



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



11-06-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

TOYOTA JIDOSHA KABUSHIKI KAISHA)
t/a TOYOTA MOTOR CORPORATION)
and)
TOYOTA MOTOR SALES, U.S.A., INC.,)
)
Opposers)
)
SYNGENTA PARTICIPATIONS AG,)
)
Applicant)

Opposition No.: 157,206
Mark: LEXUS
U. S. Appln. Serial No.: 78/145,546

OPPOSERS' MOTION TO COMPEL APPLICANT'S RESPONSES TO OPPOSERS'
FIRST SET OF INTERROGATORIES AND FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS

Opposers' First of Set of Interrogatories was served on Applicant's attorney on September 11, 2003. A copy of the first set is attached as Exhibit 1 to this motion.

Opposers' First Requests for Production of Documents and Things were served on Applicant's attorney on September 11, 2003. A copy of the first requests is attached as Exhibit 2 to this motion.

Applicant has refused to respond to Opposers' First Set of Interrogatories and First Requests for Production of Documents. Applicant's sole reason for this refusal is that Opposers "failed to timely respond to Applicant's discovery requests." On this point, please see Opposers' accompanying Opposition to Applicant's Motion to Compel.

Applicant's reason for not responding to Opposers' interrogatories and requests for production is insufficient as a matter of law.

TBMP 403.03 states:

“Discovery in proceedings before the Board is not governed by any concept of priority of discovery or deposition. That is, a party which is the first to serve a request for discovery does not thereby gain a right to receive a response to its request before it must respond to its adversary's subsequently served request for discovery, and this is so even if its adversary fails to respond, or respond completely, to the first party's request for discovery. Rather, a party is under an obligation to respond to an adversary's request for discovery during the time allowed therefor under the applicable rules, irrespective of the sequence of requests for discovery, or of an adversary's failure to respond to a pending request for discovery.”

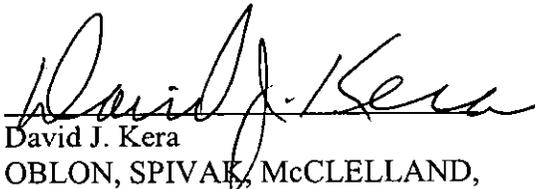
Opposers' counsel had a telephone conference with Applicant's counsel on November 3, 2003 in which a good faith effort was made to resolve this discovery dispute, but agreement was not possible.

Opposers request that Applicant be ordered to respond to Opposers' First Set of Interrogatories and First Requests for Production of Documents and Things.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI KAISHA
D/B/A TOYOTA MOTOR CORPORATION AND
TOYOTA MOTOR SALES, U.S.A., INC.

By:


David J. Kera

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
Fax: (703) 413-2220

Attorney for Opposers

Date: November 6, 2003

DJK/ojb {E:\ATTY\DJK\213-238096US-M01.DOC}

EXHIBIT 1

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

TOYOTA JIDOSHA KABUSHIKI KAISHA)
t/a TOYOTA MOTOR CORPORATION)
and)
TOYOTA MOTOR SALES, U.S.A., INC.,)
)
Opposer)
v.)
SYNGENTA PARTICIPATIONS AG,)
)
Applicant.)

Opposition No. 157,206
Mark: LEXUS
U.S. Appln. Serial No. 78/145,546

OPPOSERS' FIRST SET OF INTERROGATORIES

Opposers, Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Opposers"), serve the following interrogatories under Rule 33, Fed.R.Civ.P., and Trademark Rules 2.116(a) and 2.120(d)(1), to be answered separately and fully in writing under oath by an officer or agent of Applicant, Syngenta Participations AG ("Applicant"). Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Applicant shall provide Opposers with any supplemental answers and additional information that are requested herein which shall become available to Applicant at a later date.

