

ESTTA Tracking number: **ESTTA1077369**

Filing date: **08/25/2020**

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 party opposes registration of the indicated application.

**Opposer Information**

Name	F.M. BROWN'S SONS INCORPORATED		
Entity	Corporation	Citizenship	Pennsylvania
Address	205 WOODROW AVENUE SINKING SPRING, PA 19608 UNITED STATES		

Correspondence information	ELLIOTT J. STEIN COUNSEL STEVENS & LEE, P.C. 100 LENOX DRIVE SUITE 200 LAWRENCEVILLE, NJ 08648 UNITED STATES Primary Email: ejs@stevenslee.com Secondary Email(s): ejs@stevenslee.com, varlawyer@hotmail.com, ddu@stevenslee.com 6099877050
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**Applicant Information**

Application No.	88851667	Publication date	07/28/2020
Opposition Filing Date	08/25/2020	Opposition Period Ends	08/27/2020
Applicant	King Customer Jewelry Co., Ltd. ALPHATUNG@163.COM QINGDAO, 266100 CHINA		

**Goods/Services Affected by Opposition**

Class 031. First Use: 2020/01/01 First Use In Commerce: 2020/01/02 All goods and services in the class are opposed, namely: Foodstuffs for animals; Foodstuffs for farm animals
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
Deceptiveness	Trademark Act Section 2(a)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2213441	Application Date	05/12/1997
Registration Date	12/22/1998	Foreign Priority Date	NONE
Word Mark	ENCORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1998/08/10 First Use In Commerce: 1998/08/10 small animal and bird feed		

U.S. Application No.	88918430	Application Date	05/15/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ENCORE		
Design Mark			
Description of Mark	The mark consists of a banner in yellow and gold and the word ENCORE in purple with a yellow border and gold shadowing.		
Goods/Services	Class 031. First use: First Use: 1998/03/10 First Use In Commerce: 1998/08/10 Small animal, pet bird food, animal feed, namely, food for poultry, livestock and large pets		

U.S. Application No.	88925971	Application Date	05/20/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ENCORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1998/03/31 First Use In Commerce: 1998/08/10 animal feed, namely, food for poultry, livestock and large pets		

Attachments	FMBROWN-TM-ENCORE-OpposTo ENKORE BUGS-NotOppos-08252020.pdf(333275 bytes )
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Signature	/varlawyer/
Name	Elliott J. Stein
Date	08/25/2020

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

		Opposition No. _____
F. M. BROWN’S SONS INCORPORATED, a Pennsylvania corporation,	]	
	]	
Opposer	]	
v.	]	U.S. Application Serial No. 88/851,667 for <b>“ENKORE BUGS”</b>
	]	
KING CUSTOMER JEWELRY CO., LTD., a limited liability company of the Peoples Republic of China,	]	
	]	
Applicant.	]	Application published in the in the Official Gazette: July 28, 2020
	]	

**NOTICE OF OPPOSITION**

F.M. Brown’s Sons Incorporated, a Pennsylvania corporation, (“F.M. Brown”) with principal offices at 205 Woodrow Avenue, Sinking Spring, Pennsylvania, believes that it will be damaged if Trademark Application No. 88/851,667 (the “Offending Application”) for the trademark “**ENKORE BUGS**” (the “Offending Trademark”) filed by King Customer Jewelry Co., Ltd., a limited liability company of the Peoples Republic of China, (the “Applicant”) with an (undisclosed) address at Qingdao, China 266100, is granted registration and so opposes the Offending Application and the registration of the Offending Trademark.

F.M. Brown further alleges, in support of it Opposition that:

1. The business that today is F.M. Brown traces its roots back to the 1800’s when George Brown – the Great-Great Grandfather of those who own and manage the company today – acquired a water-powered grist mill and began producing animal feed and flour from wheat grown on his own farm.

2. Franklin Brown, one of George's sons, later joined the business and managed it until he retired in 1920. Franklin Brown's four (4) sons – the third generation of Brown's – then joined the business and later formed a partnership to continue and grow the enterprise under the family name. On March 23, 1948, the business was incorporated as F.M. Brown's Sons Incorporated by the Pennsylvania Secretary of State.

3. Today, under the supervision of members of the fifth generation of Brown's, F.M. Brown has grown to five (5) manufacturing facilities and divisions that produce and market food and treats for pets and farm animals, equine food, bird feed, grass seed, pond fish food as well as continuing to supply the snack industry with flour. F.M. Brown also operates a working farm where it grows a portion of what it processes and sells.

4. In the course of operating and growing its business for over a century, F.M. Brown established dozens of trademarks and brands to distinguish its products from those of its competitors.

5. The markets in which F.M. Brown market and sells its products closely associate those trademarked and branded products with F.M. Brown and the standards for high quality that such trademarks and brands represent.

6. Today, F.M. Brown holds over twenty (20) United States Registered Trademarks covering a broad variety of products including many which are focused upon the care and feeding of all manner of animals and birds.

7. At least as early as 1998, F.M. Brown adopted the trademark "ENCORE" for its animal feed and bird feed products.

8. On December 22, 1998, F.M. Brown was awarded a United States Registered Trademark (No. 2,213,441) for the trademark “**ENCORE**” specifying “small animal and bird feed” (the “Registered Trademark”).

12. On September 2, 2005, F.M. Brown’s registration for the Registered Trademark was declared incontestable by the United States Patent and Trademark Office.

