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Filing date: **06/08/2018**

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

Proceeding	92067298
Party	Plaintiff Flowers Bakeries Brands LLC
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Submission	Motion to Compel Discovery or Disclosure
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Signature	/Nichole Davis Chollet/
Date	06/08/2018
Attachments	2018.06.08 Motion to Compel_Decl of Jones_Ex A - F.pdf(573484 bytes )

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

FLOWERS BAKERIES BRANDS, LLC,	)	
	)	
Petitioner,	)	
	)	Reg. No. 4239651
	)	
v.	)	Mark: NATURE’S BLEND
	)	
MARK and BRENDA ROBINSON,	)	Cancellation No. 92067298
	)	
Respondents.	)	

**PETITIONER’S MOTION TO COMPEL DISCOVERY RESPONSES  
AND TO RESET DISCOVERY AND TRIAL DATES**

**I. Introduction**

Pursuant to 37 C.F.R. § 2.120(f), Petitioner Flowers Bakeries Brands, LLC (“Flowers”) respectfully move the Board for an order:

- (1) compelling responses by a date certain to the interrogatories and requests for production served by Flowers on Respondents Mark and Brenda Robinson (collectively, “Respondents”) without affording Respondents the belated opportunity to assert objections they waived;<sup>1</sup> and
- (2) resetting the discovery and trial dates in this matter for the sole purpose of allowing Flowers to complete discovery once Respondents have served their responses to allow Flowers the opportunity to review the written responses and document production in advance of any necessary deposition(s).

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<sup>1</sup> By failing to timely respond to Flowers’ interrogatories and requests for production without justification, Respondents waived their objections to those discovery requests. *See* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) 403.03; Fed. R. Civ. P. 33(b)(4).

As set forth below in greater detail, Flowers has complied with its meet-and-confer obligations prior to filing this motion.

## **II. Respondents Failed to Respond to Written Discovery Requests and Have Not Met Their Obligations to Respond to Flowers' Attempts to Resolve This Matter Without the Board's Intervention**

The Board should compel discovery responses from Respondents and reset the remaining deadlines to allow Flowers to complete discovery because Respondents' failure to participate in this proceeding will otherwise prejudice Flowers' case. Respondents served initial disclosures on January 26, 2018, and Flowers served its initial disclosures on February 21, 2018. *See* Declaration of A. Elizabeth Jones, dated June 8, 2018, filed contemporaneously herewith ("Jones Decl."), ¶3. On February 26, 2018, Flowers served written discovery requests on Respondents, namely, Flowers First Set of Interrogatories and First Set of Document Requests.<sup>2</sup> *See* Jones Decl., ¶4, Ex. A. Respondents' responses to the discovery requests were due April 11, 2018.<sup>3</sup> *See Id.* ¶6. Respondents did not respond or object to Flowers' discovery requests by the deadline. *Id.* ¶6. Therefore, on April 18, 2018, Flowers' counsel sent Respondents' counsel an email noting Respondents' objections were waived and requesting responses. *Id.* at ¶7, Ex. B. On April 26, 2018, Respondents' counsel responded that he would have responses within a week. *Id.* ¶8, Ex. C. Flowers' counsel waited until May 7, 2018, but when no responses were served, counsel for Flowers again emailed Respondents' counsel regarding the outstanding discovery responses. *Id.* ¶9, Ex. D. Respondents' counsel responded to Flowers' counsel's email on May 16, 2018, stating the responses were forthcoming. *Id.* ¶10, Ex. E. On May 29, 2018, Flowers' counsel again followed up with Respondents' counsel noting Respondents' discovery deficiencies and

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<sup>2</sup> Respondents also served Flowers with (1) First Request for Admission, (2) First Request for Documents, and (3) First Request for Interrogatories on February 26, 2018. Jones Decl. ¶5. Flowers timely responded to Respondents' discovery requests. *Id.* ¶6.

<sup>3</sup> The parties mutually agreed to extend the original deadline from March 28, 2018 to April 11, 2018.

requesting responses to the outstanding discovery. *Id.* ¶11, Ex. F. Counsel for Respondents has not responded to counsel for Flowers. *Id.* ¶12.

Respondents' responses to Flowers' interrogatories and requests for production remain outstanding as of the filing date of this motion. Jones. Decl. ¶12. Flowers therefore will be prejudiced if it is forced to attempt to schedule a deposition within the remaining discovery period without the benefit of prior interrogatory responses and responsive documents from Respondents. Because Respondents have not made a good faith attempt to cure their discovery deficiencies, Flowers had no choice but to proceed with the present motion to compel.

### **III. The Board Should Compel Responses and Reset the Remaining Discovery and Trial Dates to Allow Flowers to Complete Discovery**

Based on Respondents' failure to respond to Flowers' discovery requests, the Board should (1) compel Respondents' responses by a date certain to Flowers' interrogatories and requests for the production of documents, including the production of responsive documents; and (2) reset the remaining discovery dates as to Flowers (but not Respondents) to allow for Flowers' review of, and follow-up on, the discovery produced.

