

ESTTA Tracking number: **ESTTA719843**

Filing date: **01/12/2016**

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	KELLOGG NORTH AMERICA COMPANY
Granted to Date of previous extension	01/13/2016
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES

Correspondence information	KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES jim.lewis@kellogg.com, elizabeth.kinsley@kellogg.com, rachel.pileggi@kellogg.com
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Applicant Information

Application No	86627812	Publication date	09/15/2015
Opposition Filing Date	01/12/2016	Opposition Period Ends	01/13/2016
International Registration No.	NONE	International Registration Date	NONE
Applicant	King.com Limited Aragon House Business Centre St. Julians, STJ3140 MALTA		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Downloadable computer game software for video and computer games; Downloadable computer game programs offered via social media; Computer peripheral devices; Downloadable image files containing photographic images and artwork, and text in the field of video and computer games; Downloadable image files containing photographic images and artwork, and text in the field of video and computer games offered via social media; Downloadable music files; Downloadable ring tones for mobile phones; Downloadable electronic publications in the nature of e-books, online magazines, online newspapers, electronic journals, and podcast transcripts in the field of computer and video games; Headphones; Musical juke boxes; Microphones; Baby monitors; Mouse pads; Portable media players; Portable telephones; Sound recording, transmitting and reproduction apparatus; Spectacle cases; Spectacle frames; Sunglasses; Telephone apparatus; Blank USB flash drives; Video game cartridges; Cases for mobile phones, tablets, laptop computers and netbooks, portable media players, cameras and other photographic equipment; Downloadable electronic game software for use on mobile phones, tablets and other electronic mobile devices; Video game software; Downloadable interactive multimedia computer game programs; Downloadable interactive multimedia computer game programs offered via social media; Download-</p>
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able computer software for mobile phones, tablets and other electronic mobile devices in the field of social media for the creation and exchange of user-generated content, marketing research, and also for transmission of electronic communications and also for posting advertisements; Downloadable software in the nature of a mobile application for use in the field of social media for the creation and exchange of user-generated content, marketing research, and also for transmission of electronic communications and also for posting advertisements; Downloadable computer application software featuring video and computer games; Computer application software for mobile phones, portable media players, tablets, handheld computers and other electronic mobile devices, namely, software for video and computer games; Computer application software for mobile phones, portable media players, tablets, handheld computers and other electronic mobile devices, namely, software for video and computer games offered via social media; Mobile phone accessories and charms, namely, dangles for mobile phones; Eyewear; Eyeglasses; Mobile phone accessory charms; Mobile phone covers; Radios incorporating alarm clocks

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Educational services, namely, conducting classes, seminars, workshops in the field of games; Training in the field of games; Entertainment, namely, providing on-line games; Entertainment, namely, providing on-line computer games available on social media; Entertainment in the nature of computer games, namely, providing temporary use of non-downloadable computer games; Entertainment, namely, providing non-downloadable computer games online; Entertainment services, namely, providing online video games available on social media; Entertainment services, namely, providing temporary use of non-downloadable interactive games; Entertainment services, namely, providing temporary use of non-downloadable electronic games; Entertainment services, namely, providing a website featuring games and puzzles; Entertainment services, namely, providing online video games; Organizing sporting and cultural activities, namely, conducting tournaments, contests and competitions in the field of computer games; Amusement parks; Arranging and conducting workshops for educational purposes in the fields of computers, graphic arts and video games; Entertainment services in the nature of providing casino and gambling facilities; Electronic desktop publishing; Entertainment services, namely, production of live, televised and movie appearances by a professional entertainer; Film production services, other than advertising films; Gambling services; Providing on-line computer games via a computer network; Operating lotteries; Organization of electronic games competitions; Party planning services for others; Production of music; Entertainment, namely, production of television shows; Providing amusement arcade services; Hosting social entertainment events, namely, karaoke parties for others; Non-downloadable electronic publications in the nature of e-books, online magazines, online newspapers, electronic journals, blogs, podcasts and mobile applications in the field of games; Publication of books; Publication of electronic books and journals on-line; Scriptwriting services for non-advertising purposes; Writing of texts for others; Electronic games services provided by means of a global computer network; Entertainment services, namely, providing online electronic games; Entertainment Information; Entertainment services, namely, providing online electronic games for use on mobile phones, tablets and other electronic mobile devices; providing information on-line relating to computer games and computer enhancements for computer games; Entertainment services, namely, providing temporary use of non-downloadable single and multi-player electronic interactive games via the internet, electronic communication networks and via a global computer network; Entertainment services, namely, providing temporary use of non-downloadable single and multi-player electronic interactive games via the internet, electronic communication networks and via a global computer network and on social media; Multimedia publishing of software, specifically of computer game software, electronic games and video game software

