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

Proceeding no.	91271087
Party	Plaintiff Jemie B.V.
Correspondence address	JONATHAN JENNINGS PATTISHALL MCAULIFFE NEWBURY HILLIARD & GERALDSON LLP 200 S WACKER DRIVE SUITE 2900 CHICAGO, IL 60606 UNITED STATES Primary email: jsj@pattishall.com Secondary email(s): pb@pattishall.com, ntp@pattishall.com, docket@pattishall.com, jin@pattishall.com 312-554-8000
Submission	Motion to Amend Pleading/Amended Pleading
Filer's name	Novaira T. Paul
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Signature	/Novaira T. Paul/
Date	01/17/2023
Attachments	Jemie Motion for Leave to Amend Notice of Opp. CANNATERRA FILING.pdf(725404 bytes )

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

JEMIE B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91271087
	)	
TODD HIMLE,	)	
	)	
Applicant.	)	

**OPPOSER'S MOTION FOR LEAVE TO FILE  
FIRST AMENDED NOTICE OF OPPOSITION AND FOR A SUSPENSION AND  
EXTENSION OF THE DISCOVERY AND TESTIMONY DEADLINES**

Opposer, Jemie B.V. ("Jemie" or "Opposer"), hereby moves under Rule 15(a) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.115 for leave to amend its Notice of Opposition (Dkt. No. 1) to assert Jemie’s ownership in its “CANNA-family of marks and names,” to re-order and elaborate upon certain allegations, and to add specific references to its aforesaid family of marks and names. Opposer asserts that it has good cause in moving to amend during the discovery period because the grant of this motion will not prejudice Applicant.

Pursuant to Fed. R. Civ. P. 6(b), 37 C.F.R. § 2.116(a), 37 C.F.R. § 2.127 and TBMP § 510.03(a), Opposer also hereby moves for the suspension of this proceeding, and an extension of the expert and fact discovery and testimony deadlines in this proceeding by thirty (30) days after the disposition of this motion to amend and any response thereto filed by Applicant<sup>1</sup>. Opposer submits that it has good cause for this request as it must know the outcome of its motion to amend, and any response filed thereto by Applicant, in order to adequately conduct discovery and present its case at trial. The additional time is needed to complete this discovery prior to the

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<sup>1</sup> The next deadline on the schedule is the deadline for expert discovery, which, because of the weekend and holiday falls on January 17, 2023 (today).

testimony period. This proceeding is in the initial discovery period after being reset following the filing and withdrawal of a motion to compel by Applicant. Dkt. No. 19.

In support of this motion, Opposer submits below the Memorandum of Points and Authorities and attaches the Declaration of Phillip Barengolts as Exhibit 1 (the “Barengolts Decl.”), as well as a copy of Opposer’s proposed First Amended Notice of Opposition (“Amended Notice”) as Exhibit 2. Opposer also submits a redlined copy of the proposed amended pleading as Exhibit 3.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. FACTUAL BACKGROUND**

Opposer filed a Notice of Opposition on August 16, 2021, against the application to register CANNATERRA (Ser. No. 88/232,121) in Classes 16, 35 and 41 (the “Opposed Application”) on grounds of priority and likelihood of confusion. (Dkt. No. 1). Opposer did not oppose the mark in class 25. Applicant filed its answer and affirmative defenses on June 20, 2022 (Dkt. No. 14). The parties engaged in extensive settlement negotiations and agreed to numerous extensions of time since the filing of the notice of opposition to allow time for these negotiations. Barengolts Decl. at ¶ 4. Apart from exchanging initial disclosures, on January 13, 2023, Applicant served Applicant’s First Set of Requests for Production, First Set of Interrogatories and First Set of Requests for Admissions. *Id.* at ¶ 7. The parties have engaged in no other discovery. *Id.* The discovery deadline is currently February 14, 2023. This is the first discovery period after the Board reset the dates after the filing and withdrawal of Applicant’s motion to compel. Dkt. No. 14. Prior to this, Opposer has not sought an extension of the discovery and testimony deadlines in this proceeding without the consent of Applicant. Barengolts Decl. at ¶ 4.

