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

Proceeding no.	91276103
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 88/885,823

FMC Corporation)	
)	
Opposer,)	
)	
v.)	Opposition No. 91276103
)	
Monsanto Company,)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Applicant, Monsanto Company (“Monsanto”) answers the Notice of Opposition filed by Opposer, FMC Corporation, as follows:

1. On information and belief, Monsanto Company is a United States corporation with its principal place of business at 800 N. Lindbergh Blvd., E2NA, St. Louis, Missouri 63167.

ANSWER: Admitted.

2. Opposer is a Delaware corporation with its principal place of business at 2929 Walnut Street, Philadelphia, Pennsylvania 19104.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

3. Opposer, FMC Corporation, is an agricultural sciences company engaged in the business of providing goods and services to growers in the fields of crop protection, plant health, and pest and turf management.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

4. At least as early as 2000, Opposer's predecessor began to invest an extraordinary amount of time and money building and growing its business. Since then, Opposer and its predecessor have continuously used the STEWARD trademark in connection with insecticides and related goods in commerce. Opposer serves agricultural, industrial, and consumer markets by delivering innovative agricultural solutions and application systems rooted in science, safety, and sustainability.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

5. Opposer owns United States Trademark Registration No. 2,430,195 for the mark "STEWARD" in connection with "insecticides for agricultural use" (International Class 05), filed in 1997 and maturing to registration in 2001.

ANSWER: Admitted.

6. Opposer's "STEWARD" mark is valid and incontestable. The registration is conclusive evidence of the validity of the "STEWARD" Mark, and of the registration of the mark, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the mark in commerce for the above-mentioned goods. A true and correct copy of the registration for Opposer's "STEWARD" Mark is attached hereto and incorporated herein as Exhibit A.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

7. The “STEWARD” mark has been continuously used in commerce since the year 2000. Considerable efforts have been expended to promote the “STEWARD” Mark. By virtue of these efforts and by virtue of the expertise and excellence of goods associated with the “STEWARD” Mark, the “STEWARD” Mark has achieved an extraordinary degree of consumer recognition and is uniquely associated and identified with Opposer. Moreover, the goodwill associated with the “STEWARD” Mark is an invaluable asset of Opposer.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

8. Applicant filed an application to register Applicant’s Mark on Use-In-Commerce basis under Section 1(a) of the Lanham Act on April 24, 2020 (hereinafter “Application”) which was published for opposition on April 12, 2022.

ANSWER: Monsanto admits it filed an application to register the mark



(Serial No. 88/885,823) on April 24, 2020 on a use-in-commerce basis under Section 1(a) of the Lanham Act, claiming a first-use date of Dec. 31, 2010. Monsanto and its predecessors have been using the STEWART word mark in connection with agricultural seeds for over 100 years. Application Serial No. 88/885,823 was published on April 12, 2022.

9. Applicant’s Mark covers “agricultural seeds” in Class 31.

ANSWER: Monsanto admits its application to register the mark



(Serial No. 88/885,823) covers “agricultural seeds” in Class 31.

10. The filing date of the Application is long after Opposer's established, longstanding rights in the incontestable "STEWARD" Mark.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

11. The claimed date of first use in commerce of Applicant's Mark is long after the Opposer's established, longstanding rights in the incontestable "STEWARD" Mark.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

12. Applicant's Mark is confusingly similar to the "STEWARD" Mark. The goods in connection with which Applicant uses Applicant's Mark are highly similar to the goods in connection with which Opposer uses the "STEWARD" Mark.

ANSWER: Denied.

13. On information and belief, the goods offered in connection with Applicant's Mark are advertised in the same or similar channels of trade as those offered in connection with the "STEWARD" Mark, and consumers of Opposer's and Applicant's goods and services are the same or similar.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

14. On information and belief, by virtue of Opposer's federal trademark registration for the "STEWARD" Mark, Applicant is deemed to be on constructive notice of Opposer's federal trademark rights as a matter of law.

ANSWER: Monsanto admits that ownership of a U.S. trademark registration provides constructive notice, but Monsanto and its predecessors have been using the STEWART word mark for agricultural seeds since 1918, long before the registration date of Opposer's Reg. No. 2,430,195.

15. Due to these and other factors, Applicant's use of STEWART is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods or commercial activities.

ANSWER: Denied.

16. Opposer has standing to bring this opposition and to assert each of the causes of action herein.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

COUNT I – LIKELIHOOD OF CONFUSION

17. Opposer repeats and incorporates by reference all of the foregoing paragraphs.

ANSWER: Monsanto re-alleges and incorporates its answers in the preceding paragraphs of this Answer, as though fully set forth herein.

18. As its ground for relief, Opposer claims priority and likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

ANSWER: Denied.

19. Opposer, through the use of its "STEWART" Mark and by virtue of the quality of Opposer's goods, has built up valuable goodwill and reputation with its "STEWART" Mark.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

20. Opposer's "STEWARD" Mark is distinctive, strong, and incontestable.

ANSWER: Denied.

21. Applicant's Mark is highly similar in appearance, sound, connotation, and commercial impression to the "STEWARD" Mark.

ANSWER: Denied.

