
25	03/27/2023	REQ FOR BD PARTICIPATION IN CONFERENCE	
24	03/14/2023	P EXPERT DISCLOSURES	
23	03/13/2023	D EXPERT DISCLOSURES	
22	11/07/2022	EXTENSION OF TIME GRANTED	
21	11/01/2022	D MOT FOR EXT W/ CONSENT	
20	10/13/2022	TRIAL DATES REMAIN AS SET	
19	09/28/2022	D REQ FOR DISCOVERY CONFERENCE-ESTTA	
18	09/28/2022	D CHANGE OF CORRESP ADDRESS	
17	08/25/2022	CORRECTION TO BD ORDER	
16	08/24/2022	CONSOLIDATED; TRIAL DATES RESET	
15	03/30/2022	D MOT GRANTED; RESPONSE DUE	
14	12/30/2021	P OPP/RESP TO MOTION	
13	12/15/2021	CONSOLIDATED (PARENT); SUSP PEND MOT TO DISMISS IN 92069339	
12	08/03/2021	TRIAL DATES RESET	
11	06/30/2021	RESPONSE DUE	
10	06/17/2021	P MOT TO RESUME PROCEEDINGS	
9	03/25/2021	SUSP PEND DISP OF CIVIL ACTION	
8	02/26/2021	D RESP TO BD ORDER/INQUIRY	
7	02/17/2021	RESPONSE DUE 30 DAYS (DUE DATE)	03/19/2021
6	02/25/2020	SUSP PEND DISP OF CIVIL ACTION	
5	12/17/2019	D MOT TO SUSP PEND DISP CIV ACTION	
4	12/17/2019	ANSWER	
3	11/11/2019	INSTITUTED	
2	11/11/2019	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	12/21/2019
1	11/11/2019	FILED AND FEE	

Results as of 02/14/2024 08:31 PM

Search:

ESTTA Tracking number: **ESTTA1023089**

Filing date: **12/17/2019**

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

Proceeding	91252185
Party	Defendant SHANDONG SHINHO FOOD INDUSTRIES CO., LTD..
Correspondence Address	CHRISTIANE S. CAMPBELL DUANE MORRIS LLP 30 S. 17TH ST. PHILADELPHIA, PA 19103-4196 ccampbell@duanemorris.com, ipdocketing@duanemorris.com no phone number provided
Submission	Answer
Filer's Name	Christiane S. Campbell
Filer's email	ccampbell@duanemorris.com
Signature	/Christiane S. Campbell/
Date	12/17/2019
Attachments	Cong Ban Lv Chinese Characters Answer to Notice of Opp 12-17-19.pdf(349264 bytes)

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

In The Matter Of Application Serial Nos. 88428830

Filed: May 14, 2019

For Mark: 

Published in the Official Gazette: Oct. 22, 2019

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May Flower International, Inc.,

Opposer,

Opposition No.: 91252185

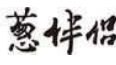
v.

Shandong Shinho Food Industries Co., Ltd.,

Applicant.

-----X

ANSWER TO NOTICE OF OPPOSITION

On November 11, 2019, May Flower International, Inc. (“Opposer”), filed a Notice of Opposition (U.S. Opposition No. 91252185) to Shandong Shinho Food Industries Co., Ltd.’s (“Applicant”) U.S. Application Serial No. for the mark  (defined as the “Second Cong Ban Lv” mark).

In Answer to Opposer’s Notice of Opposition, Applicant pleads and avers as follows:

1. Opposer is and has been in the business of food importation and distribution since 2002. In connection with this business, Opposer offers for sale and distributes bean pastes, sauces, and food seasonings products.

ANSWER:

Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's allegations set forth in Paragraph 1.

2. The Second Cong Ban Lv mark consists of three Chinese characters. These Chinese characters in the mark transliterate to “Cong Ban Lv.” The English translation for each of the characters is as follows: 葱 (scallion or green onion), 伴 (companion or mate), 侣 (companion or mate). Since at least as early as December, 2003, Opposer has used the generic designation “葱,” “拌,” “酱” to identify its bean paste and sauce products, which means “scallion,” “stir,” and “sauce” in English respectively. Opposer needs to be able to use this designation in connection with the promotion and sale of its bean paste and sauce products, as it is a common generic designation to identify these products. Attached as **Exhibit A** are true and correct copies of Opposer’s products showing Opposer’s generic usage of the designation.

ANSWER:

Applicant admits that the mark Opposer has defined as the “Second Cong Ban Lv mark” consists of three Chinese Characters. Applicant admits that the three Chinese Characters may be transliterated to “Cong,” “Ban,” and “Lv” which mean “scallion companion” or “companion of scallion” in English. Applicant denies Opposer’s characterization of certain Chinese Characters as generic. Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 2.

3. The generic designation “葱,” “伴侣,” has been used not only by Opposer, but also by other companies to identify key characteristic of their goods. Attached as **Exhibit B** are photos of products showing generic use of “葱,” “伴侣,” by other companies in the industry.


ANSWER:

Applicant denies Opposer’s characterization of certain Chinese Characters as generic. Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 3.



4. The generic designation “葱,” “伴侣,” has also been used by members of the public as a generic name for one specific kind of sauce. For example, on Baidu (a Chinese search engine), people are asking what is the difference between “葱伴侣” and “甜面酱¹.” Attached as **Exhibit C** are true and correct copies of such inquiries on Baidu showing generic use of “葱,” “伴侣,” by the general public. (English translation of this page is also attached in **Exhibit C**)

ANSWER:

Applicant denies Opposer’s characterization of certain Chinese Characters as generic. Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 4, and Applicant points out that a number of the allegations contained in Paragraph 4 and its footnote are wholly irrelevant to proceedings in the U.S.

5. On Mar. 29, 2011, Teh-San Sun (the principal of Shandong Shinho Food Industries Co., Ltd., hereinafter “Shandong Shinho”) applied for a design mark  (the “First Cong Ban Lv” mark) to USPTO (Serial No. 85280283), which was registered on Feb. 14, 2012 (US Registration No. 4098259). The Chinese characters in the First Cong Ban Lv mark are identical to the ones in the Second Cong Ban Lv mark. A comparison of these two marks is as follows:

¹ According to Wikipedia (https://en.wikipedia.org/wiki/Tianmian_sauce), 甜面酱 or sweet noodle sauce in English, is a thick, smooth, dark brown or black paste with either a mild, savory or sweet flavor. It is commonly used in Northern Chinese cuisine, Northeastern Chinese cuisine, as well as Korean-Chinese cuisine. Peking duck and jajangmyeon are two popular dishes that feature the sauce.

The First Cong Ban Lv mark	The Second Cong Ban Lv mark
	

ANSWER:

Applicant admits that U.S. Application Serial No. 85280283 was filed on March 29, 2011 and that on February 14, 2012 the application matured to registration No. 4098259. Applicant admits that the application was filed in the name of Teh-San Sun, an individual. Applicant admits that Teh-San Sun is the principal of, and a licensor to, Shandong Shinho Food Industries Co., Ltd. Applicant admits that the Chinese Characters that appear in what Opposer has defined as the “First Cong Ban Lv mark” are the same as the Chinese Characters that appear in what Opposer has defined as the “Second Cong Ban Lv mark.” Applicant admits that the marks that appear in the above table are the marks that are the subjects of what Opposer has defined as the “First Cong Ban Lv mark” and the “Second Cong Ban Lv mark.” Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 5.

6. On July 18, 2018, Shandong Shinho commenced a lawsuit against the Opposer in the United States District Court, the Southern District of Texas, alleging the Opposer’s use of “葱拌酱” designation infringed on the First Cong Ban Lv mark and Opposer committed unfair competition. The case was later transferred to the Eastern District of New York (Civil Action No.

19-cv-01621). In the federal court case, the Opposer counterclaimed to cancel the First Cong Ban Lv mark based on a claim of Fraud. At this moment, the case is still pending.

ANSWER:

Applicant admits that there is a pending federal civil case between the parties, *Shandong Shinho Food Industries, Ltd. v. May Flower International*, 19-cv-1621 (EDNY 2019) and Applicant will be moving to suspend the present opposition proceedings on the basis of the same. Applicant admits that Opposer counterclaimed to cancel the U.S. registration for the First Cong Ban Lv mark. The remaining allegations set forth in Paragraph 6 are denied.

7. While the above-mentioned litigation was still ongoing, on May 14, 2019, Shandong Shinho Food Industries Co., Ltd. ("Applicant") filed Application Serial No. 88428830 to register the Second Cong Ban Lv mark as a trademark with the United States Patent and Trademark Office in connection with Sweet bean paste, Soybean paste, Garlic spicy sauces, Spicy sauces, condiments in the nature of sauces, Cooking sauces, Savory sauces, Dipping sauces, without disclaiming any portion of the alleged mark.

ANSWER:

Applicant admits that on May 14, 2019, Applicant filed U.S. Application Serial No. 88428830 for what Opposer defines as the Second Cong Ban Lv mark, and that application covers "Sweet bean paste, Soybean paste, Garlic spicy sauces, Spicy sauces, condiments in the nature of sauces, Cooking sauces, Savory sauces, Dipping sauces" in International Class 30. Applicant admits that its application did not include a disclaimer. The remaining allegations set forth in Paragraph 7 are denied.

8. On Oct. 22, 2019, the USPTO approved Application Serial No. 88428830 for publication without requiring a disclaimer.

ANSWER:

Applicant admits that U.S. Application Serial No. 88428830 was published on October 22, 2019, though the USPTO issued a notification of notice of publication as of October 2, 2019. Applicant admits that the application does not contain a disclaimer. Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 8.

FIRST GROUND FOR OPPOSITION – GENERICNESS

9. The primary significance of “葱伴侣” to relevant consumers is as a generic designation. It is therefore incapable of distinguishing Applicant’s products from those sold by Opposer and others in the food seasoning industry. By claiming exclusive rights in the designation “葱伴侣,” Applicant seeks to prevent Opposer and other legitimate competitors from using a precise and common designation that identifies its sauce products. Opposer and its competitors selling/providing sauces products, as well as the general public, need to use the designation “葱,” “伴侣” to be able to properly identify these sauces products.

ANSWER:

Denied.

10. Therefore, Opposer would be injured if Applicant is permitted to obtain a registration for the designation “葱伴侣,” giving Applicant the right to exclude Opposer and others in the industry from using generic terminology to identify their sauces products.

ANSWER:

Denied.

11. Based on the foregoing, registration of the Second Cong Ban Lv mark exceeds the scope of permissible registration under 15 U.S.C. § 1052 for marks “by which the goods of the applicant may be distinguished from the goods of others.”

ANSWER:

Applicant denies that its application for the Second Cong Ban Lv mark “exceeds the scope” of 15 U.S.C. § 1052. Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 11.

SECOND GROUND FOR OPPOSITION - MERE DESCRIPTIVENESS

12. The designation is merely descriptive of Applicant’s sauces products, and Applicant has not shown and cannot show that the designation has acquired distinctiveness.

ANSWER:

Denied.

13. As a descriptive designation without secondary meaning, “葱伴侣” does not distinguish Applicant’s sauces from those produced/sold/provided by Opposer and others in the food seasoning industry.

ANSWER:

Denied.

14. By claiming exclusive rights in the designation “葱伴侣,” Applicant seeks to prevent Opposer and others from using the descriptive designation, which is necessary to accurately describe their sauces products.

ANSWER:

Denied.

15. Therefore, Opposer would be injured by the registration sought by Applicant for the descriptive designation “葱伴侣” without a disclaimer, which would give Applicant the right to exclude Opposer and others in the industry from using ordinary terminology to describe their sauces products.

ANSWER:

Denied.

16. Based on the foregoing, registration of the Second Cong Ban Lv mark exceeds the scope of permissible registration under 15 U.S.C. § 1052(e)(1), which prohibits registration of merely descriptive terms.

ANSWER:

Applicant denies that its application for the Second Cong Ban Lv mark “exceeds the scope” of 15 U.S.C. § 1052. Applicant is without sufficient knowledge or information on which to form a belief as to the truth of Opposer's remaining allegations set forth in Paragraph 16.

