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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
Filer's Name	A. Elizabeth Jones
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Signature	/A. Elizabeth Jones/
Date	11/21/2018
Attachments	2018.11.21 Motion to Compel_Dec of Jones_Exh. A - P.pdf(1480356 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 served by Flowers on Respondents Mark and Brenda Robinson (collectively, “Respondents”) without affording Respondents the opportunity belatedly to assert objections they have waived;¹ 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.

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

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 again compel discovery responses from Respondents and reset the remaining deadlines to allow Flowers to complete discovery because Respondents' failure to fully participate in this proceeding will otherwise prejudice Flowers' case.

As the Board will recall, 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 November 21, 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.² *See* Jones Decl., ¶4, Ex. A. Respondents' responses to the discovery requests were due April 11, 2018.³ *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

² 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.

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

again followed up with Respondents' counsel noting Respondents' discovery deficiencies and requesting responses to the outstanding discovery. *Id.* ¶ 11, Ex. F. Flowers was forced to file a motion to compel discovery, which the Board granted. *Id.* ¶¶ 12-13, Exs. G-H.

In response to the Board's Order granting Flowers' motion to compel, counsel for Respondents served incomplete responses to Flowers' First Set of Interrogatories. *Id.* ¶ 14, Ex. I. Flowers' counsel requested additional responses to the incomplete interrogatory answers and confirmation of Respondents' document production pursuant to the Board's Order. *Id.* ¶ 15, Ex. J. Respondents' counsel agreed to provide additional responses to the interrogatories and then served a mere seventeen-document production in response to Flowers' First Set of Document Requests. *Id.* ¶ 17. To obtain more complete information, Flowers served a Second Set of Interrogatories and First Requests for Admission on Respondents' on September 13, 2018. *Id.* ¶ 18, Ex. L. Respondents did not respond or object to Flowers' discovery requests by the deadline and Flowers' sent another deficiency letter. *Id.* ¶ 19, Ex. M. Flowers' counsel again emailed Respondents' counsel regarding the outstanding discovery requests and requesting a response. *Id.* ¶ 20, Ex. N. Respondents' counsel finally responded that the Respondents would produce additional documents but would not be answering the interrogatories. *Id.* ¶ 21, Ex. O. On October 28, 2018, Respondents' counsel served additional seven documents. *Id.* ¶ 22. On October 29, 2018, Flowers' counsel requested confirmation via electronic mail that Respondents did not intend to serve amendment interrogatory responses to Flowers' First Set of Interrogatories or any written responses to Flowers' Second Set of Interrogatories. *Id.* ¶ 23, Ex. P.

To date, counsel for Respondents has not responded to counsel for Flowers request for responses to the Second Set of Interrogatories. *Id.* ¶ 24.

Respondents' responses to Flowers' Second Set of Interrogatories remain outstanding as of the filing date of this motion. Jones. Decl. ¶ 24. Flowers therefore will be prejudiced if it is forced to proceed with its dispositive filings without the benefit of complete interrogatory responses 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 (2) reset the remaining discovery dates by 30 days 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 Respond Fully to Flowers' Second Set of Interrogatories

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' Second Set of Interrogatories. 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' Second Set of Interrogatories. If Flowers is forced to attempt to proceed with its dispositive filings without the benefit of complete interrogatory responses, it would be prejudiced because it has not had the benefit of reviewing complete responsive written discovery responses. Absent an extension, Flowers will be unfairly deprived of its right to take follow-up discovery as to Respondents' discovery responses. *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’ Second Set of Interrogatories; 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: November 21, 2018

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

Respectfully submitted,

/A. Elizabeth Jones/
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 November 21, 2018:

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

/Kris Teilhaber /
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 Respondents’ registration. TTABVUE 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. 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. To date, Respondents have not responded or objected to those requests.

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

8. On April 26, 2018, Respondents' counsel responded that he would have responses within a week. A 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 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 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 copy of the letter sent via electronic mail by Flowers' counsel is attached as **Exhibit F**.

12. On June 8, 2018, Flowers' counsel filed a motion to compel discovery related to Respondents' failure to respond to Flowers' First Set of Interrogatories and First Set of Document Requests. A copy of that filing is attached as **Exhibit G**.

13. On July 26, 2018, the Board granted Flowers' motion to compel discovery. A copy of that order is attached as **Exhibit H**.

14. On August 16, 2018, Respondents' counsel served responses to Flowers' First Set of Interrogatories. A copy of those responses is attached as **Exhibit I**.

15. On August 23, 2018, Flowers' counsel contacted Respondents' counsel noting deficiencies in the Respondents' responses to Flowers' First Set of Interrogatories and confirmation that Respondents would produce documents as required by the Board's order. A copy of the letter sent via electronic mail by Flowers' counsel is attached as **Exhibit J**.

16. On August 24, 2018, Respondents' counsel acknowledged Flowers' letter and agreed to provide additional interrogatory responses by August 30, 2018. A copy of that electronic message is attached as **Exhibit K**.

17. On August 28, 2018, Respondents' counsel produced a mere 17 documents in response to Flowers' First Set of Document Requests.

18. On September 13, 2018, Flowers' counsel served its Second Set of Interrogatories and First Requests for Admission on Respondents. Copies of those requests and interrogatories are attached collectively as **Exhibit L**.

19. On October 17, 2018, Flowers' counsel sent Respondents' counsel letter regarding deficiencies in the Respondents' document production, noting Respondents' objections to Flowers' First Requests for Admission and Second Set of Interrogatories were waived and requesting responses to the Second Set of Interrogatories. A copy of the letter sent via electronic mail is attached as **Exhibit M**.

20. On October 26, 2018, Flowers' counsel again emailed Respondents' counsel regarding the outstanding discovery and requesting a response. A copy of the electronic message is attached as **Exhibit N**.

21. On October 26, 2018, Respondents' counsel responded that Respondents would produce additional documents but would not be responding to Flowers' Second Set of Interrogatories. A copy of the electronic message is attached as **Exhibit O**.

22. On October 28, 2018, Respondents' counsel served an additional seven documents.

23. On October 29, 2018, Flowers' counsel requested confirmation via electronic mail that Respondents would not be serving amendment interrogatory responses to Flowers' First Set of Interrogatories or any written responses to Flowers' Second Set of Interrogatories. A copy of the electronic message is attached as **Exhibit P**.

24. To date, Flowers' counsel has received no response to the October 29, 2018, message or any responses to Flowers' Second Set of Interrogatories.

