

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

THE SCOTTS COMPANY LLC, and OMS INVESTMENTS, INC., Plaintiffs, v. GTX TURF FARMS LP, ANDREW TOBIAS, and BRYAN FOSTER, Defendants.	Case No. 2:22-cv-538 JURY TRIAL DEMANDED
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COMPLAINT

Plaintiffs, The Scotts Company LLC and OMS Investments, Inc. (collectively “ScottsMiracle-Gro” or “Plaintiffs”), for their Complaint against Defendants, GTX Turf Farms LP, Andrew Tobias, and Bryan Foster (collectively “Defendants”), allege and states as follows:

Nature of the Case

1. Headquartered in central Ohio for over 150 years, ScottsMiracle-Gro is the world’s largest marketer of branded consumer lawn and garden products. ScottsMiracle-Gro has developed and owns some of the industry’s most widely recognized brands including its famous MIRACLE-GRO mark and ALL-IN-ONE PARTICLES mark. ScottsMiracle-Gro has extensively used its famous, registered, and incontestable MIRACLE-GRO mark on and in connection with consumer lawn and garden products for over seventy years. ScottsMiracle-Gro has also extensively used its well-known, registered, and incontestable ALL-IN-ONE PARTICLES mark in connection with lawn care products containing fertilizer for over twenty years.

2. Defendants directly compete against ScottsMiracle-Gro in the manufacture, distribution, promotion and sale of lawn care products, and manufacture and sell grass seed and

lawn fertilizer products under the MIRACLE GRASS, GROTRAX, and ALL IN ONE marks. Defendants market and sell products bearing the MIRACLE GRASS, GROTRAX and ALL IN ONE marks at various retail outlets, including the same retail outlets where ScottsMiracle-Gro markets and sells its products under the MIRACLE-GRO and ALL-IN-ONE PARTICLES marks.

3. As detailed below, Defendants' conduct constitutes infringement and dilution of ScottsMiracle-Gro's trademark rights and unfair competition. Defendants' unlawful conduct is knowing, intentional, and designed to trade on the reputation and goodwill that ScottsMiracle-Gro has developed through years of successful promotion and sales of its superior products and on the reputation of Scotts' MIRACLE-GRO, GRO, GRO-formative, and ALL-IN-ONE PARTICLES marks here at issue.

4. ScottsMiracle-Gro has been, and is likely to continue to be, injured by Defendants' unlawful conduct, and will suffer irreparable harm unless and until Defendants are enjoined from using the MIRACLE GRASS, GROTRAX and ALL IN ONE marks in connection with Defendants' products in the United States.

The Parties

5. The Scotts Company LLC is an Ohio limited liability company with its principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041, and is the licensee of various intellectual property assets owned by OMS Investments, Inc., including the MIRACLE-GRO Marks and ALL-IN-ONE PARTICLES marks that are being willfully infringed by Defendants.

6. OMS Investments is a Delaware corporation with an office at 10250 Constellation Blvd., Suite 2800, Los Angeles, California, 90067, and is an affiliate of the The Scotts Company, LLC.

7. Defendant GTX Turf Farms LP (“GTX”) is a Delaware limited partnership with a place of business as 99 Aero Camino, Unit # B, Goleta, California 93117.

8. Defendant Andrew Tobias is a California resident who resides at 121 W De La Guerra Street, Suite A, Santa Barbara, California 93101, and upon information and belief, is a partner in GTX.

9. Defendant Bryan Foster is a California resident who resides at 121 W De La Guerra St, Suite A, Santa Barbara, California 93101, and upon information and belief, is a partner in GTX.

10. On information and belief, Defendants, through their agents, representatives, or affiliates, have done, and are doing, business in the Southern District of Ohio, and have engaged in acts and/or omissions within this District. The foregoing acts and/or omissions are causing ScottsMiracle-Gro to suffer injury, including but not limited to injury within this District.

