

ESTTA Tracking number: **ESTTA1062484**

Filing date: **06/17/2020**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Growth Products Ltd.		
Entity	Corporation	Citizenship	New York
Address	80 Lafayette Avenue North White Plains, NY 64068 UNITED STATES		

Name	Douglas Plant Health Intermediate, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1550 East Old 210 Highway Liberty, MO 64068 UNITED STATES		

Attorney information	Gene S. Winter St. Onge Steward Johnston & Reens LLC 986 Bedford Street Stamford, CT 06905 UNITED STATES sgerold@ssjr.com, litigation@ssjr.com 2033246155		
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Applicant Information

Application No	88592495	Publication date	05/26/2020
Opposition Filing Date	06/17/2020	Opposition Period Ends	06/25/2020
Applicant	FMK GROUP, LLC 30 N Gould St Ste R Sheridan, WY 82801 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Providing business management services for therapeutic plant farm processing operations, namely, cannabis in the nature of hemp, kava, and kratom plant processing; all of the foregoing services provided in connection with goods containing less than .3% THC on a dry weight basis</p>
<p>Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Scientific research consultation services in the field of therapeutic plant production, namely, growing and harvesting cannabis in the nature of hemp, kava, and kratom plant production; all of the foregoing services provided in connection with goods containing less than .3% THC on a dry weight basis</p>

Class 044. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: Providing agricultural co-op services, namely, growing, harvesting, and handling therapeutic plant production; providing agricultural consultation services in the field of therapeutic plant production, namely, growing and harvesting cannabis in the nature of hemp, kava, and kratom plant production; all of the foregoing services provided in connection with goods containing less than .3% THC on a dry weight basis

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.	2135211	Application Date	12/06/1995
Registration Date	02/10/1998	Foreign Priority Date	NONE
Word Mark	COMPANION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1994/10/20 First Use In Commerce: 1994/10/20 soil conditioners in the nature of microorganisms and organic matter for application to turf soil and plants for agricultural, domestic and horticultural use		

U.S. Registration No.	2962399	Application Date	02/05/2004
Registration Date	06/14/2005	Foreign Priority Date	NONE
Word Mark	COMPANION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/01/15 First Use In Commerce: 2002/01/15 Biological fungicide for agricultural and domestic use		

U.S. Registration No.	4279754	Application Date	06/14/2012
Registration Date	01/22/2013	Foreign Priority Date	NONE
Word Mark	COMPANION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/01/15 First Use In Commerce: 2002/01/15 Biological fungicide with and without soil for use in the fields of agriculture, domestic, horticulture, landscape, nursery, hydroponics, turf care, tissue culture and foliar applications		

Attachments	78362875#TMSN.png(bytes) 85651552#TMSN.png(bytes) Notice of Opposition.pdf(154003 bytes) Reg. No. 2,135,211.pdf(16572 bytes) Reg. No. 2,962,399.pdf(18858 bytes) Reg. No. 4,279,754.pdf(96316 bytes)
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Signature	/Gene S. Winter/
Name	Gene S. Winter
Date	06/17/2020

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

GROWTH PRODUCTS LTD.	:	
PLANT HEALTH INTERMEDIATE, INC.	:	
Opposers,	:	
	:	
-v-	:	Opposition No.
	:	
FMK GROUP, LLC	:	
	:	
Applicant.	:	

Re: Trademark Application

Serial No.	88-592495
Trademark:	COMPANION AG
Applicant:	Fmk Group, LLC
Filed:	August 26, 2019
Goods/Services:	(Int'l Class: 35) Providing business management services for therapeutic plant farm processing operations, namely, cannabis in the nature of hemp, kava, and kratom plant processing; all of the foregoing services provided in connection with goods containing less than .3% thc on a dry weight basis (Int'l Class: 42) Scientific research consultation services in the field of therapeutic plant production, namely, growing and harvesting cannabis in the nature of hemp, kava, and kratom plant production; all of the foregoing services provided in connection with goods containing less than .3% thc on a dry weight basis (Int'l Class: 44) Providing agricultural co-op services, namely, growing, harvesting, and handling therapeutic plant production; providing agricultural consultation services in the field of therapeutic plant production, namely, growing and harvesting cannabis in the nature of hemp, kava, and kratom plant production; all of the foregoing services provided in connection with goods containing less than .3% thc on a dry weight basis

