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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. 78/103187
Filed By Bayer Corporation on January 17, 2002
For the mark TRIMAX
Published in the *Official Gazette* on August 20, 2002

U.S. Patent & TMOfc/TM Mail Rcpt. Dt. #57

[REDACTED]

09-06-2002

GUSTAFSON LLC,
Opposer,

v.

Opposition No. _____

BAYER CORPORATION,
Applicant.

NOTICE OF OPPOSITION

In the matter of the application for registration of the mark TRIMAX for "insecticides, pesticides and herbicides for domestic, agricultural, and other professional use", in International Class 005, Serial No: 78/103187 filed January 17, 2002 by Bayer Corporation ("Applicant") published for opposition on Page 336 of the *Official Gazette* for August 20, 2002, Opposer, Gustafson LLC, believes that it would be damaged by such registration, and hereby opposes the registration of Applicant's mark. The grounds for the opposition are as follows:

1. Opposer, Gustafson LLC, is a Delaware limited liability Company. Opposer has a place of business at 1400 Preston Road, Suite 400, Plano, Texas 75093.
2. Opposer is in the business of producing and distribution agricultural chemicals, including pesticides and related goods and services.
3. Opposer filed an intent-to-use trademark application, Serial No. 78/031404, for the mark TRIVAX in International Class 005 on October 19, 2000.
4. Opposer received a Notice of Allowance in the application for its mark TRIVAX, which was issued on April 2, 2002.

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5. Applicant filed its trademark application to register the mark TRIMAX on January 17, 2002 in connection with a "seed-applied fungicide and/or insecticide", some fifteen months after Opposer filed its application. Applicant's trademark application seeks registration of the mark TRIMAX for "insecticides, pesticides and herbicides for domestic, agricultural, and other professional use" in International Class 005.

6. Upon information and belief, Opposer alleges that the goods of Opposer and Applicant are offered in similar channels of commerce and offered to similar customers.

7. As a result of the confusing similarity between Opposer's mark and Applicant's mark and because the goods of Applicant and Opposer are similar, are in similar channels of commerce, and are directed to similar customers, registration of the mark TRIMAX in connection with Applicant's goods is likely to cause confusion or is likely to deceive purchasers as to the source or sponsorship of such goods.

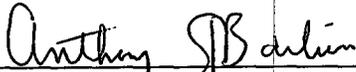
8. Upon information and belief, Opposer alleges that there was no *bona fide* use of Applicant's mark in commerce prior to the filing of the application for registration on January 17, 2002.

WHEREFORE, Opposer, Gustafson LLC, requests that the application for the mark TRIMAX, Serial No. 78/103187, be rejected and that the registration for the mark TRIMAX be refused.

Respectfully submitted on this 5th day of September 2002.

KESSLER & COLLINS, PC

By:



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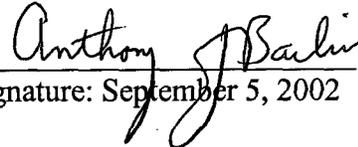
**COUNSEL FOR OPPOSER,
GUSTAFSON LLC.**

CERTIFICATION OF EXPRESS MAILING (37 C.F.R. SECTION 1.10)

I hereby certify that this correspondence is being deposited with the United States Postal Service Express Mail Post Office To Addressee service under 37 CFR 1.10 on September 5, 2002 and is addressed to: BOX TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Anthony J. Barbieri

Signature


Date of Signature: September 5, 2002

09-06-2002



September 5, 2002

Via Express Mail #EL901314915US

BOX TTAB - FEE
Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Application Serial No. 78/103187
Filed: January 17, 2002
Applicant: Bayer Corporation
Trademark: TRIMAX
Official Gazette: August 20, 2002

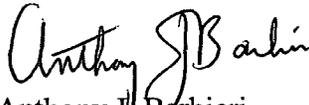
Dear Commissioner:

Enclosed please find Gustafson LLC's Notice of Opposition in the above-referenced matter. Please file this into the records of the Commission. Also enclosed is our firm's check in the amount of \$300.00 for the required filing fee.

If the amount for the filing fee is incorrect, please debit or credit Deposit Account No. 501714 for the difference. Should you have questions, please do not hesitate to contact me at my direct telephone number (214) 379-0733.

Thank you.

Very truly yours,


Anthony J. Barbieri

AJB/jw

Enclosure

TRADemark TRIAL AND
APPEAL BOARD
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