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Filing date: **10/07/2013**

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

| | |
|---|---|
| Proceeding | 91212688 |
| Party | Defendant<br>Growth Products Ltd. |
| Correspondence Address | GENE S. WINTER<br>ST. ONGE STEWARD JOHNSTON & REENS LLC<br>986 BEDFORD ST<br>STAMFORD, CT 06905-5619<br><br>tm-pto@ssjr.com |
| Submission | Answer |
| Filer's Name | Gene S. Winter |
| Filer's e-mail | litigation@ssjr.com |
| Signature | /Gene S. Winter/ |
| Date | 10/07/2013 |
| Attachments | 91212688 Answer.pdf(107571 bytes ) |

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

| | | |
|---|---|---|
| Dow AgroSciences, LLC | : | |
| | : | |
| Opposer, | : | |
| | : | |
| v. | : | Opposition No. 91212688 |
| | : | Serial No. 85-764632 |
| Growth Products Ltd. | : | |
| | : | |
| | : | |
| Applicant. | : | |

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## ANSWER TO NOTICE OF OPPOSITION

Applicant, Growth Products Ltd., ("Applicant" or "GROWTH PRODUCTS") hereby replies to the numbered grounds for opposition set forth in Opposer's Notice of Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Dow AgroSciences, LLC and the damages recited in paragraph 1 and therefore denies those allegations.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies those allegations.

3. Applicant admits that Opposer is listed as the owner of U.S. Registration No. 2101792 for the mark SUCCESS for "preparations for destroying vermin, namely an insecticide for agricultural use." Applicant lacks knowledge or information sufficient to

form a belief about the truth of the remaining allegations in paragraph 3 and demands proof thereof.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and therefore denies those allegations.

5. Applicant admits that Applicant filed Application Serial No. 85-764632 filed October 26, 2012 and published in the Official Gazette on August 27, 2013. Applicant denies the remaining allegations in paragraph 5.

6. Applicant denies the allegations in paragraph 6.

7. Applicant denies the allegations in paragraph 7.

8. Applicant denies the allegations in paragraph 8.

9. Applicant denies the allegations in paragraph 9.

10. Applicant denies the allegations in paragraph 10.

11. Applicant denies the allegations in paragraph 11.

12. Applicant denies the allegations in paragraph 12.

13. Applicant denies the allegations in paragraph 13.

14. Applicant denies the allegations in paragraph 14.

15. Applicant denies the allegations in paragraph 15.

## AFFIRMATIVE DEFENSES

### First Affirmative Defense

The opposition fails to state a claim for which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

**Second Affirmative Defense**

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the relevant consuming public in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of Applicant.

**Third Affirmative Defense**

There is no likelihood of confusion. The marks are dissimilar, used on unrelated goods and distributed through different channels of trade and classes of purchasers, there are many similar marks in use on similar goods, the nature and extent of any actual confusion is de minimis, and the Opposer's mark is not famous.

**Fourth Affirmative Defense**

The Opposer's mark lacks secondary meaning.

**Fifth Affirmative Defense**

The Opposer cannot prove facts showing proprietary rights in its pleaded mark that are prior to Applicant's rights in the challenged mark.

**Sixth Affirmative Defense**

The Opposer has come to the TTAB with unclean hands because it has falsely asserted or implied that Opposer's goods under the trademark are sold to landscapers, nurseries and domestic use knowing that Opposer's goods under the trademark are only used for agriculture, specifically, crops.

WHEREFORE, Applicant prays that the Opposition be dismissed, and that the above referenced Application be allowed to proceed to registration.

Respectfully submitted,

October 7, 2013
Date

*/s/ Gene S. Winter*

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ATTORNEYS FOR APPLICANT

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served via first class mail, postage prepaid, on counsel for the Opposer at the following address:

Julia Spoor Gard
BARNES & THORNBURG
11 South Meridian Street
Indianapolis, Indiana 46204

and by electronic mail to: jgard@btlaw.com

Date: October 7, 2013

*/s/ Joan M. Burnett*
Joan M. Burnett