

ESTTA Tracking number: **ESTTA684041**

Filing date: **07/16/2015**

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

Proceeding	91222461
Party	Defendant Lions Gate Entertainment Inc.
Correspondence Address	JILL M PIETRINI SHEPPARD MULLIN RICHTER & HAMPTON LLP 1901 AVENUE OF THE STARS , STE 1600 LOS ANGELES, CA 90067-6055 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Paul A. Bost
Filer's e-mail	pbost@smrh.com, jpietrini@smrh.com, lmartin@smrh.com, mdanner@smrh.com, lthompson@smrh.com
Signature	/Paul A. Bost/
Date	07/16/2015
Attachments	Lions Gate's Motion to Dismiss.pdf(4679534 bytes) Request for Judicial Notice with popi definition.pdf(347622 bytes)

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

<p><i>In re Matter of Application No. 86/346,513</i> for the mark: POPI</p> <p>Victoria Kheel, Opposer, v. Lions Gate Entertainment Inc., Applicant.</p>	<p>Opposition No. 91-222461</p> <p>APPLICANT LIONS GATE ENTERTAINMENT, INC.’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM</p>
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Pursuant to Fed.R.Civ.P. 12(b)(6) and TBMP § 503, *et seq.*, Applicant Lions Gate Entertainment Inc. (“Applicant”) hereby moves the Board for an order dismissing Opposer Victoria Kheel’s (“Opposer”) fraud claims asserted in her Notice of Opposition.

This motion to dismiss is made on the grounds that Opposer’s fraud claims are deficient as a matter of law and fail to state a claim on which basis the relief sought by Opposer may be granted. Opposer claims that Applicant made three statements in its response to an office action that were either false or misleading, and that, but for those statements, Applicant’s application at issue would not have been published for opposition. However, even if these statements are construed in the light most favorable to Opposer, none of these statements were false, either expressly or implicitly. As a matter of law, Opposer cannot successfully plead a fraud claim without pleading that Applicant made a false statement. Also, at least two of the alleged fraudulent statements were or should have been immaterial to the Office’s decision to publish Applicant’s application for opposition. On this basis, the claims also fail as a matter of law.

The Board should dismiss Opposer’s fraud claims with prejudice and without leave to amend because Opposer cannot plead any facts stating a claim for fraud.

This motion is supported by the accompanying brief, Applicant's accompanying request for judicial notice, and such other papers and argument as may be presented to the Board.

Respectfully submitted,

Dated: July 16, 2015

/Paul A. Bost/
Jill M. Pietrini
Paul A. Bost
SHEPPARD MULLIN RICHTER & HAMPTON LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017
Telephone: (310) 228-3700
Facsimile: (310) 228-3701

*Attorneys for Opposer
Fifty-Six Hope Road Music Limited*

BRIEF IN SUPPORT OF MOTION TO DISMISS

I. RELEVANT FACTUAL BACKGROUND

On July 24, 2014, Applicant filed U.S. Application Serial No. 86/346,513 to register the mark POPI (the “Application”), on an intent-to-use basis, for “Cosmetics; cosmetic preparations for body care; nail polish; nail decals; bath crystals; bath gel; bath oil; bath salts; body lotion; cream soaps; fragrances; moisturizing creams; shaving soap; soaps for personal use” in Class 3. On August 25, 2014, the Office issued an office action refusing registration of the Application based on, in part, a finding of likelihood of confusion with Opposer’s registration of POPPY’S in Class 3. On February 24, 2015, Opposer submitted a response to the office action contesting the Office’s refusal to register. As a result, the Office withdrew its refusal to register the Application on the grounds of a likelihood of confusion with Opposer’s POPPY’S mark, and the Application was published for opposition.

On May 19, 2015, Opposer requested, and was granted, an extension of time to file an opposition to the registration of the Application. On June 20, 2015, Opposer instituted these opposition proceedings and asserted two grounds upon which registration of the Application should be refused: (1) Applicant made certain false or misleading statements in its February 24, 2015 office action response that constitute fraud on the Office; and (2) likelihood of confusion with Opposer’s POPPY’S mark.

Opposer’s fraud claim rests upon three statements Applicant made in its office action response:

1. Opposer asserts that Applicant’s statement that its “mark POPI does not connote all natural, green and environmentally friendly products” was false and untrue

because Applicant's products offered under the POPI mark are, per Applicant's licensee's website, all natural. (Docket No. 1, ¶ 10.)

2. Opposer asserts that Applicant misled the Board by differentiating its products with Applicant's by virtue of the fact that Applicant is a "mom." (*Id.*, ¶ 12.)
3. Opposer asserts that Applicant misled the Board by stating that its mark "is spelled completely differently from POPPY or POPPY'S lending a different visual impression to Applicant's mark" because Applicant has indicated on advertising for its products that POPI is "pronounced 'poppy.'" (*Id.*, ¶ 13.)

II. OPPOSER'S MOTION TO DISMISS SHOULD BE GRANTED

A. The Standard for a Motion to Dismiss for Failure to State a Claim

Fed.R.Civ.P. 12(b)(6) entitles a defendant to move to dismiss a claim on the grounds that it fails to state a claim upon which relief can be granted. "A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of the allegations set forth in a pleading." *Covidien LP v. Masimo Corp.*, 109 U.S.P.Q.2d 1696, 1697 (TTAB 2014). "To survive a motion to dismiss under Fed. R. Civ. P 12(b)(6) for failure to state a claim upon which relief can be granted, a plaintiff need only allege sufficient factual content that, if proved, would allow the Board to conclude, or to draw a reasonable inference, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing or cancelling the mark." *Id.*

A notice of opposition must "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570, 127 S.Ct. 1955 (2007). Specifically, the opposer "must allege well-pleaded factual matter and more than '[t]hreadbare recitals of the elements of a

cause of action, supported by mere conclusory statements.” TBMP § 503.02, *citing Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009).

In adjudicating a motion to dismiss for failure to state a claim, the Board may consider documents referenced in the Notice of Opposition if their authenticity is not in dispute, they are central to Opposer’s claim, or they are sufficiently referred to in the Notice of Opposition. *Schaefer v. IndyMac Mortg. Servs.*, 731 F.3d 98, 100 n.1 (1st Cir. 2013). *See also In re Stacs Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996) (“documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered” in a motion to dismiss.) The consideration of such documents does not convert a motion to dismiss into a motion for summary judgment. *Id.* Here, the Board may consider Applicant’s February 24, 2015 office action response, which document Opposer refers to repeatedly throughout its Notice of Opposition and which document serves as the basis for Opposer’s fraud claims. Namely, Opposer argues that certain statements made by Applicant in this office action response constitute fraud on the Office. A copy of Applicant’s February 24, 2015 office action response (exhibits omitted for reasons of size except for Exhibits 9 and 14) is attached hereto as **Exhibit A**. The parties cannot reasonably dispute the authenticity of the attached office action response.

Here, for purposes of this motion, Applicant does not dispute Opposer’s standing to maintain the proceeding. Instead, at issue is whether Opposer has stated a claim for fraud on the Office that is plausible on its face. Pleadings alleging fraud are held to a higher standard than pleadings alleging other claims. Namely, “in alleging fraud . . . , a party must state with particularity the circumstances constituting fraud.” Fed.R.Civ.P. 9(b). Also, fraud “must be proved to the hilt with clear and convincing evidence, leaving nothing to speculation, conjecture,

or surmise.” *Tri-Star Marketing LLC v. Nino Franco Spumanti S.R.L.*, 84 U.S.P.Q.2d 1912, 1915 (TTAB 2007). The Board has dismissed claims of fraud on the pleadings. *See Dragon Bleu (SARL) v. VENM, LLC*, 112 U.S.P.Q.2d 1925, 1929 (TTAB 2014).

B. Opposer Fails to State a Claim for Fraud

“Fraud in procuring a trademark registration occurs when an Applicant for registration knowingly makes a false, material representation of fact in connection with an application to register with the intent of obtaining or maintaining a registration to which it is otherwise not entitled.” *Id.* at 1927, *relying on In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed. Cir. 2009).

Opposer has not pleaded any false, material representations of fact made by Applicant. Thus, Opposer fails to state a claim for fraud.

1. None of Applicant’s Statements at Issue Were False

In order to state a claim for fraud, Opposer must allege that Applicant made a false statement. “[A] false statement is one of the critical elements in proving fraud.” *Swiss Watch International Inc. v. Federation of the Swiss Watch Industry*, 101 U.S.P.Q.2d 1731, 1746 (TTAB 2012). *See also Tri-Star Marketing LLC v. Nino Franco Spumanti S.R.L.*, 84 U.S.P.Q.2d 1912, 1916 (TTAB 2007) (petitioner’s fraud claim failed because it could not “prove an essential element of the ground of fraud, namely that the statement is not true.”)

Opposer’s claim of fraud can be dismissed on the pleadings because none of Opposer’s statements made in its office action response of February 24, 2015 were false.

