

ESTTA Tracking number: **ESTTA106014**

Filing date: **10/25/2006**

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	FMC Corporation
Granted to Date of previous extension	10/25/2006
Address	2000 Market Street Philadelphia, PA 19103 UNITED STATES

Attorney information	Cindy A. Elliott Blank Rome LLP One Logan Square 9th Floor Philadelphia, PA 19103 UNITED STATES elliott-c@blankrome.com Phone:215-569-5725
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Applicant Information

Application No	76650642	Publication date	06/27/2006
Opposition Filing Date	10/25/2006	Opposition Period Ends	10/25/2006
Applicant	Albaugh, Inc. 1525 NE 36th Street Ankeny, IA 50021 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Herbicides

Attachments	COMMAND.pdf (6 pages)(48813 bytes)
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Signature	/Cindy A. Elliott/
Name	Cindy A. Elliott
Date	10/25/2006

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

FMC CORPORATION,	:	
a Delaware corporation,	:	
	:	
Opposer,	:	Serial No.: 76/650,642
	:	
v.	:	Opposition No.: _____
	:	
ALBAUGH INC.,	:	
an Iowa corporation	:	
	:	
Applicant.	:	

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

Attn.: Trademark Trial and Appeal Board

Madam:

Pursuant to Federal Rule of Civil Procedure 15(a) and 37 C.F.R. § 2.101 et seq., Opposer respectfully requests that the Board accept the enclosed Notice of Opposition against the mark COMANDO. We respectfully request that the above-indicated Notice of Opposition be instituted and that, in due course, notification be sent regarding answer dates and testimony periods. Please charge our Deposit Account No. 02-2555 for fees due in connection with the filing of this Notice of Opposition.

Respectfully submitted,

FMC CORPORATION

Date: October 25, 2006 By: *Cindy Elliott*
Kenneth N. Klass
Timothy D. Pecsénye
Cindy A. Elliott
Megan E. Spitz
Its Attorneys

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

In re Application of Albaugh, Inc.

Application No.: 76/650,642

Filed: November 18, 2005

Mark: COMANDO

FMC CORPORATION,	:	
a Delaware corporation,	:	
	:	
Opposer,	:	Serial No.: 76/650,642
	:	
v.	:	Opposition No.: _____
	:	
ALBAUGH INC.,	:	
an Iowa corporation	:	
	:	
Applicant.	:	

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

Attn.: Trademark Trial and Appeal Board

NOTICE OF OPPOSITION

Madam:

Opposer FMC Corporation, a Delaware corporation located at 1735 Market Street, Philadelphia, PA 19103, believes that it would be damaged by the registration of the mark shown in Application Serial No. 76/650,642 and hereby opposes the same under the provision of Section 13 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1063.

As grounds of opposition, it is alleged that:

1. Opposer has made continuous and extensive use of a trademark, namely, COMMAND ("the COMMAND Mark") which use has developed widespread public recognition and appeal for the COMMAND Mark. Opposer has offered a variety of herbicides bearing the COMMAND Mark ("the Goods").

2. Opposer is the Owner of all right, title and interest in and to the COMMAND Mark and is the owner of U.S. Registration No. 1,191,052 for the COMMAND Mark. Opposer's registration is valid and subsisting and is conclusive evidence of Opposer's exclusive right to use the COMMAND Mark in commerce for the Goods and for those goods and services in the zone of natural expansion thereof.

3. Through extensive and continuous use of the COMMAND Mark, Opposer has established substantial goodwill in the COMMAND Mark in connection with the Goods.

**APPLICANT'S MARK IS CONFUSINGLY SIMILAR
TO THE MARK OWNED AND REGISTERED BY OPPOSER**

4. Opposer's extensive promotion and use of the COMMAND Mark since at least as early as September 23, 1980 has caused customers, prospective purchasers, and the public generally to immediately associate the COMMAND Mark with Opposer and to expect a variety of goods bearing the COMMAND Mark to have a connection with, or association with, Opposer.

5. On November 18, 2005, Applicant filed an application for registration of the mark COMANDO ("Applicant's Mark") as used to identify "herbicides." Applicant's Mark was published for opposition in the Official Gazette of June 27, 2006.

6. Applicant's basis for filing is intent to use, pursuant to Section 1(b) of the Lanham Act.

7. Opposer's use of the COMMAND Mark predates both Applicant's filing date and first use in commerce.

8. Applicant's Mark is essentially identical to the COMMAND Mark owned by Opposer.

9. Applicant's goods are herbicides, as are Opposer's.

10. The use and registration of Applicant's Mark to identify its goods is likely to cause confusion, mistake and deception as to the source, origin, sponsorship or association of the goods and will injure Opposer.

11. Any defects, objections or faults found with the goods sold and rendered by Applicant under Applicant's Mark, because of the false association with Opposer, would inflict upon and seriously injure the reputation of Opposer.

12. The grant of a Certificate of Registration to Applicant for Applicant's Mark would be inconsistent with and in derogation of Opposer's prior rights and would therefore cause damage and injury to Opposer and deception of and confusion to the public.

* * * *

For the reasons set forth in the foregoing paragraphs one through twelve, Opposer believes that it would be damaged by the registration of Applicant's Mark, and thus Applicant should be denied registration of the mark.

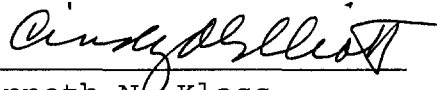
WHEREFORE, Opposer prays that this opposition be sustained and that Application Serial No. 76/650,642 be refused registration.

Respectfully submitted,

FMC CORPORATION

Date: October 25, 2006

By:


Kenneth N. Klass
Timothy D. Pecsénye
Cindy A. Elliott
Megan E. Spitz
Its Attorneys

BLANK ROME LLP
ONE LOGAN SQUARE
PHILADELPHIA, PA 19103
(215) 569-5619

cc: Marcia D. Pintzuk, Esquire

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is addressed to the Trademark Trial and Appeal Board, Hon. Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, and is being deposited via the Electronic System for Trademark Trials and Appeals (ESTTA) on October 25, 2006.


Cindy A. Elliott