

ESTTA Tracking number: **ESTTA550075**

Filing date: **07/23/2013**

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	Eva L Levine		
Entity	Individual	Citizenship	UNITED STATES
Address	1784 Curtner Avenue San Jose, CA 95124 UNITED STATES		

Correspondence information	Eva L Levine 1784 Curtner Avenue San Jose, CA 95124 UNITED STATES evallevine@gmail.com Phone:408-504-8572		
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Applicant Information

Application No	85845976	Publication date	06/25/2013
Opposition Filing Date	07/23/2013	Opposition Period Ends	07/25/2013
Applicant	Syngenta Participations AG Schwarzwaldallee 215 Basel, CH-4058 SWITZERLAND		

Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seeds
Class 005. All goods and services in the class are opposed, namely: Fungicides; Insecticides; Nematicides; Pesticides

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Trademark Act section 43(c) dilution Trademark Act section 1 lack of bona fide intent to use Trademark Act section 45 unfair competition Reverse confusion Unjust enrichment and bad faith intent

Mark Cited by Opposer as Basis for Opposition

U.S. Application/	NONE	Application Date	NONE
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Registration No.			
Registration Date	NONE		
Word Mark	Plenaris Advisers		
Goods/Services	IC 036 financial services, financial planning, estate planning, retirement planning, insurance planning, college planning		

Attachments	Opposition Notice 1A.pdf(4978805 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Eva L Levine/
Name	Eva L Levine
Date	07/23/2013

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

In the matter of trademark application Serial No. 85845976
For the mark Plenaris
Published in the Official Gazette on June 25, 2013

Eva Liang Levine

v.

Syngenta Participations AG

NOTICE OF OPPOSITION

Opposer Eva Liang Levine, Principal and Owner, Plenaris Advisers®
950 S. Bascom Avenue, Suite 1113, San Jose, CA 95128

The above-identified opposer believes that she will be irreparably damaged by registration of the mark shown in the above-identified trademark application, and hereby opposes the same.

The grounds for opposition are as follows:

I. Opposer is the registered owner of the mark Plenaris. Trademark Act §2(d) (15 U.S.C. §1052)

1. Opposer Eva Liang Levine is the creator and the original user of the mark Plenaris.
2. It is a fanciful, arbitrary, and unique mark which opposer created for her business in financial services known as Plenaris Advisers, as well as Plenaris Advisory. There was no such word in the English language until opposer created it.
3. Opposer became the registered owner of the mark when her application for trademark protection was approved on June 6, 2008. The registration number is 3446225. (Exhibit 1)
4. Opposer has perfected the renewal of the mark on June 10, 2013 and will remain the registered owner of the mark until June 10, 2018. (Exhibit 2)
5. Opposer has every intention to use the mark for her business until such date and beyond.

II. Brand Dilution by Blurring, Trademark Act §43 (c)(15 U.S.C. §1125)

6. ‘Dilution by blurring’ under the Trade Act is defined as “association arising from the similarity between a mark or trade name and a famous mark that impairs the

distinctiveness of the famous mark.” Applicant Syngento Participations AG (hereinafter Syngento) seeks to use the identical mark. The subject mark is therefore ipso facto a famous mark due to the fact that a global corporation based in Switzerland such as Syngenta seeks to use it.

7. The mark is associated with financial planning services. Applicant Syngenta would change its meaning by using it differently on its chemical products as indicated in its application for registration, which will result in the dilution of the brand. (Exhibit 3)

8. Given the fancifulness and the arbitrariness of the mark, opposer risks confusion on the part of the general public whether its name and business are associated in any way with Syngenta, such as whether opposer is a licensee of the mark instead of its owner, given the fact that Syngenta is a much bigger business and is therefore in a position to dominate the use of the mark through its marketing efforts on a global scale.

III. Brand Dilution by Tarnishment, Trademark Act §43(c) (15 U.S.C. §1125)

9. Since Syngenta engages in the manufacturing of chemicals, many of which are known to be toxic, opposer objects to its mark being proposed for use on such toxic chemicals.

10. Evidence of Syngenta’s toxic products includes Thiamethoxam, which has been banned by the European Union. (Exhibit 4)

11. Another well-known product by Syngenta, Atrazine, is also banned by the European Union and is the subject of study within the U.S. on environmental damage. (Exhibit 5)

12. To date, the mark has been a benign, though fanciful word that has no significance as a scientific or chemical term. Syngenta’s attempt to adopt the name for its own use seems to be an attempt to use a benign word for an array of chemical products that are controversial. Once the mark is associated with controversy, it will forever be tainted. If Syngenta is allowed to use the mark, it is only a matter of time for the mark to be tainted to the point where opposer’s brand will also be irreversibly damaged or rendered unusable.

