

ESTTA Tracking number: **ESTTA628645**

Filing date: **09/23/2014**

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	Wilbur-Ellis Company
Granted to Date of previous extension	09/24/2014
Address	345 California Street, 27th Floor San Francisco, CA 94104 UNITED STATES

Attorney information	Randy Troxel Trademark-Associates 1001 Bayhill Drive, Suite 200 San Bruno, CA 94066 UNITED STATES rtroxel@tmassoc.com
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Applicant Information

Application No	86171284	Publication date	05/27/2014
Opposition Filing Date	09/23/2014	Opposition Period Ends	09/24/2014
Applicant	Bio Huma Netics, Inc. 1331 West Houston Avenue Gilbert, AZ 852331816 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. First Use: 2000/03/30 First Use In Commerce: 2000/05/25 All goods and services in the class are opposed, namely: Ammonium nitrate fertilizer; Ammonium sulphate fertilizer; Chemical fertilizers; Complex fertilizer; Complex fertilizers; Fertilizers; Growth stimulant for microbial products used in the degradation of hydrocarbon contaminants; Marine fertilizer; Mixed fertilizers; Nutritive additive to enhance the biological activity of water, soil, seeds and plants for purposes of fertilization and bioremediation of pollutants; Plant growth nutrients; Plant nutrients; Urea fertilizer
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Grounds for Opposition

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

U.S. Registration No.	4234686	Application Date	03/14/2011
Registration Date	10/30/2012	Foreign Priority Date	NONE

Word Mark	PHOTO MAX
Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2012/03/30 First Use In Commerce: 2012/03/30 Fertilizers; Plant nutrition preparations

U.S. Registration No.	2979919	Application Date	03/15/2004
Registration Date	07/26/2005	Foreign Priority Date	NONE

Word Mark	WECO MAX
Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/06/02 First Use In Commerce: 2004/06/02 Herbicides for agricultural and commercial use

U.S. Registration No.	4404682	Application Date	10/04/2012
Registration Date	09/17/2013	Foreign Priority Date	NONE
Word Mark	TRIPLE 7 MAX		

Design Mark	TRIPLE 7 MAX		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2009/06/24 First Use In Commerce: 2009/06/24 Fertilizers		

U.S. Registration No.	4506428	Application Date	09/01/2012
Registration Date	04/01/2014	Foreign Priority Date	NONE
Word Mark	TRIPLE 9 MAX		
Design Mark	TRIPLE 9 MAX		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2012/10/25 First Use In Commerce: 2012/10/25 Fertilizers		

Related Proceedings	91218471
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Attachments	85265920#TMSN.png(bytes) 78384392#TMSN.png(bytes) 85746288#TMSN.png(bytes) 85718937#TMSN.png(bytes) PHYTO-MAX; Notice of Opposition.pdf(114749 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	/randytroxel/
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Name	Randy Troxel
Date	09/23/2014

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

In the matter of:

Opposition No. _____

U.S. Application Ser. No.: **86171284**

Mark: PHYTO-MAX

Filed: January 21, 2014

Opposer
Wilbur-Ellis Company

v.

Applicant
Bio Huma Netics, Inc.

NOTICE OF OPPOSITION

Opposer, Wilbur-Ellis Company, believing that it will be damaged by registration of the above referenced mark, hereby submits its Notice of Opposition.

1. Opposer, Wilbur-Ellis Company, is a California corporation having its principle place of business at 345 California Street, 27th Floor, San Francisco, CA 94104.
2. On information and belief, Applicant Bio Huma Netics, Inc. is an Arizona corporation with its principle place of

business at 1331 West Houston Avenue Gilbert, AZ 85233.

3. On information and belief, both Opposer and Applicant manufacture, distribute, and/or sell similar goods and services, including fertilizers, soil amendments, and related goods for the agricultural, turf, and related markets.

4. Opposer owns, among others, the following U.S. trademark registrations:

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
PHOTO MAX	4234686	October 30, 2012
WECO MAX	2979919	July 25, 2005
TRIPLE 7 MAX	4404682	September 17, 2013
TRIPLE 9 MAX	4506428	April 1, 2014

5. Opposer's full-service agricultural, turf, and ornamental provisions include a complete line of soil amendment, plant nutrition, plant growth regulator, and fertilizer products and services.

6. Opposer has extensively advertised, promoted, and marketed its goods and services such that consumers have come to know and recognize Opposer's trademarks as identifying products which originate with or are authorized by Opposer.

7. Opposer has a significant investment in creating, building, and maintaining rights in its trademarks, as well as in advertising, promoting, and marketing its goods and services internationally and in the U.S.
8. On information and belief, Applicant intends to sell a variety of fertilizer goods identified under the name PHYTO-MAX.
9. On information and belief, Applicant's proposed mark PHYTO-MAX has not been, and is not currently used in commerce.
10. Opposer has continuously used its PHOTO MAX trademark in the United States for fertilizer goods since at least as early as March 30, 2012.
11. Opposer has continuously used its WECO MAX trademark in the United States for agricultural chemicals since at least as early as June 2, 2004.
12. Opposer has continuously used its TRIPLE 7 MAX trademark in the United States for fertilizer goods since at least as early as June 24, 2009.

13. Opposer has continuously used its TRIPLE 9 MAX trademark in the United States for fertilizer goods since at least as early as October 25, 2012.
14. On information and belief, if Applicant's mark is allowed for registration, consumers are likely to be confused as to the source of the respective goods.
15. Opposer believes it will be injured by registration of the mark PHYTO-MAX as it relates to fertilizer goods.

WHEREFORE, Opposer prays that Application Ser. No. **86171284** be refused registration.

Respectfully submitted,
TRADEMARK-ASSOCIATES

Dated: September 23, 2014

By: //randytroxel//
Randy Troxel
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San Bruno, CA 94066
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Please refer to Our File: 834-800

CERTIFICATE OF SERVICE

The person whose signature appears below confirms that a Notice of Opposition dated September 23, 2014 has been served upon the other party as required by transmitting a copy of the document via U.S. Mail to Applicant's Correspondent of Record,

A. Stephen Farnsworth
1331 W Houston Ave
Gilbert, Arizona 85233-1816

Respectfully submitted,
TRADEMARK-ASSOCIATES

Dated: September 23, 2014

By: //randytroxel//

Randy Troxel
Counsel for Opposer

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