

ESTTA Tracking number: **ESTTA525261**

Filing date: **03/06/2013**

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	PetSmart Store Support Group, Inc.
Granted to Date of previous extension	03/06/2013
Address	19601 N. 27th Avenue Phoenix, AZ 85027 UNITED STATES

Attorney information	James L. Vana Perkins Coie LLP 1201 Third Avenue, Suite 4900 Seattle, WA 98101 UNITED STATES pctrademarks@perkinscoie.com, trademarks@ssg.petsmart.com Phone:206-359-8000
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**Applicant Information**

Application No	85648492	Publication date	11/06/2012
Opposition Filing Date	03/06/2013	Opposition Period Ends	03/06/2013
Applicant	AGS Labs Inc. 4871 Sharp Street Dallas, TX 75247 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Adhesive bandages; cough drops; dietary supplement drinks for infants and children and infant formula; medicated diaper rash ointment; enema preparations; eye care products, namely, eye drops and saline solution for medical purposes; feminine hygiene products, namely, medicated douches, tampons, and feminine hygiene pads; first aid products, namely, rubbing alcohol, hydrogen peroxide for medical use, epsom salt, iodine tincture, witch hazel, and ipecac syrup for medical purposes; stool softener; medicated foot cream; lubricating petroleum jelly for medical purposes; pregnancy test strips for home use; medicated sleep aids; antacids; medicated callus removers and medicated callus pads
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**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	1815480	Application Date	01/22/1992
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No.			
Registration Date	01/04/1994	Foreign Priority Date	NONE
Word Mark	GRREAT CHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1992/07/22 First Use In Commerce: 1992/07/22 pet food and edible pet treats		

Attachments	GREAT CHOICE Notice of Opposition - 3.6.2013.PDF ( 8 pages )(1592254 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	/James L. Vana/
Name	James L. Vana
Date	03/06/2013

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

PETSMART STORE SUPPORT GROUP, INC.,

Opposer,

v.

AGS LABS INC.

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Mark: GREAT CHOICE

Application Serial No.: 85/648492

Filing Date: June 11, 2012

PetSmart Store Support Group, Inc. ("Opposer") believes that it will be damaged by registration of the mark GREAT CHOICE ("Applicant's Mark"), in International Class 5, for use in connection with those goods identified in Application Serial No. 85/648492 (Applicant's Goods"), and hereby opposes the Application as grounds for its opposition, Opposer alleges as follows:

**I. PARTIES**

1. Opposer is a Delaware Corporation, having a place of business in Phoenix, Arizona.
2. On information and belief, Applicant AGS, Labs, Inc. ("Applicant") is a Texas corporation.

**II. OPPOSER'S MARK**

3. Opposer is engaged in the sale of a variety of pet-products, operation of on-line and brick and mortar retail stores featuring a wide variety of pet products, as well as obedience training, rescue operation and other pet-related services.
4. Opposer is the owner of the mark GRREAT CHOICE ("Opposer's Mark"), used in connection with pet food and edible pet treats ("Opposer's Goods") since at least as early as 1992.
5. Opposer's goods under the GRREAT CHOICE mark also include the following:

Odor removers for pets; stain removers for pets; disposable wipes impregnated with a cleaning preparation for pets; non-medicated, non-