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

Dated: November 21, 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
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 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

Teilhaber, Kris

From: Jones, Beth <Bjones@kilpatricktownsend.com>
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 | [My Profile](#) | [vCard](#)

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EXHIBIT C

Teilhaber, Kris

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

Teilhafer, Kris

From: Jones, Beth <Bjones@kilpatricktownsend.com>
Sent: Monday, May 07, 2018 10:27 AM
To: Nicholas D. Wells
Cc: Davis, Ted; Chollet, Nicki; Teilhafer, 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 | [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>
Cc: Davis, Ted <TDavis@kilpatricktownsend.com>; Chollet, Nicki <NChollet@kilpatricktownsend.com>; Teilhafer, Kris <KTeilhafer@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

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>; Teilhafer, 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

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

office 404 815 6107 | fax 404 541 3326

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

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EXHIBIT E

Teilhaber, Kris

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

Categories: Flowers

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

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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

From: Nicholas D. Wells [<mailto:nwells@legendslaw.com>]

Sent: Thursday, April 26, 2018 12:12 AM

To: Jones, Beth <bjones@kilpatricktownsend.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

Beth,

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

Nicholas

Nicholas D. Wells

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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

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

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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

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.

EXHIBIT G

ESTTA Tracking number: **ESTTA901972**

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
Correspondence Address	THEODORE H DAVIS JR KILPATRICK TOWNSEND & STOCKTON LLP 1100 PEACHTREE STREET , SUITE 2800 ATLANTA, GA 30309-4528 UNITED STATES Email: tdavis@ktslaw.com, nchollet@ktslaw.com, bjones@ktslaw.com, kteilhaber@ktslaw.com, tadmin@ktslaw.com
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Nichole Davis Chollet
Filer's email	nchollet@ktslaw.com, tdavis@ktslaw.com, bjones@ktslaw.com, kteilhaber@ktslaw.com, tadmin@ktslaw.com
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;¹ 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).

¹ 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.² *See* Jones Decl., ¶4, Ex. A. Respondents' responses to the discovery requests were due April 11, 2018.³ *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

² 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.

³ 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
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 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 | [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
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
Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528
office 404 815 6107 | fax 404 541 3326
bjones@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

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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 | [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>
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

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Nicholas

Nicholas D. Wells

LEGENDS LAW GROUP

330 N. Main St.

Kaysville, Utah 84037

P: +1 801-337-4500

nwells@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

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Beth



Beth Jones

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

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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
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nwells@legendslaw.com
www.legendslaw.com

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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

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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 | [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>
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

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Nicholas

Nicholas D. Wells
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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

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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

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.

EXHIBIT H

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

July 26, 2018

Cancellation No. 92067298

Flowers Bakeries Brands LLC

v.

Mark Robinson and Brenda Robinson

Christen M. English, Interlocutory Attorney:

Petitioner's motion, filed June 8, 2018, to compel and extend discovery for itself only¹ is **granted** as conceded to the extent set forth below because Respondents failed to respond thereto. *See* Trademark Rule 2.127(a).

Within **thirty days** of the mailing date of this order, Respondents are ordered to serve on Petitioner:

- (1) verified written responses, without objections on the merits,² to Petitioner's first set of interrogatories;

¹ Petitioner should have, but did not, specify the length of extension sought.

² "Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence." *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). In contrast, claims that information sought by a discovery request is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information. *Id.*

- (2) written responses, without objections on the merits, to Petitioner’s first set of document requests;
- (3) all responsive, non-privileged documents by copying them at Respondents’ own expense, *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1556 (TTAB 2000); TBMP § 406.04(b) (2018); and
- (4) to the extent necessary, a privilege log pursuant to Fed. R. Civ. P. 26(b)(5)(A)(ii).

If Respondents fail to comply with this order, they may be subject to sanctions, potentially including entry of judgment against them. Trademark Rule 2.120(h); Fed. R. Civ. P. 37(b)(2).

With the exception of Respondents’ compliance with this order, proceedings remain suspended for **thirty days from the mailing date of this order**, and then shall resume on the schedule set forth below. Discovery is extended thirty days for Petitioner only.

Expert Disclosures Due	8/18/2018
Discovery Closes for Defendants	9/17/2018
Discovery Closes for Plaintiff	10/17/2018
Plaintiff’s Pretrial Disclosures Due	12/1/2018
Plaintiff’s 30-day Trial Period Ends	1/15/2019
Defendants’ Pretrial Disclosures Due	1/30/2019
Defendants’ 30-day Trial Period Ends	3/16/2019
Plaintiff’s Rebuttal Disclosures Due	3/31/2019
Plaintiff’s 15-day Rebuttal Period Ends	4/30/2019
Plaintiff’s Opening Brief Due	6/29/2019
Defendants’ Brief Due	7/29/2019
Plaintiff’s Reply Brief Due	8/13/2019
Request for Oral Hearing (optional) Due	8/23/2019

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). 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).

EXHIBIT I

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

Mark: **NATURE'S BLEND**

Registration No.: 4239651

Registration Date: November 13, 2012

Flowers Bakeries Brands LLC

Petitioner,

v.

Mark Robinson and Brenda Robinson

Respondent

Cancellation No. 92067298

**RESPONDENT'S RESPONSE TO PETITIONER'S FIRST SET OF
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.

Response:

Respondents Mark Robinson and Brenda Robinson jointed selected and designed Respondent's Mark and were responsible for all aspects of its creation and use.

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.

Response:

Respondents selected a mark that was suggestive of the natural ingredients within Respondent's products and also suggestive of the combination of multiple ingredients.

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.

Response:

Coffee	Date first offered for sale in the USA: 13 November 2012
Tea	Date first offered for sale in the USA: 13 November 2012
Cocoa	Date first offered for sale in the USA: 13 November 2012
Sugar	Date first offered for sale in the USA: 13 November 2012
Rice	Date first offered for sale in the USA: 13 November 2012
Tapioca	Date first offered for sale in the USA: 13 November 2012
Sago	Date first offered for sale in the USA: 13 November 2012
artificial coffee	Date first offered for sale in the USA: 13 November 2012
flaxseed and nuts	Date first offered for sale in the USA: 13 November 2012
bread	Date first offered for sale in the USA: 13 November 2012
pastry	Date first offered for sale in the USA: 13 November 2012
confectionery made of sugar	Date first offered for sale in the USA: 13 November 2012
chocolate	Date first offered for sale in the USA: 13 November 2012
ices	Date first offered for sale in the USA: 13 November 2012
honey	Date first offered for sale in the USA: 13 November 2012
treacle	Date first offered for sale in the USA: 13 November 2012

yeast Date first offered for sale in the USA: 13 November 2012

baking powder Date first offered for sale in the USA: 13 November 2012

yeast extract spreads Date first offered for sale in the USA: 13 November 2012

cocoa spreads Date first offered for sale in the USA: 13 November 2012

spread containing chocolate and nuts Date first offered for sale in the USA: 13 November 2012

2012

sauces Date first offered for sale in the USA: 13 November 2012

ketchup Date first offered for sale in the USA: 13 November 2012

ice Date first offered for sale in the USA: 13 November 2012

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.

