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

Proceeding	91206346
Party	Plaintiff 1-800-FLOWERS.COM, INC.
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Date	08/21/2012
Attachments	2012-08-21 Opposer's Mtn to Consolidate Opp and to Suspend.pdf (8 pages)(207880 bytes) Exhibit A.pdf (5 pages)(63738 bytes) Exhibit B - Part 1v2.pdf (61 pages)(1306194 bytes) Exhibit B - Part 2v2.pdf (35 pages)(929603 bytes) Exhibit B - Part 3v2.pdf (56 pages)(850647 bytes)

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

1-800-FLOWERS.COM, INC.	)	Opposition No. 91206347
	)	Mark: BATTY BOUQUET
	)	
Opposer,	)	Opposition No. 91206346
	)	Mark: HONEY BEAR BOUQUET
	)	
v.	)	Opposition No. 91206345
	)	Mark: SWEETHEART SWIZZLE
	)	BOUQUET
EDIBLE ARRANGEMENTS, LLC	)	
	)	Opposition No. 91206479
	)	Mark: O'CANADA BOUQUET
Applicant.	)	

OPPOSER'S MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS AND TO SUSPEND THE CONSOLIDATED OPPOSITION PROCEEDING

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.104(b), and T.B.M.P. § 511, Opposer 1-800-Flowers.com, Inc. ("Opposer") hereby moves the Board to consolidate Oppositions Nos. 91206347 (BATTY BOUQUET), 91206346 (HONEY BEAR BOUQUET), 91206345 (SWEETHEART SWIZZLE BOUQUET), and 91206479 (O'CANADA BOUQUET) (collectively, Opposer's "BOUQUET Oppositions") with the already consolidated opposition proceedings maintained in Opposition No. 91203846. Further, pursuant to 37 C.F.R. § 2.117(a) and T.B.M.P. § 510.02(a), Opposer moves the Board to suspend Opposer's BOUQUET Oppositions for the same reason it suspended the consolidated Opposition No. 91203846: that Opposer and Applicant Edible Arrangements, LLC ("Applicant") are currently parties to a civil action initiated by Opposer in the United States District Court for the Eastern District of New York (the "Civil Action") that will dispose of the issues raised in Opposer's BOUQUET Oppositions.

I. RELEVANT BACKGROUND

In May 2011, Opposer filed with the United States Patent and Trademark Office ("USPTO") applications to register several versions of the mark FRUIT BOUQUETS together with a stylized strawberry and vine design for, among other things, cut fresh fruit arrangements (Application Serial Nos. 85311052, 85311131, 85311102, 85314779, 85314758, and 85314733). (The foregoing trademark applications are referred to collectively hereinafter as "Opposer's FRUIT BOUQUETS Applications," and the trademarks that are the subjects of those applications are referred to hereinafter collectively as "Opposer's FRUIT BOUQUETS Marks.")

On February 13, 2012, after the USPTO approved and published Opposer's FRUIT BOUQUETS Applications, Applicant filed notices of opposition against them before the Trademark Trial and Appeal Board (the "Board") (Opposition Nos. 91203907, 91203891, 91203873, 91203868, 91203866, and 91203846, referred to collectively hereinafter as "Applicant's Oppositions"). In Applicant's Oppositions, Applicant claims that there is a likelihood of confusion between Opposer's FRUIT BOUQUETS Marks and the marks underlying three trademark registrations owned by Applicant: (1) Registration No. 3429717 for the mark BERRY BOUQUET; (2) Registration No. 3429718 for the mark BERRY TREE BOUQUET; and (3) Registration No. 3869223 for the mark DIPPEDFRUIT.COM & Design. (Registration Nos. 429717, 3429718, and 3869223 are referred to collectively hereinafter as "Applicant's BERRY Marks.")

