

ESTTA Tracking number: **ESTTA471470**

Filing date: **05/09/2012**

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

Proceeding	91201901
Party	Plaintiff OMS Investments, Inc.
Correspondence Address	John Gary Maynard, III Hunton & Williams LLP 951 East Byrd StreetRiverfront Plaza - East Tower Richmond, VA 23219-4074 UNITED STATES HWITM@hunton.com
Submission	Other Motions/Papers
Filer's Name	John Gary Maynard, III
Filer's e-mail	HWITM@hunton.com
Signature	/John Gary Maynard, III/
Date	05/09/2012
Attachments	Supplemental to Motion to Suspend Opposition Proceedings.pdf ( 49 pages ) (9887329 bytes )

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

In the matter of Application Serial No. 85/147,170  
Published in the *Official Gazette* on June 7, 2011  
Mark: MOJOGRO

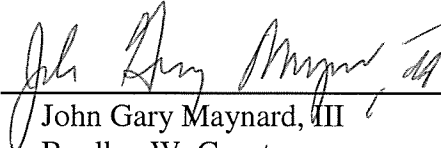
OMS Investments, Inc.,	)	
	)	
Opposer,	)	Opposition No. 91201901
	)	
v.	)	
	)	
Mojogro Soils, LLC.	)	
	)	
Applicant.	)	
	)	

**SUPPLEMENTAL TO MOTION TO SUSPEND OPPOSITION PROCEEDINGS**

A copy of the complaint was inadvertently omitted from Exhibit 1 when the Motion to Suspend Opposition Proceedings was filed on May 3, 2012. Therefore, a copy of Exhibit 1 that includes the complaint is being submitted as a supplemental to the Motion to Suspend Opposition Proceedings.

May 9, 2012

Respectfully submitted,

By:   
John Gary Maynard, III  
Bradley W. Grout  
Hunton & Williams LLP  
951 East Byrd Street  
Riverfront Plaza, East Tower  
Richmond, VA 23219-4074  
Telephone (804)788-8200

*Attorneys for Opposer,  
OMS Investments, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing SUPPLEMENTAL TO MOTION TO SUSPEND OPPOSITION PROCEEDINGS has been properly served upon counsel of record for Applicant, via U.S. first class mail, postage prepaid, on this 9<sup>th</sup> day of May, 2012.

Christopher A. Johnson, Esq.  
BOTKIN & HALL, LLP  
105 East Jefferson Boulevard, Suite 400  
South Bend, Indiana 46601

A handwritten signature in cursive script, appearing to read "Early Wortham", written in black ink.

Early Wortham

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>THE SCOTTS COMPANY LLC</b>	:	
	:	
<b>and</b>	:	
	:	
<b>OMS INVESTMENTS, INC.,</b>	:	<b>Civil Action No.:</b> _____
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b><u>JURY TRIAL DEMANDED</u></b>
	:	
<b>MOJOGRO SOILS, LLC,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>MOJOGRO, LLC,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>MOJOGRO, INC.,</b>	:	
	:	
<b>Defendants.</b>	:	

**COMPLAINT**

Plaintiffs The Scotts Company LLC (“Scotts Company”) and OMS Investments, Inc. (“OMS”), collectively (“Scotts”), by counsel, respectfully submit this Complaint against Defendants Mojogro Soils, LLC, Mojogro, LLC and Mojogro, Inc. for acts of (1) federal trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); (2) federal unfair competition and false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (3) federal dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); (4) federal cyberpiracy, in violation of Section 43(d) of the Lanham Act, 15 U.S.C. §1125(d); (5) common law unfair competition in violation of Ohio law; and (6) unfair and deceptive trade practices in violation of Ohio law.

**THE PARTIES**

1. Plaintiff Scotts Company is an Ohio limited liability company with its principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041.

2. Plaintiff OMS is a Delaware corporation with its principal place of business at 10250 Constellation Boulevard, Suite 2800, Los Angeles, California 90067. OMS is a subsidiary of Scotts Company LLC, and was incorporated to hold various Scotts Company LLC's intellectual property assets. OMS licenses to Scotts Company LLC many of these intellectual property assets, including the trademarks being infringed by Defendants.

3. Upon information and belief, Defendant Mojogro Soils, LLC is a limited liability company in Michigan with its principal place of business at 5120 Naomi Road, Eau Claire, Michigan 49111.

4. Upon information and belief, Defendant Mojogro, LLC is a limited liability company in Michigan with its principal place of business at 5120 Naomi Road, Eau Claire, Michigan 49111.

5. Upon information and belief, Defendant Mojogro, Inc. is a corporation in Michigan with its principal place of business at 5120 Naomi Road, Eau Claire, Michigan 49111.

6. Defendants Mojogro Soils, LLC, Mojogro, LLC and Mojogro, Inc. are collectively defined as "Mojogro" or "Defendants".

7. Scotts and Mojogro are competitors in the manufacturing, advertising, promoting and selling of consumer and professional lawn and garden care products, including potting soil and garden soil in this district and across the United States.

**JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over Scotts' Lanham Act claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has subject matter jurisdiction over Scotts' state-law claims pursuant to 28 U.S.C. § 1332, because the citizenship of the parties is diverse and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest, costs and attorneys' fees.

10. This Court has supplemental jurisdiction over Scotts' state-law claims pursuant to 28 U.S.C. § 1367(a).

11. Venue is appropriate in this district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1(e) because Defendants are subject to personal jurisdiction here and the misconduct giving rise to Scotts' claims in substantial part is occurring here. Defendants market and sell infringing Mojogro products in Kroger stores throughout this district.

**FACTS COMMON TO ALL COUNTS**

12. Scotts is the leading supplier of products for consumer lawn and garden care worldwide. Scotts has been in business for over 140 years, and has a national reputation for high quality and integrity.

13. Scotts owns and uses the most recognizable and valuable brands in the consumer lawn and garden care industry. In the United States, consumer awareness of Scotts' MIRACLE-GRO®, ORTHO®, and SCOTT'S® brands is several times greater than for Scotts' nearest competitors.

14. Throughout its 140 year history, Scotts has maintained a national reputation for high quality and integrity. That reputation, as symbolized by Scotts' brand names and proprietary trade dress, is of inestimable value.

15. Mojogro is a competitor of Scotts which markets its products to consumers and to national chain store retail accounts as alternatives to Scotts' products.

**SCOTTS' MIRACLE-GRO® MARK**

16. Scotts, through its predecessors in interest and affiliates, has used in commerce the famous and distinctive mark MIRACLE-GRO since at least as early as 1951. Over the years, the mark has been used in connection with a wide range of lawn and garden goods and services, including soil, fertilizers, soil amendments, and plant food.

17. Scotts owns several federal trademark registrations incorporating the famous and distinctive MIRACLE-GRO mark as reflected in the following representative registrations ("Scotts' Marks"):

Mark	Reg. No. / App. No.	Goods/Services
MIRACLE-GRO	0668,868	Class 10: Water soluble plant food.
MIRACLE-GRO	1,223,038	Class 1: Fertilizer in the form of spikes for trees and shrubs.
MIRACLE-GRO & Design	2,820,953	Class 1: Fertilizers for domestic use; plant food; garden soil; potting mix; seed starter mix for domestic use; root stimulating hormone that converts plant cells to stem cells.  Class 5: Herbicides for domestic use.  Class 21: Garden feeders, namely containers designed to hold plant food and are used to feed and water plants.  Class 31: Sphagnum peat moss.
MIRACLE-GRO and Design	2,822,655	Class 1: Fertilizers for domestic use; plant food; garden soil; potting mix; seed starter mix for domestic use; root stimulating hormone that converts plant cells to stem cells.

