

ESTTA Tracking number: **ESTTA175922**

Filing date: **11/20/2007**

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	BASF Aktiengesellschaft
Granted to Date of previous extension	11/21/2007
Address	Carl-Bosch-Strasse 38 Ludwigshafen am Rhein, 67056 GERMANY
Attorney information	James D. Weinberger Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza 6th Floor New York, NY 10017 UNITED STATES jweinberger@frosszelnick.com, jferraro@frosszelnick.com Phone:(212) 813-5900

**Applicant Information**

Application No	76642493	Publication date	07/24/2007
Opposition Filing Date	11/20/2007	Opposition Period Ends	11/21/2007
Applicant	Albaugh, Inc. 1525 NE 36th Street Ankeny, IA 50021 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Herbicides
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	811182	Application Date	02/25/1964
Registration Date	07/19/1966	Foreign Priority Date	NONE
Word Mark	PYRAMIN		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class U006 (International Class 005). First use: First Use: 1963/07/23 First Use In Commerce: 1963/10/11 HERBICIDES

Attachments	Notice of Opp. v. PYRAMID (Albaugh, Inc.) (F0137026).PDF ( 4 pages )(14584 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ James D. Weinberger
Name	James D. Weinberger
Date	11/20/2007

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

In the Matter of Application Serial No. 76/642,493  
Mark: PYRAMID  
Filing Date: July 11, 2005  
Published in the *Official Gazette* on July 4, 2007

BASF AKTEINGESELLSCHAFT,  Opposer,  -against-  ALBAUGH, INC.  Applicant.
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Opposer, BASF Aktiengesellschaft (“Opposer”), a German joint stock company with an address at Carl-Bosch-Strasse 38, Ludwigshafen am Rhein, Germany, believes that it would be damaged by the registration of the trademark PYRAMID in International Class 5 as applied for in Application Serial No. 76/642,493 for herbicides (the “Application”), filed July 11, 2005 under Section 1(b) of the Lanham Act. As grounds for its opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer is a leading chemical company and a large supplier of agricultural and fine chemicals.
2. Opposer, itself or through its related companies, has been using the PYRAMIN mark in the United States in connection with herbicides since October 1963.
3. Opposer has invested a substantial amount of time, effort and money in promoting the PYRAMIN mark and the herbicides offered thereunder.
4. As a result of Opposer’s investment of time, money and effort, the PYRAMIN

mark has come to be recognized as identifying goods finding their origin exclusively in or otherwise associated with Opposer, and represents a substantial goodwill of Opposer.

5. Opposer owns U.S. Registration No. 811,182, registered on July 19, 1966 for PYRAMIN for “herbicides” in International Class 5 based on the aforementioned first use date of October 1963.

6. Upon information and belief, Applicant is an Iowa corporation with an address at 1525 NE 36<sup>th</sup> Street, Ankeny, Iowa 50021.

7. On or about July 11, 2005, Applicant filed an application to register the mark PYRAMID for “herbicides” in International Class 5, based on an intent to use under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b). The application filing date is more than forty (40) years subsequent to Opposer’s first use of PYRAMIN for herbicides in the United States.

8. Applicant’s PYRAMID mark is highly similar to Opposer’s PYRAMIN mark in appearance and sound.

9. The goods set forth in the Application are identical to the goods in connection with which Opposer uses and has registered its PYRAMIN mark.

10. On information and belief, Applicant targets the same type of consumers that purchase Opposer’s PYRAMIN herbicide products or to whom Opposer markets and promotes such products.

11. Based on the similarities of the parties’ respective marks and goods, the public is likely to falsely associate the goods of Applicant under the PYRAMID mark with Opposer or with Opposer’s goods; or to falsely believe that Applicant’s herbicides emanate from or are sponsored, endorsed or licensed by Opposer; or to falsely believe that there is some relationship between Applicant and Opposer.

12. Applicant's Application and the presumption of exclusivity that would arise from a registration to Applicant of the PYRAMID mark are inconsistent with the prior rights of Opposer in the PYRAMIN mark and the rights of Opposer flowing from its own federal trademark registration.

13. Use and registration of the PYRAMID mark by Applicant in connection with herbicides is likely to cause confusion, cause mistake or deceive consumers, and cause them to believe that the goods offered under Applicant's PYRAMID mark emanate from, or are sponsored by, endorsed by or otherwise connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Opposer will be damaged by the registration of Applicant's PYRAMID mark by reason of the foregoing, and because it would give color of right therein to Applicant inconsistent with Opposer's prior rights.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 76/642,493 be denied.

Respectfully submitted,

Dated: New York, New York  
November 20, 2007

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: /s/ James D. Weinberger

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*Attorneys for Opposer*

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Notice of Opposition to be sent by prepaid first-class mail to counsel for Applicant

Adam W. Jones, Esq.  
Brown, Winick, Graves, Gross  
Regency West 5  
4500 Westown Parkway, Suite 277  
West Des Moines, Iowa 50266

on this 20<sup>th</sup> day of November, 2007.

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/s/ James D. Weinberger  
James D. Weinberger