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7002/TM/js1

"TRADEMARK"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Agrium Inc.

U.S. Serial No. 77/322,290

Filed: November 6, 2007

Mark: Color Green

Alice Benmaman  
Trademark Attorney

Law Office 116

- - - - -

July 16, 2008  
Alexandria, Virginia

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

RESPONSE

Dear Madam:

This is in response to the Office actions mailed November 28, 2007 and January 16, 2008 and confirms the undersigned's telephone interview with the trademark attorney in this application, Alice Benmaman, Esquire, on May 22, 2008. Applicant and the undersigned thank the trademark attorney for her courtesy in discussing this application.



07-16-2008

U.S. Patent & TMO/TM Mail Rpt Ct. #72

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Responsive to the trademark attorney's request for a description of the mark, applicant states as follows:

The mark consists of the Color Green used on the granules of fertilizers. The dotted outline around the granules of fertilizers is intended to show placement of the Color Green and is not claimed as part of the mark.

The trademark attorney has refused registration of the Color Green for fertilizers on the grounds that applicant has not established that the Color Green has acquired distinctiveness for fertilizers. Applicant respectively submits that the Color Green is distinctive of applicant's goods due to, inter alia, the arbitrary nature of the mark and applicant's long, continuous and substantially exclusive use of the Color Green for fertilizers for over almost twenty years as set forth in the application. This is prima facie evidence of acquired distinctiveness under Section 2(f) of the Trademark Act.

Responsive to the trademark attorney's requirement for additional information, applicant states as follows:

1. The identified Color Green trademark does not serve any other purpose as used on the goods other than as a trademark and, therefore, the Color Green trademark is not functional.

2. The Color Green trademark is not a natural by-product of the manufacturing process for the goods. The Color Green is added as an additional step in the manufacturing process.
3. Attached hereto as Exhibits 1 through 4 are advertising material for the Color Green fertilizer. The Color Green trademark is used with applicant's related company's registered trademark NUTRALENE.
4. Applicant uses the Color Green as a trademark to identify a source of origin of applicant's goods. Applicant uses other colors as trademarks for its goods. For example, applicant's related company is the owner of Registration Nos. 2,551,388 and 2,554,423, copies attached hereto as Exhibits 5 and 6, cited by the trademark attorney and discussed hereafter. Applicant also uses other colors to identify and distinguish its goods, including as referenced in applicant's pending Application Serial Nos. 77/295,286; 77/295,316; 77/357,676; and 77/357,703, also pending before the trademark attorney and discussed with the trademark attorney during the telephone interview.
5. Applicant is not aware of any competitors manufacturing fertilizers using applicant's trademark. Any such use

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would be an infringement of applicant's trademark, and applicant polices its trademarks.

6. Attached hereto as Exhibits 7 and 8 are advertisements of third party manufacturers of fertilizers.
7. The Color Green is not needed by others for fertilizers.

Notwithstanding the above and while not believed to be necessary, applicant is also in the process of compiling additional evidence to illustrate the distinctiveness of applicant's trademark for fertilizers. The undersigned advised the trademark attorney of applicant's intention during the referenced telephone interview.


The trademark attorney has initially refused registration under Section 2(d) of the Trademark Act based on Registration Nos. 2,551,388 and 2,554,423. Applicant respectfully requests that the trademark attorney reconsider and withdraw the refusal to register on the grounds that the cited registrations are owned by applicant's related company Agrium Advanced Technologies (U.S.) Inc.

Publication is respectfully requested.

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Respectfully submitted,

AGRIUM INC.

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Attachments: Exhibits 1-8

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