NOTICE OF OPPOSITION

Opposer, GROWTH PRODUCTS LTD., a New York corporation located at 80 Lafayette Avenue, North White Plains, NY 10603 and related entity PLANT HEALTH INTERMEDIATE, INC. a Delaware corporation d/b/a “DOUGLAS PLANT HEALTH” with a principal place of business at 1550 East Old 210 Highway, Liberty MO 64068 (collectively “Opposer”), believes it will be damaged by the registration of COMPANION AG for “Providing business management services for therapeutic plant farm processing operations, namely, cannabis in the nature of hemp, kava, and kratom plant processing; all of the foregoing services provided in connection with goods

containing less than .3% thc on a dry weight basis” in International Class 035; “Scientific research consultation services in the field of therapeutic plant production, namely, growing and harvesting cannabis in the nature of hemp, kava, and kratom plant production; all of the foregoing services provided in connection with goods containing less than .3% thc on a dry weight basis” in International Class 042; and “Providing agricultural co-op services, namely, growing, harvesting, and handling therapeutic plant production; providing agricultural consultation services in the field of therapeutic plant production, namely, growing and harvesting cannabis in the nature of hemp, kava, and kratom plant production; all of the foregoing services provided in connection with goods containing less than .3% thc on a dry weight basis” in International Class 044 under U.S. Serial No. 88/592,495, filed by Fmk Group, LLC (“Applicant”), a Wyoming Limited Liability Company with a principal place of business at 30 N Gould Street, Suite R, Sheridan, WY 82801.

As such, Opposer hereby opposes the registration of Application Serial No. 88/592,495 pursuant to Section 13 of the 1946 Trademark Act (15 U.S.C. §1063). Opposer alleges the following grounds for opposing the COMPANION AG application:

1. Opposer is the owner of the trademark COMPANION registered under U.S. Registration Nos. 2,135,211, 2,962,399 and 4,279,754 (hereinafter “Opposer’s Registrations”) for the word mark “COMPANION” (hereinafter “Opposer’s Mark”) for use in connection with “Soil conditioners in the nature of microorganisms and organic matter for application to turf soil and plants for agricultural, domestic and horticultural use” in Class 001; “Biological fungicide for agricultural and domestic use” in Class 005; and “Biological fungicide with and without soil for use in the fields of agriculture, domestic, horticulture, landscape, nursery, hydroponics, turf care, tissue culture and foliar applications” in Class 005 (hereinafter referred to as “Opposer’s Goods”). A copy of Opposer’s Registration Nos. 2,135,211, 2,962,399 and 4,279,754 are attached hereto and incorporated herein by reference.
2. The above identified registrations are valid, incontestable and subsisting and are evidence of Opposer’s exclusive right to use the Opposer’s Mark in commerce on the goods specified in said registrations; namely, “soil conditioners in the nature of microorganisms and organic matter for application to turf soil and plants for agricultural, domestic and horticultural use”; “biological fungicide for agricultural and domestic use” and “biological fungicide with and without soil for use in the fields of agriculture, domestic, horticulture, landscape, nursery, hydroponics, turf care, tissue culture and foliar applications”.

3. Opposer also utilizes its COMPANION® mark in offering and selling related products in the hemp and cannabis industry.
4. Opposer's rights in Opposer's Mark, COMPANION®, commenced on October 20, 1994. To the best of our knowledge, Applicant, Fmk Group, LLC, has not yet commenced use of the applied-for COMPANION AG mark in connection with the Class 035, 042 or 044 services filed under Section 1(b) in Application Serial No. 88/592,495.
5. Applicant's COMPANION AG mark comprises the entirety of Opposer's COMPANION® mark. Furthermore, the word "COMPANION" is the dominant portion of Applicant's mark. Additionally, Applicant's proposed services are similar to Opposer's registered goods in Classes 001 and 005 and Opposer's use of its COMPANION® mark in the hemp and cannabis industry; as such, Applicant's services are likely to be offered in the same channels or trade to the same consumers.
6. Applicant's ESSENTIAL AG mark, when used in connection with the services identified in Applicant's Application Serial No. 88/592,495 is likely to cause confusion, deception and mistake with Opposer's COMPANION® mark because Applicant's COMPANION AG mark would be used in connection with services that are offered in the same/similar channels of trade with those offered by Opposer under its COMPANION® mark. The use and registration of the COMPANION AG by Applicant will therefore damage Opposer in the sale of their goods and cause confusion among purchasers.
7. In view of the similarities between Applicant's COMPANION AG mark and Opposer's COMPANION mark, and the overlapping marketing channels, consumers are likely to assume some degree of association, affiliation or sponsorship between the goods and services offered under the COMPANION AG and COMPANION® marks.
8. Applicant's COMPANION AG mark is likely to cause confusion, mistake or deception with Opposer's COMPANION® mark within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).
9. Pursuant to 15 U.S.C. §1063(a), as amended, Opposer believes it will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the infringing use of its COMPANION AG mark, and will give colorable exclusive statutory rights to Applicant in violation and derogation of prior and superior statutory and common law rights of Opposer.

