

ESTTA Tracking number: **ESTTA127355**

Filing date: **02/28/2007**

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	MICROBAN PRODUCTS COMPANY
Granted to Date of previous extension	02/28/2007
Address	11515 Vanstory Drive Suite 125 Huntersville, NC 28078 UNITED STATES
Correspondence information	Cliff D. Weston Patent Counsel MICROBAN PRODUCTS COMPANY 11515 Vanstory Drive Suite 125 Huntersville, NC 28078 UNITED STATES cliff.weston@microban.com Phone:704-875-0806 x1288

Applicant Information

Application No	78768653	Publication date	10/31/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	02/28/2007
Applicant	S-T-N Holdings, Inc. 800 North Rainbow Blvd. Suite 157 Las Vegas, NV 89107 UNITED STATES		

Goods/Services Affected by Opposition

Class 002. All goods and services in the class are opposed, namely: Preservatives used in the treatment of wood and cellulosic materials
Class 005. All goods and services in the class are opposed, namely: fungicides
Class 019. All goods and services in the class are opposed, namely: treated wood and lumber

Attachments	30101_300noticeopp.pdf (6 pages)(448998 bytes)
-------------	---------------------------------------------------

Signature	/Cliff D. Weston/
Name	Cliff D. Weston
Date	02/28/2007

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

In re Serial No.: 78/768653
 Mark: MICROPRO
 Published: October 31, 2006

MICROBAN PRODUCTS)	
COMPANY,)	
)	Opposition No.
Opposer,)	
)	
v.)	Mark: MICROPRO
)	
S-T-N HOLDINGS, LTD.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

U.S. Patent and Trademark Office
 P.O. Box 1451
 Alexandria, Virginia 22313-1451

Sir:

MICROBAN PRODUCTS COMPANY, a North Carolina corporation located at 11515 Vanstory Drive, Suite 125, Huntersville, North Carolina 28078 (hereinafter “Opposer”), believes that it would be damaged by registration of the mark shown in Application Serial No. 78/768,653 (“the ’653 Application”), filed December 7, 2005, by S-T-N Holdings, Ltd. (hereinafter “Applicant”), published in the Official Gazette of the United States Patent and Trademark Office on October 31, 2006, and hereby opposes the registration of such mark. The time to oppose was extended by a timely request for extension of time to file this opposition.

The grounds for the opposition are as follows:

OPPOSER AND ITS RIGHTS IN A “MICROBAN” FAMILY OF MARKS

1. Opposer is a leading provider of antimicrobial compositions and custom antimicrobial services, and its trademarks and service marks appear on a broad range of industrial and consumer products incorporating such compositions and services.

2. Since at least 1975, Opposer has continuously used the mark MICROBAN in interstate commerce in connection with a wide range of goods and services having an antibacterial, antifungal, mildewcidal or other antimicrobial property including, without limitation, paints; wallboard; insulation; lumber; and carpeting.

3. When used in connection with the Opposer’s paints and its other products, the MICROBAN mark is inherently distinctive. Although not necessary because of the mark’s inherent distinctiveness, the MICROBAN mark has also acquired secondary meaning by reason of Opposer’s advertising, promotion, and other use thereof.

4. Moreover, Opposer is the owner of the following the United States Trademark Registrations for the MICROBAN family of house marks:

Mark	Reg. No.	Goods/Services	Appl. Date	Reg. Date
MICROBAN	1063362	Anti-bacterial polyethylene packaging bags (Class 022)	Oct 9, 1975	Apr 12, 1977
MICROBAN	1141006	Additive to impart antibacterial, antifungal and antimicrobial properties to plastic resins (Class 001)	Apr 3, 1978	Nov 4, 1980
MICROBAN	2227218	Antimicrobial, antibacterial, and antifungal chemical additives for incorporation into plastic resins and products made from such additives, namely, fibers, fabrics, and wide variety of plastic resin consumer goods (Class 001)	Apr 25, 1997	Mar 2, 1999
MICROBAN	2227218	Treatment of plastic resins and products made from such plastic resins, namely, fibers and fabrics, and a wide variety of plastic resin consumer goods, with antimicrobial, antibacterial, and antifungal chemical additives (Class 040)	Apr 25, 1997	Mar 2, 1999

MICROBAN	2220264	Treatment of plastic resins and products made from such plastic resins, namely, fibers and fabrics, and a wide variety of plastic resin consumer goods, with antimicrobial, antibacterial, and antifungal chemical additives (Class 040)	Sep 10, 1997	Jan 26, 1999
MICROBAN	2611477	Antimicrobial, antibacterial, and antifungal chemical additives for incorporation into plastic resins and products made from such additives, namely, fibers, fabrics, and a wide variety of plastic resin consumer goods (Class 001)	May 8, 2000	Aug 27, 2002
MICROBAN ANTIBACTERIAL PROTECTION	2380284	Antimicrobial, antibacterial, and antifungal chemical additives for incorporation into plastic resins and products made from such additives, namely, fibers, fabrics, and a wide variety of plastic resin consumer goods (Class 001)	Feb 2, 1998	Aug 29, 2000
MICROBAN ANTIBACTERIAL PROTECTION	2380284	Treatment of plastic resins and products made from such plastic resins, namely, fibers, fabric, and a wide variety of plastic resin consumer goods, with antimicrobial, antibacterial, and antifungal chemical additives (Class 040)	Feb 2, 1998	Aug 29, 2000
MICROBAN ANTIMICROBIAL PROTECTION	2365607	Antimicrobial, antibacterial, and antifungal chemical additives for incorporation into plastic resins and products made from such additives, namely, fibers, fabrics, and a wide variety of plastic resin consumer goods (Class 001)	Feb 2, 1998	Jul 11, 2000
MICROBAN ANTIMICROBIAL PROTECTION	2365607	Treatment of plastic resins and products made from such plastic resins, namely, fibers, fabric, and a wide variety of plastic resin consumer goods, with antimicrobial, antibacterial, and antifungal chemical additives (Class 040)	Feb 2, 1998	Jul 11, 2000
MICROBAN PROTECTION	2365610	Antimicrobial, antibacterial, and antifungal chemical additives for incorporation into plastic resins and products made from such additives, namely, fibers, fabrics, and a wide variety of plastic resin consumer goods (Class 001)	Feb 4, 1998	Jul 11, 2000
MICROBAN PROTECTION	2365610	Treatment of plastic resins and products made from such plastic resins, namely, fibers, fabric, and a wide variety of plastic resin consumer goods, with antimicrobial, antibacterial, and antifungal chemical additives (Class 040)	Feb 4, 1998	Jul 11, 2000

