

ESTTA Tracking number: **ESTTA446578**

Filing date: **12/15/2011**

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

Proceeding	91199427
Party	Defendant J. Rettenmaier & Söhne GmbH + Co. KG
Correspondence Address	JOHN S ZANGHI FAY SHARPE LLP HALLE BLDG 5TH FL, 1228 EUCLID AVE CLEVELAND, OH 44115-1834 UNITED STATES jzanghi@faysharpe.com, skoenig@faysharpe.com
Submission	Answer
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Date	12/15/2011
Attachments	psee700060_ans.PDF ( 6 pages )(19607 bytes )

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

In the matter of Application Serial No. 85/126,611  
filed September 10, 2010

PET VALU CANADA, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91199427
	)	
J. RETTENMAIER & SÖHNE GMBH + CO. KG)	)	
	)	
Applicant.	)	
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**ANSWER**

Attention: TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Applicant, J. Rettenmaier & Söhne GmbH + Co. KG (hereinafter "Applicant" or "JRS"), by and through its undersigned counsel, hereby answers the Notice of Opposition to the registration of its trademark CAT'S BEST and Design, subject of Serial No. 85/126,611.

Applicant denies the averment in the second introductory paragraph of the Notice of Opposition that the registration of applicant's mark will damage Opposer. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments raised in the second introductory paragraph of the Notice of Opposition and, therefore, denies the same.

Applicant denies each and every allegation contained in the Notice of Opposition unless otherwise admitted or responded to as follows:

1. Admitted.

2. Applicant admits that Application Serial No. 85/126,611 was filed on September 10, 2010 under Section 1(b) for the mark CAT'S BEST and Design, in International Class 31 (hereinafter "the '611 application"), but Applicant denies the remaining averments raised in paragraph 2 of the Notice of Opposition.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 3 of the Notice of Opposition and, therefore, denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 4 of the Notice of Opposition and, therefore, denies the same.

5. Applicant admits that Opposer has attached printouts as Exhibit "A" concerning U.S. Trademark Registration Nos. 2,959,261 and 2,782,766, but Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments raised in paragraph 5 of the Notice of Opposition and, therefore, denies the same

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 6 of the Notice of Opposition and, therefore, denies the same.

7. Denied.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 8 of the Notice of Opposition and, therefore, denies the same.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 9 of the Notice of Opposition and, therefore, denies the same.

10. Applicant admits that the '611 application was filed with no restrictions on trade channels, but Applicant denies the remaining averments raised in paragraph 10 of the Notice of Opposition.

11. Denied.

12. Applicant admits that opposer's mark KITTY'S BEST and applicant's mark CAT'S BEST both employ the term "BEST", but Applicant denies the remaining averments raised in paragraph 12 of the Notice of Opposition.

13. Applicant admits that the first term of applicant's mark is "Cat's" and that the first term of Opposer's mark is "Kitty's" and that each term begins with a "k" sound, but Applicant denies the remaining averments raised in paragraph 13 of the Notice of Opposition.

14. Applicant admits that the goods listed in the '611 application are "cat litter" and that the goods listed in Opposer's registrations are "cat litter", but Applicant denies the remaining averments raised in paragraph 14 of the Notice of Opposition.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 15 of the Notice of Opposition and, therefore, denies the same.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 16 of the Notice of Opposition and, therefore, denies the same.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Applicant admits that if it is granted a registration for the mark opposed, it would obtain thereby at least a prima facie exclusive right to use the mark for the goods identified in the registration, but Applicant denies the remaining averments raised in paragraph 21 of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

For its affirmative defenses, Applicant asserts as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

Opposer has failed to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Opposer has no standing to assert the claims set forth in the Notice of Opposition.

#### **THIRD AFFIRMATIVE DEFENSE**

The wording KITTY'S BEST is at most weak, if not generic, and does not have the trademark significance to support the allegations raised in the Notice of Opposition under U.S. trademark law.

#### **FOURTH AFFIRMATIVE DEFENSE**

There is no likelihood of confusion between the CAT'S BEST and Design mark of the '611 application and the registration or the use of Opposer's KITTY'S BEST designation and to sustain this opposition would provide an overly broad scope of protection for the KITTY'S BEST registration.

#### **FIFTH AFFIRMATIVE DEFENSE**

Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant prays that the opposition be dismissed and that CAT'S BEST and Design, subject of Serial No. 85/126,611, be registered on the Principal Register.

Dated: December 15, 2011

Respectfully submitted,

FAY SHARPE LLP

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Attorneys for Applicant

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Applicant.	)	
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2011, the foregoing **ANSWER** was filed electronically. Notice of this filing was served via electronic mail and U.S. Mail on the following attorney for Opposer:

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/John S. Zanghi/  
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