ESTTA Tracking number: **ESTTA1071466**

Filing date: **07/29/2020**

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

Proceeding	91256044
Party	Defendant East Coast Materials Management LLC
Correspondence Address	RICHARD S FINKELSTEIN RC TRADEMARK COMPANY LLC PO BOX 940 BROOKFIELD, CT 06804 UNITED STATES Primary Email: rick@rctrademark.com Secondary Email(s): info@rctrademark.com 860-368-0040
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Richard S. Finkelstein
Filer's email	rick@rctrademark.com
Signature	/Richard S Finkelstein/
Date	07/29/2020
Attachments	Ground_Essentials_Motion_To_Dismiss_Opposition.pdf(2024267 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the matter of:

Serial Numbers	:	88657183 and 88657199
Mark	:	GROUND ESSENTIALS (and design)
Filed on	:	October 16, 2019

Growth Products Ltd. Opposer, v. East Coast Materials Management LLC Applicant.	) Opposition: 91256044

Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) WITH PREJUDICE

East Coast Materials Management LLC, ("Applicant"), respectfully moves the Board to dismiss Growth Products Ltd.'s ("Opposer") opposition to U.S. Trademark Application Serial No.: 88657183 for GROUND ESSENTIALS and design for "Soil for growing; Top soil" ("the '183 application") and Serial No.: 88657199 for GROUND ESSENTIALS and design for "Mulch" ("the '199 application") with prejudice because the (1) Opposer's Notice of Opposition is untimely; (2) Opposer's alleged "good cause" to extend its time to oppose was fraudulent; (3) Opposer has shown a blatant disregard for the rules and has acted in bad faith; (4) Opposer is time barred from bringing this opposition; (5) Opposer's pleadings are insufficient

and (6) Opposer has no standing to bring this opposition as there is no valid basis for the Opposition and thus, in view of the foregoing, Opposer fails to state a claim upon which relief can be granted.

I. BACKGROUND

Applicant filed two intent to use applications on October 16, 2019. On February 26, 2020, Applicant's attorney received a demand letter from Opposer demanding that "1. ECMM will expressly abandon Application Serial Nos. 88/657,183 and 88/657,199 for GROUND ESSENTIALS and Design;" and "2. ECMM will cease using the GROUND ESSENTIALS and Design mark and/or the "GROUND ESSENTIALS" word mark in connection with the goods identified in Application Serial Nos. 88/657,183 and 88/657,199" (See Exhibit 1 and Exhibit 2). Applicant's attorney did not respond to this letter and its baseless allegations.

Opposer then sent two reminder emails dated March 11, 2020 and March 25, 2020 (See Exhibit 3 and Exhibit 4). Applicant's attorney did not respond to any of these emails. On March 25, 2020, Opposer filed for a 30-day extension of time to file a notice of opposition associated with the '183 application and the '199 application. These extensions were granted. These extensions also expired on May 2, 2020.

Opposer then sent two more reminder emails dated April 15, 2020 and April 29, 2020 (See Exhibit 5 and Exhibit 6). Applicant's attorney did not respond to any of these emails. On April 29, 2020, Opposer filed a request for an additional 60-day extension of time to oppose the '183 application based on good cause. **Opposer did not file a second extension to oppose the '199 application**. Opposer fraudulently indicated that good cause was established because "The potential opposer is engaged in settlement discussions with applicant". As Opposer was not engaged in any settlement discussions with Applicant, this statement is false and thus Opposer should not have been granted an extension beyond its initial 30-day extension of time to file a notice of opposition.

Opposer then sent two more reminder emails dated May 13, 2020 and May 27, 2020 (see Exhibit 7 and Exhibit 8). Applicant's attorney did not respond to any of these emails. On May 27, 2020, Opposer served its opposition on Applicant's attorney.

On, June 11, 2020, the Board notified Opposer that they failed to file a second extension regarding '199 application but indicated that if Opposer filed a truthful statement indicating that their reason for not filing the extension was due to the COVID-19 pandemic, they would be excused. Opposer, on June 12, 2020, filed a paper, without serving the Applicant, stating that "Opposer hereby submits that due to COVID19 related office closures, delays and remote access issues, Opposer failed to timely file the 60-day extension of time for Serial No. 88/657,199."

However, even with these horrific "COVID19 related office closures, delays and remote access issues" Opposer still managed to (i) consistently send emails to the Applicant, (ii) file an extension regarding the '183 application and (iii) timely file an opposition but yet, Opposer somehow couldn't file an extension to oppose the '199 application. Opposing counsel is a very experienced attorney and has TTAB records dating back to the 1980s but yet Opposing counsel (i) failed to properly serve the Applicant, (ii) indicated a false reason for good cause, and (iii) forgot to file an extension and (iv) then files a paper that states their reason for failing to file the extension was due to COVID-19 but yet Opposing counsel was still able to file another extension, continually email Applicant and file a notice of opposition. Applicant submits that taken as a whole, these events show a pattern of bad faith exhibited by Opposer. Based on Opposer's bad faith and fraudulent statement with the board, Applicant requests that this Opposition be dismissed with prejudice.

II. ARGUMENTS

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of a complaint. See *Adv. Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc*., 988 F.2d 1157, 26 U.S.P.Q.2d 1038, 1041 (Fed. Cir. 1993); see also *Space Base Inc. v. Stadis Corp*., 17 U.S.P.Q.2d 1216, 1218 (T.T.A.B. 1990). Under Rule 12(b)(6), dismissal is appropriate if a complaint fails to "state a claim upon which relief can be granted." See Fed. R. Civ. P. 12(b)(6). In the present case, the Notice of Opposition was untimely since the time to oppose had already

expired for the '199 application and the second extension for the '183 application should not have been granted since it was fraudulent. Thus, since the time to oppose both applications had already expired, dismissal is appropriate because Opposer does not "state a claim upon which relief can be granted."

A. OPPOSER FAILED TO SERVE ITS SUBMISSION REGARDING THE '199 APPLICATION ON THE APPLICANT

Opposer's June 12, 2020 paper stating that "Opposer hereby submits that due to COVID19 related office closures, delays and remote access issues, Opposer failed to timely file the 60-day extension of time for Serial No. 88/657,199" was never served on the Applicant.

Pursuant to TBMP §113.01, **"**Except for the notice of opposition or the petition to cancel, **every submission filed in an *inter partes* proceeding before the Board … must be served by the filing party** upon every other party to the proceeding." (Emphasis Added)

Furthermore, and pursuant to TBMP §113.02, "When a party to an *inter partes* proceeding before the Board files a submission required by 37 C.F.R. § 2.119(a) to be served upon every other party to the proceeding, **proof that the required service has been made ordinarily must be submitted before the filing will be considered by the Board**." (Emphasis Added)

In the present case, Applicant was not served with the response filed on 12 June 2020 nor was any proof provided to the board that service had been made (See Exhibit 11). Applicant should have been given an opportunity to respond to the statement but because of Opposer's disregard for the rules, and bad faith, Applicant must now respond in this paper. Furthermore, Applicant respectfully points out that Opposer also never paid for a second extension but appears to have now been given a free extension by the board.

Applicant further notes that since Opposer could file a petition to cancel the '199 application should it ever register, Opposer is not without a remedy if it wants to pursue its baseless allegations. However, in view of the facts that no extension was filed, no extension was paid for, and further in view of TBMP §113.01 and TBMP §113.02, Applicant submits that

Opposer's submission should not have been considered by the board and the opposition to the '199 application should be dismissed with prejudice.

B. OPPOSER'S EXTENSION REQUEST FOR THE '199 APPLICATION HAD EXPIRED

Opposer filed for a 30-day extension of time to file a notice of opposition for the '199 application. This extension expired on May 2, 2020 (See Exhibit 9). Opposer knew, or should have known, that no extension past May 2, 2020 was filed. Continuing to send emails after May 2nd and to file an Opposition, when the time period had clearly lapsed, only serves to harass the Applicant, cause unnecessary delay and needlessly increase the cost of Applicant's legal expenses. Such bullying should not be permitted. Opposer had 60 days to file a notice of opposition including its original 30 days and its 30-day extension, and it still failed to do so. Opposer has missed its window to file the notice of opposition for the '199 application and the opposition of the '199 application should be dismissed with prejudice.

