TTAB

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

#76588671

ORIGINAL

ERICA CURTIS, Petitioner, vs. PACIFIC COAST FEATHER COMPANY, Respondent.	**CANCELLATION PETITION NO. 92045343** **JOINT REQUEST FOR ENTRY OF FINAL ORDER**

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

Petitioner and Respondent jointly request that the Trademark Trial and Appeals Board enter the Final Order submitted herewith in order to settle the above-captioned matter.

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04-17-2007
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #34

Dated: 4/12/07

Respectfully submitted,

John C. Lautsch
WAGNER LAUTSCH LLP
550 S. Wellington Road
Orange, CA 92869
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Fax (714) 633-7653

Clark A. Puntigam
JENSEN & PUNTIGAM, P.S.
2033 Sixth Avenue, Suite 1020
Seattle, WA 98121-22584
Tel. (206) 448-3200
Fax (206) 441-5514

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,	)	**CANCELLATION NO. 92045343**
Petitioner,	)	**FINAL ORDER**
vs.	)	
PACIFIC COAST FEATHER COMPANY,	)	
Respondent.	)	

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

Upon reviewing the files and submissions in this matter and upon joint request of Erica Curtis, petitioner, and Pacific Coast Feather Company, respondent, as set forth in their Settlement Agreement attached hereto, and upon considering the facts of this case and finding good reason therefor, the Board adopts the Settlement Agreement of the parties and finds that the terms of the settlement reached by the parties will not cause

confusion or mistake, nor deceive, and therefore orders that Registration No. 2,996,662 for mark "SWEET PEA" shall be amended to limit the goods marketed and sold under said mark to class 020 pillows, namely, for adults only. The Board further orders that the suspension of application no. 78559325 shall be lifted and said application processed without further opposition by respondent Pacific Coast Feather Company.

IT IS SO ORDERED:

Dated: _____ _____

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, Petitioner, vs. PACIFIC COAST FEATHER COMPANY, Respondent.	)	**CANCELLATION NO. 92045343** **DECLARATION OF JOHN C. LAUTSCH**

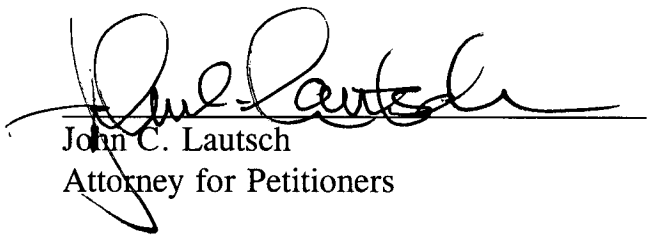
BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

I am the attorney of record for Petitioners herein. The statements in this Declaration are within my own personal knowledge and I could and would testify competently thereto in a court of law if called upon to do so.

The attached Settlement Agreement is a true and correct copy of the original Settlement Agreement signed by both Petitioners and Respondent in this matter.

I declare under penalty of perjury that the facts set forth above are true and correct, and that this Declaration was executed on the 12th day of April 2007 in Orange, California.

Dated: 4/12/07



John C. Lautsch
Attorney for Petitioners

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of the Effective Date of Agreement stated below by and between Erika (aka Erica) Curtis, 19788 Paso Robles Drive, Riverside, CA 92508 ("Curtis") and Pacific Coast Feather Company, P. O. Box 80385, Seattle, WA 98108 ("Pacific Coast") to settle the claims made in Cancellation Petition No. 92045343 regarding Registration No. 2,996,662 mark: "SWEET PEA" (the Cancellation Petition").

NOW THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows:

1. The terms and conditions of this Agreement are conditioned upon the Trademark Trial and Appeal Board ("TTAB") adopting and ordering the order proposed by the parties and attached hereto as Exhibit "A" or an order substantially to the same effect.

2. Pacific Coast represents and warrants that it will limit the goods marketed and sold under its mark "SWEET PEA" to class 020 pillows, namely for adults only, and agrees that its listing of goods and/or services for registration no. 2,996,661 shall be amended to be so limited. Pacific Coast further represents and warrants that it will not use "SWEET PEA" as a trademark or trade name or otherwise to identify its business or for any other purpose than as described in this paragraph. Pacific Coast further represents and warrants that its first use of its mark "SWEET PEA" was March 19, 2004.

3. Curtis represents and warrants that it will limit the goods marketed and sold under its mark "SWEET PEA & ME" to class 020 pillows, namely for babies only and agrees that its listing of goods and/or services for her application no. 78559325 shall be so limited. Curtis further agrees and warrants that her first use of her mark "SWEET PEA & ME" was April 29, 2003.

4. Subject to the terms and conditions of Paragraphs 1 and 2, Curtis agrees to the TTAB entering the order attached hereto as Exhibit "A" or an order substantially to the same effect.

