

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

In the matter of trademark Registration No. 2,996,662
For the mark: SWEET PEA
Date registered: September 20, 2005

ORIGINAL

_____)	CANCELLATION
ERICA CURTIS)	NO. 92045340 2045343
)	
vs.)	REQUEST TO BE
)	PERMITTED TO FILE
PACIFIC COAST FEATHER)	AMENDED
COMPANY)	PETITION TO CANCEL
_____)	

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



10-20-2006
U.S. Patent & TM Office Use Only Form #11

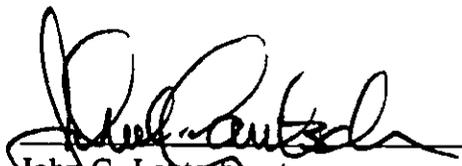
Petitioner requests to be permitted to file the Amended Petition to Cancel attached hereto. This request is made on the ground that there is good cause for the amendment and that such will not prejudice Respondent.

The parties have engaged in written interrogatories and requests for production of documents to each other. The Amended Petition to Cancel reflects information obtained during this discovery and therefore makes a clearer statement of Petitioner's claims, to all parties' benefit.

///

Dated: 9-1-06

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Lautsch", written over a horizontal line.

John C. Lautsch
WAGNER LAUTSCH LLP
2 Corporate Park, Suite 210
Irvine, CA 92606
Tel. (714) 744-1061
Fax (714) 633-7653

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is:

2 Corporate Park, Suite 210
Irvine, CA 92606

On September 1, 2006, I served the within:

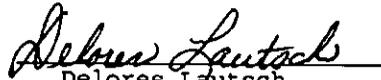
REQUEST TO BE PERMITTED TO FILE AMENDED PETITION TO CANCEL

in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as follows:

Clark A. Puntigam
Jensen & Puntigam, P. S.
2033 Sixth Ave., Suite 1020
Seattle, WA 98121-2584

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 1, 2006, at Irvine, California.


Delores Lautsch

19788 Paso Robles Drive, Riverside, CA 92508, believes that the partnership will be irreparably damaged by Registration No. 2,996,662 as it relates to goods in Class 20, namely baby pillows, and hereby petitions the cancel registration of the mark "SWEET PEA" for these goods.

As grounds therefor, it is alleged that:

1. Petitioner has adopted and continuously used the trademark "SWEET PEA & ME" since at least as early as April 29, 2003, to the present, in connection with the sale of baby pillows and baby blankets in Classes 20 and 24.
2. Petitioner applied for registration of its mark "SWEET PEA & ME" as it relates to goods in Class 20, namely baby pillows, and Class 24, namely baby blankets, on February 2, 2005. The application number assigned to Petitioner's application is Serial No. 78559325. A true and correct copy of this application is attached hereto as Exhibit "A". A true and correct copy of Petitioner's receipt for this application is attached hereto as Exhibit "B".
3. Petitioner received a Notice of Publication Under 12(a) for its application Serial No. 78559325 on April 5, 2006. A true and correct copy of this Notice is attached hereto as Exhibit "C".
4. Petitioner received an Office Action dated September 1, 2005, wherein the Examining Attorney found no similar registered mark which would bar registration, but determined that Petitioner was not entitled to register due to prior pending application Serial No. 7688671, now Registered Mark No. 2,996,662, for mark "SWEET PEA" for namely pillows. A true and correct copy of this Office Action is attached hereto as

Exhibit "D".

5. On January 18, 2006, Petitioner requested that her application be suspended pending disposition of cancellation proceeding no. 92045343. On May 4, 2006, Petitioner received a Notice of Suspension of her application pending disposition of the instant cancellation proceeding. A true and correct copy of this Notice of Suspension is attached hereto as Exhibit "E".

6. Application for Registration No. 2,996,662 for the mark "SWEET PEA" FOR Class 20, namely pillows, sought to be cancelled herein, was applied for April 26, 2004, and was registered on September 20, 2005.

7. Petitioner's application for registration of her mark "SWEET PEA & ME" for Class 20, namely baby pillows, and Class 24, namely baby blankets, was made February 2, 2005.

8. The goods marketed and sold by Respondent under its mark as herein described as closely related or are identical to those of Petitioner.

9. Petitioner's first use of her mark was at least as early as April 29, 2003. Respondent's first use was March 19, 2004, a date which is almost eleven (11) months after Petitioner's first use. See true and correct copy of Petitioner's application, Exhibiti "A", and true and correct copy of Respondent's application and filing receipt, attached hereto as Exhibit "F".

10. Petitioner has expended considerable effort and expense in promotion its

trademark "SWEET PEA & ME" and the goods sold under such mark, with the result that the purchasing public has come to know, rely upon, and recognize the products of Petitioner by such mark. Petitioner has a valuable good will established in her mark.

11. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby the *prima facie* exclusive right to use in commerce the mark "SWEET PEA" on the identical goods sold by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of the Registrant, all to the great detriment of Petitioner, who has expended considerable effort and sums in promoting her mark.

12. Purchasers are likely to consider the goods of the Registrant sold under the mark "SWEET PEA" as emanating from Petitioner, and purchase such goods as those of the Petitioner, resulting in loss of sales to Petitioner.

13. Concurrent use of the mark by the Registrant and Petitioner may result in irreparable damage to Petitioner's reputation and goodwill, if the goods sold by the Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

14. If the Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its trademark, "SWEET PEA & ME", and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods, all to the great injury of Petitioner.

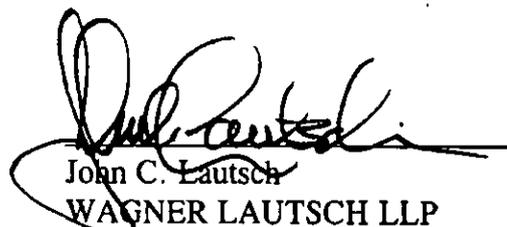
WHEREFORE, Petitioner is or will be damaged by Registration No. 2,996,662, and prays that said Registration be cancelled as it relates to goods in Class

020, namely pillows.

A duplicate Amended Petition for Cancellation is being filed herewith.

Dated: 9-1-06

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Lautsch", written over a horizontal line.

John C. Lautsch
WAGNER LAUTSCH LLP
2 Corporate Park, Suite 210
Irvine, CA 92606
Tel. (714) 744-1061
Fax (714) 633-7653

Trademark/Service Mark Application, Principal Register

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of SWEET PEA & ME.

The applicants, Erika Curtis, a citizen of United States, residing at #356, 1761 West La Palma Avenue, Anaheim, California, United States, 92801, Nathan Curtis, a citizen of United States, residing at #356, 1761 West La Palma Avenue, Anaheim, California, United States, 92801, request registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 024: baby blankets
International Class 020: baby pillows

In International Class 024, the mark was first used at least as early as 04/29/2003, and first used in commerce at least as early as 04/29/2003, and is now in use in such commerce. The applicants are submitting or will submit one specimen *foreach class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services.

In International Class 020, the mark was first used at least as early as 04/29/2003, and first used in commerce at least as early as 04/29/2003, and is now in use in such commerce. The applicants are submitting or will submit one specimen *foreach class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services.

The applicants hereby appoint John C. Lautsch of Wagner Lautsch LLP, Suite 200, 41 Corporate Park Irvine, California, United States, 929606 to submit this application on behalf of the applicants.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: jlautsch@wflaw.com.

A fee payment in the amount of \$650 will be submitted with the application, representing payment for

EXHIBIT A

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/sh believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that a statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true..

Signature: /John C. Lautsch/ Date: 02/02/2005
Signatory's Name: John C. Lautsch
Signatory's Position: Attorney

Signature: /John C. Lautsch/ Date: 02/02/2005
Signatory's Name: John C. Lautsch
Signatory's Position: Attorney

[Go Back](#)

Success!

We have received your application and assigned serial number 78559325 to your submission. We will send an Email summary of the application data to **jlautsch@wl-law.com**, which will be your official confirmation of receipt. For electronically submitted applications, the USPTO will no longer mail an additional paper filing receipt. However, since e-mail is not always reliable, please print out and save this notice. If the USPTO later determines that no filing date was justified, your submission will be returned, and your filing fee will be refunded. You would then have the opportunity to cure the deficiency, and re-file the application. Thank you.

NOTE: Do **NOT** send a duplicate paper copy of this filing to the USPTO, as it will interfere with the proper processing of the electronic submission and will result in your being charged for two filings neither of which can be refunded.

TEAS support team

Wed Feb 02 19:31:57 EST 2005

STAMP: USPTO/BAS-6810677208-20050202193157953742-78559325-200709f7e3afb99b36485f3378f7dd2bbc5-CC-754-20050202192451748385



Trademark Electronic Application System (TEAS) service

U.S. Patent and Trademark Office

TEAS@uspto.gov

EXHIBIT B



Apr 5, 2006

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
78/559,325
2. Mark:
SWEET PEA & ME
Standard Character Mark
3. International Class(es):
20, 24
4. Publication Date:
Apr 25, 2006
5. Applicant:
Curtis, Erika
Curtis, Nathan

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

jclautsch

From: "ECom106" <Ecom1063@USPTO.GOV>
 To: <jlautsch@wl-law.com>
 Sent: Thursday, September 01, 2005 11:19 AM
 Attach: 76588671P001OF002.JPG; 76588671P002OF002.JPG; dec - (1)specS in use as of filing.jpg
 Subject: TRADEMARK APPLICATION NO. 78559325 - SWEET PEA & ME - N/A

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/559325

APPLICANT: Erika Curtis

78559325

CORRESPONDENT ADDRESS:
 JOHN C. LAUTSCH
 WAGNER LAUTSCH LLP
 41 CORPORATE PARK STE 200
 IRVINE, CA 92606-5175

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

MARK: SWEET PEA & ME

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
 jlautsch@wl-law.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and email address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 78/559325

The assigned examining attorney has reviewed the referenced application and determined the following.

