

ESTTA Tracking number: **ESTTA1118874**

Filing date: **03/08/2021**

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	Gardens Alive, Inc.
Granted to Date of previous extension	03/10/2021
Address	230 MARY AVENUE GREENDALE, IN 47025 UNITED STATES

Correspondence information	ZICK RUBIN ARCHSTONE LAW GROUP P.C. 57 WELLS AVENUE SUITE ONE NEWTON, MA 02459 UNITED STATES Primary Email: zrubin@archstonelaw.com Secondary Email(s): bulrich@archstonelaw.com, lye@archstonelaw.com 781-314-0117
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**Applicant Information**

Application No.	88883208	Publication date	11/10/2020
Opposition Filing Date	03/08/2021	Opposition Period Ends	03/10/2021
Applicant	SP & RA PTY LTD 74 RIVERSTONE BLVD CLYDE NORTH, VIC, 3978 AUSTRALIA		

**Goods/Services Affected by Opposition**

Class 021. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: herb storage containers for household use

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4056161	Application Date	04/08/2011
Registration Date	11/15/2011	Foreign Priority Date	NONE

Word Mark	GARDENS ALIVE!
Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1988/12/19 First Use In Commerce: 1988/12/19 Retail store services, online retail store services, mail order services and, telephone ordering services all featuring live plants, plant bulbs, seeds, garden supplies and gardening-related products, pet care supplies, kitchen tools, food storage containers, indoor insect traps, indoor and outdoor household cleaning products, and pond treatment products

U.S. Registration No.	2474693	Application Date	07/17/1996
Registration Date	08/07/2001	Foreign Priority Date	NONE
Word Mark	GARDENS ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1995/12/04 First Use In Commerce: 1995/12/04 organic plant foods		

U.S. Registration No.	1976225	Application Date	03/14/1995
Registration Date	05/28/1996	Foreign Priority Date	NONE
Word Mark	FRUIT TREES ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1993/10/00 First Use In Commerce: 1993/10/00 organic plant food and nutrients for fruit trees		

U.S. Registration No.	1972632	Application Date	03/14/1995
Registration Date	05/07/1996	Foreign Priority Date	NONE
Word Mark	COMPOST ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1986/03/00 First Use In Commerce: 1986/03/00 materials useful in the production of gardening mulch, namely compost		

U.S. Registration No.	1971149	Application Date	03/14/1995
Registration Date	04/30/1996	Foreign Priority Date	NONE
Word Mark	BULBS ALIVE!		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 1991/01/00 First Use In Commerce: 1991/01/00 organic plant food and nutrients for bulbs

U.S. Registration No.	1680890	Application Date	04/23/1990
Registration Date	03/31/1992	Foreign Priority Date	NONE
Word Mark	TOMATOES ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1985/01/10 First Use In Commerce: 1985/01/10 organic plant foods for tomatoes		

U.S. Registration No.	1673129	Application Date	04/23/1990
Registration Date	01/28/1992	Foreign Priority Date	NONE
Word Mark	VEGETABLES ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1985/01/10 First Use In Commerce: 1985/01/10 organic plant foods for vegetables		

U.S. Registration No.	1672719	Application Date	04/23/1990
Registration Date	01/21/1992	Foreign Priority Date	NONE
Word Mark	TURF ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1988/01/10 First Use In Commerce: 1988/01/10 grass seed		

U.S. Registration No.	1669965	Application Date	04/23/1990
Registration Date	12/31/1991	Foreign Priority Date	NONE
Word Mark	HOUSEPLANTS ALIVE!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1985/01/10 First Use In Commerce: 1985/01/10 organic plant foods and nutrients for houseplants		

Attachments	Notice of Opposition.pdf(137308 bytes )
Signature	/zickrubin/
Name	ZICK RUBIN
Date	03/08/2021

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

GARDENS ALIVE, INC.,

Opposer,

v.

SP & RA PTY LTD,

Applicant.

Opposition No.:

Application Serial No. 88883208

Mark: PLANTSALIVE and Design

**Notice of Opposition**

Opposer Gardens Alive, Inc. (“Opposer”), a Delaware corporation, located at 230 Mary Avenue, Greendale, Indiana 47025, believes that it will be damaged by U.S. Application Serial No. 88883208, filed with the United States Patent and Trademark Office on April 22, 2020 by Applicant SP & RA PTY LTD (“Applicant”), an Australian private limited company located at 74 Riverstone Boulevard, Clyde North, VIC Australia 3978, for the trademark PLANTSALIVE and Design. Opposer hereby opposes Applicant’s application to register PLANTSALIVE and Design and, as grounds for the Opposition, alleges:

**Opposer’s Goods and “Gardens Alive!” Family of Marks**

1. Opposer is a national lawn, plant, and garden supply company that sells its products under a family of “\_\_\_\_\_ ALIVE!” including the federally registered marks GARDENS ALIVE!, HOUSEPLANTS ALIVE!, VEGETABLES ALIVE!, TURF ALIVE!, TOMATOES ALIVE!, COMPOST ALIVE!, BULBS ALIVE!, and FRUIT TREES ALIVE!. Opposer has continuously marketed and sold since at least as early as 2011, in connection with

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