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

In re Application No. 76/291958
Published June 25, 2002



10-08-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #75

Valent U.S.A.

Opposer,

V.

OMS Investments, Inc.

Applicant.

Opposition No. 91152792

02 OCT 24 PM 9:14
TRADEMARK TRIAL AND
APPEAL BOARD

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

ANSWER

1. Applicant has insufficient information as to the allegations set forth in Paragraph 1 and therefore denies same.

2. Applicant has insufficient information as to the allegations set forth in Paragraph 2 and therefore denies same.

CERTIFICATE OF MAILING

Date of Deposit : October 4, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

JULIE B. SEYLER

(signature of person mailing paper or fee)

3. Applicant has insufficient information as to the allegations set forth in Paragraph 3 and therefore denies same.

4. Applicant has insufficient information as to the allegations set forth in Paragraph 4 and therefore denies same.

5. Applicant has insufficient information as to the allegations set forth in Paragraph 5 and therefore denies same.

6. Applicant admits Paragraph 6.

7. Applicant denies Paragraph 7.

8. Applicant denies Paragraph 8.

9. Applicant denies Paragraph 9.

10. Applicant did not need Opposer's consent to apply to register the mark PRO SELECT and therefore admits Paragraph 10.

11. Applicant denies Paragraph 11.

AFFIRMATIVE DEFENSES

12. Upon information and belief, Opposer does not have the exclusive right to use and register the word SELECT.

13. Upon information and belief, Opposer's mark SELECT co-exists with the following third party SELECT marks for related goods:

Trademark	Goods	Owner	Registration No.
VALLEY Select	Grass seed	Lewis Seed Co.	2,503,073
1000 ISLANDS SELECT	Shredded mulch	Pala Woods Co., Inc.	2,514,172
SEYMOUR'S SELECTED SEEDS	Seeds for vegetables, fruits, beans, and flowers	Seeds for the World, Inc.	2,495,651
MIRACLE-GRO SELECT PLANTS	Live plants	OMS Investments, Inc.	2,525,828
ATHENS SELECT	Live plants	University of Georgia Research Foundation, Inc.	2,367,295
SILVER SELECT	Live plants	Botanics Wholesale, Inc.	2,265,774
SELECT SOILS	Potting soil mixtures sold in bulk or bag form; top soil mixtures	South Mill Mushroom Sales, Inc.	2,180,292
GROWER SELECT	Flower, herb, fruit and vegetable seeds and living plants	Ball Horticultural Company	2,113,127
SELECT GROWING FOR SELECT CUSTOMERS	Fresh cut flowers	Jardines de Los Andes, S.A.	1,812,320
1881 SELECT	Natural organic and mineral fertilizer for lawn and garden use, agricultural use and commercial use; cow manure, composted cow manure, dehydrated cow manure, dehydrated manure; potting soil, raw bark, namely pine bark and pine nuggets; pine mulch, cedar mulch, root mulch	OMS Investments Inc.	1,746,652
1881 SELECT	Natural humus	OMS Investments Inc.	1,746,650
PLANT SELECT	Living plants	Denver Botanic Gardens, Inc.	1,935,703
SOUTHERN SELECT	Grass seed mixtures	Agribio Tech, Inc.	1,483,742
NURSERY SELECT	Fertilizers for domestic use; herbicides, pesticides, insecticides and fungicides for domestic use; living plants	OMS Investments Inc.	75/691310 Notice of Allowance issued


14. Upon information and belief, Opposer's mark SELECT is entitled to only a narrow scope of protection.

15. Applicant owns registrations for 1881 SELECT and MIRACLE GRO SELECT, other marks which incorporate the word SELECT and which co-exist with Opposer's mark SELECT.

16. Opposer's mark and Applicant's mark evoke different commercial impressions.

WHEREFORE, it is requested that thus opposition be dismissed with prejudice.

Respectfully submitted,


LAWRENCE E. ABELMAN
JULIE B. SEYLER

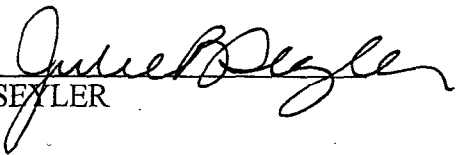
Attorneys for Opposer

ABELMAN, FRAYNE & SCHWAB
150 East 42nd Street
New York, New York
212-949-9022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER was served by first class mail, postage prepaid this 4th day of October, 2002 upon the following:

Jennifer E. Berner
PATTISHALL MCAULIFFE NEWBURY, et.al
311 South Wacker Drive, Suite 500
Chicago, Illinois 60606



JULIE B. SEYLER