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

Proceeding	91196025
Party	Plaintiff Pet Holdings Inc.
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Date	11/26/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 77/868181  
Published in the *Official Gazette* April 13, 2010

PET HOLDINGS INC.,

Opposer,

v.

COMBO VENTURES LLC,

Applicant.

Opposition No. 91196025

**OPPOSER’S ANSWER TO COUNTERCLAIM AND AFFIRMATIVE DEFENSES**

Opposer, Pet Holdings Inc., for its answer to the Counterclaim to Cancel Registration (the “Counterclaim”) filed by Combo Ventures LLC in the above-captioned matter, pleads and avers as follows:

1. Answering ¶ 1, this paragraph is not an allegation that requires an admission or denial, because it merely reincorporates Applicant’s previous allegations. To the extent those allegations conflict with the allegations in Opposer’s Notice of Opposition, such allegations are denied.

2. Answering ¶ 2 of the Counterclaim, Opposer admits that Applicant seeks cancellation of Opposer’s Registration (Registration No. 3748736) issued February 16, 2010 for the mark FAIL BLOG in International Classes 38, 41 and 42 for the application filed April 8, 2009.

3. Opposer denies each and every allegation contained in ¶ 3.

4. Opposer denies each and every allegation contained in ¶ 4.
5. Opposer denies each and every allegation contained in ¶ 5.
6. Opposer denies each and every allegation contained in ¶ 6.
7. Opposer denies each and every allegation contained in ¶ 7.
8. Opposer denies each and every allegation contained in ¶ 8.
9. Answering ¶ 9, Opposer admits that it filed a trademark application on April 8, 2009, which matured into Registration No. 3748736. Opposer denies knowledge sufficient to admit or deny the remaining allegations of ¶ 9.
10. Opposer denies each and every allegation contained in ¶ 10.
11. Opposer denies that Applicant will be damaged by the continued registration of the mark shown in Registration No. 3748736.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Applicant fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

As a result of Opposer's continuous use of the mark identified in Registration No. 3748736 (the "Mark"), the Mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Opposer in connection with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Opposer, and caused the Mark to become a valuable asset of Opposer.

#### **Third Affirmative Defense**

Opposer has been using the Mark and developing consumer recognition and goodwill therein since at least January 3, 2008, such use being open, notorious and known to Applicant

and such knowledge, in turn, being known to Opposer. During this time Applicant failed to take meaningful action to assert the claims on which it bases its Counterclaim to Cancel Registration, on which inaction Opposer has relied to its detriment. Applicant's claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

Based on the foregoing, Opposer respectfully requests that its Opposition be sustained and that Applicant's Counterclaim to Cancel Registration be dismissed.

Dated: November 26, 2010

Respectfully Submitted,

By: /s/ Venkat Balasubramani  
Venkat Balasubramani

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing **Answer to Counterclaim and Affirmative Defenses** was served on Applicant in the following manner, per the prior written agreement of counsel:

**Via Email to:**

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**CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that the foregoing **Answer to Counterclaim and Affirmative Defenses** and **Certificate of Service** is being filed electronically today, November 26, 2010, with the United States Patent and Trademark Office via the Electronic System for Trademark Trial and Appeals.

/s/ Sean M. McChesney  
Sean M. McChesney