#### **A. The Board Should Compel Respondents to Fully Respond to Flowers' First Set of Interrogatories and Flowers' First Set of Document Requests**

Federal Rule of Civil Procedure 37(a)(3)(B) and Trademark Rule of Practice 2.120(f) allow a discovering party to move for an order compelling responses to discovery requests when the other party refuses to respond or provides deficient responses. *See, e.g.*, T.B.M.P. § 523.01; *Pioneer Kabushiki Kaisha v. Hitachi High Techs. Am., Inc.*, 74 U.S.P.Q.2d 1672, 1679 (T.T.A.B. 2005) (granting motion to compel production of documents); *Miss Am. Pageant v. Petite Prods. Inc.*, 17 U.S.P.Q.2d 1067, 1070 (T.T.A.B. 1990) (granting motion to compel responses to interrogatories and document production); *Am. Soc'y of Oral Surgeons v. Am. Coll. of Oral &*

*Maxillofacial Surgeons*, 201 U.S.P.Q. 531, 534 (T.T.A.B. 1979) (granting motion to compel responses to discovery requests); *Miller & Fink Corp. v. Servicemaster Hosp. Corp.*, 184 U.S.P.Q. 495, 496 (T.T.A.B. 1975) (granting motion to compel responses to interrogatories); *Johnson & Johnson v. Diamond Med., Inc.*, 183 U.S.P.Q. 615, 617 (T.T.A.B. 1974) (granting motion to compel production of documents). Respondents have neither served written objections or responses to Flowers’ discovery requests nor produced responsive documents. The Board therefore should compel them to do so.

**B. The Board Should Extend Discovery for Flowers and Reset Trial Dates**

Under Federal Rule of Civil Procedure 6(b) and T.B.M.P. § 509.01, a party may seek to extend the discovery period for “good cause.” See *Champagne Louis Roederer v. J. Garcia Carrion, S.A.*, Opp. No. 91155105, 2004 WL 839411, at \*5 (T.T.A.B. April 15, 2004) (granting motion to extend where good cause was shown, there was no evidence of bad faith, no prejudice to non-moving party, and no abuse of the privilege of extensions). Moreover, the “Board is generally liberal in granting extensions of time so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” *Id.* at \*5.

Flowers’ request for an extension of the discovery period is necessitated by Respondents’ failure to respond to Flowers’ discovery requests. If Flowers is forced to attempt to schedule a deposition before the close of discovery as scheduled, it would be prejudiced because it has not had the benefit of reviewing responsive written discovery responses or documents from Respondents. Absent an extension, Flowers will be unfairly deprived of its right to take follow-up discovery as to Respondents’ discovery responses and document production, including the ability to seek discovery through deposition. See *Miss Am. Pageant*, 17 U.S.P.Q.2d at 1070 (“[T]he Board will, upon motion, reopen or extend discovery solely for the benefit of a party

whose opponent, by wrongfully refusing to answer, or delaying its responses to, discovery, has unfairly deprived the propounding party of the right to take follow-up.”).

Accordingly, Flowers has shown good cause for the extension. *See Toy Airplane Gliders of Am., Inc. v. Manniso*, Opp. No. 153177, 2003 WL 21979842, \*4 (T.T.A.B. Aug. 8, 2003) (granting motion to extend discovery period); *Mobil Oil Corp. v. Carmen Anthony Steakhouse, LLC*, Opp. No. 119854, 2001 WL 1105101, at \*3-4 (T.T.A.B. Sept. 18, 2001) (granting motion to extend discovery period upon showing of “sufficient good cause”). Further, Flowers has acted in good faith and diligently pursued its case before making this request, and the proposed extension will not prejudice Respondents.

#### **IV. Conclusion**

For the foregoing reasons, Flowers respectfully requests the Board to compel Respondents to respond fully to Flowers’ First Set of Interrogatories and First Set of Document Requests; and to extend the discovery period for Flowers (but not Respondents), reset trial deadlines accordingly, and suspend this proceeding pending the Board’s resolution of this motion.

Dated: June 8, 2018

Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4528  
404-815-6500 (ph.)  
404-815-6555 (fax)

Respectfully submitted,

/Nichole Davis Chollet/  
Theodore H. Davis Jr.  
Nichole Davis Chollet  
A. Elizabeth Jones

*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I certify a copy of the attached **PETITIONER'S MOTION TO COMPEL  
DISCOVERY RESPONSES AND TO RESET DISCOVERY AND TRIAL DATES** was  
served by electronic mail to the following attorney of record on June 8, 2018:

Nicholas D. Wells, Esq.  
330 N Main Street  
Kaysville, UT 84037  
nwells@legendslaw.com

/Nichole Davis Chollet/  
Kilpatrick Townsend & Stockton LLP

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

FLOWERS BAKERIES BRANDS, LLC,	)	
	)	
Petitioner,	)	
	)	Reg. No. 4239651
	)	
v.	)	Mark: NATURE’S BLEND
	)	
MARK and BRENDA ROBINSON,	)	Cancellation No. 92067298
	)	
Respondents.	)	

**DECLARATION OF A. ELIZABETH JONES IN SUPPORT OF PETITIONER’S  
MOTION TO COMPEL DISCOVERY RESPONSES  
AND TO RESET DISCOVERY AND TRIAL DATES**

I, A. Elizabeth Jones, declare as follows:

1. I am an attorney at the law firm of Kilpatrick Townsend & Stockton LLP, and am one of the attorneys representing Petitioner Flowers Bakeries Brands, LLC (“Flowers”) in this action against Respondents Mark and Brenda Robinson (“Respondents”). I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge.

2. Flowers commenced this proceeding on November 9, 2017 by filing a Petition for Partial Cancellation against the above-referenced registration owned by Respondents. *See* Dkt. 1.

3. Respondents served initial disclosures on January 26, 2018 and Flowers served its initial disclosures on February 21, 2018.

4. On February 26, 2018, Flowers served document requests and interrogatories on Respondents. True and correct copies of those document requests and interrogatories are attached collectively as **Exhibit A**.

