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

Proceeding	91237996
Party	Defendant Intrepid Potash, Inc.
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Date	02/02/2018
Attachments	Answer to Notice of Opp.pdf(98706 bytes) Ex. 1 - ESSENTIAL Class 1 Marks.pdf(111999 bytes)

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

GROWTH PRODUCTS LTD.,)	Opposition No. 91237996
)	
Plaintiff,)	Serial No. 87278332
)	
INTREPID POTASH, INC.,)	
)	
<hr style="width:100%; border: 0.5px solid black; margin-bottom: 0;"/> Defendant.)	

ANSWER TO NOTICE OF OPPOSITION

Intrepid Potash, Inc. (“Intrepid” or “Applicant”) respectfully submits its Answer to the Notice of Opposition (“Opposition”) filed by Growth Products Ltd. (“Opposer”). Applicant denies all allegations that are not expressly admitted herein, and further states as follows:

ANSWER

As to the preliminary paragraph of the Opposition, Intrepid denies the grounds and allegations asserted by Opposer.

1. Intrepid lacks information sufficient to admit or deny the allegations of Paragraph 1 of the Opposition and on that ground denies them.

2. Intrepid admits that Opposer is identified as the owner of U.S. Trademark Registration No. 1,806,946 for ESSENTIAL for use on “soil conditioners for agricultural, horticultural and domestic use”, and U.S. Trademark Registration No. 4,382,341 for ESSENTIAL for use on “Plant growth nutrients and nutritive solutions with and without soil for use in the fields of agriculture, domestic, horticulture, landscape, nursery, hydroponics, turf care, tissue culture and foliar applications.” Intrepid otherwise denies the allegations of Paragraph 2 of the Opposition.

3. Intrepid admits that Opposer is identified as the owner of U.S. Trademark Registration No. 4,685,162 for SIMPLE SUCCESS for use on “fertilizers for domestic use; soil

conditioners for horticultural and domestic use; plant growth nutrients and nutritive solutions in the nature of nutritive additives to enhance the biological activity of water, soil, seeds, and plants for purposes of fertilization and bio-mediation of pollutants with and without soil for use in the fields of domestic, horticulture, landscape, nursery, hydroponics, turf care, tissue culture and foliar applications.” Intrepid otherwise denies the allegations of Paragraph 3 of the Opposition.

4. The allegations of paragraph 4 of the Opposition contain Opposer’s legal conclusions for which no response is required. To the extent a response is deemed required, Intrepid denies the allegations of paragraph 4 of the Opposition.

5. Intrepid lacks information sufficient to admit or deny the allegations of Paragraph 5 of the Opposition and on that ground denies them.

6. Intrepid admits that on or about December 22, 2016, it filed an application to register ESSENTIAL MINERALS FOR SUCCESS, which has been assigned Application Serial No. 87-278332 by the U.S. Patent and Trademark Office.

7. Intrepid admits that its application, Application Serial No. 87-278332, identifies the following goods: “Potash; langbeinite, namely, sulfate of potassium and magnesium; minerals and mineral blends consisting primarily of potassium, magnesium, sulfates or sodium chloride” in International Class 001. Intrepid otherwise denies the allegations of Paragraph 7 of the Opposition.

8. Intrepid lacks information sufficient to admit or deny the allegations of Paragraph 8 of the Opposition and on that ground denies them.

9. Intrepid denies the allegations of Paragraph 9 of the Opposition.

10. Intrepid admits that it created the presentation materials found at <https://intrepidpotashinc.gcs-web.com/static-files/c49f6f58-121b-4216-9402-eca526b3fa16> in or about June 2017 and used them for investor relations. Intrepid otherwise denies the allegations of Paragraph 10 of the Opposition.

11. Intrepid lacks information sufficient to admit or deny the allegations of Paragraph 11 of the Opposition and on that ground denies them.

12. Intrepid admits the allegations of Paragraph 12 of the Opposition.

13. Intrepid denies the allegations of Paragraph 13 of the Opposition.

14. Intrepid denies the allegations of Paragraph 14 of the Opposition.

15. Intrepid denies the allegations of Paragraph 15 of the Opposition.

16. Intrepid denies the allegations of Paragraph 16 of the Opposition.

DEFENSES

1. The Opposition fails to state a claim upon which relief can be granted.

2. Opposer has not been damaged or harmed by Applicant's use of Applicant's mark and will not be damaged or harmed by the registration of Applicant's mark.

3. The Opposition is barred because there is no likelihood of confusion, mistake, or deception, as Opposer's mark is not confusingly similar to Applicant's mark. Among other things, Opposer's mark ESSENTIAL has a singular tense and contains one word while Applicant's mark ESSENTIAL MINERALS FOR SUCCESS has a plural tense, contains four words and six additional syllables, and conveys a different commercial meaning. Opposer's mark SIMPLE SUCCESS likewise has a singular tense and contains two words while Applicant's mark ESSENTIAL MINERALS FOR SUCCESS has a plural tense, contains four words and three additional syllables, and conveys a different commercial meaning.

4. The Opposition is also barred because Opposer's goods not similar to Applicant's goods. Applicant's mark, ESSENTIAL MINERALS FOR SUCCESS, is for use in connection with raw minerals sold in large bulk containers for a wide variety of purposes across multiple, diverse industries, whereas Opposer's goods are sold through retail outlets for soil enhancement for agricultural, horticultural and domestic use.

