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

Proceeding	91232832
Party	Defendant E.C. Grow, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

<p>DOW AGROSCIENCES, LLC</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>E.C. GROW, INC.</p> <p style="text-align: center;">Applicant.</p>	<p style="text-align: center;">In the matter of Trademark Application Serial No.: 87149200</p> <p style="text-align: center;">Mark: Simplify</p> <p style="text-align: center;">Opposition Number: 91232832</p>
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APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, E.C. Grow, Inc. (hereinafter “Applicant”), in Answer to the Notice of Opposition filed by Dow Agrosiences, LLC (hereinafter “Opposer”), against Trademark Application Serial Number 87149200 for SIMPLIFY (hereinafter “Applicant’s SIMPLIFY mark”), states as follows:

In response to the preamble appearing on the caption page of the Notice of Opposition, Applicant denies that the Opposer will be damaged by registration of Applicant’s SIMPLIFY mark.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition, and therefore denies the allegations.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition, and therefore denies the allegations.

3. Applicant admits that current records on the United States Patent and Trademark Office website contain the identification of the mark SIMPLICITY as noted in Paragraph 3 of the Notice of Opposition in addition to the goods listed on the registration and the claims of the date of first use.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition, and therefore denies the allegations.

5. Applicant admits that it seeks to register the trademark SIMPLIFY as evidenced by Trademark Application Serial Number 87149200.

6. Applicant admits that the goods listed in Paragraph 6 of the Notice of Opposition (“Applicant’s Goods”) are those claimed in Trademark Application Serial Number 87149200. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations that the Applicant’s Goods are similar to “Opposer’s Goods”, and therefore denies the allegations.

7. Applicant denies the allegations contained in Paragraph 7 of the Notice for Opposition.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice for Opposition.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice for Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice for Opposition.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice for Opposition, and therefore denies the allegations.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice for Opposition.

AFFIRMATIVE DEFENSES

13. Applicant notes that there is no likelihood of confusion, mistake or deception between Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark noted in the Notice for Opposition. Applicant is informed and believes, and thus alleges, that consumers viewing Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark in the context of the services, products, and/or business of the two companies would not be confused by the respective use of Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark. Furthermore, Applicant is informed and believes, and thus alleges, that Opposer would not be injured by the granting to Applicant of the registration of Applicant's SIMPLIFY mark.

14. Applicant is informed and believes, and thus alleges, that relevant purchasers would not expect that Applicant's Goods come from the same or a similar

source as Opposer's Goods. Applicant is informed and believes, and thus alleges, that Applicant's Goods are not sold to the same purchasers and through the same channels of trade as Opposer's Goods. Applicant's Goods are sold at retail stores to home and small commercial users for application to lawns and turf. Applicant's Goods are *fertilizers* (materials that supply nutrients to plants) and *pesticides* (materials meant to protect plants from pests). Goods of the Opposer containing the SIMPLICITY mark are sold by distributors and similar tradespersons to professional level users for application to crops, such as wheat. Goods of the Opposer containing the SIMPLICITY mark are *herbicides* (weedkillers) according U.S. Registration No. 4593001.

15. Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark are not confusingly similar in sight, sound, meaning or overall commercial impression. SIMPLIFY and SIMPLICITY have some characters in common, but also contain different characters; SIMPLICITY also contains more characters than SIMPLIFY. SIMPLIFY and SIMPLICITY begin with similar phonetic sounds, but end with distinctly different phonetic sounds. "Simplify" is a transitive verb having the following definition: to make simple or simpler: such as *a* : to reduce to basic essentials *b* : to diminish in scope or complexity : STREAMLINE *c* : to make more intelligible : CLARIFY. See <https://www.merriam-webster.com/dictionary/simplify>. "Simplicity" is a noun having the following definition: *1*: the state of being simple, uncomplicated, or uncompounded *2a* : lack of subtlety or penetration : INNOCENCE, NAIVETÉ *b* : FOLLY, SILLINESS *3*: freedom from

pretense or guile : CANDOR *4a* : directness of expression : CLARITY *b* : restraint in ornamentation : AUSTERITY. See <https://www.merriam-webster.com/dictionary/simplicity>. Therefore, Applicant is informed and believes, and thus alleges, that consumers viewing Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark in the context of the services, products, and/or business of the two companies would not be confused by the respective use of Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark. Furthermore, Applicant is informed and believes, and thus alleges, that there has been no actual confusion reported to Applicant or any other party regarding Applicant's SIMPLIFY mark and Opposer's SIMPLICITY mark.

44. Applicant is informed and believes, and thus alleges, that Opposer has not exclusively used the mark SIMPLICITY in commerce. The mark SIMPLICITY has been used by numerous private and retail entities throughout the United States other than by Opposer.

46. Applicant alleges that the United States Patent and Trademark Office has permitted registration of other marks for SIMPLICITY for use on products and services sold in commerce, and thus any one mark that incorporates SIMPLICITY has a narrow scope of protection. Applicant further alleges that due to these circumstances, any minor differences in appearance or sound of the mark is sufficient to avoid confusion in the mind of the consumer.

WHEREFORE, Applicant respectfully requests that registration of Applicant's SIMPLIFY mark be granted.

Dated: March 24, 2017 By: /David R. Fairbairn/
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ATTORNEY FOR APPLICANT

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on this March 24, 2017, a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE FOR OPPOSITION** is being electronically filed with the United States Patent and Trademark Trial and Appeal Board, at <http://estta.uspto.gov/>.

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CERTIFICATE OF SERVICE

I hereby certify that on this March 24, 2017, a true and complete copy of the foregoing

APPLICANT'S ANSWER TO NOTICE FOR OPPOSITION has been served upon

Opposer, via email to:

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