Mark	Reg. No. / App. No.	Goods/Services
		Class 5: Herbicides for domestic use. Class 21: Garden feeders, namely containers designed to hold plant food and are used to feed and water plants. Class 31: Sphagnum peat moss.

True and correct copies of the electronic records for these registrations printed from the United States Patent and Trademark Office’s (“USPTO”) Trademark Applications and Registrations Retrieval (“TARR”) online database are attached hereto as Exhibit A.

18. Each of the registrations noted above was issued on the Principal Register and is presently in full force and effect. Notably, all of the registrations cited above are incontestable. Scotts’ Marks are valid and distinctive.

19. Scotts has expended and continue to expend substantial time, money and effort in advertising and promoting Scotts’ Marks to identify itself as the source of its goods and services, such as in newspapers, magazines, sponsorships, and through nationally broadcast television and radio commercials. As a result, Scotts’ Marks are some of the most recognizable and valuable brands in the lawn, garden and horticulture industry. Moreover, due to the national, and indeed, worldwide consumer recognition of Scotts’ Marks, consumers have come to recognize “MIRACLE-GRO” as also symbolizing the goodwill inherent in Scotts’ Marks, and further, associate MIRACLE-GRO solely with Scotts and its line of high quality products.

20. Scotts also owns domain names that fully incorporate Scotts’ Marks, including MIRACLE-GRO.COM, MIRACLEGRO.COM, and MIRACLEGRO.NET (“Scotts’ Names”), and it uses these domain names in connection with its principal websites. At these websites, Scotts uses Scotts’ Marks to describe and actively promote its products and services.



**DEFENDANTS' INFRINGEMENT OF SCOTTS' MIRACLE-GRO® MARK**

21. Defendants manufacture and sell competing potting soil and garden soil. Defendants recently began selling products under their MOJOGRO mark. In addition to selling products through local stores and chains in Michigan, Wisconsin, and Colorado, Defendants sell MOJOGRO products in Kroger stores throughout this district and across the United States. Defendants advertise their products, among other places, at [www.mojogro.com](http://www.mojogro.com).

22. Upon information and belief, on or about October 16, 2008, Defendants registered the domain name MOJOGRO.COM through GoDaddy.com, LLC (<http://www.godaddy.com>). See Exhibit B (copy of Defendants' domain name registration). The domain name is registered to Mojogro's principal, Timothy Beall.

23. Upon information and belief, Defendants have used the domain name MOJOGRO.COM with a bad faith intent to profit from Scotts' Marks, with intent to cause confusion, and with actual knowledge of Scotts' Names and Scotts' Marks, which were distinctive and famous at the time of the registration of MOJOGRO.COM.

24. Defendants' domain name MOJOGRO.COM is confusingly similar to Scotts' Marks, and, upon information and belief, Defendants registered and have used the domain name for commercial gain and with the intent to divert consumers from Scotts' websites to its own and to tarnish Scotts' Marks by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the MOJOGRO.COM website.

25. On October 7, 2010, Defendants applied to the United States Patent and Trademark Office to register the mark MOJOGRO for "Potting compost; Potting soil; Soil amendments" in International Class 1 (Application Serial No. 85/147,170), and, on December 9,

2011, applied to register the mark POWERED BY MOJOGRO for “Potting soil for plants and potted plants having potting soil” in International Class 1 (Application Serial No. 85/491,294).

26. Defendants’ placement of its MOJOGRO mark on the packaging of its competitive products constitutes trademark infringement. Examples of Defendants’ packaging and advertising of its infringing potting soil and garden soil are attached as Exhibit C.

27. The MOJOGRO mark is likely to confuse and has confused consumers into believing that Scotts is the source of Defendants’ infringing potting soil and garden soil products, that Defendants are affiliated with, connected with, sponsored by, approved by, or otherwise associated with Scotts, and/or that Defendants’ infringing products are the same as Scotts’ MIRACLE-GRO® products. Given the goodwill and public recognition arising from the association of Scotts’ Marks with Scotts, consumers are likely to believe that Scotts has licensed, approved or otherwise authorized Defendants’ use of the MOJOGRO mark when it has not.

28. Defendants’ MOJOGRO mark is confusingly similar to Scott’s Marks because it is similar in appearance, sound and commercial impression, pursuant to 15 U.S.C. § 1052(d). Among other things, the MOJOGRO mark incorporates the word element “GRO,” which is identical to the famous and distinctive “GRO” element in Scotts’ Marks. Furthermore, the MOJOGRO mark shares a similar commercial impression with Scotts’ Marks, thereby creating a risk of consumer confusion. Specifically, consumers may believe, incorrectly, that MOJOGRO is an extension of Scotts’ family of MIRACLE-GRO marks. The likelihood of confusion between the MOJOGRO mark and Scotts’ Marks is further exacerbated because the goods sold under the Defendants’ MOJOGRO mark, namely potting soil and garden soil, are identical to the products sold under Scotts’ Marks.

29. Upon information and belief, Defendants' infringement of Scotts' MIRACLE-GRO® Mark has caused irreparable harm to Scotts and its reputation, and has diminished Scotts' sales of its own MIRACLE-GRO® potting soil and garden soil products. Scotts believes registration of the mark MOJOGRO and POWERED BY MOJOGRO marks will cause further damage.

30. Unless enjoined by this Court, Defendants' intentional infringement will cause a likelihood of confusion, leading consumers to believe that the infringing MOJOGRO products are supplied by Scotts, and/or that Defendants and the infringing MOJOGRO products are affiliated with, connected with, sponsored by, approved by, or otherwise associated with Scotts.

31. Unless enjoined by this Court, Defendants' intentional infringement will cause irreparable injury to Scotts, by confusing and deceiving consumers, by disrupting customer relationships, by damaging Scotts' reputation, and by lessening the capacity of Scotts' famous marks to identify and distinguish its goods.

**COUNT I**  
**(Trademark Infringement under the Lanham Act § 32)**

32. Scotts repeats the allegations in paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Scotts owns valid and subsisting rights in Scotts' Marks.

34. Defendants use the confusingly similar MOJOGRO mark in selling their competing garden soil and potting soil products.

35. Defendants' unauthorized use of Scotts' Marks in connection with Defendants' competing products is likely to confuse and has confused consumers into believing that Scotts is the source of Defendants' competing products, that Defendants are affiliated with, connected

with, sponsored by, approved by, or otherwise associated with Scotts, and /or that Defendants' competing products are the same as Scotts' products.

36. Defendants have adopted and used, and is continuing to use, its infringing mark with constructive and actual knowledge of Scotts' prior rights, with the intent to cause confusion, and in bad faith.

37. Defendants' acts are causing Scotts to suffer irreparable harm, for which it has no adequate remedy at law, and has damaged Scotts in an amount to be determined at trial. Scotts is entitled to injunctive relief against Defendants, pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116. Scotts is also entitled to Defendants' profits and its damages, trebled, and to reasonable attorneys' fees and costs, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117.

**COUNT II**  
**(Unfair Competition and False Advertising under the Lanham Act § 43(a))**

38. Scotts repeats the allegations in paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. By making unauthorized use of Scotts' Marks in connection with Defendants' competing products, Defendants have engaged in unfair competition against Scotts in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

40. Defendants' unauthorized use of Scotts' Marks in connection with Defendants' competing products is likely to confuse and has confused consumers into believing that Scotts is the source of Defendants' competing products, that Defendants are affiliated with, connected with, sponsored by, approved by, or otherwise associated with Scotts, and/or that Defendants' competing products are the same as Scotts' products.

41. Defendants' unfair competition, false advertising, and false designations of origin using Scotts' Marks has been conducted intentionally, willfully, and with full knowledge of Scotts' ownership and prior use of these marks.

