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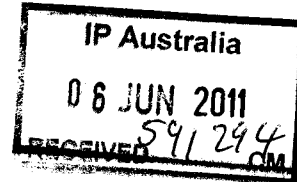
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NOTE - EVIDENCE FORWARDED
TO EXAM SERVICES

Attention: Karen Read, Trade Mark Examiner

2 June 2011

Registrar of Trade Marks
IP Australia - Trade Marks Office
PO Box 200
Woden ACT 2606
By email: assist@ipaustralia.com.au



Dear Karen

Greenstar Plant Products, Inc.
Trade Mark Application No. 1337311 for MONSTER BLOOM in Class 1
Response to Examiner's Report No. 1
Our ref: LAT:MCG:02-5503-2807

We act for Greenstar Plant Products, Inc. ("the Applicant").

We refer to the Examiner's Report No. 1 dated 12 March 2010 concerning the Applicant's application no. 1337311 for the MONSTER BLOOM trade mark in class 1 ("the MONSTER BLOOM mark").

1 Section 44 objection

1.1 We note that the Examiner has raised an objection to the MONSTER BLOOM mark pursuant to section 44 of the Act. The Examiner has cited the following registered trade mark as a barrier to the registration of the MONSTER BLOOM mark:

Number	Trade Mark	Class/services	Date of registration
1219227	MONSTA BLOOM	Class 1: Chemicals used in agriculture, horticulture and forestry; fertilisers; manures	11 January 2008

2 Honest Concurrent Use

2.1 To overcome this objection, we submit the statutory declaration of Ms Ruth Roberts which evidences the Applicant's prior and honest concurrent use of the MONSTER

BLOOM mark in Australia, including prior and up until the priority date of the cited registration.

3 Conclusion

In light of the attached statutory declaration, we respectfully request that the Examiner withdraw the section 44 objections and allow the Application to proceed to acceptance. We submit that Application No. 1337311 for MONSTER BLOOM in Class 1 should be allowed on the basis of demonstrated prior and honest concurrent use pursuant to section 44(3) of the Act.

We look forward to receiving your response in due course.

Yours sincerely



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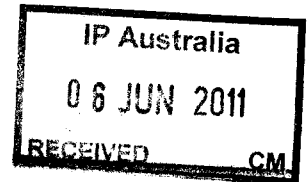
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Encl

Australia

Trade Marks Act 1995

IN THE MATTER OF Trade Mark
Application No. 1337311 for MONSTER
BLOOM in the name of Greenstar Plant
Products, Inc.



STATUTORY DECLARATION

Statutory Declarations Act 1959 (Cwlth)

I, Ruth Roberts, Regulatory Manager of Greenstar Plant Products Inc., make the following declaration under the *Statutory Declarations Act 1959*:

- 1 I, Ruth Roberts, am Regulatory Manager at Greenstar Plant Products Inc. (“**the Applicant**”) and am authorised to make this declaration on the Applicant’s behalf.
- 2 The facts contained in this declaration come from my personal knowledge and belief and from information contained in the books and records of the Applicant to which I have access.

The Applicant

- 3 The Applicant is a leading international producer of premium horticultural products and solutions for domestic and commercial use.
- 4 Established in 1995 and based in Langley B.C., Canada, the Applicant distributes domestically and internationally more than 75 brands and over 900 horticultural products to retail indoor and outdoor garden centres, landscapers and commercial growers.

The Application

- 5 I am aware that on 17 December 2009, the Applicant applied for registration of the MONSTER BLOOM trade mark under application no. 1337311 (“**the MONSTER BLOOM Trade Mark**”). Details of the MONSTER BLOOM Trade Mark are set out below:

Application No.	Trade Mark	Goods
1337311	MONSTER BLOOM	Class 1 : Fertilizers; chemicals used in agriculture and horticulture and forestry

Background on the MONSTER BLOOM Fertilizer Product and Trade

- 6 The Applicant began production in 2002 of a plant fertilizer high in phosphorus and potassium which helps to improve bloom/fruit quality and optimizes photosynthesis and starch production within the plant. This plant fertilizer is promoted and marketed as “MONSTER BLOOM” fertilizer blend (“**the MONSTER BLOOM Fertilizer Product**”).
- 7 The MONSTER BLOOM Fertilizer Product was first introduced in 2002 and has been continuously sold since then. The MONSTER BLOOM Fertilizer Product was first sold in Australia in 2002.
- 8 The MONSTER BLOOM Trade Mark is a distinguishing brand name of this fertilizer product which has been sold throughout Australia for over the last 8 years and continues to be sold in Australia.

