



01-22-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #58

Exhibits

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

MILLER CHEMICAL & FERTILIZER CORPORATION v.

SURFMARK L.L.C.

In the matter of Application Serial No. 76/138,471

Filed: October 2, 2000

Published in the Official Gazette
of December 11, 2001, Vol. 1253, No. 2 at page TM208

Opposition No. _____

Identity of Opposer:

Name:	MILLER CHEMICAL & FERTILIZER CORPORATION
Nature of Entity:	Corporation
State of Incorporation:	Commonwealth of Pennsylvania
Business Address:	120 Radio Road, P.O. Box 333 Hanover, Pennsylvania 17331

Notice of Opposition

The above-identified Opposer believes that it will be damaged by the registration of the proposed mark, EXIT, identified in an application filed October 2, 2000 by SURFMARK, L.L.C. (hereinafter referred to as "Applicant"), alleging use on November 1, 1996 in connection with chemical, namely, nonionic antifoam/defoamer, designed to eliminate or suppress foam formation in spray tank mixes in connection with agricultural, industrial, turf and ornamental, forestry and rights-of-way industries in International Class 1.

Opposer has requested a thirty (30) day extension of time to file this Notice. A copy is attached as Exhibit A.

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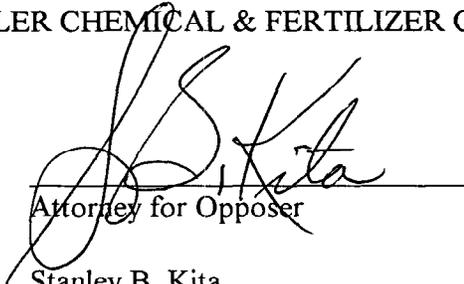
As grounds for its opposition, Opposer alleges:

1. Opposer is in the business of manufacturing and selling fertilizers and agricultural chemicals in the United States and various foreign countries.
2. Opposer has continuously sold a non-ionic activator-enhancer chemical under the trademark EXIT since August, 1988. A copy of the Opposer's label is attached as Exhibit B.
3. Opposer has used the term EXIT as a trademark prior to Applicant's alleged first use in November, 1996 of its EXIT mark for its goods.
4. As a result of Opposer's long and continuous use of EXIT as a trademark on its goods, the mark EXIT has come to identify and represent Opposer as the source of its above-stated goods.
5. On February 26, 2001, Opposer filed an application Serial Number 76/216,348 to register its EXIT trademark based on use as early as August, 1988. A copy of Opposer's filing receipt is attached as Exhibit C. On July 25, 2001, the Examining Attorney in charge of Opposer's application refused registration under Section 2(d) based on Applicant's earlier filed application. A copy of the Examiner Attorney's action is enclosed as Exhibit D.
6. Applicant's proposed mark EXIT, which is the subject of the above-referenced application by Applicant, so resembles Opposer's mark EXIT as to be likely, when used in connection with the goods set forth in Applicant's application, to cause confusion, or to cause mistake, or to deceive -- to the damage and injury of Opposer and of the relevant purchases under 15 U.S.C. §1052 (d).
7. Applicant's proposed registration of the mark EXIT sought to be registered by Applicant is precluded by Opposer's prior use of the trademark EXIT on or in connection with closely-related goods.

WHEREFORE, Miller Chemical & Fertilizer Corporation believes that it will be damaged by the registration sought by Applicant, and requests that its opposition to such registration be sustained, and that Applicant's application to register the proposed mark be refused.

MILLER CHEMICAL & FERTILIZER CORPORATION

By



Attorney for Opposer

Stanley B. Kita
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Enclosures: Exhibit A
Exhibit B
Exhibit C
Exhibit D
Check in the amount of \$300.

HOWSON AND HOWSON

ATTORNEYS AT LAW

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January 22, 2002



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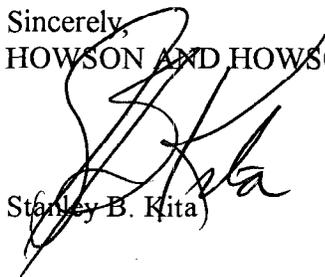
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Sir:

Enclosed is a Notice of Opposition for the mark EXIT.

The Commissioner is hereby authorized to charge any deficiency in the fee, and credit any overpayment, to our Deposit Account No. 08-3040.

Sincerely,
HOWSON AND HOWSON


Stanley B. Kita

SBK/mlr

Enclosures:

Copy of Transmittal Letter
Notice of Opposition - in Triplicate
Exhibits A, B, C and D
Check in the amount of \$300.

Express Mail: ET033443633US