

09-11-2002

TTAB

Atty. Docket No. 95043.003

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as Express Mail, using label No. EL 284 914 986 US, addressed to BOX TTAB - FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on the date indicated below.

September 11, 2002
Date

Connie L. Carlson
Connie L. Carlson

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

WALTERS GARDENS, INC.

Opposer

v.

PRIDE OF PLACE PLANTS, INC.

Applicant

Opposition No. _____

BOX TTAB - FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Dear Sir:

NOTICE OF OPPOSITION

Walters Gardens, Inc. ("Opposer"), a Michigan Corporation with a principal place of business at 1992 96th Avenue, Post Office Box 137, Zeeland, Michigan 49464-0137, U.S.A., hereby opposes registration of the mark PIILU that is the subject of Application Serial Number 76/201,447, published in the Official Gazette of June 18, 2002, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Long prior to any date of first use upon which Applicant can rely, others around the world, including those in the industry in the United States, have been using the term PIILU to refer to a specific cultivar of Clematis live plants.

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2. Long prior to any date of first use upon which Applicant can rely, the term "PIILU" has been used generically to refer to a cultivar of Clematis marketed throughout this country by other nurseries. As a result, the term "PIILU" has become a generic term to refer to this variety of Clematis. Third parties have also offered for sale live plants identified as Clematis "PIILU" in this country since at least 1995.

3. Applicant has filed an intent-to-use application to register the mark "PIILU" for live plants. That application was filed on January 29, 2001, and was assigned Serial Number 76/201,447.

4. Applicant's mark so resembles the common name for a cultivar of Clematis plants adopted generally by the industry throughout the United States and the world. Accordingly, Applicant's mark so resembles a name previously used in the United States by others including Opposer which has become generic such that registration of the name by Applicant is likely to damage Opposer and prevent Opposer from referring to the common variety of Clematis PIILU and thus place Opposer at a disadvantage in the market place.

5. Moreover, Applicant's registration of the mark when used on or in connection with live plants, is likely to cause confusion, mistake, or deceive others as to the source or origin of the goods when the cultivar name is used by Applicant and others in connection with the sale of live Clematis plants.

6. On information and belief, Opposer believes the particular cultivar is not protected by a United States Patent in this country as the plant was offered for sale in this country more than one year prior to the filing date of any patent application, thus creating a bar to patenting of this particular variety.

7. On information and belief, Opposer believes Applicant is trying to protect a plant variety under the Trademark laws of the United States in light of the barring events for obtaining patent protection on the variety.

8. Applicant's registration should be denied on grounds the term "PIILU" has become a generic term referencing a specific cultivar of Clematis live plant offered for sale in this country and the world long prior to Applicant's filing of the application, and the use of that term by the industry has not been abandoned.

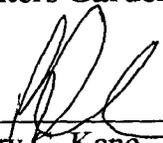
9. The requisite fee of \$300.00 per class required to accompany this request is enclosed.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,

Walters Gardens, Inc.

Date: 9/10/07



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