NO CONFLICTING REGISTERED MARKS

The examining attorney has searched the Office records and has found no similar registered which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

**APPLICATION NOT ENTITLED TO REGISTER –
 ONE PRIOR PENDING APPLICATION**

The examining attorney encloses information regarding pending Application Serial No. 76588671. The filing date of

EXHIBIT D

9/2/05

the referenced application precedes the applicant's filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application matures into a registration, the examining attorney may refuse registration in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §1208.01.

INFORMALITIES

The applicant must respond to the following informalities.

Specimens of Use Required

An application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), must include a specimen showing use of the mark in commerce on or in connection with the goods. TMEP §904. The application does not contain a specimen. The applicant must submit a specimen, and must submit the following statement:

The specimens were in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09. See the attached statement with declaration.

RESPONSE

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Linda A. Powell/
Trademark Examining Attorney
Law Office 106
(571) 272-9327
(571) 273-9106 fax

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be

viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Sep 1, 2005

76588671

Issue: Sep 20, 2005

DESIGN MARK

Serial Number

76588671

Status

PUBLISHED FOR OPPOSITION

Word Mark

SWEET PEA

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Pacific Coast Feather Company CORPORATION WASHINGTON P.O. Box 80385
Seattle WASHINGTON 98108

Goods/Services

Class Status -- ACTIVE. IC 020. US 002 013 022 025 032 050. G & S:
pillows. First Use: 2004/03/19. First Use In Commerce: 2004/03/19.

Filing Date

2004/04/26

Examining Attorney

WHITE, RICHARD

Attorney of Record

Clark A. Puntigam

SWEET PEA

The specimens were in use in commerce at least as early as the filing date of the application.

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

JLautsch

From: "ECom104" <Ecom1043@USPTO.GOV>
To: <jlautsch@wl-law.com>
Sent: Thursday, May 11, 2006 3:23 PM
Attach: dec - (1)spec in use as of filing.jpg
Subject: TRADEMARK APPLICATION NO. 78559325 - SWEET PEA & ME - N/A

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/559325
APPLICANT: Curtis, Erika

78559325

CORRESPONDENT ADDRESS:
John C. Lautsch
WAGNER LAUTSCH LLP
Suite 210
2 Corporate Park
Irvine CA 92606

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

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: SWEET PEA & ME

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:
jlautsch@wl-law.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/559325

NOTICE OF SUSPENSION

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37 C.F.R. §2.67. However, the examining attorney will conduct periodic status checks and may issue inquiries at 6 month intervals from the mailing date of this notice. TMEP §716.05. If a status inquiry Office action issues, applicant will have 6 months from the mailing or e-mailing date of the status inquiry to respond. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

EXHIBIT E 8/31/2006

Action on this application is suspended pending the disposition of:

- Cancellation No(s). 92045343

The proceeding(s) above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore, action is suspended pending the final disposition of this proceeding(s). See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq. Any refusal(s) made under Section 2 is herein maintained.

Outstanding Issues

Specimens of Use Required: An application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), must include a specimen showing use of the mark in commerce on or in connection with the goods. TMEP §904. The application does not contain a specimen. The applicant must submit a specimen, and must submit the following statement:

The specimens were in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09. See the attached statement with declaration.

/Linda A. Powell/
Trademark Examining Attorney
Law Office 104
(571) 272-9327

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document using the file download icon to the upper right. [required PDF viewer] [FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- *Call the Trademark Assistance Center at 571.272.9250 for help on trademark matters.*
- *Send questions about USPTO programs to the [USPTO Contact Center \(UCC\)](#).*
- *If you have technical difficulties or problems with this application, please e-mail them to Electronic Business Support [Electronic Applications](#) or call 1 800-786-9199.*

76588671

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

04/29/2004 SWILSONI 00000050 76588671

01 FC16001

335.00 09

LAW OFFICES OF
JENSEN & PUNTIGAM, P.S.
A PROFESSIONAL CORPORATION

ROBERT A. JENSEN
bj@jensenpuntigam.com
CLARK A. PUNTIGAM
clark@jensenpuntigam.com

2033 SIXTH AVENUE, SUITE 1020
SEATTLE, WA 98121-2584
(206) 448-3200 FAX: (206) 441-5514
www.jensenpuntigam.com

SPECIALIZING IN PATENT,
TRADEMARK AND COPYRIGHT
LAW AND RELATED LITIGATION
AND LICENSING

April 21, 2004

Assistant Commissioner for Trademarks
Box New App-FEE
2900 Crystal Drive
Arlington, VA 22202-3514

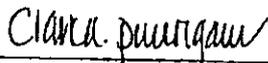
RE: U.S. Trademark Application
Mark : SWEET PEA
Applicant : Pacific Coast Feather Co.

