

ESTTA Tracking number: **ESTTA403623**

Filing date: **04/14/2011**

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 Valu Canada, Inc.
Granted to Date of previous extension	06/01/2011
Address	121 McPherson Street Markham, L3R 3L3 CANADA

Attorney information	Roberta Jacobs-Meadway Eckert Seamans Cherin & Mellott, LLC Two Liberty Place 50 South 16th Street 22d floor Philadelphia, PA 19102 UNITED STATES rjacobsmeadway@eckertseamans.com, dwilfong@eckertseamans.com Phone:215-851-8522
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Applicant Information

Application No	85126611	Publication date	02/01/2011
Opposition Filing Date	04/14/2011	Opposition Period Ends	06/01/2011
Applicant	J. Rettenmaier & Söhne GmbH + Co.KG Holzmühle, 1 Rosenberg, 73494 GERMANY		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: cat litter

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.	2959261	Application Date	04/28/2004
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	KITTY'S BEST		

Design Mark	KITTY'S BEST
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 1997/04/01 First Use In Commerce: 1997/04/01 cat litter

U.S. Registration No.	2782766	Application Date	01/28/2002
Registration Date	11/11/2003	Foreign Priority Date	NONE
Word Mark	KITTY'S BEST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2002/07/00 First Use In Commerce: 2002/07/00 cat litter		

Attachments	76589066#TMSN.gif (1 page)(bytes) 76363720#TMSN.gif (1 page)(bytes) NOTICE OF OPPOSITION SN 85126611.PDF (15 pages)(548484 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	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	04/14/2011

1. J. Rettenmaier & Söhne GmbH + Co.KG, a German limited partnership (“Applicant”), seeks to register CAT’S BEST as a trademark for use in connection with cat litter, as evidenced by the publication of said mark in the *Official Gazette* on February 1, 2011.

2. The application herein opposed was filed September 10, 2010 on the basis of intent to use. Applicant claims no date earlier than February 1, 2010 for the purpose of claiming priority.

3. Opposer is and has been engaged in the manufacture and sale of pet products, including cat litter, and has built a successful business in connection therewith.

4. Since at least as early as April 1, 1997, Opposer has used “KITTY’S BEST” as the dominant element of its marks in commerce for cat litter products.

5. Opposer has taken steps to protect the “KITTY’S BEST” mark and has secured U.S. Trademark Registration No.s 2,959,261 and 2,782,766 for such mark for cat litter products as identified therein. Registration No. 2,782,766 is incontestable. Printouts of the pertinent information about these registrations from the Trademark Office website are attached as Exhibit “A.”

6. The use of the “KITTY’S BEST” mark by Opposer has been continuous and commercially significant.

7. Opposer’s registered trademark “KITTY’S BEST” is inherently distinctive as applied to Opposer’s products.

8. By virtue of Opposer’s continuous use in commerce of its registered “KITTY’S BEST” trademark in connection with such goods, such goods have become favorably known to the relevant trade and public under such mark.

9. As Opposer is the owner of a U.S. trademark registration for “KITTY’S BEST,” priority is not an issue.

10. In the application herein opposed, there are no restrictions on trade channels, so it must be assumed that the goods identified in the application will travel through all trade channels appropriate for goods of that type.

11. Applicant’s mark for cat litter is confusingly similar to Opposer’s registered “KITTY’S BEST” trademark for cat litter.

12. Opposer’s mark and Applicant’s mark both employ the identical term – “BEST,” as the dominant or a dominant element.

13. Additionally, the first word of each mark begins with a word identifying a feline beginning with a “k” sound. The connotation is clearly the same since a “kitty” is a “cat.”

14. The goods of Opposer and the goods of Applicant are the same – cat litter.

15. Cat litter products such as are sold by Opposer and as are identified in the application herein opposed are customarily marketed through the same and overlapping channels of trade.