DEFINITIONS AND INSTRUCTIONS

The following interrogatories and Opposers' accompanying requests are subject to the definitions set forth below:

- A. The term "document" shall be construed in its broadest permissible sense, and

shall include any and all means of conveying, storing, or memorializing information, whether in paper or other tangible physical form, or in electronic form, in the possession, custody, or control of Applicant or its representatives. Each comment, or addition to, or deletion from, a document shall constitute a separate document.

B. If Applicant refuses to identify and/or produce any document(s) based upon a claim of confidentiality, privilege, or work product immunity, Applicant shall, in log form, (i) identify each document by its author, intended recipient(s), the date of the document, and its general subject matter, and (ii) set forth for each withheld document the particular basis for the refusal of production.

C. As used herein, the term "Opposers' Marks" shall refer to the registered LEXUS trademarks set forth in Paragraph 7 of the Notice of Opposition. If Applicant's answer or response applies to less than all of Opposers' Marks, or if Applicant's answer or response differs for any mark, Applicant shall state for which mark(s) each answer or response (or portion thereof) is applicable.

D. As used herein, the term "Opposers' Name" shall refer to the trade name LEXUS as alleged in Paragraph 14 of the Notice of Opposition.

E. As used herein, the term "Applicant's Mark" shall mean the LEXUS trademark of Application Serial No. 78/145,546.

F. As used herein, the phrase "Applicant's Products" shall refer to products actually and/or intended to be advertised, promoted, and/or sold in connection with the LEXUS trademark which is the subject of Application Serial No. 78/145,546.

INTERROGATORIES

INTERROGATORY NO. 1

State the address of each worldwide location at which Applicant maintains a place of business for the manufacturing, promotion, sale, and distribution of Applicant's Products in the United States.

INTERROGATORY NO. 2

State the date Applicant selected Applicant's Mark for use in connection with Applicant's Products.

INTERROGATORY NO. 3

Identify (by name, job title, and relationship to Applicant) the person(s) who first conceived of Applicant's Mark.

INTERROGATORY NO. 4

Describe in detail the genesis of Applicant's Mark.

INTERROGATORY NO. 5

Identify all searches of any type conducted by or on behalf of Applicant in connection with its selection, use, or decision to apply for Federal registration of Applicant's Mark.

INTERROGATORY NO. 6

State whether Applicant had knowledge of Opposers' use or registration of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark.

INTERROGATORY NO. 7

State the earliest date on which Applicant had knowledge of Opposers' use or registration of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition.

INTERROGATORY NO. 8

If Applicant had prior knowledge of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark, state the precise facts known and identify the source of this knowledge.

INTERROGATORY NO. 9

If Applicant had prior knowledge of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark, state whether Applicant considered the issue of, or received any opinions concerning, a likelihood of confusion between Applicant's Mark and any of Opposers' Marks or Opposers' Name.

INTERROGATORY NO. 10

Identify, by common commercial descriptive name, each product bearing Applicant's Mark actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant.

INTERROGATORY NO. 11

For each of Applicant's Products identified in Interrogatory No. 10, state the date of first use or anticipated date of first use anywhere and in United States commerce, and describe the circumstances surrounding such first use anywhere and in commerce.

INTERROGATORY NO. 12

For each of Applicant's Products identified in Interrogatory No. 10, state the specific chemical formulation, instructions for use, warnings, and precautions.

INTERROGATORY NO. 13

For each of Applicant's Products identified in Interrogatory No. 10, state, by calendar quarter, the dollar volume budgeted and expended by Applicant to promote the products under Applicant's Mark.

INTERROGATORY NO. 14

For each product identified in Interrogatory No. 10, state, by calendar quarter, the approximate income anticipated or received to date from sales of Applicant's Products.

INTERROGATORY NO. 15

Identify each third-party you maintain is using the LEXUS mark as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the name of each third-party user;
- b) the goods or services for or with which each third-party is using the LEXUS mark; and
- c) the dates of each third-party's use of the LEXUS mark in so far as this information is within the knowledge of Applicant or its representatives.