13. The Registered Trademark is subsisting, valid and enforceable and is a valuable asset of F. M. Brown.

14. Since the 1990’s, F.M. Brown has offered – and continues to offer – dozens of products for animals and birds bearing the Registered Trademark.

15. In 1998, F.M. Brown adopted the following graphic trademark that incorporated the Registered Trademark:



16. On May 15, 2020, F.M. Brown filed an Application to Register the trademark for “ENCORE” and design (the “**ENCORE**” logo depicted above) with the Trademark Office specifying, "Small animal, pet bird food, animal feed, namely, food for poultry, livestock and large pets” and a date of first use in commerce in August 1998. That Application to Register was assigned U.S. Trademark Application Serial No. 88/918,430.

17. On May 20, 2020, F.M. Brown filed an Application to Register the trademark for the text string “**ENCORE**” with the Trademark Office specifying, "animal feed, namely, food for poultry, livestock and large pets” and a date of first use in commerce in August 1998. That

Application to Register was assigned U.S. Trademark Application Serial No. 88/925,971 and specified "animal feed, namely, food for poultry, livestock and large pets."

18. The Applications to Register assigned U.S. Trademark Application Serial Nos. 88/918,430 and 88/925,971 are referred to herein as the "Pending Applications."

19. In addition to the Registered Trademark and the trademarks that are the subject of the Pending Applications, F.M. Brown has acquired common law rights in and to the trademark "**ENCORE**" (the "Common Law Trademarks") covering all manner of foods and snacks for animals from small animals to livestock and feed for birds from small birds to poultry.

20. The Registered Trademark, the trademarks that are the subject of the Pending Applications and the Common Law Trademarks are strong and through their extensive, exclusive and continuous use and promotion by F.M. Brown, the Common Law Trademarks long ago acquired secondary meaning.

21. For over twenty-two (22) years, the buyers of products bearing the Registered Trademark, the trademarks that are the subject of the Pending Applications and the Common Law Trademarks have recognized that the trademark "**ENCORE**" identifies F.M. Brown as the source of the animal feed, namely, food for poultry, livestock and large pets and have known that F.M. Brown, with its reputation for high quality and reliability, stands behind them.

22. Notwithstanding F.M. Brown's rights in and to the Registered Trademark, the trademarks that are the subject of the Pending Applications and the Common Law Trademarks, the Applicant filed the Offending Application (U.S. Trademark Application No. 88/851,667) to register the Offending Trademark, "**ENKORE BUGS**", on March 29, 2020, specifying, "Foodstuffs for animals; Foodstuffs for farm animals" and a date of first use in commerce of January 2, 2020.

23. At the time that Applicant filed the Offending Application, Applicant had constructive, if not actual knowledge of the Registered Trademark, the trademarks that are the subject of the Pending Applications and the Common Law Trademarks.

24. The Offending Trademark is confusingly similar to the Registered Trademark, the trademarks that are the subject of the Pending Applications and/or the Common Law Trademarks.

25. The goods bearing the Offending Trademarks are the same as or closely related to products of F.M. Brown bearing the Registered Trademark, the trademarks that are the subject of the Pending Applications and/or the Common Law Trademarks.

26. Consumers encountering Applicant's goods bearing the Offending Trademark are likely to incorrectly believe that the Applicant is affiliated, connected or associated with F.M. Brown.

27. Moreover, the poor quality and packaging of the Applicant's goods is likely to tarnish and otherwise damage the reputation of F.M. Brown's goods and the Registered Trademark, the trademarks that are the subject of the Pending Applications and the Common Law Trademarks.

28. On August 13, 2020, Trademark Examining Attorney Patrick Carr, issued Office Actions barring registration of (both of) the Pending Applications owing to the prior filing of the Offending Application.

29. F.M. Brown will be damaged by the issuance of the Offending Application, by causing the public to be confused or to mistakenly believe that the goods sold by the Applicant, are associated with, endorsed or sponsored by F.M. Brown.

30. The Offending Trademark is unregistrable under the Trademark Act, particularly, under 15 U.S.C. §1052(d) and should be refused registration.

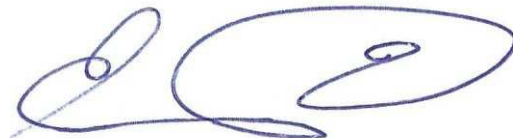
31. Registration of the Offending Trademark is likely to damage F.M. Brown because the Offending Trademark is likely to cause confusion, cause mistake and deceive potential purchasers and to prevent the registration of the trademarks that are the subject of the Pending Applications.

WHEREFORE, F.M. Brown believes that it has been and will be damaged by the registration of the Offending Trademark and, therefore, respectfully requests that this Opposition be sustained and registration of such Offending Trademark be refused on the grounds set forth herein.

The Director is hereby authorized to charge the filing fee for this Notice of Opposition to Deposit Account No. DA502833.

Respectfully submitted,

Dated: August 25, 2020



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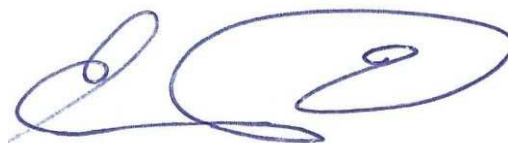
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**CERTIFICATE OF SERVICE**

I, Elliott J. Stein, certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION, was served on August 25, 2020 via electronic mail and U.S. regular mail, postage prepaid, upon the following counsel of record:

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Elliott J. Stein