

ESTTA Tracking number: **ESTTA341201**

Filing date: **04/07/2010**

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	Cargill, Incorporated
Granted to Date of previous extension	04/28/2010
Address	15407 McGinty Road West Wayzata, MN 55391 UNITED STATES

Attorney information	William Schultz Merchant & Gould P.C P.O. Box 2910 MINNEAPOLIS, MN 55402 UNITED STATES cargilltm@merchantgould.com Phone:612.332.5300
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Applicant Information

Application No	77790839	Publication date	12/29/2009
Opposition Filing Date	04/07/2010	Opposition Period Ends	04/28/2010
Applicant	Ann Noppe Noyce 305 East College Avenue Appleton, WI 54911 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: PET FOOD AND EDIBLE PET TREATS
Class 044. All goods and services in the class are opposed, namely: ANIMAL THERAPY SERVICES, NAMELY, HOLISTIC HEALTHCARE FOR ENHANCING THE HEALTH AND WELL-BEING OF ANIMALS

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

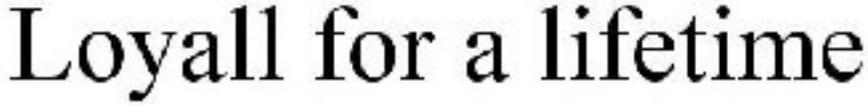
U.S. Registration No.	3432078	Application Date	12/15/2006
Registration Date	05/20/2008	Foreign Priority Date	NONE
Word Mark	LOYALL		

Design Mark	<h1>LOYALL</h1>
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 2008/02/12 First Use In Commerce: 2008/02/12 Pet food

U.S. Registration No.	3427764	Application Date	03/07/2007
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	LOYALL		
Design Mark			
Description of Mark	The mark consists of the word Loyall with a dog.		
Goods/Services	Class 031. First use: First Use: 2008/02/12 First Use In Commerce: 2008/02/12 Pet food		

U.S. Registration No.	3450438	Application Date	03/07/2007
Registration Date	06/17/2008	Foreign Priority Date	NONE
Word Mark	LOYALL		

Design Mark	
Description of Mark	The mark consists of the word "Loyall" with a cat.
Goods/Services	Class 031. First use: First Use: 2008/02/13 First Use In Commerce: 2008/02/13 Pet food

U.S. Registration No.	3450381	Application Date	02/14/2007
Registration Date	06/17/2008	Foreign Priority Date	NONE
Word Mark	LOYALL FOR A LIFETIME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2008/02/12 First Use In Commerce: 2008/02/12 Food for animals		

Related Proceedings	None
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Attachments	77065597#TMSN.jpeg (1 page)(bytes) 77124046#TMSN.jpeg (1 page)(bytes) 77124047#TMSN.jpeg (1 page)(bytes) 77107490#TMSN.jpeg (1 page)(bytes) 2010 04 07 Notice of Opposition.pdf (7 pages)(243153 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William Schultz/
Name	William Schultz
Date	04/07/2010

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

Cargill, Incorporated)	
)	Opposition No. _____
Opposer,)	
)	Mark: LOYAL HEARTS
v.)	
)	Application Ser. No. 77-790,839
Ann Noppe Noyce)	
)	Filed: July 28, 2009
Applicant.)	
)	Published: December 29, 2009
_____)	

NOTICE OF OPPOSITION

Cargill, Incorporated, a Delaware Corporation, having a principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391, believes it will be damaged by registration of LOYAL HEARTS as a trademark for “pet food and edible pet treats” and “animal therapy services, namely, holistic healthcare for enhancing the health and well-being of animals,” Application Ser. No. 77-790,839, by Ann Noppe Noyce (hereinafter referred to as “Applicant”), and hereby opposes the same upon the following grounds.

1. Cargill is the owner of the registered trademark LOYALL and derivatives of that mark. On December 15, 2006, prior to Applicant’s filing date of July 28, 2009, Cargill filed an application to register the LOYALL mark in connection with pet food. Since at least as early as February 12, 2008, Cargill began using the mark LOYALL and derivatives of that mark for use on or in connection with pet food, food for animals, and services related to pet care, all of which are and have been continuously used and marketed in interstate commerce by Cargill.

2. On May 20, 2008, the United States Patent & Trademark Office registered on the Principal Register and issued to Cargill Registration No. 3,432,078 for the mark LOYALL.

Registration No. 3,432,078 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the LOYALL mark in commerce to market "pet food." Pursuant to 37 C.F.R § 2.122(d), Opposer hereby attaches a current printout of information from the TARR database related to U.S. Trademark Registration No. 3,432,078.

3. On May 13, 2008, the United States Patent & Trademark Office registered on the Principal Register and issued to Cargill Registration No. 3,427,764 for the mark LOYALL (and design). Registration No. 3,427,764 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the LOYALL mark in commerce to market "pet food." Pursuant to 37 C.F.R § 2.122(d), Opposer hereby attaches a current printout of information from the TARR database related to U.S. Trademark Registration No. 3,427,764.

4. On June 17, 2008, the United States Patent & Trademark Office registered on the Principal Register and issued to Cargill Registration No. 3,450,438 for the mark LOYALL (and design). Registration No. 3,450,438 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the LOYALL mark in commerce to market "pet food." Pursuant to 37 C.F.R § 2.122(d), Opposer hereby attaches a current printout of information from the TARR database related to U.S. Trademark Registration No. 3,450,438.

