

ESTTA Tracking number: **ESTTA14655**

Filing date: **09/07/2004**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Smart World Organics, Inc.		
Entity	Corporation	Citizenship	Florida
Address	18744 Titus Road Unit #1 Hudson, FL 34667 UNITED STATES		

Attorney information	Shyam NS Dixit Jr Trenam, Kemker, Scharf, Barkin, Frye, O'Neill and Mullis 2700 Bank of America Plaza 101 East Kennedy Boulevard Tampa, FL 33602 UNITED STATES sdixit@trenam.com Phone:813-227-7469		
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Registration Subject to Cancellation

Registration No	2846341	Registration date	05/25/2004
Registrant	Gustafson, L.L.C.		
Goods/Services Subject to Cancellation	Class 005. First Use: 20030901 , First Use In Commerce: 20030901 Goods/Services: SEED APPLIED FUNGICIDE AND INSECTICIDE FOR AGRICULTURAL USE		
Attachments	Petition to Cancel.pdf (4 pages) Exhibit A.pdf (2 pages)		

Signature	/Shyam NS Dixit Jr/
Name	Shyam NS Dixit Jr
Date	09/07/2004

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

SMART WORLD ORGANICS, INC.

Petitioner,

v.

GUSTAFSON, LLC

Registrant

Cancellation No.

Registration No. 2846341

Serial No. 78055392

PETITION TO CANCEL REGISTRATION

BOX TTAB

Commissioner for Trademarks

2900 Crystal Drive

Arlington, Va. 22202-3513

BOX: FEE

PETITIONER, Smart World Organics, by and through the undersigned counsel, petitions to cancel Registration No. 2846341 for the Trademark PROSPER in International Class 005.

The reason this petition is warranted is as follows:

1. The trademark PROSPER was first used by Circle-One in connection with the services in International Class 01 at least as early as March 3, 1994, and was first used in interstate commerce in connection with the services in International Class 01 at least as early as September 2, 1994. The trademark PROSPER is now and has always been in use by Circle-One in such interstate commerce.

2. The Commissioner of Patent and Trademarks issued a certificate of registration to Circle-One International for the trademark PROSPER on August 24, 1999, Registration No. 2271859.

3. Circle-One has since transferred all assets to Smart World Organics, Inc. That is, all of Circle-One's property rights are owned and/or controlled by Smart World Organics. Smart World Organics continues to do business as Circle-One and continues to market the Circle-One line of products, which display the trademark PROSPER.

4. Petitioner, Smart World Organics, is located at 18744 Titus Road, Unit #1, Hudson, Florida 34667, and Circle-One is located at 6252 Commercial Way, Suite 119, Brooksville, FL 34613 USA.

5. To the best of petitioner's knowledge, the name and address of the current owner of the registration is Gustafson, LLC, a Delaware Limited Liability Company ("Gustafson"), with its offices at 1400 Preston Road, Suite 400, Plano, Texas 75093

6. The above-identified petitioner believes that it will be damaged by Registration No. 2846341 for the Trademark PROSPER in International Class 005, and hereby petitions to cancel same. The grounds for cancellation are as follows:

7. Gustafson filed an application for the mark PROSPER, Serial No. 78/055392, on July 20, 2001, and an office action was issued stating Gustafson's application was refused due to Registration No. 2271859.

8. On April, 18, 2002, a final office action was submitted by Law Office #102, apparently for reasons already mentioned, i.e., due to Registration No. 2271859.

9. After almost nine years of uninterrupted use, between February and March 2003, Circle-One received several phone calls from an attorney in Texas that represented Gustafson. That attorney was from the same law firm representing Gustafson in a petition to cancel Registration No. 2271859.

10. Between February and March 2003, Gustafson's attorney said that Gustafson

desired to purchase the registered trademark PROSPER. Gustafson's attorney said that Gustafson wanted to use the word PROSPER as a mark for one of its products. Gustafson's attorney offered \$1,000.00.

11. In or about March 2003, Circle-One told Gustafson's attorney that Circle-One was not interested in selling its mark and informed Gustafson's attorney that Circle-One had invested hundreds of thousands of dollars promoting the name in the United States, and other countries, and that Circle-One uses the trademark PROSPER on most of its products, advertising, its website, and in e-commerce (www.Circle-One.com).

12. During March or April 2003, Gustafson's attorney offered \$3,000.00 for the trademark PROSPER. After repeating that Circle-One was not interested in selling its mark for the reasons stated above, Gustafson's attorney stopped any and all communications.

13. On or about March 3, 2003, Gustafson filed a petition to cancel Registration No. 2271859 for the Trademark PROSPER in International Class 001 on the grounds that it believed "the above-referenced registrant has abandoned its use of the above referenced trademark."