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	692163	Application Date	03/03/1959
Registration Date	01/26/1960	Foreign Priority Date	NONE

Word Mark	EGGO
Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1935/04/27 First Use In Commerce: 1935/04/27 [PREPARED BATTER AND FLOUR FOR WAFFLES, BISCUITS, PANCAKES, MUFFINS, CAKES ANDDOUGHNTS;] FROZEN WAFFLES; [POTATO CHIPS; MAYONNAISE; PICKLES; RELISHES; MUSTARD; HORSE RADISH; SALAD DRESSINGS; SALAD OILS; CANNED TUNA;] TABLE SYRUPS [;GELATINE DESSERTS; CANNED AND BOTTLED TOMATO PRODUCTS-NAMELY, TOMATO CATSUP, TOMATO PASTE AND PUREE; SANDWICH SPREADS; JAMS; JELLIES; BARBECUE SAUCE AND SOUP BASE]

U.S. Registration No.	898862	Application Date	08/15/1969
Registration Date	09/15/1970	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 029, 030). First use: First Use: 1935/04/27 First Use In Commerce: 1935/04/27 [POTATO CHIPS, CORN CHIPS, TORTILLA CHIPS, PRETZELS,] MAYONNAISE, SALAD DRESSINGS, TABLE SYRUP, PANCAKE AND WAFFLE MIX, FROZEN WAFFLES [AND NOODLES] , RELISH, [NON-DAIRY-SOUR CREAM DRESSING,] BARBECUE SAUCE, TARTAR SAUCE [AND COLE SLAW]		

U.S. Registration No.	3359488	Application Date	07/02/2007
Registration Date	12/25/2007	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1953/00/00 First Use In Commerce: 1953/00/00 waffles, pancakes, french toast sticks,[table syrup, cinnamon rolls]		

U.S. Registration No.	2310962	Application Date	08/10/1998
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Registration Date	01/25/2000	Foreign Priority Date	NONE
Word Mark	L 'EGGO MY EGGO		
Design Mark	L 'EGGO MY EGGO		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1972/12/00 First Use In Commerce: 1972/12/00 Waffles		

U.S. Registration No.	3419042	Application Date	10/14/2006
Registration Date	04/29/2008	Foreign Priority Date	NONE
Word Mark	L'EGGO MY EGGO		
Design Mark	L'EGGO MY EGGO		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1972/12/00 First Use In Commerce: 1972/12/00 waffles, pancakes, french toast		

U.S. Registration No.	4392555	Application Date	11/30/2009
Registration Date	08/27/2013	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark	EGGO		
Description of Mark	NONE		

Goods/Services	Class 025. First use: First Use: 2002/00/00 First Use In Commerce: 2002/00/00 Shirts		
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U.S. Registration No.	3204661	Application Date	09/29/2005
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Registration Date	01/30/2007	Foreign Priority Date	NONE
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Word Mark	EGGO		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 030. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 CEREAL-DERIVED FOOD PRODUCT TO BE USED AS A BREAKFAST FOOD, SNACK FOOD OR INGREDIENT FOR MAKING FOOD		
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U.S. Registration No.	4592765	Application Date	01/28/2014
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Registration Date	08/26/2014	Foreign Priority Date	NONE
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Word Mark	EGGO		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 030. First use: First Use: 2008/03/00 First Use In Commerce: 2008/03/00 muffins, muffin tops		
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U.S. Registration No.	4484676	Application Date	07/03/2013
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Registration Date	02/18/2014	Foreign Priority Date	NONE
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Word Mark	EGGO DRIZZLERS		
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Design Mark	<h1>EGGO DRIZZLERS</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2013/01/21 First Use In Commerce: 2013/01/21 Waffles		

U.S. Registration No.	4549014	Application Date	05/03/2013
Registration Date	06/10/2014	Foreign Priority Date	NONE
Word Mark	EGGO BITES		
Design Mark	<h1>EGGO BITES</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2013/12/22 First Use In Commerce: 2013/12/22 Frozen breakfast foods, namely, waffles, pancakes, french toast		