C. OPPOSER'S EXTENTION REQUEST FOR THE '183 APPLICATION WAS FRADULENT

A request for an extension of time must be filed within thirty days after the date of publication in the *Official Gazette*, or within an extension period granted by the Board. The time within which to file a request for extension of time to oppose is set by statute and **may not be extended or waived**. *In re Kabushiki Kaisha Hitachi Seisakusho*, 33 USPQ2d 1477 (Comm'r Pats. 1994 *); In re Cooper*, 209 USPQ 670 (Comm'r Pats. 1980).

As stated in 37 C.F.R. § 2.102 (C), "Requests to extend the time for filing an opposition must be filed as follows: (1) A person may file a first request for: (i) Either a thirty-day extension of time, which will be granted upon request; or (ii) A ninety-day extension of time, which will be granted only for good cause shown. A sixty-day extension is not available as a first extension of time to oppose. (2) If a person was granted an initial thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, **which will be granted only for good cause shown**." (Emphasis Added)

In the present case, Opposer falsely indicated that "The potential opposer is engaged in settlement discussions with applicant" even though there never were any settlement discussions. (See Exhibit 10). Applicant never responded to Opposer's initial letter or any of Opposer's emails and, as such, Opposer could not have been engaged in settlement discussions with Applicant. Therefore, Opposer's alleged good cause is fraudulent. Opposer merely sent a demand letter with baseless accusations and then harassed Applicant to respond to its baseless accusations. This is simply bullying and does not constitute settlement discussions.

Since there were no settlement discussions, and thus no good cause, the second extension of time should not have been granted. Since Opposer had 60 days to file the notice of opposition including its original 30 and its 30-day extension, and still failed to file a notice of opposition, Opposer's May 27th notice of opposition should be dismissed as untimely. Applicant further notes that since Opposer could file a petition to cancel the '183 application should it ever register, Opposer is not without a remedy if it wants to pursue its baseless allegations. However, Opposer missed its window to file the notice of opposition because the 60-day request for an extension was made in bad faith and based on a fraudulent statement.

D. OPPOSER HAS ACTED IN BAD FAITH

Under Rule 11(b) of the Federal Rules of Civil Procedure, one who presents a pleading to a court certifies that the pleading is:

> (1) not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) **the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery**…

Fed R. Civ. P 11(b) (Emphasis added).

In the present case, Opposer can provide no evidentiary support for settlement discussions regarding the ‘183 application because none took place and Opposer knew, or should have known, that the time frame to oppose the ‘199 application had expired. Opposers actions are in bad faith and seem to be for the purpose of harassment, causing unnecessary delay and needlessly increasing the cost of the present proceeding.

Therefore, under Rule 11(c), the court may impose an appropriate sanction on a determination that Rule 11(b) has been violated. Fed. R. Civ. P 11(c). Further, and along similar lines, Section 11.18 of the Code of Federal Regulations (“CFR”) states that one who files a document with the USPTO certifies that:

> (b) (2) (i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) **The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery**…

37 CFR § 11.18 (Emphasis Added).

In the present case, Opposer can provide no evidentiary support for settlement discussions regarding the ‘183 application because none took place and Opposer knew, or should have known, that the time frame to oppose the ‘199 application had expired.

Opposers actions are in bad faith and seem to be for the purpose of harassment, causing unnecessary delay and needlessly increasing the cost of the present proceeding. Therefore, under Section 11.18(c), violations of Section (b)(2) subject the violator to sanctions or actions deemed appropriate by the USPTO Director, “which may include, but are not limited to, any combination of (1) Striking the offending paper; (2) Referring a practitioner's conduct to the Director of Enrollment and Discipline for appropriate action; (3) Precluding a party or practitioner from

submitting a paper, or presenting or contesting an issue; (4) Affecting the weight given to the offending paper; or (5) Terminating the proceedings in the Office".

Further, sanctions must be imposed on any party, attorney, or law firm that has violated Rule 11(b) or is responsible for the violation. Fed.R.Civ.P.11(c)(1)(A) ("Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees."). In view of the aforementioned bad faith and fraudulent extension request, this Opposition should be dismissed with prejudice with no further opportunity to amend.

E. OPPOSER LACKS STANDING

Applicant also submits that the Opposer does not have standing to maintain the opposition proceeding because Opposer has not presented any facts that provide valid grounds supporting the opposition. Opposer has not provided any evidence of actual damages or expected damages incurred by Opposer due to Applicant's use of the mark GROUND ESSENTIALS and design, thus there can be no reasonable belief that the Opposer will be damaged by the GROUND ESSENTIALS (and design) registrations. To withstand a motion to dismiss for failure to state a claim upon which relief can be granted, Opposer must allege such facts that would, if proven, establish that (1) it has standing to maintain the proceeding, and (2) a valid ground exists for opposing the subject application. *Young v. AGB Corp.*, 152 F.3d 1377, 47 U.S.P.Q.2d 1752, 1754 (Fed. Cir. 1998).

Here, Opposer can satisfy neither the standing nor the valid grounds requirement. First, Opposer does not have standing to maintain the opposition proceeding because its interest in opposing the registration is not reasonable because **(i) the two marks are vastly different based on sight, sound, and meaning, (ii) this opposition was filed based on fraudulent statements, (iii) Opposer failed to properly file or pay for an extension, and (iv) Opposer failed to serve papers to the Applicant**. Standing requires that the opposer's belief that it will be (or is being) damaged by a registration is reasonable and reflects a real interest in the case. *Ritchie v. Simpson*, 170 F.3d 1092, 50 U.S.P.Q.2d 1023 (Fed. Cir. 1999); see also *Jewelers Vigilance Comm. Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 U.S.P.Q.2d 2021 (Fed. Cir. 1987); and *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 U.S.P.Q. 185 (C.C.P.A. 1982). In other words, the Opposer must have a personal interest in the outcome of the proceeding and must have a

reasonable basis for a belief of damage. See, e.g., *Univ. Oil Prod. Co. v. Rexall Drug & Chem. Co*., 463 F.2d 1122, 1123, 174 U.S.P.Q. 458, 459 (C.C.P.A. 1972).

Given the vast differences in the marks, Opposer fails to indicate how he would be damaged by **a mark that does not use the word ESSENTIAL (an adjective)** (See Exhibit 12 where the product is advertised as "essential L-amino acids") **since Applicant uses the mark GROUND ESSENTIALS (a noun) where the word GROUND (and design) is the dominant portion**. Therefore, Opposer lacks standing because there can be no reasonable belief that the Opposer will be damaged by the GROUND ESSENTIALS (and design).

F. INSUFFICIENCY OF THE PLEADINGS

Even if the Board determines that the Opposer has standing, the Opposer fails to establish a valid material ground for opposing Applicant's mark "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal, 556 U.S. 662* at 663 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 at 555, 557). In short, Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* at 678. Applicant submits that the present opposition simply offers naked assertations devoid of any factual enhancement.

Here, in view of the vast differences in the marks, Opposer's allegations are so lacking in factual content regarding how it will be damaged that the Board cannot draw any inferences, let alone a reasonable one, that Applicant's mark creates a likelihood of confusion.

Indeed, Opposer's only basis for alleging a likelihood of confusion is the statement that "The word "GROUND" in Applicant's mark is highly descriptive and thus, the dominant portion of Applicant's mark is the word "ESSENTIALS" which is identical to Applicant's mark" which completely ignores (i) the design elements of Applicant's mark, (ii) the fact that the word GROUND is significantly larger than the word ESSENTIALS and (iii) that the Applicant's ESSENTIALS is a noun while Opposer's ESSENTIAL is an adjective. As such, Opposer's Notice of Opposition fails to meet the basic pleading standards of the Federal Rules of Civil Procedure, *Iqbal*, and *Twombly* because it fails to explain the factual basis for such a claim.

Applicant submits that this opposition is just trademark bullying. Therefore, this opposition should be dismissed with prejudice with no further opportunity to amend.