Applicant’s sales of the MONSTER BLOOM Fertilizer Product

- 9 Currently Australians purchase over 2465 units of the MONSTER BLOOM Fertilizer Product annually. The specific number of units and value of the MONSTER BLOOM Fertilizer Product sold since 2007 is shown in “**Confidential Annexure DD-1**”.
- 10 Since 2007, the Applicant has generated sales of the MONSTER BLOOM Fertilizer Product in excess of [REDACTED]

- 11 Exhibited to me at the time of swearing this Statutory Declaration and marked “**Exhibit DD-2**” is a sample of the packaging of the MONSTER BLOOM Fertilizer Product prominently featuring the MONSTER BLOOM Trade Mark.

The Applicant’s promotion of the MONSTER BLOOM Trade Mark

- 12 The Applicant has actively marketed and promoted its MONSTER BLOOM Fertilizer Product under and by reference to the MONSTER BLOOM Trade Mark.
- 13 The MONSTER BLOOM Trade Mark has been used to promote and advertise the Applicant’s MONSTER BLOOM Fertilizer Product in a wide variety of media including:
- (a) print advertising;
 - (b) on the Applicant’s website
<http://www.grotek.net/en/products/product.aspx?id=68> ; and
 - (c) the fertilizer product’s information sheet.
- 14 Exhibited to me at the time of swearing this Statutory Declaration and marked “**Exhibit DD-3**” is a catalogue produced by the Applicant advertising the MONSTER BLOOM Fertilizer Product sold and marketed under the MONSTER BLOOM Trade Mark.
- 15 Exhibited to me at the time of swearing this Statutory Declaration and marked “**Exhibit DD-4**” are extracts from various websites discussing the MONSTER BLOOM Fertilizer Product sold and marketed under the MONSTER BLOOM Trade Mark. This exhibit serves to demonstrate the enthusiasm generated by the mention of the MONSTER BLOOM Trade Marks and highlight consumers’ strong connection to this trade mark as being that of the Applicant’s MONSTER BLOOM Fertilizer Product sold and marketed under and by reference to the MONSTER BLOOM Trade Mark.

Customer impression

- 16 I believe that as a result of:
- (a) the significant history of the MONSTER BLOOM Fertilizer Product;
 - (b) the widespread distribution of the MONSTER BLOOM Fertilizer Product; and

- (c) given Australian consumers have, for years, enjoyed and continue to enjoy the MONSTER BLOOM Fertilizer Product as sold and marketed under the MONSTER BLOOM Trade Marks;

the MONSTER BLOOM Trade Mark has become synonymous as that being of the Applicant's MONSTER BLOOM Fertilizer Product.

- 17 “**Confidential Annexure DD-1**” and paragraph 10 of the Statutory Declaration contain actual sales figures of the Applicant, disclosure of the contents of which would unreasonably and adversely affect the Applicant in the conduct of its business, financial or commercial affairs. That information is supplied in confidence and I claim that “**Confidential Annexure DD-1**” and paragraph 10 of this Statutory Declaration are exempt from disclosure under the provisions of the *Freedom of Information Act 1982*.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

DECLARED at Langley)
this 24 th day of May 2011 before me:)

Harbir Deol)
Signature of authorised witness)

.....)
Name of authorised witness (block letters))

.....)
HARBIR KAUR DEOL)
- NOTARY PUBLIC)
201 - 20171 92A AVENUE)
LANGLEY, B.C. V1M 3A5)
TEL: (604) 888-6605)
Address of authorised witness)

.....)
Capacity in which authorised witness takes)
the statutory declaration)

[Signature])
Signature of declarant)