13. Under §43(c), opposer is entitled to injunctive relief for injury under brand dilution by blurring and tarnishment regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

IV. Lack of Bona Fide Intent to Use Mark in Commerce, Trademark Act §1 (15 U.S.C. §1051)

14. The subject application is Syngenta’s third application for registering the mark.

15. Syngenta’s first application, dated October 22, 2010 was abandoned on January 31, 2011. (Exhibit 6)

16. Syngenta's second application, dated October 25, 2010, was abandoned on May 14, 2012. (Exhibit 7)

17. It has been more than 33 months since Syngenta's first application for registering the subject mark. Yet there is no evidence that Syngenta has done anything to use the mark in any way, which gives rise to the likelihood that it may be interested in hoarding the mark and its associated good name for undisclosed reasons.

18. In addition, a cursory survey of Syngenta's product lines indicates that the company has no shortage of fanciful names that it uses for its products, which gives rise to a questionable intent why it seeks to appropriate the subject mark that opposer created, knowing full well that opposer is the registered owner of the mark since June 2008. (Exhibit 8)

V. Unfair Competition. Trademark Act §45 (15 U.S.C. §1127)

19. §45 (15 U.S.C. §1127) states that the intent of the Trademark Act is "...to protect persons engaged in ... commerce against unfair competition; ..."

20. Syngenta seeks to register the mark in the broadest sense without any limitation, despite including only two classes of goods in the application. Opposer has reason to believe that Syngenta's intent is to eventually encroach on opposer's use of the mark, dominating the use of it and then appropriating the full use of the mark. For example, opposer owns the internet domain names: www.plenaris.com, as well as www.plenarisadvisory.com. (Exhibit 9) Opposer may be forced by Syngenta to cease and desist the use of the domain name www.plenaris.com if Syngenta is allowed to use the mark because it can claim that it has the right to use the mark in the most general and complete sense with no limitations. It means that it will use the mark by restricting opposer's use of it, thereby reducing opposer's ownership rights to the mark.

21. Opposer's belief in Syngenta's intent to encroach and dominate the use of the mark is based on the fact that Syngenta, as a global corporation (with 27,000 employees in over 90 countries, and over \$11 billion in sales in 2010 (Exhibit 10), has had a corporate history and practice of asserting its rights against other businesses through legal actions, including legal actions against Bayer and Monsanto over patent infringement. *Monsanto Co. et al v. Syngenta Seeds, Inc. et al*, (Fed Cir. 2007) 503 F. 3d 1352.

22. Not only does Syngenta have a practice of asserting its rights against other businesses, it has a history and practice of infringing on other businesses' rights, as in the case of Bayer. In May 2001, Bayer instituted an action against Syngenta for patent infringement. (Exhibit 11) The parties settled in January 2002 with Syngenta paying Bayer \$120 million for using the patent at issue. (Exhibit 12) In April 2013, Bayer again filed an action against Syngenta for patent infringement, according to news reports. (Exhibit 13)

23. Since opposer is a small business with limited resources, there is no way she can defend herself against any potential legal action perpetrated by Syngenta. This means that approving Syngenta's use of the mark will effectively drive opposer out of business.

24. Another indication of Syngenta's intent to use the mark in a broad sense is that the present registration application indicates two international classes and many more U.S. classes of goods with no clear specificity. For example, for Class 001, the mark is used for "chemical preparation for use in agriculture, horticulture and forestry..." which seems to pertain to a process, while for Class 005, the mark is used for "fungicides, insecticides, nematocides, pesticides," which denotes products that may number in the hundreds. Once Syngenta is allowed to use the mark, it's highly likely that it will expand the use of the mark as there is already no clear, limited use of the mark. Since no interested party will have the resources to monitor and challenge such expanded use, Syngenta will effectively gain full use of the mark with no limitations and no legal consequences.

25. Syngenta's intent to expand the use of the mark is also indicated in its first two filings for mark registration, which showed only 1 class of use (IC 005) instead of 2 classes as in the last application. (Exhibits 3, 6, 7)

26. Similarly, opposer owns the email address: plenaris@yahoo.com. (Exhibit 2) If Syngenta can use the same mark, opposer runs the risk of having her business email misdirected if Syngenta should decide to use similar email addresses. Given the cost of trademark litigation and the limited remedy, it's never feasible for opposer to monitor or institute any legal action against Syngenta. The only protection under the Trademark Act available to opposer is the denial of its use of the mark.

VI. Reverse Confusion

27. Reverse confusion is the corollary of unfair competition where a small business, which is the senior owner/user of a trade mark, can have its rights to the mark overrun by a junior user but larger business.

28. In *Dreamwerks Production Group, Inc., v. SKG Studio* (9th cir. 1998) 142 F. 3d 1127, the smaller business Dreamwerks sued the larger business SKG Studio for trademark infringement over the use of the word 'dreamworks.' The court, in finding for Dreamwerks on reverse confusion, stated that if the roles of the parties were reversed, there would be no doubt that the larger business would have asserted a claim for trademark infringement.