42. Defendants' acts are causing Scotts to suffer irreparable harm, for which it has no adequate remedy at law, and has damaged Scotts in an amount to be determined at trial. Scotts is entitled to injunctive relief against Defendants, pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116. Scotts is also entitled to Defendants' profits and its damages, trebled, and to reasonable attorneys' fees and costs, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117.

**COUNT III**  
**(Trademark Dilution under the Lanham Act § 43(c))**

43. Scotts repeat the allegations in paragraphs 1 through 42 of this Complaint as though fully set forth herein.

44. By virtue of Scotts' prominent, longstanding, and continuous use of Scotts' Marks in interstate commerce, these marks became famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

45. Defendants' use of Scotts' Marks began after Scotts' Marks became famous.

46. Defendants' use of Scotts' Marks dilutes the quality of Scotts' Marks by lessening the capacity of Scotts' famous marks to identify and distinguish its goods.

47. Defendants have adopted and used, and are continuing to use, their dilutive mark with actual knowledge of Scotts' prior rights, with the willful intent to trade on the recognition of Scotts' Marks, and with the willful intent to harm the reputation of those famous marks.

48. Defendants' acts are causing Scotts to suffer irreparable harm, for which it has no adequate remedy at law, and has damaged Scotts in an amount to be determined at trial. Scotts is

entitled to injunctive relief against Defendants, pursuant to Sections 43(c)(1), 43(c)(5), and 34 of the Lanham Act, 15 U.S.C. §§ 1125(c)(1), 1125(c)(5), and 1116. Scotts is also entitled to Defendants' profits and its damages, trebled, and to reasonable attorneys' fees and costs as a result of Defendants' willful conduct.

**COUNT IV**  
**(Cyberpiracy under the Lanham Act § 43(d))**

49. Scotts repeats the allegations in paragraphs 1 through 48 of this Complaint as though fully set forth herein.

50. By registering and using the domain name MOJOGRO.COM, Defendants have demonstrated a bad faith intent to profit from Scotts' Marks, and have registered, trafficked in, and used domain names that are identical or confusingly similar to Scotts' Marks and Scotts' Names. Defendants are thus engaging in cyberpiracy in violation of Section 43(d) of the Lanham Act. 15 U.S.C. § 1125(d).

51. Defendants have used the domain name MOJOGRO.COM with actual knowledge of Scotts' Marks, with the intent to cause confusion, and in bad faith.

52. Defendants' use of the confusingly similar domain name is likely to cause confusion among consumers who may falsely associate Defendants and their services and products with Scotts' and Scotts' Marks.

53. Defendants' use of the confusing domain name is also likely to lead customers and potential customers of Scotts to mistakenly access the website of Defendants when attempting to locate Scotts' Marks and related marks on the Internet.

54. Scotts has no adequate remedy at law to address Defendants' cyberpiracy. Scotts has been, and absent injunctive relief, will continue to be, irreparably harmed by Defendants' actions.

55. Scotts is entitled to preliminary and permanent injunctive relief to prevent further damage and to prohibit Defendants from further violations of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

56. Pursuant to 15 U.S.C. § 1117(d), Scotts' is entitled to an award of statutory damages in an amount up to \$100,000 per domain name.

57. Pursuant to 15 U.S.C. § 1125(d)(1)(C), Scotts' is entitled to an Order from the Court transferring the pirated domain name, MOJOGRO.COM, to Scotts.

**COUNT V**  
**(Common Law Unfair Competition)**

58. Scotts repeats the allegations in paragraphs 1 through 57 of this Complaint as though fully set forth herein.

59. Defendants' misleading and confusing use of Scotts' Marks in connection with Defendants' competing products constitutes unfair competition under the common law of Ohio.

60. Defendants' acts are causing Scotts to suffer irreparable harm, for which it has no adequate remedy at law, and has damaged Scotts in an amount to be determined at trial for which they are jointly and severally liable.

61. Unless Defendants' misconduct is enjoined, Scotts will continue to be irreparably harmed by Defendants' unfair competition.

62. Defendants have engaged in unfair competition against Scotts willfully, maliciously, with the intent to injure Scotts, and with reckless disregard for Scotts' rights. Therefore, Scotts is entitled to recover punitive damages for Defendants' unfair competition.

**COUNT VI**  
**(Ohio Unfair and Deceptive Trade Practices Act)**

63. Scotts repeats the allegations in paragraphs 1 through 62 of this Complaint as though fully set forth herein.

64. Defendants' misleading and confusing use of Scotts' Marks in connection with Defendants' competing products violates the Ohio Unfair and Deceptive Trade Practices Act, O.R.C. §§ 4165.01-4165.04.

65. Defendants' acts are causing Scotts to suffer irreparable harm, for which it has no adequate remedy at law, and has damaged Scotts in an amount to be determined at trial for which they are jointly and severally liable.

66. Unless Defendants' misconduct is enjoined, Scotts will continue to be irreparably harmed by Defendants' unfair and deceptive trade practices.

67. Defendants have engaged in unfair and deceptive trade practices against Scotts willfully, maliciously, with the intent to injure Scotts, with reckless disregard for Scotts' rights, and knowing that its conduct is deceptive. Therefore, Scotts is entitled to recover punitive damages and attorneys' fees for Defendants' unfair and deceptive trade practices pursuant to O.R.C. § 4165.03(B).

**PRAYER FOR RELIEF**

WHEREFORE, Scotts prays that the Court enter an Order:

A. Adjudging that Defendants have been and are engaging in acts of federal trademark infringement, federal unfair competition and false advertising, federal dilution, unfair competition, and unfair and deceptive trade practices in violation of Ohio law, as alleged herein;

B. Preliminarily and permanently enjoining Defendants, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any of



them, from using any trademarks, trade dress, packaging, promotional materials, or other items which incorporate, which are confusingly similar to, or which dilute Scotts' Marks, including, but not limited to, the domain name MOJOGRO.COM;

C. Permanently enjoin Defendants from pursuing any United States trademark application for, and using the trademarks MOJOGRO, POWERED BY MOJOGRO or any confusingly or substantially similar trademark;

D. Requiring Defendants to transfer to Scotts the domain name, and domain name registration for MOJOGRO.COM;

E. Pursuant to 15 U.S.C. § 1117, awarding Scotts its actual compensatory damages as a judgment against Defendants in an amount to be determined at trial for Defendants' violations of 15 U.S.C. § 1114(1), for Defendants' violations of 15 U.S.C. §§ 1125(a), 1125(c) and 1125(d) and for Defendants' unfair and deceptive trade practices in violation of Ohio law;

F. Awarding Scotts treble damages as a judgment against Defendants for their knowing, intentional, and willful violations of the Lanham Act;

G. Awarding Scotts its costs and reasonable attorneys' fees from Defendants pursuant to the Lanham Act;

H. Awarding Scotts its costs and reasonable attorneys' fees for Defendants' willful unfair and deceptive trade practices;

I. Awarding Scotts punitive damages as a judgment against Defendants for their willful and malicious unfair competition and unfair and deceptive trade practices;

J. Awarding such other relief as may be just and proper.

Dated: April 30, 2012

Respectfully submitted,

/s/ Bradley T. Ferrell

---

Bradley T. Ferrell (0070965), Trial Attorney

Daniel P. Mead (0083854)

ZEIGER, TIGGES & LITTLE LLP

41 South High Street

3500 Huntington Center

Columbus, Ohio 43215-6101

Telephone: (614) 365-9900

Facsimile: (614) 365-7900

Email: ferrell@litohio.com

mead@litohio.com

Counsel for Plaintiffs The Scotts Company LLC  
and OMS Investments, Inc.