veterinary pet shampoo, namely deodorizing dog shampoo; tearless puppy shampoo; skin soothing shampoo; whitening shampoo; non-medicated, non-veterinary pet 2 in 1 shampoo & conditioner; fragrance spray for pets; deodorizing conditioner; non-medicated, non-veterinary pet shampoo namely, tearless shampoo for cats and waterless spray shampoo; plastic bags for disposing of pet waste; plastic bags in the shape of tubes for the disposal of pet-waste; disposable housebreaking pads for pets; training pads; pet accessories, namely, dispensers of plastic bags for disposing of pet waste; animal carriers; plastic dog carriers; animal harnesses; pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices; clothing for domestic pets; garments for pets; costumes for animals; clothing accessories for domestic pets, namely, hair bows and socks; small animal bedding made of cedar and aspen; clothing for domestic pets; pet crates; single door wire pet carrier; portable pet kennels; portable beds for pets; crate pads; beds for household pets; pet cushions; pet pads in the nature of cushions for sleeping and resting; pet bedding in the nature of mattresses for pets; cat scratching posts; corrugated cardboard scratchers; pet feeding bowls; grooming tools for pets, namely, combs and brushes; flea combs; scissors for pets; pet feeding and watering bowls made of plastic, ceramic and stainless steel; pet food scoops; circulating waterer for pets; bird cages for domestic birds; animal litter boxes; animal litter pans; scoops for disposal of pet waste; cages for household pets; cages for household pets consisting of shelves, tunnels, wheels, water bottles and food dishes; pet litter pan floor mats; pet feeding mats; toys for domestic pets; bird toys; cat litter; pet food and treats, namely food for guinea pigs, rats, mice, rabbits, hamsters, gerbil and chinchillas; bird food; bird treats; wild bird food; filters for circulating waterers

6. Opposer owns incontestable federal Registration No. 1,815,480 ("Opposer's Registration") for Opposer's Mark in connection with Opposer's Goods. A soft copy of this registration, in the form of a printout from the Trademark Office's on-line website, is attached as Exhibit A hereto.
7. Opposer has achieved widespread and substantial sales of Opposer's Goods under Opposer's Mark. As a result, Opposer has developed substantial good will in Opposer's Mark, which is well known in the pet food and pet treats field.

### III. APPLICANT'S MARK

8. The Application was filed on June 11, 2012 (the "Filing Date"), based on Applicant's intent to use Applicant's Mark in the United States.

9. Applicant's goods ("Applicant's Goods"), as listed in the application, are:

Adhesive bandages; cough drops; dietary supplement drinks for infants and children and infant formula; medicated diaper rash ointment; enema preparations; eye care products, namely, eye drops and saline solution for medical purposes; feminine hygiene products, namely, medicated douches, tampons, and feminine hygiene pads; first aid products, namely, rubbing alcohol, hydrogen peroxide for medical use, epsom salt, iodine tincture, witch hazel, and ipecac syrup for medical purposes; stool softener; medicated foot cream; lubricating petroleum jelly for medical purposes; pregnancy test strips for home use; medicated sleep aids; antacids; medicated callus removers and medicated callus pads

10. On information and belief Applicant has not used Applicant's Mark with Applicant's Goods.

11. The Application was published in the Official Gazette on November 6, 2012.

#### **IV. CLAIMS**

##### **A. PRIORITY AND LIKELIHOOD OF CONFUSION**

12. Opposer's Mark is distinctive for Opposer's Goods.

13. Opposer owns Opposer's Registration for Opposer's Mark.

14. Opposer has continuously used Opposer's Mark in connection with Opposer's Goods since prior to the Filing Date.

15. Opposer has not abandoned Opposer's Mark in connection with Opposer's Goods.

16. As a result of its extensive use and promotion of Opposer's Mark, that mark has developed substantial goodwill and is a strong mark.

17. Opposer's Mark and Applicant's Mark are highly similar, differing only by the addition of a second "R" in Opposer's GRREAT CHOICE Mark.

18. Opposer's Goods and Applicant's Goods are related, because Applicant's Goods have no limitations on trade channels and thus many of Applicant's Goods could be used for pets.

19. In view of the similarity between Applicant's Mark and Opposer's Mark and the related nature of the parties' respective goods, Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship

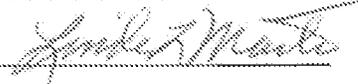
and approval of Applicant's Goods, and is likely to suggest an affiliation, connection or association of Applicant and Applicant's Goods with Opposer and Opposer's Goods, with consequent injury to Opposer, the trade and to the public.

20. The registration of Applicant's Mark with Applicant's Goods would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with Opposer's Mark. Therefore, the registration of Applicant's Mark with Applicant's Goods would damage and injure Opposer.
21. Opposer will also be damaged by the registration of Applicant's Mark with Applicant's Goods because such registration will support statutory rights for Applicant in violation and derogation of Opposer's prior, superior and exclusive rights in Opposer's Mark.

#### V. REQUEST FOR RELIEF

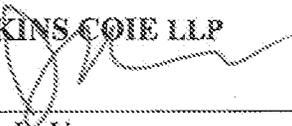
WHEREFORE, Opposer requests that the mark in Application Serial No. 85/648492 be denied registration.

DATED: March 6, 2013.

<b>CERTIFICATE OF SERVICE</b>
I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United Parcel Service with sufficient postage on March 6, 2013, in an envelope addressed to Christopher J. Day, Esq. Law Office of Christopher J. Day, 9977 N 90th Street, Suite 155, Scottsdale, Arizona 85258-4499.
Signature: 
Print Name: <u>Linda L. Martin</u>

Respectfully submitted,

**PERKINS COIE LLP**

By:   
James L. Vana  
Attorney for Opposer  
1201 Third Avenue, 49th Floor  
Seattle, Washington 98101-3099

**EXHIBIT A**

**to**

**NOTICE OF OPPOSITION**

**Soft Copy of**

**and**

**Trademark Assignment Abstract of Title for**

**Reg. No. 1815480**

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( Use the "Back" button of the Internet Browser to return to TESS)

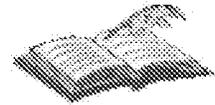
## Typed Drawing

**Word Mark** GRREAT CHOICE  
**Goods and Services** IC 031. US 046. G & S: pet food and edible pet treats. FIRST USE: 19920722. FIRST USE IN COMMERCE: 19920722  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 74239400  
**Filing Date** January 22, 1992  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** July 28, 1992  
**Registration Number** 1815480  
**Registration Date** January 4, 1994  
**Owner** (REGISTRANT) PETsMART, Inc. CORPORATION DELAWARE 19601 North 27th Avenue Phoenix ARIZONA 85027  
  
(LAST LISTED OWNER) PET sMART STORE SUPPPORT GROUP, INC. CORPORATION DELAWARE 19601 NORTH 27TH AVE PHOENIZ ARIZONA 85027  
  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Christy Hubbard  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GRREAT" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20031229.  
**Renewal** 1ST RENEWAL 20031229  
**Live/Dead Indicator** LIVE

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## Trademark Assignment Abstract of Title

### Total Assignments: 5

Serial #: 74239400      Filing Dt: 01/22/1992      Reg #: 1815480      Reg. Dt: 01/04/1994  
 Registrant: PETSMART, Inc.  
 Mark: GRREAT CHOICE

### Assignment: 1

Reel/Frame: 2291/0785      Received: 05/22/2001      Recorded: 05/17/2001      Pages: 37  
 Conveyance: SECUIRITY AGREEMENT  
 Assignors: PETSMART, INC.

PETSMART.COM, INC.

STATE LINE TACK, INC.

WEISE VET SUPPLY, INC.

Exec Dt: 04/30/2001  
 Entity Type: CORPORATION  
 Citizenship: DELAWARE  
 Exec Dt: 04/30/2001  
 Entity Type: CORPORATION  
 Citizenship: DELAWARE  
 Exec Dt: 04/30/2001  
 Entity Type: CORPORATION  
 Citizenship: NEW HAMPSHIRE  
 Exec Dt: 04/30/2001  
 Entity Type: CORPORATION  
 Citizenship: NEW YORK  
 Entity Type: CORPORATION  
 Citizenship: DELAWARE

Assignee: FLEET RETAIL FINANCE INC.  
 40 BROAD STREET  
 BOSTON, MASSACHUSETTS 02109

Correspondent: CHRISTOPHER E. KONDRACKI  
 2001 JEFFERSON DAVIS HWY.  
 SUITE 505  
 ARLINGTON, VA 22202

### Assignment: 2

Reel/Frame: 2292/0072      Received: 05/22/2001      Recorded: 05/14/2001      Pages: 7  
 Conveyance: ASSIGNS THE ENTIRE INTEREST  
 Assignor: PETSMART, INC.

Assignee: PETSMART STORE SUPPORT GROUP, INC.  
 19601 N. 27TH AVENUE  
 PHOENIX, ARIZONA 85027

Correspondent: PETSMART, INC.  
 KAREN MOURAD  
 19601 N. 27TH AVENUE  
 PHOENIX, AZ 85027

Exec Dt: 05/10/2001  
 Entity Type: CORPORATION  
 Citizenship: DELAWARE  
 Entity Type: CORPORATION  
 Citizenship: DELAWARE

### Assignment: 3

Reel/Frame: 2263/0773      Received: 12/15/2003      Recorded: 12/15/2003      Pages: 34  
 Conveyance: SECURITY AGREEMENT  
 Assignors: PETSMART, INC.

Exec Dt: 11/21/2003  
 Entity Type: CORPORATION  
 DELAWARE

PETSMART STORE SUPPORT GROUP, INC.

Citizenship:

Exec Dt: 11/21/2003

Entity Type: CORPORATION

Citizenship: DELAWARE

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: FLEET RETAIL GROUP, INC. F/K/A FLEET RETAIL FINANCE INC.

40 BROAD STREET  
BOSTON, MASSACHUSETTS 02108

Correspondent: CHRISTOPHER E. KONDRACKI  
2001 JEFFERSON DAVIS, HWY.  
SUITE 505  
ARLINGTON, VA 22202

**Assignment: 4**

Reel/Frame: 3650/0721 Received: 10/30/2007 Recorded: 10/30/2007 Pages: 34

Conveyance: SECURITY INTEREST

Assignors: PETSMART, INC.

Exec Dt: 08/15/2007

Entity Type: CORPORATION

Citizenship: DELAWARE

Exec Dt: 08/15/2007

Entity Type: CORPORATION

Citizenship: DELAWARE

Entity Type: NATIONAL BANKING ASSOCIATION

Citizenship: NONE

PETSMART STORE SUPPORT GROUP, INC.

Assignee: BANK OF AMERICA, N.A., AS COLLATERAL AGENT

100 FEDERAL STREET  
BOSTON, MASSACHUSETTS 02110

Correspondent: CHRISTOPHER E. KONDRACKI  
2001 JEFFERSON DAVIS, HWY., SUITE 1007  
ARLINGTON, VA 22202

**Assignment: 5**

Reel/Frame: 4747/0700 Received: 03/30/2012 Recorded: 03/30/2012 Pages: 31

Conveyance: RELEASE BY SECURED PARTY

Assignor: BANK OF AMERICA, N.A.

Formerly: FORMERLY FLEET RETAIL GROUP, INC. AND FLEET  
RETAIL FINANCE INC.

Exec Dt: 03/23/2012

Entity Type: NATIONAL ASSOCIATION

Citizenship: UNITED STATES

Assignees: PETSMART STORE SUPPORT GROUP, INC.

19601 N. 27TH AVENUE  
PHOENIX, ARIZONA 85027

Entity Type: CORPORATION

Citizenship: DELAWARE

PETSMART, INC.

19601 N. 27TH AVENUE  
PHOENIX, ARIZONA 85027

Entity Type: CORPORATION

Citizenship: DELAWARE

Correspondent: ELIZABETH A. WALKER  
TWO INTERNATIONAL PLACE  
CHOATE, HALL & STEWART LLP  
BOSTON, MA 02110

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