

TTAB

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

In the matter of Trademark Application:



Serial No.: 76/140984  
Filed: October 3, 2000  
Mark: RW  
Class: 31  
Goods: Rootstock for Tree Roses

05-28-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #11

Proven Winners North America, LLC,  
  
Opposer,  
  
v.  
  
Jackson & Perkins Wholesale, Inc.,  
  
Applicant.

Opposition No.  
**NOTICE OF OPPOSITION**

02 JUN -5 AM 8:23  
TRADEMARK TRIAL AND APPEAL BOARD

NOTICE OF OPPOSITION

Proven Winners North America, LLC, a limited liability corporation organized under the laws of the State of California and located at 1566 La Pradera Drive, Suite 5, Campbell, CA 95008 ("Opposer"), believes it will be damaged by registration of the trademark **RW** for rootstock for tree roses, in International Class 31 (U.S. Class 1,46) shown in Serial No.76/140984, filed on October 3, 2000 by Jackson & Perkins Wholesale, Inc. ("Applicant") and hereby opposes the same.

Opposer alleges, solely for the purpose of this proceeding, as grounds for opposition the following:

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OWEN, WICKERSHAM & ERICKSON  
A PROFESSIONAL CORPORATION  
TRADEMARK, COPYRIGHT & PATENT LAW  
455 MARKET STREET, 19TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 882-3200

UN

1           1.       Applicant seeks to register **RW** as a trademark for rootstock for tree roses  
2 in International Class 31 based on a claim of intent to use in commerce as evidenced by  
3 publication of said mark on page TM 692 of the August 28, 2001 issue of the *Official*  
4 *Gazette*.

5           2.       Opposer is the owner of Registration No. 2,547,272 for the mark **PW** for  
6 living plants in International Class 31, encompassing the same class and similar identified  
7 goods as Applicant's application Serial No. 76/140984.

8           3.       Opposer's **PW** trademark has been continuously used and promoted in  
9 connection with its living plants since as early as 1992.

10          4.       Opposer is also the owner of Registration No. 2,204, 668 for the mark **PW**  
11 **& Design** for living plant cultivars in International Class 31, encompassing the same class  
12 and similar identified goods as Applicant's Serial No. 76/140984.

13          5.       Opposer's **PW and Design** trademark has been continuously used and  
14 promoted in connection with living plant cultivars since as early as 1992.

15          6.       Opposer alleges that Applicant's **RW** mark is likely to cause confusion,  
16 mistake or to deceive the public. Applicant's mark is substantially similar to Opposer's  
17 trademark, the products identified by the mark are substantially similar and said products  
18 are or would be encountered by the same group of consumers within the same  
19 geographical territory.

20          7.       Opposer alleges that Applicant's mark "so resembles a mark registered in  
21 the Patent and Trademark Office or a mark . . . previously used in the United States by  
22 another and not abandoned, as to be likely, when applied to the goods of the applicant, to  
23 cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). Therefore,  
24 Applicant is not entitled to register its mark, and the application should be denied in  
25 accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

26          8.       Opposer alleges that Applicant's mark, **RW**, is not a "trademark by which  
27 the goods of the applicant may be distinguished from the goods of others," namely the  
28 goods of Opposer bearing its **PW** and **PW and Design** marks. Opposer's **PW** and **PW**

1 **and Design** marks and Applicant's **RW** mark identify or are intended to identify similar  
2 goods. Opposer alleges that the application at issue is directed toward the same group of  
3 consumers who are likely to believe that Applicant's products are part of an extension of  
4 Opposer's **PW** line of products.

5 9. Opposer alleges that Applicant's trademark **RW** is deceptive and falsely  
6 suggests a connection with Opposer, all to the detriment and damage of Opposer, and in  
7 violation of Section 2(a) of the Trademark Act of 1946, as amended, and 15 U.S.C. §  
8 1052(a), upon which Applicant's application for registration should be refused.

9 10. Opposer alleges that the trade and the public, seeing the mark upon  
10 Applicant's goods, will be falsely led to believe that such products are of those of  
11 Opposer, and therefore, such products will be, or are likely to be, confused with  
12 Opposer's. If Applicant is permitted to use and register its mark, any defect, objection or  
13 fault found with Applicant's products marketed under the **RW** trademark necessarily  
14 would reflect upon and seriously injure the reputation that Opposer has established for its  
15 products or services merchandised or marketed under its mark in the U.S.

16 11. Opposer alleges that if Applicant is granted the registration herein opposed,  
17 it would interfere with Opposer's exclusive right to use its name and marks herein relied  
18 upon, all to the detriment and damage of Opposer.

19 12. If Applicant is granted the registration herein opposed, it would thereby  
20 obtain at least a prima facie exclusive right to use the mark. Such a registration would be  
21 a source of damage and injury to Opposer.

22 13. Opposer alleges that for the reasons aforesaid, it will be damaged by a grant  
23 of registration to Applicant of its trademark which is the subject of Serial No. 76/140984.

24 WHEREFORE, Opposer prays as follows:

- 25 1. That this Opposition be sustained;
- 26 2. That Application Serial No. 76/140984 be rejected; and
- 27 3. That registration of the trademark **RW** shown and specified in Application  
28 Serial No. 76/140984 be refused and denied.

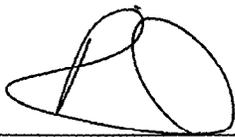
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A duplicate copy of this Notice of Opposition is filed herewith, and a check for \$300 is enclosed for the fee.

The undersigned declares that she is authorized to execute this Notice of Opposition on behalf of Opposer, that she has read the Opposition and knows the contents thereof, that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements and the like so made may jeopardize the validity of this Notice of Opposition or any decision resulting therefrom.

Dated: May 23, 2002

Respectfully submitted,  
OWEN, WICKERSHAM & ERICKSON, P.C.

By    
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