TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

#71356616

Mailed: March 18, 2011

Cancellation No. 92053773
Registration No. 322305

DEL MONTE CORPORATION
1075 PROGRESS STREET
PITTSBURGH, PA 15212
UNITED STATES

Jeffrey Kaplan

v.

Del Monte Corporation

JEFFREY KAPLAN
PO BOX 11106
FORT LAUDERDALE, FL 33339
UNITED STATES

Veronica P. White, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system: **http://ttabvue.uspto.gov/ttabvue/**.

The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to registrant. However, the proof of service indicates that petitioner sent that service copy to an attorney for registrant, rather than to registrant. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record." The rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the registrant's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record. In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for registrant, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than registrant.

04-01-2011

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: **http://www.uspto.gov/trademarks/index.jsp**. The Board's main webpage (**http://www.uspto.gov/trademarks/process/appeal/index.jsp**) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. *See* Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (*See* Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: http://ttabvue.uspto.gov/ttabvue/.**

Defendant's answer and any other filing made by any party must include proof of service. *See* Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** *See* Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	4/27/2011
Deadline for Discovery Conference	5/27/2011
Discovery Opens	5/27/2011
Initial Disclosures Due	6/26/2011
Expert Disclosures Due	10/24/2011
Discovery Closes	11/23/2011
Plaintiff's Pretrial Disclosures	1/7/2012
Plaintiff's 30-day Trial Period Ends	2/21/2012
Defendant's Pretrial Disclosures	3/7/2012
Defendant's 30-day Trial Period Ends	4/21/2012
Plaintiff's Rebuttal Disclosures	5/6/2012
Plaintiff's 15-day Rebuttal Period Ends	6/5/2012

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. *See* Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. *See* Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVUE record for this case at **http://ttabvue.uspto.gov/ttabvue/**. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the

absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: **http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp**. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. *See* Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. *See* TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. *See* TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. *See* Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at **http://estta.uspto.gov**.

cc:

Timoth S Ernst
Del Monte Foods
One Market @ The Landmark
PO Box 193575
San Francisco CA 94119-3575

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA398542**

Filing date: **03/17/2011**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Jeffrey Kaplan		
Entity	Individual	Citizenship	UNITED STATES
Address	POB 11106 Fort Lauderdale, FL 33339 UNITED STATES		

Correspondence information	Jeffrey Kaplan POB 11106 Fort Lauderdale, FL 33339 UNITED STATES eggcream@earthlink.net Phone:954-793-0637

Registration Subject to Cancellation

Registration No	322305	Registration date	03/05/1935
Registrant	DEL MONTE CORPORATION 1075 Progress Street Pittsburgh, PA 15212 UNITED STATES		

Goods/Services Subject to Cancellation

Class U046 (International Class 031). First Use: 1934/09/23 First Use In Commerce: 1934/09/23 All goods and services in the class are cancelled, namely: CANNED CAT FOOD

Grounds for Cancellation

Abandonment	Trademark Act section 14

Attachments	PetitiontocanceltrademarkPuss'nboots.pdf (3 pages)(12013 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jeffrey Kaplan/
Name	Jeffrey Kaplan
Date	03/17/2011

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

In the matter of Trademark Registration No. 0322,305
For the Mark PUSS' N BOOTS

Jeffrey Kaplan, Cancellation No: Pending

Petitioner,

v.

Del Monte Corporation,

Respondent

PETITION FOR CANCELLATION

1. Jeffrey Kaplan (hereinafter the "Petitioner") is an individual whose is located and is doing business at P.O.B. 11106 Fort Lauderdale, Florida 33339. To the best of Petitioner's knowledge, Del Monte Corporation (hereinafter the "Respondent") is a Corporation with its place of business at 1075 Progress Street Pittsburg, PA 15212.

2. The Petitioner believes it is or will be damaged by Respondent's U.S. Trademark Registration No. 0322305 for the mark PUSS'N BOOTS for canned cat food registered on March 5th 1935.

3. The above-identified Petitioner believes that it is, or will be, damaged by the above identified registration and hereby petitions to cancel the same. The grounds for this cancellations is as follows:

ABANDONMENT UNDER SECTION 45 OF THE TRADEMARK ACT

4. On information and belief, Respondent has abandoned Registration No. 0322305 by discontinuing use of the mark for a period of three (3) years or more with no intent to resume use.

5. Petitioner is likely to be damaged by continuance of said registration in that Petitioner intends use of the same or similar mark and will be impaired by the continued registration of said abandoned mark of Respondent.

6. Petitioner intends to use and register the mark PUSS'N BOOTS for cat food International Class 31, by virtue of U.S. Serial No. 85269420 filed on March 17th 2011.

7. Concurrent use and registration of the mark by the Respondent and Petitioner is likely to result in irreparable damage to Petitioner's reputation and good will if Petitioner claims ownership of the Petitioner's mark PUSS'N BOOTS in U.S. Serial No. 85269420.

8. Petitioners and Respondents application and registrations are for nearly identical marks and identify nearly the same goods, that the marks are used in connection with.

9. If the Respondent is permitted to retain the registrations sought to be cancelled, a cloud would be placed on Petitioner's title in and to its trademark PUSS'N BOOTS, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods and services, all to the great injury of Petitioner.

WHEREFORE, Petitioner respectfully requests that its Petition be granted in its entirety and that Registration No. 0322305 - PUSS' N BOOTS for canned cat food be cancelled.

Respectfully Submitted,

/ Jeffrey Kaplan/
POB 11106
Ft. Lauderdale, Florida 33339
(954) 793-0637 3-17-11

CERTIFICATE OF MAILING

It is hereby certified that the attached Petition for Cancellation is being deposited First Class Postage Prepaid with the U.S. Postal Service addressed to Del Monte Foods c/o Timoth S. Ernst- One Market @ The Landmark, POB 193575 San Francisco, CA 94119

/Jeffrey Kaplan/
3/17/11

United States Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA. 22313-1451
If Undeliverable Return in Ten Days

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