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a. Applicant’s statement that its mark “POPI does not connote all natural, green and environmentally friendly products” was not false

Applicant’s statement is not a representation of fact. It cannot be deemed either true or false. It is, instead, a legal argument.¹ *A.B. Dick Company v. Marr*, 88 U.S.P.Q. 71, 82 (S.D.N.Y. 1950) (“A statement by counsel in the course of argument or of a party in response to an interrogatory that certain evidence is ‘irrelevant, incompetent and immaterial’ and that it has no probative force in the case, is previous legal argument. If such argument constitutes fraud upon the courts, the courts are being defrauded every day.”)

In its office action response, Applicant explains that the mark POPI descended from its television show *Orange Is The New Black*, in which one of the main characters, Piper, has an “idea to start an artisanal soap-making business called ‘POPI’ after another character named Polly introduces her to the soap-making. The name ‘POPI’ is an amalgamation of Piper and Polly’s names.” (Exhibit A, p. 4.) Applicant contrasts this to Opposer’s POPPY mark, which, Applicant *argues*, has a certain connotation given Opposer’s promotion of its products as non-toxic and environmentally friendly. (Exhibit A, p. 7.) In short, Applicant argues that its mark POPI does not connote all natural, green, or environmentally-friendly products, but, instead, identifies the names of characters in *Orange Is The New Black*. There is nothing false or misleading about Applicant’s contention as to the connotation of its mark. Clearly, Applicant’s legal argument cannot be deemed a false representation of fact for purposes of a claim of fraud.

Notably, in its Notice of Opposition, Opposer does not claim that Applicant’s statement is, in-and-of-itself, untruthful. Instead, Opposer pleads that Applicant’s statement was false because Applicant’s licensed POPI products, per its licensee’s website, are “all natural.”

¹ The word “POPI,” by definition, has no connotation; it is a made-up word without a dictionary definition. *See* Opposer’s Request for Judicial Notice, submitted herewith.

(Docket No. 1, ¶ 10.) This is irrelevant to the truth of Applicant’s statement, which is, by its plain and unambiguous terms, only concerned with the *connotation of the POPI mark*, not the nature of the goods offered under the POPI mark. Applicant’s statement does not make any representations – explicit or implicit – as to the nature and quality of the goods offered under the POPI mark.

Also, even if Applicant’s statement is considered to be somewhat ambiguous as to the nature of Applicant’s goods (it is not), Applicant identified its licensee by name in its office action response and included therewith a printout from its licensee’s website. (Exhibit A, p. 5.) Thus, Applicant cannot be said to have misled as to the nature of its licensed products when it made of record sources from which the Office could have easily obtained such information. *See W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co.*, 153 U.S.P.Q. 749, 750-51 (CCPA 1967) (affirming TTAB finding that registrant did not commit fraud by not “positively disclos[ing]” the nature of its goods at issue; “[a] perusal of the registration file, moreover, discloses that the specimens filed with the application . . . indicate to any interested party [including trademark examiners] the character of [registrant’s] goods”); *Menzies v. International Playtex, Inc.*, 204 U.S.P.Q. 297, 306 (TTAB 1979) (alleged fraudulently withheld information was “plainly stated on the specimens and thus was made known to, not willfully withheld from, the Trademark Attorney who handled this application.”)

b. Applicant’s statement that Opposer is a “mom” was not false

In its office action response, Applicant quotes the following promotional copy from Opposer’s website:

I’m just a mom who cares about maintaining a healthy lifestyle . . . I needed to share my products with as many people and households as possible. Not only had I reduced the toxins in my home, I was also reducing the toxins that went out into the environment. Poppy’s Naturally Clean was born.

(Exhibit A, p. 7.) Opposer does not contend that Applicant misrepresented the content of its website. Instead, Opposer claims that Applicant’s statement “is misleading” because Applicant’s POPI goods are made by “a mother and her daughter,” which information Opposer gleaned from Applicant’s licensee’s website. (Docket No. 1, ¶ 12.) Thus, according to Opposer, Applicant misleads when it attempts to distinguish its products from Opposer’s on the grounds that Opposer is a “mom.”

Applicant’s statement is neither literally false nor false by implication. Opposer does not contend that Applicant misquoted or misrepresented the content of Opposer’s website. And Opposer does not claim that she is, in fact, not a “mom.”

Also, Applicant did not make any representations in the office action response – express or implied – that it or its licensee, unlike Applicant, is not a “mom.” Opposer does not identify any untruthful statements made by Applicant as to its or its licensee’s maternal nature (or lack thereof).²

Opposer’s argument that Applicant sought to mislead the PTO is premised upon a misunderstanding of why Applicant quoted Opposer’s website in the first place. Applicant did not quote Opposer’s website in order to make of record the fact that Opposer is a “mom,” and to distinguish the parties’ marks on that basis. Instead, Applicant quoted the website in support of its argument that Opposer’s POPPY’S mark connoted products that were “green” and “environmentally friendly.” (Exhibit A, p. 7.) This is clear from a plain reading of the office action response. No reasonable reading of Applicant’s office action response would lead anyone to believe that Applicant is arguing that there is no likelihood of confusion between its and

² In any event, Applicant – Lions Gate Entertainment Inc. – and its licensee – Chivas Skin Care – are corporate entities. They cannot be “moms,” although, presumably, both Applicant and its licensee employ women who are also “moms.”

Opposer's marks because Opposer is a "mom" or that Applicant is implicitly claiming that neither it nor its licensees are moms.

c. Applicant's statement that POPI "is spelled completely differently from POPPY or POPPY'S lending a different visual impression to Applicant's mark" was not false.

In the course of distinguishing its mark from Opposer's in the office action response, Applicant stated that "POPI is spelled completely differently from POPPY or POPPY'S, lending a different visual impression to Applicant's mark." (Exhibit A, p. 7.) Opposer claims that because Applicant's licensee notes on its website that POPI is "pronounced 'poppy,'" Applicant misrepresented that it does not "use[] the same spelling as POPPY'S in its sales and advertising."

Again, Applicant's statement cannot be construed as false even according to the most liberal reading. Applicant merely states the obvious, that is, that the mark reflected in its Application – POPI – is spelled differently from POPPY and POPPY'S. The truth of this statement is self-evident and cannot be subject to any controversy. Opposer cannot dispute - and does not dispute – the literal truth of Applicant's statement.

Also, Applicant's statement is neither misleading nor impliedly false. Applicant's statement is limited to the visual similarities of its and Opposer's marks as they are reflected in the parties' respective Application and registration. Applicant never represents in the office action response that it does not use the term "poppy" in its promotional literature. Applicant's alleged fraudulent statement does not address the pronunciation of POPI, much less the aural similarities, if any, between its mark and Opposer's. Applicant's statement regarding the visual dissimilarities of the marks does not imply anything about the marks' aural similarities. Also, nowhere in its office action response does Applicant state that POPI is not pronounced "poppy." In sum, Applicant's statement at issue is neither false nor misleading.

Furthermore, in the Notice of Opposition, Opposer contends that Applicant was “bound to disclose” to the Office in its office action response that its licensee states in promotional materials that POPI is “pronounced ‘poppy.’” (Docket No. 1, ¶ 13.) This is an incorrect statement of the law. Opposer cannot identify any authority or duty obligating Applicant to disclose to the Office in its office action response how its mark is pronounced. *American Flange & Manufacturing Co. v. Rieke Corp.*, 80 U.S.P.Q.2d 1397, 1415 (TTAB 2006) (withdrawn) (distinguishing fraud in the context of a patent application from that of a trademark application; “[i]n the patent context the applicant or its attorney has ‘an almost fiduciary-like duty of full disclosure.’ [citation omitted.] The concept of ‘fraud’ in the trademark registration context is more akin to fraud in other fields of law. For purposes of the Trademark Act, an applicant commits fraud by knowingly making a false statement as to a material fact in conjunction with a trademark application.”) *See, e.g. First International Services Corp. v. Chuckles Inc.*, 5 U.S.P.Q.2d 1628, 1635 (TTAB 1988) (Board rejected opposer’s claim that applicant committed by fraud by “failing to inform the Examining Attorney that opposer had brought suit in federal District Court charging applicant with infringement . . . While the [Office] prefers that applicants advise the Examining Attorney of any court action involving marks in pending applications, neither the Statute nor Rules requires them to do so. Thus, applicant’s silence on this matter is not actionable.”)

2. Applicant’s Alleged Misrepresentations Were Not Material to the Office’s Decision to Publish the Application

For a claim of fraud in procuring a trademark registration, a false statement is “material” when a registration would not have been granted but for the false statement. “The *materiality* of facts is viewed in light of the legal standard to be applied to the case.” *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 4 U.S.P.Q.2d 1793, 1799 (Fed. Cir. 1987), *citing Barmag Barmer*

Maschinenfabrik AG v. Murata Mach., Ltd., 221 U.S.P.Q. 831, 835-36 (Fed. Cir. 1984)

(emphasis in original.)

