

ESTTA Tracking number: **ESTTA1019125**

Filing date: **11/30/2019**

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	Wilbur-Ellis Company LLC
Granted to Date of previous extension	12/01/2019
Address	345 CALIFORNIA STREET, 27TH FLOOR SAN FRANCISCO, CA 94104 UNITED STATES

Attorney information	Randy Troxel Trademark-Associates 611 Gateway Blvd., FL2 South San Francisco, CA 94080 UNITED STATES rtroxel@tmassoc.com 6506921700
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Applicant Information

Application No	88297217	Publication date	06/04/2019
Opposition Filing Date	11/30/2019	Opposition Period Ends	12/01/2019
Applicant	VALAGRO S.p.A. Via Cagliari, 1 - Zona Industriale ATESSA (CH), 66041 ITALY		

Goods/Services Affected by Opposition

Class 001. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fertilizers for agriculture
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3619370	Application Date	10/28/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	MAX SET		

Design Mark	<h1>MAX SET</h1>		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Fertilizers		

U.S. Registration No.	4452189	Application Date	08/02/2012
Registration Date	12/17/2013	Foreign Priority Date	NONE
Word Mark	MAX SET NURISH		
Design Mark	<h1>MAX SET NURISH</h1>		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2012/09/27 First Use In Commerce: 2012/09/27 Fertilizers		

U.S. Registration No.	4155312	Application Date	03/16/2011
Registration Date	06/05/2012	Foreign Priority Date	NONE
Word Mark	MAX SET ULTRA		
Design Mark	<h1>MAX SET ULTRA</h1>		

Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2011/04/25 First Use In Commerce: 2011/04/25 Fertilizers

Attachments	77601909#TMSN.png(bytes) 85694093#TMSN.png(bytes) 85268342#TMSN.png(bytes) MAX SET v MC SET Notice of Opposition.pdf(124469 bytes)
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Signature	//randytroxel//
Name	Randy Troxel
Date	11/30/2019

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

In the matter of:

Opposition No. _____

U.S. Application Ser. No.: 88297217
Mark: MC SET
Filed: Feb. 11, 2019

Opposer
Wilbur-Ellis Company LLC

v.

Applicant
VALAGRO S.p.A

NOTICE OF OPPOSITION

Opposer Wilbur-Ellis Company LLC, believing that it will be damaged by registration of the above referenced mark, hereby submits this Notice of Opposition.

1. Opposer, Wilbur-Ellis Company LLC, is a California limited liability company having its principle place of business at 345 California Street, 27th Floor, San Francisco, CA 94104.
2. On information and belief, Applicant VALAGRO S.p.A. is an Italian corporation having its principle place of business at Via Cagliari, 1 - Zona Industriale Atesa (CH) Italy 66041.

3. On information and belief, both Opposer and Applicant manufacture, distribute, promote and/or sell similar and related goods in U.S. and global markets.
4. Opposer owns the following U.S. trademark registrations (among others):

<u>Mark</u>	<u>Registration No.</u>	<u>Goods</u>
MAX SET	3619370	Fertilizers
MAX SET NURISH	4452189	Fertilizers
MAX SET ULTRA	4155312	Fertilizers

5. Opposer has continuously used its MAX SET trademark for fertilizers in the United States since at least as early as Dec. 30, 2003.
6. Opposer's full-service professional and agricultural provisions include a variety of chemical products including but not limited to fertilizers.
7. Opposer has extensively advertised, promoted, and marketed its goods and services such that consumers have come to know and recognize Opposer's trademarks as identifying products which originate with or are authorized by Opposer.
8. Opposer has a significant investment in creating, building, and maintaining rights in its trademarks, as well

as in advertising, promoting, and marketing its goods and services internationally and in the U.S.

9. Applicant filed on Feb. 11, 2019 an application to register the mark “MC SET”.
10. Applicant’s identification of goods as filed reads “Fertilizers for agriculture.”
11. In light of the similarities of the respective marks, the similarity of the goods, and likely consumer overlap (among other factors), if Applicant’s mark is allowed for registration, consumers are likely to be confused as to the source of the respective goods.
12. Opposer believes it will be injured by registration of Applicant’s proposed MC SET mark.
13. The parties are engaged in settlement negotiations, but the proposed agreement has not been signed and as yet is not effective.

WHEREFORE, Opposer prays that Application Ser. No. 88297217 be refused registration.

Respectfully submitted,
TRADEMARK-ASSOCIATES

Dated: Nov. 30, 2019

By: //randytroxel//
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Please refer to Our File: 834-800-082