

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

In the matter of trademark Registration No. 76588671
For the mark: SWEET PEA
Date registered: September 20, 2005

2996662

ERICA CURTIS)
)
vs.)
)
PACIFIC COAST FEATHER)
COMPANY)
)
)

PETITION TO CANCEL

Identification of Petitioners:

Erika Curtis dba "Sweet Pea & Me".
Former address: 1761 West La Palma Avenue, #356, Anaheim, California.
Current address: 19788 Paso Robles Drive, Riverside, CA 92508.

Nathan Curtis dba "Sweet Pea & Me".
Former address: 1761 West La Palma Avenue, #356, Anaheim, California.
Current address: 19788 Paso Robles Drive, Riverside, CA 92508.

To the best of Petitioners' knowledge, the name and address of the current owner of the registration are: Pacific Coast Feather Company, P.O. Box 80385, Seattle, WA 98108.

The above-identified Petitioners believe that they will be damaged by the above-identified registration, and hereby petition to cancel the same.

The grounds for cancellation are as follows:

1. Petitioners have standing as applicant no. 78559325 for mark "SWEET PEA &



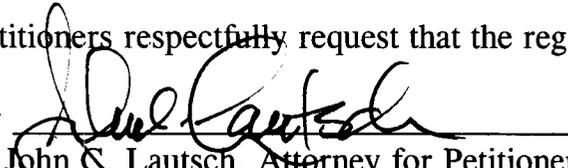
ME" for class 024 (goods: baby blankets) and for class 020 (goods: baby pillows).

2. There is a likelihood of confusion between Petitioners' mark and the registered mark. The registered mark is 76588671 registered September 20, 2005, for mark "SWEET PEA" for class 020 (goods: pillows). Because both parties sell the same goods (pillows) and their marks are substantially the same, there is a great likelihood that confusion will be created in the minds of the buying public as to the source of the goods. *Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167, 1175 (2d Cir. 1976) (need not mislead "all customers"); *McCormick & Co. v. B. Manischewitz Co.*, 206 F.2d 744, 746-747 (6th Cir. 1953) ("...while extrinsic facts are significant, the likelihood of confusion may as readily be perceived by a reviewing court upon visual comparison as by a court of first instance...." * * * "the law sets no numerical standard for misguided purchasers"); *Christian Dior, S.A.R.L. v. Miss Dior of Flatbush, Inc.*, 173 U.S.P.Q. 416 (E.D.N.Y. 1972) (a small infringer cannot be permitted to "nibble away" at petitioner's reputation and good will).

3. Petitioners have superior rights because Petitioners' mark was used in commerce prior to the registered mark. Petitioners first used their mark anywhere at least as early as April 4, 2003, and in lawful commerce at least as early as April 4, 2003. Petitioners have made bona fide sales of their goods over the Internet into interstate commerce, as well as by other means. Petitioners' mark was affixed to their goods as labels. *Trademark Law Revision Act of 1988, Section 45; Sengoku Works Ltd. v. RMC Intern., Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996), as modified, 97 F.3d 1460 (9th Cir. 1996) ("To acquire ownership of a trademark it is not enough to have invented the mark first or even to have registered it first; the party claiming ownership must have been the first to actually use the mark in the sale of goods or services"); *Allard Enterprises, Inc. v. Advanced Programming Resources, Inc.*, 146 F.3d 350, 356 (6th Cir. 1998) (One of the bedrock principles of trademark law is that trademark or 'service mark ownership is not acquired by federal or state registration. Rather, ownership rights flow only from prior appropriation and actual use in the market.'") The registered mark states that it was first used on March 19, 2004, and in commerce on March 19, 2004. This is almost a year after Petitioners' first bona fide use. Petitioners own this mark.

Petitioners respectfully request that the registered mark no. 76588671 be cancelled.

By


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Date:

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