

ESTTA Tracking number: **ESTTA524926**

Filing date: **03/05/2013**

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	Safer, Inc.
Granted to Date of previous extension	03/06/2013
Address	69 NORTH LOCUST STREET LITITZ, PA 17543 UNITED STATES
Attorney information	MARSHA G GENTNER JACOBSON HOLMAN PLLC 400 7TH STREET NW, 6TH FLOOR WASHINGTON, DC 20004 UNITED STATES trademark@jhip.com, mgentner@jhip.com Phone:202-638-6666

Applicant Information

Application No	85636878	Publication date	11/06/2012
Opposition Filing Date	03/05/2013	Opposition Period Ends	03/06/2013
Applicant	Pool Critter Solutions, LLC 903 SE Central Parkway Stuart, FL 34994 UNITED STATES		

Goods/Services Affected by Opposition

Class 019. All goods and services in the class are opposed, namely: non-metal water resistant boards for deterring animals and pests from entering pools

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.	2236673	Application Date	02/17/1998
Registration Date	04/06/1999	Foreign Priority Date	NONE
Word Mark	DEER AWAY		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1988/03/15 First Use In Commerce: 1988/03/15 repellent for repelling deer, other big game, and rabbits

Attachments	i6675.nop_20130305163701.pdf (4 pages)(138274 bytes) i6675.att_20130305163726.pdf (9 pages)(228290 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	/Marsha G. Gentner/
Name	MARSHA G GENTNER
Date	03/05/2013

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

SAFER, INC.)
)
 Opposer,)
)
 v.) Opposition No.
)
 POOL CRITTER SOLUTIONS, LLC)
)
 Applicant.)

NOTICE OF OPPOSITION

In the matter of an application to register a trademark under the Trademark Act of 1946, Serial No. 85/636,878, for the mark RACCOON AWAY (Stylized) and Raccoon Design, filed May 29, 2012, in the name of Pool Critter Solutions, LLC, published for opposition in the TRADEMARK OFFICIAL GAZETTE of November 6, 2012, Vol. 1384, No. 1, at page TM 754, the Opposer, Safer, Inc., believes it will be damaged by registration of said alleged trademark and hereby opposes same. The grounds for opposition are as follows:

1. The Opposer, Safer, Inc., is a corporation duly organized and existing under the laws of the state of Delaware and having a place of business at 69 North Locust, Lititz, Pennsylvania 17543. Since long prior to the date of first use alleged in the application opposed herein, Opposer has manufactured, distributed, advertised for sale and sold, *inter alia*, a variety of pest control products.

2. Since prior to the filing date of the application opposed herein, Opposer Safer, Inc. has, and is now, engaged in the production, advertisement, marketing, distribution and sale in commerce, of pest control and repellent products, including products to serve as a barrier to deter animals and pests from entering landscaped and other areas, under and in connection in with the mark **DEER AWAY**. Since the initial use of its **DEER AWAY** mark, Opposer continuously has used said

Opposer's **DEER AWAY** mark, in commerce in connection with its products advertised, offered, marketed, distributed, and sold by Opposer, and to identify and designate same, and to distinguish those goods, and Opposer's business, from those of others.

3. Opposer is the owner of and will rely on herein U.S. trademark registration no. 2,236,673, issued April 6, 1999. Said registration is valid and subsisting, and operates as conclusive evidence of Opposer's ownership of the mark set forth therein and exclusive right to use the registered mark in commerce in connection with the goods set forth in those registration. *See* 15 U.S.C. §§1065 and 1115(b). Attached hereto is a current printout of information from the electronic database records of the U.S. Patent and Trademark Office showing the current status and title of the aforementioned registration.

4. On May 29, 2012, Applicant filed an application to register the mark RACCOON AWAY (Stylized) and Raccoon Design. Said application was accorded serial no. 85/636,878, and was published for opposition in the OFFICIAL GAZETTE of November 6, 2012, at page TM 754, identifying the goods as "non-metal water resistant boards for deterring animals and pests from entering pools."

5. The mark sought to be registered by Applicant is a colorable imitation of, and confusingly similar to, Opposer's prior and aforesaid **DEER AWAY** mark.

6. On information and belief, the goods identified in the application opposed herein are similar and/or related, to the goods in connection with which Opposer uses Opposer's **DEER AWAY** mark, and are and/or will be sold and/or offered through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which Opposer's products are marketed and/or sold.