Response:

Coffee 13 November 2012 to the present

Tea 13 November 2012 to the present

Cocoa 13 November 2012 to the present

Sugar 13 November 2012 to the present

Rice 13 November 2012 to the present

Tapioca 13 November 2012 to the present

Sago 13 November 2012 to the present

artificial coffee 13 November 2012 to the present

flaxseed and nuts 13 November 2012 to the present

bread 13 November 2012 to the present
pastry 13 November 2012 to the present
confectionery made of sugar 13 November 2012 to the present
chocolate 13 November 2012 to the present
ices 13 November 2012 to the present
honey 13 November 2012 to the present
treacle 13 November 2012 to the present
yeast 13 November 2012 to the present
baking powder 13 November 2012 to the present
yeast extract spreads 13 November 2012 to the present
cocoa spreads 13 November 2012 to the present
spread containing chocolate and nuts 13 November 2012 to the present
sauces 13 November 2012 to the present
ketchup 13 November 2012 to the present
ice 13 November 2012 to the present

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

Response:

Products are and were offered for sale at the prices indicated below:

Coffee \$8

Tea	\$10	
Cocoa	\$5	
Sugar	\$16	
Rice	\$5	
Tapioca	\$7	
Sago	\$5	
artificial coffee	\$8	
flaxseed and nuts	\$30	
bread	\$10	
pastry	\$10	
confectionery made of sugar	\$10	
chocolate	\$21	
ices	\$16	
honey	\$95	
treacle	\$30	
yeast	\$8	
baking powder	\$5	
yeast extract spreads	\$8	
cocoa spreads	\$12	
spread containing chocolate and nuts		\$12
sauces	\$7	
ketchup	\$7	
ice	\$16	

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

Response:

Respondent's goods have been offered for sale principally in California but also in other states.

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.

Response:

Respondent's goods are sold to all consumers. Respondent targets health-conscious consumers who are adults and who typically seek whole foods, natural foods, organic food, and the like.

Respondent's customers often use homeopathic medicines or dietary supplements as part of their personal health regime.

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.

Response:

Respondents Mark Robinson and Brenda Robinson are jointly responsible for creating, preparing, development, and placing advertising and promotional materials in the United States.

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.

Response:

Respondent has not used advertising agencies in the United States.

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.

Response:

Respondent's Goods advertised and promoted via Instagram.com under the handle

@naturesblend

Respondent's Goods were advertised and promoted via Facebook.com on the pages

/naturesblend

/naturesblendus

/omegamite

/omegahoney

Respondent's Goods are promoted via website www.naturesblendworld.com

Respondent's Goods are promoted through various channels through the efforts of Respondent's third-party spokesmodel, Claudia Jovanovski.

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

Response:

U.S. marketing and promotional budget for 2017 and/or 2018 is \$100,000.

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.

Response:

Respondent's Goods are sold through NaturesBlendWorld.com.

Respondent's Goods are sold through Amazon.com.

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.

Response:

U.S Reg. No.	Text of mark
<u>5501046</u>	<u>NATURE'S TRUTH</u>
<u>5472568</u>	<u>SIMPLY NATURE</u>
<u>5469508</u>	<u>NATURE GIRL</u>
<u>5431345</u>	<u>NATURES WAREHOUSE</u>
<u>5303446</u>	<u>NATUREMILLS</u>
<u>5243056</u>	<u>NATURE GROVE</u>
<u>5233944</u>	<u>NATURE MEETS TASTE</u>
<u>5216931</u>	<u>NATURE'S HALO</u>
<u>5186432</u>	<u>NATURE'S TOUCH</u>
<u>5175349</u>	<u>NATURZ TASTE THE BEST</u>
<u>5145779</u>	<u>NATURE'S FUSION</u>

<u>5425789</u>	<u>NATURE NATE'S NATURAL SINCE 1972</u>
<u>5459508</u>	<u>NATURESSENCE</u>
<u>4771354</u>	<u>NATURE NATE'S</u>
<u>5317701</u>	<u>NATURE'S BEST DAIRY</u>
<u>5111016</u>	<u>NATURE'S BEST DAIRY</u>
<u>5005696</u>	<u>NATURE'S FACTORY THE ROAD TO HEALTH</u>
<u>5126619</u>	<u>NATURE'S FACTORY THE ROAD TO HEALTH</u>
<u>4987713</u>	<u>NATURES SELECT</u>
<u>4865317</u>	<u>NATURELAND</u>
<u>5239276</u>	<u>NATURE'S COLORS</u>
<u>5232865</u>	<u>NATURE'S INTENT</u>
<u>5167610</u>	<u>SIMPLY NATURE</u>
<u>5166995</u>	<u>MAMA NATURE</u>
<u>5148064</u>	<u>RAW NATURE</u>
<u>4946648</u>	<u>NATURE'S INTENT</u>
<u>5101365</u>	<u>NATURE AIR</u>
<u>5068198</u>	<u>NATURE'S BEST</u>
<u>5040293</u>	<u>NATURE'S BASKET</u>
<u>5029865</u>	<u>NATURE FRESH</u>
<u>5007710</u>	<u>NATURECRUST</u>
<u>5008954</u>	<u>NATUREBRITE</u>
<u>4993192</u>	<u>NATURE SWEET</u>
<u>4622122</u>	<u>NATURE'S FRIEND</u>
<u>4909530</u>	<u>NATURE'S HAND</u>
<u>4875257</u>	<u>NATURE'S HAND</u>
<u>4568029</u>	<u>NATUREBOX</u>
<u>4662143</u>	<u>NATUREBOX</u>
<u>4764619</u>	<u>NATUREBEAN</u>
<u>4639778</u>	<u>NATURE'S EATS</u>
<u>4618517</u>	<u>NATURE'S STANCE</u>
<u>4584171</u>	<u>NATURE'S GOLD</u>
<u>4347681</u>	<u>NATURE'S KITCHEN</u>
<u>4014876</u>	<u>NATURE'S TRIBUTE</u>
<u>3917217</u>	<u>NATURE'S BAKERY</u>
<u>3917078</u>	<u>NATURE'S BAKERY</u>