As set forth above, Applicant did not make any misrepresentations – express or implied – to the Office in its office action response. Furthermore, none of the alleged misrepresentations was material to the Office’s decision to allow the Application to register. Opposer does not plead any facts supporting a finding of materiality. Instead, Opposer generally recites, without factual support, that “Applicant made false and misleading representations to the TTAB with the intent that the TTAB rely on these representations,” and that the Office relied on Applicant’s misrepresentations. (Docket No. 1., ¶¶ 7-8.) Opposer’s threadbare recital of the materiality element of its fraud claim without supporting facts falls well short of the standard for pleading clarified in *Iqbal* and *Twombly*, as well as the heightened standard for pleading a fraud claim set forth in Fed.R.Civ.P. 9(b). Opposer’s fraud claim is subject to dismissal on this ground alone.

Furthermore, the Board should not grant Opposer leave to amend its pleading to provide greater factual support for its claim of materiality because there are no facts under which Opposer could make the requisite showing of materiality.

a. Applicant’s statement that its mark “POPI does not connote all natural, green and environmentally friendly products” was not material

To the extent Opposer is claiming that Applicant’s statement above constituted a misrepresentation to the Office as to the types of goods Applicant offers under its mark in commerce (i.e., not “all natural” products), any such alleged misrepresentation is immaterial to the Office’s determination as to whether Applicant’s mark is likely to cause confusion with Opposer’s prior-registered POPPY’S mark. This is because the Office’s comparison of the goods offered by Applicant and Opposer under their respective marks is necessarily constrained to the identification of goods in their Application and registration, respectively. *Canadian*

Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Assoc., 1 U.S.P.Q.2d 1813, 1815 (Fed. Cir. 1987) (“question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-a-vis the goods and/or services recited in an opposer's registration, rather than what the evidence shows the goods and/or services to be.”) Thus, even if Applicant was arguing that its and Opposer’s products were distinguishable because Applicant’s products were not “all natural” (and, to be clear, Applicant never made any such argument or statement in its office action response), this argument would be immaterial to the Office’s task, which was to compare the goods offered by the parties as reflected in their respective identifications of goods, not as actually used in commerce. *See Dragon Bleu*, 112 U.S.P.Q.2d at 1928 (applicant did not adequately plead materiality; opposer’s alleged promise in its office action response to not use certain goods in commerce was only relevant to the Office’s determination of a likelihood of confusion to the extent opposer amended its identification of goods to reflect this restriction.)

b. Applicant’s statement that Opposer is a “mom” was not material

As noted above, Applicant did not make any arguments to the Office that it and Opposer’s marks were distinguishable or otherwise unlikely to result in confusion because Opposer was a “mom” and Applicant was not. Even had Applicant made such an argument, each party’s respective maternal status, on its face, is irrelevant to the likelihood of confusion determination. Thus, any such argument would be, as a matter of law, immaterial to the Office’s decision to publish the Application for publication.

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III. CONCLUSION

For the reasons stated above, the Board should dismiss Opposer's fraud claim with prejudice and without leave to amend.

Respectfully submitted,

Dated: July 16, 2015

/s/Paul A. Bost
Jill M. Pietrini
Paul A. Bost
SHEPPARD MULLIN RICHTER & HAMPTON LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017
Telephone: (310) 228-3700
Facsimile: (310) 228-3701

*Attorneys for Applicant
Lions Gate Entertainment Inc.*

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 16th day of July, 2015.

/s/Lynne Thompson _____
Lynne Thompson

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Ilana Makovoz, Esq.
MAKOVOZ LAW GROUP
9350 Wilshire Blvd., Suite 203
Beverly Hills, CA 90212

on this 16th day of July, 2015.

/s/Lynne Thompson _____
Lynne Thompson

SMRH:441189375.2

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Lions Gate Entertainment Inc.	
Serial No:	86,346,513
Filed:	July 24, 2014
Class:	3
Mark:	POPI

Examining Attorney

Eric Sable

Law Office: 117

RESPONSE TO OFFICE ACTION

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

Dear Commissioner:

Applicant hereby responds to the Office Action of August 26, 2014.

THE MARK SHOULD BE PASSED TO REGISTRATION

I. THERE IS NO LIKELIHOOD OF CONFUSION WITH THE CITED REGISTRATIONS

The Examining Attorney has issued a refusal to register Applicant's mark POPI in Class 3 for cosmetics; cosmetic preparations for body care; nail polish; nail decals; bath crystals; bath gel; bath oil; bath salts; body lotion; cream soaps; fragrances; moisturizing creams; shaving soap; soaps for personal use under Section 2(d) of the Trademark Act on the grounds of a likelihood of confusion with the following marks (collectively, "Cited Marks"):

- POPPY'S, Reg. No. 4,537,279, registered under Section 2(f) for all purpose cleaning preparations; all-purpose cleaners; bath soaps; carpet cleaning preparations; cleaning agents and preparations; cleaning preparations; cleaning preparations for household purposes; dish detergents; general purpose cleaning,



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polishing, and abrasive liquids and powders; glass cleaning preparations; granulated soaps; hand soaps; household cleaning preparations; laundry soap; leather cleaning preparations; liquid soaps for hands, face and body; odor removers for pets; oven cleaners; pet stain removers; powder cleaners for metals, ceramics and carpets; soap powder; soaps for household use; soaps for personal use; soaps for toilet purposes in Class 3 owned by Victoria Kheel; and

- **Poppy**, Reg. No. 2,988,454, registered for hair and scalp conditioner in Class 3 owned by Pro-Capa Products, Inc.

The Office bears the burden of showing that a mark falls within the statutory bars of Section 2(d). J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (Fourth Ed.) § 19:75 at 19-230. To refuse registration under Section 2(d), the Examining Attorney “must present sufficient evidence and argument that the mark is barred from registration.” *Id.* § 19:128 at 19-383. In this case, the Examining Attorney, respectfully, has not met his burden based on the arguments below. The Examining Attorney has cited *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973) in support of his position. However, the Examining Attorney has based his conclusion upon only a portion of the test applied in *DuPont*.

In view of the significant dissimilarities in the appearance, connotation and commercial impressions between Applicant’s mark and the Cited Marks, the differences between the goods offered under the respective marks, the differences in the purchasing conditions, the sophistication of Registrants’ consumers, the existence of numerous third party POPPY registrations in Class 3, and the lack of fame of the Cited Marks, it cannot be reasonably concluded that a likelihood of confusion exists. Application of all key elements of the *DuPont*

test dictates the conclusion that granting Applicant's application for federal registration of POPI is not likely to cause confusion.

A. The Marks are Dissimilar in Appearance, Sound, Connotation and Commercial Impression

The first inquiry in testing for likelihood of confusion is the similarity or dissimilarity of the marks in their entireties, in sight, sound, connotation and commercial impression. See *DuPont*, 476 F.2d at 1361. Applicant's mark POPI is dissimilar from the cited marks POPPY'S and POPPY'S (Stylized) in all respects.

The key relevant factor is the difference between the connotation and commercial impression of Applicant's mark and the Cited Marks. "The meaning or connotation of a mark must be determined in relation to the named goods or services. Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties' goods or services so that there is no likelihood of confusion. TRADEMARK MANUAL OF EXAMINING PROCEDURE §1207.01(b)(v), citing *In re Sears, Roebuck & Co.*, 2 USPQ.2d 1312, 1314 (TTAB 1987) (holding CROSS-OVER for bras and CROSSOVER for ladies' sportswear not likely to cause confusion, noting that the term "CROSS-OVER" was suggestive of the construction of applicant's bras, whereas "CROSSOVER," as applied to Registrants' goods, was "likely to be perceived by purchasers either as an entirely arbitrary designation, or as being suggestive of sportswear which "crosses over" the line between informal and more formal wear . . . or the line between two seasons"); *In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984) (holding PLAYERS for men's underwear and PLAYERS for shoes not likely to cause confusion, agreeing with applicant's argument that the term "PLAYERS" implies a fit, style, color, and durability suitable for outdoor activities when applied to shoes, but "implies something else, primarily indoors in nature" when applied to men's

underwear); *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (holding BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's clothing not likely to cause confusion, noting that the wording connotes the drinking phrase "Drink Up" when applied to men's clothing, but does not have this connotation when applied to ladies' and children's underwear). The connotations and commercial impressions of Applicant's mark and the Cited Marks are completely different because Applicant's mark and the Cited Mark have different meanings.

Applicant is the producer of the hit television series "Orange is the New Black" ("OITNB Series") launched in 2013. The series stars a character named Piper Chapman, an upper-middle class woman living in New York City who is sentenced to 15 months in a women's federal prison for previously transporting a suitcase full of drug money to her former girlfriend who is an international drug smuggler. In prison, Piper meets many fellow women prisoners and establishes various friendships with them. See Exhibit 1, which is a true and correct printout from the information internet database Wikipedia about the OITNB Series. The series is critically acclaimed and has received wide media coverage. See Exhibit 2, which is a true and correct article from the Washington Post; see also Exhibit 3, which is a true and correct article from the New York Times; see also Exhibit 4, which is a true and correct article from Entertainment Time; and see also Exhibit 5, which is a true and correct article from IGN.