14. Circle-One did not receive notice of the petition to cancel Registration No. 2271859 for the Trademark PROSPER in International Class 001 nor did it have knowledge that a proceeding had been initiated against its registered trademark PROSPER.

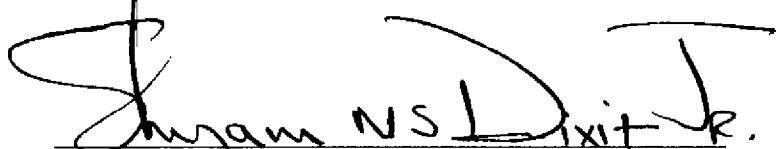
15. Gustafson claimed to have attempted to serve notice of this proceeding according to "the USPTO's TARR system," which, according to Gustafson's petition to cancel registration, listed the address of the Registrant as "Flight Path Drive Drive, Brooksville, Florida 34609."

16. At the time Circle-One was communicating with Gustafson's attorney, and since then, Gustafson, upon information and belief, knew that Circle-One had not abandoned its mark PROSPER and that Circle-One's business address was: (1) 6252 Commercial Way, Suite 119,

Brooksville, FL 34613; and/or (2) 18744 Titus Road, Unit #1, Hudson, Florida 34667.

17. The following document is submitted in support of this motion: Exhibit "A", Declaration under 37 C.F.R. §2.20 of Ray Nielsen, officer of Circle-One and Smart World Organics.

SMART WORLD ORGANICS, INC.

A handwritten signature in black ink that reads "Shyam N.S. Dixit Jr." with a horizontal line underneath the name.

Shyam N.S. Dixit Jr.
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O'NEILL & MULLIS, P.A.
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ATTORNEYS FOR PETITIONER SMART
WORLD ORGANICS, INC.

Date: September 7, 2004

Please direct all telephone calls and correspondence to:

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

GUSTAFSON, LLC

Petitioner,

v.

CIRCLE ONE INTERNATIONAL, INC.

Registrant

Cancellation No. 92041710

Registration No. 2271859

Serial No. 75462372

DECLARATION UNDER 37 C.F.R. §2.20

BOX TTAB

Commissioner for Trademarks

2900 Crystal Drive

Arlington, Va. 22202-3513

BOX: NO FEE

The undersigned hereby declares that he is an officer of Smart World Organics, Inc., Circle-One, Circle-One International and Circle-One Organics, Registrant in the above-identified petition for cancellation, and that he is fully authorized and empowered to make and execute this Declaration on its behalf, and:

That the mark PROSPER was first used in connection with the services in International Class 01 at least as early as March 3, 1994; was first used in interstate commerce in connection with the services in International Class 01 at least as early as September 2, 1994; and is now and has been in use in such commerce.

That the Commissioner of Patent and Trademarks issued a certificate of registration to Circle-One International for the mark PROSPER on August 24, 1999, Registration No. 2271859.

That, after almost three years of uninterrupted use, between February and March 2003, Circle-One received several phone calls from an attorney from Texas, representing Gustafson, LLC, the petitioner in the above-identified petition for cancellation.

That, between February and March 2003, Gustafson's attorney said that Gustafson desired to purchase the registered mark PROSPER. Gustafson's attorney said that Gustafson wanted to use the word PROSPER as a trademark for one of these products. Gustafson's attorney offered \$1,000.00.

That, in or about March 2003, Circle-One told Gustafson's attorney that Circle-One was not interested in selling its mark and informed Gustafson's attorney that Circle-One had invested hundreds of thousands of dollars promoting the name in the United States, and other countries, and that Circle-One uses the mark PROSPER on most of our products, advertising, its website, and in e-commerce (www.Circle-One.com).

That, during March or April 2003, Gustafson's attorney offered \$3,000.00 for the mark PROSPER. After repeating that Circle-One was not interested in selling its mark for the reasons stated above, Gustafson's attorney stopped any and all communications.

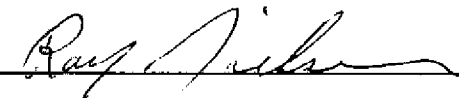
That, recently, it has come to Circle-One's attention, by its clients, that Gustafson had products bearing the mark PROSPER. Circle-One's clients complained that they are confused and it was hurting their sales of Circle-One's products.

That, at the time Circle-One was communicating with Gustafson's attorney, and since then, Gustafson, upon information and belief, knew that Circle-One had not abandoned its mark PROSPER and that Circle-One's business address was: (1) 6252 Commercial Way, Suite 119, Brooksville, FL 34613; and/or (2) 18744 Titus Road, Unit #1, Hudson, Florida 34667.

Declarant further states that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or documents or any Registration resulting therefrom.

SMART WORLD ORGANICS, INC. AND
CIRCLE-ONE,

Date: 9-3-04

By: 

Name: Ray Nielsen
Title: President