U.S. Registration No.	4735343	Application Date	10/17/2014
Registration Date	05/12/2015	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark	<h1>EGGO</h1>		

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2014/10/01 First Use In Commerce: 2014/10/01 Sandwiches

Attachments	77220790#TMSN.png(bytes) 75533599#TMSN.png(bytes) 77021301#TMSN.png(bytes) 77882388#TMSN.png(bytes) 78723394#TMSN.png(bytes) 86177391#TMSN.png(bytes) 86001838#TMSN.png(bytes) 85923122#TMSN.png(bytes) 86426587#TMSN.png(bytes) ALTER-EGGO Notice of Opposition 1-12-2016.pdf(271845 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/James K. Lewis/
Name	KELLOGG NORTH AMERICA COMPANY
Date	01/12/2016

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

In the matter of trademark application Serial No.: 86-627812
Filed: May 13, 2015
Mark: ALTER-EGGO
Published in the Official Gazette on: September 15, 2015

KELLOGG NORTH)	
AMERICA COMPANY,)	
)	
Opposer,)	
)	
v.)	Opposition No. Pending
)	
KING.COM LIMITED,)	
)	
King.)	

NOTICE OF OPPOSITION

KELLOGG NORTH AMERICA COMPANY, a Delaware limited liability company with a principal place of business at One Kellogg Square, Battle Creek, Michigan, USA 49016 (“Kellogg”) believes that it will be damaged by registration of the mark ALTER-EGGO in application Serial No. 86-627812, applied for by KING.COM LIMITED, a Malta limited company with an office located at Aragon House Business Centre, Dragonara Road, St. Julians, Malta STJ3140 (“King”). Kellogg opposes registration of the ALTER-EGGO mark on the basis of likelihood of confusion under Section 2(d) of the Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. § 1052(d), and dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). In support of its Opposition, Kellogg asserts the following:

THE KELLOGG EGGO MARKS

1. Kellogg, through its predecessors and/or affiliated companies (collectively, “Kellogg”), is engaged in the business of manufacturing, advertising, promoting, and selling waffles, French toast, pancakes, breakfast sandwiches, and other similar or related goods under its registered EGGO trademarks set forth in the chart below (the EGGO Marks).

2. Kellogg distributes these goods throughout the United States through local, regional, and national grocery stores, mass merchants, drug stores, online retail stores (e.g. Amazon) and other types of retailers.

3. Kellogg adopted and first used the mark EGGO in connection with frozen waffles and table syrups over eighty years ago in April 1935. Since that date, Kellogg has used the mark EGGO continuously and over the years started using the other EGGO Marks.

4. Kellogg owns the following U.S. trademark registrations, all of which are validly registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

Mark	Reg. No.	Goods/Services	Status	First Use Date	Registration Date
EGGO	692,163	Frozen waffles, table syrups	Incontestable	Apr. 27, 1935	Jan. 26, 1960
EGGO	898,862	Mayonnaise; salad dressings, table syrup, pancake and waffle mix, frozen waffles, relish, barbecue sauce, tartar sauce	Incontestable	Apr. 27, 1935	Sept. 15, 1970

EGGO	3,359,488	Waffles, pancakes, French toast sticks	Incontestable	Jan. 1, 1953	Dec. 25, 2007
L'EGGO MY EGGO	2,310,962	Waffles	Incontestable	Dec. 1, 1972	Jan. 25, 2000
L'EGGO MY EGGO	3,419,042	Waffles, pancakes, French toast	Incontestable	Dec. 1, 1972	April 29, 2008
EGGO	4,392,555	Shirts	Registered	Jan. 1, 2002	Aug. 27, 2013
EGGO	3,204,661	Cereal-derived food product to be used as a breakfast food, snack food or ingredient for making food	Incontestable	Jan. 20, 2006	Jan. 30, 2007
EGGO	4,592,765	Muffins, muffin tops	Registered	Mar. 1, 2008	Aug. 26, 2014
EGGO DRIZZLERS	4,484,676	Waffles	Registered	Jan. 21, 2013	Feb. 18, 2014
EGGO BITES	4,549,014	Frozen breakfast foods, namely, waffles, pancakes, French toast	Registered	Dec. 22, 2013	June 10, 2014
EGGO	4,735,343	Sandwiches	Registered	Oct. 1, 2014	May 12, 2015

5. Long prior to King's filing and first use in commerce of the ALTER-EGGO mark, Kellogg spent hundreds of millions of dollars advertising and promoting the EGGO Marks, including through online and mobile advertising and promotion.