5. On the same day, Respondents served document requests, requests for admission, and interrogatories on Flowers.

6. Both parties' responses to the respective discovery requests were originally due on March 28, 2018. The parties mutually agreed to extend the original deadline from March 28, 2018 to April 11, 2018. Flowers served objections and responses to Respondents discovery requests on April 11, 2018. To date, Respondents have not responded or objected to those requests.

7. On April 18, 2018, Flowers' counsel sent Respondents' an email noting Respondents' objections were waived and requesting a response. A true and correct copy of the email sent from Flowers' counsel to Respondents' counsel is attached as **Exhibit B**.

8. On April 26, 2018, Respondents' counsel responded that he would have responses within a week. A true and correct copy of an email chain including the April 26, 2018 email from Respondents' counsel is attached as **Exhibit C**.

9. On May 7, 2018, Flowers counsel again emailed Respondents' counsel regarding the outstanding discovery. A true and correct copy of an email chain including the May 7, 2018 email from Flowers' counsel to Respondents' counsel is attached as **Exhibit D**.

10. On May 16, 2018, Respondents' counsel responded to Flowers' counsel stating the responses were forthcoming. A true and correct copy of an email chain including the May 16, 2018 email from Respondents' counsel is attached as **Exhibit E**.

11. On May 29, 2018, Flowers' counsel again contacted Respondents' counsel noting the discovery deficiencies and requesting response to the outstanding discovery. A true and correct copy of the letter sent via electronic mail by Flowers counsel is attached as **Exhibit F**.

12. As of today, Respondents' counsel has not responded to Flowers latest attempt to seek discovery responses or served response to Flowers' discovery requests.

13. Despite Flowers' numerous requests, to date, Flowers has not received a single document or a single discovery response from Respondents.

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

Dated: June 8, 2018

/A. Elizabeth Jones/

A. Elizabeth Jones

*Attorney for Flowers Bakeries Brands, LLC*

## **EXHIBIT A**

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

FLOWERS BAKERIES BRANDS,	)	
LLC,	)	
Petitioner,	)	
	)	Reg. No. 4239651
	)	
v.	)	Mark: NATURE’S BLEND
	)	
MARK and BRENDA ROBINSON,	)	Cancellation No. 92067298
	)	
Respondents.	)	
	)	
	)	

**PETITIONER’S FIRST SET OF DOCUMENT REQUESTS TO RESPONDENTS**

Pursuant to 37 C.F.R. §§ 2.116 and 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Petitioner Flowers Bakeries Brands, LLC requests that Respondents Mark and Brenda Robinson answer the following Requests for Production of Documents and Things (collectively, “Requests”; individually, “Request”), and produce the requested documents and things at the offices of Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309, within thirty (30) days of service, or such other time and place as may be agreed upon by counsel.

**I. DEFINITIONS**

A. “Petitioner” shall mean Flowers Bakeries Brands, LLC and its affiliates, including its directors, employees, agents, representatives, attorneys, parent corporations, subsidiaries, affiliates, divisions, subgroups, successors, and assigns.

B. “Respondents” shall mean, collectively, Mark and Brenda Robinson and each of their corporate affiliates, and as to each corporate affiliate, all divisions, subgroups, wholly owned or partially owned subsidiaries, corporations, owners, predecessors-in-interest, successors, assignees, agents, intermediaries, consultants, and all representatives and other

persons acting on its behalf, and the present and former officers, servants, and employees of each of the entities referenced in this paragraph.

C. “Document” includes “things” and shall have the broadest possible construction under Rule 34 of the Federal Rules of Civil Procedure and includes, without limiting the generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs, and summaries of information or data, whether typed, handwritten, printed, recorded, or otherwise produced or reproduced, and any other retrievable data (whether e-mail, discs, tapes, cards, or data coded electrostatically, electromagnetically, optically, or otherwise). “Document” also means any non-identical copy thereof. Designated documents are to be taken as including all attachments, exhibits, enclosures, appendices, and other documents that relate to or refer to such designated documents. The enumeration of various specific items as included within the definition of the word “documents” shall not be taken to limit the generality of this word, and the requests herein are directed and intended to obtain all “documents” in the broadest and most comprehensive sense and meaning of this word.

D. “Person” includes both the singular and plural, and means any individual, partnership, joint venture, corporation, proprietorship, firm, association, group, club, institute, governmental body, or any other organization or entity. “Person” includes any Third Party.

E. “Third Party” includes both the singular and plural, and means any Person except Petitioner or Respondents.

F. “Date” means the exact day, month, and year if ascertainable, or if not, the best available approximation (including an approximation through relationship to other events).

G. “Identify” when used in reference to a Person who is an individual, means to state his or her first and last name, present or last known address and phone number, and present or last known position or business affiliation.

H. “Identify” when used in reference to a Person who is a partnership, joint venture, corporation, proprietorship, firm, association, group, club, institute, governmental body, or any other organization or entity, means to state its full name, the legal form of such entity or organization, its present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

I. “NATURE’S OWN Mark” means the trademarks owned by Petitioner and described in Paragraph 4 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

J. “Petitioner’s Goods” shall refer individually and collectively to all goods offered, sold, or promoted under or in connection with the NATURE’S OWN Mark, including but not limited to the goods covered by the registrations in Paragraph 4 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

K. “Respondents’ Mark” means the NATURE’S BLEND mark that is the subject of Reg. No. 4239651.

L. “Respondents’ Goods” shall refer individually and collectively to all goods offered, sold, or promoted under or in connection with Respondents’ Mark.

