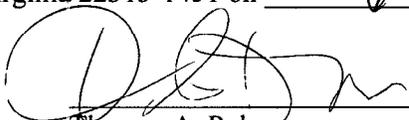


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on 6-14-05.



Thomas A. Polcyn
Reg. No. 41,256

Attorney Docket: 43497-51943

NESTLE PURINA PETCARE COMPANY :

Opposer, :

v. :

SCHELL & KAMPETER, INC. :

Applicant. :

Opposition No. _____

Application Serial No. 78/433,125

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

NOTICE OF OPPOSITION

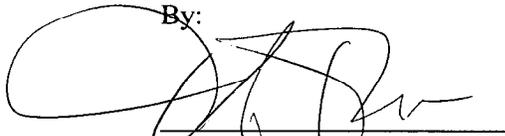
Enclosed please find a Notice of Opposition with Exhibits 1-2 (in triplicate).

Authorization is hereby given to charge Deposit Account 20-0823 \$300.00 for the Notice of Opposition fee. A duplicate copy of this Letter is enclosed for that purpose.

Respectfully submitted,

THOMPSON COBURN LLP

By:



Thomas A. Polcyn
Reg. No. 41,256
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000



06-16-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

ATTORNEYS FOR OPPOSER

corporation with offices at 103 North Olive Street, Meta, Missouri 65058, and hereby opposes same.

As grounds for its opposition, Opposer hereby alleges as follows:

1. Applicant seeks to register HEALTHY WEIGHT as a trademark for *pet food* in International Class 31, as shown by publication in the Official Gazette on May 24, 2005. Applicant filed its trademark application on June 10, 2004, and claims it first used the subject mark in interstate commerce on June 1, 2004.

2. Since at least as early as April 30, 2002, Opposer has continuously used the phrase "HEALTHY WEIGHT" in interstate commerce in connection with its PURINA ONE brand pet food, as shown in Exhibit 1.

3. Since at least as early as January 31, 2003, Opposer has continuously used the phrase "HEALTHY WEIGHT" in interstate commerce in connection with its BENEFUL brand pet food, as shown in Exhibit 2.

4. The alleged mark shown in U.S. Application Serial No. 78/433,125 is generic and fails to function as a trademark.

5. The alleged mark shown in U.S. Application Serial No. 78/433,125 is merely descriptive, when used on or in connection with the relevant goods, because it describes a

characteristic or quality of the product. Specifically, use of the phrase "HEALTHY WEIGHT" in connection with *pet food* indicates that the *pet food* helps pets maintain a healthy weight.

6. The alleged mark shown in U.S. Application Serial No. 78/433,125 is not inherently distinctive.

7. The alleged mark shown in U.S. Application Serial No. 78/433,125 has not acquired distinctiveness.

8. Due to numerous other ongoing uses of the phrase "HEALTHY WEIGHT" for *pet food* on products sold in interstate commerce, which began long prior to Applicant's filing date and alleged date of first use, including but not limited to opposer's uses of the subject phrase on the products shown in Exhibits 1-2, the alleged mark shown in U.S. Application Serial No. 78/433,125 has not been in substantially exclusive use in interstate commerce, and could not have acquired distinctiveness.

9. Registration of the alleged mark shown in U.S. Application Serial No. 78/433,125 will injure and cause damage to Opposer because such registration: (1) would purport to give Applicant exclusive rights to the mark claimed therein; (2) would impair or restrict Opposer's ability to use the subject phrase to identify its products as those designed to help pets maintain a healthy weight; and (3) may cast doubt on Opposer's ability to continue use of the phrase "HEALTHY WEIGHT" in connection with *pet food*.

10. By reason of the foregoing, Applicant is not entitled to the registration of the trademark sought by its application.

WHEREFORE, Opposer respectfully prays that this opposition be sustained and the application for registration be denied.

Authorization is hereby given to charge Deposit Account 20-0823 \$300.00 for the Notice of Opposition fee. This is believed to be the correct fee, but if it is not, authorization is hereby given to debit Account 20-0823 or credit any excess thereto.