One of the plot storylines explored in the OITNB Series is the main character Piper's idea to start an artisanal soap-making business called "POPI" after another character named Polly introduces her to the soap-making. The name "POPI" is an amalgamation of Piper and Polly's names. See Exhibit 6, which is a true and correct printout from the information website Wiki about "POPI"; see also Exhibit 7, which is a true and correct article from the entertainment news

website <acculturated.com> about the OITNB Series; and *see* **Exhibit 8**, which is a true and correct printout from the online community information website Reddit about the POPI soap business storyline.

As part of its marketing efforts for the OITNB Series, Applicant distributes and sells various merchandise associated with the series, including a line of soaps under Applicant's mark POPI. *See* **Exhibit 9**, which are true and correct printouts from Applicant's authorized licensee and online merchandise retailer Chivas Skin Care advertising "POPI" products; *see also* **Exhibit 10**, which is a true and correct printout from entertainment website Bustle reviewing tie-in merchandise from the OITNB Series, including Applicant's "POPI" soaps. Thus, Applicant's mark POPI connotes the main character Piper Chapman and her business idea from the OITNB Series. There is no other connotation or commercial impression that can be ascribed to POPI because it is a coined term by Applicant.

Registrants' marks POPPY (Stylized) and POPPY'S contain absolutely no association with the OITNB Series. Applicant conducted an internet search for Registrant Pro-Capa Products, Inc. ("Pro-Capa"), owner of Reg. No. 2,988,454 for POPPY (Stylized), but could not find any current use of the mark.¹ However, Pro-Capa's arguments during prosecution of its application to register its POPPY (Stylized) mark are quite illustrative. The Examining Attorney for Pro-Capa's application issued a refusal to register under Section 2(e)(1) and Section 2(d) of the Lanham Act based on descriptiveness of the mark for the recited goods and a likelihood of confusion with Reg. No. 1,262,124 for GOLDEN POPPY for hair shampoo and Reg. No. 1,962,664 for POPPY & Design for color cosmetics. *See* **Exhibit 11**, which is a true and correct

¹ Reg. No. 2,988,454 was registered on August 30, 2005. Registrant Pro-Capa has not filed a combined declaration of use and application for renewal under Sections 8 & 9 of the Lanham Act. Applicant requests that the Examining Attorney suspend the present application pending Registrant Pro-Capa renewal or non-renewal of Reg. No. 2,988,454.

copy of the Office Action issued on May 30, 2002 for Reg. No. 2,988,454. Pro-Capa amended its application to claim distinctiveness on under Section 2(f) of the Lanham Act and distinguished its POPPY (Stylized) mark from the cited marks based on differences between the appearances and connotations of the respective marks, making the following statements:

- The reference mark, GOLDEN POPPY, and Applicant's stylized mark POPPY mark present different connotations. The reference mark, GOLDEN POPPY, brings to mind a yellow flower which is undoubtedly the color of the hair shampoo sold under the mark, **whereas Applicant's mark in connection with Applicant's hair and scalp conditioner, brings to mind, rather than a color, familiar black poppy seeds and perhaps a constituent ingredient thereof.**
- With respect to [Reg. No. 1,962,644...], [t]he dominant design feature of the reference registration comprises a lip print of a woman's mouth and brings to mind that the goods are lipstick. **Applicant's mark brings to mind poppy seeds or ingredients of poppy seeds.**

See **Exhibit 12**, which is a true and correct copy of Pro-Capa's Response to Office Action dated November 22, 2002 for Reg. No. 2,988,454 (emphasis added.) Pro-Capa's packaging reinforces the connotation of poppy seeds because it directly states, "Hair & Scalp Conditioner with Poppy Seed Oil Biotin". See **Exhibit 13**, which are true and correct copies of Pro-Capa's specimens of use submitted for Reg. No. 2,988,454.

Applicant's mark is an amalgamation of two characters' names from the OITNB Series. Applicant's mark POPI does **not** connote poppy seeds or poppy seed ingredients. By Pro-Capa's own reasoning, Applicant's mark POPI is even more distinguishable from Pro-Capa's POPPY (Stylized) mark than the marks cited against Pro-Capa. Furthermore, Pro-Capa's POPPY (Stylized) mark is descriptive of the recited goods and only entitled to a narrow scope of protection.

Applicant also conducted an internet search for Registrant Victoria Kheel, owner of Reg. No. 4,537,279 for POPPY'S. Registrant Kheel owns the website at

<poppysnaturallyclean.com>. See **Exhibit 14**, which are true and correct printouts from Registrant Kheel's website. On the "About Us" webpage, Registrant states the following:

I'm just a mom who cares about maintaining a healthy lifestyle....
I needed to share my products with as many people and households
as possible. Not only had I reduced the toxins in my home, I was
also reducing the toxins that went out into the environment.
Poppy's Naturally Clean was born.

Id. Registrant Kheel's website makes numerous references to "all natural" "green" and "environmentally friendly" products.

As stated above, Applicant's mark is an amalgamation of two characters' names from the OITNB Series. Applicant's mark POPI does **not** connote all natural, green and environmentally friendly products. Applicant's mark POPI is distinguishable from Registrant Kheel's POPPY's mark in connotation and commercial impression.

The Examining Attorney also erroneously concluded that Applicant's mark and the Cited Marks are similar in sight and sound.

Applicant's mark POPI is spelled completely differently from POPPY or POPPY'S, lending a different visual impression to Applicant's mark. Registrant Kheel added the additional components "S" to her POPPY'S mark, suggesting a proprietary association with her mark, which is visually lacking in Applicant's POPI mark. Registrant Pro-Capa specifically chose to register its mark in a particular font. Section 807.04(a) of the TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") provides, "[a] 'special form drawing' is a drawing that presents a mark comprised, in whole or in part, of special characteristics such as elements of design or color, style(s) of lettering, or unusual form(s) of punctuation." (emphasis added.) The Federal Circuit has noted that "the nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be weighed in the context in which they occur." *In re Electrolyte Laboratories, Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990). Applicant's mark POPI is

different in visual appearance from the Cited Mark POPPY (Stylized), as Applicant does not use this particular font style for its mark POPI. The Examining Attorney's cursory conclusion that the respective marks are substantially similar failed to take this key difference of font style into consideration.

When viewed in their entireties, it is patently obvious that POPI and the Cited Marks POPPY'S and POPPY (Stylized) are completely different in appearance, sound and meaning.

B. The Goods Offered Under the Respective Marks Are Not Marketed Such that a Mistaken Belief of Common Source Would Likely Arise

The courts and the TTAB routinely hold that, even in a situation where two marks are identical, which is not the case here, there is no likelihood of confusion "if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source . . ." TMEP § 1207.01(a)(i) (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156, 1158 (TTAB 1990) ("[A]s far as the general public is concerned confusion would not be likely because the goods and services are sold through different channels of trade to different classes of consumers."). For example, in *Sunenblick v. Harrell*, the court found no confusion between jazz records and hip-hop records sold under the *identical mark* UPTOWN RECORDS because, although the recordings were both musical products, they were marketed to different consumers and sold in separate sections of record stores. *Sunenblick v. MCA Records, Inc.*, 895 F. Supp. 616, 629 (S.D.N.Y. 1995). *See also Harlem Wizards Entertainment Basketball, Inc. v. NBA Properties, Inc.*, 952 F. Supp. 1084, 1095 (D.N.J. 1997) (HARLEM WIZARDS for showcase basketball team and WASHINGTON WIZARDS for professional basketball team not likely to be confused).

The Examining Attorney states that Applicant's and Registrants' goods are the same or similar types of goods. (Office Action at 2.) Courts and the Board routinely hold however that there is no likelihood of confusion "if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source" TMEP § 1207.01(a)(i) (emphasis added) (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related).

In this case, Applicant's beauty and personal care products are marketed as POPI merchandise in association with Applicant's OITNB Series. Applicant's marketing efforts are successfully focused with this connection in mind, resulting in awareness by the relevant consumers.

Registrants' products lack any such marketing or connection. Because each party's respective goods are not "marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source," it is highly unlikely, if not impossible, that consumers would confuse Applicant's and Registrants' goods.

Furthermore, Registrant Kheel's core products are house cleaning products, which Applicant does not offer. Registrant Pro-Capa argued in its Office Action Response dated November 22, 2002 during prosecution of its application that its hair and scalp conditioner were different from hair shampoo or color cosmetics offered by prior registrants. See **Exhibit 12**. Applicant's goods should be considered distinguishable from Pro-Capa's products as well.

C. Registrants' Consumers Will Not be Confused When Purchasing the Offered Goods

The *DuPont* test also considers the conditions under which and the buyers to whom sales are made, *i.e.* "impulse" buys vs. careful, sophisticated purchasing. *See DuPont*, 476 F.2d at 1361. The threshold for confusion is much higher for careful, sophisticated, discriminating purchasers than for impulse purchasers, and there is always less likelihood of confusion if the purchase concerns an expensive product or is made after careful examination of the product. *See In re Digirad Corp.*, 45 USPQ2d 1841, 1843 (TTAB 1998).

