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

Proceeding no.	91278157
Party	Defendant OWN Your Hunger Inc.
Correspondence address	BRITTANY FAYE MEYER-BELNAP #1, 1806 BELMONT ROAD NW WASHINGTON, DC 20009 UNITED STATES Primary email: brittanymb@gmail.com Secondary email(s): admin@ownyourhunger.com 202-550-5700
Submission	Defendant's Notice of Reliance
Filer's name	BRITTANY MEYER-BELNAP
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Signature	/BRITTANY MEYER-BELNAP/
Date	11/14/2023
Attachments	Opposition-91278157-2023-11-14-Notice of Reliance with Exhibits.pdf(316818 bytes)

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

<p>OWN YOUR HUNGER INC., Applicant, v. Flowers Bakeries Brands LLC Opposer.</p>	<p>Opposition No. 91278157 US Serial No. 90805804 Mark: WONDERSPREAD Filed: July 1, 2021</p>
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NOTICE OF RELIANCE

Applicant OWN Your Hunger Inc. (“OWN”) submits of record in connection with this opposition proceeding copies of the documents below:

EXHIBIT	DATE	DOCUMENT	RELEVANCE
1	May 26, 2023	Opposer’s Responses to First Set of Interrogatories	Presence of actual confusion; awareness of third-party registration(s) with identical or similar marks; similarity of goods; similarity of trade channels; similarity of consumers; level of fame.
2	May 26, 2023	Opposer’s Responses to First Set of Admission	Presence of actual confusion; awareness of third-party registration(s) with identical or similar marks; similarity of goods; similarity of trade channels; similarity of consumers; level of fame.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing NOTICE OF RELIANCE was served via email on November 14, 2023, on Opposer at the following address of record:

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EXHIBIT 1

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

FLOWERS BAKERIES BRANDS,)
LLC,)
Opposer,)
Serial No. 90805804)
v.)
Mark: WONDERSPREAD)
OWN YOUR HUNGER INC.,)
Opposition No. 91278157)
Applicant.)
)
)
)

**OPPOSER’S RESPONSES AND OBJECTIONS
TO FIRST SET OF REQUESTS FOR ADMISSIONS**

Pursuant to C.F.R. §§ 2.116 and 2.120 of the Trademark Rules of Practice and Federal Rules of Civil Procedure 26 and 36, Opposer Flowers Bakeries Brands, LLC objects and responds to Applicant Own Your Hunger Inc.’s (“Applicant”) First Set of Requests for Admission (the “Requests”) as follows.

GENERAL OBJECTIONS

1. Opposer objects to the Requests to the extent they attempt to impose obligations upon Opposer inconsistent with or greater than Opposer’s obligations for discovery under the rules of the Trademark Trial and Appeal Board (“TTAB”) and the Federal Rules of Civil Procedure.
2. Opposer objects to the Requests to the extent they seek information not in the possession, custody, or control of Opposer.
3. Opposer objects to the Requests to the extent they seek information not relevant to the issues in this proceeding and not calculated to lead to the discovery of admissible evidence.

4. Opposer objects to the Requests to the extent they assume facts not in evidence. Opposer's responses are made without admitting facts presumed or assumed by the Requests.

5. Opposer objects to the Requests to the extent the information sought is protected from discovery by attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions, or legal theories of counsel, and as such are protected from discovery.

6. Opposer's objections and responses to the Requests are made without waiving or intending to waive, but to the contrary, preserving and intending to preserve:

(a) all questions of competency, relevancy, materiality, privilege, and admissibility of evidence;

(b) the right to object on any ground to the use of any response or the subject matter thereof;

(c) the right to object on any ground, at any time, to a demand for further responses to these or other discovery requests;

(d) the right to rely upon any subsequently discovered documents or information Opposer does not presently possess or recall; and

(e) the right to amend, revise, or supplement these objections and responses at any time pursuant to the rules of the TTAB and the Federal Rules of Civil Procedure.

7. Opposer incorporates by reference these General Objections into each of the Objections to Definitions and Objections and Responses below.

OBJECTIONS TO APPLICANT'S DEFINITIONS

1. Opposer objects to the Definitions provided in the Requests to the extent they differ from the plain meaning of the terms they purportedly define.

2. Opposer objects to the Definitions provided in the Requests to the extent they impose obligations upon the Opposer inconsistent with or greater than those permitted under the TTAB or the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS & RESPONSES

REQUEST NO. 1:

Admit Opposer is aware of numerous USPTO third-party registrations that exist and bear the same mark WONDER in International Class 029 and other food-related classes.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that Opposer may obtain during discovery. Opposer additionally objects to this request because the terms “numerous” and “other food classes” are undefined.