Respectfully submitted,
THOMPSON COBURN LLP

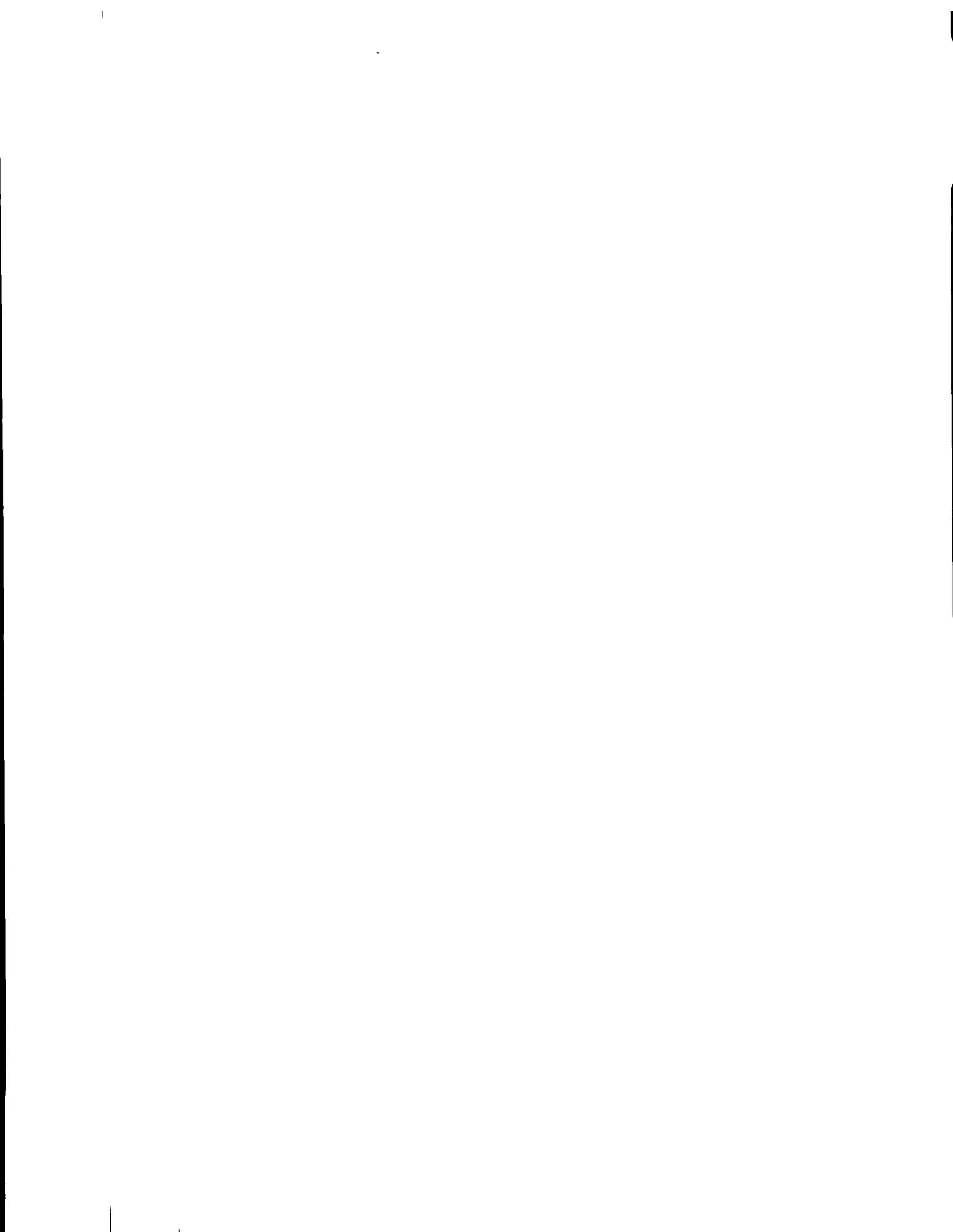
By:



Thomas A. Polcyn
Reg. No. 41,256
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000