7. The registration and/or use of the RACCOON AWAY (Stylized) and Raccoon Design mark is likely to cause confusion, mistake, and/or to deceive as to origin, sponsorship, and/or

association of Applicant's goods sold under the mark sought to be registered by Applicant vis-a-vis Opposer and/or Opposer's **DEER AWAY** mark, and/or to mislead purchasers of Applicant's goods and/or Opposer's goods, and/or the public in general, into believing that Applicant's goods are sold by, emanate from, and/or in some way, directly or indirectly, are associated with Safer, Inc., and/or Opposer's **DEER AWAY** mark and/or Opposer's goods, or business, or vice versa, to the damage and detriment of Opposer.

8. If Applicant is granted registration on the application opposed herein, and Applicant obtains such rights as conferred under the Principal Register of the Trademark Act of 1946, Applicant will obtain unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946, to the detriment and harm of Opposer.

WHEREFORE, this Opposer, Safer, Inc., believes and alleges that it will be damaged by registration of Serial No. 85/636,878, as aforesaid, and prays that:

- a. judgment in the present opposition be entered in favor of Opposer;
- b. the present opposition be sustained; and
- c. registration of application serial no. 85/636,878 be rejected and refused.

Respectfully submitted,

SAFER, INC.

By:


Marsha G. Gentner
JACOBSON HOLMAN PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Date: March 6, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2013, the foregoing Notice of Opposition was served, by mailing same first class and postage prepaid, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Leslie A. Burgk, Esquire
Leslie A. Burgk, P.A.
580 Village Boulevard
Suite 150
West Palm Beach, Florida 33409-1951



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Mark: DEER AWAY

US Serial Number: 75417924

Application Filing Date: Feb. 17, 1998

US Registration Number: 2236673

Registration Date: Apr. 06, 1999

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Nov. 03, 2008

Publication Date: Jan. 12, 1999

Mark Information

Mark Literal Elements: DEER AWAY

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Disclaimer: "DEER"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: repellent for repelling deer, other big game, and rabbits

International Class: 005 - Primary Class

U.S Class: 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)
First Use: Mar. 15, 1988 **Use in Commerce:** Mar. 15, 1988

Basis Information (Case Level)

Filed Use:	Yes	Currently Use:	Yes	Amended Use:	No
Filed ITU:	No	Currently ITU:	No	Amended ITU:	No
Filed 44D:	No	Currently 44D:	No	Amended 44D:	No
Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No		
Filed No Basis:	No	Currently No Basis:	No		

Current Owner(s) Information

Owner Name: SAFER, INC.
69 NORTH LOCUST
Owner Address: LITITZ, PENNSYLVANIA 17543
UNITED STATES

Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: HARVEY B. JACOBSON, JR. **Docket Number:** T33121US0

Correspondent

Correspondent Name/Address: HARVEY B. JACOBSON, JR.
JACOBSON HOLMAN PLLC
400 Seventh Street, N.W.
Suite 600
Washington, DISTRICT OF COLUMBIA 20004
UNITED STATES

Phone: 202-638-6666 **Fax:** 202-393-5350

Correspondent e-mail: trademark@jhip.com **Correspondent e-mail Authorized:** No

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jun. 07, 2011	CASE FILE IN TICRS	
Jun. 06, 2011	CASE FILE IN TICRS	
Nov. 03, 2008	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	65765
Nov. 03, 2008	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Oct. 30, 2008	ASSIGNED TO PARALEGAL	65765
Oct. 28, 2008	TEAS SECTION 8 & 9 RECEIVED	
Oct. 29, 2004	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Sep. 14, 2004	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Sep. 14, 2004	PAPER RECEIVED	
Apr. 06, 1999	REGISTERED-PRINCIPAL REGISTER	
Jan. 12, 1999	PUBLISHED FOR OPPOSITION	
Dec. 11, 1998	NOTICE OF PUBLICATION	
Oct. 30, 1998	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 29, 1998	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 04, 1998	NON-FINAL ACTION MAILED	
Sep. 03, 1998	ASSIGNED TO EXAMINER	67659

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Apr. 06, 2009

TM Staff and Location Information

TM Staff Information - None

Reel/Frame: 2427/0338 Pages: 5

Date Recorded: Jan. 15, 2002

Supporting Documents: assignment-tm-2427-0338.pdf

Assignor

Name: INTAGRA, INC. Execution Date: Dec. 12, 2001

Legal Entity Type: CORPORATION State or Country Where Organized: MINNESOTA

Assignee

Name: SAFER INC.

Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Address: 2711 CENTERVILLE ROAD, SUITE 400
C/O CORPORATION SERVICE COMPANY
WILMINGTON, DELAWARE 19808

Correspondent

Correspondent Name: JACOBSON HOLMAN PLLC

Correspondent Address: 400 7TH STREET, N.W.
WASHINGTON, D.C. 20004

Domestic Representative - Not Found

Assignment 3 of 7

Conveyance: RELEASE AND REASSIGNMENT

Reel/Frame: 2754/0446 Pages: 7

Date Recorded: Jun. 16, 2003

Supporting Documents: assignment-tm-2754-0446.pdf

Assignor

Name: ANTARES CAPITAL CORPORATION, AS AGENT Execution Date: Jun. 10, 2003

Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Assignee

Name: SAFER, INC.

Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Address: 69 NORTH LOCUST STREET
LITITZ, PENNSYLVANIA 17543

Correspondent

Correspondent Name: KATTEN MUCHIN ZAVIS ROSENMAN

Correspondent Address: PENELPE JOHNSON
525 WEST MONROE STREET, SUITE 1600
CHICAGO, IL 60661

Domestic Representative - Not Found

Assignment 4 of 7

Conveyance: SECURITY INTEREST

Reel/Frame: 2762/0428 Pages: 10

Date Recorded: Jun. 23, 2003

Supporting Documents: assignment-tm-2762-0428.pdf

Assignor

Name: SAFER INC Execution Date: Jun. 10, 2003

Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Assignee

Name: ANTARES CAPITAL CORPORATION

Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Address: 311 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

Correspondent

Correspondent Name: KATTEN MUCHIN ZAVIS ET.AL.

Correspondent Address: PENELOPE JOHNSON
525 WEST MONROE STREET
CHICAGO, IL 60661

Domestic Representative - Not Found

Assignment 5 of 7

Conveyance: SECURITY INTEREST

Reel/Frame: 3054/0835

Pages: 12

Date Recorded: Mar. 29, 2005

Supporting Documents: assignment-tm-3054-0835.pdf

Assignor

Name: SAFER, INC.

Execution Date: Feb. 11, 2005

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: ALLIED CAPITAL CORPORATION

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

Address: 1919 PENNSYLVANIA AVENUE, NW, THIRD FLOOR
WASHINGTON, DISTRICT OF COLUMBIA 20006

Correspondent

Correspondent Name: THOMAS E. ZUTIC, ESQ. - DLA PIPER ET AL

Correspondent Address: 1200 NINETEENTH STREET, NW
WASHINGTON, DC 20036-2412

Domestic Representative - Not Found

Assignment 6 of 7

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 3612/0409

Pages: 7

Date Recorded: Aug. 30, 2007

Supporting Documents: assignment-tm-3612-0409.pdf

Assignor

Name: ALLIED CAPITAL CORPORATION

Execution Date: Aug. 22, 2007

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

Assignee

Name: SAFER, INC.
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE
Address: 69 NORTH LOCUST STREET
LITITZ, PENNSYLVANIA 17543

Correspondent

Correspondent Name: KATTEN MUCHIN ROSENMAN
Correspondent Address: 525 WEST MONROE STREET
CHICAGO, IL 60661

Domestic Representative - Not Found

Assignment 7 of 7

Conveyance: SECURITY INTEREST
Reel/Frame: 3612/0539 **Pages:** 25
Date Recorded: Aug. 31, 2007
Supporting Documents: assignment-tm-3612-0539.pdf

Assignor

Name: SAFER, INC. **Execution Date:** Aug. 22, 2007
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Assignee

Name: ANTARES CAPITAL CORPORATION, AS AGENT
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE
Address: 500 W MONROE
CHICAGO, ILLINOIS 60661

Correspondent

Correspondent Name: KRISTIN BROZOVIC C/O KATTEN MUCHIN
Correspondent Address: 525 W MONROE
CHICAGO, IL 60661

Domestic Representative - Not Found