CONCLUSION

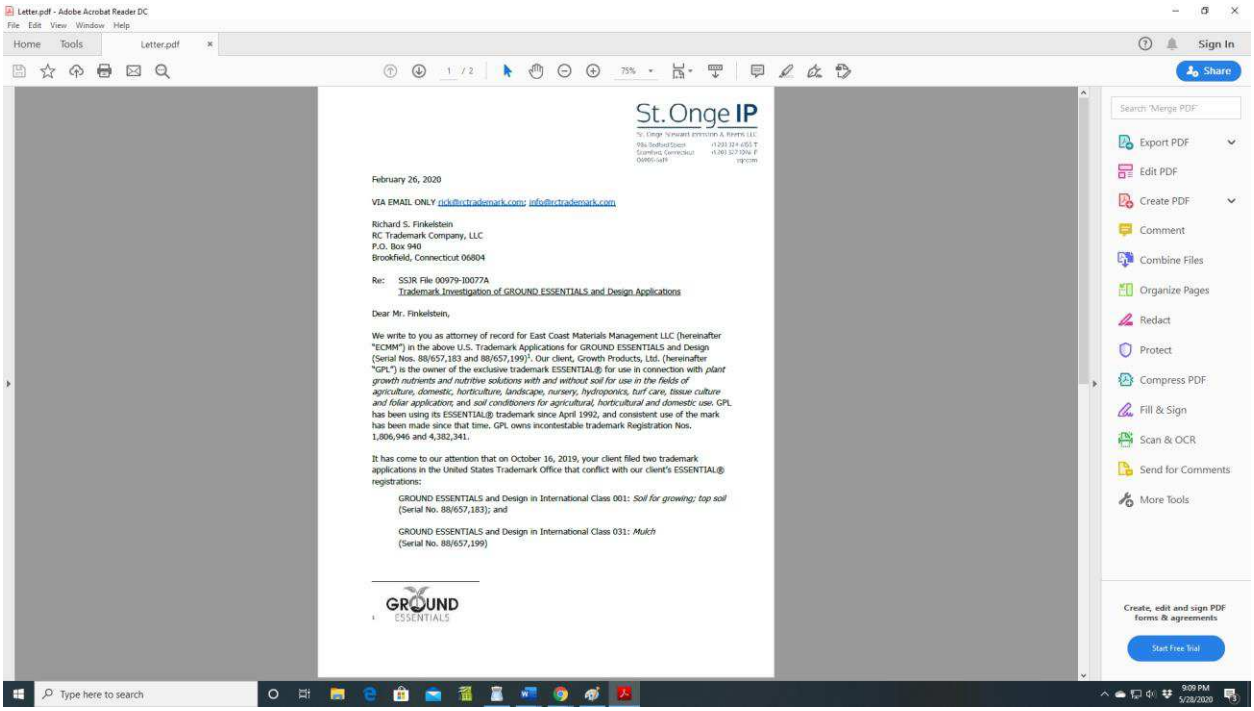
For the above reasons, Applicant respectfully requests that Opposer's Notice of Opposition be dismissed with prejudice with no further opportunity to amend.

Respectfully submitted,

Date: July 29, 2020

_/Richard S. Finkelstein/_____
Richard S. Finkelstein
RC Trademark Company, LLC
P.O. Box 940
Brookfield, CT 06804
(860)-368-0040
Attorney for Applicant

Exhibit 1



St. Onge IP

February 26, 2020

VIA EMAIL ONLY rick@rctrademark.com; info@rctrademark.com

Richard S. Finkelstein
RC Trademark Company, LLC
P.O. Box 940
Brookfield, Connecticut 06804

Re: SSJR File 00979-10077A
Trademark Investigation of GROUND ESSENTIALS and Design Applications

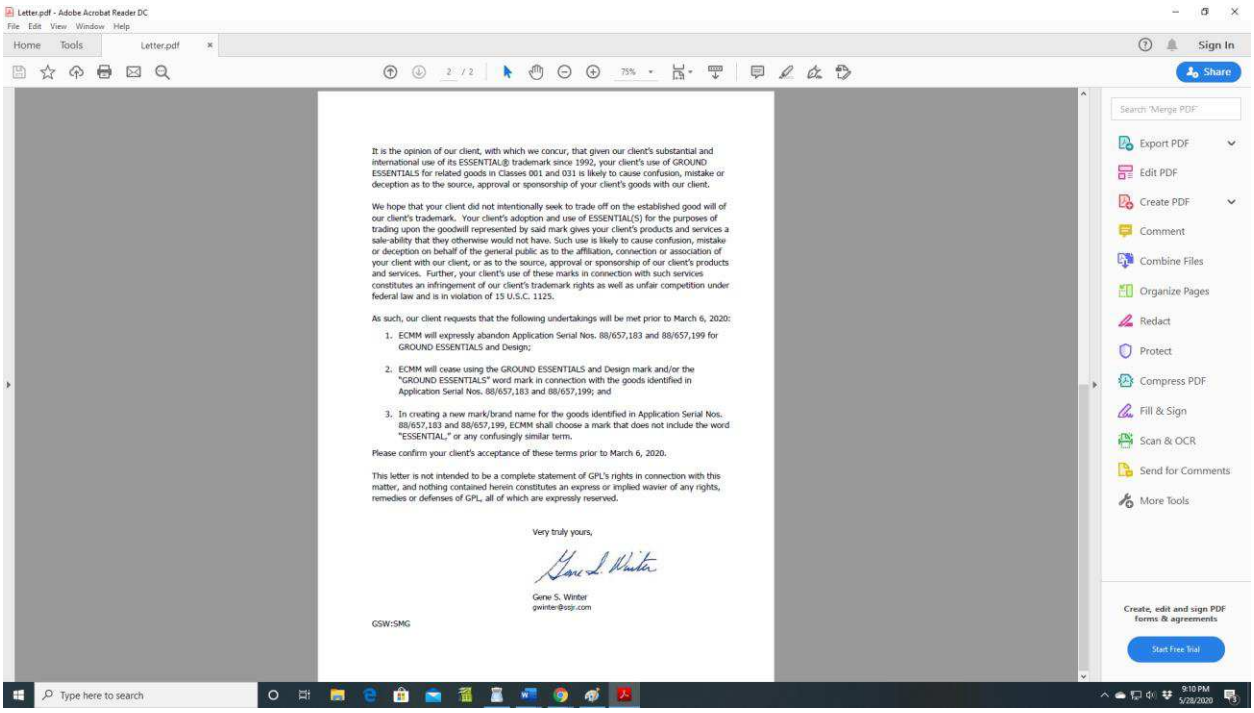
Dear Mr. Finkelstein,

We write to you as attorney of record for East Coast Materials Management LLC (hereinafter "ECMM") in the above U.S. Trademark Applications for GROUND ESSENTIALS and Design (Serial Nos. 88/657,183 and 88/657,199)[1]. Our client, Growth Products, Ltd. (hereinafter "GPL") is the owner of the exclusive trademark ESSENTIAL® for use in connection with *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 application; and soil conditioners for agricultural, horticultural and domestic use.* GPL has been using its ESSENTIAL® trademark since April 1992, and consistent use of the mark has been made since that time. GPL owns incontestable trademark Registration Nos. 1,806,946 and 4,382,341.

It has come to our attention that on October 16, 2019, your client filed two trademark applications in the United States Trademark Office that conflict with our client's ESSENTIAL® registrations:

GROUND ESSENTIALS and Design in International Class 001: *Soil for growing; top soil* (Serial No. 88/657,183); and

GROUND ESSENTIALS and Design in International Class 031: *Mulch* (Serial No. 88/657,199)



It is the opinion of our client, with which we concur, that given our client's substantial and international use of its ESSENTIAL® trademark since 1992, your client's use of GROUND ESSENTIALS for related goods in Classes 001 and 031 is likely to cause confusion, mistake or deception as to the source, approval or sponsorship of your client's goods with our client.

We hope that your client did not intentionally seek to trade off on the established good will of our client's trademark. Your client's adoption and use of ESSENTIAL(S) for the purposes of trading upon the goodwill represented by said mark gives your client's products and services a sale-ability that they otherwise would not have. Such use is likely to cause confusion, mistake or deception on behalf of the general public as to the affiliation, connection or association of your client with our client, or as to the source, approval or sponsorship of our client's products and services. Further, your client's use of these marks in connection with such services constitutes an infringement of our client's trademark rights as well as unfair competition under federal law and is in violation of 15 U.S.C. 1125.

As such, our client requests that the following undertakings will be met prior to March 6, 2020:

1. ECMM will expressly abandon Application Serial Nos. 88/657,183 and 88/657,199 for GROUND ESSENTIALS and Design;
2. ECMM will cease using the GROUND ESSENTIALS and Design mark and/or the "GROUND ESSENTIALS" word mark in connection with the goods identified in Application Serial Nos. 88/657,183 and 88/657,199; and
3. In creating a new mark/brand name for the goods identified in Application Serial Nos. 88/657,183 and 88/657,199, ECMM shall choose a mark that does not include the word "ESSENTIAL," or any confusingly similar term.

