

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/322290

MARK:

\*77322290\*

CORRESPONDENT ADDRESS:

THEODORE A. BREINER  
BREINER & BREINER, L.L.C.  
P.O. BOX 320160  
ALEXANDRIA, VA 22320-0160

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Agrium Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :

7002/TM

CORRESPONDENT E-MAIL ADDRESS:

**SUPPLEMENTAL OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:**

This letter is supplemental to the Office action dated November 28, 20007. All of the substantive issues and informalities raised in the Office Action dated November 28, 2007, are incorporated by reference herein. Please note that applicant must respond to all issues raised in this Office Action, within six (6) months of the mailing date of this letter. If applicant does not respond within this time limit, the application will be abandoned.

Likelihood of Confusion

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2551388 and 2554423. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

The applicant applied to register the color green for fertilizers. The registered marks are the color green for granular chemical preparations for use in the manufacture of fertilizers; and for granular fertilizer ingredient of blended fertilizers for professional, commercial, and domestic use.

The applicant's mark and the registered marks are identical, namely, the color green as applied to the fertilizers. If the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), *cert. denied* 506 U.S. 1034 (1992); *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981); TMEP §1207.01(a).

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel.*

*Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i). Here, applicant's mark and the registered marks are used in connection with fertilizers and fertilizers ingredients. Since applicant's and registrant's goods travel in the same trade channels, confusion as to origin of said goods is likely.

The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988).

**PLEASE NOTE:** If applicant is the owner of U.S. Registration Nos. 2551388 and 2554423, then applicant must submit a claim of ownership. 37 C.F.R. §2.36; TMEP §812. The following standard format is suggested:

Applicant is the owner of U.S. Registration Nos. 2551388 and 2554423.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Alice Benmaman/  
Trademark Attorney  
Law Office 116  
(571) 272-9126

**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**DESIGN MARK**

**Serial Number**  
75009459

**Status**  
REGISTERED

**Registration Number**  
2554423

**Date Registered**  
2002/04/02

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(2) DESIGN ONLY

**Owner**  
RLC TECHNOLOGIES, L.L.C. CORPORATION ALABAMA 203 WEST FOURTH STREET  
P.O. BOX 1187 SYLACAUGA ALABAMA 35150

**Goods/Services**  
Class Status -- ACTIVE. IC 001. US 001 005 006 010 026 046. G & S:  
granular fertilizer ingredient of blended fertilizers for  
professional, commercial, and domestic use. First Use: 1991/02/00.  
First Use In Commerce: 1991/02/00.

**Lining/Stippling Statement**  
The drawing is lined for the color green.

**Description of Mark**  
The mark consists of the color green as applied to a portion of the  
granules constituting a fertilizer blend, the remainder of the  
granules having contrasting colors, but such colors are not claimed as  
part of the mark. The dotted outline of the goods shown in the  
drawing is intended to show the position of the mark and is not part  
of the mark.

**Section 2f Statement**  
2(F) ENTIRE MARK

**Filing Date**  
1995/10/24

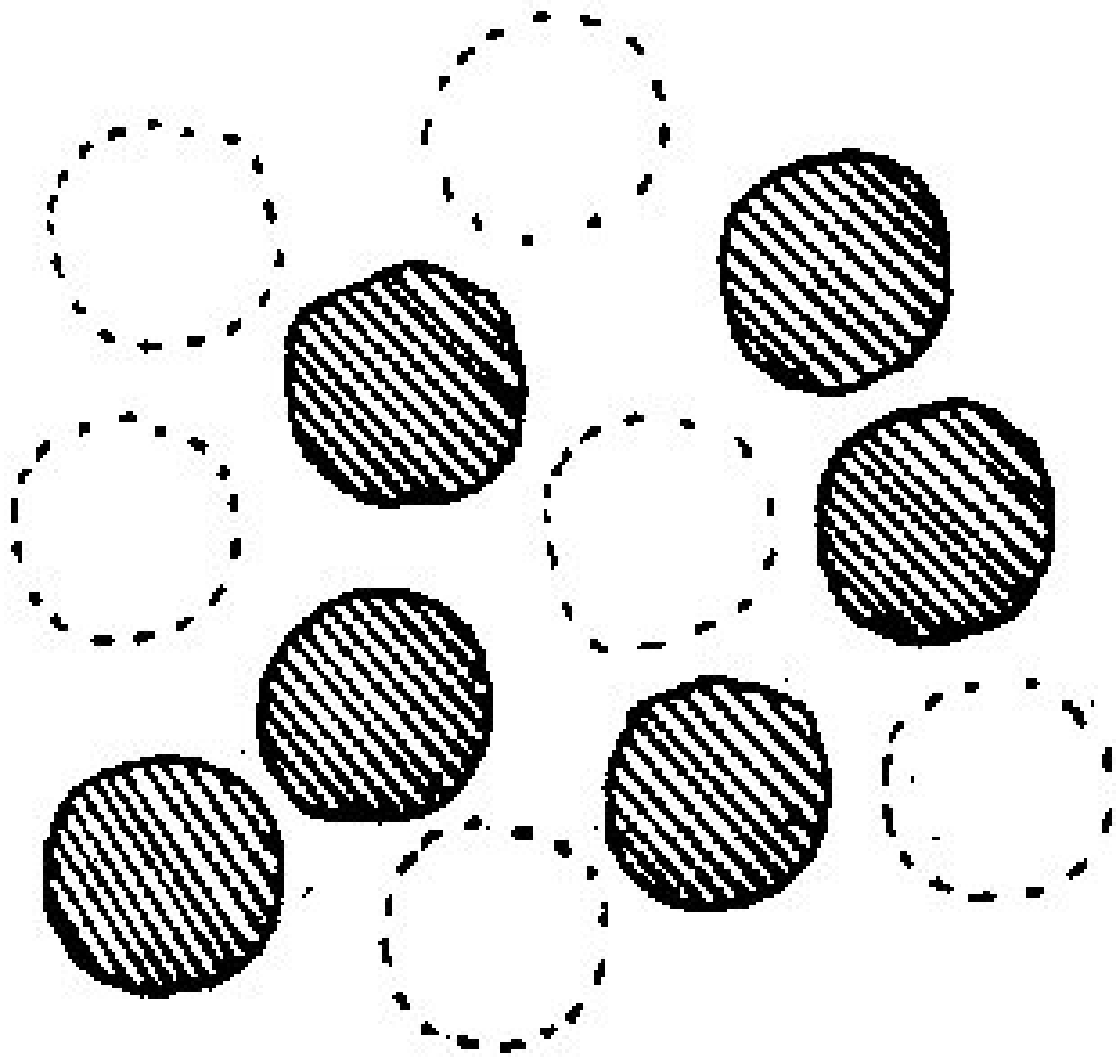
**Examining Attorney**

**Print: Jan 16, 2008**

**75009459**

CHICOSKI, JENNIFER

**Attorney of Record**  
THEODORE A BREINER



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