INTERROGATORY NO. 16

Identify each third-party you maintain has registered or applied for registration of the LEXUS mark as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the name of each third-party applicant or registrant;

- b) the USPTO application number or registration number for each third-party application or registration;
- c) the goods or services included in each third-party application or registration; and
- d) the date of claimed first use in each third-party application and registration.

INTERROGATORY NO. 17

Identify each of the "LEXUS businesses throughout the U.S." referred to in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the full name of each "LEXUS business";
- b) the location of each "LEXUS business";
- c) a description of the goods or services offered by each "LEXUS business" in so far as this information is within the knowledge of Applicant or Applicant's representatives; and
- d) the length of time each "LEXUS business" has been in existence in so far as this information is within the knowledge of Applicant or Applicant's representatives.

INTERROGATORY NO. 18

Identify each of the cases, including the "Profile Cocktail Lounge" case in which the courts have considered the issue presented in this Opposition as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the style of each case, including case caption and parties' names;
- b) the tribunal in which the case was or is pending; and
- c) a full citation to the case decision, if any, and where a copy of the decision may be obtained.

INTERROGATORY NO. 19

Please identify the "previous law firm" referred to in the September 12, 2002 correspondence attached as Exhibit A, including:

- a) the name of the individual attorney and law firm referred to;
- b) the dates of each piece of written correspondence between Applicant or its representatives and the "previous law firm";
- c) the subject matter of each piece of written correspondence between Applicant or its representatives and the "previous law firm".

INTERROGATORY NO. 20

Explain the business relationship between Applicant and Novartis.

INTERROGATORY NO. 21

Identify representative examples of each different promotional document and item used and being considered for use by Applicant in connection with the promotion and sale of Applicant's Products bearing Applicant's Mark.

INTERROGATORY NO. 22

Identify representative examples of each different labeling and packaging item or shipping container used or being considered for use by Applicant in connection with the distribution and sale of Applicant's Products.

INTERROGATORY NO. 23

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including web sites and broadcast media commercials) in which Applicant has promoted or plans to promote Applicant's Products in connection with Applicant's Mark.

INTERROGATORY NO. 24

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant's Products in connection with Applicant's Mark.

INTERROGATORY NO. 25

Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

INTERROGATORY NO. 26

Identify those persons having the most knowledge of any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

INTERROGATORY NO. 27

Identify any agreements (such as assignments, licenses, authorizations, permissions, or consents) entered into by Applicant regarding Applicant's Mark.

INTERROGATORY NO. 28

Identify the channels of distribution and the geographical areas of trade within which Applicant's Products are, or are intended to be, promoted.

INTERROGATORY NO. 29

Identify the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark and the types of ultimate consumers to whom Applicant offers or intends to offer for sale Applicant's Products.

INTERROGATORY NO. 30

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Applicant's Products in connection with Applicant's Mark, and the period of time during which each such person or agency has participated.

INTERROGATORY NO. 31

Identify the methods of shipping or intended methods of shipping Applicant's Products.

INTERROGATORY NO. 32

For each expert Applicant has retained to give testimony in this proceeding, provide the information required in Rule 26(a)(2)(B), Fed.R.Civ.P.

INTERROGATORY NO. 33

State the basis for the *bona fides* of Applicant's intent to use Applicant's Mark in commerce on the date the application that ultimately was given Serial No. 78/145,546 by the U.S. Patent and Trademark Office was filed.

INTERROGATORY NO. 34

Identify each Federal, state, or local governmental agency whose license or approval is required on the distribution or sale of each product sold or to be sold under Applicant's Mark.

INTERROGATORY NO. 35

Identify each license or notice of approval received from a Federal, state, or local governmental agency for the distribution or sale of each product sold or to be sold under Applicant's Mark.