Please confirm your client's acceptance of these terms prior to March 6, 2020.

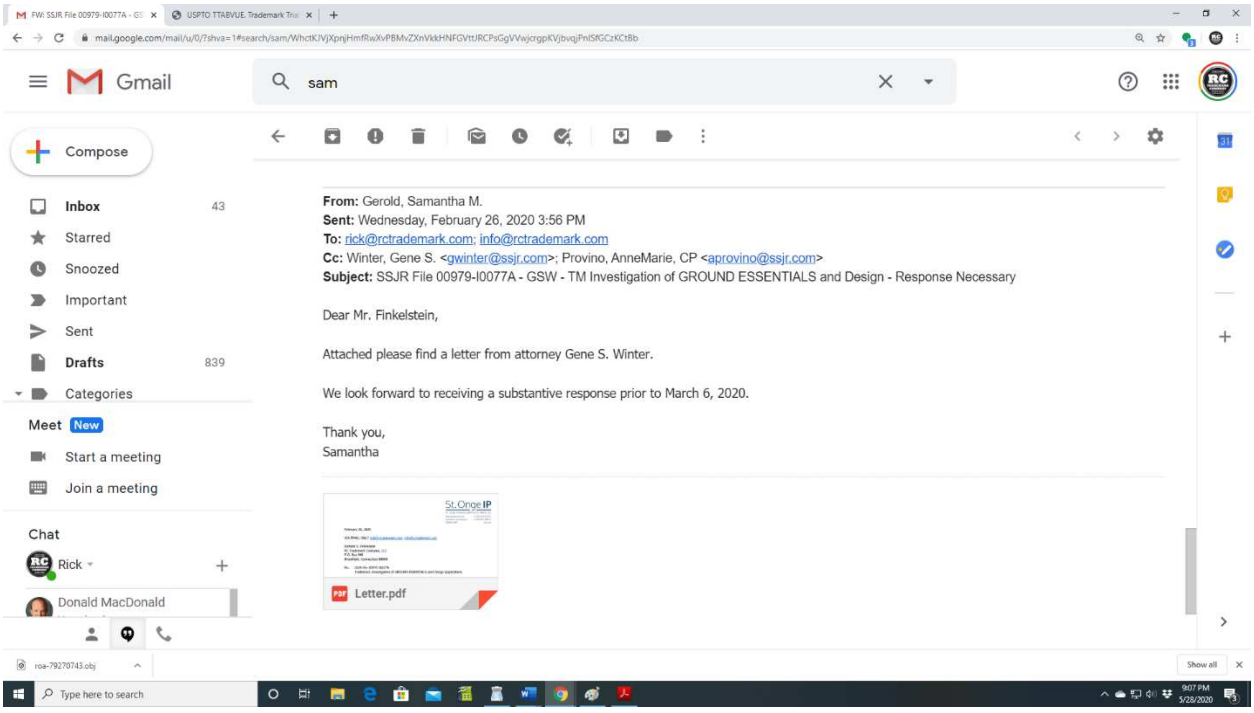
This letter is not intended to be a complete statement of GPL's rights in connection with this matter, and nothing contained herein constitutes an express or implied wavier of any rights, remedies or defenses of GPL, all of which are expressly reserved.