M. “Customer” means any wholesaler, retailer, distributor, website, or other outlet to whom each of Respondents’ Goods have been sold.

N. “Consumer” means a Person to whom a Customer has offered for sale or sold Respondents’ Goods or to whom Respondents intend or believe Customers will offer for sale or

sell Respondents' Goods. For clarification, "Consumer" also includes a Person to whom Respondents have sold or offered for sale Respondents' Goods in circumstances in which Respondents have sold or offered for sale Respondents' Goods to an end user directly (i.e., not through a Customer).

O. The terms "any" and "all" shall be mutually interchangeable and shall not be construed to limit any request.

P. "And" shall mean "or" and "or" shall mean "and" to make the request inclusive rather than exclusive.

Q. The past tense shall be construed to include the present tense, and vice versa, to make the request inclusive rather than exclusive.

R. The singular shall be construed to include the plural, and vice versa, to make the request inclusive rather than exclusive.

S. "Including" shall mean "including but not limited to" and "including without limitation."

T. "Refer or relate" shall mean concerning, regarding, referring to, relating to, discussing, noting, about, with respect to, mentioning, describing, evidencing, or constituting.

## **II. INSTRUCTIONS**

1. Documents should be produced as they are kept in the usual course of business or organized and labeled to correspond with the numbered categories of these Requests.

2. With respect to any document withheld from production upon a claim of privilege, state for each such document:

- a. the type of document;
- b. the date of the document;

- c. the name and job title of the author of the document;
- d. the name and job title of the recipient of the document for the purposes of permitting the Petitioner to evaluate the privilege claim;
- e. the name and job title of each person who received a copy of the document; and
- f. a brief summary of the subject matter of the documents.

3. These Requests shall be deemed to be continuing. Respondents are under a duty to supplement, correct, or amend its response to any of these Requests if they learn that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Petitioner during the discovery process or in writing. If after producing documents, Respondents become aware of documents responsive to these Requests, such documents shall be produced whether such documents were newly discovered, newly created, or otherwise.

### **III. DOCUMENT REQUESTS**

1. Documents concerning the creation, development, selection, design, or adoption of Respondents' Mark, including but not limited to any trademark searches, investigations, market research or studies, written opinions or reports, artwork, sketches, drafts, drawings, images, and any related communications.

2. Documents concerning any alternative names, phrases, logos, designs, or words considered by Applicant, whether or not adopted, in connection with the process that resulted in the adoption of Respondents' Mark.

3. Documents evidencing and supporting Respondents' *bona fide* intention to use the Respondents' Mark in United States commerce in connection with the specific goods listed in the Respondents' trademark application as of the filing date of the application.

4. Documents demonstrating Respondents' alleged date of first use, if any, of Respondents' Mark with Respondents' Goods in the United States.

5. Documents concerning any marketing or promotional activities Respondents have undertaken in the United States in connection with Respondents' Goods that features Respondents' Mark.

6. Examples of each marketing, advertising, or promotional material run in the United States featuring Respondents' Mark, including, but not limited to, newspaper, magazine, Internet, radio, trade shows, trade publications, event, or television advertisements or promotions.

7. Documents concerning any business, advertising, or marketing plans concerning any actual and/or planned use of Respondents' Mark in the United States.

8. Documents sufficient to show the annual marketing, advertising, and promotional expenditures for goods featuring Respondents' Mark.

9. A representative sample of the packaging for each of Respondents' Goods that it sells or has offered for sale in the United States.

10. Documents sufficient to show the channels of trade through which Respondents distribute or have distributed Respondents' Goods, including, but not limited to, documents sufficient to identify the Customers, distributors or other outlets through which any goods are or have been sold.

11. Documents sufficient to identify the annual and monthly unit and dollar sales for each of Respondents' Goods.

12. Documents sufficient to identify Respondents' typical or target Customers for Respondents' Goods.

13. Documents sufficient to identify Respondents' typical or target Consumers for Respondents' Goods.

14. Documents concerning any public opinion poll, study, survey, market research, or other analysis conducted by or for Respondents with respect to Respondents' Mark.

15. Documents concerning any inquiry, complaint, or other communication concerning the qualities, advantages, disadvantages, or lack of quality of Respondents' Goods.

16. Documents concerning Petitioner, the Petitioner's Goods, or the NATURE'S OWN Mark.

17. Documents concerning any investigations, surveys, or inquiries that Respondents conducted on its behalf concerning whether there is or may be any likelihood of confusion between the NATURE'S OWN Mark and Respondents' Mark.

18. Documents concerning or supporting Respondents' denial of the allegations in Paragraph 14 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

19. Documents concerning or supporting Respondents' denial of the allegations in Paragraph 15 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

20. Documents concerning or supporting Respondents' denial of the allegations in Paragraph 17 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

21. Documents concerning opinions of any experts engaged by Respondents in this matter, including drafts of the same, communications with such expert, and documents relied on by the expert for the opinions, whether or not such expert will actually testify in this matter.

22. Documents concerning actual or threatened litigation involving trademark infringement or unfair competition claims in which Respondents have been engaged.

23. Documents concerning any agreement, arrangement or partnership under which Respondents granted a Person or entity the right or license to use all or part of Respondents' Mark in the United States.