29. Despite the dissimilarities between Syngenta's and opposer's business, the outcome of reverse confusion remains the same, as the larger business' action amounts to appropriating the smaller business' brand and identity. Without the appropriate protection from USPTO, opposer will likely be irreversibly injured because her ownership rights to the subject mark will be seriously impaired by Syngenta's use of the mark.

VII. Unjust Enrichment and Bad Faith Intent

30. Syngenta's application for use of the mark has all the hallmark of bad faith intent, as it knew that the mark was owned by opposer for her small business. This is unjust enrichment because opposer is the creator and the incontestable registered owner of the mark. If opposer were as big as Google, Yahoo, or Exxon, which are all fanciful marks, Syngenta would not have attempted to use the same name.

31. In *Bond Stores, Inc., v. Bond Stores, Inc.* (3rd Cir. 1939) 104 F. 2d, 124, 125 the court captured the essence of trademark ownership by stating that owning a business name is "...very much akin to that of the patronymically proud, when a newly admitted citizen assumes the family name." It means that one's own business name can be likened to one's progeny.

32. In this case, opposer does claim to be the creator of the mark Plenaris from whole cloth. Syngenta's application for the use of the mark amounts to requesting that USPTO allow it to share in the custody of the mark without any legitimate claim to its parentage, and to benefit from opposer's fruit of labor with no contribution to its cultivation. It is a patently unfair request, which should not be permitted in law or in equity.

33. Moreover, not only does Syngenta attempt to appropriate the mark for its own use, its registration application states that it also intends to extend the use to its related company or licensee(s). (Exhibit 3) It means that it will do whatever it pleases with the mark, which may include, in addition to licensing the right to use the mark to third parties, selling, assigning, or otherwise dispose of the mark every which way, all to the detriment of opposer by diminishing her rights and the distinctiveness of the mark.

34. Since no interested party will be able to monitor Syngenta's use of the mark, as it would be an undue burden on opposer to enforce her rights under the law, opposer submits that neither will USPTO be able to monitor Syngenta in the long run.

35. Inasmuch as trademark ownership is part of intellectual property laws designed to safeguard the owner/creator's rights to intellectual property, opposer hereby asserts that she has the exclusive right to the mark at issue as a matter of public policy as well as the law, as she would be irreparably harmed if applicant Syngenta is permitted to use the mark. Conversely, there is no evidence that Syngenta would be harmed in any way if it is denied the use of the mark.

WHEREFORE, opposer respectfully prays that the Board deny the applicant Syngenta the use and the registration of the mark Plenaris, as it is the only remedy available to opposer under the Trademark Act.

July 23, 2013

/Eva Liang Levine/
Opposer

Attached are selected exhibits only, as electronic filing would not accept the entire file. Opposer reserves the right to include all exhibits as referred to in the pleading as part of this Notice of Opposition and will submit them upon TTAB's request, since the Notice may not be amended.

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 3,446,225

Registered June 10, 2008

SERVICE MARK
PRINCIPAL REGISTER

Plenaris Advisers

LEVINE, EVA LIANG (UNITED STATES INDIVIDUAL)
1784 CURTNER AVENUE
SAN JOSE, CA 951241207

FOR: ADMINISTRATION OF EMPLOYEE BENEFIT PLANS; ADMINISTRATION OF EMPLOYEE PENSION PLANS; ADMINISTRATION OF EMPLOYEE WELFARE BENEFIT PLANS; ADMINISTRATION OF PRE-PAID HEALTH CARE PLANS; CREDIT AND FINANCIAL CONSULTATION; ELECTRONIC FINANCIAL SERVICE FOR THE PURCHASE OF SAVINGS BONDS; ESTATE PLANNING; FINANCIAL ADMINISTRATION OF RETIREMENT PLANS; FINANCIAL ANALYSIS AND CONSULTATION; FINANCIAL CONSULTATION; FINANCIAL EVALUATION FOR INSURANCE PURPOSES; FINANCIAL EXCHANGE; FINANCIAL FORECASTING; FINANCIAL GUARANTEE AND SURETY; FINANCIAL INFORMATION IN THE NATURE OF RATES OF EXCHANGE; FINANCIAL INFORMATION PROCESSING; FINANCIAL INFORMATION PROVIDED BY ELECTRONIC MEANS; FINANCIAL INVESTMENT IN THE FIELD OF SECURITIES AND REAL ESTATE; FINANCIAL LOAN CONSULTATION; FINANCIAL MANAGEMENT; FINANCIAL PLANNING; FINANCIAL PLANNING CONSULTATION; FINANCIAL PLANNING FOR RETIREMENT; FINANCIAL PLANNING, NAMELY, THE CREATION OF PERSONALIZED STRATEGIES TO ACHIEVE FINANCIAL INDEPENDENCE; FINANCIAL PORTFOLIO MANAGEMENT; FINANCIAL RESEARCH; FINANCIAL RISK MANAGEMENT; FINANCIAL SERVICES IN THE NATURE OF AN INVESTMENT SECURITY; FINANCIAL SERVICES, NAMELY, ASSISTING OTHERS WITH THE COMPLETION OF FINANCIAL TRANSACTIONS FOR STOCKS, BONDS, SECURITIES AND EQUITIES; FINANCIAL SERVICES, NAMELY ESTATE SETTLEMENT SERVICES; FINANCIAL SERVICES, NAMELY, MONEY LENDING; FINANCIAL SERVICES, NAMELY, PROVIDING INFORMATION IN THE FIELDS OF FOREIGN CURRENCY, COMMODITIES, FINANCIAL