16. The products marketed and sold under Opposer’s registered “KITTY’S BEST” trademark and the products intended to be sold under Applicant’s CAT’S BEST mark are such as would be sold to the same and to overlapping classes of purchasers.

17. Applicant’s CAT’S BEST trademark as applied to the goods identified in the application herein opposed so resembles Opposer’s registered “KITTY’S BEST” trademark that it is likely to cause confusion, mistake, and/or deception.

18. If Applicant is permitted to register CAT'S BEST for the cat litter product set forth in the application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

19. On seeing Applicant's CAT'S BEST mark used in connection with Applicant's cat litter products, purchasers and potential purchasers are likely to believe in error that such goods are offered by or in association with or under license from Opposer or that Opposers and Applicant are affiliated.

20. Any defect, objection to, or fault found with Applicant's cat litter products sold under the mark CAT'S BEST would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and business.

21. If Applicant is granted a registration for the mark herein opposed, he would obtain thereby at least a *prima facie* exclusive right to use the mark for the goods identified in the registration. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Pet Valu Canada Inc. prays that registration of the mark of Application Serial No. 85/126611 be refused and that this opposition be sustained.

Respectfully Submitted,

Dated: 4/24/11

By:


Roberto Jacobs-Meadway
Desiree L. Wilfong
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19103
(215) 851-8522

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached
Notice of Opposition was served on counsel for Applicant on the dated listed below via U.S.

Mail:

John F. Zanghi, Esq.
Fay Sharpe LLP
1228 Euclid Avenue
Cleveland, OH 44115-1834

Dated: 4-14-11

By: Mary T. Boesenhofer
Mary T. Boesenhofer

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-04-14 08:57:32 ET

Serial Number: 76589066 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2959261

Mark

KITTY'S BEST

(words only): KITTY'S BEST

Standard Character claim: Yes

Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Date of Status: 2011-03-18

Filing Date: 2004-04-28

Transformed into a National Application: No

Registration Date: 2005-06-07

Register: Principal

Law Office Assigned: LAW OFFICE 116

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: M70 -TMO Law Office 116

Date In Location: 2011-03-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Pet Valu Canada Inc.

Address:

Pet Valu Canada Inc.
121 McPherson Street
Markham, Ontario, L3R 3L3
Canada

Legal Entity Type: Corporation

State or Country of Incorporation: Canada

GOODS AND/OR SERVICES

International Class: 031**Class Status:** Active

cat litter

Basis: 1(a)**First Use Date:** 1997-04-01**First Use in Commerce Date:** 1997-04-01

ADDITIONAL INFORMATION

Section 2(f)**Prior Registration Number(s):**

2239914

2782766

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-03-18 - Section 8 (6-year) accepted & Section 15 acknowledged

2011-03-17 - Case Assigned To Post Registration Paralegal

2011-03-02 - TEAS Section 8 & 15 Received

2008-03-12 - TEAS Change Of Correspondence Received

2005-06-07 - Registered - Principal Register

2005-03-15 - Published for opposition

2005-02-23 - Notice of publication

2004-12-08 - Law Office Publication Review Completed

2004-12-08 - Assigned To LIE

2004-11-23 - Approved for Pub - Principal Register (Initial exam)

2004-11-23 - Assigned To Examiner

2004-11-23 - Examiner's amendment mailed

2004-11-23 - Examiners Amendment -Written

2004-11-23 - Assigned To Examiner

2004-05-13 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Roberta Jacobs-Meadway