24. Documents referred to or relied on in responding to Petitioner's First Set of Interrogatories.

Dated: February 26, 2018

Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4528  
404-815-6500 (ph.)  
404-815-6555 (fax)

Respectfully submitted,

/Nichole Davis Chollet/  
Theodore H. Davis Jr.  
Nichole Davis Chollet  
A. Elizabeth Jones

*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I certify a copy of the attached **PETITIONER'S FIRST SET OF REQUESTS FOR DOCUMENTS TO RESPONDENTS** was served by electronic mail to the following attorney of record on February 26, 2018:

Nicholas D. Wells, Esq.  
330 N Main Street  
Kaysville, UT 84037  
nwells@legendslaw.com

/Nichole Davis Chollet/  
Kilpatrick Townsend & Stockton LLP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Respondents.	)	
	)	
	)	

**PETITIONER’S FIRST SET OF INTERROGATORIES TO RESPONDENTS**

Pursuant to C.F.R. §§ 2.116 and 2.120 and Federal Rules of Civil Procedure 26 and 33, Petitioner Flowers Bakeries Brands, LLC requests that Respondents Mark and Brenda Robinson answer the following interrogatories in writing and under oath within thirty (30) days after service of this request.

**I. DEFINITIONS**

A. “Petitioner” shall mean Flowers Bakeries Brands, LLC and its affiliates, including its directors, employees, agents, representatives, attorneys, parent corporations, subsidiaries, affiliates, divisions, subgroups, successors, and assigns.

B. “Respondents” shall mean, collectively, Mark and Brenda Robinson and each of their corporate affiliates, and as to each corporate affiliate, all divisions, subgroups, wholly owned or partially owned subsidiaries, corporations, owners, predecessors-in-interest, successors, assignees, agents, intermediaries, consultants, and all representatives and other persons acting on its behalf, and the present and former officers, servants, and employees of each of the entities referenced in this paragraph.

C. “Document” includes “things” and shall have the broadest possible construction under Rule 34 of the Federal Rules of Civil Procedure and includes, without limiting the generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs, and summaries of information or data, whether typed, handwritten, printed, recorded, or otherwise produced or reproduced, and any other retrievable data (whether e-mail, discs, tapes, cards, or data coded electrostatically, electromagnetically, optically, or otherwise). “Document” also means any non-identical copy thereof. Designated documents are to be taken as including all attachments, exhibits, enclosures, appendices, and other documents that relate to or refer to such designated documents. The enumeration of various specific items as included within the definition of the word “documents” shall not be taken to limit the generality of this word, and the requests herein are directed and intended to obtain all “documents” in the broadest and most comprehensive sense and meaning of this word.

D. “Person” includes both the singular and plural, and means any individual, partnership, joint venture, corporation, proprietorship, firm, association, group, club, institute, governmental body, or any other organization or entity. “Person” includes any Third Party.

E. “Third Party” includes both the singular and plural, and means any Person except Petitioner or Respondents.

F. “Date” means the exact day, month, and year if ascertainable, or if not, the best available approximation (including an approximation through relationship to other events).

G. “Identify” when used in reference to a Person who is an individual, means to state his or her first and last name, present or last known address and phone number, and present or last known position or business affiliation.

H. “Identify” when used in reference to a Person who is a partnership, joint venture, corporation, proprietorship, firm, association, group, club, institute, governmental body, or any other organization or entity, means to state its full name, the legal form of such entity or organization, its present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

I. “NATURE’S OWN Mark” means the trademarks owned by Petitioner and described in Paragraph 4 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

J. “Petitioner’s Goods” shall refer individually and collectively to all goods offered, sold, or promoted under or in connection with the NATURE’S OWN Mark, including but not limited to the goods covered by the registrations in Paragraph 4 of the Petition for Partial Cancellation filed in Cancellation No. 92067298.

K. “Respondents’ Mark” means the NATURE’S BLEND mark that is the subject of Reg. No. 4239651.

L. “Respondents’ Goods” shall refer individually and collectively to all goods offered, sold, or promoted under or in connection with Respondents’ Mark.

M. “Customer” means any wholesaler, retailer, distributor, website, or other outlet to whom each of Respondents’ Goods have been sold.

N. “Consumer” means a Person to whom a Customer has offered for sale or sold Respondents’ Goods or to whom Respondents intend or believe Customers will offer for sale or sell Respondents’ Goods. For clarification, “Consumer” also includes a Person to whom Respondents have sold or offered for sale Respondents’ Goods in circumstances in which

Respondents have sold or offered for sale Respondents' Goods to an end user directly (i.e., not through a Customer).

O. The terms "any" and "all" shall be mutually interchangeable and shall not be construed to limit any request.

P. "And" shall mean "or" and "or" shall mean "and" to make the request inclusive rather than exclusive.

Q. The past tense shall be construed to include the present tense, and vice versa, to make the request inclusive rather than exclusive.

R. The singular shall be construed to include the plural, and vice versa, to make the request inclusive rather than exclusive.

S. "Including" shall mean "including but not limited to" and "including without limitation."

T. "Refer or relate" shall mean concerning, regarding, referring to, relating to, discussing, noting, about, with respect to, mentioning, describing, evidencing, or constituting.

## **II. INSTRUCTIONS**

1. Respondents must answer each interrogatory separately and fully in writing under oath.

2. Respondents must serve the original answers to the interrogatories on Petitioner's counsel within thirty (30) days after service of the interrogatories.

3. Where an interrogatory relates to more than one Person or subject, it must be answered as to each such Person or subject separately.

4. Any objection to the interrogatories must be signed by the attorney making the objection. The objecting party must state the reasons for the objection with specificity and must answer any portion of the interrogatory to which there is no objection.