Dear Sir:

Enclosed is a trademark application for the above-identified mark. Also enclosed are a check for \$335 for the filing fee and a specimen of the mark. Please charge any additional fees to Deposit Account No. 07-1900.

Respectfully submitted,

JENSEN & PUNTIGAM, P.S.



Clark A. Puntigam
Registration No. 25,763

CAP:gh

Enclosures: Trademark Application, Specimen
Check, Postcard

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK APPLICATION BY A CORPORATION: PRINCIPAL REGISTER

MARK: SWEET PEA
U. S. CLASS: 32
INTERNATIONAL CLASS: 20

To the Assistant Commissioner of Trademarks:

The applicant, Pacific Coast Feather Company, a corporation organized and operating under the laws of the State of Washington, having a business address of P.O. Box 80385, Seattle, Washington 98108, has adopted and is using the trademark shown in the accompanying drawing in interstate commerce for pillows in International Class 20, and requests that said trademark be registered in the United States Patent and Trademark Office on the Principal Register as established by the act of July 5, 1946.

The mark was first used at least as early as March 19, 2004 and was first used in interstate commerce at least as early as March 19, 2004 and is now in use in such commerce.

The mark is used on packaging for the goods, and one specimen thereof is enclosed herewith.

The undersigned hereby appoints the firm of Jensen & Puntigam, P.S., consisting of Robert A. Jensen, Registration No. 24,268 and Clark A. Puntigam, Registration No. 25,763, members of the Bar of the State of Washington, 2033 Sixth Avenue, Suite 1020, Seattle, Washington 98121, as its attorneys with full power of substitution and revocation, to prosecute this application to register, to make alterations and amendments therein, to receive the registration thereof, and to transact all business in the Patent and Trademark Office in connection therewith.

Please address all correspondence regarding this application to:

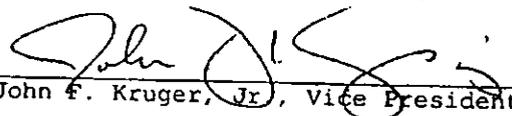
Clark A. Puntigam
JENSEN & PUNTIGAM, P.S.
2033 Sixth Avenue, #1020
Seattle, WA 98121-2554
Phone: (206) 448-3200
FAX: (206) 441-5514
E-mail: clark@jensenpuntigam.com

John F. Kruger Jr. states that he is vice president of applicant corporation and is authorized to execute this declaration on behalf of said corporation; that he believes said corporation to be owner of the trademark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said trademark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods and/or services of such other person, firm, corporation or association to cause confusion, or to cause mistake, or to deceive; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration that may result therefrom.

PACIFIC COAST FEATHER COMPANY

Date

4/19/04


John F. Kruger, Jr., Vice President

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is:

2 Corporate Park, Suite 210
Irvine, CA 92606

On September 1, 2006, I served the within:

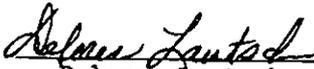
AMENDED PETITION TO CANCEL

in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as follows:

Clark A. Puntigam
Jensen & Puntigam, P. S.
2033 Sixth Ave., Suite 1020
Seattle, WA 98121-2584

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 1, 2006, at Irvine, California.


Delores Lautsch

19788 Paso Robles Drive, Riverside, CA 92508, believes that the partnership will be irreparably damaged by Registration No. 2,996,662 as it relates to goods in Class 20, namely baby pillows, and hereby petitions the cancel registration of the mark "SWEET PEA" for these goods.

