

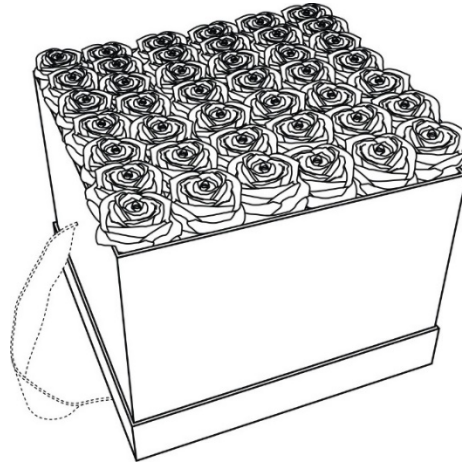
Applicant's Arguments in Support of Acquired Distinctiveness

Under Trademark Act §2(f), 15 U.S.C. §1052(f)

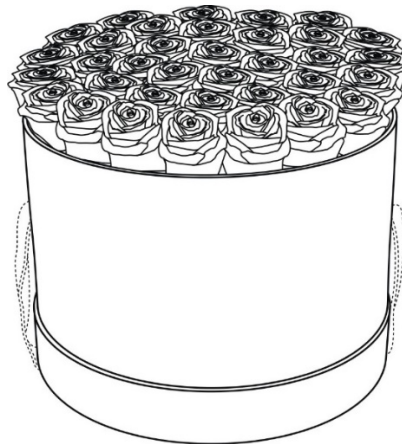
The Applicant, Venus ET Fleur, LLC, (hereinafter "VEF" and/or "Applicant") respectfully submits evidence of the subject trade dresses' substantial reputation and goodwill, which entitle the mark to registration on the Principal Register under Trademark Act §2(f), 15 U.S.C. §1052(f), as it has acquired distinctiveness through substantially exclusive and extensive use in interstate commerce such that the trade dress is indicative of the source of the associated goods.

Concurrent with and inclusive of the within trade dress application, VEF has/is filing a total of five (5) trade dress applications covering "cut flowers". Drawings representative of the respective trade dresses are as follows:

- a) LARGE SQUARE



- b) LARGE ROUND



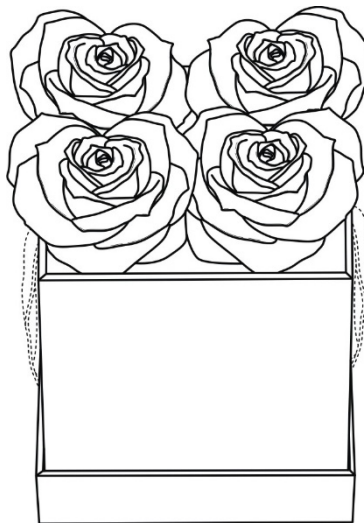
c) SMALL SQUARE



d) SMALL ROUND



e) PETITE SQUARE



To support a claim of acquired distinctiveness, the United States Patent and Trademark Office (USPTO) permits an applicant to submit evidence of “advertising expenditures, sales success, length and exclusivity of use, unsolicited media coverage, and consumer studies (linking the name to a source).” *In re Change Wind Corp.*, 123 USPQ2d 1453, 1467 (TTAB 2017) (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)). A showing of acquired distinctiveness need not consider all of these types of evidence; no single factor is determinative. *In re Steelbuilding.com*, 415 F.3d at 1300, 75 USPQ2d at 1424; see TMEP §§1212.06 *et seq.* However, “[t]he evidence must relate to the promotion and recognition of the specific configuration embodied in the applied-for mark and not to the goods in general.” *In re Change Wind Corp.*, 123 USPQ2d at 1467 (citing *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 851 n.11, 214 USPQ 1, 4 n.11 (1982)). An applicant is not required to provide conclusive evidence of its marks distinctiveness, but merely a prima facie showing of acquired distinctiveness, TMEP §1212.01.

In support of its contention the subject trade dresses are registrable under section 2(f), VEF provides herewith the Affidavit of Anik Chadha (hereinafter “Affidavit”), Director of Business Development for Venus ET Fleur, LLC, and the accompanying Venus ET Fleur Exhibit Schedule (hereinafter “Exhibits”) as evidence showing the respective VEF trade dresses distinguish Applicant's goods. 37 C.F.R. §2.41(a); TMEP §1212.03. More specifically, the Affidavit highlights sales data, based on sales in interstate commerce, for the respective trade dresses and the associated goods, namely “cut flowers”, from 2016 through the filing of the within applications.