THIRD GROUND FOR OPPOSITION – PENDING LITIGATION

17. The Second Cong Ban Lv mark is identical to the Chinese characters in the First Cong Ban Lv mark.

ANSWER:

Admitted.

18. The validity of the First Cong Ban Lv mark has been challenged by Opposer in the federal litigation.

ANSWER:

Applicant admits that Opposer has challenged the validity of the First Cong Ban Lv mark registration in the civil action titled *Shandong Shinho Food Industries, Ltd. v. May Flower*

International - 19-cv-1621 (EDNY 2019). The remaining allegations set forth in Paragraph 18 are denied.

19. It is the policy of the Trademark Trial and Appeal Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

ANSWER:

Admitted.

20. Therefore, the application for the Second Cong Ban Lv mark should be stayed, pending the result of the federal litigation.

ANSWER:

Applicant admits that the present opposition should be suspended pending the outcome of the civil litigation. The remaining allegations set forth in Paragraph 20 are denied.

APPLICANT'S AFFIRMATIVE DEFENSES

1. Applicant repeats and realleges its Answer in Paragraphs 1 through 20 as though set forth fully herein.

2. Applicant reserves the right to raise additional affirmative defenses as may become apparent through discovery and up to trial.

FIRST AFFIRMATIVE DEFENSE: Opposer's Notice of Opposition does not set forth a claim upon which the relief sought can be granted.

3. Applicant, itself or through its predecessors-in-interest, has been offering staple foods, namely, food seasonings, sauces, and soy bean paste under its Cong Ban Lv marks since at

least as early as February, 1997, and has offered these goods in U.S. commerce since at least as early as December 31, 2008.

4. Applicant is the owner of the First Cong Ban Lv mark and the Second Cong Ban Lv mark and variants, and corresponding applications and registrations throughout the world, including those referenced in the present opposition.

5. Applicant's Cong Ban Lv marks that are the subjects of U.S. and other Applications and Registrations include a Logo mark (First Cong Ban Lv mark) and a Chinese Character mark (Second Cong Ban Lv mark). Each incorporates the Chinese Characters that transliterate to "Cong Ban Lv" and that mean "scallion companion" or "companion of scallion" in English.

6. The relevant public would not understand Applicant's Cong Ban Lv marks primarily to refer to its staple food products, namely, food seasonings, sauces, and soy bean paste.

7. Applicant's Cong Ban Lv marks are not descriptive terms for its staple food products, namely, food seasonings, sauces, and soy bean paste. Even assuming, arguendo, that Applicant's Cong Ban Lv marks are descriptive (which is expressly denied), the Cong Ban Lv marks have acquired secondary meaning by virtue of more than ten years of consecutive use in U.S. commerce, and substantial sales and marketing.

8. On information and belief, Opposer or a party(ies) related to opposer, filed its own applications to register marks that are comprised entirely of and/or incorporate the characters below, that transliterate to Cong Ban Jiang and mean "sauce with scallions" or "scallion mixing with/in bean sauce" in English. These are U.S. Applications Serial Nos. 88061719, 87770958, and 86757408.

葱拌醬



9. On information and belief, the Chinese Characters that mean “Cong Ban Jiang” were not disclaimed from any of the applications referenced in Applicant’s Paragraph 8, above.

10. On information and belief, Opposer does not take the position that the Chinese Characters for Cong Ban Jiang are generic or descriptive of food products.

11. Opposer cannot credibly take the position that Applicant’s Cong Ban Lv marks, including the Second Cong Ban Lv mark that is the subject of this opposition, are generic or descriptive.

12. Opposer alleges that, pursuant to TTAB practice and procedure, the opposition proceedings should be suspended pending the outcome of the pending corresponding civil litigation, and “therefore the application for the Second Cong Ban Lv mark should be stayed, pending the result of the federal litigation.”

13. While suspension is technically the correct result, the application for the Second Cong Ban Lv mark will effectively be suspended pending the outcome of the instant opposition, and the instant opposition should be suspended pending the outcome of the civil litigation.

14. Opposer has not moved the Board for a suspension pending civil litigation, and therefore the naked allegations set forth by Opposer in its Paragraphs 19 and 20 are insufficient grounds upon which to grant relief.

15. Opposer has claimed genericness, descriptiveness, and pending litigation as its grounds for opposition to the Subject Application. None of these claims are sufficiently substantiated in the present opposition, and therefore Opposer has failed to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE: Opposer is before the Board with unclean hands.

16. On information and belief, and in consideration of allegations set forth in Opposer's Paragraph 1, above, Opposer or parties related to Opposer were distributors or resellers of Applicant's food products bearing the Cong Ban Lv marks. Opposer was therefore necessarily aware of Applicant's Cong Ban Lv marks.




17. Opposer, or parties related to Opposer, adopted for itself and filed applications for the Cong Ban Jiang marks referenced in Applicant's Paragraph 8, above.

18. Opposer's (or parties related to Opposer) use of the Cong Ban Jiang marks is therefore necessarily later in time than Applicant's own use of its Cong Ban Lv marks. It is implausible that Opposer's mark could have been the subject of independent creation.

19. On information and belief, Opposer's adoption and use of its or related parties' Cong Ban Jiang marks is retaliation against Applicant because Applicant was unable to grant Opposer or its related parties exclusive distributorship of Applicant's products.

20. Further to Opposer's vengeful acts in the marketplace, Opposer is abusing the Board and Board proceedings to retaliate against Applicant and Applicant's principal. Specifically, Applicant has been forced to defend its rights in ten separate Board proceedings (including the instant opposition), nine of which were filed against Applicant or its principal by Opposer or related entities. These proceedings are identified and explained below:

OPPOSITIONS/ CANCELLATION ACTIONS

<u>MARK</u>	<u>NATURE OF ACTION</u>	<u>BASES</u>
U.S. Serial No. 88090394 	<i>Harry Li v. Sun</i> , Opp. No. 91246143	Deceptiveness 2(a); Immoral / Scandalous 2(a); and Fraud, <i>Bose</i> . TERMINATED (Dismissed with prejudice, for failure to state a claim)
U.S. Reg. No. 4082684 	<i>Harry Li v. Sun</i> , Cncl. 92070528	Deceptiveness 2(a); Immoral / Scandalous 2(a); and Fraud, 14(3) and <i>Bose</i> . TERMINATED (Dismissed with prejudice, for failure to state a claim)
U.S. Reg. No. 4148766 	<i>Harry Li v. Sun</i> , Cncl. 92070509	Abandonment 14(3); Deceptiveness 2(a); Immoral/ Scandalous 2(a) Fraud 14(3) and <i>Bose</i> . TERMINATED (Dismissed with prejudice, for failure to state a claim)

<u>MARK</u>	<u>NATURE OF ACTION</u>	<u>BASES</u>
<p>U.S. Reg. No. 4098259</p> 	<p><i>Captain Liu v. Sun</i>, Cncl. 92069339</p>	<p>Abandonment 14(3); Genericness 14(3); 43(a); Deceptiveness 2(a); Immoral / Scandalous 2(a); Disparaging 2(a); Functionality 2(e); Fraud 14(3) and Bose; Violation of Collective / Certification Marks</p> <p>Suspended pending Civil Lit.</p>
<p>U.S. App. No. 88428830</p> 	<p><i>May Flower International, Inc. v. Shandong Shinho</i>, Opp. No. 91252185</p>	<p>Descriptiveness 2(e)(1); genericness 1, 2, and 45; Pending Litigation 2.117(a)</p> <p>Present opposition.</p>
<p>U.S. Reg. No. 4072021</p> 	<p><i>May Flower International, Inc. v. Teh-San Sun</i>, Cncl. No. 92072769</p>	<p>Fraud 14(3) and Bose</p> <p>Pending</p>
<p>U.S. Reg. No. 4148766</p> 	<p><i>May Flower International, Inc. v. Teh-San Sun</i>, Cncl. No. 92072865</p>	<p>Fraud 14(3) and Bose</p> <p>Pending</p>
<p>U.S. App. No. 88061719</p> 	<p><i>Shandong Shinho Food Industries Co., Ltd. v. GB Green Gastronome, LLC</i>, Opp. No. 91252441</p>	<p>Priority and likelihood of confusion</p> <p>Pending</p>

<u>MARK</u>	<u>NATURE OF ACTION</u>	<u>BASES</u>
U.S. Reg. No. 4082684 	<i>May Flower International, Inc. v. Teh-San Sun</i> , Cncl. No. 92072841	Fraud 14(3) and <i>Bose</i> and non-use Pending
U.S. Reg. No. 4071937 	<i>May Flower International, Inc. v. Teh-San Sun</i> , Cncl. No. 92072917	Fraud 14(3) and <i>Bose</i> and non-use Pending

21. Notably, the first three proceedings were terminated upon Applicant's principal's successful motions to dismiss on the bases that the complaining party failed to set forth claims upon which relief could be granted. The dismissals were with prejudice as to the opposer / petitioner in each case.

22. The parties in the position of opposer / petitioner, and parties in privity with them, are precluded from re-litigating the dismissed actions, under the doctrine of *res judicata*.

23. Opposer and its related parties have no real interest in the marks that are the subjects of the applications and registrations they are seeking to block or cancel, and cannot demonstrate how they would be harmed by the registration or continued registration of the same.

24. In this, and in all related proceedings, Opposer is before the Board with unclean hands.

THIRD AFFIRMATIVE DEFENSE: Opposer is estopped from objecting to registration of the Second Cong Ban Lv mark by Applicant.

25. Opposer is estopped from alleging Applicant's Second Cong Ban Lv mark is descriptive and/or generic where Opposer has sought federal protection for a near identical mark.

26. In view of the arguments and facts set forth in Paragraphs 1 – 25, above, Opposer is estopped from disputing Applicant's use and registration of its First Cong Ban Lv mark and Second Cong Ban Lv mark.

Dated: December 17, 2019

DUANE MORRIS LLP

By: /Christiane S. Campbell/
Christiane S. Campbell

Attorneys for Applicant,
Shandong Shinho Food Industries Co., Ltd.

Christiane S. Campbell
30 South 17th Street
Philadelphia, PA 19103
(tel) 215.979.1817
(fax) 215.979.1020
ccampbell@duanemorris.com

CERTIFICATE OF SERVICE

I, Christiane S. Campbell, Esq., counsel to Shandong Shinho Food Industries Co., Ltd. in the above-captioned proceeding, hereby certify that, on the 17th day of December, 2019, I served a copy of the foregoing Answers to May Flower International, Inc.'s Notice of Opposition, by email, upon the following individual(s):

Ge Li, Esq.
Kevin Kerveng Tung, P.C.
Queens Crossing Business Center
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
gli@kktlawfirm.com and ktung@kktlawfirm.com.

By: /Christiane S. Campbell/
Christiane S. Campbell

ESTTA Tracking number: **ESTTA1014841**

Filing date: **11/11/2019**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	May Flower International, Inc.		
Entity	Corporation	Citizenship	New York
Address	56-72 49th Pl. Maspeth, NY 11379 UNITED STATES		

Attorney information	Ge Li Kevin Kerveng Tung, P.C. 136-20 38th Ave, Suite 3D Flushing, NY 11354 UNITED STATES gli@kktlawfirm.com, ktung@kktlawfirm.com, lwyang@kktlawfirm.com 7189394633		
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Applicant Information

Application No	88428830	Publication date	10/22/2019
Opposition Filing Date	11/11/2019	Opposition Period Ends	11/21/2019
Applicant	SHANDONG SHINHO FOOD INDUSTRIES CO., LTD. JIGEZHUANG, LONGWANGZHUANG TOWN LAIYANG CITY, SHANDONG PROVINCE CHINA		

Goods/Services Affected by Opposition

Class 030. First Use: 1997/02/01 First Use In Commerce: 2008/12/31 All goods and services in the class are opposed, namely: Sweet bean paste, Soybean paste, Garlic-spicy sauces, Spicy sauces, condiments in the nature of sauces, Cooking sauces, Savory sauces, Dipping sauces
--

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is generic	Trademark Act Sections 1, 2 and 45
Other	Pending litigation, Trademark Rule 2.117(a)

Related Proceedings	Cancellation Proceeding No. 92069339; United States District Court, Eastern District of New York, civil action number 19-cv-01621
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Attachments	Notice of Opposition.pdf(114928 bytes) Exhibits A-C.pdf(1794090 bytes)
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Signature	/Ge Li/
Name	Ge Li
Date	11/11/2019

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

In The Matter Of Application Serial Nos. 88428830

Filed: May 14, 2019

For Mark: 

Published in the Official Gazette: Oct. 22, 2019

-----X
May Flower International, Inc.,

Opposer,

Opposition No.:

v.

