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

Proceeding	91202554
Party	Defendant PIONEER PET PRODUCTS, LLC
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Date	12/27/2011
Attachments	Good Earth Answer.pdf (7 pages)(30582 bytes)

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

PROCEEDING NO. 91202554

THE GOOD EARTH CORPORATION,

v.

PIONEER PET PRODUCTS, LLC

Serial No. 85337652

Mark: THE GOOD EARTH

ANSWER

Respondent, Pioneer Pet Products, LLC (“Applicant”), by its attorneys, Boyle Fredrickson, S.C., as and for its Answer to the claims asserted in the Notice of Opposition (“Opposition”) filed on behalf of The Good Earth Corporation (“Opposer”), denies that Opposer will be damaged by the registration of Applicant’s mark THE GOOD EARTH (Serial No. 85337652) (the “Application”). With respect to the specific assertions in the Opposition, Applicant respectfully responds as follows:

1. Applicant is without sufficient information to admit or deny the allegations in Paragraph 1 of the Opposition and therefore denies the same.
2. Admitted that Applicant is a Wisconsin limited liability company, having an address at N144 W5660 Pioneer Road, Cedarburg, WI 53102.
3. Denied.
4. Admitted that Opposer claims ownership of U.S. Trademark Registration and Application Serial Nos.: 943,714; 2,563,918; 85/563,571; 1,913,376; 2,291,798; 1,914,950; 1,238,249; 77/393,704; 3,958,837; 85/347,612;

77/894,594; 85/344,787; 3,683,648; 77/896,061; 77/904,486; 3,997,953; 85/071,692; 3,235,618; 3,235,620; 1,114,999; and 85/344,766 which are for various goods and that Exhibit A appears to be a copy of the identified TARR printouts of these U.S. Trademark registration and application serial numbers.

Applicant is without sufficient information to admit or deny the remaining allegations in Paragraph 4 of the Opposition and therefore denies the same.

5. Applicant is without sufficient information to admit or deny the allegations in Paragraph 5 of the Opposition and therefore denies the same.
6. Admitted that Applicant has not yet claimed use of Applicant's Mark. Applicant is without sufficient information to admit or deny the remaining allegations in Paragraph 6 of the Opposition and therefore denies the same.
7. Applicant is without sufficient information to admit or deny the allegations in Paragraph 7 of the Opposition and therefore denies the same.
8. Admitted that Applicant filed application, Serial No. 85.337,652 to register THE GOOD EARTH for cat litter and litter for small animals. Denied that Applicant's Mark was published for opposition in the Official Gazette on October 25, 1011. Applicant is without sufficient information to admit or deny the remaining allegations in Paragraph 8 of the Opposition and therefore denies the same.
9. Admits that the Mark associated with Applicant's Application includes "THE GOOD EARTH" in the body of the mark which is identical to at least a portion of one or more of Opposer's claimed marks. Applicant denies the remaining allegations in Paragraph 9 of the Opposition.

COUNT ONE
Likelihood of Confusion

- 10. Applicant repeats the answers set forth in paragraphs 1 through 9.
- 11. Denied.
- 12. Denied.
- 13. Denied.

COUNT TWO
Dilution

- 14. Applicant repeats the answers set forth in paragraphs 1 through 13.
- 15. Denied.
- 16. Denied.
- 17. Denied.

COUNT THREE
False Designation of Origin

- 18. Applicant repeats the answers set forth in paragraphs 1 through 17.
- 19. Denied.
- 20. Denied.
- 21. Denied.
- 22. Denied.

AFFIRMATIVE DEFENSES

1. There is no likelihood of confusion between Applicant's marks and Opposer's mark and therefore no basis for denying Applicant a Registration.
2. The Opposition fails to state a claim upon which relief may be granted.
3. Opposer has not used its claimed marks as trademarks in commerce so as to be able to establish prior use of the mark.
4. To the extent Opposer has made any trademark use of its claimed marks, its use has been geographically limited to only a small portion of the country.
5. To the extent Opposer has made any trademark use of its claimed marks, its use has been in different channels of trade from those in which Applicant's mark will be used.
6. To the extent Opposer has made any trademark use of its claimed marks, its use has been in connection with different, unrelated goods from those with which Applicant's mark will be used
7. To the extent Opposer has made any trademark use of its claimed marks, its goods have been marketed to and used by different consumers from those of Applicant.
8. Opposer's trademark registrations are invalid because Opposer knew or should have known that it had not made use of the mark in connection with all of the goods set forth in the registration at the time of the filing of

the Statement of Use or at the time of the filing of the Section 8 and 15 Affidavit.

9. To the extent Opposer has made any trademark use of its claimed marks, Opposer's marks were not famous prior to the filing date of Applicant's Application.
10. There is no dilution of Opposer's marks by Applicant's mark and therefore no basis for denying Applicant a Registration.

WHEREFORE Applicant respectfully requests that the Opposition be denied
and/or dismissed in its entirety.

Date: December 27, 2011

/Adam L. Brookman/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer has been served on the below listed counsel for Opposer by mailing said copy on December 27, 2011, via First Class Mail, postage prepaid to:

Gary H. Fechter
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/Adam L. Brookman/
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