Subject to and without waiving its objections, Opposer admits it is aware of a limited number of registrations of marks consisting in part of the word “wonder” and covering goods in Class 29, but none of marks consisting only of that word. Opposer denies any knowledge of the validity of those registrations.

REQUEST NO. 2:

Admit the mark WONDER has co-existed for a substantial time period with numerous third-party marks that is [sic] registered with the USPTO that also partially or fully consist of the mark WONDER, and has not resulted in any confusion.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that

Opposer may obtain during discovery. Opposer also objects to this Request because “a substantial time period” is undefined.

Subject to and without waiving its objections, Opposer admits knowledge of certain registrations covering marks consisting in whole or in part of the word “wonder” but denies that those marks are confusingly similar to those of Opposer. Opposer denies any knowledge of the validity of those registrations.

REQUEST NO. 3:

Admit the mark WONDER has co-existed for a substantial time period with numerous third-party marks not registered with the USPTO but contains the word WONDER and sold in United States commerce and has not resulted in any confusion.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that Opposer may obtain during discovery.

Subject to and without waiving its objections, Opposer admits knowledge of certain registrations covering marks consisting in whole or in part of the word “wonder” but denies that those marks are confusingly similar to those of Opposer.

REQUEST NO. 4:

Admit the timeframe that the mark WONDER has co-existed with numerous other third-party marks without any confusion can potentially be as long as a centennial (i.e. 100 years).

RESPONSE:

In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that

Opposer may obtain during discovery. Opposer additionally objects to this Request to the extent it improperly uses the word “centennial” as a noun.

Subject to and without waiving its objections, Opposer states that the Request’s failure to identify the referenced “numerous other third-party marks” leaves Opposer without a basis for admitting the Request, and Opposer therefore denies it.

REQUEST NO. 5:

Admit that Opposer is not aware of any actual confusion that has occurred with its WONDER mark since Applicant’s mark WONDERSPREAD was first used in US commerce in April of 2021.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that Opposer may obtain during discovery.

Subject to and without waiving its objections, Opposer admits this Request.

REQUEST NO. 6:

Admit Opposer is aware of another Opposer for Application US Serial No. 90805804 for WONDERSPREAD, namely The Wonderful Company LLC who currently holds US Registration Number 5429601 for THE WONDERFUL NUT.

RESPONSE:

Subject to and without waiving its objections, Opposer admits awareness of The Wonderful Company. Opposer denies knowledge of the nature or status of that company’s enforcement strategy with respect to Applicant.

REQUEST NO. 7:

Admit Opposer is not aware of any actual confusion with its WONDER mark and any mark belonging to The Wonderful Company LLC, for which Opposer was the plaintiff in Opposition 91207033 (<https://ttabvue.uspto.gov/ttabvue/v?pno=91207033&pty=OPP>) that alleges Likelihood of Confusion and Dilution.

RESPONSE:

Opposer objects to this Request as it seeks information not relevant to the issues in this proceeding and not calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Opposer denies that it opposed any application by The Wonderful Company LLC in Opposition No. 912207033 and therefore states it is unable to admit or deny this Request.

REQUEST NO. 8:

Admit that Opposer, in the past 10 years, has not been involved in any actual or threatened litigation regarding trademark infringement or unfair competition claims in which Opposer has engaged with any other owners who have registered a mark containing the word WONDER in any class with the USPTO.

RESPONSE:

Subject to and without waiving its objections, Opposer denies this Request.

REQUEST NO. 9:

Admit that no independent surveys, focus groups, or any other type of third-party poll was conducted to indicate any likelihood of confusion among consumers, that associates the mark WONDERSPREAD with any of Opposer's goods.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that Opposer may obtain during discovery.

Subject to and without waiving its objections, Opposer admits this Request.

REQUEST NO. 10:

Admit that no independent surveys, focus groups, or any other type of third-party poll was conducted to indicate any likelihood of confusion among consumers, that associates the mark WONDERSPREAD with any of Opposer's goods.

RESPONSE:

Request No. 10 is duplicative of Request No. 9. In addition to the General Objections, Opposer objects to this Request to the extent it is premature in that discovery has only recently begun, and this Request seeks information that Opposer may obtain during discovery.

Subject to and without waiving its objections, Opposer admits this Request.

REQUEST NO. 11:

Admit bread and nut butters are mutually exclusive products. In other words, it is not necessary that bread and nut butters must be used together.

RESPONSE:

Subject to and without waiving its objections, Opposer admits this Request. Opposer states, however, that it is patently apparent that bread and nut butters can be used together.

REQUEST NO. 12:

Admit the correct use of Opposer's WONDER mark in registrations that have "bread" listed in its goods and Services is "WONDER® brand bread", and not "WONDER bread".

RESPONSE:

Subject to and without waiving its objections, Opposer denies this Request.