6. Kellogg has derived substantial revenue from the sale of products under the EGGO Marks.

7. Through such activities, Kellogg has generated substantial goodwill and consumer recognition of the EGGO Marks. The American public has come to associate the EGGO Marks and the word “Eggo” exclusively with a single source and the EGGO Marks have become iconic and much-loved American brands.

8. Kellogg has further bolstered the EGGO Marks’ goodwill and recognition through extensive common law use of the EGGO and L’EGGO MY EGGO Marks through sales of promotional tee-shirts, lip balms, syrup containers, and plastic waffle holders, among other things, and to promote its EGGO branded food products extensively in online and digital media. In addition, Kellogg has produced online games and online interactive user experiences to promote the EGGO brand using the EGGO and L’EGGO MY EGGO marks. This use in commerce of the EGGO and L’EGGO MY EGGO marks further strengthens the EGGO brand and inures to the benefit of the EGGO Marks.

9. The EGGO Marks have become, prior to King’s filing and first use in commerce of the ALTER-EGGO mark, distinctive and famous under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

THE OPPOSED MARK

10. On May 13, 2015, King filed an application to register the ALTER-EGGO mark in connection with a long list of goods and services¹ in International Classes 9 and 41. The application was assigned Serial No. 86-627812.

¹ Downloadable computer game software for video and computer games; Downloadable computer game programs offered via social media Computer peripheral devices; Downloadable image files containing photographic images and artwork, and text in the field of video and computer games; Downloadable image files containing photographic images and artwork, and text in the field of video and computer games offered via social media; Downloadable music files; Downloadable ring tones for mobile phones; Downloadable electronic publications in the nature of e-books, online magazines, online newspapers, electronic journals, and podcast transcripts in the field of computer and video games; Headphones; Musical juke boxes; Microphones;

11. King's applied-for ALTER-EGGO mark fully incorporates Kellogg's EGGO mark.

12. King's filing of the ALTER-EGGO mark is without the consent of Kellogg.

13. On August 26, 2015, the USPTO issued a Notice of Publication and the ALTER-EGGO mark was published in the *Official Gazette* on September 15, 2015.

Baby monitors; Mouse pads; Portable media players; Portable telephones; Sound recording, transmitting and reproduction apparatus; Spectacle cases; Spectacle frames; Sunglasses; Telephone apparatus; Blank USB flash drives; Video game cartridges; Cases for mobile phones, tablets, laptop computers and netbooks, portable media players, cameras and other photographic equipment; Downloadable electronic game software for use on mobile phones, tablets and other electronic mobile devices; Video game software; Downloadable interactive multimedia computer game programs; Downloadable interactive multimedia computer game programs offered via social media ; Downloadable computer software for mobile phones, tablets and other electronic mobile devices in the field of social media for the creation and exchange of user-generated content, marketing research, and also for transmission of electronic communications and also for posting advertisements; Downloadable software in the nature of a mobile application for use in the field of social media for the creation and exchange of user-generated content, marketing research, and also for transmission of electronic communications and also for posting advertisements; Downloadable computer application software featuring video and computer games; Computer application software for mobile phones, portable media players, tablets, handheld computers and other electronic mobile devices namely, software for video and computer games; Computer application software for mobile phones, portable media players, tablets, handheld computers and other electronic mobile devices namely, software for video and computer games offered via social media; Mobile phone accessories and charms namely dangles for mobile phones; Eyewear; Eyeglasses; Mobile phone accessory charms; Mobile phone covers; Radios incorporating alarm clocks. Educational services, namely, conducting classes, seminars, workshops in the field of games; Training in the field of games; Entertainment, namely, providing on-line games; Entertainment, namely, providing on-line computer games available on social media; Entertainment in the nature of computer games, namely, providing temporary use of non-downloadable computer games; Entertainment, namely, providing non-downloadable computer games online; Entertainment services, namely, providing online video games available on social media; Entertainment services, namely, providing temporary use of non-downloadable interactive games; Entertainment services, namely, providing temporary use of non-downloadable electronic games; Entertainment services, namely, providing a website featuring games and puzzles; Entertainment services, namely, providing online video games; Organizing sporting and cultural activities, namely, conducting tournaments, contests and competitions in the field of computer games; Amusement parks; Arranging and conducting workshops for educational purposes in the fields of computers, graphic arts and video games; Entertainment services in the nature of providing casino and gambling facilities; Electronic desktop publishing; Entertainment services, namely, production of live, televised and movie appearances by a professional entertainer; Film production services, other than advertising films; Gambling services; Providing on-line computer games via a computer network; Operating lotteries; Organization of electronic games competitions; Party planning services for others; Production of music; Entertainment, namely, production of television shows; Providing amusement arcade services; Hosting social entertainment events, namely, karaoke parties for others; Non-downloadable electronic publications in the nature of e-books, online magazines, online newspapers, electronic journals, blogs, podcasts and mobile applications in the field of games; Publication of books. Publication of electronic books and journals on-line; Scriptwriting services for non-advertising purposes; Writing of texts for others; Electronic games services provided by means of a global computer network; Entertainment services, namely, providing online electronic games; Entertainment Information; Entertainment services, namely, providing online electronic games for use on mobile phones, tablets and other electronic mobile devices; providing information on-line relating to computer games and computer enhancements for computer games; Entertainment services, namely, providing temporary use of non-downloadable single and multi-player electronic interactive games via the internet, electronic communication networks and via a global computer network; Entertainment services, namely, providing temporary use of non-downloadable single and multi-player electronic interactive games via the internet, electronic communication networks and via a global computer network and on social media; Multimedia publishing of software, specifically of computer game software, electronic games and video game software.

