

ESTTA Tracking number: **ESTTA1318967**Filing date: **10/30/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91287257
Party	Defendant Prevegenics, LLC
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Date	10/30/2023
Attachments	PrevegenicsAnswertoArystaOpposition.pdf(109261 bytes)

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

In the Matter of Trademark Application Serial No. 97521062
Published in the *Official Gazette* May 23, 2023
For the Mark: MICRO-PHITE

	:	X	
Arysta Lifescience, Inc.,	:	:	
Opposer	:	:	
vs.	:	:	Opposition No. 91287257
	:	:	
Prevegenics, LLC	:	:	
Applicant	:	:	
	:	X	

APPLICANT’S ANSWER TO OPPOSITION

Applicant, Prevegenics, LLC, by its attorney, hereby answers the allegations set forth in the Notice of Opposition as follows:

1. With respect to the initial but unnumbered paragraph or preamble, Applicant believes that no answer is required except that Applicant denies that Opposer will be damaged by Applicants’ registration of its mark that is the subject of the Opposition. With respect to the numbered paragraphs, Applicant admits the allegations set forth in Paragraph 1 of the Opposition.
2. Applicant admits the allegations set forth in Paragraph 2 of the Opposition.
3. Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 3 of the Opposition and therefore denies those allegations.

4. Applicant has insufficient knowledge or information as to the truth of the allegations in Paragraph 4 of the Opposition and therefore denies those allegations, except that Applicant admits that Registration No. 1,409,149 for “MIROMITE” is for “Agricultural Acaracides.”

5. Applicant admits that Opposer is listed as the last owner of Registration No. 1,409,149 in the U.S. Patent and Trademark Office index for that registration, but Applicant has insufficient knowledge or information as to whether Opposer is the current owner of that registration and therefore therefore denies the remainder of the allegations of Paragraph 5 of the Opposition.

6. Applicant denies that Opposer’s MICROPHITE trademark is well-known. Applicant has insufficient knowledge or information as to the truth of the remainder of the allegations in Paragraph 6 of the Opposition and therefore also denies those allegations.

7. Applicant denies the allegations of Paragraph 7 of the Opposition.

8. Applicant admits that it filed its application to register the mark MICRO-PHITE as an “intent to use” application, but Applicant denies the remainder of the allegations in Paragraph 8 as not understood.

9. Applicant objects to the compound nature of Paragraph 9 of the Opposition and has insufficient knowledge or information as to the truth of those allegations and therefore denies those allegations.

10. Applicant objects to the vague and ambiguous reference in Paragraph 10 of the Opposition to a “prior user” of the MICROMITE mark without stating another user of the MICROMITE mark. Applicant denies that it has ever used or ever intended to use the

MICROMITE mark. Applicant otherwise has insufficient knowledge or information as to the truth of the allegations in Paragraph 10 of the Opposition and therefore denies those allegations.

11. Applicant denies the allegations in Paragraph 11 of the Opposition.
12. Applicant denies the allegations in Paragraph 12 of the Opposition.
13. Applicant denies the allegations in Paragraph 13 of the Opposition.
14. Applicant denies the allegations in Paragraph 14 of the Opposition.
15. Applicant denies the allegations in Paragraph 15 of the Opposition.
16. Applicant denies the allegations in Paragraph 16 of the Opposition.
17. Applicant denies the allegations in Paragraph 17 of the Opposition.
18. Applicant denies the allegations of Paragraph 18 of the Opposition.

With respect to any allegations not specifically answered here, Applicant denies those allegations.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Absence of Likelihood of Confusion

1. Applicant's mark, MICRO-PHITE, is a distinctive, made-up word, coined by Applicant, for association with Applicant's fertilizer products that it associates with its MICRO-PHITE mark as stated in the application as published for opposition:

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.

2. Applicant's mark is suggestive of micronutrients such as phosphite used in fertilizer for providing nutrients for improving plant growth and productivity. In contrast, Opposer's mark refers to microscopic "mites" of the arachnid subclass Acari.

3. Fertilizers are commonly known and used. The need for an acaricide on the other hand typically requires verification of an arachnid or mite infestation by expensive laboratory microscope testing, resulting in recommendation of specific specialized products to kill the specific arachnids found to prevent the mites from stunting plant growth or killing the plant.

4. Applicant's mark, MICRO-PHITE, and Opposer's MICROMITE mark set forth in the Opposition, are distinctly different in appearance, sound, and meaning, and are not directed to any of the same products or uses.

5. Applicant's mark, MICRO-PHITE, is also not directed to the same markets as those in which Opposer directs its mark, or are directed to a sophisticated market that understands the characteristics, uses, and sources of the products being purchased and can readily distinguish one product from another. A person looking for a fertilizer is not typically looking for an acaricide as the two are not related, and fertilizers and acaricides are not typically sold together or side by side or even in the same store location.

6. There is no likelihood of confusion between Applicant's mark MICRO-PHITE mark and Opposer's MICROMITE mark.

8. Opposer is misusing its registration in seeking to expand its rights through an opposition proceeding beyond the scope set forth in the registration itself.

Second Affirmative Defense

Third parties have used similar marks for similar goods as Opposer, thus Opposer's mark is entitled to a narrow scope of protection

9. "Micro" is commonly used in trademarks to suggest small, and hundreds if not thousands of third party trademarks include "micro."

10. Since acaracides are typically used to kill mites, “mite” is commonly used in or with araracide trademarks. The word “miticide” is a common, generic word for acaracide according to Britannia. <https://www.britannica.com/technology/miticide>.

11. Many third party trademarks also include words or portions of words that rhyme with “mite.”

12. The mark “MICROMITE” must be given a narrow scope, particularly with respect to the broad and large field of “agriculture.”

Third Affirmative Defense

Failure to State a Claim for Which Relief Can Be Granted

13. Applicant restates and incorporates by reference its Paragraphs 1-12 of its Affirmative Defenses stated above as if restated here.

14. For the foregoing reasons, Opposer has failed to state a claim for which relief can be granted.

WHEREFORE, having answered Opposer's Notice of Opposition and having raised defenses and affirmative defenses, Applicant respectfully requests that the Trademark Trial and Appeal Board enter an Order:

- (a) dismissing this Opposition with prejudice; and
- (b) allowing Applicant’s registration of the mark MICRO-PHITE.

Date: October 30, 2023

Respectfully submitted,
/s/karen tripp;
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PREVEGENICS, LLC

CERTIFICATE OF TRANSMISSION

I hereby certify that the foregoing APPLICANT’S ANSWER TO OPPOSITION is being electronically transmitted via the Electronic System for Trademark Trial and Appeals (“ESTTA”) as <http://esta.uspto.gov/> on the date noted below.

October 30, 2023

By/s/karen tripp
Karen B. Tripp

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT’S ANSWER TO OPPOSITION is being served on Opposer, Arysta Lifescience Inc., via email to its counsel, Jordan A. LaVine and Eric Clendening, at their respective email addresses, *jordan.lavine@flastergreenberg.com* and *eric.clenening@flastergreenberg.com* and *tm-dock@flastergreenberg.com*, on the date noted below.

October 30, 2023

By/s/karen tripp
Karen B. Tripp