As grounds therefor, it is alleged that:

1. Petitioner has adopted and continuously used the trademark "SWEET PEA & ME" since at least as early as April 29, 2003, to the present, in connection with the sale of baby pillows and baby blankets in Classes 20 and 24.
2. Petitioner applied for registration of its mark "SWEET PEA & ME" as it relates to goods in Class 20, namely baby pillows, and Class 24, namely baby blankets, on February 2, 2005. The application number assigned to Petitioner's application is Serial No. 78559325. A true and correct copy of this application is attached hereto as Exhibit "A". A true and correct copy of Petitioner's receipt for this application is attached hereto as Exhibit "B".
3. Petitioner received a Notice of Publication Under 12(a) for its application Serial No. 78559325 on April 5, 2006. A true and correct copy of this Notice is attached hereto as Exhibit "C".
4. Petitioner received an Office Action dated September 1, 2005, wherein the Examining Attorney found no similar registered mark which would bar registration, but determined that Petitioner was not entitled to register due to prior pending application Serial No. 7688671, now Registered Mark No. 2,996,662, for mark "SWEET PEA" for namely pillows. A true and correct copy of this Office Action is attached hereto as

Exhibit "D".

5. On January 18, 2006, Petitioner requested that her application be suspended pending disposition of cancellation proceeding no. 92045343. On May 4, 2006, Petitioner received a Notice of Suspension of her application pending disposition of the instant cancellation proceeding. A true and correct copy of this Notice of Suspension is attached hereto as Exhibit "E".

6. Application for Registration No. 2,996,662 for the mark "SWEET PEA" FOR Class 20, namely pillows, sought to be cancelled herein, was applied for April 26, 2004, and was registered on September 20, 2005.

7. Petitioner's application for registration of her mark "SWEET PEA & ME" for Class 20, namely baby pillows, and Class 24, namely baby blankets, was made February 2, 2005.

8. The goods marketed and sold by Respondent under its mark as herein described as closely related or are identical to those of Petitioner.

9. Petitioner's first use of her mark was at least as early as April 29, 2003. Respondent's first use was March 19, 2004, a date which is almost eleven (11) months after Petitioner's first use. See true and correct copy of Petitioner's application, Exhibiti "A", and true and correct copy of Respondent's application and filing receipt, attached hereto as Exhibit "F".

10. Petitioner has expended considerable effort and expense in promotion its

trademark "SWEET PEA & ME" and the goods sold under such mark, with the result that the purchasing public has come to know, rely upon, and recognize the products of Petitioner by such mark. Petitioner has a valuable good will established in her mark.

11. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby the *prima facie* exclusive right to use in commerce the mark "SWEET PEA" on the identical goods sold by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of the Registrant, all to the great detriment of Petitioner, who has expended considerable effort and sums in promoting her mark.

12. Purchasers are likely to consider the goods of the Registrant sold under the mark "SWEET PEA" as emanating from Petitioner, and purchase such goods as those of the Petitioner, resulting in loss of sales to Petitioner.

13. Concurrent use of the mark by the Registrant and Petitioner may result in irreparable damage to Petitioner's reputation and goodwill, if the goods sold by the Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

14. If the Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its trademark, "SWEET PEA & ME", and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods, all to the great injury of Petitioner.

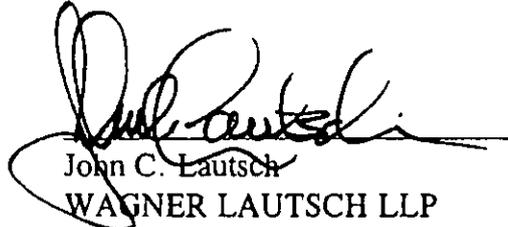
WHEREFORE, Petitioner is or will be damaged by Registration No. 2,996,662, and prays that said Registration be cancelled as it relates to goods in Class

020, namely pillows.

A duplicate Amended Petition for Cancellation is being filed herewith.

Dated: 9-1-06

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Lautsch", written over a horizontal line.

John C. Lautsch

WAGNER LAUTSCH LLP

2 Corporate Park, Suite 210

Irvine, CA 92606

Tel. (714) 744-1061

Fax (714) 633-7653

Trademark/Service Mark Application, Principal Register

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of SWEET PEA & ME.

The applicants, Erika Curtis, a citizen of United States, residing at #356, 1761 West La Palma Avenue, Anaheim, California, United States, 92801, Nathan Curtis, a citizen of United States, residing at #356, 1761 West La Palma Avenue, Anaheim, California, United States, 92801, request registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 024: baby blankets
International Class 020: baby pillows

In International Class 024, the mark was first used at least as early as 04/29/2003, and first used in commerce at least as early as 04/29/2003, and is now in use in such commerce. The applicants are submitting or will submit one specimen *foreach class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services.

In International Class 020, the mark was first used at least as early as 04/29/2003, and first used in commerce at least as early as 04/29/2003, and is now in use in such commerce. The applicants are submitting or will submit one specimen *foreach class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services.

The applicants hereby appoint John C. Lautsch of Wagner Lautsch LLP, Suite 200, 41 Corporate Park Irvine, California, United States, 929606 to submit this application on behalf of the applicants.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: jlautsch@wflaw.com.