OPPOSITION BASED UPON A LIKELIHOOD OF CONFUSION

14. Kellogg repeats and realleges the allegations set forth in Paragraphs 1-13.

15. Kellogg has used the EGGO Marks up to 80 years prior to King's application to register the ALTER-EGGO mark, and through extensive advertising and promotion, the EGGO Marks have become strong and famous marks.

16. King's ALTER-EGGO mark is confusingly similar to Kellogg's EGGO Marks in overall sight, sound and commercial impression.

17. King's ALTER-EGGO mark is predominated by the distinctive term "EGGO", which is identical to Kellogg's EGGO Marks that are merely the term "EGGO". The other Kellogg EGGO Marks that are not merely the term "EGGO" are predominated by the term "EGGO", i.e. L'EGGO MY EGGO.

18. The goods and services for which King seeks registration of the ALTER-EGGO mark are closely related to the means through which Kellogg advertises and promotes products sold under its EGGO Marks.

19. King's ALTER-EGGO mark is confusingly similar to Kellogg's EGGO Marks, and registration and use by King of the ALTER-EGGO mark is likely to cause confusion, mistake, or deception that King's goods and services are those of Kellogg or are otherwise endorsed, sponsored, or approved by Kellogg, or is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association between King and Kellogg.

20. For the foregoing reasons, Kellogg believes and alleges that it will be damaged by the registration of the ALTER-EGGO mark, application Serial No. 86-627812.

**OPPOSITION BASED UPON DILUTION OF KELLOGG'S DISTINCTIVE AND
FAMOUS EGGO MARKS**

21. Kellogg repeats and realleges the allegations set forth in Paragraphs 1-20.

22. King's use of the ALTER-EGGO mark is likely to dilute the distinctive quality and reputation of Kellogg's famous EGGO Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

23. If King is permitted to register the ALTER-EGGO mark, dilution of the distinctive nature and quality of Kellogg's famous EGGO Marks would result in irreparable damage and injury to Kellogg.

24. For the foregoing reasons, Kellogg believes and alleges that it will be damaged by the registration of the ALTER-EGGO mark, application Serial No. 86-627812.

PRAYER FOR RELIEF

WHEREFORE, Kellogg respectfully requests that the application to register the mark ALTER-EGGO, as shown in application Serial No. 86-627812, be refused registration and judgment in this opposition be entered in favor of Kellogg, with prejudice.

Respectfully submitted,

KELLOGG NORTH AMERICA COMPANY

Dated January 12, 2016

By: /James K. Lewis/

Assistant Secretary
KELLOGG COMPANY
One Kellogg Square
Battle Creek, Michigan 49017
Telephone: (269) 961-6910
Facsimile: (269) 961-3276
jim.lewis@kellogg.com

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION has been served upon KING.COM LIMITED via overnight courier addressed to:

Mr. Andrew S. Ehard
Attorney of Record for KING.COM LIMITED
Merchant and Gould PC
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Dated January 12, 2016

By: /James K. Lewis/

Assistant Secretary
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