<u>4240976</u>	<u>NATURE REFINED</u>
<u>4234706</u>	<u>NATURE'S LEGACY</u>
<u>4213376</u>	<u>NATURE'S FIRST SEA SALT</u>
<u>4215002</u>	<u>NATURE'S HABIT</u>
<u>4106994</u>	<u>NATUREL SELECT</u>
<u>4275391</u>	<u>NATURENUTRITION</u>
<u>4489191</u>	<u>NATURE'S SECRET WEAPON</u>
<u>4068415</u>	<u>NATURE'S FAVORITE</u>
<u>4964882</u>	<u>NATURE'S WAY</u>
<u>4964881</u>	<u>NATURE'S WAY</u>
<u>4428691</u>	<u>NATURE2KITCHEN</u>
<u>4832140</u>	<u>NATURE'S TRUTH</u>
<u>4183445</u>	<u>NATURE VALLEY 100% NATURAL</u>
<u>4556252</u>	<u>NATURE VALLEY</u>
<u>4173015</u>	<u>NATUREWISE SWEETENERS</u>
<u>4673759</u>	<u>NATURE'S KICK ORIGINAL HONEYSTIX</u>
<u>4265612</u>	<u>NATURE'S CHILD</u>
<u>4484197</u>	<u>NATURE'S SUMMIT</u>
<u>4499500</u>	<u>NATURE'S TOUCH</u>
<u>4504119</u>	<u>NATURE'S FINEST SWEET</u>
<u>4398971</u>	<u>NATURE VALLEY</u>
<u>4328031</u>	<u>NATURE'S TOUCH</u>
<u>4260082</u>	<u>NATURA WEED</u>
<u>4481513</u>	<u>NATURE'S FIELDS</u>
<u>4165630</u>	<u>NATURE'S GODDESS</u>
<u>4081174</u>	<u>NATURE'S COCKTAIL</u>
<u>4140803</u>	<u>NATURE ADDICTS</u>
<u>5430617</u>	<u>NATURE DENT</u>
<u>3922263</u>	<u>NATUR'FINE</u>
<u>3922262</u>	<u>NATUR'SOFT</u>
<u>4953356</u>	<u>NATURE'S NO. 1</u>
<u>4753812</u>	<u>NATURE'S NO. 1</u>
<u>5000556</u>	<u>NATURA VITALIS</u>
<u>4386029</u>	<u>NATURA SÌ</u>
<u>4362838</u>	<u>NATURE GOODNESS</u>

<u>3298882</u>	<u>NATURE'S GRILL</u>
<u>3497318</u>	<u>NATURE'S PROMISE</u>
<u>3490693</u>	<u>NATURE'S PROMISE</u>
<u>3321752</u>	<u>NATURE'S REST</u>
<u>3321753</u>	<u>NATURE'S STOMACH SOOTHER</u>
<u>3213309</u>	<u>NATURE'S PLACE</u>
<u>3747840</u>	<u>NATURE'S SUPREMES</u>
<u>3542088</u>	<u>NATURE'S SWEET LIFE</u>
<u>3542010</u>	<u>NATURE'S SWEET LIFE</u>
<u>3107939</u>	<u>NATURE'S PROMISE</u>
<u>3091369</u>	<u>NATURE'S PROMISE</u>
<u>3136604</u>	<u>NATURE'S PROMISE</u>
<u>2811721</u>	<u>NATURE'S ENERGY INFUSION</u>
<u>2791522</u>	<u>NATURE ONLY</u>
<u>4060457</u>	<u>NATUREGIFT COFFEE 21</u>
<u>3827217</u>	<u>NATURELAND</u>
<u>4024434</u>	<u>NATURE LAND, INC.</u>
<u>3912976</u>	<u>NATURE'S HARMONY</u>
<u>3887069</u>	<u>NATURE TRAILS</u>
<u>3714970</u>	<u>NATURE'S INDULGENCE</u>
<u>3684174</u>	<u>NATURE'S IMAGES</u>
<u>3553283</u>	<u>NATURE'S DELITE</u>
<u>3285278</u>	<u>NATURE'S ACCENTS</u>
<u>3305342</u>	<u>NATURE'S YOKE</u>
<u>3928819</u>	<u>NATURE'S CONFECTIONS</u>
<u>3387595</u>	<u>NATURE'S BASKET</u>
<u>3634062</u>	<u>NATURE'S PREMIER ENERGY BEVERAGE</u>
<u>3415403</u>	<u>NATURE'S SWEETEST MIRACLE</u>
<u>2911414</u>	<u>NATURE. SCIENCE. SOLUTIONS.</u>
<u>2818828</u>	<u>NATURE'S PATH</u>
<u>2495510</u>	<u>NATURE'S FLAVORS</u>
<u>2492114</u>	<u>NATURE'S PATH</u>
<u>2562863</u>	<u>NATUREPRINT</u>
<u>2210738</u>	<u>NATURE'S WONDERLAND</u>
<u>2526366</u>	<u>NATURE'S TOUCH</u>

<u>2069075</u>	<u>NATURE'S PATH</u>
<u>1652776</u>	<u>NATURE'S CRUNCH</u>
<u>1928000</u>	<u>NATURE'S BURGER</u>
<u>1971834</u>	<u>NATURE'S HILIGHTS</u>
<u>1696334</u>	<u>NATURE'S MEDLEY</u>
<u>1639903</u>	<u>NATURE'S SYMPHONY</u>
<u>1313714</u>	<u>NATURE O'S</u>
<u>1343040</u>	<u>NATURE'S CUPBOARD</u>
<u>1050871</u>	<u>NATURE VALLEY</u>
<u>1335747</u>	<u>NATURE'S CHOICE</u>
<u>1211778</u>	<u>NATURE VALLEY</u>
<u>1265867</u>	<u>NATURE'S SUNSHINE</u>
<u>1253892</u>	<u>NATURE'S SUNSHINE</u>
<u>1828406</u>	<u>NATURSOURCE</u>
<u>0967747</u>	<u>NATURFRESH</u>
<u>0963384</u>	<u>NATURE'S BOUNTY</u>
<u>0964313</u>	<u>NATURE'S SEASONS</u>
<u>0965714</u>	<u>NATURE VALLEY</u>
<u>0978261</u>	<u>NATURE'S HAND</u>

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.

Response:

Respondent has no way of knowing at this time if each of these marks is in use in the marketplace. As Respondent becomes aware of use or probable use, Respondent will accordingly update these responses.

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.

Response:

None.

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.

Response:

Natures Blend Pty Ltd

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

Response:

No other persons participated in the preparation of these responses.

