

ESTTA Tracking number: **ESTTA773899**

Filing date: **09/30/2016**

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 Corporation
Granted to Date of previous extension	10/02/2016
Address	100 Park Avenue Florham Park, NJ 07932 UNITED STATES

Correspondence information	Joyce M. Ferraro Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES jferraro@frosszelnick.com Phone:(212) 813-5900
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Applicant Information

Application No	86757101	Publication date	04/05/2016
Opposition Filing Date	09/30/2016	Opposition Period Ends	10/02/2016
Applicant	White, Nicole E 5704 E 23rd Street Tulsa, OK 74114 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 2014/08/19 First Use In Commerce: 2014/08/19 All goods and services in the class are opposed, namely: Seeds for planting

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.	3016363	Application Date	08/06/2004
Registration Date	11/15/2005	Foreign Priority Date	NONE
Word Mark	VAULT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2005/03/07 First Use In Commerce: 2005/03/07 Agricultural and horticultural inoculants for seed and infurrow application for the stimulation of plant growth and biological control

Attachments	78463470#TMSN.png(bytes) Notice of Opposition v. Nicole White (OPEN SEED VAULT) (F2060443x96B9E).pdf(21890 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	/jmf/
Name	Joyce M. Ferraro
Date	09/30/2016

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

In the Matter of Application Serial No. 86/757,101
Mark: OPEN SEED VAULT
Filing Date: September 15, 2015
Published in the *Official Gazette* on April 5, 2016

BASF CORPORATION,

Opposer,

-against-

NICOLE E. WHITE,

Applicant.

Opposer, BASF Corporation, a Delaware corporation, with an address at 100 Park Avenue, Florham Park, New Jersey 07932, believes that it will be damaged by the registration of the mark OPEN SEED VAULT in International 31 as applied for in Application Serial No. 86/757,101, filed on September 15, 2015, for “Seeds for planting” (the “Application”) under Section 1(a) 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 large supplier of agricultural, horticultural, and fine chemicals.
2. Opposer is the owner of an incontestable renewed registration for the mark VAULT, U.S. Reg. No. 3,016,363, registered on November 15, 2005, for “Agricultural and horticultural inoculants for seed and infurrow application for the stimulation of plant growth and biological control” in International Class 1. This registration is valid, subsisting and constitutes evidence of Opposer’s exclusive rights in the registered VAULT mark pursuant to 15 U.S.C. §

1057(b).

3. Upon information and belief, applicant, Nicole E. White (“Applicant”), is a United States individual with an address of 5704 E 23rd Street, Tulsa, Oklahoma 74114.

4. On or about September 15, 2015, long after Opposer first used the VAULT mark and obtained a registration therefor, Applicant filed with the U.S. Patent and Trademark Office the Application to register the mark OPEN SEED VAULT for “Seeds for planting”, claiming use since August 19, 2014 under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a).

5. Applicant’s OPEN SEED VAULT mark is highly similar to Opposer’s VAULT mark in sight, sound, and overall impression as Opposer’s mark is completely subsumed therein.

6. The goods set forth in the Application are highly similar and/or closely related to the goods in connection with which Opposer’s VAULT mark is registered.

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

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

9. Applicant’s application and the presumption of exclusivity that would arise from a registration to Applicant of the OPEN SEED VAULT mark are inconsistent with the prior rights of Opposer in the VAULT mark and the rights of Opposer flowing from the federal trademark registration thereof.

10. Use and registration of the OPEN SEED VAULT mark by Applicant in connection with seeds for planting is likely to cause confusion, cause mistake or deceive

consumers, and cause them to believe that the goods offered under Applicant's OPEN SEED VAULT mark emanate from, are sponsored or endorsed by, or otherwise are connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. Opposer is likely to be harmed by a registration of Applicant's OPEN SEED VAULT 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. 86/757,101 in International Class 31 be refused.

Dated: New York, New York
September 30, 2016

FROSS ZELNICK LEHRMAN & ZISSU, P.C.



By: _____
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New York, New York 10017
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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 Applicant, whom is listed as the correspondent of record, at:

Ms. Nicole E. White
5704 E 23rd Street
Tulsa, Oklahoma 74114

on this 30th day of September, 2016.

A handwritten signature in blue ink that reads "Joyce M. Ferraro". The signature is written in a cursive style and is positioned above a horizontal line.

Joyce M. Ferraro