5. Opposer's mark ESSENTIAL is a descriptive term, and is diluted and weak, even with regard to soil conditioners for agricultural, horticultural and domestic use, and no single entity may have exclusive rights to that word. A search of the Trademark Electronic Search System shows thirty-nine (39) live marks with term ESSENTIAL in International Class 001, including the following marks specifically for soil, soil conditioners, fertilizers, lawn, and agricultural products (*see Exhibit 1* attached hereto):

<u>SERIAL NO.</u>	<u>REG. NO.</u>	<u>MARK</u>
8777836		ESSENTIAL EARTH PRODUCTS
86457152	4743723	ESSENTIAL EVERYDAY
85506579	4601848	PURE ESSENTIALS BLACK LABEL
85651560	4382341	ESSENTIAL
79195933		PURESENTIEL
79026099	3291179	GO TO ESSENTIALS
78645767	3285559	EZ20 ESSENTIAL ZINC
76340161	3265416	MICROESSENTIALS
76208769	2929946	SOIL ESSENTIALS
74372715	1806946	ESSENTIAL

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and that U.S. Trademark Application Serial No. 87278332 be allowed to register.

Dated February 2, 2018

Respectfully submitted,

BRYAN CAVE LLP

s/Timothy M. Reynolds

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served on the following by ESTTA , email and first class mail on February 2, 2018 :

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s/ Timothy M. Reynolds _____

EXHIBIT 1



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(This page: 1 ~ 39)

 Refine Search

Current Search: S1: essential[BI,TI] and 001[IC] and live[LD] docs: 39 occ: 140

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	87772836		ESSENTIAL EARTH PRODUCTS	TSDR	LIVE
2	87367521	5382376	INTREPID ESSENTIAL MINERALS FOR SUCCESS	TSDR	LIVE
3	87367517	5382375	INTREPID TRIO ESSENTIAL MINERALS FOR SUCCESS	TSDR	LIVE
4	87318742		BIOMESENTIALS	TSDR	LIVE
5	87733042		MOR ESSENTIALS LONGEVITEA	TSDR	LIVE
6	87278332		ESSENTIAL MINERALS FOR SUCCESS	TSDR	LIVE
7	87055658		COMPLEXE ESSENTIEL PRIME	TSDR	LIVE
8	87229156	5305034	CORECHEM ESSENTIAL CHEMISTRY. INNOVATIVE SOLUTIONS.	TSDR	LIVE
9	86410120	4747310	STIX ESSENTIAL	TSDR	LIVE
10	86940362		ESSENTIAL PRIME COMPLEX	TSDR	LIVE
11	86457152	4743723	ESSENTIAL EVERYDAY	TSDR	LIVE
12	86390977		OFTEN INVISIBLE - ALWAYS ESSENTIAL	TSDR	LIVE
13	86465953	5182042	PROMELT ESSENTIAL	TSDR	LIVE
14	86230157	4741921	ESSENTIAL POLYMERS	TSDR	LIVE
15	85124680	4086181	LES INCONTOURNABLES SILAB : SILAB ACTIVES YOU CAN'T PERFORM WITHOUT	TSDR	LIVE
16	85535985	4194737	ESSENTIALWATERSOLUTIONS	TSDR	LIVE
17	85159499	4210674	POOL ESSENTIALS	TSDR	LIVE
18	85166834	3970723	DERMOESSENTIALE	TSDR	LIVE
19	85165277	4268741	ESSENTIAL EVERYDAY	TSDR	LIVE
20	85703069	4446089	M ESSENTIALS	TSDR	LIVE
21	85506579	4601848	PURE ESSENTIALS BLACK LABEL	TSDR	

					LIVE
22	85651560	4382341	ESSENTIAL	TSDR	LIVE
23	85502972	4522408	TRILOGY ESSENTIAL INGREDIENTS	TSDR	LIVE
24	85036408	4384269	THE ESSENTIALS OF LIFE SCIENCE RESEARCH. GLOBALLY DELIVERED.	TSDR	LIVE
25	79195933		PURESENTIEL	TSDR	LIVE
26	79218593		LIFE SPA & HOT TUB ESSENTIALS	TSDR	LIVE
27	79026099	3291179	GO TO ESSENTIALS	TSDR	LIVE
28	78645767	3285559	EZ20 ESSENTIAL ZINC	TSDR	LIVE
29	77518919	3605405	WWW.MICROESSENTIALLAB.COM	TSDR	LIVE
30	77207677	3665475	EMERGENCY ESSENTIALS	TSDR	LIVE
31	77366871	3648337	PROESSENTIAL	TSDR	LIVE
32	76340161	3265416	MICROESSENTIALS	TSDR	LIVE
33	76208769	2929946	SOIL ESSENTIALS	TSDR	LIVE
34	76689604	3600745	ESSENTIAL INGREDIENTS	TSDR	LIVE
35	76306851	2735407	ESSENTIAL WATERS	TSDR	LIVE
36	75187287	2241811	SPA ESSENTIALS	TSDR	LIVE
37	75443015	2317793	REEF ESSENTIALS	TSDR	LIVE
38	74372715	1806946	ESSENTIAL	TSDR	LIVE
39	74081386	1728514	ESSENTIAL	TSDR	LIVE

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