INTERROGATORY NO. 36

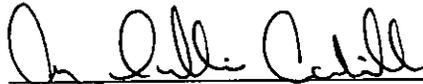
Identify each person who has supplied documents or information for, or who has

participated in responding to, these interrogatories and, Opposers' First Request for Production of Documents and Things.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI
KAISHA D/B/A TOYOTA MOTOR
CORPORATION AND TOYOTA MOTOR
SALES, U.S.A., INC.

By:



David J. Kera
Amy Sullivan Cahill
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220

Attorneys for Opposers

Date: September 15, 2003

DJK/ASC/tmq/ojb [I:\ATTY\DJK\0213-238096US-INT.DOC]

EXHIBIT A



James A.
Trademark

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409

Tel 336-632-7835
Fax 336-632-2012
e-mail:
jim.zellinger@syngenta.com

September 12, 2002

David J. Kera
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1755 Jefferson Davis Highway, 4th Floor
Arlington, VA 22202

Re: Toyota Motor Corporation – Trademark and Service Mark LEXUS
Syngenta Participations AG - LEXUS

Dear Sir:

It was difficult to discuss the above with your client's previous law firm since they repeatedly refused to listen to me as your letter indicates. In response to a point raised in your letter as well as to reiterate my earlier comments, Syngenta AG is the largest crop protection entity in the world. It markets and sells a "LEXUS" brand seed in the European market. Thus, as earlier advised, there is legitimate reason to extend Syngenta's brand quality and awareness from Europe to North America and is not any attempt to trade off of the auto manufacturer's limited reputation.

Further, without great elaboration as your client has faced this dilemma previously, while your client's mark is certainly recognized in the auto industry, the mark has been employed and registered by third parties in other more closely related classes. Confusion does not and cannot exist.

Finally, there are hundreds of "LEXUS" businesses (unrelated to the auto industry) throughout the U.S. about which LEXUS has undertaken limited action. Furthermore, the courts have already addressed this issue in the "Profile Cocktail Lounge" case and many others.

SEP 16 2002

LAN



David J. Kera
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
Page 2

It is obvious that any attempt by your client to preclude this extension of my client's foreign trademark rights would be undertaken in bad faith. My client would thus seek damages and attorney fees if any interference occurs.

Very truly yours,

A handwritten signature in black ink, appearing to read "JZ", written over a faint circular stamp or watermark.

James Zellinger
Trademark Counsel

JAZ/kmw

Letter/Lexus_Oblon

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' FIRST SET OF INTERROGATORIES** was served on counsel for Syngenta Participations AG this 15th day of September 2003 by sending same, via first class mail, postage prepaid to:

James A. Zellinger, Esq.
SYNGENTA CROP PROTECTION INC.
410 Swing Road
Greensboro, North Carolina 27409



EXHIBIT 2

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

TOYOTA JIDOSHA KABUSHIKI KAISHA)
t/a TOYOTA MOTOR CORPORATION)
and)
TOYOTA MOTOR SALES, U.S.A., INC.,)
)
Opposer)
v.)
)
SYNGENTA PARTICIPATIONS AG,)
)
Applicant.)

Opposition No. 157,206
Mark: LEXUS
U.S. Appln. Serial No. 78/145,546

OPPOSERS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Opposers, Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Opposers"), request, pursuant to Rule 34, Fed.R.Civ.P., and Trademark Rules 2.116(a) and 2.120(d)(2), that Applicant, Syngenta Participations AG ("Applicant"), produce the documents and things listed below for inspection and copying, and that said production be made accompanying Applicant's service of its responses to this Request upon Opposers at the offices of Oblon, Spivak, McClelland, Maier & Neustadt, P.C., Fourth Floor, 1940 Duke Street, Alexandria, Virginia 22311.

DEFINITIONS AND INSTRUCTIONS

- A. The definitions and instructions contained in Opposer's First Set of Interrogatories (the "interrogatories") are incorporated herein by reference.
- B. With respect to any document requested below for which a claim of privilege, work product or confidentiality is made, specify (in log form) the nature of the document,

identify by name, address, title and business affiliation the writer, the addressee and all recipients thereof, and set forth the general subject matter to which the document relates, and its date.