OF COUNSEL:

John Gary Maynard, III (Va. Bar No. 40596)\*

Bradley W. Grout (Ga. Bar No. 313950)\*

HUNTON & WILLIAMS LLP

954 East Byrd Street

Riverfront Plaza, East Tower

Richmond, Virginia 23219-4074

Telephone: (804) 788-8200

Facsimile: (804) 788-8218

Email: jgmaynard@hunton.com

bgrou@hunton.com

*\*pro hac vice motions to be filed*

640-266:364220

**EXHIBIT A**

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-04-26 10:06:39 ET

Serial Number: 72046856 Assignment Information      Trademark Document Retrieval

Registration Number: 668868

Mark (words only): MIRACLE-GRO

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2008-07-23

Filing Date: 1958-02-28

Transformed into a National Application: No

Registration Date: 1958-10-28

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2009-01-16

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. OMS INVESTMENTS, INC.

**Address:**

OMS INVESTMENTS, INC.  
10250 Constellation Boulevard Suite 280  
Los Angeles, CA 900676228  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

---

**GOODS AND/OR SERVICES**

---

**U.S. Class:** 010 (International Class 001)

**Class Status:** Active

WATER SOLUBLE PLANT FOOD

**Basis:** 1(a)

**First Use Date:** 1951-04-15

**First Use in Commerce Date:** 1951-04-15

---

**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2010-07-22 - Notice Of Suit

2009-01-16 - Case File In TICRS

2008-07-23 - Third renewal 10 year

2008-07-23 - Section 8 (10-year) accepted/ Section 9 granted

2008-07-22 - Assigned To Paralegal

2008-07-10 - TEAS Section 8 & 9 Received

1999-01-25 - Second renewal 10 year

1998-10-28 - Section 9 filed/check record for Section 8

1978-10-28 - First renewal

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Aimee A. Zaleski

**Correspondent**

Aimee A. Zaleski

The Scotts Company LLC

14111 Scottslawn Road

Marysville OH 43041

Phone Number: 937-644-7667

Fax Number: 937-644-7568



**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-04-26 10:07:58 ET**

**Serial Number:** 73283281 Assignment Information      Trademark Document Retrieval

**Registration Number:** 1223038

**Mark (words only):** MIRACLE-GRO

**Standard Character claim:** No

**Current Status:** The registration has been renewed.

**Date of Status:** 2003-03-22

**Filing Date:** 1980-10-24

**Transformed into a National Application:** No

**Registration Date:** 1983-01-11

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 40S -Scanning On Demand

**Date In Location:** 2008-04-11

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. OMS INVESTMENTS, INC.

**Address:**

OMS INVESTMENTS, INC.  
100 WILSHIRE BLVD., SUITE 1230  
SANTA MONICA, CA 90401  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

---

**GOODS AND/OR SERVICES**

---

**International Class:** 001

**Class Status:** Active

Fertilizer in the Form of Spikes for Trees and Shrubs

**Basis:** 1(a)

**First Use Date:** 1980-10-01

**First Use in Commerce Date:** 1980-10-01

---

#### ADDITIONAL INFORMATION

---

**Prior Registration Number(s):**

1141943

6688680

---

#### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2010-07-22 - Notice Of Suit

2008-04-11 - Case File In TICRS

2003-03-22 - First renewal 10 year

2003-03-22 - Section 8 (10-year) accepted/ Section 9 granted

2003-01-06 - Combined Section 8 (10-year)/Section 9 filed

2003-01-06 - PAPER RECEIVED

1989-05-22 - Section 8 (6-year) accepted & Section 15 acknowledged

1989-05-12 - Response received for Post Registration action

1989-04-18 - Post Registration action mailed Section 8 & 15

1988-12-30 - Section 8 (6-year) and Section 15 Filed

1983-01-11 - Registered - Principal Register

1982-10-19 - Published for opposition

1982-09-07 - Notice of publication

1982-01-05 - Non-final action mailed

1981-09-16 - Assigned To Examiner



1981-03-25 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

LAWRENCE E. ABELMAN

**Correspondent**

LAWRENCE E. ABELMAN  
ABELMAN FRAYNE & SCHWAB  
150 EAST 42ND STREET  
NEW YORK, NY 10017-5612

---

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-04-26 10:08:30 ET

Serial Number: 76496455 Assignment Information      Trademark Document Retrieval

Registration Number: 2820953

Mark



(words only): MIRACLE-GRO

Standard Character claim: No

Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Date of Status: 2010-03-26

Filing Date: 2003-03-04

Transformed into a National Application: No

Registration Date: 2004-03-09

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: L60 -TMEG Law Office 106

Date In Location: 2010-03-26

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. OMS Investments, Inc.

Address:

OMS Investments, Inc.  
10250 Constellation Blvd. , Suite 2800

Los Angeles, CA 90067  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Delaware

---

**GOODS AND/OR SERVICES**

---

**International Class:** 001

**Class Status:** Active

Fertilizers for domestic use; plant food; garden soil; potting mix; seed starter mix for domestic use; root stimulating hormone that converts plant cells to stem cells

**Basis:** 1(a)

**First Use Date:** 1997-01-00

**First Use in Commerce Date:** 1997-01-00

**International Class:** 005

**Class Status:** Active

Herbicides for domestic use

**Basis:** 1(a)

**First Use Date:** 2000-00-00

**First Use in Commerce Date:** 2000-00-00

**International Class:** 021

**Class Status:** Active

Garden feeders, namely, containers designed to hold plant food and are used to feed and water plants

**Basis:** 1(a)

**First Use Date:** 2000-12-31

**First Use in Commerce Date:** 2000-12-31

**International Class:** 031

**Class Status:** Active

Sphagnum peat moss

**Basis:** 1(a)

**First Use Date:** 2001-01-00

**First Use in Commerce Date:** 2001-01-00

---

**ADDITIONAL INFORMATION**

---

**Description of Mark:** The mark consists of the word "MIRACLE-GRO" in a bullseye logo with a green leaf dotting the "I" in "MIRACLE-GRO" and a yellow ring in the bullseye.

**Design Search Code(s):**

**05.03.08** - More than one leaf, including scattered leaves, bunches of leaves not attached to branches

**05.03.25** - Leaf, single; Other leaves

**21.03.12** - Dart boards; Targets without crosshairs or alignment guides

**26.01.17** - Circles, two concentric; Concentric circles, two; Two concentric circles

**26.01.21** - Circles that are totally or partially shaded.

**27.03.04** - Plants forming letters or numerals

**Prior Registration Number(s):**

668868  
1051605  
1223038  
2345472  
2525828  
2580976  
2601682  
2618698  
2618699

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2010-07-22 - Notice Of Suit

2010-03-26 - Section 8 (6-year) accepted & Section 15 acknowledged

2010-03-26 - Case Assigned To Post Registration Paralegal

2010-03-09 - TEAS Section 8 & 15 Received

2008-08-05 - Notice Of Suit

2008-06-17 - Notice Of Suit

2004-03-09 - Registered - Principal Register

2003-12-16 - Published for opposition

2003-11-26 - Notice of publication

2003-09-25 - Approved for Pub - Principal Register (Initial exam)

2003-08-11 - Communication received from applicant

2003-09-07 - Case File In TICRS

2003-08-11 - PAPER RECEIVED

2003-06-27 - Non-final action mailed

2003-06-25 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Susan E. Hollander, Esq.

**Correspondent**

Susan E. Hollander, Esq.  
Manatt, Phelps & Phillips, LLP  
1001 Page Mill Road, Bldg. 2  
Palo Alto CA 94304  
Phone Number: 650-812-1300  
Fax Number: 650-213-0260

---

**Thank you for your request. Here are the latest results from the TARR web server.**

This page was generated by the TARR system on 2012-04-26 10:09:20 ET

Serial Number: 76496458 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2822655

Mark



(words only): MIRACLE-GRO

Standard Character claim: No

Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Date of Status: 2010-03-10

Filing Date: 2003-03-04

Transformed into a National Application: No

Registration Date: 2004-03-16

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: L60 -TMEG Law Office 106

Date In Location: 2010-03-10

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. OMS INVESTMENTS, INC.