REQUEST NO. 13:

Admit Opposer's Registration 1665998 for the mark WONDER under International Class 030 for "bread, rolls and buns", and Registration 4185108 for the mark WONDER under International Class for "bakery goods", does not describe the same goods as nuts or nut-based spreads.

RESPONSE:

Subject to and without waiving its objections, Opposer admits this Request but denies that the closely related nature of the parties' goods renders confusion unlikely.

REQUEST NO. 14:

Admit none of Opposer's goods sold in the United States are considered to be in the luxury and/or premium-priced categories.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request on the ground that the phrase "luxury and/or premium-priced categories" is vague and ambiguous such that the Request fails to identify the information sought with reasonable particularity. Opposer also objects to this Request on the grounds that the parties' respective filings in the USPTO are restricted with respect to product categories and the Request therefore seeks information irrelevant to the likelihood of confusion between the parties' marks.

Subject to and without waiving its objections, Opposer admits this Request.

REQUEST NO. 15:

Admit all Opposer's goods sold in the United States that bear the mark WONDER are generally placed in the lower cost, budget, and/or affordable price categories.

RESPONSE:

In addition to the General Objections, Opposer objects to this Request on the ground that the phrase "lower cost, budget, and/or affordable price categories" is vague and ambiguous such that the Request fails to identify the information sought with reasonable particularity. Opposer also objects to this Request on the grounds that the parties' respective filings in the USPTO are restricted with respect to price points and the Request therefore seeks information irrelevant to the likelihood of confusion between the parties' marks.

Subject to and without waiving its objections, Opposer admits this Request.

Dated: March 9, 2023
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/Theodore H. Davis Jr./
Theodore H. Davis Jr.
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify a copy of the attached **OPPOSER'S RESPONSES AND OBJECTIONS TO FIRST SET OF REQUESTS FOR ADMISSIONS** was served by electronic mail to the following attorney of record on March 9, 2023:

Brittany Faye Meyer-Belnap, Esq.
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/Raina Barbee/
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EXHIBIT 2

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

FLOWERS BAKERIES BRANDS,)	
LLC,)	
Opposer,)	
)	Serial No. 90805804
v.)	Mark: WONDERSPREAD
)	
OWN YOUR HUNGER INC.,)	Opposition No. 91278157
)	
Applicant.)	
)	
)	

**OPPOSER’S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS
TO APPLICANT’S FIRST SET OF INTERROGATORIES**

Pursuant to C.F.R. §§ 2.116 and 2.120 of the Trademark Rules of Practice and Federal Rules of Civil Procedure 26 and 33, Opposer, Flowers Bakeries Brands, LLC (“Opposer”) objects and responds to Applicant, Own Your Hunger, Inc.’s (“Applicant”) First Set of Interrogatories (the “Interrogatories”) as follows. Opposer hereby incorporates its prior responses and objections as part of these responses.

GENERAL OBJECTIONS

1. Opposer objects to the Interrogatories to the extent they attempt to impose obligations upon Opposer inconsistent with or greater than Opposer’s obligations for discovery under the rules of the Trademark Trial and Appeal Board (“TTAB”) and the Federal Rules of Civil Procedure.

2. Opposer objects to the Interrogatories to the extent they impose undue burden and expense on Opposer.

3. Opposer objects to the Interrogatories to the extent they require Opposer to search and review electronically stored information from sources not reasonably accessible to Opposer because of undue burden or cost. FED. R. CIV. P. 26(b)(2)(B).

4. Opposer objects to the Interrogatories to the extent they seek information not in the possession, custody, or control of Opposer or its agents, representatives, or attorneys.

5. Opposer objects to the Interrogatories to the extent they seek information already in the possession, custody, or control of Applicant or their agents, representatives, or attorneys.

6. Opposer objects to the Interrogatories to the extent they seek information unreasonably cumulative or duplicative. FED. R. CIV. P. 26(b)(2)(C)(i).

7. Opposer objects to the Interrogatories to the extent they seek information more readily available from a more convenient, less burdensome, or less expensive source than Opposer. *Id.*

8. Opposer objects to the Interrogatories to the extent they seek information protected from discovery by attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, or protection, including, but not limited to: information constituting privileged communications with counsel; information prepared, acquired, or developed in anticipation of litigation or for trial; and mental impressions, conclusions, opinions, or legal theories of an attorney or legal representative of Opposer. Inadvertent disclosure of any such information is not intended to and shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, or with respect to the subject matter thereof. Nor shall such inadvertent disclosure waive Opposer's rights to object to the use of any such information during this action or in any other proceedings. Opposer claims all such privileges and invokes all such protections.

