

**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

Ryan

Mailed: October 31, 2002

Opposition No. 116,511

HEALTHPOINT, LTD.

v.

ACTIVE ORGANICS, INC.

**Before Karyn K. Ryan, Interlocutory Attorney
Trademark Trial and Appeal Board.**

On September 3, 2002, a motion to amend application Serial No. 75/619,784 was filed in this proceeding.¹ In the first sentence of the motion, the applicant is identified as "Winfield Technology Corporation"; however, in the signature line of the motion, applicant is identified as "Active Organics, Inc."

In view of this inconsistency, it is unclear whether the submission was filed pursuant to the request of the named defendant in this proceeding, Active Organics, Inc., or on

¹ It does not appear from the Office's records that the September 3, 2002 paper includes proof of proper service on opposer as required by Trademark Rule 2.119. As a courtesy, a copy of the September 3, 2002 paper is being mailed to opposer with opposer's copy of this order. However, strict compliance with Trademark Rule 2.119 is required by applicant in future papers filed herein.

A statement signed by the attorney appearing on the original paper when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service. Such statement should appear on the face of the paper, not on the reverse side, inasmuch as all papers filed in this proceeding are scanned into an electronic record and two-sided filings are inappropriate in Board proceedings.

behalf of a third party, Winfield Technology Corporation, who has not established its right to take action herein.

Under the circumstances, applicant is allowed **thirty** days from the mailing date set forth on page one of this order to provide written clarification as to the identity of the requesting entity and to resubmit its motion to amend with the proper and consistent identification of the moving party. If there has been a change in ownership such that Winfield Technology Corporation now owns the involved application, applicant is allowed within the same **thirty** days to establish Winfield's right to take action in this proceeding.² If applicant fails to respond to this order, the September 3, 2002 motion will not be considered.

Proceedings otherwise shall remain **suspended** until further written notice by the Board.

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² Pursuant to Patent and Trademark Office Rule 3.73(b), 37 C.F.R. §3.73(b), when the assignee of the entire right, title and interest of an application seeks to take action in a matter before the Office, the assignee must establish its ownership of the subject application to the satisfaction of the Commissioner. Ownership is established by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g. reel and frame number, etc.) where such evidence is recorded in the Office. The assignee may also establish its ownership of the application by submitting a statement, supported by affidavit or declaration under 37 C.F.R. §2.20, explaining that a valid transfer of legal title to the application has occurred. See TMEP §502. The Office may require such establishment of the assignee's title to the application as a condition to permitting the assignee to take action in a matter pending before the Office, such as this opposition proceeding.