Opposer alleged the existence of a “CANNA-family of marks” when it filed its Notice on August 16, 2021. *See* Notice of Opposition. At the time Opposer submitted its initial disclosures in this proceeding on October 11, 2022, Opposer noted the existence of the CANNA family of marks and names. Thus, Applicant has been aware of Opposer’s assertion that it owns a family of marks since as early as August 16, 2021, and since October 11, 2022, it has been aware of Opposer’s assertion of a family of CANNA-formative marks and names. *Id.*

Finally, as part of its CANNA family of marks and names, Opposer uses the name CANNA CONTINENTAL with its business and the mark CANNA TERRA in connection with a product line developed for plant growth and care. Barengolts Decl. at ¶ 6. This CANNA TERRA mark is a specific example of the CANNA family of marks that Opposer pled in its original Notice of Opposition in this proceeding. *Id.*

## **II. OPPOSER’S PROPOSED FIRST AMENDED NOTICE OF OPPOSITION**

In paragraphs 1-2 of the proposed Amended Notice, Opposer describes in more detail the industries it operates in and the goods and services it offers, and references the website at which its licensee markets products under the family of CANNA-formative names and marks. In paragraph 3, it makes it clear that CANNA-formative names are part of the CANNA family of marks and names and notes an example of such a name in CANNA CONTINENTAL. In paragraph 4 of the proposed Amended Notice, Opposer notes CANNA TERRA as an example of the CANNA-formative marks that comprise the CANNA-family of marks and names. Finally, in paragraphs 6-9, and 12, Opposer expands upon its allegations to note the “CANNA-family of marks and names.” Thus, Opposer is asserting that the family includes CANNA-formative names and the CANNA TERRA mark.

### III. LEGAL STANDARD

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action. 37 C.F.R. § 2.107(a); TBMP § 315. Accordingly, amendments in Board proceedings are governed by FRCP 15(a). See also TBMP § 507.01. FRCP 15(a) provides that leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a); *Kemin Foods, L.C. v. Pigmentos Vegetales Del Centro S.A. de C.V.*, 464 F.3d 1339, 80 USPQ2d 1385, 1396 (Fed. Cir. 2006).

### IV. ANALYSIS

Under Fed. R. Civ. P. 15(a)’s liberal standard, Opposer’s motion for leave to amend should be granted unless Applicant makes a strong showing of undue prejudice, bad faith, dilatory motive, or futility. *Embarcadero Techs., Inc. v. Delphix Corp.*, 117 USPQ2d 1518, 1523 (TTAB 2016) (“In deciding whether to grant leave to amend, the Board may consider undue delay, prejudice to the opposing party, bad faith or dilatory motive, futility of the amendment, and whether the party has previously amended its pleadings.”) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). As further discussed below, given that this proceeding is in the discovery stage, the lack of prejudice to Applicant, and the Board’s liberal standard for granting amendments prior to the close of discovery, leave to amend is warranted.

#### A. **The Proposed First Amended Notice of Opposition Does Not Prejudice Applicant.**

Opposer’s proposed First Amended Notice of Opposition will not cause any undue prejudice to Applicant because Applicant has been aware of some of the issues covered by the amendments already, namely, the allegations concerning a CANNA-family of marks and names that is the subject of the proposed amended pleading. See Amended Notice ¶¶ 3-5. See *Valvoline Licensing & Intellectual prop. LLC v. Sunpoint Int’l Group USA Corp.*, 2021 WL 3164036, at \*5

(TTAB 2021) (granting amendment to plead prior use and registration of a mark as an additional basis for its Section 2(d) claim where discovery had not yet opened and the proposed amendment would not significantly expand the scope of the case). The other changes in the amended notice simply reorder and amplify certain allegations and make them more succinct—no additional claims or grounds have been asserted. *See* Amended Notice ¶¶1-13 *Avedis Zildjian Co. v. D. H. Baldwin Co.*, 180 USPQ 539, 541 (TTAB 1973) (“[A]mendments need not of themselves set forth a cause of action, it being sufficient for the purpose that they may serve to amplify allegations already set forth in the moving party’s pleadings.”); *Care Corp. v. Nursecare Int’l, Inc.*, 216 USPQ 993, 1982 WL 54119, at \*4 (TTAB 1982) (“Allowance of [an] amended opposition would not prejudice applicant since no new grounds are asserted.”).