Dated: August 16, 2018

Legends Law Group, PLLC

By: /Nicholas D. Wells/

Nicholas D. Wells
Stephen H. Bean
330 N. Main St.

Kaysville, Utah 84037
(801) 337-4500

Attorneys for Respondent,
Mark Robinson and Brenda Robinson

VERIFICATION

I, Mark Robinson, declare:

I am a joint owner of the NATURE'S BLEND trademark that is the subject to the present proceeding at the Trademark Trial and Appeal Board. I reviewed Respondent's Response to Petitioner's First Set of Interrogatories. I verify that the answers to the interrogatories are true and correct. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.

Dated: August 16, 2018

By:  _____

EXHIBIT J

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

August 23, 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

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 deficiencies in the Robinsons' interrogatory responses.

As you know, Flowers served discovery request on the Robinsons on February 26, 2018, including Flowers' First Set of Interrogatories and First Set of Document Requests. When the Robinsons failed to respond to Flowers' discovery requests or our several attempts to follow up on the discovery requests, Flowers was left with no choice but to file a motion to compel (Dkt. No. 5). The Board granted Flowers's motion on July 26, 2018 (Dkt. No. 6). As set out in the Board's Order, the Robinson's responses to Flowers' interrogatories, document requests, production of any responsive documents, and any privilege log are due within 30 days of the Board's order (e.g. August 25, 2018). We write to discuss two matters: (1) the Robinsons' production of documents responsive to Flowers' documents requests, and (2) the deficiencies in the Robinsons' interrogatory responses. We address each in turn.

Production of Documents

Under the Board's Order, the Robinsons must produce documents and provide Flowers with a privilege log no later than August 27, 2018. We want to confirm that the parties will mutually exchange documents no later than this date. Kindly confirm this by the close of business on August 24, 2018.

Responses to Interrogatories

As you know, Federal Rule of Civil Procedure 33 provides that each interrogatory must be answered “fully in writing”. *See* Fed. R. Civ. P. 33(b)(3). The Robinsons’ responses to Flowers Interrogatory Nos. 5, 6, and 17 fall short of this requirement, and accordingly, must be supplemented.

Interrogatory No. 5

Interrogatory No. 5 requests that the Robinsons “state the prices that Respondents’ Goods have been offered for sale, including wholesale, suggested retail, and any other price categories utilized” for products identified in response to Interrogatory No. 3. The Robinsons provided a price for each type of good offered under Respondents’ Mark, but failed to identify if that price corresponds to the wholesale, suggested retail, or other price category. Please supplement the Robinsons’ responses to identify the type price that correspondences with the dollar figure provided in response to Interrogatory No. 5 and identify any additional price categories utilized in connection with Respondents’ Goods.

Interrogatory No. 6

Interrogatory No. 6 requests that the Robinsons “identify all geographic areas (by city and state within the United States) in which Respondents’ Goods have been sold.” The Robinsons’ response of “principally in California but also in other states” is incomplete and inadequate. Flowers requests the Robinsons immediately provide a complete, substantive response to this Interrogatory which includes *each* city and state within the United States where the Respondents’ Goods are sold.

Interrogatory No. 17

Interrogatory No. 17 requests the identity of “each Person, other than counsel, who participated in any way in the preparation of responses to these Interrogatories.” The Robinsons responded that “[n]o other persons participated in the preparation of these responses.” We note that Mr. Mark Robinson signed the verification but has not been identified in response to this Interrogatory. We also find it questionable that neither Mark or Brenda Robinson assisted in preparing the response to Flowers’ interrogatories. Flowers requests that the Robinsons immediately supplement its response to fully respond to Interrogatory No. 17.

Please provide responses to the foregoing deficiencies in Respondents’ interrogatory responses by no later than August 30, 2018. Flowers expressly reserve the right to address additional deficiencies in the Robinsons’ discovery responses as discovery progresses and documents are exchanged.

Nicholas D. Wells, Esq.
August 23, 2018
Page 3

Sincerely,

A handwritten signature in blue ink that reads "Nichole Davis Chollet". The signature is written in a cursive style with a blue ink color.

Nichole Davis Chollet

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

EXHIBIT K

Teilhaber, Kris

From: Nicholas D. Wells <nwells@legendslaw.com>
Sent: Friday, August 24, 2018 10:44 AM
To: Chollet, Nicki
Cc: Davis, Ted; Jones, Beth; Teilhaber, Kris
Subject: RE: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson: Petition No. 92067298

Dear Nicki,

I acknowledge your letter of yesterday regarding the pending discovery matters in the above case.

I confirm that I have sought the requested clarifying details on the interrogatories and I anticipate sending this information to you by August 30, 2018.

I have also sought confirmation from my client regarding delivery of the document production. I hope to be able to confirm our plans by the end of the day.

Kind 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

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From: Chollet, Nicki [mailto:NChollet@kilpatricktownsend.com]
Sent: Thursday, August 23, 2018 7:03 PM
To: Nicholas D. Wells <nwells@legendslaw.com>
Cc: Davis, Ted <TDavis@kilpatricktownsend.com>; Jones, Beth <Bjones@kilpatricktownsend.com>; Teilhaber, Kris <KTeilhaber@kilpatricktownsend.com>
Subject: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson: Petition No. 92067298

Dear Nicholas,
Please see the attached.
Best,
Nicki



Nichole Davis Chollet

Kilpatrick Townsend & Stockton LLP

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

office 404 815 6010 | cell 404 906 6948 | fax 404 541 3387

nchollet@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

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EXHIBIT L

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 SECOND 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 Respondents Mark and Brenda Robinson to answer the following interrogatories in writing and under oath within thirty (30) days after service of this request.

I. DEFINITIONS

The Definitions contained in Petitioner’s First Set of Interrogatories are incorporated by reference.

II. INSTRUCTIONS

The Instructions set forth in Petitioner’s First Set of Interrogatories are incorporated by reference.

III. INTERROGATORIES

18. Identify each Customer (by name and address) who purchased Respondents’ Goods in the United States.

19. For each Customer identified in response to Interrogatory No. 18, state:

- a. which of Respondents' Goods the Customer purchased;
- b. the number of units purchased; and
- c. the date on which each purchased occurred.

20. Identify each Consumer (by name and address) who purchased Respondents' Goods in the United States.

21. For each Consumer identified in response to Interrogatory No. 20, state:

- a. which of Respondents' Goods the Consumer purchased;
- b. the number of units purchased; and
- c. the date on which each purchase occurred.