Shandong Shinho Food Industries Co., Ltd.,

Applicant.

-----X

NOTICE OF OPPOSITION

May Flower International, Inc. ("Opposer"), a corporation organized and existing under the laws of New York with a principal place of business at 56-72 49th Pl., Maspeth, New York, 11379, believes that it will be damaged by the issuance of a registration for the alleged trademark



(the "Second Cong Ban Lv" mark), as shown in Application Serial No.

88428830 (the "Application"), and hereby opposes the Application pursuant to Sections 2(e)(1) and 13(a) of the Lanham Trademark Act of 1946 ("Lanham Act") on the grounds that



is a generic or merely descriptive designation for the sauces in the Application, 15 U.S.C. §§ 1052(e)(1), 1063(a). Opposer further opposes the Application on the ground that the Second Cong Ban Lv mark is identical or similar to a registered mark (United States Trademark Registration No. 4098259, the "First Cong Ban Lv" mark), which is the

subject of a pending litigation in the United States Federal District Court, Eastern District of New York. As grounds for opposition, Opposer alleges as follows:

1. Opposer is and has been in the business of food importation and distribution since 2002. In connection with this business, Opposer offers for sale and distributes bean pastes, sauces, and food seasonings products.


2. The Second Cong Ban Lv mark consists of three Chinese characters. These Chinese characters in the mark transliterate to “Cong Ban Lv.” The English translation for each of the characters is as follows: 葱 (scallion or green onion), 伴 (companion or mate), 侣 (companion or mate). Since at least as early as December, 2003, Opposer has used the generic designation “葱,” “拌,” “酱” to identify its bean paste and sauce products, which means “scallion,” “stir,” and “sauce” in English respectively. Opposer needs to be able to use this designation in connection with the promotion and sale of its bean paste and sauce products, as it is a common generic designation to identify these products. Attached as **Exhibit A** are true and correct copies of Opposer’s products showing Opposer’s generic usage of the designation.



3. The generic designation “葱,” “伴侣,” has been used not only by Opposer, but also by other companies to identify key characteristic of their goods. Attached as **Exhibit B** are photos of products showing generic use of “葱,” “伴侣,” by other companies in the industry.

4. The generic designation “葱,” “伴侣,” has also been used by members of the public as a generic name for one specific kind of sauce. For example, on Baidu (a Chinese search

engine), people are asking what is the difference between “葱伴侣” and “甜面酱¹.” Attached as **Exhibit C** are true and correct copies of such inquiries on Baidu showing generic use of “葱,” “伴侣,” by the general public. (English translation of this page is also attached in **Exhibit C**)

5. On Mar. 29, 2011, Teh-San Sun (the principal of Shandong Shinho Food

Industries Co., Ltd., hereinafter “Shandong Shinho”) applied for a design mark  (the “First Cong Ban Lv” mark) to USPTO (Serial No. 85280283), which was registered on Feb. 14, 2012 (US Registration No. 4098259). The Chinese characters in the First Cong Ban Lv mark are identical to the ones in the Second Cong Ban Lv mark. A comparison of these two marks is as follows:

The First Cong Ban Lv mark	The Second Cong Ban Lv mark
	

6. On July 18, 2018, Shandong Shinho commenced a lawsuit against the Opposer in the United States District Court, the Southern District of Texas, alleging the Opposer’s use of “葱拌酱” designation infringed on the First Cong Ban Lv mark and Opposer committed unfair competition. The case was later transferred to the Eastern District of New York (Civil Action No.

¹ According to Wikipedia (https://en.wikipedia.org/wiki/Tianmian_sauce), 甜面酱 or sweet noodle sauce in English, is a thick, smooth, dark brown or black paste with either a mild, savory or sweet flavor. It is commonly used in Northern Chinese cuisine, Northeastern Chinese cuisine, as well as Korean-Chinese cuisine. Peking duck and jajangmyeon are two popular dishes that feature the sauce.

19-cv-01621). In the federal court case, the Opposer counterclaimed to cancel the First Cong Ban Lv mark based on a claim of Fraud. At this moment, the case is still pending.

7. While the above-mentioned litigation was still ongoing, on May 14, 2019, Shandong Shinho Food Industries Co., Ltd. ("Applicant") filed Application Serial No. 88428830 to register the Second Cong Ban Lv mark as a trademark with the United States Patent and Trademark Office in connection with Sweet bean paste, Soybean paste, Garlic spicy sauces, Spicy sauces, condiments in the nature of sauces, Cooking sauces, Savory sauces, Dipping sauces, without disclaiming any portion of the alleged mark.

8. On Oct. 22, 2019, the USPTO approved Application Serial No. 88428830 for publication without requiring a disclaimer.

FIRST GROUND FOR OPPOSITION – GENERICNESS

9. The primary significance of “葱伴侣” to relevant consumers is as a generic designation. It is therefore incapable of distinguishing Applicant’s products from those sold by Opposer and others in the food seasoning industry. By claiming exclusive rights in the designation “葱伴侣,” Applicant seeks to prevent Opposer and other legitimate competitors from using a precise and common designation that identifies its sauce products. Opposer and its competitors selling/providing sauces products, as well as the general public, need to use the designation “葱,” “伴侣” to be able to properly identify these sauces products.

10. Therefore, Opposer would be injured if Applicant is permitted to obtain a registration for the designation “葱伴侣,” giving Applicant the right to exclude Opposer and others in the industry from using generic terminology to identify their sauces products.

11. Based on the foregoing, registration of the Second Cong Ban Lv mark exceeds the scope of permissible registration under 15 U.S.C. § 1052 for marks “by which the goods of the applicant may be distinguished from the goods of others.”

SECOND GROUND FOR OPPOSITION - MERE DESCRIPTIVENESS

12. The designation is merely descriptive of Applicant’s sauces products, and Applicant has not shown and cannot show that the designation has acquired distinctiveness.

13. As a descriptive designation without secondary meaning, “葱伴侣” does not distinguish Applicant’s sauces from those produced/sold/provided by Opposer and others in the food seasoning industry.

14. By claiming exclusive rights in the designation “葱伴侣,” Applicant seeks to prevent Opposer and others from using the descriptive designation, which is necessary to accurately describe their sauces products.

15. Therefore, Opposer would be injured by the registration sought by Applicant for the descriptive designation “葱伴侣” without a disclaimer, which would give Applicant the right to exclude Opposer and others in the industry from using ordinary terminology to describe their sauces products.

16. Based on the foregoing, registration of the Second Cong Ban Lv mark exceeds the scope of permissible registration under 15 U.S.C. § 1052(e)(1), which prohibits registration of merely descriptive terms.

THIRD GROUND FOR OPPOSITION – PENDING LITIGATION

17. The Second Cong Ban Lv mark is identical to the Chinese characters in the First Cong Ban Lv mark.

18. The validity of the First Cong Ban Lv mark has been challenged by Opposer in the federal litigation.

19. It is the policy of the Trademark Trial and Appeal Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

20. Therefore, the application for the Second Cong Ban Lv mark should be stayed, pending the result of the federal litigation.

WHEREFORE, Opposer respectfully requests that its opposition be sustained and that U.S. Application Serial No. 88428830 be denied. Alternatively, the application with U.S. Application Serial No. 88428830 shall be stayed pending the result of the federal litigation.

Dated: Queens, New York
November 11, 2019

Respectfully submitted,

KEVIN KERVENG TUNG, P.C.
Attorneys for Opposer
May Flower International, Inc.

/s/Ge Li
Ge Li, Esq.
Queens Crossing Business Center
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Tel: (718)939-4633

CERTIFICATE OF SERVICE

The undersigned certifies that on the date set forth below a copy of the foregoing document entitled Notice of Opposition was served on the following by email:

Christiane S. Campbell
Counsel for Applicant
Shandong Shinho Food Industries Co., Ltd.
ccampbell@duanemorris.com

Dated: November 11, 2019

/s/Ge Li _____
Ge Li

Exhibit “A”



醬拌

低鹽

老北京

炸醬

Bean Paste

新工藝 純天然

適合減鹽並健康

生菜麻醬

香辣味

自然發酵

鮮魚

片醬面

淨重 100g

Exhibit “B”



Kikkoman Teriyaki Sauce Garlic & Green Onion -- 20.5 fl oz
★★★★☆ 2

\$19.25 Prime

All Departments Search



Food / Condiments, Sauces & Spices / Condiments



Kikkoman Teriyaki Garlic & Green Onion Sauce, 20.5 oz

★★★★☆ 3 reviews Kikkoman Walmart # 570405467

\$5.51 - \$8.12

Pack Size: Choose an option

- ~~Single~~
\$2.64
\$ 0.14 / oz
- 2 Pack**
\$5.51
\$ 0.13 / oz
- 3 Pack**
\$8.12
\$ 0.13 / oz

Pickup Only

Qty?

1

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Back to search results | Listed in category: Collectibles > Advertising > Food & Beverage > Other Food & Beverage Ads



Ge Li
glikktlawfirm@gmail.com

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Chinese Food Snack Cereal Powder Raisin Oatmeal 即食冲饮 五谷磨房 提子燕麦 五谷伴侣 燕麦片 280g

Bethfirstto [write a review](#)

Condition: **New**

Sale ends in: 05d09h16m

Quantity: 5 available / [2 sold](#)

Was: ~~US\$19.99~~

You save: **\$1.00 (5% off)**

Price: **US\$18.99**

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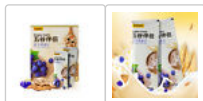
[huarenigou-com](#) (171) 100% Positive feedback

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Have one to sell?

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Shipping: **\$8.00** Standard Shipping from outside US | [See details](#)

See details about international shipping here.

Item location: Shandong, China

Ship to: Worldwide [See exclusions](#)

Delivery: Estimated between **Mon, Dec. 2 and Mon, Dec. 30**

This item has an extended handling time and a delivery estimate **greater than 13 business days**.

Payments:

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Chinese Snack Walnut Sesame Black Bean Cereal

\$32.73
~~\$39.92~~
Free shipping
Lastone



Lipinpuzi duck meat gift pack
Small packaging instant food gift

\$28.79
~~\$36.99~~
Free shipping
Lastone



Chinese Herbal Tea Rose Konjak Powder MOYU 中国

\$21.53
~~\$25.94~~
Free shipping
Seller 99.0% positive



Snacks Chinese Instant Food Jellyfish Slices Haizhe

\$21.89
~~\$26.69~~
Free shipping
New



Chinese Food Snacks Guangxi Snail Powder

\$16.35
~~\$19.94~~
Free shipping
Seller 99.2% positive



【老金磨方 红豆薏米粉 薏仁粉 600g/罐】五谷杂粮餐粉

\$23.98
~~\$28.99~~
Free shipping
New

5999.TV



中起食品饮料招商网

1588.TV



火爆粮油调味品招商网

Exhibit “C”

搜索答案 我要提问



葱伴侣大酱 甜面酱区别

买了这2种酱，看看吃法都差不多。味道当然有点不一样。不过放到菜里我感觉都差不多。所以好奇有啥区别。

我来答 分享 举报

浏览 7572 次

5个回答

#活动# 知道“双11”，答题即将全面开启，千元礼金等你来拿！



V肃

推荐于2017-09-24

葱伴侣大酱是用大豆加工的，经过一些处理后专门用来沾葱、黄瓜等蔬菜生吃的；甜面酱是用面粉加工的，其实也吃不出甜来，也挺咸的，可以做菜时放点或沾蔬菜生吃。炒菜时最好不要放葱伴侣，味道不好，一般的知名菜如酱牛肉、酱香排骨、宫爆鸡丁等等都是放面酱的，就连红烧肉放些面酱也味道超好。

15 分享 举报



妈妈高女儿胖

2008-09-08

就像楼上两位说的一样。摊鸡蛋饼的时候可以把甜面酱铺在饼上卷起来吃。喜欢吃咸的话就用葱伴侣大酱

2 分享 举报

更多回答 (3)

其他类似问题

- 大酱、甜面酱、黄酱有什么区别啊？要详细一点的 2012-01-05
- 豆瓣酱和甜面酱的区别？拜托各位大神 2014-06-22
- 豆瓣酱，甜面酱与黄豆酱的不同之处 2015-08-14
- 葱伴侣大酱怎么做好吃，葱伴侣大酱的吃法 2017-04-07
- 做京酱肉丝的甜面酱可以用什么代替？ 2010-08-18
- 黄豆酱和豆瓣酱的区别 2015-06-24
- 甜面酱哪个牌子的比较正宗 2017-02-09
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- 为什么清朝皇帝都爱住养心殿？
- 为什么全球矿产资源分布极不均匀？
- 成年人最大的体面：大胆谈钱，别太要脸

等你来答

换一换

- 如何参与百度知道“双11”答题活动？赢... 34857人想问 我来答
- 双十一当天适合表白吗？ 34040人想问 我来答
- 如果只能买一件商品，你会买什么？ 22679人想问 我来答
- 今年双十一，你会拉朋友一起“淘宝羊球”吗？ 13172人想问
- 双十一你买过最超值的商品是？ 16699人想问
- 双十一男朋友应该帮忙清空购物车吗？ 18078人想问 我来答

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Search for I have to ask

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category newspaper

Onion companion miso sweet noodle sauce difference

bought these 2 kinds of sauces and see how they are eaten. The taste is of course a bit different. But I feel the same when I put it in the dish.