This proceeding is still in the pretrial stage, Applicant has only just issued discovery, there has been no other discovery taken, and Applicant already is in possession of information that relates to some of the amendments sought here. The Board is clear that when a motion for leave to amend is made during the pretrial phase of an opposition proceeding, there is no prejudice to the non-moving party. *Levi Strauss & Co. v. Kevin Henry Armant*, 2020 WL 4530523, at \*2-3 (TTAB Aug. 4, 2020) (non-precedential) (“Generally speaking, if the Board proceeding is still in the pre-trial stage, leave to amend, if otherwise appropriate, will be given.”).

In fact, the Board has allowed amendments to pleadings at much later stages than that requested by Opposer. *See Focus 21 Int’l Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 USPQ2d 1316, 1318 (TTAB 1992) (permitting motion to amend filed prior to opening of petitioner's testimony period). Applicant will have the full opportunity to take discovery on the amended allegations, as well as to present facts and evidence to support its defense at trial based on the proposed amended pleading. Opposer will not oppose an extension of time reasonably

needed to accomplish this discovery or Applicant's reasonable request for supplemental discovery relating to the amended allegations.

**B. Opposer Has No Dilatory Motive in Seeking to Amend its Notice of Opposition.**

Opposer is acting without any dilatory motive. The proceeding has not settled despite many attempts by the parties to negotiate for such an outcome, and Opposer must move forward with its case. In deciding to move now, in the midst of the discovery period, "there is no evidence that Opposer has acted in bad faith in doing so." *Levi Strauss & Co.*, 2020 WL 4530523, at \*3.

**C. Opposer's Proposed First Amended Notice of Opposition is Not Futile.**

Opposer's proposed First Amended Notice of Opposition is not futile because the newly added allegations are properly pled. The amendments help demonstrate Opposer's extensive and broad use of its CANNA-family of marks and names, and make more pointed allegations consistent with what it plead in its original Notice. *See* Amended Notice ¶¶1-3. The additional CANNA TERRA mark pled expands upon its earlier allegations asserting a family of CANNA-formative marks and is nearly identical to Applicant's mark opposed herein. *See id.* at ¶ 4. Adding these allegations in support of its Notice, as Opposer seeks to do so, is far from the type of "futile" change to a pleading that would bar amendment. *See, e.g., Be Sport, Inc. v. al-Jazeera Satellite Channel*, 115 USPQ2d 1765 (TTAB 2015) (amendment was futile where it sought to add a proposed defense barred by res judicata).

**D. Opposer Has Not Previously Amended its Notice of Opposition**

In considering whether to grant a motion to amend, the Board will also consider whether the moving party has previously amended its pleading. *Embarcadero*, 117 USPQ2d at 1523. If a party has not previously amended its pleading, then the party should generally be permitted to

amend its pleading in accordance with FRCP 15(a)'s liberal policy allowing amendments. *SaddleSprings, Inc. v. Mad Croc Brands, Inc.*, 2014 WL 1649335, at \*6 (TTAB Mar. 31, 2014) (non-precedential) (“Furthermore, we note that petitioner has not abused its right to amend its pleading since this is the first instance where petitioner has sought to do so.”); *Cf., Am. Express Mktg & Dev. Corp. v. Gilad Dev. Corp.*, 94 USPQ2d 1294, 2010 WL 956669 at \*3 (TTAB 2010) (non-precedential) (no abuse of amendment privileges where applicant sought to amend its pleading, an answer, for the first time).

Here, Opposer has not previously amended its Notice of Opposition and accordingly, the Board should permit Opposer to amend its Notice of Opposition.

