

ESTTA Tracking number: **ESTTA55160**

Filing date: **11/28/2005**

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

<b>Name</b>	McLaughlin Gormley King Company
<b>Granted to Date of previous extension</b>	11/26/2005
<b>Address</b>	8810 Tenth Avenue North Minneapolis, MN 55427-4372 UNITED STATES

<b>Attorney information</b>	Stephen R. Baird Winthrop & Weinstine, P.A. 225 South Sixth Street Suite 3500 Minneapolis, MN 55402 UNITED STATES sbaird@winthrop.com, trademark@winthrop.com Phone:(612) 604-6585
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#### Applicant Information

<b>Application No</b>	76574411	<b>Publication date</b>	09/27/2005
<b>Opposition Filing Date</b>	11/28/2005	<b>Opposition Period Ends</b>	11/26/2005
<b>Applicant</b>	PBI/GORDON CORPORATION 1217 West 12th Street P.O. Box 014090		

Kansas City, MO 64101 UNITED STATES
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**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: INSECTICIDES
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<b>Attachments</b>	Notice of Opposition - 76574411.pdf ( 4 pages )
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<b>Signature</b>	/Stephen R. Baird/
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<b>Name</b>	Stephen R. Baird
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<b>Date</b>	11/28/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Ser. No.: 76/574,411  
Filed: February 6, 2004  
For the mark: MITE-CIDE  
Published in the Trademark Official Gazette on September 27, 2005

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McLaughlin Gormley King Company,

Opposer,

v.

Opposition No. \_\_\_\_\_

PBI/Gordon Corporation

Applicant.

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**NOTICE OF OPPOSITION**

Opposer, McLaughlin Gormley King Company (“Opposer”), believes that it will be damaged by the registration of the mark shown in intent-to-use Application Serial No. 76/574,411 (the “Application”) in International Class 5 and hereby opposes the same.

The grounds for opposition are as follows:

1. PBI/Gordon Corporation Company, (“Applicant”) seeks to register MITE-CIDE as a trademark for “insecticides,” in International Class 5.

2. The MITE-CIDE mark in the Application was published for opposition in the Trademark Official Gazette on September 27, 2005. On October 25, 2005, Opposer filed a Request for Extension of Time to Oppose registration of the proposed MITE-CIDE mark until

November 26, 2005. On October 25, 2005, the Trademark Trial and Appeal Board granted Opposer's extension request.

3. On information and belief, Applicant intends to use MITE-CIDE in connection with insecticides.

4. Opposer adopted and has continuously used its MULTICIDE® mark in connection with pesticides and insecticides since at least as early as June 29, 1937.

5. In addition to the common law rights Opposer has in the MULTICIDE® mark, Opposer also owns United States Trademark Registration No. 352,464 for the mark MULTICIDE® in connection with "insecticides," in International Class 5. Opposer's MULTICIDE® has been incontestable for decades.

6. Opposer has expended considerable time, effort, and expense in promoting, advertising and popularizing the distinctive MULTICIDE® brand and the goods and services offered under the MULTICIDE® mark, and the purchasing public has come to know, rely upon and recognize the MULTICIDE® mark as a strong indicator of the source of Opposer's goods.

7. Opposer has priority of rights in the MULTICIDE® mark for insecticides.

8. The goods on which Applicant seeks to apply its MITE-CIDE mark are identical to, and overlap with, Opposer's goods that bear its MULTICIDE® mark. Opposer uses its MULTICIDE® mark in connection with insecticides and Applicant intends to use MITE-CIDE in connection with insecticides.

9. The proposed MITE-CIDE mark so resembles the MULTICIDE® mark as to be likely, when used on or in connection with the goods described in Paragraph 1, to cause confusion, mistake, or to deceive.

10. Applicant's MITE-CIDE mark is highly similar to Opposer's MULTICIDE® mark phonetically, visually, and in meaning. Opposer's MULTICIDE® mark is comprised of nine (9) characters, only one more character than that comprising Applicant's MITE-CIDE mark. Both MULTICIDE® and MITE-CIDE begin with the letter "M" sound, followed by a vowel, they both possess a hard "T" sound in the middle, and end with the identical "cide" suffix. Based on information and belief, the relevant purchasing public is likely to understand both MULTICIDE® and MITE-CIDE as being suggestive of products that kill insects.

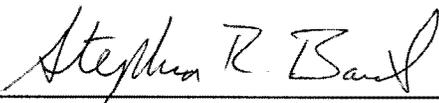
11. Given the clear phonetic and visual similarities between the marks in question, their analogous meanings, and the close similarity and overlap between the goods offered, or intended to be offered, under the respective marks, purchasers and prospective purchasers are likely to mistakenly believe that the goods Applicant claims to have an intention to offer under the proposed MITE-CIDE mark are sponsored, endorsed or approved by Opposer, or are in some way affiliated, connected or associated with Opposer, all to the detriment of Opposer. Registration of the mark shown in the Application should, therefore, be refused under 15 U.S.C. §1052(d).

12. Registration of the proposed mark MITE-CIDE additionally would be a source of damage to Opposer as it would confer upon the Applicant various statutory presumptions to which it is not entitled in view of Opposer's use and registration of the MULTICIDE® mark.

WHEREFORE, Opposer McLaughlin Gormley King Company prays that Application Serial No. 76/574,411 in International Class 5 be rejected, that registration of the mark therein for the goods and services therein specified be refused, and that the present opposition be sustained.

Dated: November 28, 2005

WINTHROP & WEINSTINE, P.A.

By:   
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