

IN THE UNITED STATES PATENT AND TRADEMARK

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of the Trademark Application Serial No. 76/654,200
for "SUPER CHEWS" published in the Official Gazette on January 2, 2007

Mars, Incorporated,)	Opposition No.: 91177059
)	
Opposer,)	ANSWER TO NOTICE OF OPPOSITION
)	
vs.)	
)	
Pet Center, Inc.)	
)	
Applicant.)	
_____)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF OPPOSITION

COMES NOW the Applicant, Pet Center, Inc., a California corporation (hereafter "Applicant"), by and through its attorney and pursuant to Rule 2.114 of the Trademark Rules of Practice and Rule 8(b) of the Fed. R. Civ. P., and for its Answer to the Notice for Opposition (hereafter the "Opposition"), filed by Mars, Incorporated (hereafter "Opposer") seeking to oppose the issuance of United States Trademark Application Serial No. 76/654,200 for "SUPER CHEWS", and answers the Opposition as follows:



06-04-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

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ANSWER TO NOTICE OF OPPOSITION

Answering the Preamble paragraph, Applicant has insufficient information and belief to admit or deny the allegations contained therein except for the fact that it alleges that Opposer will not be damaged by registration of the mark shown in Application Serial No. 76/654,200. Except as expressly admitted, Applicant denies each and every, all and singular, the remaining allegations of said Preamble paragraph.

1. Answering Paragraph 1 of the Opposition, Applicant has insufficient information and belief to admit or deny the allegations contained therein and basing its denial on that ground, denies each and every, all and singular, the allegations of said Paragraph 1 of the Opposition.

2. Answering Paragraph 2 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 2 of the Opposition.

3. Answering Paragraph 3 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 3 of the Opposition.

4. Answering Paragraph 4 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 4 of the Opposition.

5. Answering Paragraph 5 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 5 of the Opposition.

6. Answering Paragraph 6 of the Opposition, Applicant admits that it filed Application Serial No. 76/654,200 with a claim of acquired distinctiveness under Section 2(f) and later entered a disclaimer of the term "CHEWS". Except as expressly admitted herein, Applicant denies each and every, all and singular, the remaining allegations of said Paragraph 6 of the Opposition.

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7. Answering Paragraph 7 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 7 of the Opposition.

Answering Count I: Genericness

8. Answering Paragraph 8 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 8 of the Opposition.

9. Answering Paragraph 9 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 9 of the Opposition.

10. Answering Paragraph 10 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 10 of the Opposition.

11. Answering Paragraph 11 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 11 of the Opposition.

12. Answering Paragraph 12 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 12 of the Opposition.

13. Answering Paragraph 13 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 13 of the Opposition.

Answer to Count II: Abandonment

14. Answering Paragraph 14 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 14 of the Opposition.

15. Answering Paragraph 15 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 15 of the Opposition.

16. Answering Paragraph 16 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 16 of the Opposition.

17. Answering Paragraph 17 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 17 of the Opposition.

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18. Answering Paragraph 18 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 18 of the Opposition.

Answer to Count III: Specimen Fails to Show Use of Mark

19. Answering Paragraph 19 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 19 of the Opposition.

20. Answering Paragraph 20 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 20 of the Opposition.

21. Answering Paragraph 21 of the Opposition, Applicant admits the allegations of said Paragraph 21 of the Opposition.

22. Answering Paragraph 22 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 22 of the Opposition.

23. Answering Paragraph 23 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 23 of the Opposition.

24. Answering Paragraph 24 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 24 of the Opposition.

25. Answering Paragraph 25 of the Opposition, Applicant denies each and every, all and singular, the allegations of said Paragraph 25 of the Opposition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

26. As a first, separate and distinct affirmative defense, Applicant alleges Opposer has no standing to bring the Opposition as Opposer has demonstrated no prior use of its mark and therefore, Opposer has no standing to bring the Opposition and the Opposition should be dismissed with prejudice.

///

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TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

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SECOND AFFIRMATIVE DEFENSE

27. As a second, separate and distinct affirmative defense, Applicant alleges that it has used the mark "SUPER CHEWS" in interstate commerce for more than five years and dating back to 1995 and therefore, by virtue of more than eleven years of continuous use in interstate commerce, the mark has become distinctive and has become associated with the Applicant.

THIRD AFFIRMATIVE DEFENSE

28. As a third, separate and distinct affirmative defense, Applicant alleges that that the Opposition and each and every paragraph stated therein fails to state a cause of action against the Applicant.

FOURTH AFFIRMATIVE DEFENSE

29. As a fourth, separate and distinct affirmative defense, Applicant alleges that the Opposer has sustained no damage, injury or prejudice as a result of the Applicant's trademark application.

WHEREFORE, Applicant requests that the Opposition to Trademark Application Serial No. 76/654,200 be denied and that Opposer take nothing by way of its Opposition.

If there is any charge required for the filing of this Answer to Notice of Opposition, the Commissioner of Patents and Trademarks is hereby authorized to charge my Deposit Account No. 18-2222 for the appropriate fee.

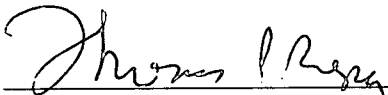
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Please send all correspondence concerning this Opposition to Thomas I. Rozsa, at
the address listed below.

Respectfully submitted,

Date: June 4, 2007



Thomas I. Rozsa
Registration No. 29,210
Attorney for Applicant
Pet Center, Inc.

18757 Burbank Boulevard, Suite 220
Tarzana, California 91356-3346
Telephone: (818) 783-0990
Telecopier: (818) 783-0992

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

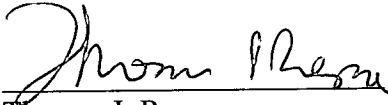
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CERTIFICATE OF MAILING

I hereby certify that the ANSWER TO NOTICE OF OPPOSITION,
CERTIFICATE OF SERVICE, and CERTIFICATE OF MAILING are being deposited
with the United States Postal Service with sufficient postage as Express Mail, Mail Label
No. EM 040566465 US an envelope addressed to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dated: June 4, 2007


Thomas I. Rozsa
Registration No. 29,210
Attorney For Applicant

In Re Opposition No. 91177059

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ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

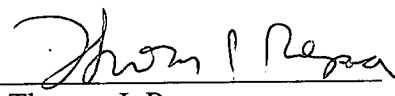
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the document entitled ANSWER TO NOTICE OF
OPPOSITION was sent on June 4, 2007 via first class mail, postage prepaid, to the
attorneys for the Opposer at the following address:

Cristina A. Carvalho, Esq.
Jason J. Mazur, Esq.
Ross Q. Panko, Esq.
ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Dated: June 4, 2007


Thomas I. Rozsa
Registration No. 29,210

In Re Opposition No. 91177059

ans.opp