#### **V. GOOD CAUSE FOR A SUSPENSION AND EXTENSION OF TIME**

As noted above in Section IV, this motion to amend raises important issues that are germane to the outcome of this proceeding. They directly relate to likelihood of confusion over the parties' marks and to the evidence of this claim that will be considered. Opposer needs to know the outcome of this motion, and what claims are at issue after Applicant responds to the amended pleading, in order to know how and in what manner to conduct its discovery of Applicant. Barengolts Decl. at ¶ 7. In this scenario, suspending the proceeding while the Board decides the motion to amend is appropriate. *See, e.g., SDT, Inc. v. Patterson Dental Co.*, 30 USPQ2d 1707, 1994 WL 237393, at \*1 (TTAB Mar. 7, 1994) (“in view of the nature of the issue raise by opposer's motion to amend, it would be unreasonable to expect either party to take discovery or offer evidence prior to the determination of the motion”); *Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 5 USPQ2d 1067 (TTAB 1987) (good and sufficient cause found to reset discovery and testimony periods where motion to amend pending).



In addition, prior to this, Opposer has not sought an extension of the deadlines in this proceeding without Applicant's consent. The early stipulated extensions of the time to answer or otherwise plead and of the discovery and testimony periods were tied to settlement negotiations. Barengolts Decl. at ¶ 4. The additional time is now needed to complete its discovery of Applicant on the issues raised in the amended pleading and any response thereto filed by Applicant. *Id.* at ¶ 7.

## **VI. CONCLUSION**

For the foregoing reasons, Opposer respectfully requests that the Board grant Opposer's motion for leave to file Opposer's first Amended Notice of Opposition and that Opposer has submitted good cause to suspend this proceeding and reset and extend the applicable deadlines after reaching its decision on the underlying motion.

Dated: January 17, 2023

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

By: /Novaira T. Paul /  
Jonathan S. Jennings  
Phillip Barengolts  
Novaira Paul  
200 South Wacker Drive  
Suite 2900  
Chicago, Illinois 60606  
(312) 554-8000

*Attorneys for Opposer, Jemie B.V.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OPPOSER'S MOTION FOR LEAVE TO FILE FIRST AMENDED NOTICE OF OPPOSITION AND FOR A SUSPENSION AND EXTENSION OF THE DISCOVERY AND TESTIMONY DEADLINES was served upon Applicant, via its counsel, on January 17, 2023 via e-mail, at the following address:

David S, D'Ascenzo  
Dascenzo Gates, P.C.  
1000 S.W. Broadway, Suite 1555  
Portland, Oregon 97205  
[david@dgip.law](mailto:david@dgip.law)

s/Novaira T. Paul

# **Exhibit 1**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

JEMIE B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91271087
	)	
TODD HIMLE,	)	
	)	
Applicant.	)	

**DECLARATION OF PHILLIP BARENGOLTS**  
**IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST AMENDED NOTICE OF**  
**OPPOSITION AND FOR A SUSPENSION AND EXTENSION OF THE DISCOVERY**  
**AND TESTIMONY DEADLINES**

I, Phillip Barengolts, pursuant to 28 U.S.C. § 1746, hereby declare the following:

1. I am a partner in the law firm of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, counsel for Opposer, Jemie B.V. (“Jemie” or “Opposer”). I have personal knowledge of the facts stated herein and could, if called as a witness, testify competently as to them.
2. On August 16, 2021, Jemie filed its Notice of Opposition against the application to register CANNATERRA (Ser. No. 88/232,121) in Classes 16, 35 and 41.
3. Applicant, Todd Himle (“Applicant”), filed his answer and affirmative defenses on June 20, 2022.
4. On many occasions, from the time of the filing of the original notice of opposition in this proceeding, until most recently, on November 14, 2022, Jemie’s counsel and Applicant’s counsel have discussed and negotiated the potential settlement of this proceeding. The parties have agreed to numerous extensions of the time to answer the original notice of opposition, as

well as of the relevant and corresponding discovery and testimony periods, since the filing of the notice of opposition in order to allow time to conduct these settlement negotiations. This is Opposer's first request for an extension of the discovery and testimony period deadlines without having Applicant's consent.

5. Most recently, on December 3, 2019, Jemie obtained a registration for another mark that belongs to its CANNA family of marks and names, BIOCANNA (Reg. No. 5,924,171), in connection with goods in Class 1.

6. Opposer has used the name CANNA CONTINENTAL in connection with its business, and the mark CANNA TERRA in connection with a product line developed for plant growth and care. This name and mark belong to the "CANNA family of marks and names" and the incorporation of the "CANNA family of marks and names" amplifies the existing allegations concerning likelihood of confusion.