5. On June 17, 2008, the United States Patent & Trademark Office registered on the Principal Register and issued to Cargill Registration No. 3,450,381 for the mark LOYALL FOR A LIFETIME. Registration No. 3,450,381 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the LOYALL mark in commerce to market "food for animals." Pursuant to 37 C.F.R § 2.122(d), Opposer hereby

attaches a current printout of information from the TARR database related to U.S. Trademark Registration No. 3,450,381.

6. Cargill has expended substantial amounts of money in marketing, advertising and promoting the LOYALL mark on or in connection with pet food, food for animals, and services related to the care of animals in the United States.

7. Cargill has enjoyed substantial sales of goods and services in the United States in connection with the use of the LOYALL mark.

8. By reason of the extensive marketing, advertising, and promotion of goods and services in connection with the LOYALL mark and the high quality of those goods and services, these marks have extremely valuable goodwill that inures to the benefit of Cargill.

9. Applicant is an individual with a mailing address at 305 East College Avenue, Appleton, Wisconsin 54911.

10. Applicant is seeking to obtain registration on the Principal Register of the mark LOYAL HEARTS, Application Serial No. 77-790,839, for use on or in connection with “pet food and edible pet treats” and “animal therapy services, namely, holistic healthcare for enhancing the health and well-being of animals.”

11. There is no issue of priority concerning Application Ser. No. 77-790,839 because Cargill has use and registrations of its LOYALL mark prior to July 28, 2009, Applicant’s filing date.

12. The LOYALL trademark was highly distinctive and recognized by the public as identifying the goods and services of Cargill prior to July 28, 2009.

COUNT I — LIKELIHOOD OF CONFUSION

13. Paragraphs 1-12 are incorporated by reference herein.

14. Cargill enjoys substantial and exclusive goodwill and good reputation in connection with its LOYALL trademark. This goodwill and reputation will be harmed by the use and registration of the mark LOYAL HEARTS sought to be registered by Applicant.

15. On information and belief, Applicant's intended adoption and use of its LOYAL HEARTS mark has been with knowledge of Cargill's prior use of its LOYALL trademark on its goods and services.

16. Applicant's intended adoption and use of the LOYAL HEARTS trademark has been without Cargill's consent or permission.

17. The LOYAL HEARTS trademark for which Applicant seeks registration is similar in appearance, sound, connotation, and commercial impression to the LOYALL mark.

18. Applicant's LOYAL HEARTS mark so resembles Cargill's LOYALL trademark as to be likely, when applied to Applicant's goods and services, to cause confusion, mistake, or deception as to the source of origin of Applicant's goods and services by creating the erroneous impression that Applicant's goods and services originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Cargill.

19. The goods and services for which Applicant seeks registration of the LOYAL HEARTS trademark, namely, "pet food and edible pet treats" and "animal therapy services, namely, holistic healthcare for enhancing the health and well-being of animals" are similar to and are used in connection with the goods marketed under Cargill's LOYALL mark and derivatives of that mark.

20. The goods and services for which the Applicant seeks registration of the LOYAL HEARTS trademark are likely to be sold to or used by the same customers to whom Cargill sells

its goods and services under the LOYALL mark. The goods of Cargill and Applicant will travel in the same or similar channels of trade.

21. Applicant's LOYAL HEARTS mark is confusingly similar to Cargill's LOYALL mark and derivatives of that mark and use thereof by the Applicant on the goods and services specified in Application No. 77-790,839 is likely to cause confusion, mistake, or deception that Applicant's goods and services are those of Cargill or are otherwise endorsed, sponsored, or approved by Cargill, whereby Cargill will be damaged by registration of Applicant's LOYAL HEARTS mark on the Principal Register of the United States Patent and Trademark Office.

22. Granting a federal trademark registration to Applicant for its claimed LOYAL HEARTS mark as shown in Application Serial No. 77-790,839 would be contrary to 15 U.S.C. § 1052(d) and would violate or diminish the prior and superior rights of Cargill in its LOYALL trademark, causing irreparable damage and injury to Cargill.

PRAYER FOR RELIEF

WHEREFORE, Cargill asks that its opposition to Application No. 77-790,839 be sustained and that the registration of the term LOYAL HEARTS set forth therein be refused.

Please direct all correspondence to the attention of Allen W. Hinderaker:

Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
612-332-5300

Cargill hereby appoints Allen W. Hinderaker; William D. Schultz; Christopher Schulte; Andrew Ehard; Heather J. Kliebenstein; John A. Clifford, Reg. No. 30,247; Brent E. Routman; Scott W. Johnston, Reg. No. 39,721; Gregory C. Golla and other attorneys of the firm of Merchant & Gould P.C. as attorneys with the full power to represent Cargill, to receive all

correspondence related thereto and to represent it in all proceedings affecting the potential opposition of the mark.

Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$600.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Cargill's counsel noted above.

Respectfully submitted,

Dated: April 7, 2010

CARGILL, INCORPORATED

By its attorneys,

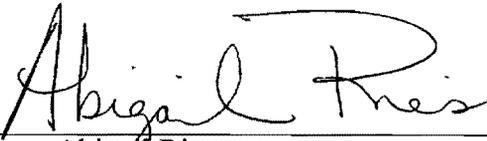


Allen W. Hinderaker
William D. Schultz
Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION has been served
by First Class Mail this 7th day of April, 2010 upon the following:

ANN NOPPE NOYCE
305 E COLLEGE AVE
APPLETON, WI 54911-5714



Abigail Ries