

ESTTA Tracking number: **ESTTA863137**

Filing date: **12/07/2017**

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

Proceeding	91235080
Party	Defendant Bell Laboratories, Inc.
Correspondence Address	CHRISTOPHER J HUSSIN BOARDMAN & CLARK 1 S PINCKNEY ST, STE 410 MADISON, WI 53703 UNITED STATES Email: docket_chussin@boardmanclark.com
Submission	Motion to Join/Substitute Party
Filer's Name	Genevieve E. Charlton
Filer's email	trademarks-ch@btlaw.com, cdolan@btlaw.com, gcharlton@btlaw.com, maballesteros@btlaw.com
Signature	/Genevieve E. Charlton/
Date	12/07/2017
Attachments	MOUSE ZERO - Motion to Substitute as Applicant.pdf(583575 bytes)

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

<p>ConSeal International Incorporated,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>Bell Laboratories, Inc.,</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No.: 91235080</p> <p>U.S. Serial No.: 87/226,954</p> <p>Mark: MOUSE ZERO</p>
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MOTION TO SUBSTITUTE OMS INVESTMENTS, INC. AS APPLICANT

OMS Investments, Inc. (“OMS”) is the new owner of the opposed trademark application in pending Opposition No. 91235080, and pursuant to Trademark Trial and Appeal Board Manual of Procedure § 512.01, moves to be substituted as the Applicant in the present opposition.

Bell Laboratories, Inc. assigned the opposed mark, namely, MOUSE ZERO to OMS Investments, Inc., a corporation duly organized and existing under the laws of Delaware, with an office at 10250 Constellation Boulevard, Suite 2800, Los Angeles, California 90067. OMS Investments filed the assignment with the Assignment Recordation Branch of the USPTO on November 27, 2017 but has not yet received recordation confirmation. A copy of the assignment and the recordation filing receipt are attached as Exhibit A.

For the foregoing reasons, OMS respectfully requests that its motion to substitute be granted. OMS further respectfully requests that the Board issue an order substituting OMS Investments, Inc. as the Applicant in the present case.

Respectfully submitted,

OMS INVESTMENTS, INC.

Date: December 7, 2017

By: / Genevieve E. Charlton /
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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 7, 2017 a true and correct copy of the foregoing **MOTION TO SUBSTITUTE OMS INVESTMENTS, INC. AS APPLICANT** was served via email on Opposer's counsel at the following address:

josh.martin@johnsonmartinlaw.com
litigation@johnsonmartinlaw.com

/ Genevieve E. Charlton /

EXHIBIT

A

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

SUBMISSION TYPE:	NEW ASSIGNMENT															
NATURE OF CONVEYANCE:	NUNC PRO TUNC ASSIGNMENT															
EFFECTIVE DATE:	03/09/2017															
CONVEYING PARTY DATA																
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Name</th> <th style="width: 30%;">Formerly</th> <th style="width: 20%;">Execution Date</th> <th style="width: 20%;">Entity Type</th> </tr> </thead> <tbody> <tr> <td>Bell Laboratories, Inc.</td> <td></td> <td>03/09/2017</td> <td>Corporation: WISCONSIN</td> </tr> </tbody> </table>		Name	Formerly	Execution Date	Entity Type	Bell Laboratories, Inc.		03/09/2017	Corporation: WISCONSIN							
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CORRESPONDENCE DATA																
<p>Fax Number: 9376447568 Phone: 9375781347 Email: trademarks@scotts.com <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> Correspondent Name: Karen K. Hammond Address Line 1: 10250 Constellation Blvd., Suite 2800 Address Line 4: Los Angeles, CALIFORNIA 90067</p>																
NAME OF SUBMITTER:	Karen K. Hammond															
Signature:	/karen k hammond/															

Date: 11/22/2017

Total Attachments: 2

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RECEIPT INFORMATION

ETAS ID: TM451895

Receipt Date: 11/22/2017

Fee Amount: \$115

TRADEMARK ASSIGNMENT

WHEREAS, Bell Laboratories, Inc. (hereinafter "Bell"), a Wisconsin corporation, with a principal place of business at 3699 Kinsman Blvd., Madison, WI 53704, owns common law trademark rights in the United States for the marks ZERO, MOUSE ZERO, and RAT ZERO for use in connection with rodenticide products and the following United States trademark applications for these marks:

Mark	Recited Goods	Application Serial No.
ZERO	rodenticides; preparations for destroying vermin	87/255,713
ZERO	traps for catching rats and mice	87/239,164
MOUSE ZERO	rodenticides; preparations for destroying vermin	87/226,954
RAT ZERO	rodenticides; preparations for destroying vermin	87/226,943

WHEREAS, Bell's common law trademark rights and the above-referenced United States trademark applications are hereinafter collectively referred to as the "ZERO Marks";

WHEREAS, Conseal International Incorporated filed Opposition Proceedings against Application Serial Nos. 87/226,954 and 87/226,943 in the United States Patent and Trademark Office's Trademark Trial and Appeal Board ("Opposition Nos. 91235080 & 91235078");

WHEREAS, OMS Investments, a Delaware corporation, with its principal place of business at 10250 Constellation Blvd., Suite 2800, Los Angeles, CA 90067 (hereinafter "OMS"), desires to acquire all of Bell's trademark rights to the ZERO Marks;

WHEREAS, as part of the consideration for this Assignment, OMS is willing to indemnify, defend, and hold harmless Bell from and against any and all claims related to the ZERO Marks including all fees and expenses in Opposition Nos. 91235080 & 91235078.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Bell hereby sells, assigns, and transfers to OMS all right, title and interest in and to the ZERO Marks, together with the goodwill symbolized by the ZERO Marks, the applications thereof recited above and that unique portion of Bell's business exclusive to its *bona fide* intent to use the ZERO Marks, *nunc pro tunc* as of March 9, 2017.

2. Scotts hereby indemnifies Bell and its respective officers, directors and employees (*"Bell Indemnified Parties"*) and forever holds the Bell Indemnified Parties harmless from and against all claims arising out of, based upon, or in connection with any injuries or damages arising from Scotts' advertising, marketing, or promotion of the ZERO Trademarks or the products labeled with the ZERO Trademarks; and any alleged infringement related to the ZERO Trademarks or products labeled with the ZERO Trademarks of any third party's copyright, trademark, or other intellectual property. Scotts also hereby indemnifies and forever holds the Bell Indemnified Parties harmless from and against all fees and expenses incurred by Bell in connection with Opposition Nos. 91235080 & 91235078 from October 1 through the substitution of OMS as respondent in Opposition Nos. 91235080 & 91235078.

OMS Investments, Inc.

By: 

Name: Nimee M. DeLuca

Title: President & CEO

Bell Laboratories, Inc.

By: 

Name: STEVE M. LEVY

Title: PRESIDENT / CEO