Jurisdiction and Venue

11. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338(a)-(b), and 1367.

12. This Court has subject matter jurisdiction over Counts I, II, VIII, and IX of this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a) because these counts present a Federal question under the following provisions of the United States Code:

- a. Counts I and VII (Trademark Infringement) - 15 U.S.C. § 1114;
- b. Counts II and VIII (Federal Unfair Competition) - 15 U.S.C. § 1125(a);
- c. Count III (Federal Trademark Dilution) - 15 U.S.C. § 1125(c); and
- d. Count VI (Cancellation of United States Registration) - 15 U.S.C. § 1119.

13. This Court has supplemental jurisdiction over the remaining Counts pursuant to 28 U.S.C. § 1367 because they form part of the same case or controversy as Scotts’ federal claims.

14. This Court has personal jurisdiction over Defendants under Ohio Revised Code § 2307.382 because, among other things, Defendants transact business in Ohio, contract to supply goods in Ohio, and have caused tortious injury by acts in Ohio. Defendants ship goods bearing the infringing MIRACLE GRASS, GROTRAX, and ALL-IN-ONE marks throughout the United States and to stores located in this District with the expectation that products will be sold in this District. By distributing and selling their infringing products in Ohio and this District, Defendants purposefully direct activities in this District that relate to and give rise to the claims alleged in this Complaint.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and Local Rule 82.1 because a substantial part of the events giving rise to ScottsMiracle-Gro's claims occurred in this District and Defendants are subject to personal jurisdiction in this District.

Background Facts

ScottsMiracle-Gro's Famous MIRACLE-GRO Mark and Products

16. Throughout its over 150 year history, ScottsMiracle-Gro has become the world's largest marketer of branded consumer lawn and garden products, and has developed and maintained a national reputation for high quality lawn and garden products. ScottsMiracle-Gro owns some of the industry's most widely recognized brands including its famous MIRACLE-GRO mark.

17. ScottsMiracle-Gro has been, and is now, extensively engaged in the business of marketing and selling in United States commerce various lawn and garden goods and services (collectively the "MIRACLE-GRO Products") under the MIRACLE-GRO marks, which include the MIRACLE-GRO word mark, MIRACLE-GRO word plus design mark and numerous GRO and GRO-formative marks.

18. ScottsMiracle-Gro, through its predecessors-in-interest, first used the MIRACLE-GRO word mark in United States interstate commerce in connection with the MIRACLE-GRO Products at least as early as 1951, and has used the mark in United States interstate commerce continuously since that date.

19. ScottsMiracle-Gro advertises and sells the MIRACLE-GRO Products under the MIRACLE-GRO marks throughout the United States, including in retail stores in this judicial district. ScottsMiracle-Gro also markets the MIRACLE-GRO Products under the MIRACLE-GRO marks throughout the United States via the Internet, including on its websites accessible at www.miraclegro.com, www.scotts.com, and www.scottsmiraclegro.com and through Amazon.com.

20. ScottsMiracle-Gro also heavily markets the MIRACLE-GRO Products under the MIRACLE-GRO marks on social media platforms including the following:

Facebook (<https://www.facebook.com/MiracleGro/>)

Instagram (<https://www.instagram.com/miraclegro>)

YouTube (<https://www.youtube.com/user/MiracleGroGardens>)

Pinterest (<https://www.pinterest.com/miraclegro/>)

Twitter (<https://twitter.com/miraclegro>).

21. ScottsMiracle-Gro has invested extraordinary resources developing, advertising, promoting and marketing the MIRACLE-GRO Products under the MIRACLE-GRO marks throughout the United States and establishing the marks in the minds of consumers as the source of high-quality goods offered by ScottsMiracle-Gro. As a result, and in addition to its registered rights described below, ScottsMiracle-Gro enjoys extremely strong common law trademark rights in the MIRACLE-GRO marks, embodying invaluable goodwill.

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