

ESTTA Tracking number: **ESTTA1122661**

Filing date: **03/24/2021**

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	SYNGENTA PARTICIPATIONS AG		
Entity	Aktiengesellschaft	Citizenship	Switzerland
Address	SCHWARZWALDALLEE 215 BASEL, 4058 SWITZERLAND		
Attorney information	JOVAN N. JOVANOVIC THE WATSON IP GROUP, PLC 3133 HIGHLAND DR. SUITE 200 HUDSONVILLE, MI 49426 UNITED STATES Primary Email: docketing@watson-ip.com Secondary Email(s): jjovanovic@watson-ip.com, sstumpo@watson-ip.com, global.trademarks@syngenta.com 6167971000		
Docket Number	IPA211552		

Applicant Information

Application No.	88874261	Publication date	02/23/2021
Opposition Filing Date	03/24/2021	Opposition Period Ends	03/25/2021
Applicant	Bladerunner Farms, Inc. 802 HOWARD ROAD POTEET, TX 78065 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Sod

Grounds for Opposition

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

U.S. Registration No.	2777904	Application Date	08/02/2002
Registration Date	10/28/2003	Foreign Priority Date	NONE

Word Mark	PRIMO MAXX
Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 1999/09/15 First Use In Commerce: 1999/09/15 PLANT GROWTH REGULATORS FOR AGRICULTURAL USE, NAMELY TURF GROWTH REGULATOR Class 005. First use: First Use: 1999/09/15 First Use In Commerce: 1999/09/15 FUNGICIDES FOR AGRICULTURAL AND DOMESTIC USE

Attachments	NoticeOfOppositionIPA211552.pdf(270314 bytes)
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Signature	/s Jovan N. Jovanovic/
Name	Jovan N. Jovanovic
Date	03/24/2021

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

Syngenta Participations AG

Opposer,

v.

Bladerunner Farms, Inc.

Applicant.

Opposition No. _____

Serial No.: 88/874,261

Mark:




NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. BOX 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Syngenta Participations AG (“Opposer”), a Aktiengesellschaft, organized under the laws of Switzerland, having an address of Schwarzwaldallee 215, Basel, 4058, Switzerland, believes it will be damaged by registration of U.S. Trademark Application Serial No. 88/874,261

(“Application”) for the mark  , hereinafter referred to as PRIMO ZOYSIA

(“Applicant’s Mark”), filed on April 16, 2020, by Bladerunner Farms, Inc, a Texas Corporation having an address of 802 Howard Road, Poteet, Texas, United States, 78065 (“Applicant”) and hereby opposes the same.

As grounds for opposition, it is alleged:

1. By the Application filed on April 16, 2020, Applicant seeks to obtain registration on the Principal Register for the trademark PRIMO ZOYSIA for *Sod* in International Class 031. (“Applicant’s Goods”). The Application was filed based on Applicant’s bona fide intent to use the subject mark in commerce.
2. Through entry of the disclaimer of “PRIMO ZOYSIA”, Applicant makes no claim to the exclusive right to use “PRIMO ZOYSIA” apart from the mark as shown.
3. Opposer is a leading global agriculture company that helps improve global food security by enabling millions of farmers to make better use of available resources. Opposer’s goods support a broad array of applications, but not limited to, growth regulation for turf, crop protection, healthy soil and better vegetable availability on the shelf.
4. Since at least as early as September 15, 1999, long before Applicant filed the Application, Opposer has provided and continues to provide its goods in connection with Opposer’s registered PRIMO MAXX (“Opposer’s Mark”).
5. Opposer through substantial use and promotion, has acquired significant goodwill and consumer recognition in its PRIMO MAXX mark. Opposer’s Mark is strong and well-known.
6. To protect its substantial goodwill and investment in its PRIMO MAXX mark, in addition to any common law rights, Opposer is the owner of U.S. Registration No. 2777904 for *Plant growth regulators for agricultural use, namely turf growth regulation* in International Class 001 and *Fungicides for agricultural and domestic use* in International Class 005. Opposer first used the PRIMO MAXX Registration for over twenty-one and a half (21.5) years before Applicant filed the Application. True and correct copies of the specifics of the PRIMO MAXX

Registration obtained from the PTO's TESS database is attached hereto as Exhibit A and made of record.