Very truly yours,

Gene S. Winter
gwinter@ssjr.com

GSW:SMG

Exhibit 2


Gmail
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Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
From: Gerold, Samantha M.
Sent: Wednesday, February 26, 2020 3:56 PM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
Dear Mr. Finkelstein,
Attached please find a letter from attorney Gene S. Winter.
We look forward to receiving a substantive response prior to March 6, 2020.
Thank you,
Samantha
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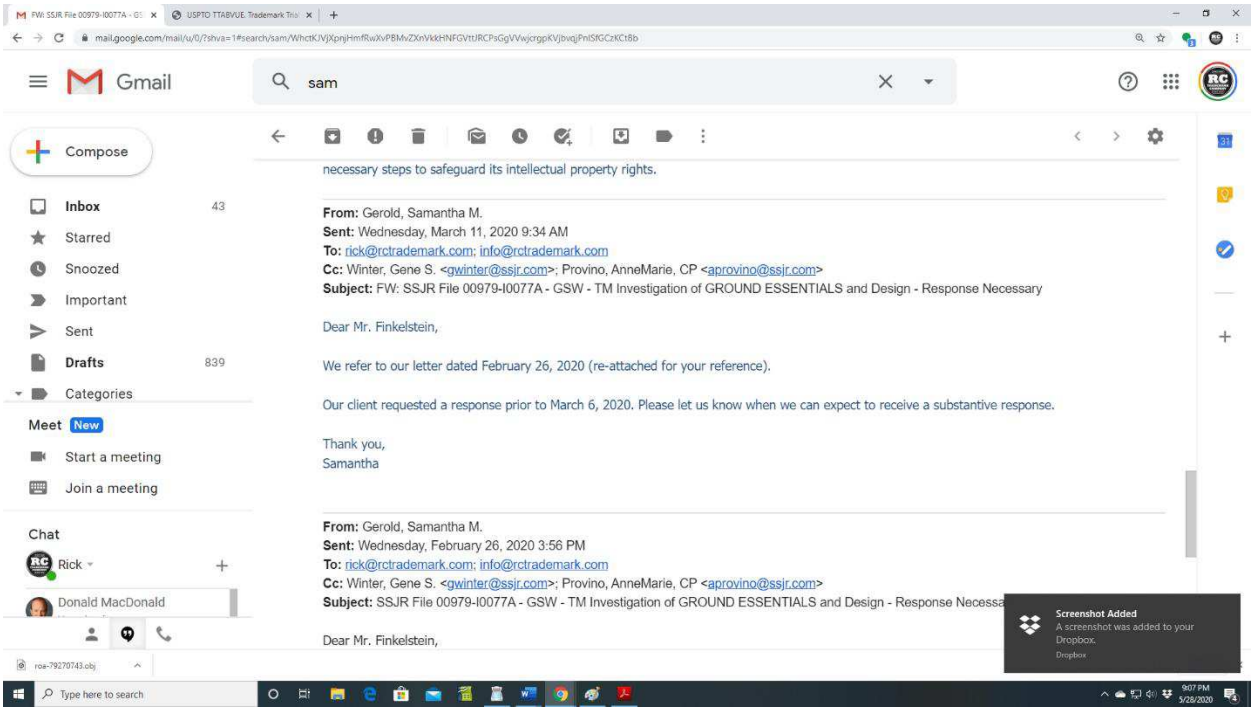
Exhibit 3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Starred
Snoozed
Important
Sent
Drafts 839
Categories
Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
necessary steps to safeguard its intellectual property rights.
From: Gerold, Samantha M.
Sent: Wednesday, March 11, 2020 9:34 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
Dear Mr. Finkelstein,
We refer to our letter dated February 26, 2020 (re-attached for your reference).
Our client requested a response prior to March 6, 2020. Please let us know when we can expect to receive a substantive response.
Thank you,
Samantha
From: Gerold, Samantha M.
Sent: Wednesday, February 26, 2020 3:56 PM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessa
Dear Mr. Finkelstein,
Screenshot Added
A screenshot was added to your Dropbox.
Dropbox
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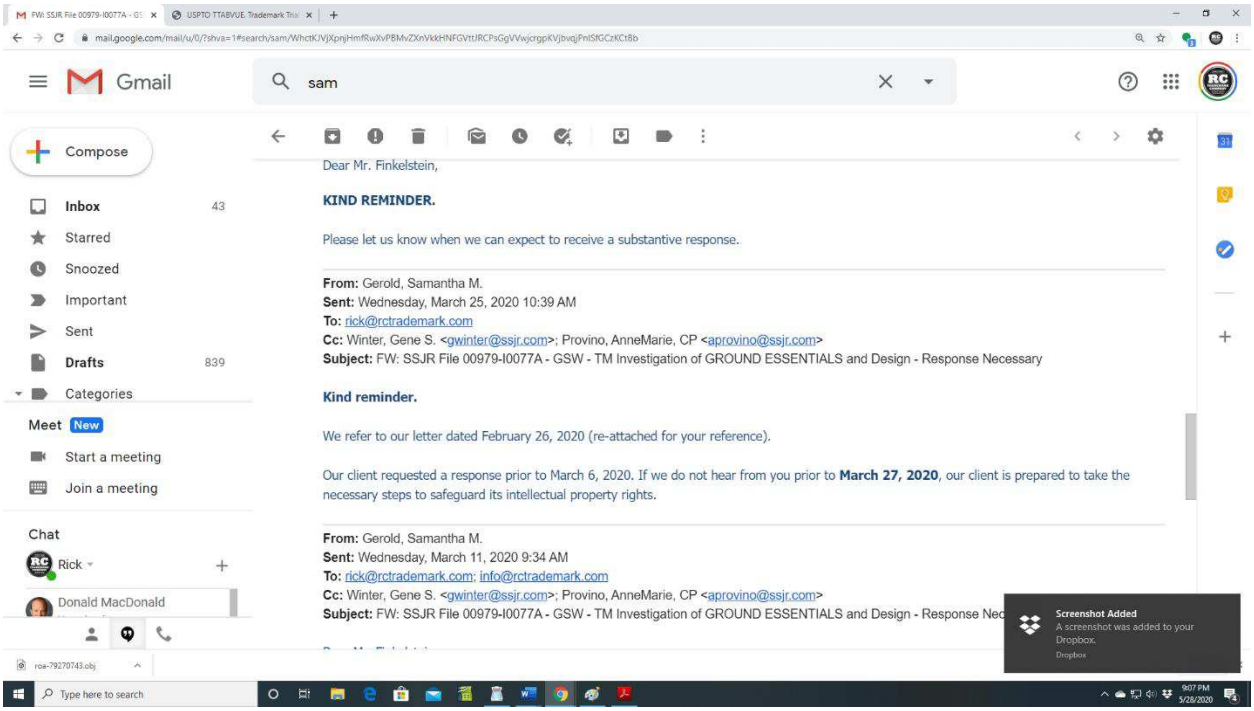
Exhibit 4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sam
Compose
Inbox 43
Starred
Snoozed
Important
Sent
Drafts 839
Categories
Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
Dear Mr. Finkelstein,
KIND REMINDER.
Please let us know when we can expect to receive a substantive response.
From: Gerold, Samantha M.
Sent: Wednesday, March 25, 2020 10:39 AM
To: rick@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
Kind reminder.
We refer to our letter dated February 26, 2020 (re-attached for your reference).
Our client requested a response prior to March 6, 2020. If we do not hear from you prior to March 27, 2020, our client is prepared to take the necessary steps to safeguard its intellectual property rights.
From: Gerold, Samantha M.
Sent: Wednesday, March 11, 2020 9:34 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Nec
Screenshot Added
A screenshot was added to your Dropbox.
Dropbox
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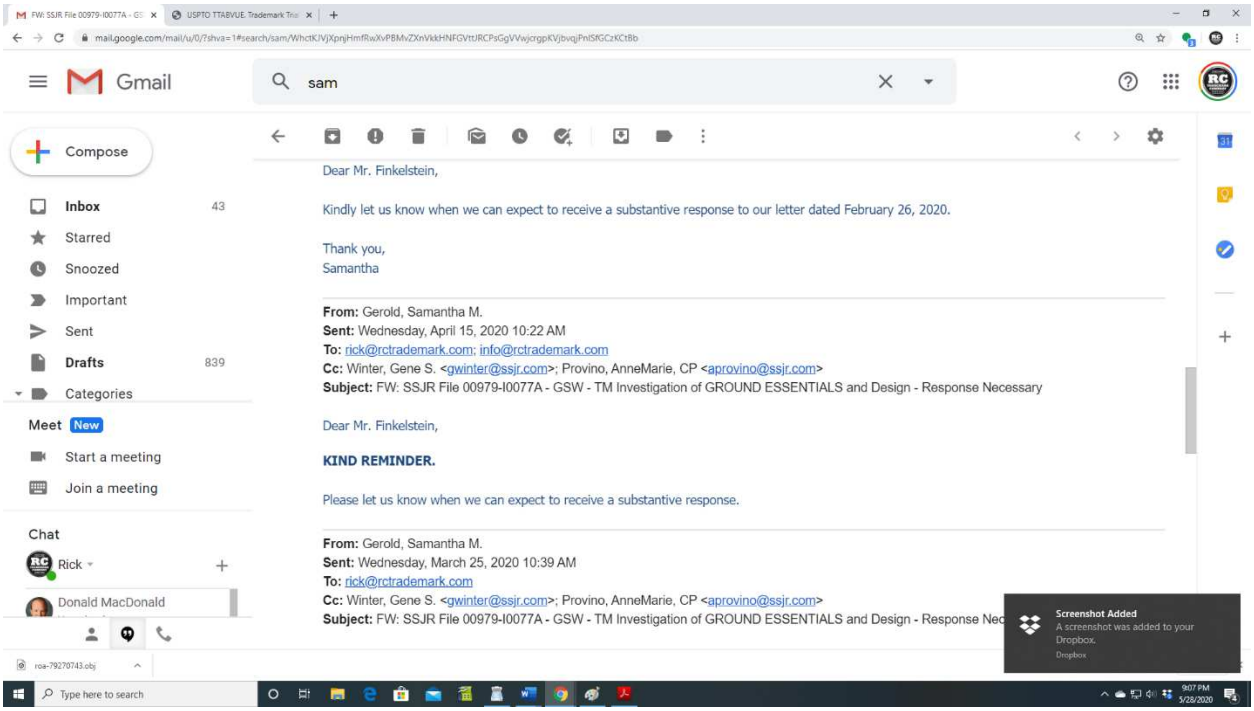
Exhibit 5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sam
Compose
Inbox 43
Starred
Snoozed
Important
Sent
Drafts 839
Categories
Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
Dear Mr. Finkelstein,
Kindly let us know when we can expect to receive a substantive response to our letter dated February 26, 2020.
Thank you,
Samantha
From: Gerold, Samantha M.
Sent: Wednesday, April 15, 2020 10:22 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
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Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Nec
Screenshot Added
A screenshot was added to your Dropbox.
Dropbox
Type here to search