Attorneys for Opposer
Nestle Purina Petcare Company

Enclosures – Exhibits 1 and 2

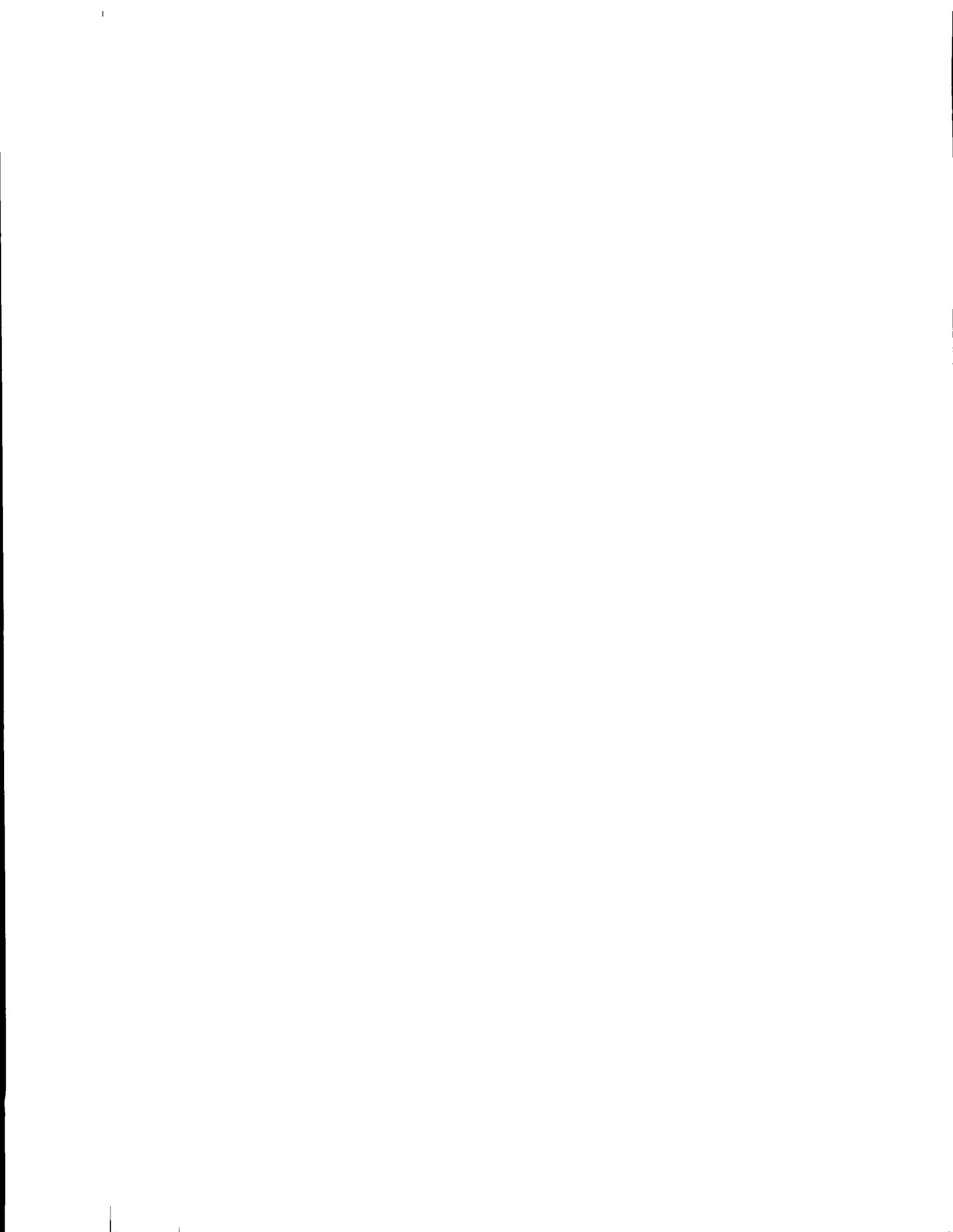


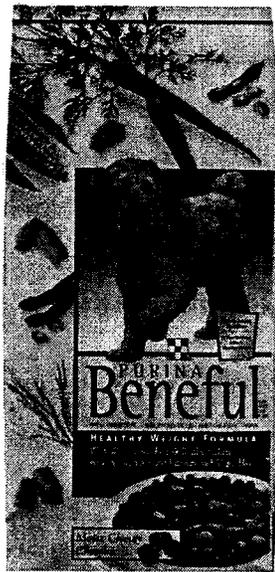
PURINA
ONE

ADULT DOG
HEALTHY WEIGHT
MANAGEMENT

ADULT DOG
HEALTHY WEIGHT
MANAGEMENT

HEALTHY WEIGHT MANAGEMENT





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

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in 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 6-14-05.



Thomas A. Polcyn
Reg. No. 41,256
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000

Attorney Docket: 43497-51943

NESTLE PURINA PETCARE COMPANY

Opposer,

v.

SCHELL & KAMPETER, INC.

Applicant.

:
:
:
:
:
:
:
:
:
:
:
:

Opposition No. _____

Application Serial No. 78/433,125

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



06-16-2005

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #66

NOTICE OF OPPOSITION

“Opposer,” Nestle Purina Petcare Company, a Missouri corporation , with an address of Checkerboard Square, St. Louis, Missouri 63164 , believes that it will be damaged by registration of the mark HEALTHY WEIGHT in International Class 31, as shown in U.S.