Registrant Pro-Capa's customers are consumers seeking hair and scalp conditioners with poppy seed ingredients. Registrant Kheel's customers are consumers seeking all natural, non-toxic and environmentally friendly cleaning products. Both registrants' consumers are therefore unlikely to confuse Registrants' products with Applicant's products associated with the OITNB Series.

In summary, these purchasing conditions weigh in favor of a finding that there is no likelihood of confusion between Applicant's mark and the Cited Marks.

D. The Cited Marks are Weak Because Other POPPY Marks Exist

DuPont and TMEP § 1207.01 also advise that the nature and number of similar marks must be considered as a factor in determining likelihood of confusion. Indeed, the relative strength or weakness of a mark is "a very important element" in determining likelihood of confusion. *See McCarthy* § 23:48 at 23-203 ("If the common element of conflicting marks is a word that is 'weak' then this reduces the likelihood of confusion."). The Board and courts routinely hold that, "[t]he greater the number of identical or more or less similar marks already in use on different kinds of goods, the less is the likelihood of confusion between any two specific uses of the weak mark." *First Sav. Bank, F.S.B. v. First Bank Sys.*, 101 F.3d 645, 653-54 (10th Cir. 1996).

The PTO has registered many other POPPY marks in Class 3 for personal care and beauty products:

Reg. No.	Mark	Goods
4,586,949	COACH POPPY EST. 1941 & Design	After shave lotions; body sprays; cosmetics and make-up; fragrances; hand lotions; perfumes; skin lotions; skin moisturizer; skin soap.
4,582,740	COACH POPPY EST. 1941 & Design	Body sprays; fragrances; perfumes.
4,574,467	COACH POPPY EST. 1941 & Design	Body sprays; fragrances; perfumes.
4,527,014	BERRY SPLASHED POPPY	Bath gel; bath salts; bath soaps; body cream; body lotion; body oil; body scrub; body sprays; bubble bath; dusting powder; foot scrubs; lip balm; lip gloss; liquid soap; nail polish
4,174,013	POPPY CAT & Design	Cosmetics and fragrances; cosmetic kits comprising nail polish, cosmetic pencils, lip balm, lip sticks, lip gloss, bath oil, bubble bath; perfumery; essential oils; creams, lotions and powders for the cosmetic treatment and care of the skin, hands, face, body, eyes, hair and nails; skin moisturizers; hand cream; talcum powder; lip balm; non-medicated preparations for the hair, shampoo, hair conditioner, mousse, styling gel; anti-perspirants and deodorants for personal use; shower gel, body wash, soap; sun screen; bath oil, bubble bath; toothpaste; baby wipes; wipes impregnated with cosmetic lotions and cleaning agents; cotton wool, cotton balls and cotton buds for cosmetic and personal use
4,174,012	POPPY CAT	Cosmetics and fragrances; cosmetic kits comprising nail polish, cosmetic pencils, lip balm, lip sticks, lip gloss, bath oil, bubble bath; perfumery; essential oils; creams, lotions and powders for the cosmetic treatment and care of the skin, hands, face, body, eyes, hair and nails; skin moisturizers; hand cream; talcum powder; lip balm; non-medicated preparations for the hair, shampoo, hair conditioner, mousse, styling gel; anti-perspirants and deodorants for personal use; shower gel, body wash, soap; sun screen; bath oil, bubble bath; toothpaste; baby wipes; wipes impregnated with cosmetic lotions and cleaning agents; cotton wool, cotton balls and cotton buds for cosmetic and personal use
4,119,416	BLACK POPPY	Fragrances for personal use, perfumes, scented body spray and nail polish
4,586,623	POPPY AUSTIN	Non-medicated hair care preparations; preparations and

Reg. No.	Mark	Goods
		<p>lotions for protecting hair from heat; hair bleaching preparations, shampoos, conditioners, preparations for the care and beauty of the hair, hair waving and hair setting preparations; hair mousse, hair putty, hair gel, hair spray, hair wax, hair balm; preparations and lotions for colouring, dyeing, tinting and bleaching the hair; shampoos and hair styling putties all having a colouring effect; non-medicated preparations for nourishing the hair; hair sprays all having a colouring effect for use in styling the hair; beauty care cosmetics; perfumes, eau de cologne; cosmetics, make up; non-medicated preparations for nourishing the skin; cosmetic preparations for the skin, scalp and body; nail care preparations; nail varnishes and nail polishes; solid powder for compacts; lipsticks; lip gloss; nail varnish remover; cotton wool balls and sticks for use in removing and applying cosmetics; preparations for removing make-up; make-up pads, namely, cosmetic pads; make-up powder and foundation; facial wipes impregnated with cosmetics; skin moisturisers; essential oils for personal use; after shave lotions; bath salts; cosmetics preparations for baths; bleaching preparations for cosmetic use; aromatherapy oils and preparations, namely, essential oils for use in aromatherapy, cosmetic hair colorants; cosmetic kits comprised of make-up, make-up remover and cotton balls for cosmetic purposes; cosmetic skin whitening creams; hair decolorants; degreasers other than for use in manufacturing processes, namely, degreasing preparations for nails, skin and hair; depilatories; cosmetic hair dyes; eye make-up; paper guides for eye make-up, namely, face powder on paper, eyebrow cosmetics; eyebrow pencils, false eyelashes, false eyelash adhesives and cosmetic preparations for eyelashes; toilet preparations, namely, toilet soaps and toilet water; cosmetic preparations for use in the shower and bath; soaps, essential oils, dentifrices, antiperspirants; deodorants for personal care; talcum powder; beauty masks; cosmetic cream, cosmetic masks, cosmetic oil, body powder and body scrubs; hand and body lotions; shaving preparations, non-medicated bath preparations, namely, beads, crystals, foam, gels, oil and powder; scented body sprays; pre-electric shaving preparations; exfoliate gels, moisturizing skin lotions, skin scrubs; self-tanning and artificial tanning preparations; cosmetic preparations for artificially</p>

Reg. No.	Mark	Goods
		tanning the skin; tanning gels, tanning foams, tanning oils, lip balms, skin bronzing powders, fade creams, namely, anti-aging creams; instant self tanning oils, creams, lotions, foams, mousse, powders, gels and sprays creams for tanning the skin; paper wipes impregnated with cosmetic preparations; moist wipes impregnated with a self tanning preparation; suntanning preparations; skin creams, sun tan milk, sun tan lotions, shaving foams, sun tan oils and gels; sun screens; cosmetic preparations to alleviate sunburn
4,123,462	COACH POPPY EST. 1941 & Design	Body sprays; cologne; perfume, not including hair and scalp conditioner
3,845,892	POPPY PINK MINT	Personal care products, namely, lip balm, lip cream, lip gloss, lip gloss palatte, lip liner, lip polisher, lipstick, lipstick holders, lip shine, lipsticks, non-medicated lip care preparations, non-medicated lip protector

See **Exhibit 15**, which are true and correct copies of the registrations certificates for the foregoing third party POPPY marks. It is illogical to conclude that Applicant's mark, spelled POPI, is confusingly similar to the Cited Marks when there are numerous POPPY marks in Class 3, which are more similar to the Cited Marks, co-existing on the Principal Register. Applicant's POPI mark is far more distinguishable from the Cited Marks than these third party marks.

This is understandable because POPPY is *weak* and *diluted* for beauty and personal care products. See **Exhibit 16**, which are true and correct printouts from third party website Poppy Soap Co. advertising organic bath soaps. See **Exhibit 17**, which is a true and correct printout from a DIY blog teaching how to "Make Your Own Soap: Grapefruit Mint Poppyseed Bars". See **Exhibit 18**, which is a true and correct printout from third party website Jackson & Polk advertising "Citrus Poppy Soap". See **Exhibit 19**, which is a true and correct printout from third party website Honey Bee Gardens advertising "Lavender Mint Rosemary Poppy Soap". See **Exhibit 20**, which is a true and correct printout from third party website Bubble and Bee advertising "Lemon Poppy Soap".

Applicant's mark can coexist with the Cited Marks given that the Cited Marks already coexist with each other and there are many other POPPY marks coexisting with the Cited Marks as well.

E. The Cited Marks Are Not Famous

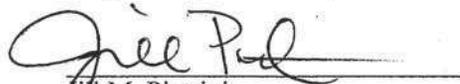
The lack of fame of the Cited Marks further supports Applicant's position that Applicant's mark is not likely to confuse consumers. *See DuPont*, 476 F.2d at 1361. A well-known or famous mark is entitled to a broader scope of protection than one which is relatively unknown. *See McDonald's Corp. v. McKinley*, 13 U.S.P.Q.2d 1895, 1900 (TTAB 1989). The Cited Marks are not famous marks like MCDONALD'S, COCA-COLA, NIKE, or APPLE. This is obvious given the diluted nature of the Cited Marks. The fact that the Cited Marks are not famous weighs in favor of a finding that there is no likelihood of confusion.