Exhibit 6

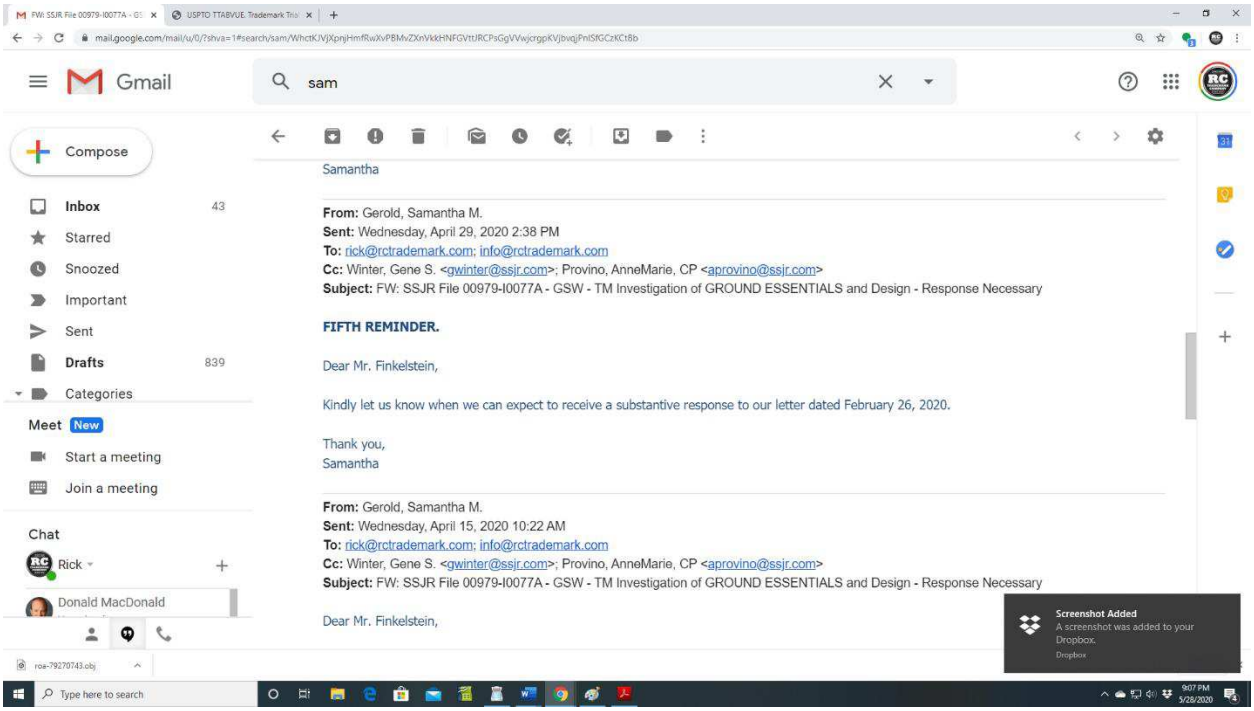

Gmail
sam
Compose
Inbox 43
Starred
Snoozed
Important
Sent
Drafts 839
Categories
Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
Samantha
From: Gerold, Samantha M.
Sent: Wednesday, April 29, 2020 2:38 PM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
FIFTH REMINDER.
Dear Mr. Finkelstein,
Kindly let us know when we can expect to receive a substantive response to our letter dated February 26, 2020.
Thank you,
Samantha
From: Gerold, Samantha M.
Sent: Wednesday, April 15, 2020 10:22 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
Dear Mr. Finkelstein,
Screenshot Added
A screenshot was added to your Dropbox.
Dropbox
Type here to search

Exhibit 7

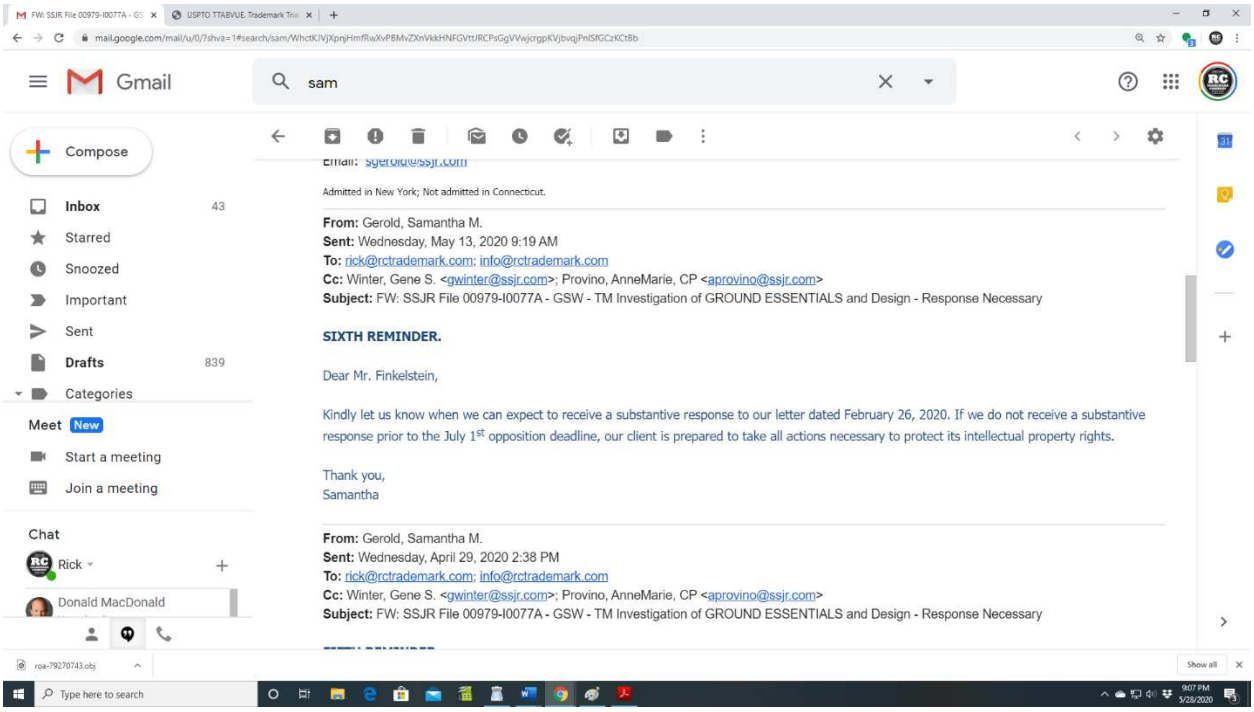

Gmail
sam
Compose
Inbox 43
Starred
Snoozed
Important
Sent
Drafts 839
Categories
Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
Admitted in New York; Not admitted in Connecticut.
From: Gerold, Samantha M.
Sent: Wednesday, May 13, 2020 9:19 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
SIXTH REMINDER.
Dear Mr. Finkelstein,
Kindly let us know when we can expect to receive a substantive response to our letter dated February 26, 2020. If we do not receive a substantive response prior to the July 1st opposition deadline, our client is prepared to take all actions necessary to protect its intellectual property rights.
Thank you,
Samantha
From: Gerold, Samantha M.
Sent: Wednesday, April 29, 2020 2:38 PM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
Type here to search

Exhibit 8

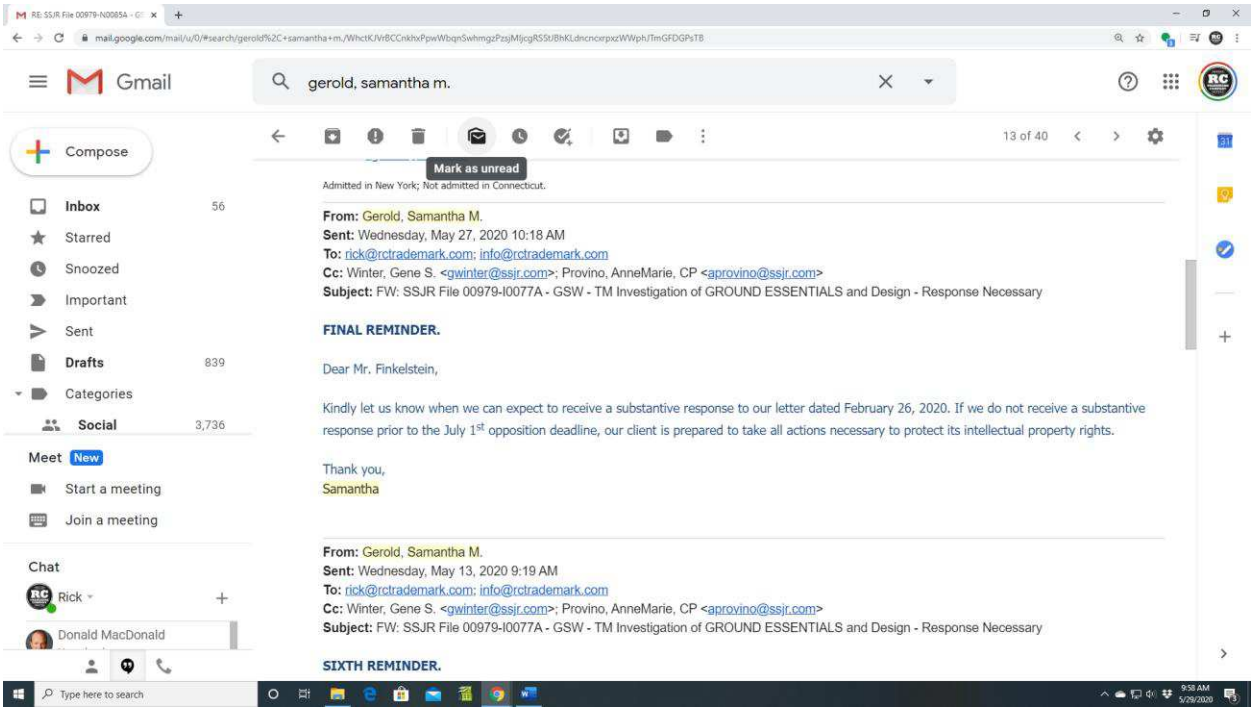
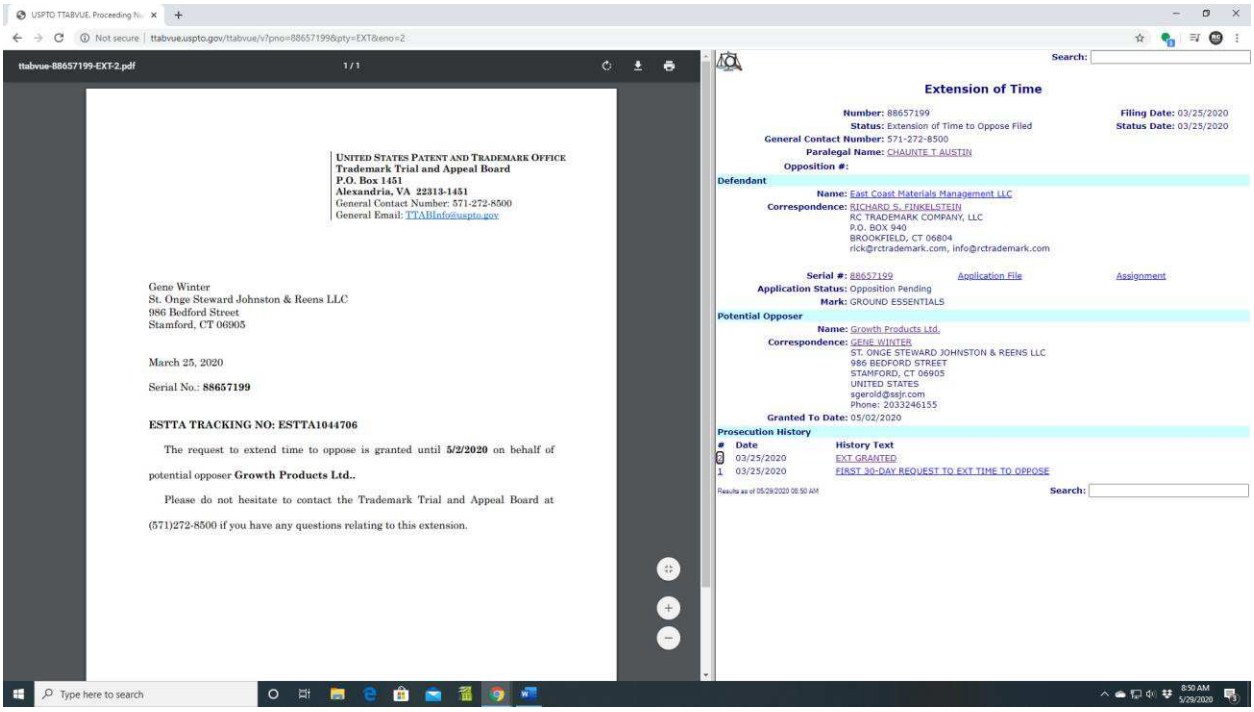