C. Applicant shall separately identify the Request by number pursuant to which each document or thing is produced.

D. A written response to this Request is required pursuant to Rule 34, Fed.R.Civ.P.

REQUESTS

1. Produce those documents and things regarding the creation, selection, and adoption of Applicant's Mark by or on behalf of Applicant.

2. Produce those documents regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search concerning Applicant's selection, first use, or decision to apply for Federal registration of Applicant's Mark.

3. Produce those documents regarding the earliest date and circumstances under which Applicant became aware of the use or registration by Opposer of any of Opposer's Marks.

4. Produce those documents regarding any action taken by Applicant in response to its awareness of any of Opposer's Marks.

5. Produce those documents and things demonstrating each type of product in connection with which Applicant's Mark has been used or is proposed to be used.

6. Produce those documents describing the specific chemical formulations of each of Applicant's Products.

7. Produce those documents demonstrating the warnings and precautions associated with the use of each of Applicant's Products.

8. Produce those documents regarding the geographical areas and channels of trade in which Applicant's Mark has been used or is proposed to be used.

9. Produce those documents regarding any assignment, consent, authorization, license or permission between Applicant and any individual(s) or entity(ies) regarding Applicant's Mark, including any modifications made thereto.

10. Produce each governmental license obtained in the United States for the sale, distribution, or use of each of Applicant's products.

11. Produce each application for a governmental license in the United States for the sale, distribution, or use of each of Applicant's products.

12. Produce representative specimens of each different item of packaging and labeling materials for Applicant's Products bearing Applicant's Mark, including the prototypes, drafts and sketches for said packaging and labeling, and those documents regarding the design and/or creation of said packaging and labeling.

13. Produce photographs showing the containers in which Applicant's products are being or are intended to be shipped or distributed.

14. Produce representative specimens of the current and proposed advertising and promotional documents bearing Applicant's Mark used or intended to be used by or on behalf of Applicant.

15. Produce those documents regarding the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark, and the ultimate purchasers to whom Applicant offers or intends to offer products bearing Applicant's Mark.

16. Produce those documents regarding the dollar value of actual and/or projected sales of Applicant's Products.

17. Produce those documents regarding the amount of money expended and/or budgeted to promote Applicant's Products bearing Applicant's Mark.

18. Produce copies of any surveys, market research tests, demographic or consumer profile studies, and focus group inquiries regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted in connection with Applicant's Mark, including the results thereof.

19. Produce copies of any comparison studies, surveys, market research tests, and those documents relating thereto, including the results thereof, concerning the products advertised, promoted, distributed and sold in commerce in connection with Applicant's Mark and the products or services advertised, promoted, distributed and sold in connection with Opposer's Marks identified in the Notice of Opposition, including, but not limited to, those relating to confusion or likelihood of confusion between Applicant's Products and the products or services advertised, promoted, distributed and sold in connection with Opposer's Marks.

20. Produce those documents demonstrating use by each third party you maintain is using the LEXUS mark as stated in correspondence dated September 12, 2002 attached hereto as Exhibit A.

21. Produce those documents demonstrating each federal registration or application for registration of the LEXUS mark as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A.

22. Produce those documents supporting the existence each of the "LEXUS businesses throughout the U.S." referred to in your correspondence dated September 12, 2002 attached hereto as Exhibit A.

23. Produce those cases and other documents, including the "Profile Cocktail Lounge" case, in which you maintain the courts have considered the issues presented in this Opposition proceeding as stated in correspondence dated September 12, 2002 attached hereto as

Exhibit A.

24. Produce all documents reflecting contact between Applicant or its representatives and the "previous law firm" referred to in the September 12, 2002 correspondence attached as Exhibit A regarding this matter, including copies of all correspondence between Applicant or its representatives and the "previous law firm" regarding this matter.