5. Subject to the terms and conditions of Paragraphs 1 and 3, Pacific Feather agrees to the TTAB entering the order attached hereto as Exhibit "A" or an order substantially to the same effect, and to cooperate with and to not oppose registration of Curtis' mark "SWEET PEA & ME".

6. The parties represent that each are not aware of any known instances of actual confusion, deception or mistake as to the origin/sponsorship of the goods of the respective parties marketed under their respective marks. The parties further represent that they have each concluded, after separate careful investigation, evaluation and consultation with trademark counsel, that so long as the parties use their marks consistently with the terms and conditions of paragraphs 2 and 3 of this agreement, that there is no likelihood of confusion, deception or mistake as to the origin, sponsorship or approval of their respective actual goods, notwithstanding that the marks of the respective parties both include the words "SWEET PEA" as an element thereof. More specifically, the parties have agreed that confusion, deception or mistake will not arise on the part of third parties, because the marks are different in that they create different commercial impressions and the goods offered by the parties are non-competitive and that their respective targeted consumers understand and appreciate the differences between the marks and the goods of the parties. These consumers understand the differences between baby pillows, which are specialty, shorter term items, and adult pillows, directed to the adult population and which tend to be longer term in use.

7. Except for when a party reasonably believes it needs to seek a temporary restraining order, if any party claims a breach of this Agreement, it shall give written notice thereof to the other party and such party shall have thirty (30) days in which to cure such claimed breach, if such breach is reasonable susceptible to being cured. Any notice, demand or communication under or in connection with this Agreement which any party desires or is required to give to any other party shall be in writing and shall be given by personal delivery, or by mailing in the U. S. mail (in a certified or registered envelope) to the mailing addresses set forth herein, or to such other addresses as he parties may from time to time designate in writing. The effective date of any notice, demand or communication personally delivered to

shall be the date of actual receipt of such notice, demand or communication or the first business day after if such notice, demand or communication is received on a non-business day, or if sent by certified or registered mail, three days after the date of mailing.

8. Each party shall bear its own costs and attorneys' fees.

9. This Agreement supersedes all pervious agreements and understandings, whether written or oral, and contains the entire agreement of the parties with respect to the subject matter herein, and shall be final and binding on all parties hereto, their respective parents, affiliates, subsidiaries, successors, licensees and assigns, regardless of any claim of mistake. This Agreement may be modified or amended only by written agreement of the parties.

10. Each party acknowledges that it has received independent legal advice from its attorney with regard to the advisability of executing this Agreement.

11. The provisions of this Agreement shall be considered severable such that if any provision or part thereof shall at any time be held invalid under any law, rule or regulation, all other provisions or parts shall remain in full force and effect and enforceable.

12. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be original, but both of which together shall constitute one and the same original.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflict of law. The parties consent to the personal jurisdiction of the state and federal courts of the State of California and select such courts as the sole proper forums within which to adjudicate disputes under or relating to this Agreement, unless the TTAB or a successor institution of the U. S. Patent and Trademark Office is a possible forum in which case the TTAB will be the sole proper forum.

14. The Effective Date of Agreement is the effective date of adoption of the order attached hereto by the TTAB.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

ERIKA CURTIS

Erica Curtis

Nathan Curtis

PACIFIC COAST FEATHER COMPANY

By: _____

Name: John F Kruger Jr

Title: SVP Marketing

EXHIBIT "A"

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,	)	**CANCELLATION NO. 92045343**
Petitioner,	)	**FINAL ORDER**
vs.	)	
PACIFIC COAST FEATHER COMPANY,	)	
Respondent.	)	

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and finding good reason therefor, the Board adopts the Settlement Agreement of the parties and finds that the terms of the settlement reached by the parties will not cause confusion or mistake, nor deceive, and therefore orders that Registration No. 2,996,662 for mark "SWEET PEA" shall be amended to limit the goods marketed and sold under said mark to class 020 pillows, namely, for adults only. The Board further orders that the suspension of application no. 78559325 shall be lifted and said application processed without further opposition by respondent Pacific Coast Feather Company.

IT IS SO ORDERED:

Dated: _____ _____

EXHIBIT "A"

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:

550 S. WELLINGTON ROAD
ORANGE, CA 92869

On April 13, 2007, I served the within:

JOINT REQUEST FOR ENTRY OF FINAL ORDER

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 Orange, California addressed as follows:

CLARK PUNTIGAM
JENSEN & PUNTIGAM
2033 SIXTH AVENUE SUITE 1020
SEATTLE, WA 98121

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

Executed on April 13, 2007, at Orange, California.

Delores Lautsch

Delores Lautsch

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
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ERIKA CURTIS

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Nathan Curtis

PACIFIC COAST FEATHER COMPANY

By: _____

Name: John F Kruger Jr

Title: SVP Marketing