

ESTTA Tracking number: **ESTTA1075699**

Filing date: **08/18/2020**

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		
Entity	limited liability company	Citizenship	California
Address	345 CALIFORNIA STREET, 27TH FLOOR SAN FRANCISCO, CA 94104 UNITED STATES		

Attorney information	RANDY TROXEL TRADEMARK-ASSOCIATES 1990 N. CALIFORNIA BLVD., 8TH FLOOR WALNUT CREEK, CA 94596 UNITED STATES Primary Email: rtroxel@tmassoc.com 650-692-1700		
Docket Number	834-800-088		

**Applicant Information**

Application No.	88871897	Publication date	08/11/2020
Opposition Filing Date	08/18/2020	Opposition Period Ends	09/10/2020
Applicant	Rockin' Horse Farm, LLC 4407 GRAND BLVD NEW PORT RICHEY, FL 34652 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 2020/01/22 First Use In Commerce: 2020/02/03 All goods and services in the class are opposed, namely: Insect repellents
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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.	3430796	Application Date	09/14/2007
Registration Date	05/20/2008	Foreign Priority Date	NONE
Word Mark	WILBUR-ELLIS		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 001. First use: First Use: 1922/01/01 First Use In Commerce: 1922/01/01 Chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seeds, surfactants for use in agricultural sprays and adjuvants, soil surfactants, surfactants for use in connection with agricultural pesticides, adjuvants for use with pesticides, adjuvants for use in the manufacture of a wide variety of goods; Fertilizers; Plant food; Plant growth regulators for agricultural use; Substances for regulating plant growth; Chemicals for use in the manufacture of a wide variety of goods</p> <p>Class 005. First use: First Use: 1922/01/01 First Use In Commerce: 1922/01/01 Pesticides; Animal feed supplements</p> <p>Class 035. First use: First Use: 1922/01/01 First Use In Commerce: 1922/01/01 Distributorship services in the field of agricultural chemicals, feed, and supplies; Goods import/export agencies</p> <p>Class 044. First use: First Use: 1922/01/01 First Use In Commerce: 1922/01/01 Providing agricultural advice; Farm consultation services</p>

U.S. Registration No.	5531925	Application Date	10/23/2017
Registration Date	07/31/2018	Foreign Priority Date	NONE
Word Mark	WILBUR-ELLIS		
Design Mark			
Description of Mark	The mark consists of the image of a globe positioned to the left of the words "WILBUR-ELLIS".		
Goods/Services	<p>Class 044. First use: First Use: 2017/12/04 First Use In Commerce: 2017/12/04 Agricultural advice; Agricultural advice, namely, providing recommendations for plant and soil nutrition supplements; Pest control services for agriculture, aquaculture, horticulture and forestry; Spreading of fertilizers and other agricultural chemicals</p>		

U.S. Registration No.	1800349	Application Date	07/16/1992
Registration Date	10/26/1993	Foreign Priority Date	NONE
Word Mark	WILBUR-ELLIS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 001. First use: First Use: 1992/05/29 First Use In Commerce: 1992/05/29 farm chemicals for use in agriculture; namely, activated charcoal, adjuvants, agricultural fumigants, fertilizers and plant nutrients, fungicides, herbicides and harvest aids, insecticides and insectbaits, plant sun protectants, seed protectants (color coatings and dyes, commercial fungicides, hopper box treatments, insecticides), soil fumigants, soil-turfpenetrants, spray tank cleaners and neutralizers, sulfur, surfactants</p> <p>Class 042. First use: First Use: 1992/02/01 First Use In Commerce: 1992/02/01 distributorship in the field of farm chemicals, feed and food</p>		

Attachments	88871897 Notice of Opposition.pdf(104015 bytes )
Signature	//randytroxel//
Name	Randy Troxel
Date	08/18/2020

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.: 88871897

Mark: Wilbur & Co

Filed: Apr. 14, 2020

Opposer

Wilbur-Ellis Company LLC

v.

Applicant

Rockin' Horse Farm, LLC dba Happy Critter



**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, 27<sup>th</sup> Floor, San Francisco, CA 94104.
2. On information and belief, Applicant Rockin' Horse Farm, LLC dba Happy Critter, is a Florida limited

liability company having its principle place of business at 4407 Grand Blvd, New Port Richey, FL 34652.

3. On information and belief, both Opposer and Applicant promote, sell, and/or otherwise provide related products in the U.S.
4. Opposer owns the following U.S. trademark registrations (among others):

<u>Mark</u>	<u>Reg. No.</u>	<u>Class(es)</u>
WILBUR-ELLIS	3430796	01, 05, 35, 44
 WILBUR-ELLIS	5531925	44
 WILBUR-ELLIS	1800349	01, 44

5. Opposer has continuously used its WILBUR-ELLIS registered trademark in the United States since at least as early as January 1922.
6. Wilbur-Ellis Company was first registered in California as a Domestic Stock Corporation on July 6, 1923.
7. On information and belief, Applicant provides “Insect repellants” in the U.S. under the mark Wilbur & Co.

8. On information and belief, Applicant first used its Wilbur & Co mark in the U.S. for “insect repellants” at least as early as Jan. 22, 2020.
9. Opposer’s trademark registrations cover variety of goods and services, for example:

“Insecticides and insect baits;” “Pesticides;” “Pest control services for agriculture, aquaculture, horticulture and forestry;” “Surfactants for use in connection with agricultural pesticides, adjuvants for use with pesticides, adjuvants for use in the manufacture of a wide variety of goods;” “Distributorship services in the field of agricultural chemicals, feed, and supplies; Goods import/export agencies;” “Providing agricultural advice; Farm consultation services.”
10. Opposer’s full-service professional and agricultural provisions include a variety of goods and services, including those related to insect repellants.
11. Opposer has extensively advertised, promoted, and marketed its goods and services such that consumers have come to know and recognize Opposer’s trademarks, both registered and common law marks, as identifying products and services which originate with or are authorized by Opposer.
12. 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.

13. 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 Applicant's goods.
14. Opposer believes it will be injured by registration of Applicant's proposed Wilbur & Co mark.

WHEREFORE, Opposer prays that the mark in Application Ser. No. 88871897 be refused registration.

Dated: August 18, 2020

Respectfully submitted,

By: //randytroxel//

Randy Troxel

Counsel for Opposer

Wilbur-Ellis Company LLC

Trademark-Associates

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Please refer to Our File: 834-800-088