**Address:**

OMS INVESTMENTS, INC.  
10250 Constellation Blvd., Suite 2800

Los Angeles, CA 90067  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Delaware

---

**GOODS AND/OR SERVICES**

---

**International Class:** 001

**Class Status:** Active

Fertilizers for domestic use; plant food; garden soil; potting mix; seed starter mix for domestic use; root stimulating hormone that converts plant cells to stem cells

**Basis:** 1(a)

**First Use Date:** 1997-01-00

**First Use in Commerce Date:** 1997-01-00

**International Class:** 005

**Class Status:** Active

Herbicides for domestic use

**Basis:** 1(a)

**First Use Date:** 2000-00-00

**First Use in Commerce Date:** 2000-00-00

**International Class:** 021

**Class Status:** Active

Garden feeders, namely containers designed to hold plant food and are used to feed and water plants

**Basis:** 1(a)

**First Use Date:** 2000-12-31

**First Use in Commerce Date:** 2000-12-31

**International Class:** 031

**Class Status:** Active

Sphagnum peat moss

**Basis:** 1(a)

**First Use Date:** 2001-01-00

**First Use in Commerce Date:** 2001-01-00

---

**ADDITIONAL INFORMATION**

---

**Description of Mark:** The mark consists of the word "MIRACLE-GRO" in a bullseye logo with a leaf dotting the "I" in "MIRACLE-GRO" and a ring in the bullseye.

**Design Search Code(s):**

05.03.25 - Leaf, single; Other leaves

21.03.12 - Dart boards; Targets without crosshairs or alignment guides

26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles

26.01.21 - Circles that are totally or partially shaded.

27.03.04 - Plants forming letters or numerals

**Prior Registration Number(s):**

668868  
1051605  
1223038  
2345472  
2525828  
2580976  
2601682  
2618698  
2618699

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2010-07-22 - Notice Of Suit  
2010-03-10 - Section 8 (6-year) accepted & Section 15 acknowledged  
2010-03-10 - Case Assigned To Post Registration Paralegal  
2010-02-24 - TEAS Section 8 & 15 Received  
2004-03-16 - Registered - Principal Register  
2003-12-23 - Published for opposition  
2003-12-03 - Notice of publication  
2003-09-22 - Approved for Pub - Principal Register (Initial exam)  
2003-08-11 - Communication received from applicant  
2003-09-07 - Case File In TICRS  
2003-08-11 - PAPER RECEIVED  
2003-06-27 - Non-final action mailed  
2003-06-25 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**  
Susan E. Hollander, Esq.

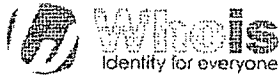


**Correspondent**

Susan E. Hollander, Esq.  
Manatt, Phelps & Phillips, LLP  
1001 Page Mill Road, Bldg. 2  
Palo Alto CA 94304  
Phone Number: 65-0812-1300  
Fax Number: 650-213-0260

---

**EXHIBIT B**



Whois Lookup

**Available domain names similar to mojogro.com**

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Mojo-Gro.com         | <input type="checkbox"/> Mojo-Gro.net         | <input type="checkbox"/> EnergyGro.com    | <input type="checkbox"/> EnergyGro.net    |
| <input type="checkbox"/> SpiritGro.com        | <input type="checkbox"/> SpiritGro.net        | <input type="checkbox"/> EssenceGro.com   | <input type="checkbox"/> EssenceGro.net   |
| <input type="checkbox"/> SpunkGro.com         | <input type="checkbox"/> SpunkGro.net         | <input type="checkbox"/> Energy-Gro.com   | <input type="checkbox"/> Energy-Gro.net   |
| <input type="checkbox"/> Spirit-Gro.com       | <input type="checkbox"/> Spirit-Gro.net       | <input type="checkbox"/> Essence-Gro.com  | <input type="checkbox"/> Essence-Gro.net  |
| <input type="checkbox"/> Spunk-Gro.com        | <input type="checkbox"/> Spunk-Gro.net        | <input type="checkbox"/> YourMojoGro.com  | <input type="checkbox"/> YourMojoGro.net  |
| <input type="checkbox"/> MarketingMojoGro.com | <input type="checkbox"/> MarketingMojoGro.net | <input type="checkbox"/> MediaMojoGro.com | <input type="checkbox"/> MediaMojoGro.net |

[Register Now](#) Only \$9.88 at Whois.com

**mojogro.com Registry Whois** Updated 1 second ago - Refresh

Domain Name: MOJOGRO.COM  
 Registrar: GODADDY.COM, LLC  
 Whois Server: whois.godaddy.com  
 Referral URL: http://registrar.godaddy.com  
 Name Server: NS1.BLUEHOST.COM  
 Name Server: NS2.BLUEHOST.COM  
 Status: clientDeleteProhibited  
 Status: clientRenewProhibited  
 Status: clientTransferProhibited  
 Status: clientUpdateProhibited  
 Updated Date: 15-sep-2011  
 Creation Date: 16-oct-2008  
 Expiration Date: 21-dec-2012

**mojogro.com Registrar Whois** Updated 1 second ago

Registrant:  
 Timothy Beall  
 5120 Naomi Road  
 Eau Claire, Michigan 49111  
 United States

Registered through: GoDaddy.com, LLC (http://www.godaddy.com)  
 Domain Name: MOJOGRO.COM  
 Created on: 16-Oct-08  
 Expires on: 21-Dec-12  
 Last Updated on: 15-Sep-11

Administrative Contact:  
 Beall, Timothy tibeallnd@yahoo.com  
 3811 Manchester Street  
 Colorado Springs, Colorado 80907  
 United States  
 (719) 494-5011

Technical Contact:  
 Beall, Timothy tibeallnd@yahoo.com  
 3811 Manchester Street  
 Colorado Springs, Colorado 80907  
 United States  
 (719) 494-5011

Domain servers in listed order:  
 NS1.BLUEHOST.COM  
 NS2.BLUEHOST.COM

**.org** **\$5.88**  
 Ends 31st May

**Web Hosting**

Host Unlimited Domains **Starts @ \$7.88 per month**

- ✓ Unlimited Disk Space
- ✓ Unlimited Data transfer
- ✓ Unlimited Databases
- ✓ Unlimited Email Accounts
- ✓ 30 Day Money Back Guarantee

[View Plan](#)

<p><b>Domains</b></p> <p><a href="#">Register New</a>  <a href="#">Transfer</a>  <a href="#">Bulk Registration</a>  <a href="#">Bulk Transfer</a>  <a href="#">Whois Lookup</a>  <a href="#">Name Suggestion Tool</a>  <a href="#">Price List</a>  <a href="#">FREE Services</a></p>	<p><b>Hosting</b></p> <p><a href="#">View Hosting Plans</a>  <a href="#">Features</a>  <a href="#">Security</a>  <a href="#">24 x 7 Monitoring</a>  <a href="#">Backup and Recovery</a>  <a href="#">Datacenter Details</a>  <a href="#">Demo</a></p>	<p><b>Email</b></p> <p><a href="#">View Email Hosting Plans</a>  <a href="#">Features</a>  <a href="#">Security</a>  <a href="#">24 x 7 Monitoring</a>  <a href="#">Backup and Recovery</a>  <a href="#">Datacenter Details</a>  <a href="#">Demo</a></p>	<p><b>Whois?</b></p> <p><a href="#">About Us</a>  <a href="#">Contact Us</a>  <a href="#">Terms of Use</a></p>
--	---	---	--

**EXHIBIT C**

# MOJOGRO<sup>™</sup> vs. The Other Guys

## Professionally Conducted 6 Week Trial

All plants were grown in a professional greenhouse under identical conditions.



