

TTAB

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

In the matter of **Serial No. 76/291,959** For **MIRACLE**
published in the Official Gazette on **September 10, 2002**



01-13-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

United Industries Corporation

Opposer,

Opposition No.:

v.

OMS Investments, Inc.

Applicant.

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NOTICE OF OPPOSITION

To the Assistant Commissioner Trademarks:
Box TTAB Fee
2900 Crystal Drive
Arlington, VA 22202-3513

United Industries Corporation, a Delaware Corporation, located and doing business at 2150 Schuetz Road, St. Louis, Missouri 63146 (hereinafter referred to as "Opposer") believes it will be damaged by registration of the mark shown in Application No. 76/291,959, published in the Official Gazette of September 10, 2002 and hereby opposes the same.

As grounds for this opposition it is alleged that:

1. Opposer has been engaged in the business of manufacturing and selling fertilizers, herbicides, insecticides, plant food and other plant and garden products since at least as early as 1961 under various trademarks.

2. Applicant's application is based on "Intent to Use".

DD

3. Opposer believes that Applicant's registration of the single term "MIRACLE" for products in Classes 1, 5, 7, 21 and 31 will be detrimental to Opposer's right to use the term in conjunction with other terms or as part of slogans for the same or related products.

4. Based on a review of Applicant's application file, it was noted that the Trademark Examining Attorney initially rejected the application on the basis of a prior filed application for "Miracle Rid-Root" for weed killers in Class 5 which was abandoned for failure to file a statement of use.

5. A search of Class 1 revealed over 65 marks in which the term "miracle" is used in conjunction with other terms and in Class 5 over 60 marks. To allow Applicant the right to use "Miracle" by itself appears to be in conflict with prior registrations using the term in conjunction with other terms.

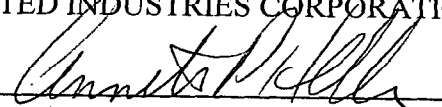
6. Furthermore, based on the fact that the Trademark Examining Attorney initially cited a prior filed application using the term "miracle" as a basis of rejection, it can be assumed that future applications containing the word "miracle" for fertilizers or plant food in Class 1 or herbicides or related products in Class 5 or in any of the other classes sought to be covered by this application will be rejected based on the prior registration for the single term "Miracle". Future applicants, including Opposer, who may wish to obtain protection of a unitary mark consisting of terms including "miracle", will therefore, be damaged and suffer injury as a result of a registration for "MIRACLE" by itself.

7. If Applicant is granted the registration, it would obtain at least a prima facie exclusive right to the use of its mark and the federal rights that are associated with a registration. Such registration would be a source of damage and injury to the Opposer should it want to use the term "miracle" in conjunction with other terms for products that would be in Classes 1, 5, 7, 21 and 31.

8. Two copies of this Notice and the \$1,500.00 fee required in Section 2.6 are enclosed to oppose Applicant's mark in Classes 1, 5, 7, 21, and 31.

Wherefore, registration by Applicant of the aforesaid trademark would be damaging to Opposer, Opposer prays that the registration sought by Applicant be refused and that this Notice of Opposition be sustained.

Respectfully submitted,
UNITED INDUSTRIES CORPORATION

By 
Annette P. Heller, Attorney for Opposer
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Town & Country, MO 63017

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Dated: January 8, 2003

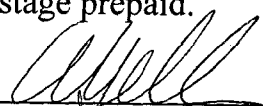
Enclosures: Original plus one copy/Filing Fee (\$1,500.00)
Our File No.: 02U117/01 020MI02/2

Certificate of Service

I, Annette P. Heller, attorney for Opposer, hereby certify that this document was mailed to the

Assistant Commissioner Trademarks:
Box TTAB Fee
2900 Crystal Drive
Arlington, VA 22202-3513

on January 8, 2003 by first-class mail postage prepaid.



Annette P. Heller