A fee payment in the amount of \$650 will be submitted with the application, representing payment for

EXHIBIT A

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that a statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John C. Lautsch/ Date: 02/02/2005
Signatory's Name: John C. Lautsch
Signatory's Position: Attorney

Signature: /John C. Lautsch/ Date: 02/02/2005
Signatory's Name: John C. Lautsch
Signatory's Position: Attorney

[Go Back](#)

Success!

We have received your application and assigned serial number 78559325 to your submission. We will send an Email summary of the application data to jlautsch@wl-law.com, which will be your official confirmation of receipt. For electronically submitted applications, the USPTO will no longer mail an additional paper filing receipt. However, since e-mail is not always reliable, please print out and save this notice. If the USPTO later determines that no filing date was justified, your submission will be returned, and your filing fee will be refunded. You would then have the opportunity to cure the deficiency, and re-file the application. Thank you.

NOTE: Do NOT send a duplicate paper copy of this filing to the USPTO, as it will interfere with the proper processing of the electronic submission and will result in your being charged for two filings neither of which can be refunded.

TEAS support team

Wed Feb 02 19:31:57 EST 2005

STAMP: USPTO/BAS-6810677208-20050202193157953742-78559325-200709f7e3afb99b36485f3378f7dd2bbc5-CC-754-20050202192451748385



Trademark Electronic Application System (TEAS) service

U.S. Patent and Trademark Office

TEAS@uspto.gov

EXHIBIT B



Apr 5, 2006

NOTICE OF PUBLICATION UNDER 12(a)

- | | |
|---------------------------------------|-------------------------------------------------------|
| 1. Serial No.:
78/559,325 | 2. Mark:
SWEET PEA & ME
Standard Character Mark |
| 3. International Class(es):
20, 24 | |
| 4. Publication Date:
Apr 25, 2006 | 5. Applicant:
Curtis, Erika
Curtis, Nathan |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

jclautsch

From: "ECom106" <Ecom1063@USPTO.GOV>
 To: <jlautsch@wl-law.com>
 Sent: Thursday, September 01, 2005 11:19 AM
 Attach: 76588671P001OF002.JPG; 76588671P002OF002.JPG; dec - (1)specS in use as of filing.jpg
 Subject: TRADEMARK APPLICATION NO. 78559325 - SWEET PEA & ME - N/A

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/559325

APPLICANT: Erika Curtis

78559325

CORRESPONDENT ADDRESS:
 JOHN C. LAUTSCH
 WAGNER LAUTSCH LLP
 41 CORPORATE PARK STE 200
 IRVINE, CA 92606-5175

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

MARK: SWEET PEA & ME

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:
 jlautsch@wl-law.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and email address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR EMAILING DATE.

Serial Number 78/559325

The assigned examining attorney has reviewed the referenced application and determined the following.

NO CONFLICTING REGISTERED MARKS

The examining attorney has searched the Office records and has found no similar registered which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

**APPLICATION NOT ENTITLED TO REGISTER –
 ONE PRIOR PENDING APPLICATION**

The examining attorney encloses information regarding pending Application Serial No. 76588671. The filing date of

EXHIBIT D

9/2/05

the referenced application precedes the applicant's filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application matures into a registration, the examining attorney may refuse registration in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §1208.01.

INFORMALITIES

The applicant must respond to the following informalities.

Specimens of Use Required

An application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), must include a specimen showing use of the mark in commerce on or in connection with the goods. TMEP §904. The application does not contain a specimen. The applicant must submit a specimen, and must submit the following statement:

The specimens were in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09. See the attached statement with declaration.

RESPONSE

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Linda A. Powell/
Trademark Examining Attorney
Law Office 106
(571) 272-9327
(571) 273-9106 fax

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be

viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Sep 1, 2005

76588671

Issue: Sep 20, 2005

DESIGN MARK

Serial Number
76588671

Status
PUBLISHED FOR OPPOSITION

Word Mark
SWEET PEA

Standard Character Mark
Yes

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

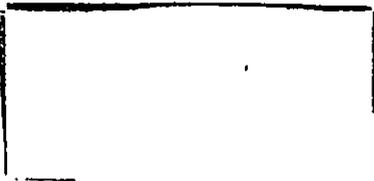
Owner
Pacific Coast Feather Company CORPORATION WASHINGTON P.O. Box 80385
Seattle WASHINGTON 98108

Goods/Services
Class Status -- ACTIVE. IC 020. US 002 013 022 025 032 050. G & S:
pillows. First Use: 2004/03/19. First Use In Commerce: 2004/03/19.

Filing Date
2004/04/26

Examining Attorney
WHITE, RICHARD

Attorney of Record
Clark A. Puntigam



SWEET PEA

The specimens were in use in commerce at least as early as the filing date of the application.

