

ESTTA Tracking number: **ESTTA10373**

Filing date: **06/18/2004**

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	Bacon Products Corporation		
Entity	Corporation	Citizenship	Tennessee
Address	1605 Shepherd Road Chattanooga, TN 37421 UNITED STATES		

Attorney information	Harry B. Ray Husch & Eppenberger, LLC 736 Georgia Avenue Suite 300 Chattanooga, TN 37402 UNITED STATES Harry.Ray@Husch.com Phone:(423) 755-2654		
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Applicant Information

Application No	76419442	Publication date	05/25/2004
Opposition Filing Date	06/18/2004	Opposition Period Ends	06/24/2004
Applicant	Class Art Productions Inc.		

Goods/Services Affected by Opposition

Class 018. First Use: First Use In Commerce:

All goods and services in the class are opposed, namely: HARNESS AND NECK COLLARS FOR PETS, NAMELY, CATS, DOGS, GUINEA PIGS AND RABBIT

Attachments	Notice of Opposition, BUDDY BELT.pdf (7 pages)
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Signature	/Harry B. Ray/
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Name	Harry B. Ray
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Date	06/18/2004
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Bacon Products Corporation,)	
)	
Opposer,)	Opposition No.:
)	
v.)	Application Serial No.: 76/419,442
)	
Class Art Productions Inc.,)	Trademark: BUDDY BELT
)	
Applicant.)	

Box TTAB - Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Opposer, BACON PRODUCTS CORPORATION, a Tennessee corporation located and doing business at 1605 Shepherd Road, Chattanooga, Tennessee 37421, believes that it will be damaged by registration of the mark (“Applicant’s Mark”) shown in Application Serial No. 76/419,442 (“Applicant’s Application”), and hereby opposes same.

Description of Applicant’s Application: Filed on June 11, 2002 for the mark **BUDDY BELT** in International Class 18 for the following goods:

HARNESS AND NECK COLLARS FOR PETS, NAMELY, CATS, DOGS, GUINEA PIGS AND RABBIT.

Applicant originally filed its Application based on actual use (§1(a)), intent to use (§1(b)), and foreign priority (§44(d)); however, the basis of the filing was changed to foreign registration (§44(e)).

As grounds of this Opposition, Opposer alleges that:

1. Opposer is the owner of U.S. Trademark Registration No. 1,533,112 for the mark **MY BUDDY** (“Opposer’s Mark”) for PET ACCESSORIES NAMELY, COLLARS AND LEADS, in International Class 18, which was registered on the Principal Register on April 4, 1989 (“Opposer’s Initial Registration”). Said registration was based upon an application filed in the U.S. Patent and Trademark Office on November 20, 1987, reflecting a date of first usage anywhere and in interstate commerce of August 1, 1987, all of which dates are prior to the date of filing of the Applicant’s Application. The U.S. Patent and Trademark Office accepted an affidavit under Section 8 on December 1, 1995 with respect to Opposer’s Initial Registration and acknowledged the incontestability of Opposer’s Initial Registration on December 1, 1995, as a result of the affidavit filed pursuant to Section 15. Opposer’s Initial Registration is valid and subsisting and is conclusive evidence of Opposer’s exclusive right to use Opposer’s Mark in commerce on the goods specified in said registration.

2. In addition to Opposer’s Initial Registration cited above, Opposer is also the owner of the following registrations and pending applications for marks containing Opposer’s Mark (hereinafter collectively referred to as “Opposer’s Subsequent Registrations”):

a. Opposer is the owner of U.S. Trademark Registration No. 2,542,503 for the mark **MY BUDDY** which was registered on the Principal Register on February 26, 2002.

Said registration is on the following goods:

PET CARE PRODUCTS, NAMELY, MEDICATED WORM SYRUP FOR DOGS AND CATS, AND ORGANIC FLEA, TICK AND LICE DIP FOR DOGS (International Class 5)

PET CARE PRODUCTS, NAMELY, NON-MEDICATED, ORGANIC SHAMPOO FOR PETS (International Class 3)

Said registration was based upon an application filed in the U.S. Patent and Trademark Office on June 27, 2000, reflecting a date of first usage anywhere and in commerce (with respect to each International Class) of May 16, 1996, which is a date prior to the filing of Applicant's Application. Said registered mark of Opposer is valid and subsisting and is *prima facie* evidence of Opposer's exclusive right to use said mark in commerce on the goods specified in said registration.

b. Opposer is the owner of U.S. Trademark Registration No. 2,699,933 for the mark **MY BUDDY ITCH RELIEF** which was registered on the Principal Register on March 25, 2003. Said registration is on the following goods:

PET CARE PRODUCTS, NAMELY, MEDICATED OINTMENT
FOR TREATMENT OF IRRITATED SKIN OF DOGS AND
HORSES (International Class 5)

Said registration was based upon an application filed in the U.S. Patent and Trademark Office on March 5, 2002, reflecting a date of first usage anywhere of March 13, 2001, and in commerce of March 15, 2001, which is a date prior to the filing of Applicant's Application. Said registered mark of Opposer is valid and subsisting and is *prima facie* evidence of Opposer's exclusive right to use said mark in commerce on the goods specified in said registration.

