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

<p>PERFECT FOODS, INC.</p> <p>Opposer</p> <p>v.</p> <p>JOHN D. GULLAHORN</p> <p>Applicant</p>
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Opposition No. \_\_\_\_\_

In re App. Serial No. 78/247,326  
 Mark: COOL CAT PRODUCTS and Design  
 Filed: May 8, 2003  
 Class: 18  
 Applicant: John D. Gullahorn  
 Published in the *Official Gazette* at TM 433 on May 11, 2004

Commissioner for Trademarks  
 Trademark Trial and Appeal Board  
 2900 Crystal Drive  
 Arlington, VA 22202-3514

NOTICE OF OPPOSITION

Sir:

The Applicant, John D. Gullahorn, an individual, whose address is 4111 Calico Drive, Cantonment, Florida 32533, seeks registration under the provisions of Section 1(b) for "COOL CAT PRODUCTS and design" (hereinafter Applicant's

NOTICE OF OPPOSITION

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mark) in connection with "cat collars and cat clothes" in Class 18, published at TM 433 of the Official Gazette dated May 11, 2004. A copy of the publication notice is attached hereto as Exhibit A.

The Opposer, Perfect Foods, Inc., a New York corporation having a business address of 4 Hawks Nest Road, Monroe, New York 10950, believes that it will be damaged by such registration and hereby opposes the application for registration. As grounds for opposition, the Opposer alleges as follows:

1. Opposer asserts priority of use by virtue of its sale of "fresh vegetables, particularly for use as a pet treat," namely natural wheatgrass, for use as a treat for small pet animals such as cats, dogs, birds, reptiles, rabbits, guinea pigs, mice and the like, in interstate commerce at least as early as January 2002.

Opposer's date of first use in commerce precedes the filing date of Applicant's intent-to-use application, May 8, 2003, which is the earliest date on which the Applicant can rely.

2. On May 24, 2003, Opposer filed an application for registration of its mark "COOL CAT WHEATGRASS PET TREAT" (hereinafter "Opposer's mark") pursuant to Section 1(b) of the Lanham Act for "fresh vegetables, particularly for use as a pet treat" in Class 31. This application was amended under Section 1(a) on February 11, 2004 to allege use of Opposer's mark in interstate commerce at least

as early as January 2002, and is now in use in such commerce by Opposer.

3. On November 13, 2003, the United States Patent and Trademark Office notified Opposer that Opposer's application for COOL CAT WHEAT GRASS PET TREAT was in conflict with the Applicant's prior-filed intent-to-use Application Serial No. 78/247,326 and would be subject to refusal under Section 2(d) upon registration of Applicant's mark. Opposer's application was subsequently suspended on March 4, 2004, pending the disposition of Applicant's request for registration.

4. Opposer has already been damaged by having its application suspended. Opposer will be further damaged if Applicant's mark is registered, since Opposer's mark may then be refused registration by the Patent and Trademark Office.

5. Applicant's mark includes "COOL CAT" which is identical to the dominant portion of Opposer's mark and is intended to be used as a trademark for pet accessory products (cat collars and cat clothes) that are closely related to Opposer's goods (pet food products). The Applicant's mark is so similar to the Opposer's mark that if the Applicant should use its mark in geographical areas where Opposer's mark is known, confusion and deception as to the origin of Applicant's goods would occur. Any defect, objection or fault found with the

Applicant's goods marketed under his mark would necessarily reflect on and injure the reputation which the Opposer has established for its goods.

6. By reason of the similarity of Applicant's mark to Opposer's mark, purchasers and prospective purchasers will assume that pet products offered by Applicant under its mark are provided by Opposer or sold under its authorization, sponsorship or license, and thereby damage Opposer as a result of the likelihood of confusion, mistake or deception of purchasers and the trade with respect to the origin of such services, contrary to the provisions of Section 2(d) of the Lanham Act, 15 U.S.C. 1052.

7. The registration sought by Applicant, if granted, would endow the Applicant with at least the *prima facie* exclusive right to use his mark in commerce and would thus be a source of continuing damage and injury to the Opposer.