Application Serial No. 78/433,125, filed by “Applicant,” Schell & Kampeter, Inc., a Missouri

corporation with offices at 103 North Olive Street, Meta, Missouri 65058, and hereby opposes same.

As grounds for its opposition, Opposer hereby alleges as follows:

1. Applicant seeks to register HEALTHY WEIGHT as a trademark for *pet food* in International Class 31, as shown by publication in the Official Gazette on May 24, 2005. Applicant filed its trademark application on June 10, 2004, and claims it first used the subject mark in interstate commerce on June 1, 2004.
2. Since at least as early as April 30, 2002, Opposer has continuously used the phrase "HEALTHY WEIGHT" in interstate commerce in connection with its PURINA ONE brand pet food, as shown in Exhibit 1.
3. Since at least as early as January 31, 2003, Opposer has continuously used the phrase "HEALTHY WEIGHT" in interstate commerce in connection with its BENEFUL brand pet food, as shown in Exhibit 2.
4. The alleged mark shown in U.S. Application Serial No. 78/433,125 is generic and fails to function as a trademark.
5. The alleged mark shown in U.S. Application Serial No. 78/433,125 is merely descriptive, when used on or in connection with the relevant goods, because it describes a

characteristic or quality of the product. Specifically, use of the phrase "HEALTHY WEIGHT" in connection with *pet food* indicates that the *pet food* helps pets maintain a healthy weight.

6. The alleged mark shown in U.S. Application Serial No. 78/433,125 is not inherently distinctive.

7. The alleged mark shown in U.S. Application Serial No. 78/433,125 has not acquired distinctiveness.

8. Due to numerous other ongoing uses of the phrase "HEALTHY WEIGHT" for *pet food* on products sold in interstate commerce, which began long prior to Applicant's filing date and alleged date of first use, including but not limited to opposer's uses of the subject phrase on the products shown in Exhibits 1-2, the alleged mark shown in U.S. Application Serial No. 78/433,125 has not been in substantially exclusive use in interstate commerce, and could not have acquired distinctiveness.

9. Registration of the alleged mark shown in U.S. Application Serial No. 78/433,125 will injure and cause damage to Opposer because such registration: (1) would purport to give Applicant exclusive rights to the mark claimed therein; (2) would impair or restrict Opposer's ability to use the subject phrase to identify its products as those designed to help pets maintain a healthy weight; and (3) may cast doubt on Opposer's ability to continue use of the phrase "HEALTHY WEIGHT" in connection with *pet food*.

10. By reason of the foregoing, Applicant is not entitled to the registration of the trademark sought by its application.

WHEREFORE, Opposer respectfully prays that this opposition be sustained and the application for registration be denied.

Authorization is hereby given to charge Deposit Account 20-0823 \$300.00 for the Notice of Opposition fee. This is believed to be the correct fee, but if it is not, authorization is hereby given to debit Account 20-0823 or credit any excess thereto.

Respectfully submitted,
THOMPSON COBURN LLP

By: 

Thomas A. Polcyn
Reg. No. 41,256
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000

Attorneys for Opposer
Nestle Purina Petcare Company

Enclosures – Exhibits 1 and 2

THOMPSON COBURN

*Thompson Coburn LLP
Attorneys at Law*

One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000
www.thompsoncoburn.com

Thomas A. Polcyn
314-552-6331
FAX 314-552-7331
EMAIL tpolcyn@thompsoncoburn.com

June 14, 2005

Bonnie S. Sparks
Trademark Counsel
Nestle Purina PetCare Global Resources, Inc.
Checkerboard Square
Saint Louis, MO 63164

Re: Opposition to U.S. Application 78/433,125 for HEALTHY WEIGHT filed by
Schell & Kampeter, Inc.; Our Ref: 43497/51943

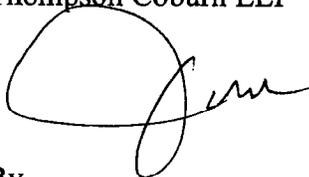
Dear Bonnie:

Per your previous instructions, we have filed the enclosed Notice of Opposition, with NPPC listed as Opposer.

I will keep you advised as this matter progresses. In the meantime, if you have any questions, please do not hesitate to contact me.

Sincerely,

Thompson Coburn LLP



By
Thomas A. Polcyn

TAP/sal

Enclosures