In sum, the Examining Attorney should withdraw the refusal of registration to the Applicant's mark because there is no likelihood of confusion between Applicant's mark and the Cited Marks.

II. CONCLUSION

Having fully responded to the Office Action, Applicant requests that the Examining Attorney withdraw the refusal to register under Section 2(d) of the Trademark Act and that the application be passed to publication.

Respectfully submitted,



Jill M. Pietrini
SHEPPARD MULLIN RICHTER & HAMPTON LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017
(310) 228-3700

Dated: February 24, 2015

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on this 24th day of February, 2015.


La Grina A. Martin

SMRH:436472341.1

EXHIBIT 9



SHOP ABOUT LOOKBOOKS VISIT CONTACT

POPI SOAP

inspired by the tv-series "ORANGE IS THE
NEW BLACK" (OITNB)



"I could be your partner... market it right and package it right, this is money. I mean, it smells so f***ing good in here."

— Piper Chapman, Season 1



POPI: Cucumber &
Mint
\$12.00



POPI: Lavender Sage
\$12.00



POPI: Grapefruit &
Basil
\$12.00



POPI: Vanilla &
Verbena
\$12.00

ORANGE
is the
new **BLACK**

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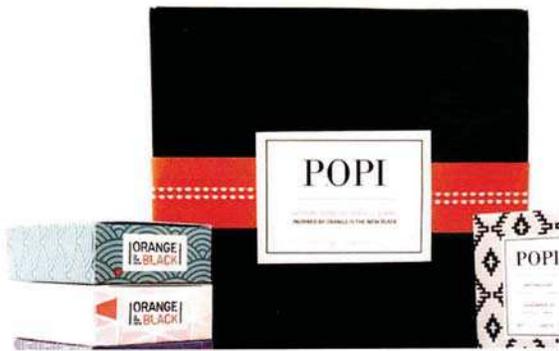
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SHOP ABOUT LOOKBOOKS VISIT CONTACT



FOR OITNB FANS
popi soap 4-pack



POPI SOAP 4-PK

SALE

\$40.00 ~~\$50.50~~

If you know someone who is obsessed with the "Orange is the New Black" (OITNB) then you also know someone who will likely be obsessed with these soaps!

We partnered with the Netflix hit-series to create a line of soap inspired by the show. POPI is the soap that Piper started making in Polly's kitchen and later pitched to Barney's via a collect call from prison! And it's now available for all OITNB fans this holiday season!

This set includes:

- 1 Cucumber & Mint POPI soap
- 1 Grapefruit & Basil POPI soap
- 1 Lavender & Sage POPI soap
- 1 Vanilla & Verbena POPI soap

• 1 gift box

Quantity:

ADD TO CART

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EXHIBIT 14



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About Us

Hello,

My name is Victoria and I am the founder of Poppy's Naturally Clean. No, I'm not a chemist, nor was Chemistry a favorite subject of mine in school. I'm just a mom who cares about maintaining a healthy lifestyle. I admit to being a "nester", I love my home; and seeking out ways of making it better in every way, is a passion of mine.



A few years ago I decided to focus on the idea of making my home self-producing. I developed an organic garden, planted many fruit trees, and adopted 3 baby chicks with the intention of reaping the profits from their egg laying. At that time, I was also taking classes in holistic nutrition, with the hopes of learning the best ways for my 2 teenage boys and I to benefit from what we eat. One of the courses focused on "toxins in the home". This is where it all began...

First order of business was to empty my cleaning closet of any cleaners that contained ingredients that I couldn't pronounce. Chances are, those are the ingredients that burned my eyes, made me sneeze and cough, gave me rashes, didn't work very well, and actually cost more money than they were worth.

Then came the endless hours of research to figure out what natural ingredients worked to clean what surfaces safely. My nutritional background gave me knowledge of the basic relationship between alkaline and acid, the key to cleaning naturally. The fun began when I started to see how great my new cleaners were working.

I celebrated every month that went by where I didn't need to go to the store to buy laundry detergent, Windex, Comet, Clorox bleach, toxic toilet bowl cleaner or furniture polish. Then the light bulb went off! I needed to share my products with as many people and households as possible. Not only had I reduced the toxins in my home, I was also reducing the toxins that went out into the environment. Poppy's Naturally Clean was born.

In addition to the Poppy's Naturally Clean products, for you convenience, I offer many other eco-friendly and "green" products that hold up to my high standards. I hope you enjoy using them as much as I do! Go Green!

Victoria

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Featured Products



All Purpose Spray Cleaner
 Our amazing all-purpose spray cleaner contains only natural ingredients and is toxin free. It is free of additives, fragrances, stabilizers, and ... [\[More...\]](#)



OFF-KEY! Computer Keyboard Cleaning Set
 Studies have shown that computer keyboards have 400% more bacteria than toilet seats! Reduce germs and bacteria from growing on your keyboard, mouse ... [\[More...\]](#)



Tub Teas
 Therapeutic soaking teas for the bath. Drop 1 tea bag into a hot bath and enjoy! Dried Lavender, Rose petal, Peppermint, Raspberry Leaf. ... [\[More...\]](#)



Marble and Granite Spray Cleaner
 Special care needs to be taken when cleaning marble and granite surfaces, as any cleaners with acidic bases will eat away at the stone. Poppy's ... [\[More...\]](#)



Yoga Mat Spray Cleaner & Sponge Set
 Keeping your Yoga mat clean and free from bacteria growth is really important! Poppy's Naturally Clean Yoga Mat Spray Cleaner & Sponge Set ... [\[More...\]](#)



Aloe Vera Liquid Hand & Body Soap
 The natural conditioning properties of Poppy's Naturally Clean Aloe Vera Liquid Hand Soap with vegetable glycerin will leave your hands soft and ... [\[More...\]](#)



Poppy's Naturally Clean All Purpose Cleaning Powder
 Poppy's Naturally Clean All Purpose Cleaning Powder contains only natural ingredients and is toxin free. It's free of additives, fragrances, ... [\[More...\]](#)



Glass and Mirror Spray Cleaner
 You will be amazed at how clean your windows and mirrors will be. Just a few sprays of Poppy's Naturally Clean Glass and Mirror Spray Cleaner and a ... [\[More...\]](#)

ACCIDENTS HAPPEN! Spray Cleaner for pet accidents
 Yes, accidents happen! But don't worry, those

Flushable Dog Poop Bags
 Yes, you heard that right, these dog poop bags can be flushed down your toilet! 100%

Our Certifications

All Poppy's Naturally Clean products are manufactured and packaged locally in Los Angeles, California.

Our products are now certified chemical-free and bio-degradable by Natural Verifiers. For more information on this independent third party verification, please visit them at www.naturalverifiers.com.



Free Los Angeles Area Delivery

Want to save on shipping costs? You can arrange for FREE delivery or pick up in the Los Angeles area, within 15 miles of Sherman Oaks. This offer is good for phone orders only, with a minimum of \$30.00.

(877) 676-7797
PHONE ORDERS ONLY

Sales Locations

Ralphs Market
 14049 Ventura Blvd.
 (at Hazeltine)
 Sherman Oaks, CA 91423

Anawalt Lumber
 11060 W. Pico Blvd.
 Los Angeles, CA 90064

1001 N. Highland Ave.
 Hollywood, CA 90038

Erewhon Natural Food Market
 7660 Beverly Blvd.
 Los Angeles, CA 90036

Follow Your Heart
 21825 Sherman Way
 Canoga Park, CA 91303

Rainbow Acres
 13208 West Washington Blvd
 Culver City, CA 90066

For other locations – See "[Where to Buy](#)"

 <p>accidents can be cleaned up in a jiffy! Our "pet friendly" spray cleaner has been</p>	<p>compostable, biodegradable, and flushable. Made from Polyvinyl... [More...]</p>
<p>"certified" to be ... Laundry Powder Soap</p> <p>Poppy's Naturally Clean Laundry Powder with low suds leaves your clothes beautifully clean and smelling fresh. One scoop of laundry powder is all that ... [More...]</p>	<p>Dishwashing Liquid</p> <p>Don't be fooled by the low suds. Poppy's Naturally Clean All Natural Dish Cleaning Liquid cleans grease and stuck on food from your dishes with ease... [More...]</p>

News and Views

Poppy's Naturally Clean now available at Tashman Home Center

This week at Tashman Home Center we received a new product line called Poppy's Naturally Clean and to go with that we also have a new line of environmentally friendly house paint called Envirolife. Poppy's Naturally Clean products are non-toxic and biodegradable. They are not harmful to you, your children, your pets, the environment, or... [Read More](#)

WHAT ON EARTH IS "QWERTY TUMMY?"