5. Respondents must furnish all information available to them as of the date of their answers to these interrogatories. If Respondents are unable to answer any of the interrogatories fully and completely, after exercising due diligence to secure the information necessary to make such full and complete answers, so state, and answer each such interrogatory to the fullest extent possible, specifying the extent of Respondents' knowledge and Respondents' inability to answer the remainder, setting forth whatever information or knowledge Respondents may have concerning the unanswered portions and the efforts made to obtain the requested information.

6. These interrogatories call not only for the knowledge of Respondents, but also for all knowledge that is available to Respondents by reasonable inquiry and due diligence, including inquiry of Respondents' representatives, agents, and attorneys.

7. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Respondents are under a duty to supplement or correct their responses to these interrogatories in a timely manner if they learn that in any material respect a response is incomplete or incorrect. If Respondents expect to obtain further information or expect the accuracy of a response to change between the time responses are served and the time of trial, Respondents must state this expectation in each response.

8. In the event that any objection is raised to these interrogatories on the basis of an assertion of privilege, state each fact on which the claimed privilege is based, and whether any responsive materials are being withheld on the basis of that objection.

### III. INTERROGATORIES

1. Identify each Person involved in the adoption, design, selection, creation and/or development of Respondents' Mark, describing each Person's involvement and responsibilities.

2. Describe the selection of Respondents' Mark, including but not limited to the reason(s) for its selection, and the process by which Respondents selected and approved Respondents' Mark.

3. Identify each of Respondents' Goods that Respondents, at any time, have sold or offered for sale in the United States, including the date of first sale.

4. For each of Respondents' Goods identified in response to Interrogatory No. 3, state the inclusive dates during which Respondents have sold or offered for sale each of Respondents' Goods in the United States.

5. For each of Respondents' Goods identified in response to Interrogatory No. 3,, state the prices that Respondents' Goods have been sold, including wholesale, suggested retail, and any other price categories utilized.

6. Identify all geographic areas (by city and state within the United States) in which Respondents' Goods have been sold.

7. Describe the typical, target, or intended Consumers of Respondents' Goods, including the approximate age(s) and gender(s) of such Consumers, as well as other demographic and psychographic profile information for such Consumers.

8. 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 Respondents' Mark, describing each Person's responsibility.

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

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

11. Identify the actual, projected, or planned marketing, promotional, and advertising expenditures for Respondents' Goods within the United States.

12. Identify the channels of trade (including the identity of all Customers) through which Respondents distribute, offer for sale, or sell Respondents' Goods within the United States.

13. Identify all third-party marks of which Respondents are aware and that they contend are sufficiently similar to the NATURE'S OWN Mark as to bear on the issue of likelihood of confusion between the NATURE'S OWN Mark and Respondents' Marks.

14. For each mark identified in response to Interrogatory No. 13:

- a. State whether the mark is currently in use in the marketplace; and
- b. Describe with particularity the basis for Respondents' knowledge that the mark is currently in use, including the manner in which the mark is being used.

15. Identify any qualitative or quantitative research, including but not limited to focus group studies, attitude and awareness studies, brand tracker studies, surveys, market research or

other consumer research, conducted by Respondents or on Respondents' behalf, to determine or measure consumer perception of Respondents' Mark in the United States.

16. Identify each Person or entity with whom Respondents have entered into an agreement, arrangement or partnership under which Respondents granted the Person or entity the right or license to use all or part of Respondents' Mark in the United States.

17. Identify each Person, other than counsel, who participated in any way in the preparation of responses to these Interrogatories.

Dated: February 26, 2018

Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4528  
404-815-6500 (ph.)  
404-815-6555 (fax)

Respectfully submitted,

/Nichole Davis Chollet/  
Theodore H. Davis Jr.  
Nichole Davis Chollet  
A. Elizabeth Jones

*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I certify a copy of the attached **PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENTS** was served by electronic mail to the following attorney of record on February 26, 2018:

Nicholas D. Wells, Esq.  
330 N Main Street  
Kaysville, UT 84037  
nwells@legendslaw.com

/Nichole Davis Chollet/  
Kilpatrick Townsend & Stockton LLP

## **EXHIBIT B**

## Jones, Beth

---

**From:** Jones, Beth  
**Sent:** Wednesday, April 18, 2018 3:52 PM  
**To:** nwells@legendslaw.com  
**Cc:** Davis, Ted; Chollet, Nicki; Teilhaber, Kris  
**Subject:** Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Nicholas,

To date, we have not received Respondents' responses and objections to Flowers' discovery requests. By mutual agreement these were due April 11, 2018; therefore, Respondents' objections have been waived. Please let us know when we will receive Respondents' written responses to Flowers' interrogatories and document requests. We would also like to discuss the logistics and timeline for exchanging documents.

Best regards,  
Beth



### **Beth Jones**

**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528  
office 404 815 6107 | fax 404 541 3326  
[bjones@kilpatricktownsend.com](mailto:bjones@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

## **EXHIBIT C**

## Jones, Beth

---

**From:** Nicholas D. Wells <nwells@legendslaw.com>  
**Sent:** Thursday, April 26, 2018 12:12 AM  
**To:** Jones, Beth  
**Cc:** Davis, Ted; Chollet, Nicki; Teilhaber, Kris  
**Subject:** RE: Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Beth,

I'm working on getting responses from my client in Australia. I anticipate having them within a week.