7. Hereinafter in the Notice of Opposition, the goods identified in Opposer's Federal registration as specified in Paragraph 5 above are valid, subsisting, unrevoked, and uncancelled. As such, they constitute *prima facie* evidence of the validity of the registered mark and of the registration thereof, Opposer's ownership of the PRIMO MAXX mark shown therein, and Opposer's exclusive right to use the registered mark in commerce in connection with the goods named therein, without condition or limitation. The Federal registration also constitutes notice to Applicant of Opposer's claim of ownership of the PRIMO MAXX mark shown therein, all as provided in Sections 7(b), 22 and 33(a) of the Trademark Act, as amended.

8. Further, Opposer's Federal registration as specified in Paragraph 5 above is incontestable. Section 15 of the Trademark Act, 15 U.S.C § 1065. Therefore, the registration constitutes conclusive evidence of the validity of the registered mark and of the registration of the mark, of Opposer's ownership of its mark, and of Opposer's exclusive right to use the registered mark in commerce as provided in Section 33 of the Lanham Act, 15 U.S.C. § 1115.

9. Opposer's first use date, filing date, and registration date for the Federal registration specified in Paragraph 5 substantially precede the Application's filing date. Accordingly, Applicant knew or should have known of Opposer's ownership, use and registration of the PRIMO MAXX mark prior to the filing date of the Application.

10. In addition to the protection afforded to Opposer by its Federal trademark registration, Opposer has extensive common law rights in its PRIMO MAXX mark in connection with the goods with which Opposer uses the PRIMO MAXX mark, including without limitation, Opposer's Goods, throughout the United States. Opposer has acquired such common law rights

through long-standing, exclusive use of its PRIMO MAXX mark in interstate commerce for over twenty-one and half (21.5) years. Opposer's common law rights in its PRIMO MAXX mark were established long before and predate the filing of the Application.

11. Opposer additionally relies on the foregoing senior common law trademark rights in Opposer's PRIMO MAXX mark as a ground for this Opposition.

12. Applicant's PRIMO ZOYSIA mark and Opposer's PRIMO MAXX mark are highly similar in sight, sound, meaning and commercial impression.

13. Applicant's Goods are highly related to Opposer's Goods.

14. Applicant's consumers and trademark channels are identical or overlapping with Opposer's consumers and trade channels.

15. Applicant's use of the PRIMO ZOYSIA mark will result in confusion by third parties with Opposer's PRIMO MAXX mark.

16. In view of the above, it is alleged that Applicant's PRIMO ZOYSIA mark so resembles Opposer's PRIMO MAXX mark that Applicant's mark will likely cause, and continue to cause, confusion or cause mistake or deceive under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). In view of Opposer's prior statutory and common law trademark rights, Applicant is not entitled to registration of Applicant's mark subject to the Application for the identified Applicant's Goods pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

17. By reason of the foregoing, Opposer will be damaged by the Registration of U.S. Application Serial No. 88/874,261 for PRIMO ZOYSIA mark.

WHEREFORE, Opposer requests that U.S. Trademark Application Serial No. 88/874,261 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Dated: March 24, 2021

Respectfully submitted,

THE WATSON IP GROUP, PLC

 /s Jovan N. Jovanovic/
Jovan N. Jovanovic (Reg. No. 40039)
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EXHIBIT A



United States Patent and Trademark Office

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Word Mark PRIMO MAXX

Goods and Services IC 001. US 001 005 006 010 026 046. G & S: PLANT GROWTH REGULATORS FOR AGRICULTURAL USE, NAMELY TURF GROWTH REGULATOR. FIRST USE: 19990915. FIRST USE IN COMMERCE: 19990915

IC 005. US 006 018 044 046 051 052. G & S: FUNGICIDES FOR AGRICULTURAL AND DOMESTIC USE. FIRST USE: 19990915. FIRST USE IN COMMERCE: 19990915

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78150165

Filing Date August 2, 2002

Current Basis 1A

Original Filing Basis 1A

Published for Opposition August 5, 2003

Registration Number 2777904

Registration Date October 28, 2003

Owner (REGISTRANT) Syngenta Investment Corp. CORPORATION DELAWARE c/o Trademark Department 410 Swing Road Greensboro NORTH CAROLINA 27409

(LAST LISTED OWNER) SYNGENTA PARTICIPATIONS AG CORPORATION SWITZERLAND Schwarzwaldallee 215 Basel SWITZERLAND CH-4058

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Jovan N. Jovanovic

Prior Registrations 1742090

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130126.

Renewal 1ST RENEWAL 20130126

**Live/Dead
Indicator** LIVE

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