8. The Opposer is not connected in any way with the Applicant or his activities. Specifically, the Opposer has not licensed or otherwise authorized the Applicant to use "COOL CAT" in connection with any product or service. Opposer does not endorse or sponsor the Applicant or Applicant's goods in any way. There is no business connection or legal relationship of any kind between the Opposer and the Applicant.

9. On information and belief, the Applicant has made no use of his mark in connection with his goods in the United States and/or commerce with the

United States. Since Opposer has claimed and can prove priority of use, Application Serial No. 78/247,326 should be rejected.

10. A duplicate copy of this Notice of Opposition and the filing fee, three hundred dollars ( \$300 ) specified by §2.6(a)(17), are enclosed herewith.

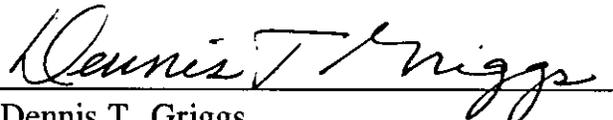
**WHEREFORE**, the Opposer requests that Application Serial No. 78/247,326 be rejected, and that the registration sought therein be denied and refused.

Please serve all correspondence related to this opposition proceeding as follows:

Dennis Griggs  
Griggs Bergen LLP  
17950 Preston Road, Suite 1000  
Dallas, Texas 75252

Respectfully submitted,

Date: June 2, 2004

  
Dennis T. Griggs  
Attorney for Opposer

Griggs Bergen LLP  
17950 Preston Road, Suite 1000  
Dallas, Texas 75252  
(972) 447-4569

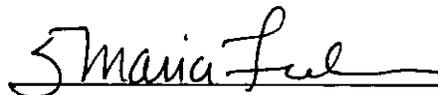
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CERTIFICATE OF MAILING

I hereby certify that the original and a duplicate copy of this NOTICE OF OPPOSITION along with a filing fee in the amount of \$300 are being deposited with the U.S. Postal Service, with first class postage prepaid, and addressed to, Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on June 2, 2004.

S. Maria Tedesco \_\_\_\_\_

(Typed name of person signing statement)

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(Signature of person signing statement)

MAY 11, 2004

U.S. PATENT AND TRADEMARK OFFICE

TM 433

**CLASS 18—(Continued).**

SN 78-243,430. ZERO MANUFACTURING, INC., NORTH SALT LAKE, UT. FILED 4-29-2003.



**ZEROHALLIBURTON**

FOR LUGGAGE, HAND BAGS, PURSES, WALLETS, BRIEFCASE-TYPE PORTFOLIOS AND ATTACHE CASES (U.S. CLS. 1, 2, 3, 22 AND 41).  
ROBIN CHOSID, EXAMINING ATTORNEY

SN 78-246,426. WNBA ENTERPRISES, LLC, SECAUCUS, NJ. FILED 5-6-2003.



FOR ATHLETIC BAGS, SHOE BAGS FOR TRAVEL, OVERNIGHT BAGS, UMBRELLAS, BACKPACKS, BABY BACKPACKS, DUFFEL BAGS, TOTE BAGS, LUGGAGE, LUGGAGE TAGS, PATIO UMBRELLAS, VALISES, ATTACHE CASES, BILLFOLDS, WALLETS, BRIEFCASES, CANES, BUSINESS CARD CASES, BOOK BAGS, ALL PURPOSE SPORTS BAGS, GOLF UMBRELLAS, GYM BAGS, PURSES, COIN PURSES, FANNY PACKS, WAIST PACKS, COSMETIC CASES SOLD EMPTY, GARMENT BAGS FOR TRAVEL, HANDBAGS, KEY CASES, KNAPSACKS, SUITCASES, TOILETRY CASES SOLD EMPTY, TRUNKS FOR TRAVELING AND RUCKSACKS (U.S. CLS. 1, 2, 3, 22 AND 41).  
ROBERT C. CLARK JR., EXAMINING ATTORNEY

SN 78-247,326. GULLAHORN, JOHN D., CANTONMENT, FL. FILED 5-8-2003.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE PRODUCTS, APART FROM THE MARK AS SHOWN. FOR CAT COLLARS AND CAT CLOTHES (U.S. CLS. 1, 2, 3, 22 AND 41).  
HENRY S. ZAK, EXAMINING ATTORNEY

**CLASS 18—(Continued).**

SN 78-255,715. KNOWLEDGE ADVENTURE, INC., LOS ANGELES, CA. FILED 5-29-2003.