So there is a difference in curiosity.

Hey, I will

answer

5 answers

#活动# "Double 11" answer activity, reward plus code! The highest 2,000 yuan shopping gift!



V

Recommended on 2017-09-24

The onion companion miso is processed with soybeans. After some treatment, it is specially used for raw vegetables such as onions and cucumbers. The sweet noodles are processed with flour. In fact, they can not be eaten sweet, but also very salty. Put some food or eat raw vegetables. When cooking, it is best not to put onion companion, the taste is not good, the general well-known dishes such as sauce beef, sauce ribs, gong bang chicken, etc. are all face-to-face sauce, even the braised pork sauce is also very good. .

15 comment



Mom high daughter fat

2008-09-08

Just like the two upstairs said. When spreading the omelet, you can put the sweet sauce on the cake and roll it up. If you like salty, use the onion partner miso

2 comment

more answers (3)

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- What is the difference between miso, sweet sauce and yellow sauce?2012-01-05
- the difference between bean paste and sweet sauce?2014-06-22What is Please come to the gods To be more detailed
- Bean paste, the difference between sweet noodles and soy sauce2015-08-14
- to eat onion partner miso, eat onion partner miso2017-04-07How
- What can be used to make sweet sauce of Beijing sauce pork?2010-08-18
- difference between soy sauce and bean paste2015-06-24The
- Which brand of noodles is more authentic?mei
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EXHIBIT G

ESTTA Tracking number: **ESTTA1321676**
Filing date: **11/13/2023**

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

Proceeding no.	91252185
Party	Defendant Shandong Shinho Food Industries Co., Ltd.
Correspondence address	CHRISTIANE S CAMPBELL DUANE MORRIS LLP 30 S 17TH ST PHILADELPHIA, PA 19103-4196 UNITED STATES Primary email: ccampbell@duanemorris.com Secondary email(s): lmatturri@duanemorris.com, bvinci@duanemorris.com, idocketing@duanemorris.com 215-979-1817
Submission	Motion to Quash
Filer's name	Christiane S. Campbell
Filer's email	lmatturri@duanemorris.com, ccampbell@duanemorris.com
Signature	/Christiane S. Campbell/
Date	11/13/2023
Attachments	Shinho Motion to Quash Re Shinho and Sun Depo Notices and Ex A and B. pdf(454366 bytes)

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

<p><i>May Flower International, Inc.</i> (Opposer)</p> <p>v.</p> <p><i>Shandong Shinho Food Industries Co., Ltd.</i> (Applicant)</p>	<p>Consolidated Opposition No. 91252185 (parent)</p> <p>U.S. App. No. 88428830</p> <p> (“Cong Ban LV Mark”)</p>
<p><i>Captain Liu</i> (Petitioner)</p> <p>v.</p> <p><i>Teh-San Sun and Shandong Shinho Food Industries Co., Ltd.</i> (Respondent)</p>	<p>Cancellation No. 92069339 (child)</p> <p>U.S. Reg. No. 4098259</p> <p> (“Cong Ban LV Design Mark”)</p>
<p><i>Shandong Shinho Food Industries Co., Ltd.</i> (Opposer)</p> <p>v.</p> <p><i>GB Green Gastronome, LLC</i> (Applicant)</p>	<p>Opposition No. 91252441 (child)</p> <p>U.S. App. No. 88061719</p> <p> (“Cong Ban Jiang Mark”)</p>

**SHANDONG SHINHO FOOD INDUSTRIES, CO., LTD. AND TEH-SAN SUN’S
MOTION TO QUASH NOTICES OF DEPOSITION BY WRITTEN QUESTIONS**

Opposer/Respondent Shandong Shinho Food Industries Co., Ltd. (“Shinho” or “Opposer”) and Respondent Teh-San Sun (“Sun”) (collectively, the “Shinho Parties”), hereby move to quash to Petitioner Captain Liu (“Liu”) and Opposer May Flower International, Inc. (“May Flower”) (collectively, the “May Flower Parties”)’s Rule 31 Notices of Deposition by Written Questions (the “Notices”).

I. PROCEDURAL AND FACTUAL BACKGROUND

The Board is familiar with the extended procedural background surrounding discovery in these consolidated proceedings. The Shinho Parties therefore do not repeat that history herein, but incorporate by reference their Oppositions to the May Flower Parties’ first and second unilateral

motions for extension of the discovery period. *See* TTABVUE #28, 32. These filings summarize the discovery history and May Flower’s continuous delay tactics in detail.

The fact most relevant to this Motion is that Shinho is a Chinese entity, organized under Chinese law, and having a principal place of business in China. *See* Proceeding No. 91252441, TTABVUE 1, at p. 1 (“Opposer, Shandong Shinho Food Industries Co., LTD., a Chinese limited liability company, having a principal place of business at JIGEZHUANG, LONGWANGZHUANG TOWN, LAIYANG CITY, SHANDONG PROVINCE, CHINA . . .”). All witnesses identified in Shinho’s Initial Disclosures—and all employees with knowledge relevant to these proceedings—are located outside of the United States, in mainland China. *Id.* (identifying Shinho’s principal place of business in Shandong Province, China); *see also* Shinho’s Initial Disclosures (all identified witnesses reside in China) originally served on the May Flower Parties on September 20, 2021 for Cancellation Proceeding No. 92069339, September 27, 2021 for Opposition Proceeding No. 91252185, and October 25, 2021 for Cancellation Proceeding No. 91252441. Shinho does not have knowledgeable employees outside of mainland China. Similarly, Teh-San Sun resides in China.

II. ARGUMENT

The Board permits parties before it to file motions to quash deposition notices “on a variety of grounds.” TBMP § 521. These grounds include, but are not limited to, the notices being untimely, harassing, or otherwise improper. *Id.* The notices of deposition filed with respect to the Shinho Parties are improper and should be quashed on several grounds.

A. The Notices Should Be Quashed Because Depositions Are Prohibited in Mainland China

The Notices are improper and should be quashed because they seek the deposition of a Chinese resident and Chinese corporate representatives in mainland China—a request forbidden by Chinese law.

The Board’s Rules and the TBMP clearly state that a party seeking the deposition of a foreign party must comply with all applicable laws of the jurisdiction in which the individual resides. *See* TBMP § 404.03(b). Thus, for even a deposition on written questions to proceed, it must be permissible under the laws of the relevant foreign jurisdiction.

As stated above and communicated to May Flower’s counsel on multiple occasions, the Shinho Parties and all employees of Shinho with relevant knowledge are located in mainland China. Under Chinese law, depositions for use in foreign proceedings are prohibited. As explained by the United States Department of State, “China does **not** permit attorneys to take depositions in China for use in foreign courts.” *See Judicial Assistance Country Information – People’s Republic of China*, U.S. Department of State – Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html> (last visited Nov. 2, 2023). Indeed, “[p]articipation in such activity could result in the arrest, detention or deportation of the American attorneys and other participants.” *Id.* Thus, the noticed depositions do not comply with, and are not permitted under, Chinese law. The Notices should therefore be quashed.

B. The Notices Are Untimely

Even if there were a means of conducting the deposition without violating Chinese law (there is not), the Notices should nonetheless be quashed as untimely.

The Board explicitly recognizes a lack of timeliness as grounds for a motion to quash a deposition notice. *See* TBMP § 521; *see also id.* § 404.07(b) (“Discovery depositions must be both properly noticed *and taken during the discovery period.*”) (emphasis added). To that end, the Board has quashed deposition notices as untimely when the noticed deposition would take place outside of the fact discovery period. *Rhone-Poulenc Industries v. Gulf Oil Corp.*, 198 USPQ 372, 373 (TTAB 1978); *see also National Football League v. DNH Management LLC*, 85 USPQ2d 1852 (TTAB 2008) (motion to quash granted where deposition noticed during discovery but scheduled after close of discovery). With respect to depositions on written questions in particular, timeliness is vital. The Board is clear that “a party that desires to take a discovery deposition on written questions initiate the procedure early in its discovery period.” *See* TBMP § 404.07(b).

Discovery opened in these Consolidated Proceedings on October 13, 2022. May Flower has requested (unilaterally) two extensions of the discovery period, which was set to close on November 7, 2023. In connection with each of those extension requests, May Flower represented that it sought an extension based on its purported desire to seek the depositions of Shinho and Teh San Sun. *See* First Motion for Extension, TTABVUE #27, at 2-3; Second Motion for Extension, TTABVUE #31, at 1-4. Despite making such representations, May Flower made no effort during the first extended discovery period to seek the depositions of the Shinho Parties. May Flower chose to delay its filing of the Notices until October 25, 2023—a mere thirteen days before the second extended discovery period was set to close. Despite being on notice that parties seeking depositions on written questions should “initiate the procedure early in its discovery period,” May Flower failed to do so until less than two weeks before the discovery period was set to close. Under the proper procedure for depositions on written questions, the Shinho Parties are not even required to respond to the Notices until *after* the discovery period closes, as that deadline falls on November

14, 2023. *See* TBMP § 404.07(e) (cross questions and objections to be served within twenty days of notice of deposition on written questions).

C. The Notices Were Issued in Bad Faith, Which Should Not Be Rewarded

This Motion is further supported by the bad faith, harassing nature of the Notices. These consolidated proceedings have been pending since 2019. At no point during those *four years* has May Flower made an effort to cooperate or to approach the proceedings in good faith. The Notices—which were issued not for the purpose of seeking discoverable information, but to harass the Shinho Parties and distract from the Shinho Parties’ own properly issued deposition notices of the May Flower Parties—is the latest example of May Flower’s bad faith.

Shinoh served proper deposition notices in this case in January 2023. As outlined in detail in Shinoh’s opposition to May Flower’s unilateral motion for extension of the discovery period, the May Flower parties have absolutely refused to cooperate and have made a wide array of excuses to avoid sitting for properly noticed depositions. *See* TTABVUE #32, at 2-7. This is the case despite the fact that Shinoh has made every effort to accommodate May Flower for these depositions since January 2023. Most recently, Shinoh agreed to withdraw all objected-to topics in its own 30(b)(6) notices to May Flower and GB Green despite the fact that the vast majority of the objections were baseless and lodged in bad faith. Despite this enormous concession, May Flower ignored multiple requests that it provide dates for the depositions of Captain Liu, May Flower, and GB Green. *See* Ex. A, Emails from C. Campbell to May Flower Counsel. When it finally replied, it was not until after the Board ordered the suspension of proceedings pending the completion of the written depositions. *See id.* May Flower’s conduct leading up to and including its most recent unilateral suspension request make clear that it does not intend to cooperate or participate in discovery (or this proceeding) in good faith. Its untimely, legally prohibited Notices

are solely intended to distract from May Flower's noncompliance with proper and timely deposition notices.