Nicholas

**Nicholas D. Wells**  
LEGENDS LAW GROUP  
330 N. Main St.  
Kaysville, Utah 84037  
P: +1 801-337-4500  
[nwells@legendslaw.com](mailto:nwells@legendslaw.com)  
[www.legendslaw.com](http://www.legendslaw.com)

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---

**From:** Jones, Beth [mailto:Bjones@kilpatricktownsend.com]  
**Sent:** Wednesday, April 18, 2018 1:52 PM  
**To:** Nicholas D. Wells <nwells@legendslaw.com>  
**Cc:** Davis, Ted <TDavis@kilpatricktownsend.com>; Chollet, Nicki <NChollet@kilpatricktownsend.com>; Teilhaber, Kris <KTeilhaber@kilpatricktownsend.com>  
**Subject:** Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Nicholas,

To date, we have not received Respondents' responses and objections to Flowers' discovery requests. By mutual agreement these were due April 11, 2018; therefore, Respondents' objections have been waived. Please let us know when we will receive Respondents' written responses to Flowers' interrogatories and document requests. We would also like to discuss the logistics and timeline for exchanging documents.

Best regards,  
Beth



**Beth Jones**  
Kilpatrick Townsend & Stockton LLP  
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## **EXHIBIT D**

## Jones, Beth

---

**From:** Jones, Beth  
**Sent:** Monday, May 7, 2018 10:27 AM  
**To:** 'Nicholas D. Wells'  
**Cc:** Davis, Ted; Chollet, Nicki; Teilhaber, Kris  
**Subject:** RE: Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Nicholas,

We have not received responses to Flowers' discovery requests. Respondent's responses were due nearly a month ago. We would prefer not to file a motion to compel. Please confirm we will be receiving responses to Flowers' interrogatories and document requests.

Best regards,  
Beth

### Beth Jones

#### Kilpatrick Townsend & Stockton LLP

Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528  
office 404 815 6107 | fax 404 541 3326  
[bjones@kilpatricktownsend.com](mailto:bjones@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

---

**From:** Nicholas D. Wells [<mailto:nwells@legendslaw.com>]  
**Sent:** Thursday, April 26, 2018 12:12 AM  
**To:** Jones, Beth <[bjones@kilpatricktownsend.com](mailto:bjones@kilpatricktownsend.com)>  
**Cc:** Davis, Ted <[TDavis@kilpatricktownsend.com](mailto:TDavis@kilpatricktownsend.com)>; Chollet, Nicki <[NChollet@kilpatricktownsend.com](mailto:NChollet@kilpatricktownsend.com)>; Teilhaber, Kris <[KTeilhaber@kilpatricktownsend.com](mailto:KTeilhaber@kilpatricktownsend.com)>  
**Subject:** RE: Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Beth,

I'm working on getting responses from my client in Australia. I anticipate having them within a week.

Nicholas

### Nicholas D. Wells

LEGENDS LAW GROUP

330 N. Main St.

Kaysville, Utah 84037

P: +1 801-337-4500

[nwells@legendslaw.com](mailto:nwells@legendslaw.com)

[www.legendslaw.com](http://www.legendslaw.com)

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---

**From:** Jones, Beth [<mailto:bjones@kilpatricktownsend.com>]  
**Sent:** Wednesday, April 18, 2018 1:52 PM  
**To:** Nicholas D. Wells <[nwells@legendslaw.com](mailto:nwells@legendslaw.com)>  
**Cc:** Davis, Ted <[TDavis@kilpatricktownsend.com](mailto:TDavis@kilpatricktownsend.com)>; Chollet, Nicki <[NChollet@kilpatricktownsend.com](mailto:NChollet@kilpatricktownsend.com)>; Teilhaber, Kris

<[KTeilhaber@kilpatricktownsend.com](mailto:KTeilhaber@kilpatricktownsend.com)>

**Subject:** Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Nicholas,

To date, we have not received Respondents' responses and objections to Flowers' discovery requests. By mutual agreement these were due April 11, 2018; therefore, Respondents' objections have been waived. Please let us know when we will receive Respondents' written responses to Flowers' interrogatories and document requests. We would also like to discuss the logistics and timeline for exchanging documents.

Best regards,  
Beth



**Beth Jones**

**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528

office 404 815 6107 | fax 404 541 3326

[bjones@kilpatricktownsend.com](mailto:bjones@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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## **EXHIBIT E**

## Jones, Beth

---

**From:** Nicholas D. Wells <nwells@legendslaw.com>  
**Sent:** Wednesday, May 16, 2018 6:03 PM  
**To:** Jones, Beth  
**Cc:** Davis, Ted; Chollet, Nicki; Teilhaber, Kris  
**Subject:** RE: Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Beth,

I confirm that responses are being prepared. It will still take a couple of days to get my client's signature from Australia but you should have them within a few more days.

Best regards,  
Nicholas

Nicholas D. Wells  
LEGENDS LAW GROUP  
330 N. Main St.  
Kaysville, Utah 84037  
P: +1 801-337-4500  
nwells@legendslaw.com  
[www.legendslaw.com](http://www.legendslaw.com)

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**From:** Jones, Beth [mailto:Bjones@kilpatricktownsend.com]  
**Sent:** Monday, May 7, 2018 8:27 AM  
**To:** Nicholas D. Wells <nwells@legendslaw.com>  
**Cc:** Davis, Ted <TDavis@kilpatricktownsend.com>; Chollet, Nicki <NChollet@kilpatricktownsend.com>; Teilhaber, Kris <KTeilhaber@kilpatricktownsend.com>  
**Subject:** RE: Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Nicholas,

We have not received responses to Flowers' discovery requests. Respondent's responses were due nearly a month ago. We would prefer not to file a motion to compel. Please confirm we will be receiving responses to Flowers' interrogatories and document requests.