MICROSURE	2330038	Antimicrobial chemical additives used in the manufacture of polymers, fibers and fabric (Class 001)	Oct 2, 1995	Mar 14, 2000
MICROSURE	2330038	Textile treatment for polymers, fibers and fabrics in the nature of an anti-microbial and sanitary coating or impregnation (Class 040)	Oct 2, 1995	Mar 14, 2000

5. In particular, Opposer has used its MICROBAN marks in commerce in connection with interior and exterior paints; wood stains; and polyurethane and other surface finishes since at least January 2001. This use includes offer of Opposer's treatment and technical services to producers of such goods, as well as sales and advertising of antimicrobial, antibacterial, mildewcidal and/or antifungal paint goods to wholesalers, retailers, building contractors and/or subcontractors, and residential users. Paints marketed at the national level with the MICROBAN mark thereon have been and continue to be manufactured by California Paints, Color Wheel, DAP, Davis Paint/Davis Frost, Hirshfield's, Miller Paints, and O'Leary Paint.

6. Opposer's foregoing Registration Nos. 1063362, 1141006, 2227218, 2220264, 2380284, 2365607, 2365610, and 2330038 for the marks MICROBAN, MICROSURE, MICROBAN PROTECTION, MICROBAN ANTIBACTERIAL PROTECTION, MICROBAN ANTIMICROBIAL PROTECTION are valid, subsisting, and are incontestable pursuant to 15 U.S.C. § 1065.

7. Opposer has used and is using the foregoing trademarks and service marks in interstate commerce in connection with the goods and services described in the Opposer's Registrations.

COUNT I

THERE IS A LIKELIHOOD OF CONFUSION WITH OPPOSER'S MARKS

8. Opposer reiterates paragraphs 1 through 7 as paragraph 8 of this Count I.

9. On December 7, 2005, Applicant filed the '653 Application for the mark MICROPRO for "Preservatives used in the treatment of wood and cellulosic materials" in Class 002; "fungicides"

in Class 005; and “treated wood and lumber” in Class 019; all based on an intent to use the mark in the United States.

10. Opposer’s use and registration of its MICROBAN marks long predates the filing date of the ‘653 application.

11. The grant of a registration to Applicant for its MICROPRO mark as sought in the ‘653 Application should be denied on the grounds of Opposer’s prior use of the MICROBAN, MICROSURE, MICROBAN PROTECTION, MICROBAN ANTIBACTERIAL PROTECTION, MICROBAN ANTIMICROBIAL PROTECTION marks. The mark sought to be registered by Applicant is confusingly similar to Opposer’s MICROBAN mark, and the use of the MICROPRO marked by Applicant is likely to cause confusion or mistake in the minds of the public and to lead the public and prospective purchasers to believe that Applicant’s goods are those of Opposer or are endorsed, sponsored or otherwise affiliated or connected with Opposer, or that Opposer’s goods and services are associated with Applicant, all to the damage and injury of the purchasing public and to the damage and injury of Opposer. The potential for such confusion is heightened by Opposer’s use of its family of MICROBAN marks (MICROSURE, MICROBAN PROTECTION, MICROBAN ANTIBACTERIAL PROTECTION, MICROBAN ANTIMICROBIAL PROTECTION) on a spectrum of goods encountered by members of the relevant consumer pool.

12. The grant of a registration to Applicant for its MICROPRO mark as sought in the ‘653 application should be denied based on likelihood of confusion with Opposer’s prior MICROBAN, MICROSURE, MICROBAN PROTECTION, MICROBAN ANTIBACTERIAL PROTECTION, MICROBAN ANTIMICROBIAL PROTECTION marks.

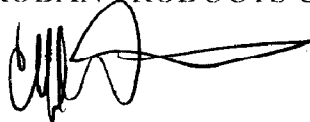
WHEREFORE, Opposer files this notice of opposition and prays that the aforesaid application of S-T-N Holdings, Ltd. herein opposed, be rejected; that no registration be issued thereon to Applicant; and for such other and further relief as may be deemed just and proper.

Enclosed is payment in the amount of \$900.00 to cover the filing fees of this notice of opposition against the '653 application. Please charge any additional fees to deposit account number 502714, and address all correspondence regarding this opposition to:

Clifford D. Weston
Microban Products Company
11515 Vanstory Drive, Suite 125
Huntersville, North Carolina 28078
704-875-0806
cliff.weston@microban.com

Respectfully submitted,

MICROBAN PRODUCTS COMPANY



By:
Clifford D. Weston
Microban Products Company
11515 Vanstory Drive, Suite 125
Huntersville, North Carolina 28078
704-875-0806
Opposer