

ESTTA Tracking number: **ESTTA47337**

Filing date: **10/05/2005**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	OMS Investments, Inc.
Granted to Date of previous extension	10/05/2005
Address	10250 Constellation Boulevard Los Angeles, CA 90067 UNITED STATES

Attorney information	Cory M. Amron, Esquire Vorys, Sater, Seymour and Pease, LLP 1828 L Street, NW11th Floor Washington, DC 20036 UNITED STATES behogue@vssp.com, rsdonnell@vssp.com, wholdach@vssp.com Phone:202-467-8810
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Applicant Information

Application No	76511789	Publication date	06/07/2005
Opposition Filing Date	10/05/2005	Opposition Period Ends	10/05/2005
Applicant	BEALCOM, LLC 6780 Abrams Road		

Dallas, TX 75231 UNITED STATES

Goods/Services Affected by Opposition

Class 021. First Use: 20030417First Use In Commerce: 20030417 All goods and services in the class are opposed, namely: EMPTY SPRAY BOTTLES FOR AQUEOUS SOLUTIONS
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Attachments	monster.pdf (6 pages)
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Signature	/cory m amron/
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Name	Cory M. Amron, Esquire
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Date	10/05/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF:

MARK: MONSTER B-GONE
SERIAL NO.: 76/511,789
DATE OF PUBLICATION: June 7, 2005

OMS INVESTMENTS, INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
BEALCOM, LLC,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

OMS INVESTMENTS, INC. (hereinafter "OMS"), a Delaware corporation having a place of business at 10250 Constellation Blvd., Suite 2800, Los Angeles, CA 90067, believes that it is and will be damaged by registration of application Serial No. 76/511,789 for the mark "MONSTER B-GONE" for "empty spray bottles for aqueous solutions" in International Class 21, by Bealcom, LLC (hereinafter referred to as "Applicant"), and hereby opposes the same under the provisions of Section 13 of the Trademark Act of July 5, 1946 (15 U.S.C. § 1063).

As grounds therefor, it is alleged that:

1. OMS and its related companies, licensees and predecessors in business, (all hereinafter referred to as "Opposer"), since long prior to Applicant's filing date of April 17, 2003 and continuing to the present, have been engaged in the business of manufacturing, distributing

and selling pesticide, insecticide, animal poisons and barrier devices, herbicides and other lawn and garden products using numerous trademarks containing the term "B-GON."

2. Opposer is the owner of, *inter alia*, the following U.S. Trademark Registrations and marks:

BRUSH-B-GON, Registration No. 1,301,169, registered October 23, 1984, for pesticides, namely herbicides;

BUG-B-GON, Registration No. 2,073,033, registered June 24, 1997, for insecticides for home and garden use;

FLEA-B-GON, Registration No. 1,261,432, registered December 20, 1983, for insecticide, namely flea-killer;

GRASS-B-GON (stylized), Registration No. 1,995,777, registered August 20, 1996, for pesticides and herbicides for home and garden use;

PEST-B-GON, Registration No. 433,172, registered September 30, 1946, for parasiticides, namely, insecticides and animal poisons;

WEED-B-GON, Registration No. 889,348, registered April 14, 1970, for aspirator type spray gun devices for chemical pesticides;

WEED-B-GON, Registration No. 903,317, registered December 1, 1970, for herbicides;

WEED-B-GON EXTRA GREEN, Registration No. 2,074,449, registered June 24, 1997, for herbicide mixed with fertilizer for domestic use;

WEED-B-GON, Registration No. 2,088,157, registered August 12, 1997, for herbicides mixed with fertilizers for domestic use;

GRUB-B-GON, Registration No. 2,236,054, registered March 30, 1999, for insecticides for residential and agricultural use; and

ANT-B-GON and Design, Registration, No. 2,646,066, registered November 5, 2002, for insecticides for agricultural and domestic use.

Opposer's registrations are valid and subsisting, all issued by the United States Patent and Trademark Office on the Principal Register of the Act of 1946, and said trademarks are currently in use. Affidavits of continued use and incontestability under §§ 8 and 15 of the Act of 1946

have been filed and accepted for Registration Nos. 2,088,157; 2,073,033; 1,995,777; 1,301,169; 1,261,432; 433,172; 889,348; and 903,317.