22. Identify each Customer (by name and address) who purchased bread sold under Respondents' Mark in the United States.

23. For each Customer identified in response to Interrogatory No. 22, state

- a. the number of units of bread purchased; and
- b. the dates on which each purchase occurred.

24. Identify each Consumer (by name and address) who purchased bread sold under Respondents' Mark in the United States.

25. For each Consumer identified in response to Interrogatory No. 24, state:

- a. the number of units of bread purchased; and
- b. the dates on which each purchase occurred.

26. Describe each of Respondents' Goods sold to Baked By Kate, including in that description:

- a. the number of units sold;
- b. the date on which each sale occurred.

27. Describe each of Respondents' Goods sold to Epic Spreads, including in that description:

- a. the number of units sold;
- b. the date each sale occurred.

28. Describe each of Respondents' Goods sold to Flour Buds Bakery, including in that description:

- a. the number of units sold; and
- b. the date each sale occurred.

29. Describe each of Respondents' Goods sold to Melanie Brown, including in that description:

- a. the number of units sold; and
- b. the date each sale occurred.

30. Describe each of Respondents' Goods sold to Naoko Nishiwaka, including in that description:

- a. the number of units sold; and
- b. the date each sale occurred.

31. Describe each of Respondents' Goods sold through Amazon, including in that description:

- a. the number of units sold;
- b. the date each sale occurred.

32. Describe each of Respondents' Goods sold to Stephen O'Donnell, including in that description:

- a. the number of units sold;

b. the date of each sale.

33. Describe each of Respondents Goods' sold to Tiger Nuts USA, including in that description:

a. the number of units sold; and

b. the date of each sale.

34. Describe in detail Respondents' business plans as of March 24, 2010, related to sale of the Respondents' Goods in the United States.

35. Describe in detail the basis of Respondents' averment during the application process of a bona fide intent as of March 24, 2010, to use Respondents' Mark in commerce in connection with Respondents' Goods.

36. Describe in detail the basis of Respondents' averment during the application process of a bona fide intent as of March 24, 2010, to use Respondents' Mark in commerce in connection with bread.

37. Describe in detail the steps taken by Respondents to insure the freshness of bread sold under Respondents' Mark in the United States.

38. Identify each location at which bread sold under Respondents' Mark in the United States is produced.

39. Identify each of Respondents' Goods produced under Respondents' Mark by Natures Blend Pty Ltd. and the number of units of each responsive good.

40. For each good produced or sold by a licensee of Respondents' Mark in the United States, describe in detail how Respondent controls the nature and quality of that good.

41. Describe in detail all activities undertaken by Claudia Jovanovski on Respondents' behalf, including in that description the dates and locations of all such activities.

Dated: September 13, 2018

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

Respectfully submitted,

/Theodore H. Davis Jr./
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 SECOND SET OF INTERROGATORIES TO RESPONDENTS** was served by electronic mail to the following attorney of record on September 13, 2018:

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

/Kris Teilhaber/
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.)
)
)

PETITIONER’S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to C.F.R. §§ 2.116 and 2.120 and Federal Rules of Civil Procedure 26 and 36, Petitioner Flowers Bakeries Brands, LLC requests Respondents Mark and Brenda Robinson to 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. “You” and “your” shall refer to Respondents as defined in Paragraph C. above.

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. “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.

H. “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.

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

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

K. “Disputed Goods” shall refer individually and collectively to “sugar, flour and preparations made from cereals, namely, flaxseed and nuts, bread, pastry and confectionery made of sugar, yeast, baking powder” offered, sold, or promoted under or in connection with Respondents’ Mark.

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

M. “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).

II. INSTRUCTIONS

1. Please re-state each request in full immediately before your response.
2. If you interpose any objection to any request, fully state the grounds for the objection.
3. If a matter is not admitted, the answer must specifically deny it or state in detail why you cannot truthfully admit or deny it.
4. If it is not possible to answer any one, or any subpart, of these requests in full after exercising due diligence to secure the information to do so, please state so expressly. Answer every other request and subpart in full, and provide any information in your possession, custody, or control that may partially answer any request or subpart that you cannot answer in full.

III. REQUESTS FOR ADMISSION

1. Admit Respondents have not sold the Disputed Goods in the United States in 2018.
2. Admit Respondents have not sold bread under Respondents’ Mark in the United States in 2018.

3. Admit Respondents did not sell the Disputed Goods in the United States in 2017.
4. Admit Respondents did not sell bread under Respondents' Mark in the United States in 2017.
5. Admit Respondents did not sell the Disputed Goods in the United States in 2016.
6. Admit Respondents did not sell bread under Respondents' Mark in the United States in 2016.
7. Admit Respondents did not sell the Disputed Goods in the United States in 2015.
8. Admit Respondents did not sell bread under Respondents' Mark in the United States in 2015.
9. Admit Respondents did not sell the Disputed Goods in the United States in 2014.
10. Admit Respondents did not sell bread under Respondents' Mark in the United States in 2014.
11. Admit Respondents did not sell the Disputed Goods in the United States in 2013.
12. Admit Respondents did not sell bread under Respondents' Mark in the United States in 2013.
13. Admit Respondents did not sell the Disputed Goods in the United States in 2012.
14. Admit Respondents did not sell bread under Respondents' Mark in the United States in 2012.
15. Admit that Respondents have never sold the Disputed Goods in the United States.
16. Admit that Respondents have never sold bread under Respondents' Mark in the United States.
17. Admit Respondents' Mark has not been used in advertisements or promotional materials targeted specifically at United States consumers in 2018.

18. Admit Respondents' Mark was not been used in advertisements or promotional materials targeted specifically at United States consumers in 2017.

19. Admit Respondents' Mark was not used in advertisements or promotional materials targeted specifically at United States consumers in 2016.

20. Admit Respondents' Mark was not used in advertisements or promotional materials targeted specifically at United States consumers in 2015.

21. Admit Respondents' Mark was not used in advertisements or promotional materials targeted specifically at United States consumers in 2014.

22. Admit Respondents' Mark was not used in advertisements or promotional materials targeted specifically at United States consumers in 2013.