Best regards,  
Beth

**Beth Jones**  
**Kilpatrick Townsend & Stockton LLP**  
Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528  
office 404 815 6107 | fax 404 541 3326  
[bjones@kilpatricktownsend.com](mailto:bjones@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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**From:** Nicholas D. Wells [<mailto:nwells@legendslaw.com>]  
**Sent:** Thursday, April 26, 2018 12:12 AM  
**To:** Jones, Beth <[Bjones@kilpatricktownsend.com](mailto:Bjones@kilpatricktownsend.com)>  
**Cc:** Davis, Ted <[TDavis@kilpatricktownsend.com](mailto:TDavis@kilpatricktownsend.com)>; Chollet, Nicki <[NChollet@kilpatricktownsend.com](mailto:NChollet@kilpatricktownsend.com)>; Teilhaber, Kris <[KTeilhaber@kilpatricktownsend.com](mailto:KTeilhaber@kilpatricktownsend.com)>  
**Subject:** RE: Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Beth,

I'm working on getting responses from my client in Australia. I anticipate having them within a week.

Nicholas

**Nicholas D. Wells**  
LEGENDS LAW GROUP  
330 N. Main St.  
Kaysville, Utah 84037  
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[nwells@legendslaw.com](mailto:nwells@legendslaw.com)  
[www.legendslaw.com](http://www.legendslaw.com)

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**From:** Jones, Beth [<mailto:Bjones@kilpatricktownsend.com>]  
**Sent:** Wednesday, April 18, 2018 1:52 PM  
**To:** Nicholas D. Wells <[nwells@legendslaw.com](mailto:nwells@legendslaw.com)>  
**Cc:** Davis, Ted <[TDavis@kilpatricktownsend.com](mailto:TDavis@kilpatricktownsend.com)>; Chollet, Nicki <[NChollet@kilpatricktownsend.com](mailto:NChollet@kilpatricktownsend.com)>; Teilhaber, Kris <[KTeilhaber@kilpatricktownsend.com](mailto:KTeilhaber@kilpatricktownsend.com)>  
**Subject:** Flowers v. Mark and Brenda Robinson: Petition No. 92067298

Nicholas,

To date, we have not received Respondents' responses and objections to Flowers' discovery requests. By mutual agreement these were due April 11, 2018; therefore, Respondents' objections have been waived. Please let us know when we will receive Respondents' written responses to Flowers' interrogatories and document requests. We would also like to discuss the logistics and timeline for exchanging documents.

Best regards,  
Beth



**Beth Jones**  
Kilpatrick Townsend & Stockton LLP  
Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528  
office 404 815 6107 | fax 404 541 3326  
[bjones@kilpatricktownsend.com](mailto:bjones@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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## **EXHIBIT F**

Suite 2800, 1100 Peachtree Street NE  
Atlanta, GA 30309-4528  
t 404 815 6500 f 404 815 6555

May 29, 2018

direct dial 404 815 6010  
direct fax 404 541 3387  
nchollet@kilpatricktownsend.com

**Via Electronic Mail**

Nicholas D. Wells, Esq.  
Legends Law Group  
330 N. Main St.  
Kaysville, Utah 84037  
Email: [nwells@legendslaw.com](mailto:nwells@legendslaw.com)

Re: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson:  
Petition No. 92067298

Dear Nicholas:

We write in connection with Petition No. 92067298 pending against Mr. and Mrs. Robinson concerning their registration of the NATURE'S BLEND mark (the "Cancellation Action"), and specifically regarding the Robinsons' failure to respond to Flowers' discovery requests in the Cancellation Action.

On February 22, 2018, Flowers served its First Set of Interrogatories and First Request for the Production of Documents. In mid-March, the parties agreed to extend the response deadline for the parties discovery requests to April 11, 2018. Despite the extension, the Robinsons failed to respond to any of Flowers' discovery requests by the April 11 deadline. On April 18 2018, we contacted you requesting responses to Flowers' discovery requests. On April 26, 2018, you responded that the your clients' responses would be served within a week. On May 7, 2018, when we still had not received response to Flowers' discovery requests, we again contacted you requesting the discovery responses and reminded you the responses were nearly a month overdue. After another week went by without a response, on May 16, 2018, you again assured us the responses were forthcoming that week. However, to date we have not received any response to Flowers' discovery requests. Your clients delay is hindering the progress of this case.

**Interrogatories**

As a result of the Robinsons' failure to timely respond to Flowers's First Set of Interrogatories, they have waived all of their objections to those requests and must provide complete responses to each of the Interrogatories. *See* TBMP § 405.04(a); Fed. R. Civ. P. 33(b)(4).

Nicholas D. Wells, Esq.  
May 29, 2018  
Page 2

**Requests for Production**

Similarly, with regard to Flowers's First Request for Production of Documents, because no timely objections to the merits of these requests were raised, all such objections have been waived, and the Robinsons must respond to each of Flowers's requests. *See* TBMP 406.04(a); Fed. R. Civ. P. 34(b)(2). Please provide all non-privileged documents responsive to Flowers' First Request for Production, written responses indicating whether such documents exist, and a date by which the parties will exchange documents.

Because this case cannot move forward without the Robinsons' responses to the discovery requests, we must insist that the Robinsons correct the discovery deficiencies identified above by no later than June 5. The Robinsons failure to do so will leave Flowers no choice but to seek relief from the Board. Should you have any questions or require any clarification, please contact Beth Jones or me.

Sincerely,



Nichole Davis Chollet

cc: Ted Davis, Esq.  
Beth Jones, Esq.