

ESTTA Tracking number: **ESTTA362657**

Filing date: **08/11/2010**

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	Pet Holdings Inc.
Granted to Date of previous extension	08/11/2010
Address	190 Queen Anne Ave N Suite 250 Seattle, WA 98109-4968 UNITED STATES
Party who filed Extension of time to oppose	Pet Holdings, Inc. Pet Holdings, Inc.
Relationship to party who filed Extension of time to oppose	Original inclusion of comma was incorrect

Attorney information	VENKAT BALASUBRAMANI FOCAL PLLC 800 FIFTH AVENUE, SUITE 4100 SEATTLE, WA 98104 UNITED STATES venkat@focallaw.com Phone:2065294827
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### Applicant Information

Application No	77868181	Publication date	04/13/2010
Opposition Filing Date	08/11/2010	Opposition Period Ends	08/11/2010
Applicant	Combo Ventures 10A 1401 Ocean Avenue Brooklyn, NY 11230 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. First Use: 2009/04/22 First Use In Commerce: 2009/04/22  
All goods and services in the class are opposed, namely: Providing an Internet website portal in the field of entertainment, pertaining to the realm of human and animal error, updated daily in the form of pictures, video and text

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3748736	Application Date	04/08/2009
Registration Date	02/16/2010	Foreign Priority Date	NONE
Word Mark	FAIL BLOG		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use: First Use: 2008/01/03 First Use In Commerce: 2008/01/03 Communications services, namely, providing facilities for users of computers, mobile and handheld computing devices, and wired and wireless communication devices to post, transmit, receive, retrieve, organize, search and review text, voice, audio and visual content and data via optical and electronic communication networks; telecommunication services, namely, transmission of text, voice, audio and visual content and data via optical and electronic communication networks; mobile media services in the nature of electronic transmission of online entertainment media content in a wide variety of subject matter for others</p> <p>Class 041. First use: First Use: 2008/01/03 First Use In Commerce: 2008/01/03 Electronic publishing services, namely, publishing of online works of others featuring text, voice, audio and visual content; entertainment services in the nature of non-downloadable music, voice, audio and visual content and data</p> <p>Class 042. First use: First Use: 2008/01/03 First Use In Commerce: 2008/01/03 Providing temporary use of non-downloadable computer software for use in posting, transmitting, receiving, retrieving, organizing, searching and reviewing text, voice, audio and visual content and data via computers, mobile and handheld computing devices, and wired and wireless communication devices; application service provider (ASP) services featuring software used for the dissemination, distribution and review of text, voice, audio and visual content and data via optical and electronic communication networks; providing temporary use of non-downloadable computer software for social networking; hosting an online website featuring web portals, web logs, blogs, electronic bulletin boards, collaboration and wiki sites related to the dissemination, distribution and review of online content in a wide variety of subject matter</p>		

Attachments	77709571#TMSN.jpeg ( 1 page )( bytes ) NOTICE OF OPPOSITION - FILED VERSION.pdf ( 9 pages )(437041 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	/vb/
Name	VENKAT BALASUBRAMANI
Date	08/11/2010

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

In the Matter of Trademark Application Serial No. 77781021

PET HOLDINGS INC.,

Opposer,

v.

COMBO VENTURES LLC,

Applicant.

Opposition No.

Mark: EPIC FAIL

Filing Date: November 9, 2009

Publication Date: April 13, 2010

**NOTICE OF OPPOSITION**

In the matter of application Serial No. 77781021 filed November 9, 2009 by Combo Ventures LLC ("Applicant"), a New York limited liability company, to register EPIC FAIL as a trademark for use in connection with "*an internet website portal in the field of entertainment, pertaining to the realm of human and animal error updated daily in the form of pictures, video and text,*" which was published in the Official Gazette on April 13, 2010, the following party believes it will be damaged by registration of the EPIC FAIL mark: Pet Holdings Inc. ("Opposer"), a Washington corporation, having its principal place of business at 190 Queen Anne Avenue North, Suite 250, Seattle, Washington 98109. Accordingly, Opposer files this Notice of Opposition to registration of the EPIC FAIL mark.

