

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

TTAB

AQUATROLS CORPORATION OF AMERICA
INC.,
Opposer,
v.
MICROBES, INC.,
Applicant.



Opposition No.

Our Account No. 14-1140

Our Order No. 2-465
C# M#

In Re Application No. 78909855
Filed: June 16, 2006
For the Mark AG-GRO

Date: February 28, 2007

Box TTAB Fee

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

The document indicated below is attached for filing and is incorporated by reference. Fees are attached as calculated below:

- NOTICE OF OPPOSITION in 1 class(es) (\$ 300.00 per class) (6402) \$ 300.00
 - PETITION FOR CANCELLATION in 0 class(es) (\$ 300.00 per class)(6401) \$ 0.00
- TOTAL FEE ENCLOSED \$ 300.00**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this form) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYTE P.C.

By Atty: Duane M. Byers

Signature: _____



02-28-2007

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_____)	
Aquatrols Corporation of America, Inc.)	
)	
Opposer)	
)	
v.)	Opposition No. _____
)	Application Serial No. 78909855
Microbes, Inc.)	
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Opposer, Aquatrols Corporation of America, Inc., a Delaware corporation, with a business address of 5 North Olney Avenue, Cherry Hill, NJ 08003, hereby opposes registration of the mark AG-GRO that is the subject of application Serial No. 78909855, published in the Official Gazette of January 30, 2007, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term AQUA GRO as a trademark for surface-active wetting agents and agricultural goods.
2. Opposer is the owner of U.S. Trademark Registration No. 0619282 for the AQUA GRO trademark as used in conjunction with non-ionic surface-active wetting agent for promoting the penetration, absorption, and retention of moisture in the soil, in International Class 1. This registration is valid,

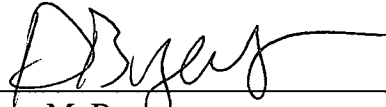
subsisting, unrevoked and uncanceled. In addition, this registration is incontestable.

3. Applicant has filed an application to register the mark AG-GRO for "organic biofertilizers for trees, shrubs, lawns, gardens, and row crops," in International Class 1. The application was filed on June 16, 2006, and was assigned Serial No. 78909855. The application was filed as an "intent to use" trademark application.
4. Applicant's trademark so resembles Opposer's previously used and registered AQUA GRO trademark as to be likely, when used in connection with the goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act. Indeed, Applicant is attempting to register the confusingly similar mark for the same, similar or related goods ("organic biofertilizers for trees, shrubs, lawns, gardens, and row crops," in International Class 1). Opposer has duly registered the AQUA GRO trademark for "non-ionic surface-active wetting agent for promoting the penetration, absorption, and retention of moisture in the soil, in International Class 1" – which usage dates back to at least as early as 1954.
5. Opposer's AQUA GRO trademark is famous and was famous before the first trademark use or application filing of the Applicant. Applicant's mark is likely to dilute the fame and strength of Opposer's mark. Thus, there is a likelihood of dilution, to the detriment of Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Date: 2/28/07

Respectfully submitted,



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Aquatrols Corporation of America, Inc.