Correspondent

Roberta Jacobs-Meadway

Eckert Seamans Cherin & Mellott, LLC

Two Liberty Place, 22nd Floor

50 South 16th Street

PHILADELPHIA PA 19102

Phone Number: 215.851.8522

Fax Number: 215.851.8383



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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 1**Serial #:** [76589066](#)**Filing Dt:** 04/28/2004**Reg #:** [2959261](#)**Reg. Dt:** 06/07/2005**Registrant:** Pet Valu Canada Inc.**Mark:** KITTY'S BEST**Assignment: 1****Reel/Frame:** [4055/0299](#)**Received:** 09/01/2009**Recorded:** 09/01/2009**Pages:** 10**Conveyance:** SECURITY INTEREST**Assignor:** [PET VALU CANADA INC.](#)**Exec Dt:** 08/31/2009**Entity Type:** CORPORATION**Citizenship:** ONTARIO**Entity Type:** CHARTERED BANK**Citizenship:** CANADA**Assignee:** [BANK OF MONTREAL, AS AGENT](#)
11TH FLOOR, FIRST CANADIAN PLACE
TORONTO, ONTARIO, CANADA M5X 1A1**Correspondent:** RICHARD KALWA
111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Search Results as of: 04/13/2011 02:34 PM

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Web interface last modified: Apr 30, 2009 v.2.1| [.HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

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Serial Number: 76363720 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2782766

Mark



(words only): KITTY'S BEST

Standard Character claim: No

Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Date of Status: 2009-09-19

Filing Date: 2002-01-28

Transformed into a National Application: No

Registration Date: 2003-11-11

Register: Principal

Law Office Assigned: LAW OFFICE 111

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: M20 -TMO Law Office 111

Date In Location: 2009-09-19

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Pet Valu Canada Inc.

Address:

Pet Valu Canada Inc.
121 McPherson Street

Markham, Ontario L3R 3L3

Canada

Legal Entity Type: Corporation

State or Country of Incorporation: Canada

GOODS AND/OR SERVICES

International Class: 031

Class Status: Active

cat litter

Basis: 1(a)

First Use Date: 2002-07-00

First Use in Commerce Date: 2002-07-00

ADDITIONAL INFORMATION

Disclaimer: "KITTY'S BEST"

Design Search Code(s):

03.01.04 - Cats, domestic Cats; Kittens

03.01.16 - Heads of cats, dogs, wolves, foxes, bears, lions, tigers

Prior Registration Number(s):

2239914

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-09-19 - Section 8 (6-year) accepted & Section 15 acknowledged

2009-09-18 - Case Assigned To Post Registration Paralegal

2009-04-01 - Assigned To Paralegal

2009-03-30 - TEAS Section 8 & 15 Received

2008-03-12 - TEAS Change Of Correspondence Received

2003-11-11 - Registered - Principal Register

2003-09-04 - Allowed for Registration - Principal Register (SOU accepted)

2003-09-04 - Assigned To Examiner
2003-08-31 - Case File In TICRS
2003-08-08 - Statement Of Use Processing Complete
2003-06-30 - Use Amendment Filed
2003-06-30 - PAPER RECEIVED
2003-01-21 - NOA Mailed - SOU Required From Applicant
2002-10-29 - Published for opposition
2002-10-09 - Notice of publication
2002-07-21 - Approved For Pub - Principal Register
2002-07-16 - Examiner's amendment mailed
2002-05-06 - Non-final action mailed
2002-04-18 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

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Trademark Assignment Abstract of Title**Total Assignments: 1****Serial #:** [76363720](#)**Filing Dt:** 01/28/2002**Reg #:** [2782766](#)**Reg. Dt:** 11/11/2003**Registrant:** Pet Valu Canada Inc.**Mark:** KITTY'S BEST**Assignment: 1****Reel/Frame:** [4055/0299](#)**Received:** 09/01/2009**Recorded:** 09/01/2009**Pages:** 10**Conveyance:** SECURITY INTEREST**Assignor:** [PET VALU CANADA INC.](#)**Exec Dt:** 08/31/2009**Entity Type:** CORPORATION**Citizenship:** ONTARIO**Entity Type:** CHARTERED BANK**Citizenship:** CANADA**Assignee:** [BANK OF MONTREAL, AS AGENT](#)
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CHICAGO, IL 60603

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