OWNER OF U.S. REG. NOS. 2,145,124, 2,601,370 AND OTHERS.  
FOR TRAVEL BAGS, INCLUDING BUT NOT LIMITED TO KNAPSACKS, BACKPACKS AND LUGGAGE (U.S. CLS. 1, 2, 3, 22 AND 41).  
GINA FINK, EXAMINING ATTORNEY

SN 78-270,027. SHOP TV, INC., DENVER, CO. FILED 7-2-2003.

**PACK-MAX**

OWNER OF U.S. REG. NO. 2,552,730.  
FOR MULTI-USE BAGS AND CONTAINERS FOR TRAVEL AND STORAGE PURPOSES, NAMELY ATHLETIC BAGS, BEACH BAGS, CARRY-ON BAGS, COSMETIC BAGS SOLD EMPTY, DIAPER BAGS, GYM BAGS, LUGGAGE, SUITCASES, TRAVEL BAGS AND TOTE BAGS (U.S. CLS. 1, 2, 3, 22 AND 41).  
FIRST USE 2-2-2000; IN COMMERCE 5-9-2000.  
DORITT L. CARROLL, EXAMINING ATTORNEY

SN 78-277,354. THE COLEMAN COMPANY, INC., WICHITA, KS. FILED 7-22-2003.

**SIERRA TRAILS**

OWNER OF U.S. REG. NO. 2,175,999.  
FOR PACKS AND BAGS, NAMELY, BACKPACKS, TRAVEL BAGS, INTERNAL FRAME BACKPACKS, EXTERNAL FRAME BACKPACKS, DAYPACKS, DUFFEL BAGS, KNAPSACKS, TOTE BAGS, AND ALL PURPOSE ATHLETIC BAGS (U.S. CLS. 1, 2, 3, 22 AND 41).  
CHRISTOPHER ADKINS, EXAMINING ATTORNEY

SN 78-286,121. THE F. J. WESTCOTT COMPANY, TOLEDO, OH. FILED 8-12-2003.

**HAAS-JORDAN**

FOR UMBRELLAS (U.S. CLS. 1, 2, 3, 22 AND 41).  
FIRST USE 12-31-1949; IN COMMERCE 12-31-1949.  
KHANH LE, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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PERFECT FOODS, INC.

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2900 Crystal Drive  
Arlington, VA 22202-3514

Sir:

TRANSMITTAL

Enclosed for filing are the following:

1. Notice of Opposition (original and one copy);
2. Credit Card Authorization - \$300;
3. Instructions as to Underpayment/Overpayment of Fees; and



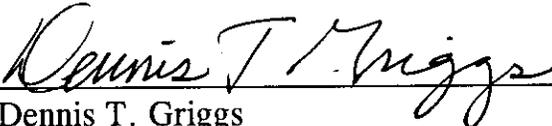
06-07-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #11

4. Opposer's Correspondence Address.

Respectfully submitted,

Date: June 2, 2004



Dennis T. Griggs  
Attorney for Opposer

Griggs Bergen LLP  
17950 Preston Road, Suite 1000  
Dallas, Texas 75252  
(972) 447-4569  
(972) 732-9218 (facsimile)

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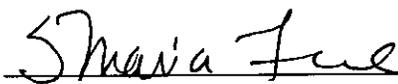
CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this TRANSMITTAL (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

S. Maria Tedesco

(Typed name of person signing statement)

Date: June 2, 2004



(Signature of person signing statement)