

ESTTA Tracking number: **ESTTA550075**

Filing date: **07/23/2013**

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	Eva L Levine		
Entity	Individual	Citizenship	UNITED STATES
Address	1784 Curtner Avenue San Jose, CA 95124 UNITED STATES		

Correspondence information	Eva L Levine 1784 Curtner Avenue San Jose, CA 95124 UNITED STATES evallevine@gmail.com Phone:408-504-8572		
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Applicant Information

Application No	85845976	Publication date	06/25/2013
Opposition Filing Date	07/23/2013	Opposition Period Ends	07/25/2013
Applicant	Syngenta Participations AG Schwarzwaldallee 215 Basel, CH-4058 SWITZERLAND		

Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seeds
Class 005. All goods and services in the class are opposed, namely: Fungicides; Insecticides; Nematicides; Pesticides

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Trademark Act section 43(c) dilution Trademark Act section 1 lack of bona fide intent to use Trademark Act section 45 unfair competition Reverse confusion Unjust enrichment and bad faith intent

Mark Cited by Opposer as Basis for Opposition

U.S. Application/	NONE	Application Date	NONE
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Registration No.			
Registration Date	NONE		
Word Mark	Plenaris Advisers		
Goods/Services	IC 036 financial services, financial planning, estate planning, retirement planning, insurance planning, college planning		

Attachments	Opposition Notice 1A.pdf(4978805 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Eva L Levine/
Name	Eva L Levine
Date	07/23/2013

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

In the matter of trademark application Serial No. 85845976
For the mark Plenaris
Published in the Official Gazette on June 25, 2013

Eva Liang Levine

v.

Syngenta Participations AG

NOTICE OF OPPOSITION

Opposer Eva Liang Levine, Principal and Owner, Plenaris Advisers®
950 S. Bascom Avenue, Suite 1113, San Jose, CA 95128

The above-identified opposer believes that she will be irreparably damaged by registration of the mark shown in the above-identified trademark application, and hereby opposes the same.

The grounds for opposition are as follows:

I. Opposer is the registered owner of the mark Plenaris. Trademark Act §2(d) (15 U.S.C. §1052)

1. Opposer Eva Liang Levine is the creator and the original user of the mark Plenaris.
2. It is a fanciful, arbitrary, and unique mark which opposer created for her business in financial services known as Plenaris Advisers, as well as Plenaris Advisory. There was no such word in the English language until opposer created it.
3. Opposer became the registered owner of the mark when her application for trademark protection was approved on June 6, 2008. The registration number is 3446225. (Exhibit 1)
4. Opposer has perfected the renewal of the mark on June 10, 2013 and will remain the registered owner of the mark until June 10, 2018. (Exhibit 2)
5. Opposer has every intention to use the mark for her business until such date and beyond.

II. Brand Dilution by Blurring, Trademark Act §43 (c)(15 U.S.C. §1125)

6. ‘Dilution by blurring’ under the Trade Act is defined as “association arising from the similarity between a mark or trade name and a famous mark that impairs the

distinctiveness of the famous mark.” Applicant Syngento Participations AG (hereinafter Syngento) seeks to use the identical mark. The subject mark is therefore ipso facto a famous mark due to the fact that a global corporation based in Switzerland such as Syngenta seeks to use it.

7. The mark is associated with financial planning services. Applicant Syngenta would change its meaning by using it differently on its chemical products as indicated in its application for registration, which will result in the dilution of the brand. (Exhibit 3)

8. Given the fancifulness and the arbitrariness of the mark, opposer risks confusion on the part of the general public whether its name and business are associated in any way with Syngenta, such as whether opposer is a licensee of the mark instead of its owner, given the fact that Syngenta is a much bigger business and is therefore in a position to dominate the use of the mark through its marketing efforts on a global scale.

III. Brand Dilution by Tarnishment, Trademark Act §43(c) (15 U.S.C. §1125)

9. Since Syngenta engages in the manufacturing of chemicals, many of which are known to be toxic, opposer objects to its mark being proposed for use on such toxic chemicals.

10. Evidence of Syngenta’s toxic products includes Thiamethoxam, which has been banned by the European Union. (Exhibit 4)

11. Another well-known product by Syngenta, Atrazine, is also banned by the European Union and is the subject of study within the U.S. on environmental damage. (Exhibit 5)

12. To date, the mark has been a benign, though fanciful word that has no significance as a scientific or chemical term. Syngenta’s attempt to adopt the name for its own use seems to be an attempt to use a benign word for an array of chemical products that are controversial. Once the mark is associated with controversy, it will forever be tainted. If Syngenta is allowed to use the mark, it is only a matter of time for the mark to be tainted to the point where opposer’s brand will also be irreversibly damaged or rendered unusable.

13. Under §43(c), opposer is entitled to injunctive relief for injury under brand dilution by blurring and tarnishment regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

IV. Lack of Bona Fide Intent to Use Mark in Commerce, Trademark Act §1 (15 U.S.C. §1051)

14. The subject application is Syngenta’s third application for registering the mark.

15. Syngenta’s first application, dated October 22, 2010 was abandoned on January 31, 2011. (Exhibit 6)

16. Syngenta's second application, dated October 25, 2010, was abandoned on May 14, 2012. (Exhibit 7)

17. It has been more than 33 months since Syngenta's first application for registering the subject mark. Yet there is no evidence that Syngenta has done anything to use the mark in any way, which gives rise to the likelihood that it may be interested in hoarding the mark and its associated good name for undisclosed reasons.

18. In addition, a cursory survey of Syngenta's product lines indicates that the company has no shortage of fanciful names that it uses for its products, which gives rise to a questionable intent why it seeks to appropriate the subject mark that opposer created, knowing full well that opposer is the registered owner of the mark since June 2008. (Exhibit 8)

V. Unfair Competition. Trademark Act §45 (15 U.S.C. §1127)

19. §45 (15 U.S.C. §1127) states that the intent of the Trademark Act is "...to protect persons engaged in ... commerce against unfair competition; ..."

20. Syngenta seeks to register the mark in the broadest sense without any limitation, despite including only two classes of goods in the application. Opposer has reason to believe that Syngenta's intent is to eventually encroach on opposer's use of the mark, dominating the use of it and then appropriating the full use of the mark. For example, opposer owns the internet domain names: www.plenaris.com, as well as www.plenarisadvisory.com. (Exhibit 9) Opposer may be forced by Syngenta to cease and desist the use of the domain name www.plenaris.com if Syngenta is allowed to use the mark because it can claim that it has the right to use the mark in the most general and complete sense with no limitations. It means that it will use the mark by restricting opposer's use of it, thereby reducing opposer's ownership rights to the mark.

21. Opposer's belief in Syngenta's intent to encroach and dominate the use of the mark is based on the fact that Syngenta, as a global corporation (with 27,000 employees in over 90 countries, and over \$11 billion in sales in 2010 (Exhibit 10), has had a corporate history and practice of asserting its rights against other businesses through legal actions, including legal actions against Bayer and Monsanto over patent infringement. *Monsanto Co. et al v. Syngenta Seeds, Inc. et al*, (Fed Cir. 2007) 503 F. 3d 1352.

22. Not only does Syngenta have a practice of asserting its rights against other businesses, it has a history and practice of infringing on other businesses' rights, as in the case of Bayer. In May 2001, Bayer instituted an action against Syngenta for patent infringement. (Exhibit 11) The parties settled in January 2002 with Syngenta paying Bayer \$120 million for using the patent at issue. (Exhibit 12) In April 2013, Bayer again filed an action against Syngenta for patent infringement, according to news reports. (Exhibit 13)

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