In direct contrast to Shinho, the May Flower Parties have seemingly only sought the depositions of Shino and Sun in response to the Shinho Parties' requests that the May Flower Parties appear for their properly noticed depositions. May Flower's avoidance of its own discovery obligations has culminated in its filing the Notice despite being well-aware that Sun is a Chinese resident, that Shinho is a Chinese company, and that any depositions of Shinho and its representatives would need to comply with Chinese law. *See* Ex. B, March 28, 2023 cover email and General Objection to Deposition Notice, at 3. May Flower has no excuse for its ignorance of the Board's rules. Thus, it is evident that it has sought depositions prohibited by Chinese law only as a mechanism to delay this proceeding, shirk its own discovery obligations, and harass the Shinho Parties. This behavior should not be rewarded.

III. CONCLUSION

For the foregoing reasons, the Notices of Deposition on Written Questions to Shinho and to Sun should be quashed.

Dated: November 13, 2023

Respectfully submitted,

DUANE MORRIS LLP

By: / Christiane S. Campbell /
Christiane S. Campbell

30 S. 17th Street
Philadelphia, PA 19103
CCampbell@duanemorris.com
LMatturri@duanemorris.com
Bvinci@duanemorris.com

Ph: 215-979-1817
Attorneys for Shinho Parties

CERTIFICATE OF SERVICE

I, Christiane S. Campbell, Esq., counsel to Shinho Parties in the above-captioned proceeding, hereby certify that, on the 13th day of November, 2023, I served a copy of the foregoing document, by email, upon counsel for May Flower Parties:

Ge Li
Kevin Kerveng Tung PC
136-20 38th Ave Ste 3D
Flushing, NY 11355
gli@kktlawfirm.com, ktung@kktlawfirm.com, lwyang@kktlawfirm.com

Dated: November 13, 2023

By: /Christiane S. Campbell/
Christiane S. Campbell

Exhibit A

Matturri, Lauren

From: Ge Li <gli@kktlawfirm.com>
Sent: Tuesday, November 7, 2023 3:02 PM
To: ktung@kktlawfirm.com; Campbell, Christiane
Cc: Hsong .; Vinci, Brianna; Matturri, Lauren
Subject: Re: Consolidated TTAB Proceeding 91252185 - Depositions

Christi:

I appreciate your effort to further revise the Rule 30(b)(6) Notice of Deposition to May Flower and GB Green. We are in receipt of these revised notices. Our client will attend the deposition after the depositions on written questions because currently the proceedings are suspended pending the completion of those depositions. Thank you

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Tel: (718)939-8033

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On Monday, November 6, 2023 at 03:56:42 PM EST, Campbell, Christiane <ccampbell@duanemorris.com> wrote:

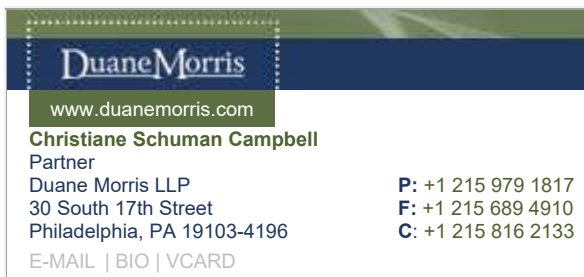
Ge,

We requested dates from you by Friday October 27 at COB. Hearing nothing, we followed up last Monday October 30.

It's now November 6 and you've neither provided dates for depositions nor acknowledged receipt of repeated communications seeking the same.

Please acknowledge receipt of this email and provide dates for your client's depositions **immediately**. There is absolutely no reason and no excuse for you not to have already sent us dates.

Christi



From: Campbell, Christiane
Sent: Monday, October 30, 2023 10:53 AM
To: Ge Li <gli@kktlawfirm.com>; ktung@kktlawfirm.com
Cc: Hsong . <hsong@kktlawfirm.com>; Vinci, Brianna <BVinci@duanemorris.com>; Matturri, Lauren <LMatturri@duanemorris.com>
Subject: RE: Consolidated TTAB Proceeding 91252185 - Depositions
Importance: High

Dates, please.

These were requested by COB last Friday and we've received nothing other than your written deposition questions (of which we confirm receipt).

From: Vinci, Brianna <BVinci@duanemorris.com>
Sent: Wednesday, October 25, 2023 12:37 PM
To: Ge Li <gli@kktlawfirm.com>; Campbell, Christiane <ccampbell@duanemorris.com>;
ktung@kktlawfirm.com; Matturri, Lauren <LMatturri@duanemorris.com>
Cc: Hsong . <hsong@kktlawfirm.com>
Subject: RE: Consolidated TTAB Proceeding 91252185 - Depositions

Ge:

Your objections to the topics set forth in the 30(b)(6) Deposition Notices of May Flower International and GB Green Gastronome are baseless and made in bad faith. However, in a good faith effort to cooperate, and without making any admissions regarding the deposition topics, we withdrew the objected-to topics in the deposition notices.

There remain no outstanding disputes between the parties regarding these 30(b)(6) Deposition Notices. Accordingly, please find attached for service the amended 30(b)(6) Deposition Notices of May Flower and GB Green Gastronome. As explained in my previous email of 10/7, these are not new notices and instead relate back to the notices served months ago.

Please provide Min Liu's availability over the next two weeks to sit for deposition both individually and as a corporate representative of May Flower and GB Green Gastronome. Please provide dates no later than 5pm ET on Friday, October 27.

Best,

Brianna

Brianna Vinci

Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

From: Ge Li <gli@kktlawfirm.com>
Sent: Wednesday, October 11, 2023 6:34 PM
To: Campbell, Christiane <ccampbell@duanemorris.com>; ktung@kktlawfirm.com; Matturri, Lauren <LMatturri@duanemorris.com>; Vinci, Brianna <BVinci@duanemorris.com>
Cc: Hsong . <hsong@kktlawfirm.com>
Subject: Re: Consolidated TTAB Proceeding 91252185 - Depositions

Counsel:

Please find attached May Flower and GB Green's updated objections reflecting our agreement in the meet and confer. I think one mistake in your summary is we only agree to withdraw the objection to Topic 16 in the Notice of 30(b)(6) deposition of May Flower, instead of Topic 15.

Our clients are still considering how to treat the remaining objections. If by this Friday (Oct. 13, 2023) our clients do not withdraw the remaining objections, they will stand by these objections. Then you can let me know whether your clients would withdraw the outstanding objected topics. Thank you.

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Tel: (718)939-8033

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On Saturday, October 7, 2023 at 11:12:22 AM EDT, Vinci, Brianna <bvinci@duanemorris.com> wrote:

Counsel,

We write to summarize the parties' two meet and confers held on Wednesday 10/4 and Friday, 10/6.

10/4 Meet and Confer

On 10/4, the parties discussed the Shinho Parties' Notice of 30(b)(6) deposition of May Flower. Shinho requested that the parties discuss each objected-to topic one by one.

- Topic No. 1: May Flower's factual basis for claiming standing to bring Cancellation Proceeding No. 91252185.


o Shinho explained that standing is always relevant, that it has challenged May Flower's standing, and that it is entitled to understand the facts supporting May Flower's assertion that it has a basis for coming before the Board seeking cancellation of or opposing Shinho's marks. Without conceding that any of May Flower's objections are proper, Shinho proposed that it revise this Topic to read, "Your factual basis for coming before the Board seeking cancellation of or opposing Shinho's Cong Ban Lv Marks." May Flower agreed to this Topic. Thus, the Topic has been revised accordingly in the attached revised Notice.

- Topic No. 2-3: The date and circumstances under which You first learned of the Cong Ban Lv Marks and all steps and actions taken by You after learning of the existence of the Cong Ban Lv Marks.

o Shinho stated that to the extent May Flower contends that this Topic is not specific enough, it could not be more clear. Moreover, Shinho explained that May Flower's objection on the basis of duplicativeness/cumulativeness was improper. Such objections are only reasonable where a party has already provided the purportedly cumulative discovery. May Flower, on the other hand, has refused to provide any substantive response to Interrogatory No. 31, which seeks this information. Thus, Shinho is entitled to seek the information elsewhere – that is, through deposition testimony. Shinho noted that it is extremely difficult to see any good faith on May Flower's part where May Flower outright refuses to provide responses to relevant discovery requests and instead has stonewalled Shinho.

- Topic No. 4-5: All Communications between You and Respondent relating to the Cong Ban Lv Marks; All Communications between You and any third parties relating to the Cong Ban Lv Marks.

o Shinho again explained that this Topic is not overbroad and should be more than particular enough to understand. Namely, the term "Communications" is defined and May Flower did not object to it, and the Topics seek only those communications relating to Shinho's Cong Ban Lv Marks (another defined, and not-objected-to, term). Nonetheless, in the spirit of compromise Shinho offered to reword the topics to include "All Communications of which You are aware . . ." May Flower stated that it would only accept a wording that included those communications of which Min Liu is aware in her personal capacity. Shinho explained that Ms. Liu's personal knowledge is not relevant to a 30(b)(6) deposition and that May Flower's corporate designees are required to familiarize themselves with the company's knowledge on all noticed topics. May Flower refused to cooperate or participate in a further meaningful discussion on these topics.

- Topic Nos. 6-8: Your factual bases for Your allegation that the Cong Ban Lv Marks are generic; Your factual bases for Your allegation that the Cong Ban Lv Marks are descriptive' Your factual bases for Your allegation that "the mark  is "identical or similar to a registered mark (United States Trademark Registration No. 4098259, the "First Cong Ban Lv" mark)."

o May Flower asserted that it is not required to present deposition testimony on the facts underlying the claims it has brought before the Board. Shinho noted that it has explained on multiple occasions that the purported case law cited in May Flower's objections does not prohibit an inquiry into the facts underlying specific claims and defenses. May Flower responded that its pleadings are clear. Thus, Shinho asked if it is May Flower's position that it plans to rest on its pleading, since May Flower has not provided responses to parallel interrogatories. Shinho also pointed to May Flower's initial disclosures, in which May Flower states that its corporate representative has knowledge of "facts alleged in Applicant's Answer and Affirmative Defenses." May Flower then asked "who has the burden of proof?" – Shinho responded that May Flower has the burden of proving its claims and defenses.

- Topic Nos. 9-14, 17:

o The parties agreed that GB Green may offer testimony on these Topics and Shinho agreed to strike them from the May Flower Notice. Shinho looks forward to GB Green's testimony on these Topics. The attached revised notice reflects this change.

- Topic No. 15:

o May Flower withdrew its objection to this Topic. Shinho looks forward to May Flower's testimony on this Topic.

Unfortunately, the parties were unable to complete their discussion on 10/4 because May Flower's counsel wanted to go to lunch.

10/6 Meet and Confer

The parties met again on Friday, 10/6.

- Shinho first asked if May Flower had reviewed Shinho's 10/5 email explaining – for the third time – that the purported precedent in May Flower/GB Green's objections was not persuasive or applicable to this case. On this call, Shinho explained in painstaking detail the reasons why the cited cases differ from the present case and why May Flower/GB Green's objections to Topics 6-8 of the May Flower notice and 5-12 of the GB Green Notice are improper. Despite having cited these cases itself, May Flower claimed it was not prepared to discuss them in any detail. Shinho's explanations on the call are reproduced below.

- o First, the *BAT LLC v. TD Bank Case* (E.D.N.Y.) dealt with a single topic which requested "information concerning TD's Affirmative Defenses asserted in this action." 2019 WL 13236131, at *4. TD had asserted 20 defenses, and the topic did "not confine the inquiry in any way, [did] not limit the inquiry to the *factual underpinnings of the defenses*, . . . and increase[d] the total number of topics from 89 to 109 since each affirmative defense is arguably a separate topic." *Id.* Here, by contrast, Topics 6-8 of the May Flower notice and 5-12 of the GB Green Notice do not generally ask for all information relating to all asserted claims/defenses. Instead, they seek the "factual underpinnings" of specifically identified claims and defenses—the very type of topic the *BAT LLC* court envisioned as proper. This case is clearly distinguishable and the mere soundbites you cite are not persuasive in this context.