Gmail
gerold, samantha m.
Compose
Inbox 56
Starred
Snoozed
Important
Sent
Drafts 839
Categories
Social 3,736
Meet New
Start a meeting
Join a meeting
Chat
Rick
Donald MacDonald
Mark as unread
13 of 40
Admitted in New York; Not admitted in Connecticut.
From: Gerold, Samantha M.
Sent: Wednesday, May 27, 2020 10:18 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
FINAL REMINDER.
Dear Mr. Finkelstein,
Kindly let us know when we can expect to receive a substantive response to our letter dated February 26, 2020. If we do not receive a substantive response prior to the July 1st opposition deadline, our client is prepared to take all actions necessary to protect its intellectual property rights.
Thank you,
Samantha
From: Gerold, Samantha M.
Sent: Wednesday, May 13, 2020 9:19 AM
To: rick@rctrademark.com; info@rctrademark.com
Cc: Winter, Gene S. <gwinter@ssjr.com>; Provino, AnneMarie, CP <aprovino@ssjr.com>
Subject: FW: SSJR File 00979-I0077A - GSW - TM Investigation of GROUND ESSENTIALS and Design - Response Necessary
SIXTH REMINDER.
Type here to search

Exhibit 9



ttabvue-88657199-EXT-2.pdf 1 / 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

Gene Winter
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905

March 25, 2020

Serial No.: **88657199**

ESTTA TRACKING NO: ESTTA1044706

The request to extend time to oppose is granted until **5/2/2020** on behalf of potential opposer **Growth Products Ltd.**.

Please do not hesitate to contact the Trademark Trial and Appeal Board at (571)272-8500 if you have any questions relating to this extension.

Search:

Extension of Time

Number: 88657199 **Filing Date:** 03/25/2020
Status: Extension of Time to Oppose Filed **Status Date:** 03/25/2020
General Contact Number: 571-272-8500
Paralegal Name: CHAUNTE T AUSTIN
Opposition #:

Defendant
Name: East Coast Materials Management LLC
Correspondence: RICHARD S. FINKELSTEIN
RC TRADEMARK COMPANY, LLC
P.O. BOX 940
BROOKFIELD, CT 06804
rick@rctrademark.com, info@rctrademark.com

Serial #: 88657199 Application File Assignment
Application Status: Opposition Pending
Mark: GROUND ESSENTIALS

Potential Opposer
Name: Growth Products Ltd.
Correspondence: GENE WINTER
ST. ONGE STEWARD JOHNSTON & REENS LLC
986 BEDFORD STREET
STAMFORD, CT 06905
UNITED STATES
sgeroid@ssjr.com
Phone: 2033246155
Granted To Date: 05/02/2020

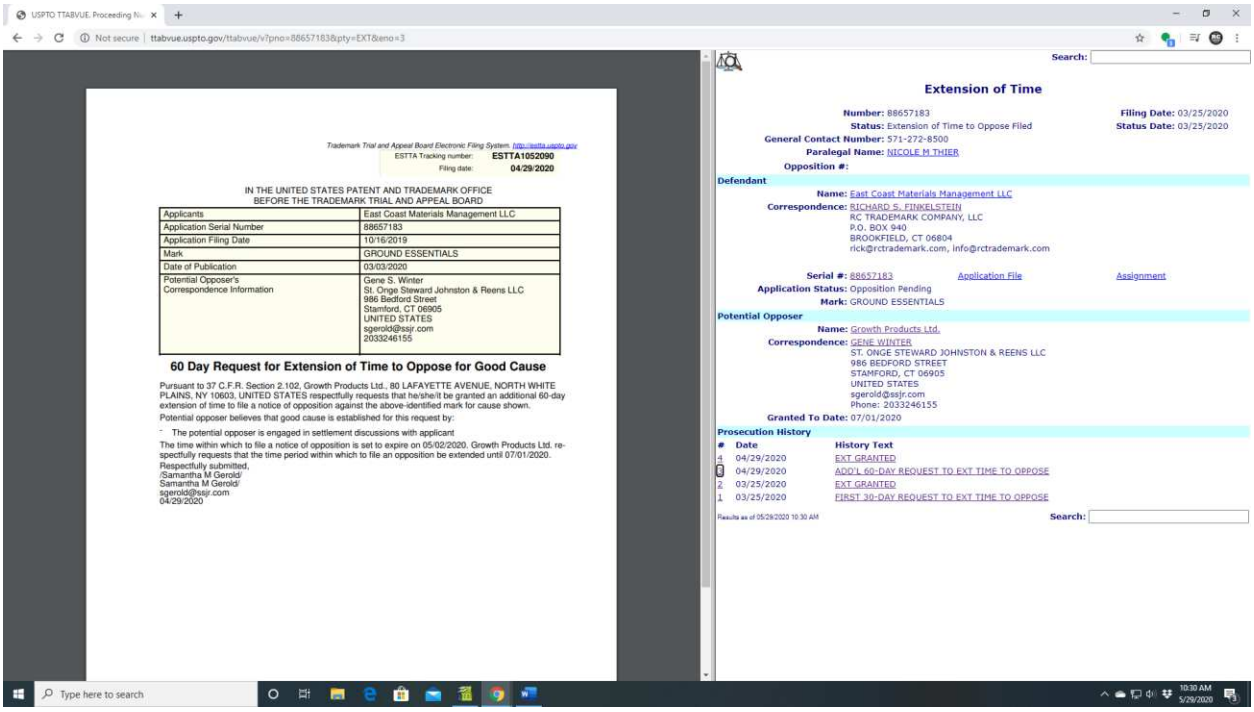
Prosecution History

#	Date	History Text
2	03/25/2020	EXT GRANTED
1	03/25/2020	FIRST 30-DAY REQUEST TO EXT TIME TO OPPOSE

Results as of 05/29/2020 08:50 AM

Search:

Exhibit 10



Trademark Trial and Appeal Board Electronic Filing System, http://estta.uspto.gov

ESTTA Tracking number: **ESTTA1052090**

Filing date: **04/29/2020**

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

Applicants	East Coast Materials Management LLC
Application Serial Number	88657183
Application Filing Date	10/16/2019
Mark	GROUND ESSENTIALS
Date of Publication	03/03/2020
Potential Opposer's Correspondence Information	Gene S. Winter St. Onge Steward Johnston & Reens LLC 986 Bedford Street Stamford, CT 06905 UNITED STATES sgerold@ssjr.com 2033246155

60 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Growth Products Ltd., 80 LAFAYETTE AVENUE, NORTH WHITE PLAINS, NY 10603, UNITED STATES respectfully requests that he/she/it be granted an additional 60-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer is engaged in settlement discussions with applicant

The time within which to file a notice of opposition is set to expire on 05/02/2020. Growth Products Ltd. respectfully requests that the time period within which to file an opposition be extended until 07/01/2020.