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

JLautsch

From: "ECom104" <Ecom1043@USPTO.GOV>
To: <jlautsch@wl-law.com>
Sent: Thursday, May 11, 2006 3:23 PM
Attach: dec - (1)spec in use as of filing.jpg
Subject: TRADEMARK APPLICATION NO. 78559325 - SWEET PEA & ME - N/A

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/559325

APPLICANT: Curtis, Erika

78559325

CORRESPONDENT ADDRESS:

John C. Lautsch
WAGNER LAUTSCH LLP
Suite 210
2 Corporate Park
Irvine CA 92606

RETURN ADDRESS:

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

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: SWEET PEA & ME

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

jlautsch@wl-law.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/559325

NOTICE OF SUSPENSION

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37 C.F.R. §2.67. However, the examining attorney will conduct periodic status checks and may issue inquiries at 6 month intervals from the mailing date of this notice. TMEP §716.05. If a status inquiry Office action issues, applicant will have 6 months from the mailing or e-mailing date of the status inquiry to respond. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

EXHIBIT E 8/31/2006

Action on this application is suspended pending the disposition of:

- Cancellation No(s). 92045343

The proceeding(s) above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore, action is suspended pending the final disposition of this proceeding(s). See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq. Any refusal(s) made under Section 2 is herein maintained.

Outstanding Issues

Specimens of Use Required: An application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), must include a specimen showing use of the mark in commerce on or in connection with the goods. TMEP §904. The application does not contain a specimen. The applicant must submit a specimen, and must submit the following statement:

The specimens were in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09. See the attached statement with declaration.

/Linda A. Powell/
Trademark Examining Attorney
Law Office 104
(571) 272-9327

Document Description: Filing Receipt Trademark Application
Mail / Create Date: 21-May-2004



FILING RECEIPT FOR TRADEMARK APPLICATION

May 21, 2004

This acknowledges receipt on the FILING DATE of the application for registration for the mark identified below. The FILING DATE is contingent upon all minimum filing date requirements being met. Your application will be considered in the order in which it was received. Action on the merits should be expected from the United States Patent and Trademark Office (USPTO) approximately six months from the FILING DATE. When inquiring about this application, include the SERIAL NUMBER, FILING DATE, OWNER NAME and MARK.

CLARK A. PUNTIGAM
JENSEN & PUNTIGAM, P.S.
2033 SIXTH AVENUE, #1020
SEATTLE, WA 98121-2554

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days. Such request may be submitted by mail to: COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3514; by fax to 703-308-9096; or by e-mail to tmfiling.receipt@uspto.gov. The USPTO will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/588671
FILING DATE: Apr 26, 2004
REGISTER: Principal
LAW OFFICE: 115
MARK: SWEET PEA
MARK TYPE(S): Trademark
DRAWING TYPE: Stylized words, letters, or numbers
FILING BASIS: Sect. 1(a) (Use in Commerce)

ATTORNEY: Clark A. Puntigam
OWNER: Pacific Coast Feather Company (WASHINGTON, Corporation)
P.O. Box 80385
Seattle, WASHINGTON 98108

FOR: pillows
INT. CLASS: 020
FIRST USE: Mar 19, 2004 USE IN COMMERCE: Mar 19, 2004

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS

EXHIBIT F

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document using the file download icon to the upper right. [required PDF viewer] [FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- *Call the Trademark Assistance Center at 571.272.9250 for help on trademark matters.*
- *Send questions about USPTO programs to the [USPTO Contact Center \(UCC\)](#).*
- *If you have technical difficulties or problems with this application, please e-mail them to Electronic Business Support [Electronic Applications](#) or call 1 800-786-9199.*

04-26-2004

U.S. Patent & TMO/c/TM Reg'l Rcpt OI. #01

Applicant : Pacific Coast Feather Company
Address : P.O. Box 80385
Date of First Use : March 19, 2004
Date of First Use in
Interstate Commerce : March 19, 2004
Goods : Pillows
Attorneys : Jensen & Puntigam, P.S.

SWEET PEA

U.S. Patent & TM Off/TM



76588671

76588671

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

04/29/2004 SMILSON1 00000050 76588671

01 FC:6001

335.00 DP

LAW OFFICES OF
JENSEN & PUNTIGAM, P.S.
A PROFESSIONAL CORPORATION

ROBERT A. JENSEN
bj@jensenpuntigam.com
CLARK A. PUNTIGAM
clark@jensenpuntigam.com

2033 SIXTH AVENUE, SUITE 1020
SEATTLE, WA 98121-2584
(206) 448-3200 FAX: (206) 441-5514
www.jensenpuntigam.com

SPECIALIZING IN PATENT,
TRADEMARK AND COPYRIGHT
LAW AND RELATED LITIGATION
AND LICENSING

April 21, 2004

Assistant Commissioner for Trademarks
Box New App-FEE
2900 Crystal Drive
Arlington, VA 22202-3514

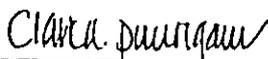
RE: U.S. Trademark Application
Mark : SWEET PEA
Applicant : Pacific Coast Feather Co.