- o May Flower then asked, "what about *Blackmore*"? Shinho explained that this District of Nebraska case is also distinguishable. There, the court dealt with topics that sought more general information ("all facts, witnesses, or documents" supporting the party's defenses). Again, Shinho's topics are more tailored to seek only the "factual underpinnings" of the claims May Flower and GB Green have brought. Moreover, the *Blackmore* court explained that the noticing party was entitled to discovery on the defendant's contentions and mandated the defendant to supplement its response to a parallel interrogatory "by stating with particularity" the grounds for its defense. May Flower's claim that it need not supplement its interrogatory responses here was not well taken – the point is not that May Flower should supplement its responses, it is that May Flower cannot stonewall Shinho and prevent Shinho from obtaining this information from any form of discovery. It is improper and in bad faith to do so.

Topics 6-8 of the May Flower notice and 5-12 of the GB Green Notice are specific, proper, and tailored to request discoverable information. Please confirm that your corporate witness will testify on these topics.

The parties also discussed the following:

- GB Green agreed to withdraw its objections to Topics 1, 2, 16, 17, 18, and 20. Shinho looks forward to GB Green's testimony on these topics.
- With respect to Topics 3-4, the parties engaged in a similar discussion to the one had on Wednesday 10/4. Namely, Shinho stated that it had proposed that these topics be rewritten to read "all Communications of which You are aware..." GB Green refused to accept this compromise. Shinho further explained that the Topics use several clearly-defined terms, and that GB Green did not object to a single definition in the Notice. The information sought by these Topics is therefore abundantly clear, clearly relevant to the proceedings, and is indeed limited to the very subject of the proceedings. Nonetheless, Shinho again asked that the parties attempt to get to a place of understanding. GB Green refused to do so.
- With respect to Topic 19, GB Green raised only a privilege objection. Shinho assured GB Green that it does not seek privileged information and that if questioning begins to encroach on privilege, GB Green may object on the record. GB Green asserted that it will not produce a witness on this Topic because it seeks facts relating to GB Green's trademark application (the application which is the subject of the parties' dispute). Shinho noted that this objection was not stated in the written objections and responses to the Notice of Deposition that GB Green has had in hand for months, and that raising it for the first time now is improper. Any objections not stated in the written responses served on 9/25/23 are waived. Please confirm that your corporate witness will be prepared to testify on this Topic.

Based on the parties' discussions, Shinho attaches revised deposition notices. As noted on the call, Shinho provides these revisions with the understanding that these are not new notices, that May Flower and GB Green agree not to argue that these revised notices are untimely, and that May Flower and GB Green will not raise new objections to the previously-noticed topics and definitions.

We look forward to hearing from you on or before Wednesday, 10/11.

Regards,
Brianna

Brianna Vinci
Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

From: Campbell, Christiane <ccampbell@duanemorris.com>
Sent: Thursday, October 5, 2023 5:08 PM
To: Vinci, Brianna <BVinci@duanemorris.com>; Ge Li <gli@kktlawfirm.com>; ktung@kktlawfirm.com; Matturri, Lauren <LMatturri@duanemorris.com>
Cc: Hsong . <hsong@kktlawfirm.com>
Subject: RE: Consolidated TTAB Proceeding 91252185 - Depositions

Ge,

Much was said yesterday about your "precedent" (we presume you were referring to *Sec. and Exch. Comm'n v. Present*) that purportedly supports your client's objections to the deposition topics exploring the factual bases behind certain of your client's claims and defenses. That you repeatedly insisted your "precedent" means the witness you identified does not have to speak to those topics that you identified suggests you did not read our email of September 28 (or earlier emails and letters).

Not only do you misconstrue the pillars and facts of the cases you cite, but you ignored our responses, which are rooted in TTAB precedent and the Federal Rules. It's not clear to us why you would suggest our position is without precedent when it has been repeatedly laid out for you.

Our September 28 email is copied again below, for your review prior to our meet and confer tomorrow morning.

Thank you,
Christi

From: Vinci, Brianna <BVinci@duanemorris.com>
Sent: Thursday, September 28, 2023 2:11 PM
To: Ge Li <gli@kktlawfirm.com>; ktung@kktlawfirm.com; Matturri, Lauren <LMatturri@duanemorris.com>
Cc: Campbell, Christiane <ccampbell@duanemorris.com>; Hsong . <hsong@kktlawfirm.com>
Subject: RE: Consolidated TTAB Proceeding 91252185 - Depositions

Ge,

You've had our deposition notices – and the topics identified therein – since February 2023. You now present objections that are identical to your original objections, despite the many accommodations we made in the most recent notices, rendering clear your intent to cause additional delay and prevent Shinho from taking depositions that were noticed properly and a long time ago.

As explained in our July 28 letter, May Flower and GB Green cannot credibly or lawfully refuse to produce a witness. TTAB precedent is clear that “[t]o the extent [a party] object[s] to the Rule 30(b)(6) deposition notice . . . or the topics thereon, [it is] required to either (1) designate a witness and proceed with the noticed deposition subject to any *appropriate* objections made on the record, or (2) file a *timely* motion to quash or for a protective order.” *OMS Investments, Inc. v. Habit Horticulture LLC*, 2022 WL 1690108, at *5 (TTAB Nov. 10, 2022) (emphasis added). Because you have not filed a motion to quash or for a protective order, Shinho expects that you will produce your witness to testify on the noticed topics subject to any appropriate objections on the record.

Further, we remind you that in each of the consolidated proceedings, the parties served Initial Disclosures that identified witness and the relevant topics upon which they can provide discoverable information. You identified Min Liu in both Initial Disclosures for GB Green Gastronome and May Flower. In the GB Green Gastronome Initial Disclosures related to the Cong Ban Jiang proceeding, you indicated Min Liu could provide “firsthand knowledge” on “the timing, ownership and use of the Applicant’s mark, design for Applicant’s mark; Applicant’s business operations and activities; Applicant’s goods and services; Applicant’s trademark application and registration, and facts alleged in the Applicant’s Answer and Affirmative Defenses.” In the May Flower Initial Disclosures related to the Cong Ban Lv (Chinese characters) proceeding, you indicated Min Liu has “firsthand knowledge regarding the facts alleged in Petitioner’s Notice of Opposition.” May Flower instituted that proceeding and raised claims of descriptiveness and made statements in the Notice of Opposition related to standing and its business. Attached for reference are these Initial Disclosures. Your recent objections to our notices to depose an individual *you identified* and on topics *you specified* is – quite literally – incredible. Your client simply cannot in good faith object to our deposing your identified witness on your outlined topics.

With respect to your purported objections, Shinho has the following comments:

To the extent that your objections are based on a purported failure to “describe with reasonable particularity the matters for examination,” Shinho disagrees that its topics are unclear or nonspecific. However, we are happy to offer explanation to the extent that you truly, in good faith, claim that you don’t understand the topics. Further, TBMP § 414 provides helpful guidance on topics the TTAB considers discoverable in proceedings. Significantly, all topics raised in the notices of deposition are identified in TBMP § 414 and are discoverable by the Shinho Parties.

- With respect to the notice to May Flower:
 - o Topic 1 seeks information relating to May Flower’s factual basis for claiming standing to bring its proceeding against Shinho. As you know, Shinho maintains that May Flower lacks standing. Thus, Shinho is entitled to inquire as to the nature of May Flower’s claims relative to standing.
 - o Topic 2 seeks information relating to the facts and circumstances under which May Flower first learned of the Cong Ban Lv Marks. It is difficult to understand your challenge to this topic’s specificity. With this topic, Shinho seeks information relating to when May Flower learned of the marks it now objects to.
 - o Topic 3 seeks information relating to what May Flower did after it learned of the Cong Ban Lv Marks. Again, it is difficult to understand how this topic is not specific enough for you to comprehend. With this topic, Shinho seeks information relating to what May Flower did in response to learning of the marks it opposes.
 - o Topic 4 seeks information relating to any communications between May Flower and Shinho relating to the Cong Ban Lv Marks. Again, this topic could not be more specific.

- o Topic 5 seeks information relating to any communications between May Flower and third parties relating to the Cong Ban Lv Marks. Again, this topic could not be more specific.
 - o Topics 6, 7, and 8 seek information relating to May Flower's claims in this action. Surely May Flower is aware of the claims it has asserted in this proceeding. If this topic is not specific enough for you to understand, perhaps May Flower should reconsider its allegations.
 - o Topic No. 15 seeks information relating to any pre-suit investigation May Flower undertook prior to bringing this action. Again, only May Flower is aware of the research – or lackthereof – it performed prior to bringing this proceeding.
 - o Topic No. 16 seeks information relating to the previous distribution relationship between Shinho and May Flower. The topic even outlines the types of information it seeks. May Flower's assertion that this topic does not provide reasonable particularity is unfounded.
- With respect to the notice to GB Green:
 - o Topic 1 seeks information relating to the facts and circumstances under which GB Green first learned of the Cong Ban Lv Marks. It is difficult to understand how this topic is not specific enough for you to comprehend. With this topic, Shinho seeks information relating to when GB Green learned of the marks asserted in this action.
 - o Topic 2 seeks information relating to what GB Green did after it learned of the Cong Ban Lv Marks. Again, it is difficult to understand how this topic is not specific enough for you to comprehend. With this topic, Shinho seeks information relating to what GB Green did in response to learning of the marks asserted in this action.
 - o Topic 3 seeks information relating to any communications between GB Green and Shinho relating to the Cong Ban Lv Marks. Again, this topic could not be more specific.
 - o Topic 4 seeks information relating to any communications between GB Green and third parties relating to the Cong Ban Lv Marks. Again, this topic could not be more specific.
 - o Topics 5-12 seek the facts underlying GB Green's affirmative defenses. GB Green asserted those defenses and is the party in possession of all information relevant to the defenses. Clearly GB Green understands its reasons for asserting its affirmative defenses. If it does not, it should reconsider the asserted defenses.
 - o Topic 20 seeks information relating to the previous distribution relationship between Shinho and GB Green. The topic even outlines the types of information it seeks. Any assertion that this topic does not provide reasonable particularity is unfounded.

To the extent that May Flower and GB Green claim that a 30(b)(6) witness cannot testify regarding the factual bases for a party's claims and defenses, that assertion is patently false. As explained in our July 28th letter, the precedent cited in your objections does not stand for the proposition that a party may not seek 30(b)(6) testimony regarding the factual bases for the party's asserted claims. Instead, the case law states that a topic is overbroad where it seeks any and all information related to the claims and defenses in an action. Shinho's topics are limited to the factual and legal bases for May Flower's claims and defenses raised in the very disputes for which discovery is sought. If your client cannot present nonprivileged information regarding the legal bases for its claims and defenses, this is not a basis to refuse to provide factual information regarding its claims and defenses. Indeed, such information clearly falls within the scope of relevance in discovery. See Fed. R. Civ. P. 26; TBMP 402.01; *FMR Corp. v. Alliant Partners*, 51 USPQ2d 1759, 1761 (TTAB 1999) (stating that the "scope of discovery in a Board proceeding is governed by Fed. R. Civ. P. 26(b)(1)"). Multiple courts

have found 30(b)(6) topics proper and reasonably particular where they are drawn to seek information relevant to the lawsuit. See, e.g., *Scovill Manuf. Co. v. Sunbeam Corp.*, 61 F.R.D. 598, 603-04 (D. Del. 1973). The corporation bears the burden of showing that the topics do not meet this deferential standard, and must seek a protective order to avoid its obligation to sit for the noticed deposition. *Beach Mart, Inc. v. L&L Wings, Inc.*, 302 F.R.D. 396, 406 (E.D.N.C. 2014). The mere fact that you have continued to assert these objections despite being on notice that they are improper illustrates your refusal to cooperate and participate in a good faith discussion regarding the requested discovery.

To the extent that your objections assert that the topics are duplicative of other discovery sought in this case, the objections are not well taken. May Flower and GB Green have refused to provide fulsome responses to written discovery in this case. As such, Shinho's efforts to obtain the discovery through deposition are more than proper and not duplicative.