Respectfully submitted,
/Samantha M Gerold/
Samantha M Gerold/
sgerold@ssjr.com
04/29/2020

Search:

Extension of Time

Number: 88657183 **Filing Date:** 03/25/2020
Status: Extension of Time to Oppose Filed **Status Date:** 03/25/2020
General Contact Number: 571-272-8500
Paralegal Name: NICOLE M THIER
Opposition #:

Defendant
Name: East Coast Materials Management LLC
Correspondence: RICHARD S. FINKELSTEIN
RC TRADEMARK COMPANY, LLC
P.O. BOX 940
BROOKFIELD, CT 06804
rick@rctrademark.com, info@rctrademark.com

Serial #: 88657183 Application File Assignment
Application Status: Opposition Pending
Mark: GROUND ESSENTIALS

Potential Opposer
Name: Growth Products Ltd.
Correspondence: GENE WINTER
ST. ONGE STEWARD JOHNSTON & REENS LLC
986 BEDFORD STREET
STAMFORD, CT 06905
UNITED STATES
sgerold@ssjr.com
Phone: 2033246155
Granted To Date: 07/01/2020

Prosecution History

#	Date	History Text
4	04/29/2020	EXT GRANTED
3	04/29/2020	ADD'L 60-DAY REQUEST TO EXT TIME TO OPPOSE
2	03/25/2020	EXT GRANTED
1	03/25/2020	FIRST 30-DAY REQUEST TO EXT TIME TO OPPOSE

Results as of 05/29/2020 10:30 AM Search:

EXHIBIT 11

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

GROWTH PRODUCTS LTD.	:	
Opposer,	:	
-v-	:	Opposition No. 91256044
EAST COAST MATERIALS MANAGEMENT, LLC	:	
Applicant.	:	

OPPOSER'S ANSWER

On June 11, Opposer, Growth Products Ltd. received a Suspension Notice from the Trademark Trial and Appeal Board in regards to Proceeding No. 912560044. Specifically, the Board suspending Proceeding No. 912560044 due to Opposer's failure to file a 60-day extension of time for Serial No. 88/657,199.

In filing the initial Notice of Opposition in Proceeding No. 912560044, Opposer failed to include the necessary statement mandated by the CARES Act. The Board has provided Opposer twenty days to provide the requisite statement. As such, Opposer hereby submits that due to COVID-19 related office closures, delays and remote access issues, Opposer failed to timely file the 60-day extension of time for Serial No. 88/657,199. Thus, pursuant to the CARES Act published by the USPTO, Opposer respectfully requests to be excused for missing the deadline for filing a second extension for Serial No. 88/657,199 and requests that Proceeding No. 912560044 resume.

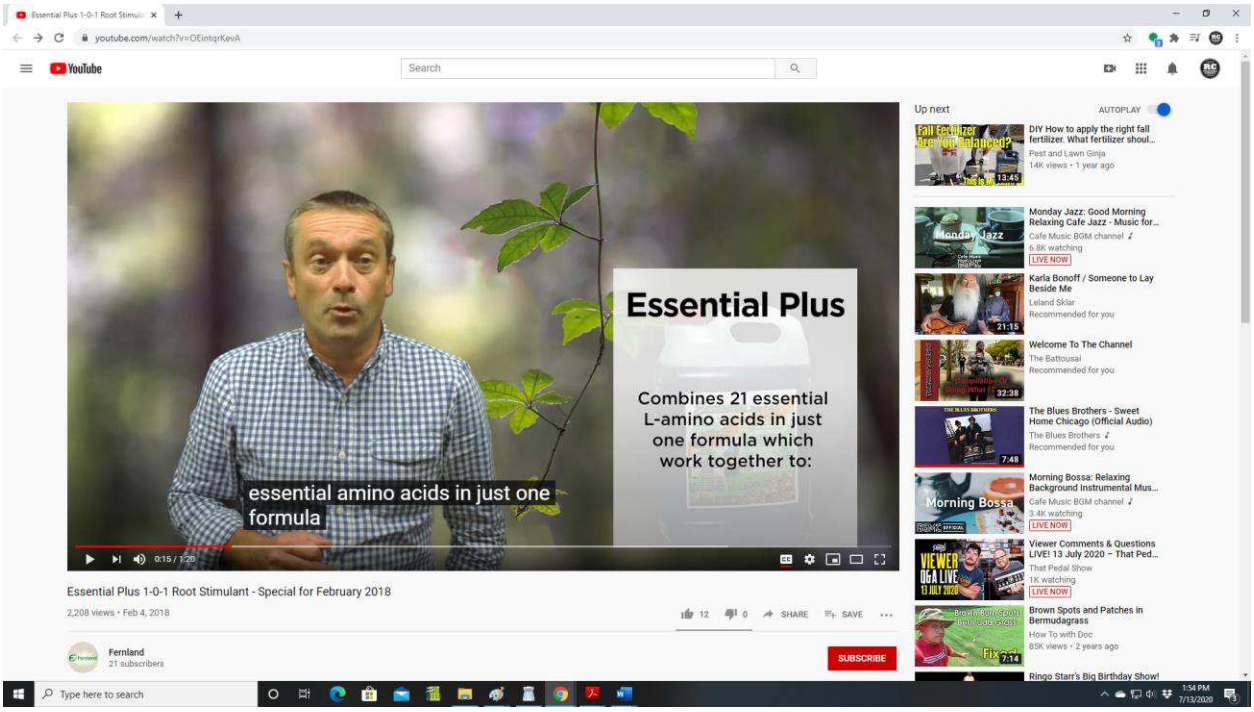
June 12, 2020

Respectfully submitted,

Gene S. Winter
Samantha M. Gerold
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155
Email: gwinter@ssjr.com; sgerold@ssjr.com; litigation@ssjr.com

ATTORNEYS FOR OPPOSER

EXHIBIT 12


youtube.com/watch?v=OEintqrKevA
YouTube
Search
Essential Plus
Combines 21 essential L-amino acids in just one formula which work together to:
essential amino acids in just one formula
Essential Plus 1-0-1 Root Stimulant - Special for February 2018
2,208 views • Feb 4, 2018
SHARE
SAVE
Fernland
21 subscribers
SUBSCRIBE
Up next
AUTOPLAY
DIY How to apply the right fall fertilizer. What fertilizer shoul...
Pest and Lawn Ginja
14K views • 1 year ago
Monday Jazz: Good Morning Relaxing Cafe Jazz - Music for...
Cafe Music BGM channel
6.8K watching
LIVE NOW
Karla Bonoff / Someone to Lay Beside Me
Leland Sklar
Recommended for you
Welcome To The Channel
The Battousai
Recommended for you
The Blues Brothers - Sweet Home Chicago (Official Audio)
The Blues Brothers
Recommended for you
Morning Bossa: Relaxing Background Instrumental Mus...
Cafe Music BGM channel
3.4K watching
LIVE NOW
Viewer Comments & Questions LIVE! 13 July 2020 – That Ped...
That Pedal Show
1K watching
LIVE NOW
Brown Spots and Patches in Bermudagrass
How To with Doc
85K views • 2 years ago
Ringo Starr's Big Birthday Show!
Type here to search

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) WITH PREJUDICE was transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at http://estta.uspto.gov/ on July 29, 2020, and was sent to Gene S. Winter and Samantha M. Gerold, counsel for Respondent, on July 1, 2020, via electronic mail at the following email addresses: gwinter@ssjr.com and sgerold@ssjr.com

Signed: /Richard S Finkelstein/ Date: July 29, 2020