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

Proceeding	92065813
Party	Defendant Village Farms, L.P.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NS Brands, Ltd.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No.: 92065813
	:	
Village Farms, L.P.,	:	
	:	
Registrant.	:	
	:	

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

**VILLAGE FARMS’S ANSWER TO NS BRANDS, LTD.’S
PETITION FOR CANCELLATION**

Village Farms L.P. (hereinafter “Village Farms” or “Registrant”), Registrant in the above-captioned action, by and through his attorneys, Blank Rome LLP, answers the allegations contained in Petitioner, NS Brands, Ltd.’s (hereinafter “NatureSweet” or “Petitioner”) Petition for Cancellation (the “Petition”) as follows.

BACKGROUND

I. Petitioner’s extensive use of HEAVENLY for tomatoes

1. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the Petition and therefore denies the same.
2. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Petition and therefore denies the same.
3. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 3 of the Petition and therefore denies the same.

4. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 4 of the Petition and therefore denies the same.

5. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 5 of the Petition and therefore denies the same.

6. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 6 of the Petition and therefore denies the same.

7. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 7 of the Petition and therefore denies the same.

8. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 8 of the Petition and therefore denies the same.

9. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 9 of the Petition and therefore denies the same.

II. Village Farms's registration for HEAVENLY VILLAGIO MARZANO.

10. Admitted.

11. Admitted.

12. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 12 of the Petition and therefore denies the same.

13. Admitted that Village Farms filed a U.S. trademark application on July 14, 2011 for the mark HEAVENLY VILLAGIO MARZANO, on the basis of intent to use, for "fresh fruits and vegetables." Village Farms further admits that this application was assigned Application Serial No. **85/371,713** by the U.S. Patent & Trademark Office. Village Farms denies that it filed any U.S. trademark application assigned Application Serial No. **85/371,743**. Village Farms lacks sufficient knowledge to admit or deny the

remaining allegations contained in Paragraph 13 of the Petition and such allegations are therefore denied.

14. Admitted.

15. Admitted that Village Farms's specimen of use filed with its Amendment to Allege Use shows Village Farms' "product packaging featuring the mark [HEAVENLY VILLAGIO MARZANO] used in direct connection with the goods included in International Class 31 outlined in the Application [Serial No. 85/371,713]" – which includes goods identified as "fresh fruits and vegetables," as expressly identified in Village Farms' Amendment to Allege Use.

16. Admitted.

17. Village Farms admits that U.S. Trademark Registration No. 4,124,908 was issued by the U.S. Patent & Trademark Office on April 10, 2012, which was more than five (5) years ago. The remaining allegations contained in Paragraph 17 include legal conclusions to which no response is required.

III. Registrant's lawsuit against Petitioner based on HEAVENLY VILLAGIO MARZANO.

18. Admitted that on February 14, 2017, Village Farms filed suit against NatureSweet in the United States District Court for the Western District of Texas (the "Pending Litigation"). Village Farms denies the remainder of the allegations contained in Paragraph 18.

19. Admitted.

20. All likelihood of confusion claims against NatureSweet are expressly set forth in the complaint filed by Village Farms in the Pending Litigation (the "Complaint"), which Village Farms has attached as Exhibit A to its Motion in Support of Village

Farms's Motion to Set Aside the Default Judgment. Village Farms admits the allegations as expressly stated in the Complaint, and the remaining allegations in Paragraph 20 of the Petition are denied.

21. All likelihood of confusion claims against NatureSweet are expressly set forth in the Complaint, which Village Farms has attached as Exhibit A to its Motion in Support of Village Farms's Motion to Set Aside the Default Judgment. Village Farms admits the allegations as expressly stated in the Complaint, and the remaining allegations in Paragraph 21 of the Petition are denied.