Finally, to the extent that your objections assert that the topics seek privileged information, that assertion is incorrect. The attorney-client privilege and work product doctrines protect only communications and impressions – not facts. Thus, your assertion that witness testimony on the facts underlying your claims and defenses (GB Green Topics 5-12, May Flower Topic Nos. 1, 6-8), the facts indicating whether or not May Flower or GB Green performed clearance searches or undertook a pre-suit investigation (GB Green Topics 18, May Flower Topic Nos. 13, 15), and the facts comprising your client's basis for filing applications without disclaimers or claims of acquired distinctiveness (GB Green Topic 19) are not privileged. Shinho is entitled to inquire as to those facts. Your privilege objections are meritless.

Please provide your availability to meet and confer on Friday 9/29 or Monday 10/2. Shinho will take your refusal to engage in a meaningful, good faith discussion as a refusal to produce a witness and will move to compel and move for sanctions.

Regards,
Brianna

Brianna Vinci
Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

From: Ge Li <gli@kktlawfirm.com>
Sent: Monday, September 25, 2023 6:32 PM
To: ktung@kktlawfirm.com; Matturri, Lauren <LMatturri@duanemorris.com>; Vinci, Brianna <BVinci@duanemorris.com>
Cc: Campbell, Christiane <ccampbell@duanemorris.com>; Hsong . <hsong@kktlawfirm.com>
Subject: Re: Consolidated TTAB Proceeding 91252185 - Depositions

Counsel:

Please find attached May Flower and GB Green's objections to your clients' revised 30(b)(6) notice. Thank you.

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law

136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Tel: (718)939-8033

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On Friday, September 22, 2023 at 01:01:15 PM EDT, Vinci, Brianna <bvinci@duanemorris.com> wrote:

Counsel,

We are disappointed in your lack of response, especially given that it was you who sought to extend the discovery period. As you know, the Board's September 8 Order not only required May Flower and GB Green to identify their 30(b)(6) witnesses, it also instructed the parties to move forward with the depositions of Min Liu/Captain Liu, May Flower, and GB Green after the parties resolved any remaining dispute regarding the amended 30(b)(6) topics. You have had Shinho's amended 30(b)(6) notices – which Shinho served to alleviate your purported objections – in hand for two months. We assume that your silence – especially after we explicitly requested a response and deposition dates – means that your purported objections are resolved and that the depositions will move forward.

To that end, please confirm that Min Liu/Captain Liu will sit for deposition (1) in her individual capacity, as noticed, and (2) as the designated 30(b)(6) witness for May Flower and GB Green, and that she will do so prior to the close of the again-extended discovery period. If you do not do so by Monday, September 25, we will seek Board intervention and inquire as to the propriety of sanctions for your failure to abide by the Board's order.

Thank you,
Brianna

Brianna Vinci
Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

From: Vinci, Brianna
Sent: Monday, September 18, 2023 11:21 AM
To: Ge Li <gli@kktlawfirm.com>; ktung@kktlawfirm.com; Maturri, Lauren <LMaturri@duanemorris.com>
Cc: Campbell, Christiane <ccampbell@duanemorris.com>
Subject: RE: Consolidated TTAB Proceeding 91252185 - Depositions

Ge,

Thank you. Given that you have not provided any response to my email of September 11 or requested to further meet and confer on the topics served on 7/28, we look forward to proceeding with depositions on those topics and with your client's 30(b)(1) deposition. Please provide dates for the depositions by Wednesday, 9/20.

Thank you,
Brianna

Brianna Vinci

Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

From: Ge Li <gli@kktlawfirm.com>
Sent: Friday, September 15, 2023 3:49 PM
To: ktung@kktlawfirm.com; Maturri, Lauren <LMaturri@duanemorris.com>
Cc: Campbell, Christiane <ccampbell@duanemorris.com>; Vinci, Brianna <BVinci@duanemorris.com>
Subject: Re: Consolidated TTAB Proceeding 91252185 - Depositions

Lauren:

We designate Min Liu as the 30(b)(6) witness for both entities.

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Tel: (718)939-8033

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On Tuesday, September 12, 2023 at 08:54:35 AM EDT, Maturri, Lauren <lmaturri@duanemorris.com> wrote:

Ge:

Pursuant to the Board's September 8, 2023 Order (TTABVUE #33), please find attached the declaration regarding Mr. Sun.

Regards,

Lauren

Lauren C. Maturri

Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1533
F: +1 215 754 4238

LMaturri@duanemorris.com
www.duanemorris.com

From: Vinci, Brianna <BVinci@duanemorris.com>

Sent: Monday, September 11, 2023 10:30 AM

To: Ge Li <gli@kktlawfirm.com>; ktung@kktlawfirm.com

Cc: Maturri, Lauren <LMaturri@duanemorris.com>; Campbell, Christiane <ccampbell@duanemorris.com>

Subject: Consolidated TTAB Proceeding 91252185 - Depositions

Counsel,

Given the Board's recent order, we expect your client to comply with its obligation to sit for the long-noticed 30(b)(6) and 30(b)(1) depositions. To that end, please advise by Wednesday, September 13 as to whether you will designate a 30(b)(6) witness to testify regarding the topics set forth in Shinho's amended notices.

Best regards,
Brianna

Brianna Vinci

Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

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Matturri, Lauren

From: Vinci, Brianna
Sent: Tuesday, March 28, 2023 7:46 PM
To: Ge Li; ktung@kktlawfirm.com
Cc: Campbell, Christiane; Matturri, Lauren
Subject: Shinho/May Flower - Consolidated Proceeding No. 91252185 (Parent)
Attachments: General Objection to 30(b)(6) Deposition Notice.DOCX

Counsel,

Please see attached. Please note that the Shinho parties object to the 30(b)(1) notice of deposition of Teh-San Sun for the same reasons. Namely, Mr. Sun is domiciled outside of the United States and May Flower was required to comply with the Board's procedures for depositions by written questions and with all applicable foreign laws in seeking his deposition.

Regards,
Brianna

Brianna Vinci

Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1198
F: +1 215 754 4983

BVinci@duanemorris.com
www.duanemorris.com

Exhibit B

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

<p><i>May Flower International, Inc.</i> (Opposer)</p> <p style="text-align: center;">v.</p> <p><i>Shandong Shinho Food Industries Co., Ltd.</i> (Applicant)</p>	<p>Consolidated Opposition No. 91252185 (parent)</p> <p>U.S. App. No. 88428830</p> <p> (“Cong Ban LV Mark”)</p>
<p><i>Captain Liu</i> (Petitioner)</p> <p style="text-align: center;">v.</p> <p><i>Teh-San Sun and Shandong Shinho Food Industries Co., Ltd.</i> (Respondent)</p>	<p>Cancellation No. 92069339 (child)</p> <p>U.S. Reg. No. 4098259</p> <p> (“Cong Ban LV Design Mark”)</p>
<p><i>Shandong Shinho Food Industries Co., Ltd.</i> (Opposer)</p> <p style="text-align: center;">v.</p> <p><i>GB Green Gastronome, LLC</i> (Applicant)</p>	<p>Opposition No. 91252441 (child)</p> <p>U.S. App. No. 88061719</p> <p> (“Cong Ban Jiang Mark”)</p>

**SHANDONG SHINHO FOOD INDUSTRIES CO., LTD.’S OBJECTIONS AND
RESPONSES TO NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6)**

Pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, Opposer Shandong Shinho Food Industries Co., Ltd. (“Shinoh” or “Opposer”), hereby provides its Objections and Responses to Petitioner Captain Liu (“Liu”) and Opposer May Flower International, Inc. (“May Flower”) (collectively, the “May Flower Parties”)’s Rule 30(b)(6) Notice of Deposition (the “Notice”).

GENERAL OBJECTION

Shinoh makes the following General Objection to the Notice and to the topics identified therein:

Shinho objects to the Notice in its entirety on the grounds that it fails to adhere to Board procedure for depositions on written questions.

Shinho is a Chinese entity. *See* Proceeding No. 91252441, TTABVUE 1, at p. 1 (“Opposer, Shandong Shinho Food Industries Co., LTD., a Chinese limited liability company, having a principal place of business at JIGEZHUANG, LONGWANGZHUANG TOWN, LAIYANG CITY, SHANDONG PROVINCE, CHINA . . .”). Any witnesses testifying on its behalf will be located outside of the United States, in China. *Id.* (identifying Shinho’s principal place of business in Shandong Province, China); *see also* Shinho’s Initial Disclosures (all identified witnesses reside in China). These witnesses cannot be forced to sit for an oral deposition in the U.S. Instead, they must be deposed by written questions. *See* 7 C.F.R. §§ 2.120(c)(1), 2.124; *see also* *Jain v. Ramparts Inc.*, 49 USPQ2d 1429, at *2 (TTAB 1997) (“[T]he Board will not order a natural person residing in a foreign country to come to the United States for the taking of his or her discovery deposition. Under the Board's practice, discovery depositions of foreign-resident witnesses may be taken only by way of written questions, unless the parties stipulate otherwise or unless the Board, upon motion for good cause shown, orders that the deposition be taken orally in the foreign country.”); *see also* TBMP 703.02(a) (applying the same rules to testimony depositions). Additionally, May Flower must comply with any and all applicable Chinese law. Its 30(b)(6) notice makes no reference to compliance with Chinese law.

Shinho will not designate witness(es) to testify in connection with the Notice because of May Flower’s failure to properly notice a deposition on written questions. Board procedure requires that: (1) “[a] party that desires to take a discovery deposition on written questions must serve notice thereof on each adverse party and shall file a copy of the notice, but not copies of

the questions, with the Board;” (2) “[t]he notice must state the name and address, if known, of the person whose deposition is to be taken;” and (3) “[c]opies of the notice served on adverse parties must be accompanied by the written questions to be propounded on behalf of the deposing party.” 37 C.F.R. § 2.124(d)(3); TBMP § 404.07(d). The procedure then states:

Within 20 days from the date of service of the notice in accordance with 37 C.F.R. § 2.119(b), . . . any adverse party may serve cross questions on the deposing party. A party that serves cross questions on the deposing party must also serve copies thereof on every other adverse party. Within 10 days from the date of service of the cross questions in accordance with 37 C.F.R. § 2.119(b), the deposing party may serve redirect questions on every adverse party. Within 10 days from the date of service of the redirect questions in accordance with 37 C.F.R. § 2.119(b), any party that served cross questions may serve recross questions on the deposing party. A party which serves recross questions on the deposing party must also serve copies thereof on every other adverse party.

37 C.F.R. § 2.124(e); TBMP § 404.07(e). The procedure also requires that the adverse party be permitted ten days to object to the written questions, after which the serving party may serve substitute questions within ten days. 37 C.F.R. § 2.124(e); TBMP § 404.07(e). Finally,

[w]ithin 10 days after the last date when questions, objections, or substitute questions may be served, the deposing party must mail a copy of the notice and copies of all the questions to the officer designated in the notice. A copy of the notice and of all the questions mailed to the officer must also be served on every adverse party. The officer designated in the notice shall take the testimony of the witness in response to the questions, and shall record each answer immediately after the corresponding question.

37 C.F.R. § 2.124(e); TBMP § 404.07(e).

May Flower has not even attempted to adhere to this procedure or to applicable Chinese law, and instead has noticed an in-person deposition to which it is not entitled under the Board rules. As such, Shinho objects to the Notice in its entirety.

Shinho will not consent to any extensions of the discovery period in the Consolidated Proceedings, as the Board is clear that “a party that desires to take a discovery deposition on written questions initiate the procedure early in its discovery period.” *See* TBMP § 404.07(b).

Discovery opened in these Consolidated Proceedings on October 13, 2022. It is set to close on April 11, 2023. May Flower is aware, and has been aware, that Shinho is a Chinese entity with a principal place of business in China since at least November 20, 2019, when Shinho filed its Notice of Opposition in Proceeding No. 91252441. *See* Proceeding No. 91252441, TTABVUE 1, at p. 1. Thus, May Flower was aware of the necessity of a deposition by written questions at the initial stages of these proceedings. An extension of time to allow May Flower to adhere to the procedure it intentionally ignored, and had the entire discovery period to comply with, would be inappropriate.