23. Admit the Disputed Goods have not been available for purchase by Customers in the United States in 2018.

24. Admit the Disputed Goods were not available for purchase by Customers in the United States in 2017.

25. Admit the Disputed Goods were not available for purchase by Customers in the United States in 2016.

26. Admit the Disputed Goods were not available for purchase by Customers in the United States in 2015.

27. Admit the Disputed Goods were not available for purchase by Customers in the United States in 2014.

28. Admit the Disputed Goods were not available for purchase by Customers in the United States in 2013.

29. Admit the Disputed Goods were not available for purchase by Customers in the United States in 2012.

30. Admit the Disputed Goods have not been available for purchase by Consumers in the United States in 2018.

31. Admit the Disputed Goods were not available for purchase by Consumers in the United States in 2017.

32. Admit the Disputed Goods were not available for purchase by Consumers in the United States in 2016.

33. Admit the Disputed Goods were not available for purchase by Consumers in the United States in 2015.

34. Admit the Disputed Goods were not available for purchase by Consumers in the United States in 2014.

35. Admit the Disputed Goods were not available for purchase by Consumers in the United States in 2013.

36. Admit the Disputed Goods were not available for purchase by Consumers in the United States in 2012.

37. Admit bread has not been available for purchase by Customers under Respondents' Mark in the United States in 2018.

38. Admit bread was not available for purchase by Customers under Respondents' Mark in the United States in 2017.

39. Admit bread was not available for purchase by Customers under Respondents' Mark in the United States in 2016.

40. Admit bread was not available for purchase by Customers under Respondents' Mark in the United States in 2015.

41. Admit bread was not available for purchase by Customers under Respondents' Mark in the United States in 2014.

42. Admit bread was not available for purchase by Customers under Respondents' Mark in the United States in 2013.

43. Admit bread was not available for purchase by Customers under Respondents' Mark in the United States in 2012.

44. Admit bread has not been available for purchase by Consumers under Respondents' Mark in the United States in 2018.

45. Admit bread was not available for purchase by Consumers under Respondents' Mark in the United States in 2017.

46. Admit bread was not available for purchase by Consumers under Respondents' Mark in the United States in 2016.

47. Admit bread was not available for purchase by Consumers under Respondents' Mark in the United States in 2015.

48. Admit bread was not available for purchase by Consumers under Respondents' Mark in the United States in 2014.

49. Admit bread was not available for purchase by Consumers under Respondents' Mark in the United States in 2013.

50. Admit bread was not available for purchase by Consumers under Respondents' Mark in the United States in 2012.

51. Admit Respondents have not sold the Disputed Goods to Baked by Kate.

52. Admit Respondents have not sold bread under Respondents' Mark to Baked by Kate.
53. Admit Respondents have not sold the Disputed Goods to Epic Spreads.
54. Admit that Respondents have not sold bread under Respondents' Mark to Epic Spreads.
55. Admit Respondents have not sold the Disputed Goods to Flour Buds Bakery.
56. Admit Respondents have not sold bread under Respondents' Mark to Flour Buds Bakery.
57. Admit Respondents have not sold the Disputed Goods to Melanie Brown.
58. Admit Respondents have not sold bread under Respondents' Mark to Melanie Brown.
59. Admit Respondents have not sold the Disputed Goods to Naoko Nishiwaka.
60. Admit Respondents have not sold bread under Respondents' Mark to Naoko Nishiwaka.
61. Admit Respondents have not sold the Disputed Goods to Amazon.
62. Admit Respondents have not sold bread under Respondents' Mark to Amazon.
63. Admit Respondents have not sold the Disputed Goods to Stephen O'Donnell.
64. Admit Respondents have not sold bread under Respondents' Mark to Stephen O'Donnell.
65. Admit Respondents have produced no written business plans related to sale of the Disputed Goods in the United States.
66. Admits Respondents have produced no written business plans related to sale of bread under Respondents' Mark in the United States.

67. Admit Respondents have produced no written business plans related to sale of the Disputed Goods in the United States.

68. Admit Respondents have produced no written business plans related to the sale of bread under Respondents' Mark in the United States.

69. Admit Respondents have produced no documentary evidence of the sale of the Disputed Goods in the United States.

70. Admit Respondents have produced no documentary evidence of the sale of bread under Respondents' Mark in the United States.

71. Admit Respondents have produced no documentary evidence of their promotion of the Disputed Goods in the United States.

72. Admit Respondents have produced no documentary evidence of their promotion of bread under Respondents' Mark in the United States.

73. Admit Respondents have produced no documentary evidence predating March 24, 2010, of their intent to sell the Disputed Goods in the United States.

74. Admit Respondents have produced no documentary evidence predating March 24, 2010, of their intent to sell bread under Respondents' Mark in the United States.

75. Admit Respondents have produced no examples of packaging for bread bearing Respondents' Mark.

Dated: September 13, 2018

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

Respectfully submitted,

/Theodore H. Davis Jr./
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 REQUEST FOR ADMISSION** was served by electronic mail to the following attorney of record on September 13, 2018:

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

/Kris Teilhaber/
Kilpatrick Townsend & Stockton LLP

EXHIBIT M

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

October 17, 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

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

Dear Nicholas:

As you know, we represent Flowers in the above-referenced matter. This letter addresses the deficiencies in the Robinsons': (i) production of documents in response Flowers' First Set of Document Requests, and (ii) responses to Flowers' Second Set of Interrogatories and First Requests for Admission. We address each in turn.

First Set of Requests for Production

As you know, the Robinsons failed to timely respond or object to Flowers' First Requests for the Production of Documents, which were served on February 26, 2018. Because no timely objections to the merits of these requests were asserted, all such objections were waived. *See* Fed. R. Civ. P. 34(b)(2); TBMP 406.04(c). Therefore, the Robinsons were required to respond to Flowers' document requests by producing all responsive documents or stating that no responsive documents exist. Instead, and only after Flowers was forced to file a motion to compel, the Robinsons produced a mere seventeen (17) documents on August 28, 2018.

We have reviewed the Robinsons' paltry production and have confirmed that the Robinsons have not produced any documents in response to Flowers' Request Nos. 1-4, 8, and 10-23. As the Robinsons waived all objections, Flowers requests the immediate production of *all* documents responsive to these requests. If the Robinsons' position is that no responsive documents exist, they must state so explicitly.

Nicholas D. Wells, Esq
October 17, 2018
Page 2

Second Set of Discovery Requests

The Robinsons failed to respond to Flowers' Second Set of Interrogatories and First Requests for Admission by the October 15, 2018 deadline. As a result of the Robinsons' failure to timely respond to Flowers' Second Set of Interrogatories, the Robinsons' waived all of their objections to those requests and must provide complete responses to each Interrogatory. *See Fed. R. Civ. P. 33(b)(4); TBMP § 405.04(a)*. In addition, the Robinsons' failure to respond to Flowers' First Requests for Admission by the October 15 deadline deems each Request admitted by operation of law. *See Fed. R. Civ. P. 36(a)(3); TBMP § 407.03(a)*.