What on Earth is Qwerty Tummy? There's a stomach bug going around your office. Everyone has the large size bottle of hand sanitizer on their desks, and they are running to the restrooms to wash their hands far more often than usual. They open doors with a tissue covering the knobs. They drink their coffee... [Read More](#)

Natural Products Expo West 2013

Poppy's Naturally Clean will be in booth 3369 at the Natural Products Expo West 2013 this March at the Anaheim Convention Center. Friday, March 8th: 10:00 am – 6:00 pm. Saturday, March 9th: 10:00 am – 6:00 pm. Sunday, March 10th: 10:00 am – 4:00 pm

- [Natural Products Expo West 2012](#)
- [Best of Show: Top 11 Health Products at Natural Products Expo West 2011](#)
- [Six Household Products That are Not Dog Safe](#)
- [The Importance of Using Products Scented with Essential Oils](#)
- [VISIT POPPY'S AT THESE LOCAL MARKETS](#)

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Poppy's Social Links



Name: **Poppy's Naturally Clean**
 Website: **Never underestimate your power as a customer! A...**
 Fans: 760

LIKE us on [Poppy's Naturally Clean Facebook page](#) and we will include you a thank you gift when you place an order. Let us know in the Special Instructions part of the order process.

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[All Purpose Cleaning Powder](#)
[All Purpose Spray Cleaner](#)
[Aloe Vera Liquid Hand Soap](#)
[Dishwashing Liquid](#)
[Glass and Mirror Spray Cleaner](#)
[Laundry Powder Soap](#)
[Laundry Powder Soap for Pet Products](#)
[Lavender Dryer Pouches](#)
[Leather Cleaner and Polish](#)
[Marble and Granite Spray Cleaner](#)
[OFF-KEY! Computer Keyboard Cleaning Set](#)
[Toilet Bowl Cleaner](#)
[Wood Floor Cleaner](#)
[Wood Furniture Cleaner and Polish](#)
[Yoga Mat Spray Cleaner & Sponge Set](#)

LAUNDRY

[Green Garmento Reusable Dry Cleaning Bag](#)
[Laundry Powder Soap](#)
[Lavender Dryer Pouches](#)
[Stoney Mountain Farms Wool Dryer Balls](#)

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[Microfiber Scrubbing Mop Pad](#)
[Microfiber Sponge](#)
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[Microfiber Wet/Dry Friction Mop Pad](#)
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SPONGES, BRUSHES AND SCRUBBERS

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[Full Circle Be Good Dish Brush](#)
[Kitchen Cleaning Pad – Heavy Duty](#)
[Kitchen Cleaning Pad – Stainless Steel/Marble/Granite](#)
[Outdoor Scouring Pad](#)
[Original Spaghetti Scrubber](#)
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PETS

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[Dish Cleaning Liquid Refill](#)
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1001 N. Highland Ave.
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 7660 Beverly Blvd.
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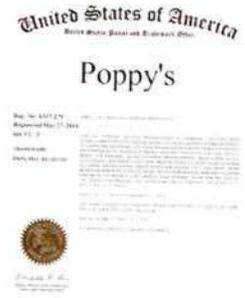
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Poppy's Naturally Clean All Purpose Cleaning Powder



Poppy's Naturally Clean All Purpose Cleaning Powder contains only natural ingredients and is toxin free. It's free of additives, fragrances, stabilizers and preservatives. With its gentle abrasion, it works well on surfaces such as countertops, cabinets, tiles, walls, appliances, sinks, tubs, outdoor furniture, trash cans, and just about anything else you can think of. Replace your chemical filled cleaning powders with our all-natural version. Peppermint scent.

DO NOT USE ON MARBLE OR GRANITE.

Price: \$6.00

INGREDIENTS: Sodium bicarbonate, sodium borate, sodium percarbonate, plant derived castile soap, essential oils of tea tree and peppermint.

[Order All Purpose Cleaning Powder](#)

All Purpose Cleaning Powder @ \$6.00 Qty: 1

Tax (if applicable) and shipping costs will be added to your order before you complete checkout.

Our Certifications

All Poppy's Naturally Clean products are manufactured and packaged locally in Los Angeles, California.

Our products are now certified chemical-free and bio-degradable by Natural Verifiers. For more information on this independent third party verification, please visit them at www.naturalverifiers.com.



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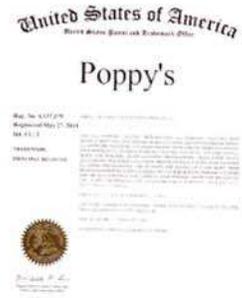
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Aloe Vera Liquid Hand & Body Soap



The natural conditioning properties of Poppy's Naturally Clean Aloe Vera Liquid Hand Soap with vegetable glycerin will leave your hands soft and moisturized as they get clean. Tea Tree essential oil, a natural antibacterial, combines with lemon essential oil to make a lovely soap to use in both the kitchen and bathroom. The low suds formula of this soap is a good indication that it is free of additives. This cleaner contains only natural ingredients and is toxin free.

16 oz. Lemon scent.

Price: \$8.00

INGREDIENTS: Water, plant derived castile soap, glycerine, aloe vera, sea salt, essential oils of tea tree and lemon.

[Order Aloe Vera Liquid Hand Soap](#)

Aloe Vera Liquid Hand Soap @ \$8.00 Qty: 1

Tax (if applicable) and shipping costs will be added to your order before you complete checkout.

Our Certifications

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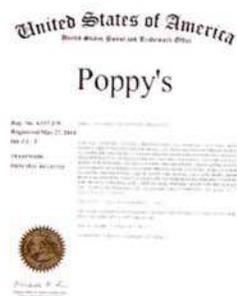
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Studio City Farmers Market

Every Sunday from 8:00 am to 1:00 pm
Ventura Place between Laurel Canyon Blvd.
& Radford Avenue. Parking is available at
CBS Studios & in the Chase Bank parking lot
www.studiocityfarmersmarket.com

See you there!

SOUTHERN CALIFORNIA

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www.Ralphs.com

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Hollywood, CA 90038
(323) 464-1600
www.anawalltumber.com

Animal Lovers Pet Shop

5141 Calle Mayor
Torrance, CA 90505
(310) 378-3052
www.animalloverspetshop.com

Arroyo Food Co-op

494 N. Wilson Ave
Pasadena, CA 91106
www.arroyofoodcoop.com

Beverly Glen Market Place

2964 N. Beverly Glen Circle
Beverly Glen, CA 90077
(310) 475-0829

Blaine's Nutrition

206 Avenue I
Redondo Beach, CA 90277
(310) 540-4826

Erewhon Natural Food Market

7660 Beverly Blvd.
Los Angeles, CA 90036
(323) 937-0777

NORTHERN CALIFORNIA

Briar Patch Co-op

290 Sierra College Drive
Grass Valley, CA 95945
(530) 272-5333
www.briarpatch.coop

Buyer's Best Friend – Wholesale & Mercantile

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(between Cole St & Shrader St)
San Francisco, CA 94117
(415) 745-2130
www.bbfdirect.com

Buyer's Best Friend – Wholesale & Mercantile

450 Columbus Avenue
(between Vallejo St & Green St)
San Francisco, CA 94133
(415) 375-0439
www.bbfdirect.com

ARIZONA

Pretty Pooch Dog Grooming

3402 Kimball Street
Herber, AZ 85928
(928) 535-6962
www.prettypoochdoggrooming.com

COLORADO

Alfalfa's Market

1651 Broadway
Boulder, CO 80302
(720) 420-8400
www.alfalfas.com

Kriser's Pet Stores

3475 S. University (at Hampden)
Kent Place Shopping Center
Englewood, CO 80113
(303) 761-1820

4930 South Yosemite Street
(at Belleview)

Belleview Square Shopping Center
Greenwood Village, CO 80111
(303) 770-0765

ONLINE

Amazon

www.amazon.com

Buyer's Best Friend – Wholesale & Mercantile

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Coco's Closet

www.cocoscloset.com

Daily Dose of Green

www.dailydoseofgreen.com

EcoMall

www.ecomall.com

Everything Yoga

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Honey Colony

www.HoneyColony.com

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Fitness is Art

2019 West Magnolia Blvd.
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www.fitnessisart.com

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21825 Sherman Way
Canoga Park, CA 91303
(818) 348-3240

Full-O-Life

2525 W. Magnolia Blvd.
Burbank, Ca. 91505
(818) 845-8343

Green Cradle Organic Home & Baby

13344 Ventura Blvd
Sherman Oaks, CA 91423
(818) 728-4305
www.greencradle.com

Home Again

4650 Arrow Hwy. B 6, 7
Montclair, CA 91763
(818) 728-4305

Kriser's Pet Stores

1559 Pacific Coast Highway
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Hermosa Beach, CA 90254
(310) 379-9282

5365 Alton Parkway
Irvine, CA 92604
(949) 551-4100

23894 Aliso Creek Road
Laguna Niguel, CA 92677
(949) 360-0145

1044 Irvine Ave.
Newport Beach, CA 92660
(949) 515-0000

12507 Ventura Blvd.
Studio City, CA 91604
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24272 Valencia Blvd.
Valencia, CA 91355
(661) 259-2361
www.krisers.com