9. Opposer objects to the Interrogatories to the extent they seek information not relevant to any claim or defense asserted by any party in this litigation. FED. R. CIV. P. 26(b)(1).

10. Opposer objects to the Interrogatories to the extent their scope is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, and the importance of the information sought in resolving the issues. *Id.*

11. Opposer objects to the Interrogatories to the extent they impose on Opposer a burden and expense outweighing the likely benefit of the documents or information sought. *Id.*

12. Opposer objects to the Interrogatories to the extent they assume facts not in evidence. Opposer's responses are made without admitting facts presumed or assumed by the Interrogatories.

13. Opposer's objections and responses to the Interrogatories are made without waiving or intending to waive, but to the contrary, preserving and intending to preserve

- (a) all questions of competency, relevancy, materiality, privilege, and admissibility of evidence;
- (b) the right to object on any ground to the use of any response or the subject matter thereof;
- (c) the right to object on any ground, at any time, to demand for further responses to these or other discovery requests;
- (d) the right to rely upon any subsequently discovered documents or information Opposer does not presently possess or recall; and
- (e) the right to amend, revise, or supplement these objections and responses at any time pursuant to the TTAB and the Federal Rules of Civil Procedure.

15. Opposer objects to the Interrogatories as overbroad and unduly burdensome to the extent they are not temporally limited to the time period at issue. Opposer and its predecessors have used the WONDER Mark continuously since 1921, with the exception of a ten-month period in 2012-2013 following the bankruptcy filing of Opposer's immediate predecessor, Hostess Brands. To require Opposer to respond from the 1921 to present day imposes a burden on Opposer disproportionate to the needs of this case. Unless otherwise noted, Opposer's responses will be limited to the previous ten (10) years or the information in Opposer's possession, custody, or control if less than ten (10) years.

16. Opposer objects to the Interrogatories insofar as they seek information regarding activities outside the United States because that information is not relevant to the claims or defenses asserted in this action. Opposer will only provide information concerning activities within the United States.

17. Opposer incorporates by reference these General Objections into each of the Objections to Definitions and Specific Objections and Responses to Interrogatories below.

OBJECTIONS TO APPLICANT'S DEFINITIONS

1. Opposer objects to the Definitions provided in the Interrogatories to the extent they differ from the plain meaning of the terms they purportedly define.

2. Opposer objects to the Definitions provided in the Interrogatories to the extent they impose obligations upon the Opposer inconsistent with or greater than those permitted under the TTAB or the Federal Rules of Civil Procedure.

SPECIFIC OBJECTIONS & RESPONSES

INTERROGATORY NO. 18:

Identify each Person who has been or is responsible for the creation, preparation, development, or placement of advertising or promotional materials in the United States bearing Opposer's Mark, describing each Person's responsibility.

RESPONSE:

In addition to the General Objections, Opposer objects to this Interrogatory as overbroad and unduly burdensome to the extent it is not temporally limited to the time period at issue and requests "each" person. Subject to these objections, Opposer states that Ashley Smith, Brand Manager, is responsible for the creation, preparation, development, or placement of advertising and marketing materials in the United States. Ms. Smith has been Brand Manager since October of 2021 and was an Associate Brand Manager starting in February of 2015.

INTERROGATORY NO. 19:

Identify each advertising agency that Opposer has retained to advertise or promote Opposer's Goods within the United States, and for each such agency, identify the Person responsible for the advertising or promotion of Opposer's Goods and describe the role each such Person played in such activities.

RESPONSE:

In addition to the General Objections, Opposer objects to this Interrogatory as overbroad and unduly burdensome to the extent it is not temporally limited to the time period at issue. Subject to these objections and after a diligent search, Opposer states that between 2013 and the present it retained: The Zimmerman Agency (public relations and social media), Brand Cottage

(media buyer), SCOUT Marketing, Inc. (social media), Creative Communications (public relations consultants), Match MG US, LLC (media campaign asset creation), TRG, Inc. f/k/a The Richards Group, Inc. (social and digital marketing), and PPK, Inc. (social, digital, and television) to advertise and promote Opposer's Goods.

INTERROGATORY NO. 20:

Identify (including, as appropriate, by title, name of the publication, website or domain name, and type of media) each channel through which Opposer's Goods have been advertised, promoted, or marketed within the United States.

RESPONSE:

In addition to its First Supplemental Response to this Interrogatory and preserving all prior objections, Opposer states as follows: Opposer's Goods have been advertised through various means over the last several decades including television, radio, print, digital, internet, and social media advertising. Examples of such advertising have been produced and are referenced herein pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

Dated: May 26, 2023

/Theodore H. Davis Jr./

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CERTIFICATE OF SERVICE

I certify a copy of the attached document was served by electronic mail to the following attorney of record on May 26, 2023:

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/Kris Teilhaber/
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