Mojogro outperforms anything currently on the market, in all flowers and veggies trialed.

## How We're Different

**Synthetic** Synthetic soil is composed of a variety of organic and inorganic materials. Most synthetic soils are deficient in important mineral nutrients, which can be added with chemical fertilizers.

**Organic** Organic matter which has been decomposed and recycled as a fertilizer and soil amendment. Compost can be rich in nutrients. The compost itself is beneficial for the land in many ways, including as a soil conditioner, a fertilizer, addition of vital humus or humic acids, and as a natural pesticide for soil.

**Mojogro** We combine the positive attributes of both synthetic and organic. This new blend is organic, so it's great for the planet and holds moisture similar to a synthetic making it easy to use.

Benefits	Synthetic	Organic	Mojogro
Affordable	✓		✓
Easy to Use	✓		✓
Long Lasting		✓	✓
Eco Friendly		✓	✓
Flower Power	✓		✓
High Yields (veggies)	✓		✓
Better Taste (veggies)		✓	✓

# MOJOGRO<sup>™</sup>



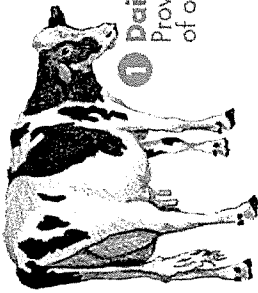
**Our Story** In 2008 a small group of professional growers, microbiologists and environmentalists got together to talk 'dirt'. The goal was to develop a soil medium that was consumer-friendly and easy-to-manage. A soil which was all natural, more predictable and longer lasting than anything on the market. What they came up with was a 100% organic, recycled solution which nature itself provides.

**Our Promise** We believe what's good for the plant should also be good for the planet. We know that all natural soils have the mojo to grow larger, healthier plants and vegetables. We promise to never inject our soils with steroids or harmful chemicals while still kicking the competitions rear-end!



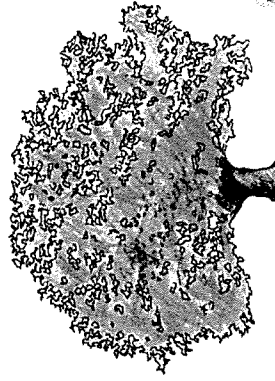
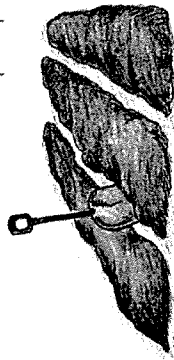
Our products are 100% locally sourced and produced in the USA.

## IT STARTS HERE



**1 Dairy Cow Manure**  
Provides high levels of organic nutrients.

**2 Dairy Compost**  
We utilize healthier and higher nutrient dairy manure in our compost production cycle.

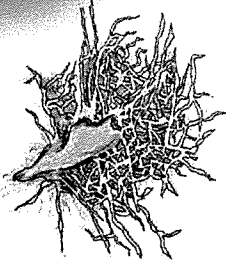


**3 Deciduous Wood Shavings (not bark)**  
Provides high levels of carbon, essential for microbe growth.



**4 MOJO**  
Adding specialized soil microbes to our compost allows the soil to create its own natural wetting agent for high moisture holding capacity.

**Wetting Agent**  
The Fungi and good bacteria that is produced during the second compost creates protection for the roots and acts as a natural wetting agent.



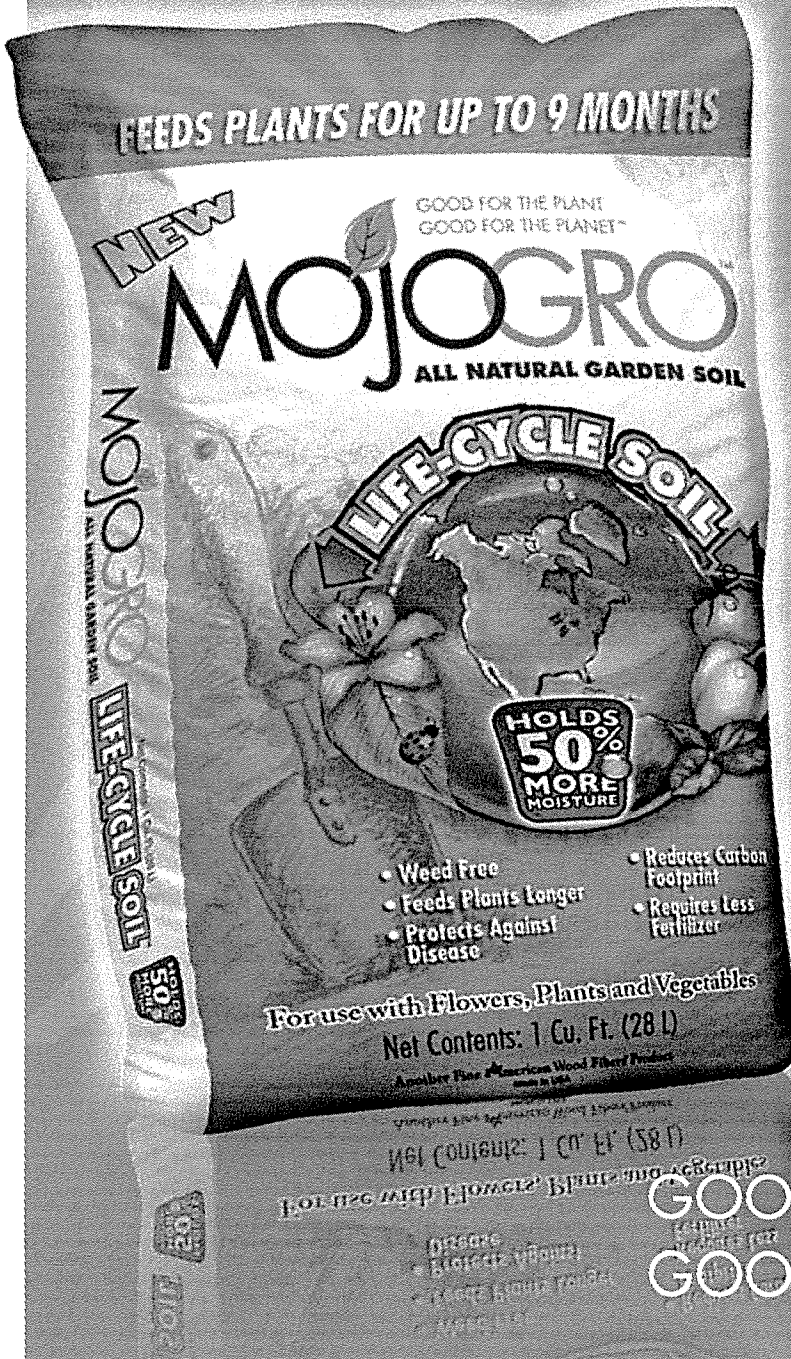
**5 Final Compost**  
We add high carbon nutrient sources to previously composted dairy manure and re-compost to increase beneficial soil microbes.

**Finished Product**  
The combination of double composting production cycles, and proprietary use of natural soil improvement processes creates a finished product, your plants will love!