7. On January 13, 2023, Applicant served its first set of interrogatories, document requests, and requests for admissions. The parties have engaged in no other discovery. Applicant will need additional time to allow for discovery on the issues raised in the amended pleading and any response thereto filed by Applicant. Opposer has no objection to Applicant being provided with reasonable additional discovery or time pertaining to the amended allegations.

8. Jemie's proposed First Amended Notice of Opposition, along with a redline showing changes from the original Notice of Opposition, are attached hereto as Exhibit 3.

Dated: January 17, 2023

Respectfully submitted,

PATTISHALL, MCAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

By: /Phil Barengolts /  
Jonathan S. Jennings  
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[jae@pattishall.com](mailto:jae@pattishall.com)

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing DECLARATION OF PHILLIP BARENGOLTS IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST AMENDED NOTICE OF OPPOSITION AND FOR A SUSPENSION AND EXTENSION OF THE DISCOVERY AND TESTIMONY DEADLINES was served upon Applicant, via its counsel, on January 17, 2023, via e-mail, at the following address:

David S, D'Ascenzo  
Dascenzo Gates, P.C.  
1000 S.W. Broadway, Suite 1555  
Portland, Oregon 97205  
[david@dgip.law](mailto:david@dgip.law)

/Novaira Paul /

# **Exhibit 2**



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

In re Application Serial No. 88/232,121 — CANNATERRA

JEMIE B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91271087
	)	
TODD HIMLE,	)	
	)	
Applicant.	)	

**FIRST AMENDED NOTICE OF OPPOSITION**

Jemie B.V. (“Opposer”), a Netherlands limited liability company located at Beneluxweg 37, 4904 SJ, Oosterhout, NL4904SJ, Netherlands, believes it will be damaged by registration of the mark CANNATERRA shown in Application Serial No. 88/232,121 (the “Opposed Mark”) by Todd Himle (“Applicant”), and hereby opposes the same.


The grounds for the opposition are as follows:

1. Opposer, through its licensees, is a world leader in goods and services in the horticulture, agricultural and forestry fields, including goods and services relating to plant health, growth and care.
2. Opposer, through its licensees, has offered a wide variety of services in the aforesaid fields, including educational information services, research services, advice, and articles relating to growing, cultivating, fertilizing, and harvesting of plants and crops through various media, including the web site at the domain name <cannagardening.com> and the CANNATALK magazine.
3. Long prior to the filing of the application to register the Opposed Mark, Opposer began to use through its licensees in the United States a family of marks and names that share the

common distinctive element CANNA (the "CANNA-family of marks and names"), including, but not limited to, the trade name CANNA CONTINENTAL in connection with the above referenced goods and services.

4. As part of its CANNA-family of marks and names, Opposer uses the mark CANNA TERRA in connection with a product line developed for plant growing and care.

5. Opposer owns United States Trademark Registrations for the marks within the CANNA-family of marks and names, in the following formats:

<b>Mark</b>	<b>Registration No.</b>
CANNA	6,127,303
CANNA	5,129,939
	5,038,951
CANNABOOST	5,399,941
CANNA START	5,399,942
CANNAZYM	5,389,880
CANNATALK	4,986,807
BIOCANNA	5,924,171

Copies of the TESS status pages and registration certificates for Registration Nos. 6,127,303, 5,129,939, 5,038,951, 5,399,941, 5,399,942, 5,389,880, 4,986,807, and 5,924,171 are attached as Exhibit A.

6. Opposer, through its licensees, has sold an extensive amount of the aforesaid goods and services in connection with the CANNA-family of marks and names.

7. Opposer, through its licensees, has engaged in extensive advertising and promotion of the aforesaid goods and services in connection with the CANNA-family of marks and names.

8. Well prior to the filing date of the application to register the Opposed Mark, and by virtue of the aforesaid extensive sales, advertising, and promotion of the goods and services, consumers have come to recognize the common characteristic CANNA as indicating Opposer as the source for the goods and services marketed under the CANNA-family of marks and names.

9. Opposer has built up and now owns a most valuable goodwill and reputation symbolized by its CANNA-family of marks and names.