DERIVATIVES, INTEREST RATE PRODUCTS, AND EQUITIES VIA THE INTERNET AND INTRANET SYSTEMS; FINANCIAL SERVICES, NAMELY, A TOTAL PORTFOLIO OFFERING FOR HIGH NET WORTH CLIENTS CONSISTING OF BOTH SEPARATE ACCOUNTS AND MUTUAL FUNDS FOR EQUITY AND FIXED INCOME INVESTMENTS; FINANCIAL SERVICES, NAMELY, INVESTMENT FUND TRANSFER AND TRANSACTION SERVICES; FINANCIAL SERVICES, NAMELY, MORTGAGE PLANNING; FINANCIAL SERVICES, NAMELY, PROVIDING A VIRTUAL CURRENCY FOR USE BY MEMBERS OF AN ONLINE COMMUNITY VIA A GLOBAL COMPUTER NETWORK; FINANCIAL SERVICES, NAMELY, PROVIDING FOR THE EXCHANGE OF FOREIGN CURRENCY, COMMODITIES, FINANCIAL DERIVATIVES, INTEREST RATE PRODUCTS, AND EQUITIES VIA THE INTERNET AND INTRANET SYSTEMS; FINANCIAL SERVICES, NAMELY, SAVINGS PROGRAMS FOR YOUTHS; FINANCIAL SERVICES, NAMELY, THE PURCHASE OF RESIDENTIAL MORTGAGES ON BEHALF OF OTHERS AND THE ISSUANCE OF MORTGAGE-BACKED SECURITIES; FINANCIAL TRANSACTION SERVICES, NAMELY, PROVIDING SECURE COMMERCIAL TRANSACTIONS AND PAYMENT OPTIONS USING A MOBILE DEVICE AT A POINT OF SALE; FINANCIAL TRUST OPERATIONS; FINANCIAL VALUATION OF PERSONAL PROPERTY AND REAL ESTATE; LEVERAGED BUY OUTS AND INVESTMENTS IN FINANCIALLY DISTRESSED OR UNDER PERFORMING COMPANIES; ORGANIZING PRE-PAID HEALTH CARE PLANS; PROVIDING A WEB SITE WHERE USERS CAN POST RATINGS, REVIEWS AND RECOMMENDATIONS ON STOCKS, BONDS, MUTUAL FUNDS AND OTHER FINANCIAL INSTRUMENTS; PROVIDING ON-LINE FINANCIAL CALCULATORS; PROVIDING ONLINE INFORMATION IN THE FIELD CHARITABLE MONETARY GIVING THROUGH FINANCIAL AND ESTATE PLANNING, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

Exh. 1, P. 1

From: TMOfficialNotices@USPTO.GOV
Sent: Monday, June 24, 2013 11:00 PM
To: plenaris@yahoo.com
Cc: evallevine@gmail.com
Subject: Trademark RN 3446225: Official Notice of Acceptance and Acknowledgement under Sections 8 and 15 of the Trademark Act

Serial Number: 77182747
Registration Number: 3446225
Registration Date: Jun 10, 2008
Mark: PLENARIS ADVISERS(STANDARD CHARACTER MARK)
Owner: Levine, Eva Liang

Jun 24, 2013

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF ACKNOWLEDGEMENT UNDER SECTION 15

The declaration of incontestability filed for the above-identified registration meets the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065. **The Section 15 declaration is acknowledged.**

The registration will remain in force for the class(es) listed below for the remainder of the ten-year period, calculated from the registration date, unless canceled by an order of the Commissioner for Trademarks or a Federal Court.

Class(es):
036

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

REQUIREMENTS FOR MAINTAINING REGISTRATION

WARNING: Your registration will be canceled if you do not file the documents below during the specified time periods.

Requirements in the First Ten Years

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between the 9th and 10th years after the registration date. See 15 U.S.C. §§1058, 1059.

Requirements in Successive Ten-Year Periods

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between

Exh. 2, P. 1