# MOJOGRO PROCESS

**NEW**  
**MOJOGRO**<sup>TM</sup>  
 ALL NATURAL GARDEN SOIL  
**LIFE-CYCLE SOIL**<sup>TM</sup>



**Finally...** An All Natural Soil that Gives You More

- **More moisture retention** than leading topsoils
- **More earth friendly** than peatmoss
- **More healthy** than compost
- **More affordable**
- **More turns**
- **More profits!**

GOOD FOR THE PLANT  
 GOOD FOR THE PLANET<sup>TM</sup>

# MOJOGRO™

## The MOJOGRO™ Story

### What is MOJOGRO™?

MOJOGRO™ is the collaborative effort of professional growers, soil scientists, conservationists, and garden enthusiasts who wanted an effective, environmentally friendly product that would better meet their needs. The goal? To develop an innovative product that is:

- weed free
- retains more moisture than normal soil
- works well for growing a wide variety of plants and vegetables
- easier to use and understand
- affordable

### What is a Life-Cycle Soil?

The people behind MOJOGRO's development all agreed that for the product to work well for novice and professional growers alike, it needed to provide and supplement the soil's natural lifecycle with not just organic matter, but also micro-organisms. This is because a healthy life cycle soil will continually recycle nutrients, and provide natural defenses against insect pests and plant diseases. You don't have to be an expert in growing if you have superior soil.

### Why is MOJOGRO™ better?

The secret to MOJOGRO™ is that NOT all organic matter is equal, and in order to better sustain the soil organisms and increase the availability of nutrients it is better to use cellulose and lignin derived organic matter (plant matter from forest and field) instead of plant matter from bogs and swamps like peat moss.

Our conservationists love that by our using these other types of plant matter, it won't be necessary for us to add chemical moistening agents to our soil for it to hold water. Peat moss will actually repel water unless chemicals are added to it.


We at MOJOGRO™ believe that no one should have to choose between a natural high quality product and an affordable price. Try MOJOGRO™ and become a believer too.


### See for yourself!

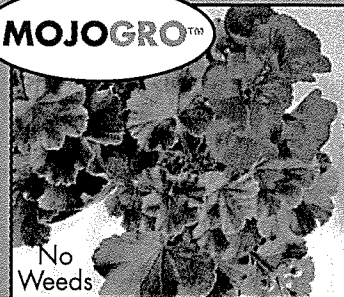
Below is an example of the root differences between plants grown in MOJOGRO™, versus a leading competitor's product. These plants were grown by an independent commercial grower under exactly the same environmental conditions (water, sunlight, heat). The foliage of these two plants look similar after 7 weeks, but which plant do you think is healthier and will produce more flowers or vegetables?

## RESULTS:

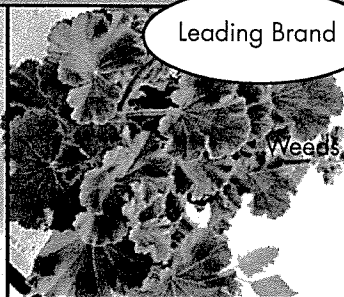
The **MOJOGRO™** soil produced **50% more** flowers and vegetables!



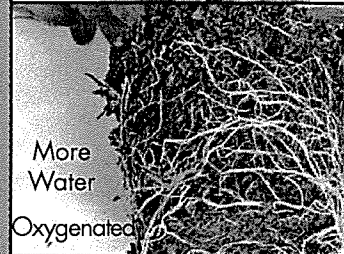





No Weeds



Weeds




More Water  
Oxygenated



Muddy

*...and stronger more durable roots!*

## LIFE-CYCLE SOIL™

Another Fine  American Wood Fibers™ Product

### UPC CODE #

**NUTRIENT ESTIMATES** (from natural sources)

P	16ppm
K	299ppm
Ca	260ppm
Mg	35ppm

Trace Micronutrients: Zn, Mn, Fe, Cu all < 3.5 ppm


**FERTILIZER INGREDIENTS**

Total Nitrogen..... 25%  
Total Sulfur..... 37%  
25% Ammoniacal Nitrogen derived from polymer coated slow release urea.

**INGREDIENTS**

This all-American potting soil contains a proprietary blend of cellulose and lignin based organic matter, water and micro-organisms from farm, field, and forest.

**MOJO**  
c/o American Wood Fibers  
Columbia, MD 21046  
[www.mojogro.com](http://www.mojogro.com)



Made in USA





About Us Products Where to Buy Gardening Tips



Home | Contact Us

Follow Us



### Garden Soil

Our Garden Soil is an all natural soil that has been tested for both potted plants and in the garden. This soil is specially blended for maximizing nutrients and beneficial micro-organisms.



### MOJONATION

#### Contact Us!

Your Name (required)

Your Email (required)

Your Question or Concern

State of Residence

Select One

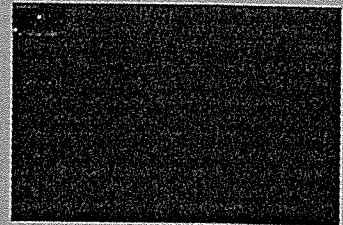
Occupation or Job Title

Phone

Your Message

Send

#### Videos





[About Us](#) [Products](#) [Where to Buy](#) [Gardening Tips](#)



[Home](#) | [Contact Us](#)

Follow Us

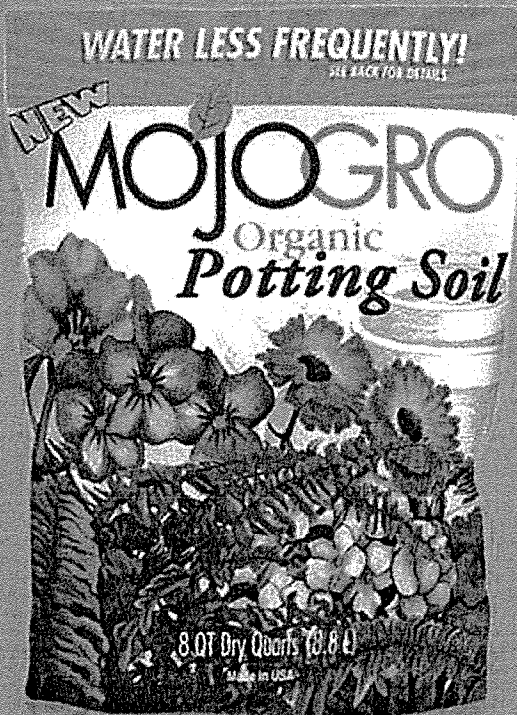


## Organic Potting Soil

Currently in the final stages of certification with OMRI, this soil utilizes the same basic process as our Life-Cycle Soil.

This soil contains organic bloodmeal as its source of nitrogen for maximizing plant growth. It is made up of 100% renewable and organic materials and is specially blended, adding balanced nutrients and beneficial micro-organisms. Additionally we have added perlite (heat expanded volcanic rock) to increase porosity levels necessary for ideal growth in pots and containers.

If you would like to get on our preferred pre-order list for when this product becomes available, please contact us at [sales@mojogro.com](mailto:sales@mojogro.com)



**Organic Potting Soil**  
**WATER LESS FREQUENTLY!**  
**FOR BEST RESULTS**

- ✓ **Check Moisture Weekly**
- ✓ **Don't Overwater**  
(Soil should be slightly moist, not saturated)
- ✓ **Water Half As Often**  
(based on average results)

**Why Mojogro™ holds moisture longer**  
 Mojogro™ Organic Potting Soil was developed by professional horticulturists and biologists to hold moisture up to 50% longer than other potting soils. This is due to naturally occurring organic wetting agents. These wetting agents are produced by micro-organisms and infused into the soil.

**GUARANTEED ANALYSIS**

Total Nitrogen (N)	0.25%
12% Ammoniacal Nitrogen	
Available Phosphate (P <sub>2</sub> O <sub>5</sub> )	0.15%
Soluble Potash (K <sub>2</sub> O)	0.20%
Calcium (Ca)	0.50%
Magnesium (Mg)	0.15%
Sulfur (S)	0.10%

\*Amount from Leachate

**MICRO-ORGANISMS**

Actinomycete Specifications	CFU per gr
Streptomyces Phenyloxyacetate	100
Bacterium Specifications	
Comamonas dehydrohalans	100

**INGREDIENTS**  
 Composted forest organic matter, composted farm cellulose and lignin organic matter, perlite, bloodmeal.