c. Opposer has filed an application with the U.S. Patent and Trademark Office for the trademark **MY BUDDY** (Trademark Application Serial No. 76/235,840) in connection with PET FOOD AND ANIMAL FEED FOR DOMESTIC AND AGRICULTURAL USE. Said application was filed on April 6, 2001 on the basis of intent

to use. Opposer continues to have a valid and bona fide intent to use said mark in connection with such goods.

d. Opposer has filed an application with the U.S. Patent and Trademark Office (Trademark Application Serial No. 76/196,825) for the mark **MY BUDDY** in connection with:

MEDICATED GROOMING PREPARATIONS FOR PETS FOR THE TREATMENT OF EAR MITES AND IRRITATED SKIN, NAMELY, SALVES, MEDICATED TOPICAL PET SHAMPOOS, CONDITIONERS, SPRAYS, CREAMS, BALM, OINTMENTS; FLEA COLLARS; FLEA AND TICK POWDERS; SPRAY PREPARATIONS FOR PETS TO REPEL FLEAS AND TICKS (International Class 5)

NON-MEDICATED GROOMING PREPARATIONS FOR PETS, NAMELY NON-MEDICATED SHAMPOOS AND NON-MEDICATED CONDITIONERS (International Class 3)

Said application was filed on January 22, 2001 on the basis of intent to use. Opposer continues to have a valid and bona fide intent to use said mark in connection with said goods.

3. Opposer has developed and continues to develop and expand the trademark **MY BUDDY** as a family of trademarks pertaining to goods in the pet industry. (The trademark **MY BUDDY** as used and intended to be used by Opposer, as evidenced by the three registrations and the two pending trademark applications described above, is hereinafter referred to as "Opposer's Mark.")

4. The distinctive element in the Opposer's Mark is the word **BUDDY**.

5. The distinctive element in the Applicant's Mark is also **BUDDY**.

6. Applicant has disclaimed the word **BELT** in its Application.

7. The word **BELT** in Applicant's Mark simply denotes the intended use of the product as a harness.

8. The addition of the word **BELT** after **BUDDY** is not sufficient to distinguish Applicant's Mark from Opposer's Mark.

9. The goods identified in Applicant's Application are either identical or closely related to the goods covered by Opposer's Mark as set forth in Opposer's Initial and Subsequent Registrations.

10. Upon information and belief, the goods set forth in Applicant's Application and the goods covered by the Opposer's Initial and Subsequent Registrations are sold, or will be sold, through similar retail establishments including, specifically, but not limited to, pet stores, drug stores and grocery stores and are promoted and sold to the same class of consumers, namely pet owners, and, therefore, move through the same channels of trade.

11. The class of consumers to which the goods set forth in Applicant's Application and the goods covered by the Opposer's Initial and Subsequent Registrations are promoted and sold, namely pet owners, is, generally, not a class of consumers that practices a high degree of care in selecting products; therefore, these consumers will be more likely to mistake that goods marked **BUDDY BELT** derive from the same source as goods marked **MY BUDDY**.

12. Thus, Applicant's Mark so resembles Opposer's Mark, and its goods are so closely related to Opposer's goods, that Applicant's use of Applicant's Mark in commerce is likely to cause confusion, to cause mistake, or to deceive consumers as to the origin of both Applicant's and Opposer's goods, thereby causing Opposer great harm.

13. In view of the above allegations, if the Applicant's Application is allowed to mature to registration on the Principal Register, Opposer will be subjected to great and irreparable damage

and Applicant will enjoy unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946.

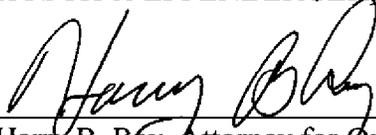
WHEREFORE, Opposer prays that Application Serial No. 76/419,442 be finally refused for registration on the Principal Register and that this Notice of Opposition be sustained in favor of Opposer.

Opposer hereby appoints Harry B. Ray of Husch & Eppenberger, LLC, a member of the Bar of the State of Tennessee to act as attorney for Opposer herein, with full power to prosecute this Notice of Opposition and to transact all relevant business with the U.S. Patent and Trademark Office and the United States Courts. Attorney Harry B. Ray is hereby authorized to receive all official communications in connection with this Notice of Opposition.

Opposer will file this Notice of Opposition electronically through the USPTO website and render payment of the applicable \$300.00 filing fee at that time.

Respectfully submitted, this 18th day of June, 2004.

HUSCH & EPPENBERGER, LLC



Harry B. Ray, Attorney for Opposer
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736 Georgia Avenue, Suite 300
Chattanooga, TN 37402
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423/ 266-5499 – facsimile

OPPOSER:

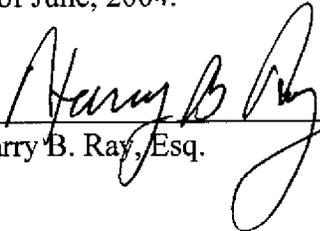
BACON PRODUCTS CORPORATION

By: 

(Reed L. Bacon, Jr.) President

CERTIFICATE OF TRANSMISSION

I hereby certify that this paper or fee is being transmitted to the United States Patent and Trademark Office via its website this 19th day of June, 2004.



Harry B. Ray, Esq.