3. Opposer has developed a family of "B-GON" marks, which marks are used to identify a line of products for controlling various types of pests and unwanted plants. Applicant's mark comprises the aurally identical and visually similar component "B-GONE."

4. Registration of the mark MONSTER B-GONE, Serial No. 76/511,789 should be denied based on Opposer's long prior use and family of registrations of its "B-GON" marks. The mark sought to be registered by Applicant is confusingly similar to Opposer's marks, and the use of the mark MONSTER B-GONE by Applicant is likely to cause confusion or mistake in the minds of the public and to lead the public and prospective purchasers to believe that Applicant's goods are those of Opposer or are endorsed, sponsored or otherwise affiliated or connected with Opposer, to the damage and injury of the purchasing public and to the damage and injury of Opposer.

5. The mark MONSTER B-GONE that Applicant seeks to register is consistent with Opposer's family of "B-GON" trademarks, in that each of Opposer's marks begins with a type of problem that customers wish to remove or prevent (i.e., rash, ant, grub, pest, weed). Although it might be inferred from the term "MONSTER" that the problem-solving connotation in Applicant's mark is humorous, the similarity is strengthened in particular by Applicant's goods, which are spray bottles of the type in which many of Opposer's "B-GON" goods are sold. The mark MONSTER B-GONE and Opposer's family of "B-GON" marks are thus confusingly similar in sound, appearance, and meaning.

6. Opposer, since long prior to the filing date of the MONSTER B-GONE application by the Applicant, has spent, and continues to spend, large sums of money in the advertisement and promotion of its goods identified and distinguished by its family of "B-GON" marks, and by reason of such advertising and the high quality of its product carrying such trademarks, Opposer now enjoys valuable goodwill and an enviable reputation with respect to its family of "B-GON" marks.

7. The distinctive line of "B-GON" marks and Opposer's line of "B-GON" products have attained widespread public recognition and have acquired great value as an identification of the source of goods in or by the Opposer, and said marks distinguish the Opposer's goods from the products or services of others.

8. The use and registration of MONSTER B-GONE by Applicant will cause the purchasing public to assume, erroneously, and to be confused, misled and/or deceived, that Applicant's goods are another member of or related to the line of "B-GON" products marketed and sold by Opposer, and that they are made by or originate with, are endorsed or sponsored by, or are in some other way associated or connected with the Opposer, all to Opposer's injury and irreparable damage.

9. The use and registration of MONSTER B-GONE by Applicant will dilute the distinctive value of Opposer's line of "B-GON" marks and products by blurring, all to Opposer's injury and irreparable damage.

10. For the reasons set forth hereinabove, Opposer believes, and so believing asserts, that the goodwill in its line of "B-GON" marks will be damaged and diluted and that

Applicant should be denied the registration of the mark MONSTER B-GONE for all goods for which it has made application.

11. By reason of the foregoing, Applicant's application for MONSTER B-GONE for "empty spray bottles for aqueous solutions" is likely to cause confusion with Opposer's marks and is thus not registrable under Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)).

WHEREFORE, Opposer prays that this Opposition be sustained and that application Serial No. 76/511,789 for MONSTER B-GONE be refused registration.

The filing fee of \$300.00 as provided in Sections 13 and 31 of the Trademark Act of 1946, and in 37 C.F.R. § 2.6(a)(17), has been charged to Deposit Account 22-0585 as part of the electronic filing of this Notice. Please charge any additional fees that may be required to said account.

Please recognize Cory M. Amron, William H. Oldach III, members of the Bar of the District of Columbia, and Richard S. Donnell, a member of the Bar of the Commonwealth of Virginia, all with the firm of Vorys, Sater, Seymour, and Pease, LLP, as Opposer's attorneys to prosecute this Notice of Opposition and to transact all business in the Patent and Trademark Office in connection herewith. Please address all communications to: Cory M. Amron, Esq., Vorys, Sater, Seymour and Pease LLP, 1828 L Street, NW, 11th Floor, Washington, DC 20036; Telephone (202) 467-8810; Facsimile (202) 467-8900, e-mail: cmamron@vssp.com. Please address correspondence to the said Cory M. Amron.

Respectfully submitted,

Date: 10/5/05



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