

Galaxy Fireworks, Inc.  
204 E. Martin L. King Jr. Blvd.  
Tampa, Fl. 33603  
813-234-2264

December 21, 2005

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

Re.: Serial No. 78745433

To Whom It May Concern:

This letter is in regards to the use of the Mark "Gorilla Brand", Trademark Application Serial No. 78745433, with a Filing Date of November 2, 2005. This Mark is filed with the Goods & Services noted as Fireworks.

**NOTICE OF OPPOSITION**

Galaxy Fireworks, Inc., of 204 East M.L. King Jr. Blvd., Tampa, Florida 33603, hereby files an official opposition to Serial No. 78745433. Please note the following information concerning our Mark:

**GORILLA FIREWORKS FEEL THE POWER**

**Registration Number:** 2888504

**Registration Date:** September 28, 2004

**G & S:** fireworks products for consumer use, namely sky rockets, roman candles, sparklers, firecrackers, and re-loadable shell kits. (Emphasis added).

Our company feels that the applicants' use of their Mark will create significant confusion and will result in damage to our company by registration of the mark as noted in the above-identified application.

The grounds for opposition are as follows:

1. The applicant has applied for a Mark that is conflicting in a field of goods and services in which our company has an existing Mark. The fireworks industry in the United States is a small, close knit community. Our company feels that were the applicant allowed to use the intended Mark there would be brand confusion in regards to our products on the parts of both the consumer and foreign suppliers in the fireworks industry. Although some leeway for confusion is allowed by the



12-27-2005

courts, it is our feeling that the use of this Mark by the applicant will be in direct conflict with the products produced under our use of the "Gorilla" Mark<sup>1</sup>.

2. Our company feels that the applicant's use of their Mark would, in effect, dilute the significance of our Mark in both interstate and international commerce<sup>2</sup>.
3. The goods produced and sold by our company (consumer fireworks) are the same type of goods and services that the applicant will be providing, thus creating confusion in the marketplace amongst our common users (i.e.: the consumer)<sup>3</sup>.
4. As noted above, the function of the goods produced for, and sold by applicant are the same as the goods produced for, and sold by our company are the same (i.e.: consumer fireworks)<sup>4</sup>, and
5. The consumer fireworks industry is a small, extremely competitive industry in which brand or logo loyalty plays a very important part. The federal government has set standards that control the amount of pyrotechnic composition in each fireworks device that is available to the consumer. Therefore the individual companies consistently expand on the quality of their trademarked products in attempts to gather and maintain a customer base<sup>5</sup>.

Thus, we object to the applicant's use of the Mark "Gorilla Brand" on any pyrotechnic novelty item, consumer fireworks device, consumer fireworks packaging, advertising media, or printed media in general as it pertains to the procurement or sales of consumer fireworks products.

In conclusion, we ask that the Application for Mark, designated as Serial No. 78745433, be disapproved. Should you have any further questions, please contact me at 800-334-2264, or preferably, at [galaxyfire@aol.com](mailto:galaxyfire@aol.com). Thank you for your time in this matter.

Sincerely,



Patrick Cook  
General Manager

---

<sup>1</sup> *KP Permanent Make-up, Inc. v. Lastingimpression I, Inc.* (03-409) 543 U.S. 111 (2004)

<sup>2</sup> 15 U.S.C. §1125(c) (12/21/05)

<sup>3</sup> Likelihood of confusion is assessed by considering the eight factors articulated by Judge Friendly in *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir.), cert. denied, 368 U.S. 820, 82 S.Ct. 36, 7 L.Ed.2d 25 (1961), and any others that may be relevant in a particular case. *Cerutti 1881 v. Cerutti, Inc.*, No. 95 CIV 7782 WL 3350 (S.D.N.Y. Jan. 5, 1998)

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-12-21 20:21:38 ET**

**Serial Number:** 78745433

**Registration Number:** (NOT AVAILABLE)

**Mark**



**(words only):** GORILLA BRAND

**Standard Character claim:** No

**Current Status:** Newly filed application, not yet assigned to an examining attorney.

**Date of Status:** 2005-11-10

**Filing Date:** 2005-11-02

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 042 -New Application Processing

**Date In Location:** 2005-11-10

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Rich Brothers Co.

**Address:**

Rich Brothers Co.  
700 S. Marion Road

Sioux Falls, SD 57106

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** South Dakota

**Phone Number:** 605-336-3344

**Fax Number:** 605-336-1908

---

**GOODS AND/OR SERVICES**

---

**International Class:** 013

Fireworks

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 1(b)

---

**ADDITIONAL INFORMATION**

---

**Color(s) Claimed:** The color(s) Black, Red and Yellow is/are claimed as a feature of the mark.

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

2005-11-09 - Design Search Codes Notice Mailed

2005-11-08 - New Application Entered In Tram

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

RICH BROTHERS CO.

700 S MARION RD

SIOUX FALLS, SD 57106-0235

**Phone Number:** 605-336-3344

**Fax Number:** 605-336-1908