Dated: March 28, 2023

Respectfully submitted,

DUANE MORRIS LLP

By: / *Christiane S. Campbell* /
Christiane S. Campbell

30 S. 17th Street
Philadelphia, PA 19103
CCampbell@duanemorris.com
LMatturri@duanemorris.com
Ph: 215-979-1817
Attorneys for Shinho Parties

CERTIFICATE OF SERVICE

I, Christiane S. Campbell, Esq., counsel to Shinho Parties in the above-captioned proceeding, hereby certify that, on the 28th day of March, 2023, I served a copy of the foregoing document, by email, upon counsel for May Flower Parties:

Ge Li
Kevin Kerveng Tung PC
136-20 38th Ave Ste 3D
Flushing, NY 11355
gli@kktlawfirm.com, ktung@kktlawfirm.com, lwyang@kktlawfirm.com

Dated: March 28, 2023

By: /Christiane S. Campbell/
Christiane S. Campbell

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, VA 22313-1451

General Contact Number: 571-272-8500

General Email: TTABInfo@uspto.gov

Baxley

December 29, 2023

Opposition No. 91252185

May Flower International, Inc.

v.

*Shandong Shinho Food Industries Co.,
Ltd.*

Opposition No. 91252441

*Shandong Shinho Food Industries Co.,
Ltd.*

v.

GB Green Gastronome, LLC

Cancellation No. 92069339

Captain Liu

v.

*Teh-San Sun and Shandong Shinho Food
Industries Co., Ltd.*

Andrew P. Baxley, Interlocutory Attorney:

On November 13, 2023, Shandong Shinho Food Industries Co., Ltd. (“Shinho”) and Teh-San Sun (“Sun”) (collectively the “Shinho Parties”) filed a motion to quash May Flower International, Inc.’s and Captain Liu’s, and GB Green Gastronome, LLC

(collectively the “May Flower Parties”) notices of deposition upon written questions of Shinho under Fed. R. Civ. P. 30(b)(6) and of Sun that were filed with the Board and served on October 25, 2023. 34, 35 and 37 TTABVUE. The motion to quash has been fully briefed.

The Shinho Parties contends that the notices must be quashed because (1) depositions are prohibited in mainland China, where Sun and the corporate representatives of Shinho reside; (2) the notices of deposition are untimely because the May Flower Parties waited until the final two weeks of the discovery period to serve them; and (3) the notices of deposition were issued in bad faith.

In response, the May Flower parties contend that Mr. Sun identified himself as a Taiwanese citizen; that the depositions can be taken in Taiwan, Hong Kong or Macau, where depositions are routinely conducted in United States proceedings; and that, while service of the notices of deposition was delayed by the complexity of the case and the parties’ meet and confer efforts, the notices of deposition were served prior to the close of the discovery period. Accordingly, the May Flower parties asks that the motion to quash be denied.

In reply, the Shinho parties contend that the Board cannot force parties to travel for depositions; that Mr. Sun’s current residence is in mainland China; that discovery depositions must be noticed and taken during the discovery period; and that service of the notices of deposition with less than two weeks remaining did not allow adequate time to complete the deposition upon written questions proceeding and take the depositions at issue prior to the close of the discovery period.

Because Mr. Sun and the corporate representatives of Shinho reside in China and will not be present in the United States or its territories during this proceeding, the May Flower Parties must take any discovery deposition of them upon written questions in a foreign country, in this case, in China. Trademark Rules 2.120(c) and 2.124. However, “China does not permit attorneys to take depositions in China for use in foreign courts.” U.S. Department of State, China Judicial Assistance Information, online at <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html>.¹

The May Flower Parties’ reliance upon decisions from court cases regarding persons traveling to other countries to appear for discovery depositions is unpersuasive. The Board is not a court and is instead an administrative tribunal of limited jurisdiction empowered only to determine trademark registrability in the United States. *See* Trademark Act Sections 17, 18, 20 and 24, 15 U.S.C. §§ 1067, 1067, 1070 and 1092; TBMP § 102.01 (2023). Just as the Board will not order persons residing in foreign countries to travel to the United States for the taking of discovery

¹ The Department of State’s China Judicial Assistance Information website goes on to state as follows:

Under its Declarations and Reservations to the Hague Evidence Convention and subsequent diplomatic communications, China has indicated that taking depositions, whether voluntary or compelled, and obtaining other evidence in China for use in foreign courts may, as a general matter, only be accomplished through requests to its Central Authority under the Hague Evidence Convention. Consular depositions would require permission from the Central Authority on a case by case basis and the Department of State will not authorize the involvement of consular personnel in a deposition without that permission. Participation in such activity could result in the arrest, detention or deportation of the American attorneys and other participants.

Id. The May Flower Parties have not indicated that they made any requests to China’s Central Authority under the Hague Evidence Convention.

depositions, the Board will not order persons to travel from one foreign country to another foreign country for the taking of a discovery deposition. *See Jain v. Ramparts Inc.*, 49 USPQ2d 1429, 1431 (TTAB 1998).

Further, discovery depositions must be properly noticed and taken during the discovery period. Trademark Rule 2.120(a)(3). “[I]t is recommended that a party that desires to take a discovery deposition on written questions initiate the procedure **early in its discovery period.**” TBMP § 404.07(b) (emphasis added). *Cf.* Trademark Rule 2.120(a)(3) (“Interrogatories, requests for production of documents and things, and requests for admission must be served early enough in the discovery period, as originally set or as may have been reset by the Board, so that responses will be due no later than the close of discovery.”). The question whether to suspend proceedings pending completion of a proposed discovery deposition on written questions is left to the Board’s exercise of its discretion to schedule cases on its docket. *See* TBMP § 404.07(b).

Notwithstanding that each of these proceedings have been pending for at least four years, the May Flower Parties waited until the final two weeks of the discovery period to notice the depositions upon written questions and serve direct questions. Had the May Flower Parties served the notices of deposition upon written questions promptly upon issuance of the Board’s September 8, 2023 order, there may have been time for the depositions to go forward based on direct and cross questions prior to the close of discovery, under the schedule set forth in that order. *See* Trademark Rule 2.124(d)(1). To allow the discovery deposition upon written questions procedure to

run its course after the October 25, 2023 service of the notices of deposition upon written questions would require either a further suspension of proceedings or an extension of the discovery period. The Board finds that neither is warranted under the circumstances. In view of the foregoing, the motion to quash is granted on the grounds that the notices of deposition are improper and untimely.

Proceedings are resumed from where the parties stood when the notices of deposition were served. Remaining dates are reset as follows.

Discovery Closes	1/12/2024
Plaintiff's Pretrial Disclosures Due	2/26/2024
Plaintiff's 30-day Trial Period Ends	4/11/2024
Defendant's Pretrial Disclosures Due	4/26/2024
Defendant's 30-day Trial Period Ends	6/10/2024
Plaintiff's Rebuttal Disclosures Due	6/25/2024
Plaintiff's 15-day Rebuttal Period Ends	7/25/2024
Plaintiff's Opening Brief Due	9/23/2024
Defendant's Brief Due	10/23/2024
Plaintiff's Reply Brief Due	11/7/2024
Request for Oral Hearing (optional) Due	11/17/2024

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits,

declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing.

Note: Parties are strongly encouraged to check the entire document before filing.² The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the ESTTA help webpage.

² To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

EXHIBIT H

ESTTA Tracking number: **ESTTA1274474**

Filing date: **03/27/2023**

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

Proceeding no.	91252185
Party	Defendant Shandong Shinho Food Industries Co., Ltd.
Correspondence address	CHRISTIANE S CAMPBELL DUANE MORRIS LLP 30 S 17TH ST PHILADELPHIA, PA 19103-4196 UNITED STATES Primary email: ccampbell@duanemorris.com Secondary email(s): lmatturri@duanemorris.com, bvinci@duanemorris.com, idocketing@duanemorris.com 215-979-1817
Submission	Other Motions/Submissions
Filer's name	Christiane S. Campbell
Filer's email	CCampbell@duanemorris.com, lmatturri@duanemorris.com, bvinci@duanemorris.com, idocketing@duanemorris.com
Signature	/Christiane S. Campbell/
Date	03/27/2023
Attachments	Request for Board Participation in Meet and Confer.pdf(150272 bytes)

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

<p><i>May Flower International, Inc.</i> (Opposer)</p> <p style="text-align: center;">v.</p> <p><i>Shandong Shinho Food Industries Co., Ltd.</i> (Applicant)</p>	<p>Consolidated Opposition No. 91252185 (parent)</p> <p>U.S. App. No. 88428830</p>  <p>“Cong Ban LV Mark”</p>
<p><i>Captain Liu</i> (Petitioner)</p> <p style="text-align: center;">v.</p> <p><i>Teh-San Sun and Shandong Shinho Food Industries Co., Ltd.</i> (Respondent)</p>	<p>Cancellation No. 92069339 (child)</p> <p>U.S. Reg. No. 4098259</p>  <p>“Cong Ban LV Design Mark”</p>
<p><i>Shandong Shinho Food Industries Co., Ltd.</i> (Opposer)</p> <p style="text-align: center;">v.</p> <p><i>GB Green Gastronome, LLC</i> (Applicant)</p>	<p>Opposition No. 91252441 (child)</p> <p>U.S. App. No. 88061719</p>  <p>“Cong Ban Jiang Mark”</p>

REQUEST FOR BOARD PARTICIPATION IN MEET AND CONFER

Pursuant to TBMP § 502.06(a) Shandong Shinho Food Industries Co., Ltd. and Teh-San Sun (the “Shinoh Parties”) respectfully request that the interlocutory attorney participate in a meet and confer between the Shinoh Parties and May Flower International, Inc., Captain Liu, and GB Green Gastronome, LLC (the “May Flower Parties”). The Shinoh Parties request this meet and confer in good faith to discuss (1) issues related to May Flower and its counsel failing to produce Captain Liu for her personal deposition and the 30(b)(6) deposition of May Flower International, Inc. and GB Green Gastronome, LLC; (2) deficiencies in the May Flower Parties’ responses to the Shinoh Parties’ written discovery requests, as raised in the Shinoh Parties’ deficiency letter dated March 17, 2023; and (3) the propriety of sanctions for the May Flower

Parties' failure to cooperate in good faith in the discovery process. *See* TBMP § 527.03. The Shinho Parties understand their duty to make a good faith effort to resolve discovery disputes prior to filing a motion to compel pursuant to TBMP § 523.02. The Shinho Parties therefore requested the May Flower Parties' availability to meet and confer. Because the May Flower Parties have continuously refused to cooperate in the discovery process, Board participation in the parties' meet and confer is necessary.

The parties conferred and counsel for the May Flower Parties indicated they are available on the below dates and times:

- Thursday, March 30 between 11am-3:00pm ET;
- Thursday, March 30 between 4pm-6pm ET; and
- Friday, March 31 between 1pm-4pm ET.

The Shinho Parties request that the conference be held at a time mutually convenient for the parties and the interlocutory attorney. Pursuant to TBMP § 502.06(a), once the Board grants this request, the Shinho Parties will circulate a calendar invite that includes the conference call information.

Respectfully submitted,

DUANE MORRIS LLP

By: /Christiane S. Campbell/
Christiane S. Campbell

Attorneys for the Shinho Parties,

Christiane S. Campbell
30 South 17th Street
Philadelphia, PA 19103
(tel) 215.979.1817
(fax) 215.979.1020
CCampbell@duanemorris.com
LMatturri@duanemorris.com

Dated: March 27, 2023

CERTIFICATE OF SERVICE

I, Christiane S. Campbell, Esq., counsel to the Shinho Parties in the above-captioned proceeding, hereby certify that, on the 27th day of March, 2023, I served a copy of the foregoing Request For Board Participation in Meet and Confer, by email, upon the following party identified as correspondents and counsel of record for the May Flower Parties:

Ge Li
Kevin Kerveng Tung PC
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Emails: gli@kktlawfirm.com, ktung@kktlawfirm.com, lwy@kktlawfirm.com
Counsel for the May Flower Parties

Dated: March 27, 2023

By: /Christiane S. Campbell/
Christiane S. Campbell