For the reasons set forth herein, registration of the mark COMPANION AG would seriously damage Opposer. As such, registration of Application Serial No. 88/592,495 for COMPANION

AG should be refused because the use and/or registration of Applicant's COMPANION AG mark infringes upon Opposer's COMPANION® mark; and registration of the COMPANION AG mark is likely to cause consumer confusion as to the source, origin, affiliation or sponsorship between Applicant and Opposer and/or their respective goods/services.

WHEREFORE, Opposer prays that said Application Serial No. 88/592,495 for COMPANION AG be denied, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

June 16, 2020

Respectfully submitted,

A handwritten signature in blue ink that reads "Gene S. Winter". The signature is written in a cursive style with a large initial "G".

Gene S. Winter
Samantha M. Gerold
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155
Email: gwinter@ssjr.com; sgerold@ssjr.com;
litigation@ssjr.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

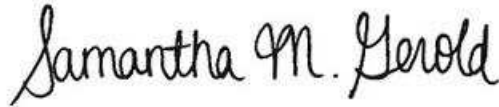
This is to certify that a true copy of the foregoing **NOTICE OF OPPOSITION** is being served by electronic mail on the Counsel for Applicant as follows:

Via Email: rzoncal@ballardspahr.com

LYNN E. RZONCA
1735 MARKET STREET, 51ST FLOOR
BALLARD SPAHR LLP
PHILADELPHIA, PA 19103

June 16, 2020

Date



Samantha M. Gerold

Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26 and 46

Reg. No. 2,135,211

United States Patent and Trademark Office

Registered Feb. 10, 1998

**TRADEMARK
PRINCIPAL REGISTER**

COMPANION

GROWTH PRODUCTS LTD. (NEW YORK CORPORATION)
P.O. BOX 1259
WHITE PLAINS, NY 10602

AL, DOMESTIC AND HORTICULTURAL USE,
IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).
FIRST USE 10-20-1994; IN COMMERCE
10-20-1994.

FOR: SOIL CONDITIONERS IN THE
NATURE OF MICROORGANISMS AND ORGANIC
MATTER FOR APPLICATION TO
TURF SOIL AND PLANTS FOR AGRICULTUR-

SER. NO. 75-028,410, FILED 12-6-1995.

BARNEY CHARLON, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,962,399

Registered June 14, 2005

**TRADEMARK
PRINCIPAL REGISTER**

COMPANION

GROWTH PRODUCTS LTD. (NEW YORK COR-
PORATION)
P.O. BOX 1252
WHITE PLAINS, NY 10602

FOR: BIOLOGICAL FUNGICIDE FOR AGRICUL-
TURAL AND DOMESTIC USE, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 1-15-2002; IN COMMERCE 1-15-2002.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,135,211.

SER. NO. 78-362,875, FILED 2-5-2004.

CURTIS FRENCH, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

COMPANION

Reg. No. 4,279,754

GROWTH PRODUCTS LTD. (NEW YORK CORPORATION)
80 LAFAYETTE AVENUE

Registered Jan. 22, 2013

NORTH WHITE PLAINS, NY 10603

Int. Cl.: 5

FOR: BIOLOGICAL FUNGICIDE WITH AND WITHOUT SOIL FOR USE IN THE FIELDS OF AGRICULTURE, DOMESTIC, HORTICULTURE, LANDSCAPE, NURSERY, HYDROPONICS, TURF CARE, TISSUE CULTURE AND FOLIAR APPLICATIONS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 1-15-2002; IN COMMERCE 1-15-2002.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,135,211 AND 2,962,399.

SER. NO. 85-651,552, FILED 6-14-2012.

LINDA LAVACHE, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.