10. On December 17, 2018, Applicant filed an intent-to-use application to register the mark CANNATERRA, Serial No. 88/232,121 for the following goods and services (class 25 goods are not reprinted below):

International Class 16: plastic and paper packaging, namely, envelopes, pouches, and bags; humidity control sheets of paper or plastic for packaging; writing paper and stationery; stickers, adhesive labels, paper labels, decals, bumper stickers, pictures, postcards, posters, graphic prints, paper banners, paper flags, pens and pencils; printed publications, namely, newsletters, brochures, reports and guides relating to cannabis, legal, political and medical research developments regarding cannabis, cannabis history, cannabis seeds, cannabis strains, genotypes, and phenotypes, proper storage and handling of cannabis, and the safe and effective use of cannabis

International Class 35: direct marketing of the goods and services of others; marketing services in the field of arranging for the distribution of the products of others; digital marketing of the goods and services of others via websites, e-mail, apps, and social networks; online and retail store services featuring a wide variety of consumer goods of others excluding any goods which contain or are used primarily with cannabis products having a delta-9 THC concentration of more than 0.3% on a dry weight basis, any goods meant for ingestion containing cannabidiol, and any goods for medical or therapeutic use containing cannabidiol; online and retail store services featuring jewelry, watches, clocks, stickers, bumper stickers, novelty magnets, refrigerator magnets, eyewear, sunglasses, pictures, postcards, posters, graphic prints, banners, lanyards, flags, pens and pencils, stationery, athletic bags, backpacks, carry-all bags, tote bags, and duffel bags, wallets, umbrellas, furniture, water bottles, sports bottles, coffee mugs, beer mugs, travel mugs, drinking glasses, coasters, pill bottles and boxes, bottle openers, glass jars, pet bowls and

pet feeding dishes, housewares, decorative pots, incense burners, candle holders, plant and flower pots, portable coolers, clothing, headwear, footwear, novelty buttons, belt buckles, patches for clothing and bags, food products not containing cannabidiol or any ingredients derived from the plant Cannabis sativa L, beverages not containing cannabidiol or any ingredients derived from the plant Cannabis sativa L, lighters for smokers, ashtrays; operation of a website providing business and consumer information about the cannabis industry, cannabis products and services, and cannabis strains, seeds, genotypes, and phenotypes; providing on-line consumer information in the field of laws and regulations pertaining to cannabis; operation of a website providing consumer information in the nature of ratings and reviews of particular cannabis seeds, strains, genotypes, and phenotypes; providing online consumer information about cannabis and in the field of cannabis

International Class 41: operation of a website providing information about cannabis history for educational purposes; educational services, namely, the production and publication of audio, visual and print materials relating to educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing online non-downloadable pre-recorded video in any format containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing non-downloadable electronic brochures containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing non-downloadable electronic newsletters containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing non-downloadable online videos containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing an on-line news blog in the field of cannabis, and research, laws and regulations pertaining thereto; operation of a website featuring information, ratings and reviews of particular cannabis strains, seeds, genotypes, and phenotypes for educational purposes; publication of electronic newspapers accessible via a global computer network; publishing of electronic publications; publishing of web magazines.

11. Opposer does not oppose Applicant's goods in Class 25.
12. Applicant's application to register the Opposed Mark, and Applicant's planned use of it, is without Opposer's consent.
13. Applicant's application to register the Opposed Mark and its planned use of the Opposed Mark, is likely to result in confusion, mistake, or deception with Opposer's CANNA-family of marks and names, the individual marks and names that comprise this family, or in the belief that Applicant or its planned use of the aforesaid goods and services are in some way

connected with, licensed, or approved by Opposer, or that Opposer is a sponsor, business partner of, or otherwise affiliated with Applicant.

14. Accordingly, registration by Applicant of the Opposed Mark for the aforesaid goods and services in classes 16, 35 and 41 would damage Opposer.

WHEREFORE, Opposer prays that its opposition be sustained and registration of the Opposed Mark for classes 16, 35 and 41 be refused.

Please address all correspondence to Jonathan S. Jennings, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 200 South Wacker Drive, Suite 2900, Chicago, Illinois 60606.