Dear Sir:

Enclosed is a trademark application for the above-identified mark. Also enclosed are a check for \$335 for the filing fee and a specimen of the mark. Please charge any additional fees to Deposit Account No. 07-1900.

Respectfully submitted,

JENSEN & PUNTIGAM, P.S.



Clark A. Puntigam
Registration No. 25,763

CAP:gh

Enclosures: Trademark Application, Specimen
Check, Postcard

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK APPLICATION BY A CORPORATION: PRINCIPAL REGISTER

MARK: SWEET PEA
U. S. CLASS: 32
INTERNATIONAL CLASS: 20

To the Assistant Commissioner of Trademarks:

The applicant, Pacific Coast Feather Company, a corporation organized and operating under the laws of the State of Washington, having a business address of P.O. Box 80385, Seattle, Washington 98108, has adopted and is using the trademark shown in the accompanying drawing in interstate commerce for pillows in International Class 20, and requests that said trademark be registered in the United States Patent and Trademark Office on the Principal Register as established by the act of July 5, 1946.

The mark was first used at least as early as March 19, 2004 and was first used in interstate commerce at least as early as March 19, 2004 and is now in use in such commerce.

The mark is used on packaging for the goods, and one specimen thereof is enclosed herewith.

The undersigned hereby appoints the firm of Jensen & Puntigam, P.S., consisting of Robert A. Jensen, Registration No. 24,268 and Clark A. Puntigam, Registration No. 25,763, members of the Bar of the State of Washington, 2033 Sixth Avenue, Suite 1020, Seattle, Washington 98121, as its attorneys with full power of substitution and revocation, to prosecute this application to register, to make alterations and amendments therein, to receive the registration thereof, and to transact all business in the Patent and Trademark Office in connection therewith.

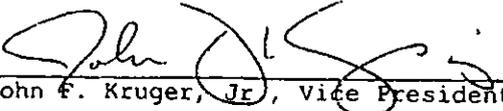
Please address all correspondence regarding this application to:

Clark A. Puntigam
JENSEN & PUNTIGAM, P.S.
2033 Sixth Avenue, #1020
Seattle, WA 98121-2554
Phone: (206) 448-3200
FAX: (206) 441-5514
E-mail: clark@jensenpuntigam.com

John F. Kruger Jr. states that he is vice president of applicant corporation and is authorized to execute this declaration on behalf of said corporation; that he believes said corporation to be owner of the trademark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said trademark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods and/or services of such other person, firm, corporation or association to cause confusion, or to cause mistake, or to deceive; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration that may result therefrom.

PACIFIC COAST FEATHER COMPANY

4/19/04
Date


John F. Kruger, Jr., Vice President

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

In the matter of trademark Registration No. 2,996,662
For the mark: SWEET PEA
Date registered: September 20, 2005

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

**CANCELLATION
NO. 92045342**

**REQUEST TO BE
PERMITTED TO FILE
AMENDED
PETITION TO CANCEL**

COPY

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

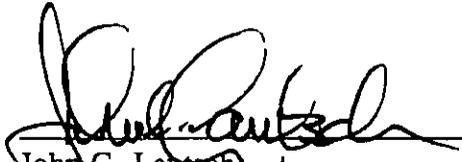
Petitioner requests to be permitted to file the Amended Petition to Cancel attached hereto. This request is made on the ground that there is good cause for the amendment and that such will not prejudice Respondent.

The parties have engaged in written interrogatories and requests for production of documents to each other. The Amended Petition to Cancel reflects information obtained during this discovery and therefore makes a clearer statement of Petitioner's claims, to all parties' benefit.

///

Dated: 9-1-06

Respectfully submitted,



John C. Lautsch
WAGNER LAUTSCH LLP
2 Corporate Park, Suite 210
Irvine, CA 92606
Tel. (714) 744-1061
Fax (714) 633-7653

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is:

2 Corporate Park, Suite 210
Irvine, CA 92606

On September 1, 2006, I served the within:

REQUEST TO BE PERMITTED TO FILE AMENDED PETITION TO CANCEL

in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as follows:

Clark A. Puntigam
Jensen & Puntigam, P. S.
2033 Sixth Ave., Suite 1020
Seattle, WA 98121-2584

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 1, 2006, at Irvine, California.


Delores Lautsch