Please provide responses to the foregoing deficiencies by supplementing the written answers and producing responsive documents by no later than October 24, 2018. If we do not receive a substantive response from you to this letter and the Robinsons' complete responses to Flowers' First Set of Documents Requests and Second Set of Interrogatories by October 24, we will need to schedule a meet and confer as Flowers will be forced to once again seek relief from the Board.

Sincerely,



Nichole Davis Chollet

EXHIBIT N

Teilhaber, Kris

From: Chollet, Nicki
Sent: Friday, October 26, 2018 10:48 AM
To: Teilhaber, Kris; nwells@legendslaw.com
Cc: Davis, Ted; Jones, Beth
Subject: RE: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)
Attachments: 2018.10.17 Letter from N. Chollet to N. Wells.pdf

Dear Nicholas,

I wanted to follow up on my attached letter from last week. We have not received a response to date. If I do not hear from you by Monday, we will have no choice but to seek relief from the Board.

As a related matter, I am expecting the birth of my second child any day. Please make sure to copy Ted Davis, Beth Jones, and Kris Teilhaber on all correspondence, as well as myself, so we make sure nothing slips through the cracks.

Thanks,
Nicki

Nichole Davis Chollet

Kilpatrick Townsend & Stockton LLP

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office 404 815 6010 | cell 404 906 6948 | fax 404 541 3387
nchollet@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Teilhaber, Kris
Sent: Wednesday, October 17, 2018 1:12 PM
To: nwells@legendslaw.com
Cc: Davis, Ted <TDavis@kilpatricktownsend.com>; Chollet, Nicki <NChollet@kilpatricktownsend.com>; Jones, Beth <Bjones@kilpatricktownsend.com>; Teilhaber, Kris <KTeilhaber@kilpatricktownsend.com>
Subject: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Please see Ms. Chollet's letter of today.



Kris Teilhaber

Paralegal

Kilpatrick Townsend & Stockton LLP

Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528
office 404 745 2428 | fax 404 541 3414

kteilhaber@kilpatricktownsend.com | www.kilpatricktownsend.com | [vCard](#)

EXHIBIT O

Teilhaber, Kris

From: Nicholas D. Wells <nwells@legendslaw.com>
Sent: Friday, October 26, 2018 3:18 PM
To: Chollet, Nicki; Teilhaber, Kris
Cc: Davis, Ted; Jones, Beth
Subject: Re: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Dear Nikki,

I acknowledge receipt of your letter and your email below. I'm at a conference at the moment but planning to have a formal response to you tomorrow. I have a small number of other documents to produce, but no other responses to interrogatories. I realize you need this stated in a formal document, and that deadlines are passed; I just wanted to indicate our intention.

Kind regards,
Nicholas

Nicholas D. Wells

LEGENDS LAW GROUP

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[Kaysville, Utah 84037](#)

P: [+1 801-337-4500](#)

nwells@legendslaw.com

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From: "Chollet, Nicki" <NChollet@kilpatricktownsend.com>
Date: Friday, October 26, 2018 at 8:47 AM
To: "Teilhaber, Kris" <KTeilhaber@kilpatricktownsend.com>, Nicholas Wells <nwells@legendslaw.com>
Cc: "Davis, Ted" <TDavis@kilpatricktownsend.com>, "Jones, Beth" <BJones@kilpatricktownsend.com>
Subject: RE: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Dear Nicholas,

I wanted to follow up on my attached letter from last week. We have not received a response to date. If I do not hear from you by Monday, we will have no choice but to seek relief from the Board.

As a related matter, I am expecting the birth of my second child any day. Please make sure to copy Ted Davis, Beth Jones, and Kris Teilhaber on all correspondence, as well as myself, so we make sure nothing slips through the cracks.

Thanks,
Nicki

Nichole Davis Chollet

Kilpatrick Townsend & Stockton LLP

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office 404 815 6010 | cell 404 906 6948 | fax 404 541 3387
nchollet@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Teilhaber, Kris

Sent: Wednesday, October 17, 2018 1:12 PM

To: nwells@legendslaw.com

Cc: Davis, Ted <TDavis@kilpatricktownsend.com>; Chollet, Nicki <NChollet@kilpatricktownsend.com>; Jones, Beth <BJones@kilpatricktownsend.com>; Teilhaber, Kris <KTeilhaber@kilpatricktownsend.com>

Subject: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Please see Ms. Chollet's letter of today.



Kris Teilhaber

Paralegal

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EXHIBIT P

Teilhaber, Kris

From: Chollet, Nicki
Sent: Monday, October 29, 2018 1:56 PM
To: 'Nicholas D. Wells'; Teilhaber, Kris
Cc: Davis, Ted; Jones, Beth
Subject: RE: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Dear Nicholas,

We have received your document production from Sunday and understand based on your correspondence below that: (1) the seven (7) additional documents produced are all your client intends to produce in response to the Board's last order, and (2) your client will not be serving amended interrogatory responses to Flowers' First Set of Interrogatories or any written responses to Flowers' Second Set of Interrogatories. In light of this, we believe we have met our conferral obligations and we will need to seek further assistance from the Board. If, however, you would like to discuss this further, please let me know by October 31.

Best,
Nicki

Nichole Davis Chollet

Kilpatrick Townsend & Stockton LLP

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office 404 815 6010 | cell 404 906 6948 | fax 404 541 3387
nchollet@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: Nicholas D. Wells <nwells@legendslaw.com>
Sent: Friday, October 26, 2018 3:18 PM
To: Chollet, Nicki <NChollet@kilpatricktownsend.com>; Teilhaber, Kris <KTeilhaber@kilpatricktownsend.com>
Cc: Davis, Ted <TDavis@kilpatricktownsend.com>; Jones, Beth <BJones@kilpatricktownsend.com>
Subject: Re: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Dear Nikki,

I acknowledge receipt of your letter and your email below. I'm at a conference at the moment but planning to have a formal response to you tomorrow. I have a small number of other documents to produce, but no other responses to interrogatories. I realize you need this stated in a formal document, and that deadlines are passed; I just wanted to indicate our intention.

Kind regards,
Nicholas

Nicholas D. Wells

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[Kaysville, Utah 84037](#)

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nwells@legendslaw.com

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Date: Friday, October 26, 2018 at 8:47 AM
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Cc: "Davis, Ted" <TDavis@kilpatricktownsend.com>, "Jones, Beth" <Bjones@kilpatricktownsend.com>
Subject: RE: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

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Thanks,
Nicki

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Subject: Flowers Bakeries Brands LLC v. Mark and Brenda Robinson (Cancellation No. 92067298)

Please see Ms. Chollet's letter of today.



Kris Teilhaber

Paralegal

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