**CAUTION:** - Not for human or animal consumption. To avoid danger of infection, keep this product bag away from babies and children.

## MOJONATION

### Contact Us!

Your Name (required)

Your Email (required)

Your Question or Concern

State of Residence

Select One

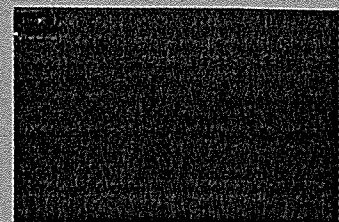
Occupation or Job Title

Phone

Your Message

Send

### Videos



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS THE SCOTTS COMPANY LLC OMS INVESTMENTS, INC. (b) County of Residence of First Listed Plaintiff Union County, OH (c) Attorney's (Firm Name, Address, and Telephone Number) (See attachment) DEFENDANTS MOJOGRO SOILS, LLC, MOJOGRO, LLC MOJOGRO, INC. County of Residence of First Listed Defendant Barrien County, MI NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) U.S. Government Plaintiff, Federal Question, U.S. Government Not a Party, U.S. Government Defendant, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1114 Brief description of cause: Trademark infringement, trademark dilution and other claims

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS Greater than \$75,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 04/30/2012 SIGNATURE OF ATTORNEY OF RECORD /s/ Bradley T. Ferrell

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**COUNSEL FOR PLAINTIFFS THE SCOTTS COMPANY LLC  
AND OMS INVESTMENTS, INC.**

**Trial Attorney:**

Bradley T. Ferrell (0070965)  
ZEIGER, TIGGES & LITTLE LLP  
41 South High Street  
3500 Huntington Center  
Columbus, Ohio 43215-6101  
Telephone: (614) 365-9900  
Facsimile: (614) 365-7900  
Email: ferrell@litohio.com

**Of Counsel:**

John Gary Maynard, III (Va. Bar No. 40596)\*  
Bradley W. Grout (Ga. Bar No. 313950)\*  
HUNTON & WILLIAMS LLP  
954 East Byrd Street  
Riverfront Plaza, East Tower  
Richmond, Virginia 23219-4074  
Telephone: (804) 788-8200  
Facsimile: (804) 788-8218  
Email: jgmaynard@hunton.com  
          bgrout@hunton.com  
*\*pro hac vice motions to be filed*

Daniel P. Mead (0083854)  
ZEIGER, TIGGES & LITTLE LLP  
41 South High Street  
3500 Huntington Center  
Columbus, Ohio 43215-6101  
Telephone: (614) 365-9900  
Facsimile: (614) 365-7900  
Email: mead@litohio.com

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Southern District of Ohio

THE SCOTTS COMPANY LLC
and OMS INVESTMENTS, INC.

Plaintiff

v.

MOJOGRO SOILS, LLC, MOJOGRO, LLC,
and MOJOGRO, INC.

Defendant

)
)
)
)
)
)
)
)

Civil Action No. 2:12-cv-00372

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MOJOGRO SOILS, LLC
c/o TIMOTHY J BEALL
5120 NAOMI ROAD
EAU CLAIRE, MICHIGAN 49111

A lawsuit has been filed against you.

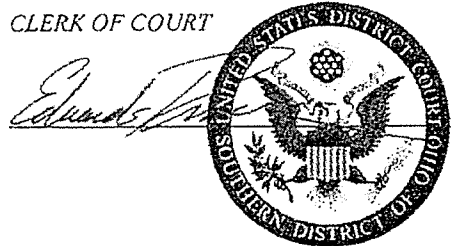
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bradley T. Ferrell
Zeiger, Tigges & Little LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215-6101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: May 1, 2012



AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 2:12-cv-00372

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Mojogro Soils, LLC  
was received by me on *(date)* May 1, 2012.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* Timothy J. Beall, who is  
designated by law to accept service of process on behalf of *(name of organization)* Mojogro Soils, LLC  
\_\_\_\_\_ on *(date)* 5/1/2012 at 2pm ; or


I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-2-12

  
*Server's signature*

Jayne Reeves, Process Server  
*Printed name and title*

7217 W. U Avenue, Schoolcraft, MI 49097  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

THE SCOTTS COMPANY LLC  
and OMS INVESTMENTS, INC.

Plaintiff

v.

MOJOGRO SOILS, LLC, MOJOGRO, LLC,  
and MOJOGRO, INC.

Defendant

Civil Action No. 2:12-cv-00372

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MOJOGRO, LLC  
c/o TIMOTHY J BEALL  
5120 NAOMI ROAD  
EAU CLAIRE, MICHIGAN 49111

A lawsuit has been filed against you.

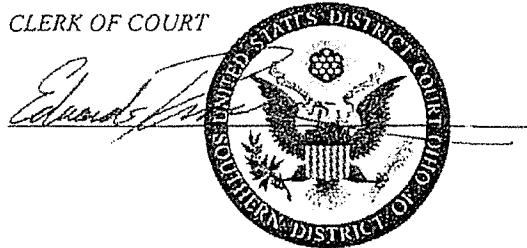
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bradley T. Ferrell  
Zeiger, Tigges & Little LLP  
3500 Huntington Center  
41 South High Street  
Columbus, Ohio 43215-6101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: May 1, 2012



Civil Action No. 2:12-cv-00372

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Mojogro, LLC  
was received by me on *(date)* May 1, 2012

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* Timothy J. Beall, who is  
designated by law to accept service of process on behalf of *(name of organization)* Mojogro, LLC  
\_\_\_\_\_ on *(date)* 5/1/2012 at 2pm ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 5-2-12

Jayne Reeves  
*Server's signature*

Jayne Reeves, Process Server  
*Printed name and title*

7217 W. U Avenue, Schoolcraft, MI 49097  
*Server's address*

Additional information regarding attempted service, etc:



AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

THE SCOTTS COMPANY LLC  
and OMS INVESTMENTS, INC.

Plaintiff

v.

MOJOGRO SOILS, LLC, MOJOGRO, LLC,  
and MOJOGRO, INC.

Defendant

Civil Action No. 2:12-cv-00372

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MOJOGRO, INC.  
c/o TIMOTHY J BEALL  
5120 NAOMI ROAD  
EAU CLAIRE, MICHIGAN 49111

A lawsuit has been filed against you.

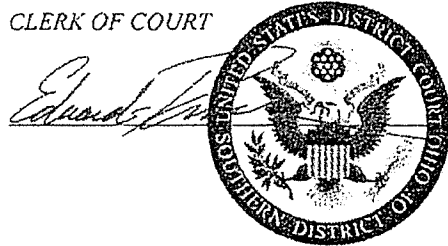
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bradley T. Ferrell  
Zeiger, Tigges & Little LLP  
3500 Huntington Center  
41 South High Street  
Columbus, Ohio 43215-6101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: May 1, 2012



AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 2:12-cv-00372

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Mojogro, Inc.  
was received by me on *(date)* May 1, 2012.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* Timothy J. Beall, who is  
designated by law to accept service of process on behalf of *(name of organization)* Mojogro, Inc.  
on *(date)* 5/1/2012 at 2pm ; or

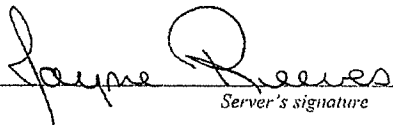
I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-2-12

  
\_\_\_\_\_  
*Server's signature*

Jayne Reeves, Process Server  
\_\_\_\_\_  
*Printed name and title*

7217 W. U Avenue, Schoolcraft, MI 49097  
\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: