

ESTTA Tracking number: **ESTTA536285**

Filing date: **05/04/2013**

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	Lucky Pup Designs, Inc.
Granted to Date of previous extension	05/04/2013
Address	357 North Laurel Avenue Los Angeles, CA 90048 UNITED STATES

Attorney information	Joshua R. Furman Joshua R. Furman Law Corp. 15260 Ventura Blvd Suite 2250 Sherman Oaks, CA 91403 UNITED STATES jrf@furmanlawyers.com Phone:818-646-4300
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Applicant Information

Application No	85576906	Publication date	03/05/2013
Opposition Filing Date	05/04/2013	Opposition Period Ends	05/04/2013
Applicant	Kennedy, Rachel Elizabeth 7985 Santa Monica Blvd Suite 109-500 West Hollywood, CA 90046 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: retail store services featuring pet food and pet supplies, on-line retail store services featuring pet pet food and pet supplies

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

Attachments	Notice of Opposition.pdf (6 pages)(95491 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	/Joshua R. Furman/
Name	Joshua R. Furman
Date	05/04/2013

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

LUCKY PUP DESIGNS, INC.,

Opposer,

v.

RACHEL ELIZABETH KENNEDY,

Applicant.

Opposition No. _____

Serial No. 85/576,906

Mark: LUCKY PUPPY

NOTICE OF OPPOSITION

Opposer Lucky Pup Designs, Inc. (“Lucky Pup”) is a California corporation with a primary place of business at 357 North Laurel Avenue, Los Angeles, California 90048. On information and belief, Applicant Rachel Elizabeth Kennedy is an individual with a mailing address of 7985 Santa Monica Boulevard, Suite 109-500, West Hollywood, California 90046.

Lucky Pup believes that it will be damaged by the potential registration of the word mark LUCKY PUPPY, Serial Number 85/576,906 (the “906 Application”), and opposes the registration of the same.

The grounds for Lucky Pup’s opposition are as follows:

1. By the application herein opposed, Applicant ultimately seeks registration on the Principal Register pursuant to the Trademark Act of 1946 as amended (the “Act”) of the trademark LUCKY PUPPY (the “Mark”) for:

International Class 035. retail store services featuring pet food and pet supplies, on-line retail store services featuring pet pet food and pet supplies.

The 906 Application is based on Applicants intention to use the Mark in commerce pursuant to Section 1(b) of the Act. No allegation of use has been filed to date.

2. The Mark was published for opposition pursuant to the 906 Application on March 5, 2013. Lucky Pup filed an extension to oppose registration of the Mark on April 2, 2013 (ESTTA529895), the Board granted the extension under May 4, 2013. This Notice of Opposition is timely filed.

3. Since at least January 1, 2003, Lucky Pup has used the mark LUCKY PUP in commerce in the United States. Said use has been continuous since the date of the first use and has not been abandoned.

4. Lucky Pup has advertised and promoted its LUCKY PUP mark extensively. Lucky Pup has made substantial sales under the LUCKY PUP mark. As a result of Lucky Pup's continuous use and promotion of LUCKY PUP, the LUCKY PUP mark has developed and represents valuable goodwill inuring to the benefit of, and consistent consumer impression with, Lucky Pup.

5. Lucky Pup's use of the LUCKY PUP mark has priority with respect to the Mark, which is only alleged as an intent to use pursuant to Section 1(b), and which has not been alleged to have been used in commerce by the Applicant to date.

6. Lucky Pup has used the LUCKY PUP mark in commerce since at least January 1, 2003, in connection with goods and services including dog collars, collars for pets, leashes for animals, harnesses, pet clothing, pet tags specially adapted for attaching to pet leashes or collars.

7. Applicant's Mark is deceptively similar to Lucky Pup's mark. The marks have a confusingly similar appearance, sound, meaning, and commercial impression, and the goods of the parties are also highly related products geared towards pets, pet supplies, and pet fashions. Consumers will mistakenly believe that Applicant's goods and services are offered by, affiliated with and/or sponsored by Lucky Pup when the same is not true.

8. Due to the highly similar nature of the Mark and Lucky Pup's mark, the closely related nature of the goods and services provided by the respective parties, consumers and potential consumers are likely to believe that Applicant's goods and services originate from Lucky Pup, resulting in a likelihood of confusion in the marketplace and damage to Lucky Pup.

9. On information and belief, the goods and services provide by Lucky Pup under its LUCKY PUP mark and the goods and services purportedly intended to be provided by Applicant under the LUCKY PUPPY Mark will be promoted and sold in the same channels of trade to the same consumers or class of consumers.

10. The use and registration of the Mark by the Applicant is likely to cause confusion and/or mistake or deception among consumers and potential consumers with Lucky Pup's mark, which is and has been in continuous use in commerce since at least January 1, 2003, causing additional and further damage to Lucky Pup.

11. The highly related nature of the goods and services, and the confusingly similar nature of the marks in overall appearance, sound, meaning, and commercial impression, use and registration of the Mark by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods and services are those of Lucky Pup, or are

otherwise endorsed, sponsored, or approved by Lucky Pup, causing further damage to Lucky Pup.

12. If Applicant is granted registration of the Mark, it would thereby obtain at least a prima facie exclusive right to the use of the Mark, further damaging or potentially damaging Lucky Pup.

13. Based upon the foregoing, registration of the Mark will result in damage to Lucky Pup under Sections 2(a) and/or 2(d) of the Act, 15 U.S.C. §§ 1052(a) & (d), 1125.

14. Further and alternatively, the registration of the Mark must be denied because the Applicant has stated false matter in its application to register the Mark. Specifically, on information and belief, Applicant is, and has since November 2012, made actual use of the Mark in commerce. Moreover, Applicant's use of the Mark has caused substantial actual confusion among consumers. Between December 2012 and date of publication of the Mark on March 5, 2013, Lucky Pup has been contacted at least 30 times by consumers experiencing actual confusion between Lucky Pup's mark and Applicant's Mark. Additionally, during the same time period, Internet search results for Lucky Pup's mark have resulted in redirection to Applicant. This actual consumer confusion has caused, and continues to cause, damage to Lucky Pup.

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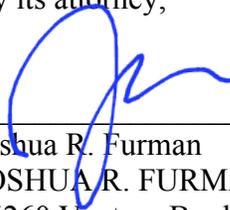
WHEREFORE, Lucky Pup prays that its opposition herein be sustained, that the 906 Application be rejected, and that no registration be issued thereon to Applicant.

Please direct all correspondence to:

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15260 Ventura Boulevard, Suite 2250
Sherman Oaks, CA 91403
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Respectfully submitted,
LUCKY PUP DESIGNS, INC.
By its attorney,

Dated: May 4, 2013



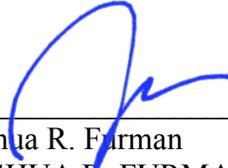
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon the following Applicant by first class mail on May 4, 2013, by Applicant's counsel of record:

Pollie Gautsch, Esq.
G&A Legal, APC
2033 San Elijo Avenue, Suite 201
Cardiff, CA 92007-1726

Dated: May 4, 2013



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