The grounds for this opposition are as follows:

1. Opposer has obtained the necessary extension of time within which to file this Notice of Opposition.

2. Opposer owns the registered trademark FAIL BLOG (U.S. Trademark Registration No. 3748736), a standard character mark, in connection with "*communications services, namely, providing facilities for users of computers, mobile and handheld computing devices, and wired and wireless communication devices to post, transmit, receive, retrieve, organize, search and review text, voice, audio and visual content and data via optical and electronic communication networks; telecommunication services, namely, transmission of text, voice, audio and visual content and data via optical and electronic communication networks; mobile media services in the nature of electronic transmission of online entertainment media content in a wide variety of subject matter for others*" in International Class 38; "*electronic publishing services, namely, publishing of online works of others featuring text, voice, audio and visual content; entertainment services in the nature of non-downloadable music, voice, audio and visual content and data*" in International Class 41; and "*providing temporary use of non-downloadable computer software for use in posting, transmitting, receiving, retrieving, organizing, searching and reviewing text, voice, audio and visual content and data via computers, mobile and handheld computing devices, and wired and wireless communication devices; application service provider (ASP) services featuring software used for the dissemination, distribution and review of text, voice, audio and visual content and data via optical and electronic communication networks; providing temporary use of non-downloadable computer software for social networking; hosting an online website featuring web portals, web logs, blogs, electronic bulletin boards, collaboration and wiki sites related to the dissemination, distribution and review of online content in a wide variety of subject matter*" in International Class 42. Opposer has used the FAIL BLOG mark in connection with the above-stated services since at least January 3, 2008. Opposer filed its application to register the FAIL BLOG mark on

April 8, 2009. A copy of the registration information for Opposer's FAIL BLOG mark, obtained from the Trademark Electronic Search System database, is attached hereto as **Exhibit A**.

3. There is no issue of priority concerning application Serial No. 77781021. Applicant began first use of the EPIC FAIL mark and filed its application for registration long after Opposer began first use of its FAIL BLOG mark.

4. FAIL BLOG, as embodied in the market since at least January 3, 2008, is an online website which allows users of the website to upload photos and videos to the site, add captions to the photos and videos, and share the postings by means of various social news and bookmarking applications.

5. On information and belief, EPIC FAIL, as embodied in the market since at least April 22, 2009, is an online website providing almost identical services as those provided under Opposer's FAIL BLOG mark. Consumers are likely to be confused by Applicant's use of the EPIC FAIL mark for services that are nearly identical to those offered by Opposer.

6. Opposer's services and Applicant's services are offered through identical channels of trade. Moreover, the target consumers for both parties' services – consumers seeking to post, view and share humorous photos and videos – are identical. Accordingly, consumer confusion is inevitable.

7. Opposer has continuously used and advertised the FAIL BLOG mark throughout the United States for a significant time.

8. By reason of continuous marketing, advertising and promotion of services in connection with the FAIL BLOG mark, and the quality of those services, the FAIL BLOG mark has extremely valuable goodwill that inures to the benefit of Opposer. This goodwill has been

and will continue to be harmed by the use and registration of the confusingly similar mark EPIC FAIL sought to be registered by Applicant.

9. Applicant's mark is similar in appearance and sound to Opposer's mark. Both are standard character marks, comprised of two four-letter words, with each mark containing the word "fail." The word "fail" is the dominant component of each mark. Consequently, the marks create an extremely similar commercial impression.

10. Applicant's EPIC FAIL mark so resembles Opposer's FAIL BLOG mark as to be likely, when applied to the Applicant's services, to cause confusion, mistake or deception as to the source or origin of Applicant's goods by creating the erroneous impression that Applicant's goods originate with, are sponsored, approved, endorsed or licensed by, are affiliated or associated with, or are in some other way connected to Opposer.