25. Explain the nature of the business relationship between Applicant and Novartis.

26. Produce those documents demonstrating the method or manner of shipping Applicant's Products.

27. For each expert Applicant intends to call to provide testimony in this proceeding, produce.

a) any written report provided by said expert relating to the subject matter of this proceeding;

b) a complete written statement of all opinions to be expressed by the expert in this proceeding, and the basis and reason therefor;

c) all documents reflecting the data or other information considered by the expert in forming his/her opinions;

d) all exhibits to be used by the expert as a summary of or support for his/her opinions;

e) those documents stating the qualifications of the expert, such as would be reflected in a resume, *curriculum vitae*, biography, summary or otherwise;

f) a written list of all publications written by the witness within the last ten years;

g) documents reflecting the compensation to be paid for the expert's

preparation time and time taken to provide testimony; and

h) a written list of any other cases in which the witness has testified as an expert at trial, in an administrative proceeding or by deposition within the past four years.

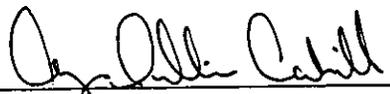
28. Produce those documents and things forming the basis of the *bona fides* of Applicant's intent to use Applicant's Mark in commerce on the date the application was filed that was ultimately given Serial No. 78/145,546 by the U.S. Patent and Trademark Office.

29. Produce those documents, not otherwise requested herein, and referred to by Applicant in responding to the interrogatories.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI
KAISHA D/B/A TOYOTA MOTOR
CORPORATION AND TOYOTA MOTOR
SALES, U.S.A., INC.

By:



David J. Kera
Amy Sullivan Cahill
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220

Attorneys for Opposers

Date: September 15, 2003

DJK/ASC/tmq/ojb [I:\ATTY\DJK\0213-238096US-RFP.DOC]

EXHIBIT A



James A.
Trademark

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409

Tel 336-632-7835
Fax 336-632-2012
e-mail:
jim.zellinger@syngenta.com

September 12, 2002

David J. Kera
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1755 Jefferson Davis Highway, 4th Floor
Arlington, VA 22202

Re: Toyota Motor Corporation – Trademark and Service Mark LEXUS
Syngenta Participations AG - LEXUS

Dear Sir:

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Further, without great elaboration as your client has faced this dilemma previously, while your client's mark is certainly recognized in the auto industry, the mark has been employed and registered by third parties in other more closely related classes. Confusion does not and cannot exist.

Finally, there are hundreds of "LEXUS" businesses (unrelated to the auto industry) throughout the U.S. about which LEXUS has undertaken limited action. Furthermore, the courts have already addressed this issue in the "Profile Cocktail Lounge" case and many others.

SEP 16 2002

LANI

James A. Zellinger, Inc.



David J. Kera
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
Page 2

It is obvious that any attempt by your client to preclude this extension of my client's foreign trademark rights would be undertaken in bad faith. My client would thus seek damages and attorney fees if any interference occurs.

Very truly yours,

A handwritten signature in black ink, appearing to read "JZ", written over a circular scribble.

James Zellinger
Trademark Counsel

JAZ/kmw

Letter/Lexus_Oblon

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Syngenta Participations AG this 15th day of September 2003 by sending same, via first class mail, postage prepaid to:

James A. Zellinger, Esq.
SYNGENTA CROP PROTECTION INC.
410 Swing Road
Greensboro, North Carolina 27409

D. Jean Barrett

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' MOTION TO COMPEL APPLICANT'S RESPONSES TO OPPOSERS' FIRST SET OF INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS** was served on counsel for Applicant, this 6th day of November, 2003, by sending same via First Class mail, postage prepaid, to:

James A. Zellinger, Esquire
SYNGENTA CROP PROTECTION INC.
410 Swing Road
Greensboro, North Carolina 27409