By way of background, VEF was founded in 2015 as an alternative to the traditional gifting of flowers and the pitfalls often associated with same, including but not limited to, delivery issues, frequent watering and a very short floral lifespan often less than a week. VEF arrangements are all made from real roses that are treated to last up to an entire year with no need to water, change out vases, or deal with withered, wilted petals. By keeping the roses at room temperature and away from direct sunlight, VEF arrangements are designed for longevity, elegance, and beauty year-round. The unique VEF trade dresses, which are the subject of the within applications, are created by housing the roses in square, round, and heart-shaped hat boxes wherein the flower blossoms extend from the top of the packaging. **See Affidavit, Paragraph Nos. 3-5.**

The VEF artistic-inspired designs have been purchased by many A-listers, including Gigi Hadid, Sarah Jessica Parker, and the Kardashians and, since its inception in 2015, VEF has become a globally coveted brand. **See Affidavit, Paragraph Nos. 6 and 7.** See also the following:

- In referencing the VEF trade dress in *The Real Deal*, “So [VEF] has created “eternity roses,” which have garnered a serious star following the likes of Gigi and Bella Hadid, Olivia Culpo and the entire Kardashian clan.” **See VEF Exhibit Schedule #22.**
- In referencing the VEF trade dress in *The Elite Daily* featuring Kim Kardashian’s valentine gift list, “Kim suggests things like a Dipitique rose candle from Barneys, a Venus et Fleur small round box of roses...” **See VEF Exhibit Schedule #32.**

- In referencing the VEF trade dress in OK!, “Venus ET Fleur arrangements have graced the homes of some of Hollywood's hottest celebs, and it's no wonder why. Their fragrant roses, artfully arranged in gorgeous boxes, last up to a YEAR! Roses, starting at \$39, www.venusetfleur.com.” **See VEF Exhibit Schedule #42.**
- In referencing the VEF trade dress on JetSet, “Regular flowers are a thing of the past. If you want to really excite her, there is simply nothing that compares to Venus ET Fleur’s stunning floral arrangements. A big favorite of celebs like Kim Kardashian, Venus ET Fleur is the only brand that can boast a proprietary formula that keeps its flowers soft to the touch and looking pristine for an entire year. They don’t have to be watered or maintained, just cherished, month after month. Available in almost any color, and styled in gorgeous Parisian keepsake boxes, these are the only flowers to truly make an impression on your sweetheart this year. **See VEF Exhibit Schedule #99.**

Also included in the Affidavit, is the gross sales data for highlighted trade dresses from the year 2016 to the present date. Applicant has summarized same below:

A) The gross sales pertaining to the **Large Round** trade dress, from 2016 to the present, are as follows:

• 2016	\$1,147.50
• 2017	\$313,411.52
• 2018	\$1,725,992.50
• 2019 (YTD)	\$1,594,421.01
Total	\$3,634,972.53

B) The gross sales pertaining to the **Small Round** trade dress, from 2016 to the present, are as follows:

• 2016	\$13,437.50
• 2017	\$176,214.20
• 2018	\$1,238,155.78
• 2019 (YTD)	\$1,284,502.87
Total	\$2,712,310.35

C) The gross sales pertaining to the **Large Square** trade dress, from 2016 to the present, are as follows:

• 2016	\$210,363.32
• 2017	\$2,507,261.35
• 2018	\$4,163,766.64
• 2019 (YTD)	\$2,672,271.27
Total	\$9,553,662.58

D) The gross sales pertaining to the Small Square trade dress, from 2016 to the present, are as follows:

• 2016	\$70,199.43
• 2017	\$1,556,697.39
• 2018	\$3,072,838.06
• 2019 (YTD)	\$1,983,819.57
Total	\$6,683,554.45

E) The gross sales pertaining to the Petite Square trade dress, from 2016 to the present, are as follows:

• 2016	\$110,397.16
• 2017	\$651,962.18
• 2018	\$1,794,731.61
• 2019 (YTD)	\$1,264,223.61
Total	\$3,821,315.96

See Affidavit, Paragraph Nos. 9-13.