22. A likelihood of confusion arises when the Applicant's Mark, as used on or in connection with the specified goods or services, so resembles a registered mark as to be likely to cause confusion. §TMEP 1207.01. Due to the similarities in appearance, sound, connotation, and commercial impression, along with the relatedness of the goods, Applicant's Mark is likely to cause confusion, mistake or to deceive the public, thus it is confusingly similar to Opposer's earlier "STEWARD" Mark.

ANSWER: Denied.

23. The following two factors are key considerations in any likelihood of confusion determination: the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression and the relatedness of the goods or services as described in the application and registration(s). *See, e.g., Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976); *In re Iolo Techs., LLC*, 95 4 USPQ2d 1498, 1499 (TTAB 2010); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1244 (TTAB 2010); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009).

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

24. It is sufficient that the goods and/or services of the applicant and the registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. *See, e.g., On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000).

ANSWER: Denied.

25. The “STEWARD” Mark was adopted and used long prior to Applicants’ filing date or first use date of Applicants’ Mark.

ANSWER: Denied.

26. Opposer’s “STEWARD” Mark was well-known, famous, and distinctive long prior to Applicant’s adoption, use, or application to register Applicants’ Mark.

ANSWER: Denied.

27. Registration of Applicant’s Mark is likely to cause confusion, to cause mistake, and to deceive the consuming public and jeopardize the valuable goodwill and reputation Opposer has built up in connection with its “STEWARD” Mark.

ANSWER: Denied.

28. Registration 2,430,195 consists solely of “STEWARD.”

ANSWER: Admitted.

29. The literal element of Applicant's Mark differs from Opposer's "STEWARD" Mark by just a single letter.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

30. The literal element of Applicant's Mark is the dominant distinctive element of Applicant's Mark.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

31. The goods identified in Application Serial No. 88/885,823 are identical or highly similar to and overlap with Opposer's goods offered under the "STEWARD" Mark.

ANSWER: Denied.

32. The likely consumers and trade channels for services offered under Opposer's "STEWARD" Mark and Applicant's Mark are related and overlap.

ANSWER: Monsanto lacks the knowledge or information necessary to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

33. Based on the similarity of Applicant's Mark and Opposer's "STEWARD" Mark, consumers are likely to incorrectly believe that Applicant's goods offered under Applicant's Mark are sponsored, approved, or emanate from Opposer.

ANSWER: Denied.

34. Registration and use of Applicant's Mark is likely to cause confusion, mistake, or deception as to the source or origin of Applicant's goods, or to induce consumers to incorrectly

believe that Applicant's goods are those of Opposer, or are sponsored or endorsed by, affiliated with, or associated with Opposer in violation of 15 U.S.C. § 1052(d).

ANSWER: Denied.

35. Opposer is likely to be damaged by registration of Applicant's Mark.

ANSWER: Denied.

36. Registration of the Applicant's Mark would be inconsistent with Opposer's prior rights in its "STEWART" Mark, would be inconsistent with Opposer's statutory grant of exclusivity of use of the "STEWART" Mark, and would damage Opposer's investment and goodwill in the "STEWART" Mark.

ANSWER: Denied.

37. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register Applicant's Mark and the Application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

ANSWER: Denied.

COUNT II – CLAIM FOR RELIEF FOR DILUTION UNDER 15 U.S.C. § 1125(c)(1)

38. Applicant re-alleges paragraphs 1-37 of this Notice of Opposition as set forth herein in full.

ANSWER: Monsanto re-alleges and incorporates its answers in the preceding paragraphs of this Answer, as though fully set forth herein.

39. Use of the STEWART marks as shown in the Application Serial No. 88/885,823 is likely to dilute the distinctive quality of Opposer's famous STEWART Mark in violation of Section 43(c) of the Trademark Act. 15 U.S.C. § 1125(c).

ANSWER: Denied.

40. Opposer is likely to be damaged by the registration of Applicant's marks.

ANSWER: Denied.

AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
(Priority)**

Opposer's claims fail because Opposer does not have priority to the literal marks at issue. Monsanto and its predecessors have been using the STEWART word mark for agricultural seeds for over 100 years, long before Opposer began using the STEWARD mark.

**SECOND AFFIRMATIVE DEFENSE
(Laches)**

Opposer's claims are barred by the doctrine of laches because Opposer unreasonably delayed in taking action against Monsanto's use of its STEWART mark, thereby causing prejudice to Monsanto. Monsanto and its predecessors have been using the STEWART word mark for agricultural seeds since 1918. Monsanto's use of the STEWART mark has co-existed with Opposer's STEWARD mark for nearly 22 years.

WHEREFORE, Applicant requests that judgment be entered in favor of Applicant and against Opposer; and that the mark shown in Application Serial No. 88/885,823 be registered on the Principal Register.

Dated: September 19, 2022

Respectfully submitted,

/Jacquelyn R. Prom/

Phillip Barengolts

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CERTIFICATE OF SERVICE

I, Jacquelyn R. Prom, certify that a true and correct copy of the foregoing document, **ANSWER TO NOTICE OF OPPOSITION**, is being served on Opposer, FMC Corporation, via electronic mail to Opposer's counsel of record as set forth below this 19th day of September, 2022.

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