Lazy Acres

2080 N. Bellflower Blvd.
Long Beach, CA 90815
(562) 430-4134

302 Meigs Road
Santa Barbara, CA 93109
(805) 564-4410
www.lazyacres.com

Lucky Puppy

12238 Unit B, Ventura Blvd
Studio City, CA 91604
(818) 370-5516

9362 S. Colorado Blvd. (at S. University Blvd)
Whole Foods Center
Highlands Ranch, CO 80126
(303) 346-8540

14710 W. Colfax Ave.
Promenade at Denver West
Lakewood, CO 80401
(303) 278-3977

5160 W. 120th Ave., Suite A
Sheridan Crossing Shopping Center (by Sprouts)
Westminster, CO 80020
(303) 404-9992
www.krisers.com

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Earth Animal

606 Post Rd E
Westport, CT 06880
(203) 222-7173
www.earthanimal.com

ILLINOIS

Kriser's Pet Stores

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1033 W. Belmont
Chicago, IL 60657
(773) 244-1600

2055 N. Clybourn
Chicago, IL 60614
(773) 871-3663

1103 S. State St.
Chicago, IL 60605
(312) 765-8883

356 E. Ohio St.
(at McClurg Court)
Chicago, IL 60611
(312) 951-1331

674 Roosevelt Road
(next to Trader Joe's)
Glen Ellyn, IL 60137
(630) 793-9785

20291 N. Rand Road
Kildeer, IL 60074
(847) 550-1705

15160 S. LaGrange Road
(next to Whole Foods)
Orland Park, IL 60462
(708) 966-0018

168 N. Northwest Highway
Park Ridge, IL 60068
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100 W. Higgins Road, Suite L-20
South Barrington, IL 60010
(847) 844-1921

1640 N. Milwaukee Ave.
Vernon Hills, IL 60061
(224) 206-7073

MLH Wellness

6404 Wilshire Blvd., Suite 1025
Los Angeles, CA 90048
(310) 425-3045
www.mlhwellness.com

Moringa for Life

2277 Vista Grande Drive
Vista, CA 92084
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Om Nom Organics

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Los Angeles, CA 90015
(213) 489-3663
www.omnomorganics.com

Pet Express

1262 S La Cienega Blvd.
Los Angeles, CA 90035
(310) 657-4738

2472 Glendale Blvd.
Los Angeles, CA 90039
(310) 668-2255

Pets Naturally

13459 Ventura Blvd.
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(818) 784-1233

Posh Pet Care

8218 W. Sunset Blvd
West Hollywood, CA 90046
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705 N. Harper Ave
West Hollywood, CA 90046
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www.poshpetcare.com

Pride N Joy

17324 Ventura Blvd., Unit B
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(818) 501-8767
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13717 Ventura Blvd.,
Sherman Oaks, CA 91423
(West of Woodman)
(818) 784-6243

Rainbow Acres

13208 West Washington Blvd
Culver City, CA 90066
(310) 823-8381
www.rainbowacresca.com

Red Barn Feed & Pet

18601 Oxnard St
Tarzana, CA 91356
(818) 345-2510

8393 Topanga Cyn. Blvd.
West Hills, CA 91304
(818) 887-7388

10142 Balboa Blvd.
Granada Hills, CA 91344
(818) 832-0110

3232 Lake Ave.
Wilmette, IL 60091
(847) 251-7744
www.krisers.com

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Momentum 98

3509 North High Street
Columbus, OH 43214
(614) 262-7087
www.momentum98.com

NORTH CAROLINA

Stoney Mountain Farm, LLC
6559 Old Stoney Mountain Road
Burlington, NC 27217
(336) 421-8244
www.stonemountainfarm.com

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Main Market Co-op

44 West Main Ave
Spokane, WA 99201
(509) 458-2667
www.mainmarket.coop

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Houston, TX 77070

Kroger's Center
5160 Buffalo Speedway
Houston, TX 77005
(832) 831-1944
www.krisers.com

5160 Vineland Ave #103
North Hollywood, CA 91601
(818) 763-1358
www.redbarnfeedandpet.com

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23811 Hawthorne Blvd
Torrance, CA 90505
(310) 375-0655
www.theremedypharm.com

Shaggy Chic
642 Lindero Canyon Rd.
Oak Park, CA 91377
(818) 879-9663

Tashman Home Center
7769 Santa Monica Blvd
West Hollywood, CA 90046
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www.tashmans.com

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Best of Show: Top 11 Health Products at Natural Products Expo West 2011



MARCH 13, 2011 – by Laurie Sanchez at <http://healthbistro.lifescript.com> It was hard to narrow down our all-time favorite health products from Natural Products Expo West this year. There were so many creative new items — many focused on being environmentally friendly, BPA-free, chemical-free, natural, made in the U.S., or other wonderful goals. But we came up... [Read More](#)

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Texas Kitchen Reviews Poppy's Naturally Clean

JUNE 11, 2011 – Poppy's Naturally Clean sent me a bottle of their All Purpose Cleaning Powder for review. This great smelling natural cleaner works really well. I tested it out on the kitchen sink and was very pleased with the results. Where I come from we have hard water so you get the occasional... [Read More](#)

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The difference between a cat and a dog is like the difference in commercial cleaners and homemade cleaners.

MAY 1, 2011 This is Poppy, and this is MY Poppy. Big difference huh? Well The difference between a cat and a dog is like the difference in commercial cleaners and homemade cleaners. Victoria, the founder of Poppy's Naturally Clean, has been working to create a healthy lifestyle. Doing this she wanted to make her... [Read More](#)

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Poppy's Naturally Clean Review

SUNDAY, MAY 1, 2011 Poppy's Naturally Clean® For Earth Day(s) Reducing Toxins in the Home and on the Planet Poppy's Naturally Clean® a complete line of natural cleaning products was developed by a mother trying to reduce the amount of toxic chemicals in her home and also decrease the numerous negative effects toxins have on... [Read More](#)

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I proudly introduce to you Poppy's Natural Clean products.

JANUARY 16, 2011 – I proudly introduce to you Poppy's Natural Clean products. If you are looking for a wonderful, effective, safe and affordable cleaning product you must try this! A Mom right here in the Los Angeles area has created this line of products that I am so impressed with that I asked permission... [Read More](#)

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Green Cleaning Basics

This is an excerpt from an article written by Susan Palmquist on Mix, Twin Cities Food Co-ops. You can read the entire article online at www.themix.coop. To read the initial interview with Poppy's Naturally Clean, please click here. You eat natural foods, use nontoxic cosmetics and, yes, green cleaning products, too. However, it seems like... [Read More](#)

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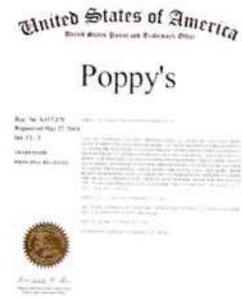
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Thank you so much for making a safe antibacterial hand soap

Thank you so much for making a safe anti-bacterial hand soap. I have one in each bathroom. I wish more people knew that they don't have to use dangerous chemicals to keep their hands free from germs. The Clean Well hand sanitizers are so convenient to carry in my purse and leave at my desk at work. Also, I LOVE the Spaghetti scrubbers. They have replaced my brillo pads for scrubbing pans. It's saving me money too and the spaghetti scrubbers aren't messy! They are fantastic for scrubbing potatoes and other thicker skin vegetables and fruits. – Karen Roth

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Our Certifications

All Poppy's Naturally Clean products are manufactured and packaged locally in Los Angeles, California.

Our products are now certified chemical-free and bio-degradable by Natural Verifiers. For more information on this independent third party verification, please visit them at www.naturalverifiers.com



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Sales Locations

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14049 Ventura Blvd.
(at Hazeltine)
Sherman Oaks, CA 91423

Anawalt Lumber

11060 W. Pico Blvd.
Los Angeles, CA 90064

1001 N. Highland Ave.
Hollywood, CA 90038

Erewhon Natural Food Market

7660 Beverly Blvd.
Los Angeles, CA 90035

Follow Your Heart

21825 Sherman Way
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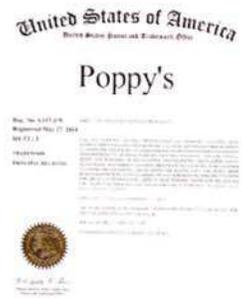
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BL 214589, n.18 (TTAB June 30, 2015); *In re Beck*, 114 U.S.P.Q.2d 1048, 1050, n.2 (TTAB 2015); *Turdin v. Trilobite, Ltd.*, 109 U.S.P.Q.2d 1473, 1483, n.15 (TTAB 2014).

Accordingly, Applicant requests that the Board take judicial notice of the attached printout from Merriam-Webster.com reflecting that it does not include a definition for the word “popi.”

Dated: July 16, 2015

/s/Paul A. Bost
Jill M. Pietrini
Paul A. Bost
SHEPPARD MULLIN RICHTER & HAMPTON LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017
Telephone: (310) 228-3700
Facsimile: (310) 228-3701

Attorneys for Applicant
Lions Gate Entertainment Inc.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 16th day of July, 2015.

/s/Lynne Thompson _____
Lynne Thompson

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MAKOVOZ LAW GROUP
9350 Wilshire Blvd., Suite 203
Beverly Hills, CA 90212

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