

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

<p>GOWAN COMPANY, LLC</p> <p>Potential Opposer,</p> <p>v.</p> <p>UNITED COMPOST AND ORGANICS, INC.,</p> <p>Applicant.</p>	<p>Application Serial No.: 78/456954</p> <p>Mark: SLEDGEHAMMER</p> <p>TTAB</p>
---	---

REQUEST TO ISSUE

Pursuant to TBMP §217, United Compost & Organics (“Applicant”) submits to the Board an executed copy of the consent agreement between Gowan Company, LLC (“Potential Opposer”) and Applicant, attached hereto as Exhibit A. The agreement states the Potential Opposer’s consent not to oppose Applicant’s application for SLEDGEHAMMER—Serial No. 78/456954 (“Application”).

Accordingly, Applicant respectfully requests the Board immediately forward the Application to issue.

UNITED COMPOST AND ORGANICS, INC.

By its attorneys,

Date: October 31, 2005

By: 
Mark R. Leonard
DAVIS & LEONARD, LLP
8880 Cal Center Dr., Suite 180
Sacramento, CA 95826
Telephone: (916) 362-9000



Certificate of Service

I hereby certify that a true and complete copy of the foregoing Request to Issue has been served on Gavin J. Milczarek-Desai, by mailing said copy on October 31, 2005, via Federal Express, for next day delivery, postage prepaid to: Gavin J. Milczarek-Desai, Quarles & Brady Streich Lang, LLP, 1 South Church Avenue, Suite 1700, Tucson, AZ 85701.


Sandra Lavoie

COEXISTENCE AND CONSENT AGREEMENT

This Coexistence and Consent Agreement (the "Agreement") is made by and between Gowan Company, L.L.C., an Arizona limited liability company having its principal place of business at 370 S. Main Street, Yuma, Arizona 85366-5569 ("Gowan"), and United Compost and Organics, Inc., a California corporation having its principal place of business at P.O. Box 787, Arcata, CA 95518 ("UCO").

Whereas, UCO is the owner of U.S. Trademark Application No. 78/456954 for the mark SLEDGEHAMMER, for "liquid organic fertilizer for agricultural, domestic and horticultural use;"

Whereas, Gowan desires to use the mark SEDGEHAMMER for "herbicides for agricultural use," and has filed intent to use applications to register the mark, in standard character and stylized formats, within the U.S. Patent and Trademark Office (Application Serial Nos. 78/616925 and 78/614757); and

Whereas, the parties believe that the concurrent use of their marks for their respective goods (as recited above) will not likely cause confusion.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. UCO hereby consents to the use and registration by Gowan of the mark SEDGEHAMMER for "herbicides for agricultural use" provided that Gowan does not use the mark SEDGEHAMMER in connection with any fertilizer or related product, except Gowan may list the term "sedgehammer herbicide" as an ingredient on packaging for a combined herbicide/fertilizer product marketed under a mark other than SEDGEHAMMER or any a similar mark.
2. Gowan hereby consents to the continued use and registration by UCO of the mark SLEDGEHAMMER, for "liquid organic fertilizer for agricultural, domestic and horticultural use."
3. The parties believe that the concurrent use of the marks for their respective goods (recited above) will not likely cause confusion or mistake, or to deceive, because their respective marks are applied to different goods, are marketed in different channels of trade, and are marketed to sophisticated purchasers. However, if any confusion should arise in the future, the parties agree to cooperate and find ways to eliminate or minimize any such confusion.
4. This Agreement will be binding upon and inure to the benefit of the parties, and to the parties' successors and assigns. This Agreement contains the entire understanding of the parties with respect to the subject matter herein and no amendment or modification will be valid unless it is in writing and signed by both parties.

In witness whereof, the parties have executed this Agreement as of the dates written below.

Gowan Company, LLC.

United Compost and Organics, Inc.

By: Kang J. Whelan
Title: Product Manager
Date: Oct. 26, 2005

By: William S. Uky
Title: PRESIDENT CEO
Date: OCT. 16, 2005