Applicant respectfully contends, the sales success relating to the five (5) respective trade dresses is additional conclusive evidence among VEF consumers of the respective trade dresses wide recognition and its strong association with VEF and the goods associated with each trade dress, namely, "cut flowers". In addition to the noted sales data, the VEF trade dresses and the associated goods "cut flowers" have attained national and worldwide recognition and have been widely used as a source indicator of Applicant's goods. In other words, relevant consumers identify the VEF trade dresses with Applicant's goods.

This is evidenced in the numerous Exhibits submitted in support of registration of the respective trade dresses. In addition to those Exhibits referenced earlier, Applicant has highlighted several additional Exhibits below.

- In the Cosmopolitan Magazine article entitled "10 Gifts Every Girl Should Get Herself", an image of the VEF trade dress is accompanied by the statement, "Luckily the geniuses at Venus ET Fleur figured out a way to take real roses (in gorgeous arrangements) and make them last a year-no maintenance required." **See VEF Exhibit Schedule #3.**
- In referencing the VEF trade dress in The Prospertere, "Venus et Fleur is a fresh innovative company producing stunning 'Real' rose presentations that actually last up to a year"; "...Venus ET Fleur has grown into an internationally recognized brand that has truly revolutionized the online floral buying experience"; "...Venus ET Fleur intersects the romantic tradition of sending flowers with exceptionally stylish design", and "...Venus ET Fleur creates the loving gesture of sending flowers into a comprehensive and exceptional artistic experience." **See VEF Exhibit Schedule #19.**

- In referencing the VEF trade dress in an excerpt from The Real Deal, “You really can never go wrong with flowers. These luxurious bouquets require absolutely no maintenance and add a touch of elegance to any space. Yes, the arrangements can cost a pretty penny, but they will also last up to a year with little to no care needed.” **See VEF Exhibit Schedule #33.**
- In referencing the VEF trade dress in Allure, “Venus Et Fleur has found a way to create the most low-maintenance floral arrangement in existence. The gorgeous suede boxes are full of perfectly pink roses that live up to a full year- no watering required.” **See VEF Exhibit Schedule #47.**
- In referencing the VEF trade dress in Martha Stewart Weddings, “These luxurious, fragrant rose boxes – a perfect coffee table topper – last a year without water.” **See VEF Exhibit Schedule #49.**
- In referencing the VEF trade dress in Stylists to a T, “Finding the perfect gifts for our loved ones has been top of mind lately, especially as we also prepare for the holidays and baby T’s arrival! So when we were introduced to Venus et Fleur, we knew we had stumbled upon a gem and needed to share it with you ASAP. If you have a colleague or hostess friend who has a thing for roses, she is going to fall in love with their incredibly unique arrangements. Each case of flowers is presented in a box of your choosing, and the rose tops sit neatly side by side in the most gorgeous flower display you’ve ever seen. Not only that, but because of how they are set inside the box, they last up to a year! Yes, a year.” **See VEF Exhibit Schedule #53.**
- As featured in the Huffington Post, “You know your love will last, so get flowers that will too...up to a YEAR! Venus et Fleur is delivered in exquisite Parisian style gift boxes and no watering is required. It’s a light dusting of non-toxic wax-based solution that helps preserve the roses in their pristine state, and keeps them fragrant too.” **See VEF Exhibit Schedule #96.**
- In referencing the VEF trade dress in the Boca Raton Observer, “These roses don’t come in traditional vases (how boring!). Instead the company uses a Parisian-inspired gift box. “Elegant and thoroughly modern presentation.” **See VEF Exhibit Schedule #102.**
- As featured in Miami Living, the VEF trade dress has “changed the game”. **See VEF Exhibit Schedule #108.**

As a result of the exposure provided by VEF’s extensive online presence along with its provision of unique goods, namely “cut flowers”, VEF and the accompanying trade dresses have achieved significant recognition as evidenced by the following unsolicited media coverage as highlighted in the both the **Affidavit** and accompanying **Exhibits**.

In conclusion and as evidenced above, VEF and its unique floral goods have enjoyed extensive growth and nationwide recognition since its inception. The success of VEF's advertising and promotional efforts, sales success and media coverage further evidence the consuming public's recognition of the subject trade dresses as indicators of VEF's much sought after "cut flowers" and VEF being the source of same.

As such, VEF respectfully contends the respective trade dresses depicted herein have the requisite acquired distinctiveness and are entitled to registration under Trademark Act §2(f), 15 U.S.C. §1052(f).