

ESTTA Tracking number: **ESTTA1311155**
Filing date: **09/20/2023**

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	ARYSTA LIFESCIENCE, INC.
Granted to date of previous extension	09/20/2023
Address	15401 WESTON PARKWAY, SUITE 150 CARY, NC 19709 UNITED STATES

Attorney information	JORDAN A. LAVINE FLASTER GREENBERG PC 100 FRONT STREET, SUITE 100 CONSHOHOCKEN, PA 19428 UNITED STATES Primary email: jordan.lavine@flastergreenberg.com Secondary email(s): jordan.lavine@flastergreenberg.com, tm-dock@flastergreenberg.com, eric.clendening@flastergreenberg.com 2152799389
Docket no.	

Applicant information

Application no.	97521062	Publication date	05/23/2023
Opposition filing date	09/20/2023	Opposition period ends	09/20/2023
Applicant	Prevegenics, LLC 651 N. BROAD ST. MIDDLETON, DE 19709 UNITED STATES		

Goods/services affected by opposition

Class 001. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Fertilizers; Natural fertilizers; Nutritive additive to enhance the biological activity of water, soil, seeds and plants for purposes of fertilization and bioremediation of pollutants; Soil amendments; Organic soil amendments

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.	1409149	Application date	09/30/1985
Register	Principal		

Registration date	09/16/1986	Foreign priority date	NONE
Word mark	MICROMITE		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Aug 27, 1985 First Use In Commerce: Aug 27, 1985 AGRICULTURAL ACARICIDES		

Attachments	Notice of Opposition MICRO-PHITE.pdf(412549 bytes)
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Signature	/jordan lavine/
Name	JORDAN A. LAVINE
Date	09/20/2023

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

Arysta Lifescience, Inc.,	:	
	:	
	:	Re: Application Serial No. 97521062
v.	:	
	:	
	:	
Prevegenics, LLC.	:	

NOTICE OF OPPOSITION

In the matter of trademark Application Serial No. 97521062 filed July 26, 2022, and published for opposition in the *Official Gazette* of May 23, 2023, Arysta Lifescience, Inc. ("Opposer"), a Delaware corporation having an address of 15401 Weston Parkway, Suite 150, Cary, NC 27513, believes that it will be damaged if a registration issues for the goods therein identified and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant seeks to register **MICRO-PHITE** as a trademark for the following goods in International Class 1: *Fertilizers; Natural fertilizers; Nutritive additive to enhance the biological activity of water, soil, seeds and plants for purposes of fertilization and bioremediation of pollutants; Soil amendments; Organic soil amendments*, as evidenced by the publication of said mark in the *Official Gazette* of May 23, 2023.
2. Opposer sought and received an extension of time to file a Notice of Opposition against the referenced application of Applicant.
3. Opposer is a global provider of agricultural crop protection and life science products, including fungicides, herbicides, insecticides, pesticides, and plant growth stimulators.

Opposer also offers fertilizers that enhance overall crop protection and that provide higher yields and better-quality crops. Opposer has a substantial presence in in the United States of America.

4. Since at least as early as August 27, 1985, Opposer and its predecessors have used the trademark **MICROMITE** in commerce in connection with agricultural acaracides, *i.e.*, an agricultural insecticide. Opposer's **MICROMITE** products comprise an insect growth regulator that reduces nymphs and prevents insect eggs from hatching. The result is broad-spectrum and long residual control of damaging insects — including Asian citrus psyllid (ACP), leafminers and katydids. **MICROMITE** can be tank-mixed with fungicides and seamlessly used as part of an integrated pest management plan.

5. Opposer owns Registration No. 1,409,149 for its **MICROMITE** trademark in the U.S. Patent and Trademark Office.

6. Opposer's **MICROMITE** trademark is well-known and is an extremely valuable asset of Opposer – especially due to the success of the products sold under the mark and based upon Opposer's and its predecessors' long use of the trademark.

7. Opposer's **MICROMITE** mark is inherently distinctive as used in connection with Opposer's goods.

8. Applicant seeks to register the mark **MICRO-PHITE** on the basis of its intent to use the mark in commerce.

9. On information and belief, Applicant did not use **MICRO-PHITE** mark in the United States prior to the filing date of its intent to use application or prior to Opposer's first use in commerce of its registered **MICROMITE** trademark.

10. Opposer is the prior user of its **MICROMITE** mark by virtue of its use of the mark in commerce since at least as early as August 27, 1985.

11. The respective **MICROMITE** and **MICRO-PHITE** marks are highly similar in sight, sound and meaning, and create the same overall commercial impression. The marks begin with the same term “Micro” and end with the suffix “ite.” The respective middle consonant sounds in the respective marks are not a sufficient distinguishing feature of the marks.

12. Opposer's goods and Applicant's goods are highly similar. The fertilizers, nutritive additives, and soil amendments are agrochemical products identified in Applicant's application are used the same field as Opposer's insecticide products. The parties' respective goods are both aimed at improving agricultural crop health and production.

13. Applicant's products and Opposer's products are likely to be promoted and sold to the same of purchasers through the same and similar channels of trade, *i.e.*, to those who purchase agrochemicals through the normal channels of trade for such products.

14. Applicant's **MICRO-PHITE** mark as used in connection with the goods identified in its application so resembles Opposer's **MICROMITE** mark that it is likely to cause confusion, mistake, or deception.

15. If Applicant is permitted to register the mark **MICRO-PHITE** for the goods identified in the application herein opposed, confusion of the trade and public is likely to result, such confusion resulting in damage and injury to Opposer.

16. Purchasers, potential purchasers, and the relevant public, upon seeing Applicant's **MICRO-PHITE** mark used in connection with the goods identified in its application would be likely to believe in error that such goods are provided in association or affiliation with or under the sponsorship of or license from Opposer.

17. If Applicant is permitted to register its mark for the goods set forth in the application herein opposed, persons familiar with the goods of Opposer would be likely to use

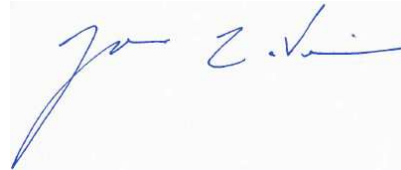
Applicant's goods as goods sponsored by or produced in affiliation with or under the sponsorship of Opposer. Furthermore, any defect, objection to or fault found with Applicant's goods provided under its mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods under the **MICROMITE** mark.

18. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer and Opposer's customers.

WHEREFORE, Opposer prays that registration of the mark of Application Serial No. 97521062 be refused, and that this opposition be sustained.

Respectfully submitted,

FLASTER GREENBERG P.C.

A handwritten signature in blue ink, appearing to read "Jordan A. LaVine", is written over a light gray rectangular background.

Jordan A. LaVine
Eric Clendening
100 Front Street, Suite 100
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September 20, 2023

ATTORNEYS FOR OPPOSER