Dated: January 17, 2023

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

By: s/Novaira T. Paul/  
Jonathan S. Jennings  
Phillip Barengolts  
Novaira T. Paul  
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Chicago, Illinois 60606  
(312) 554-8000

*Attorneys for Jemie B.V.*

# **Exhibit 3**

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

In re Application Serial No. 88/232,121 — CANNATERRA

JEMIE B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
<u>                    91271087</u>	)	
	)	
TODD HIMLE,	)	
	)	
Applicant.	)	

**FIRST AMENDED NOTICE OF OPPOSITION**

Jemie B.V. (“Opposer”), a Netherlands limited liability company located at Beneluxweg 37, 4904 SJ, Oosterhout, NL4904SJ, Netherlands, believes it will be damaged by registration of the mark CANNATERRA shown in Application Serial No. 88/232,121 (the “Opposed Mark”) by Todd Himle (“Applicant”), and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer, through its licensees, is a world leader in goods and services in the horticulture ~~field~~, agricultural and forestry fields, including goods and services relating to plant health, growth and care.

2. Opposer, through its licensees, has offered a wide variety of services in the aforesaid fields, including educational information services, research services, advice, and articles relating to growing, cultivating, fertilizing, and harvesting of plants and crops through various media, including the web site at the domain name <cannagardening.com> and the CANNATALK magazine.

3. Long prior to the filing of the application to register the Opposed Mark, Opposer ~~adopted and~~ began to use through its ~~licensee~~licensees in the United States a family of marks and names that share the common distinctive element CANNA (the "CANNA-family of marks") ~~for and names"), including, but not limited to, the trade name CANNA CONTINENTAL in connection with the above referenced goods that promote and services.~~

2.4. As part of its CANNA-family of marks and names, Opposer uses the mark CANNA TERRA in connection with a product line developed for plant health, growthgrowing and care as well as a wide variety of services consisting of providing educational information and materials, research services, advice, and articles relating to growing, cultivating, fertilizing, care, and harvesting of plants and crops.

3.5. Opposer owns United States Trademark Registrations for the marks within the CANNA-family of marks as followsand names, in the following formats:

<b>Mark</b>	<b>Registration No.</b>
CANNA	6,127,303
CANNA	5,129,939
<b><u>CANNA</u></b>	5,038,951
CANNABOOST	5,399,941
CANNA START	5,399,942
CANNAZYM	5,389,880
CANNATALK	4,986,807
BIOCANNA	5,924,171



Copies of the TESS status pages and registration certificates for Registration Nos. 6,127,303, 5,129,939, 5,038,951, 5,399,941, 5,399,942, 5,389,880, 4,986,807, and 5,924,171 are attached as Exhibit A.

~~4. Long prior to the filing of Applicant's application to register the Opposed Mark, Opposer adopted and began to use through its licensee in the United States the name CANNA as well as CANNA formative names in connection with the aforesaid goods and services.~~

~~5.6. Opposer through its licensee~~ Opposer, through its licensees, has sold an extensive amount of the aforesaid goods and services in connection with the CANNA-family of marks and names.

~~6.7. Opposer,~~ through its ~~licensee~~ licensees, has engaged in extensive advertising and promotion of the aforesaid goods and services in connection with the CANNA-family of marks and names.

~~8. Well prior to the filing date of the application to register the Opposed Mark, and by virtue of the aforesaid extensive sales, advertising, and promotion of the goods and services, consumers have come to recognize the common characteristic CANNA as indicating Opposer as the source for the goods and services marketed under the CANNA-family of marks and names; and,~~

~~7.9. Opposer has built up and now owns a most valuable goodwill and reputation symbolized by its CANNA-family of marks and names.~~

~~8.10. On December 17, 2018, Applicant filed an intent-to-use application to register the mark CANNATERRA, Serial No. 88/232,121 for the following goods and services: (class 25 goods are not reprinted below):~~

International Class 16: plastic and paper packaging, namely, envelopes, pouches, and bags; humidity control sheets of paper or plastic for packaging; writing paper and

stationery; stickers, adhesive labels, paper labels, decals, bumper stickers, pictures, postcards, posters, graphic prints, paper banners, paper flags, pens and pencils; printed publications, namely, newsletters, brochures, reports and guides relating to cannabis, legal, political and medical research developments regarding cannabis, cannabis history, cannabis seeds, cannabis strains, genotypes, and phenotypes, proper storage and handling of cannabis, and the safe and effective use of cannabis