22. All likelihood of confusion claims against NatureSweet are expressly set forth in the Complaint, which Village Farms has attached as Exhibit A to its Motion in Support of Village Farms's Motion to Set Aside the Default Judgment. Village Farms admits the allegations as expressly stated in the Complaint, and the remaining allegations in Paragraph 22 of the Petition are denied.

23. All likelihood of confusion claims against NatureSweet are expressly set forth in the Complaint, which Village Farms has attached as Exhibit A to its Motion in Support of Village Farms's Motion to Set Aside the Default Judgment. Village Farms admits the allegations as expressly stated in the Complaint, and the remaining allegations in Paragraph 23 of the Petition are denied.

24. Admitted.

25. Admitted that Village Farms first used its HEAVENLY VILLAGIO MARZANO mark at least as early as October 15, 2011.

26. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 26 of the Petition and therefore denies the same.

27. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 27 of the Petition and therefore denies the same.

28. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 28 of the Petition and therefore denies the same.

29. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 29 of the Petition and therefore denies the same.

30. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 30 of the Petition and therefore denies the same.

COUNT 1

15 U.S.C. § 1052(d) – Likelihood of Confusion

31. Village Farms incorporates its responses to Paragraphs 1-30.

32. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 32 of the Petition and therefore denies the same.

33. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 33 of the Petition and therefore denies the same.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Village Farms lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 38 of the Petition and therefore denies the same.

39. Denied.

40. All likelihood of confusion claims against NatureSweet are expressly set forth in

the Complaint, which Village Farms has attached as Exhibit A to its Motion in Support of Village Farms's Motion to Set Aside the Default Judgment. Village Farms admits the allegations as expressly stated in the Complaint, and the remaining allegations in Paragraph 40 of the Petition are denied.

41. Denied.

42. Denied.

43. All likelihood of confusion claims against NatureSweet are expressly set forth in the Complaint, which Village Farms has attached as Exhibit A to its Motion in Support of Village Farms's Motion to Set Aside the Default Judgment. Village Farms admits the allegations as expressly stated in the Complaint, and the remaining allegations in Paragraph 43 of the Petition are denied.

VILLAGE FARMS'S AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim against Registrant upon which relief may be granted.
2. The Petition is barred in whole or in part by laches.
3. The Petition is barred in whole or in part under the doctrines of waiver, estoppel, and/or acquiescence.
4. The Petition is barred in whole or in part by Petitioner's unclean hands.
5. Registrant has acted in good faith at all times.
6. As between Registrant and Petitioner, Registrant is the senior user of the HEAVENLY mark in connection with fresh fruits and vegetables. Petitioner has not provided any evidence to establish its claimed dates of first use of the HEAVENLY and HEAVENLY SALAD TOMATOES marks and, therefore, the Petition should be

dismissed in its entirety.

7. To the extent Petitioner ever owned rights to the HEAVENLY and/or HEAVENLY SALAD TOMATOES marks, such rights were abandoned as a result of Petitioner's failure to police and enforce its rights.

8. To the extent Petitioner ever owned rights to the HEAVENLY and/or HEAVENLY SALAD TOMATOES marks, such rights were abandoned as a result of non-use.

9. Petitioner does not own exclusive rights to the marks HEAVENLY and HEAVENLY SALAD TOMATOES, or to any variations or derivatives thereof.

10. Registrant's conduct is privileged and justified as legitimate, lawful competition.


11. Registrant's conduct was not the cause in fact or the proximate cause of any damages alleged by Petitioner.

12. Petitioner is not entitled to any relief for which Petitioner prays.

13. Registrant presently has insufficient knowledge or information on which to form a belief as to whether there may be additional, as yet unstated affirmative defenses. Thus, subject to discovery in this cancellation, Registrant expressly reserves its right to assert additional affirmative defenses when and if they are appropriate.

Respectfully submitted,
BLANK ROME LLP

Date: July 6, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2017, the foregoing was filed electronically with the TTAB and served via email to all counsel of record to the following:

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