11. The granting of a trademark registration for the EPIC FAIL mark to Applicant would be contrary to 15 U.S.C. § 1052(d) and would violate or diminish the prior and superior rights of Opposer in its FAIL BLOG trademark.

12. Opposer will be damaged if Applicant obtains registration of its mark because Applicant will obtain statutory rights in the mark in violation and derogation of the established prior rights of Opposer in its FAIL BLOG mark.

WHEREFORE, Opposer asks that its opposition to Application Serial No. 77781021 be sustained and that Applicant's proposed registration of the mark EPIC FAIL be refused. Please direct all correspondence to the attention of Venkat Balasubramani, Focal PLLC, 800 Fifth Avenue, Suite 4100, Seattle, Washington 98104. The undersigned is authorized to act on Opposer's behalf.

Opposer submits the required filing fee of three hundred dollars (\$300.00)  
contemporaneous with this Notice of Opposition.

DATED: August 11, 2010

Respectfully submitted,

FOCAL PLLC

By: /s Venkat Balasubramani  
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Attorneys for Opposer  
Pet Holdings Inc.

## **EXHIBIT A**



## Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Aug 11 04:25:51 EDT 2010

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[Logout](#) Please logout when you are done to release system resources allocated for you.

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# FAIL BLOG

**Word Mark** FAIL BLOG

**Goods and Services** IC 038. US 100 101 104. G & S: Communications services, namely, providing facilities for users of computers, mobile and handheld computing devices, and wired and wireless communication devices to post, transmit, receive, retrieve, organize, search and review text, voice, audio and visual content and data via optical and electronic communication networks; telecommunication services, namely, transmission of text, voice, audio and visual content and data via optical and electronic communication networks; mobile media services in the nature of electronic transmission of online entertainment media content in a wide variety of subject matter for others. FIRST USE: 20080103. FIRST USE IN COMMERCE: 20080103

IC 041. US 100 101 107. G & S: Electronic publishing services, namely, publishing of online works of others featuring text, voice, audio and visual content; entertainment services in the nature of non-downloadable music, voice, audio and visual content and data. FIRST USE: 20080103. FIRST USE IN COMMERCE: 20080103

IC 042. US 100 101. G & S: Providing temporary use of non-downloadable computer software for use in posting, transmitting, receiving, retrieving, organizing, searching and reviewing text, voice, audio and visual content and data via computers, mobile and handheld computing devices, and wired and wireless communication devices; application service provider (ASP) services featuring software used for the dissemination, distribution and review of text, voice, audio and visual content and data via optical and electronic communication networks; providing temporary use of non-downloadable computer software for social networking; hosting an online website featuring web portals, web logs, blogs, electronic bulletin boards, collaboration and wiki sites related to the dissemination, distribution and review of online content in a wide variety of subject matter. FIRST USE: 20080103. FIRST USE IN COMMERCE: 20080103

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77709571

**Filing Date** April 8, 2009

**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** December 1, 2009  
**Registration Number** 3748736  
**Registration Date** February 16, 2010  
**Owner** (REGISTRANT) Pet Holdings, Inc. CORPORATION DELAWARE 190 Queen Anne Ave N., Suite 250 Seattle WASHINGTON 98109  
**Attorney of Record** Sean M. Croman  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BLOG" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**CERTIFICATE OF TRANSMISSION**

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was submitted electronically via ESTTA on August 11, 2010, to the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

Dated: August 11, 2010

/s Venkat Balasubramani  
Venkat Balasubramani

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served by certified first-class mail, postage-prepaid, on August 11, 2010, upon Applicant at the following address:

Combo Ventures  
1401 Ocean Avenue, Apt 10A  
Brooklyn, New York 11230

Dated: August 11, 2010

/s Venkat Balasubramani  
Venkat Balasubramani