On March 26, 2012, Opposer filed answers to Applicant's Oppositions with the Board. The following day, on March 27, 2012, Opposer filed the Civil Action seeking declaratory judgment that its use of Opposer's FRUIT BOUQUET Marks did not infringe or otherwise

interfere with the asserted rights of Applicant in Applicant's BERRY Marks. Also on March 27, Opposer moved the Board to consolidate and suspend Applicant's Oppositions in light of the Civil Action. The Board granted Opposer's motions on April 17, 2012, consolidating Applicant's Oppositions under Opposition No. 91203846 and suspending the consolidated opposition proceeding pending final disposition of the Civil Action. A copy of the Board's April 17 Order is attached as **Exhibit A**.

In early August 2012, in light of Applicant's position in Applicant's Oppositions that Opposer's FRUIT BOUQUETS Marks are likely to cause confusion with Applicant's BERRY Marks, Opposer filed Opposer's BOUQUET Oppositions against Applicant's applications to register the marks BATTY BOUQUET, HONEY BEAR BOUQUET, SWEETHEART SWIZZLE BOUQUET, and O'CANADA BOUQUET (collectively, "Applicant's BOUQUET Marks"). The basis for the BOUQUET Oppositions is that if the Board accepts Applicant's assertions that Opposer's FRUIT BOUQUETS Marks are confusingly similar to Applicant's BERRY Marks, then Applicant's BOUQUET Marks are likely to be confused with Opposer's previously-used BOUQUET OF FRUITS marks that are the subject of three incontestable trademark registrations owned by Opposer: Opposer's Registration Nos. 1733412, 3244359, and 3249239 (collectively, "Opposer's BOUQUET OF FRUITS Marks"). Thus, if Applicant's position is accepted, then Opposer has prior and superior rights that preclude registration of the marks at issue in Opposer's BOUQUET Oppositions.

II. ARGUMENT

A. Consolidating Opposer's BOUQUET Oppositions with the Already Consolidated Opposition No. 91203846 Will Result in Savings of Time, Effort, and Expense.

The Board has the discretion to consolidate opposition proceedings when the proceedings involve common questions of law or fact and when consolidation will result in savings of time,

effort, and expense. Fed. R. Civ. P. 42(a); *see also* T.B.M.P. § 511 and authorities cited therein. In this case, consolidation of Opposer's BOUQUET Oppositions with the already consolidated Applicant's Oppositions (Opposition No. 91203846) is appropriate because Opposer's BOUQUET Oppositions and Applicant's Oppositions involve identical parties and identical questions of law and fact, namely, whether Applicant's BOUQUET-formative marks (i.e., Applicant's BOUQUET Marks and Applicant's BERRY Marks) are likely to cause confusion with Opposer's BOUQUET-formative marks (i.e., Opposer's FRUIT BOUQUETS Marks and Opposer's BOUQUET OF FRUITS Marks). Indeed, in the notices of opposition for each of Opposer's BOUQUET Oppositions, Opposer specifically references and relies on the notices of opposition filed by Applicant in Applicant's Oppositions. *See* Opposer's BOUQUET Oppositions ¶¶ 4-7.

Accordingly, Opposer respectfully requests the Board to consolidate Opposer's BOUQUET Oppositions with the already consolidated Applicant's Oppositions for purposes of both discovery and trial, and to reset a common schedule for discovery, testimony, and trial dates for the consolidated proceedings.

B. The Outcome of the Civil Action Pending Between Opposer and Applicant Will Conclusively and Permanently Resolve the Issues Before the Board in Opposer's BOUQUET Oppositions.

In its BOUQUET Oppositions, Opposer alleges that—in the event the Board were to accept the position asserted by Applicant in Applicant's Oppositions—Applicant's BOUQUET Marks, when used in connection with Applicant's goods, so resemble Opposer's BOUQUET OF FRUITS Marks as to be likely to cause confusion, mistake, and/or to deceive consumers concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under Opposer's BOUQUET OF FRUITS Marks. In the Complaint filed by Opposer in connection with the Civil Action, Opposer seeks a declaratory judgment as to

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