**International Class 35:** direct marketing of the goods and services of others; marketing services in the field of arranging for the distribution of the products of others; digital marketing of the goods and services of others via websites, e-mail, apps, and social networks; online and retail store services featuring a wide variety of consumer goods of others excluding any goods which contain or are used primarily with cannabis products having a delta-9 THC concentration of more than 0.3% on a dry weight basis, any goods meant for ingestion containing cannabidiol, and any goods for medical or therapeutic use containing cannabidiol; online and retail store services featuring jewelry, watches, clocks, stickers, bumper stickers, novelty magnets, refrigerator magnets, eyewear, sunglasses, pictures, postcards, posters, graphic prints, banners, lanyards, flags, pens and pencils, stationery, athletic bags, backpacks, carry-all bags, tote bags, and duffel bags, wallets, umbrellas, furniture, water bottles, sports bottles, coffee mugs, beer mugs, travel mugs, drinking glasses, coasters, pill bottles and boxes, bottle openers, glass jars, pet bowls and pet feeding dishes, housewares, decorative pots, incense burners, candle holders, plant and flower pots, portable coolers, clothing, headwear, footwear, novelty buttons, belt buckles, patches for clothing and bags, food products not containing cannabidiol or any ingredients derived from the plant *Cannabis sativa L*, beverages not containing cannabidiol or any ingredients derived from the plant *Cannabis sativa L*, lighters for smokers, ashtrays; operation of a website providing business and consumer information about the cannabis industry, cannabis products and services, and cannabis strains, seeds, genotypes, and phenotypes; providing on-line consumer information in the field of laws and regulations pertaining to cannabis; operation of a website providing consumer information in the nature of ratings and reviews of particular cannabis seeds, strains, genotypes, and phenotypes; providing online consumer information about cannabis and in the field of cannabis

**International Class 41:** operation of a website providing information about cannabis history for educational purposes; educational services, namely, the production and publication of audio, visual and print materials relating to educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing online non-downloadable pre-recorded video in any format containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing non-downloadable electronic brochures containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing non-downloadable electronic newsletters containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing non-downloadable online videos containing educational information about cannabis, cannabis history, and about cannabis seeds, strains, genotypes, and phenotypes; providing an on-line news blog

in the field of cannabis, and research, laws and regulations pertaining thereto; operation of a website featuring information, ratings and reviews of particular cannabis strains, seeds, genotypes, and phenotypes for educational purposes; publication of electronic newspapers accessible via a global computer network; publishing of electronic publications; publishing of web magazines.

~~11. Opposer does not oppose Applicant's goods in Class 25.~~

~~9.12.~~ Applicant's application to register the Opposed Mark, and Applicant's planned use of it, is without Opposer's consent.

~~10.13.~~ Applicant's application to register the Opposed Mark and its planned use of the Opposed Mark, is likely to result in confusion, mistake, or deception with Opposer's CANNA-family of marks and names, the individual marks and names that comprise this family, ~~and the aforesaid names~~, or in the belief that Applicant or its planned use of the aforesaid goods and services are in some way connected with, licensed, or approved by Opposer, or that Opposer is a sponsor, business partner of, or otherwise affiliated with Applicant.

~~11. Opposer does not oppose Applicant's goods in Class 25.~~

~~12.14.~~ Accordingly, registration by Applicant of the Opposed Mark for the aforesaid goods and services in classes 16, 35 and 41 would damage Opposer.

WHEREFORE, Opposer prays that its opposition be sustained and registration of the Opposed Mark for classes 16, 35 and 41 be refused.

~~Opposer submits the requisite filing fee of \$1,800 for the opposition. Please debit any deficiency or credit any overpayment to Account No. 16-0650.~~ Please address all correspondence to Jonathan S. Jennings, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 200 South Wacker Drive, Suite 2900, Chicago, Illinois 60606.

Dated: ~~August 16, 2021~~ January 17, 2023  
NEWBURY,

PATTISHALL, McAULIFFE,  
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