

ESTTA Tracking number: **ESTTA1109671**

Filing date: **01/22/2021**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Nest Egg Labs Inc.
Granted to Date of previous extension	01/23/2021
Address	500 W HAMILTON AVENUE, #1641 CAMPBELL, CA 95011 UNITED STATES
Attorney information	RELANI BELOUS BELOUS LAW CORPORATION PO BOX 40095 PASADENA, CA 91114 UNITED STATES Primary Email: Relani@BelousLaw.com 3106861053
Docket Number	NESTOPP2021

**Applicant Information**

Application No.	88746125	Publication date	11/24/2020
Opposition Filing Date	01/22/2021	Opposition Period Ends	01/23/2021
Applicant	Peeknest Inc 2967 DUNDAS ST. W. #667 TORONTO, ONTARIO, M6P1Z2 CANADA		

**Goods/Services Affected by Opposition**

Class 009. First Use: 2018/05/14 First Use In Commerce: 2019/06/08 All goods and services in the class are opposed, namely: Function of downloadable software for use in displaying, grouping and organizing images and descriptions of possessions sold as a component of downloadable software in the nature of a mobile application for users to capture images and descriptions in order to catalog, organize, and inventory belongings, goods, service providers, experiences, documents, notes, and media; none of the foregoing relating to home or building automation or smart home or smart building products or services
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	Opposer has common law rights as well.

## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	6236897	Application Date	02/15/2020
Registration Date	01/05/2021	Foreign Priority Date	NONE
Word Mark	NEST EGG		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2011/05/05 First Use In Commerce: 2011/05/05 Downloadable, computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; downloadable computer software that provides web-based access to applications and services through a web operating system or portal interface</p> <p>Class 042. First use: First Use: 2011/05/05 First Use In Commerce: 2011/05/05 Computer programming services; Consulting services in the field of the design of software that models, analyzes organization and inventory of various items; Design and development of computer software for computer software and systems for the hosting of computer website and storage of data; Design and development of market research software tools; Preparation, update, installation and maintenance of computer software; Providing a web site featuring technology that enables users to access platform software specializing in organizing and inventory management of various items; Software as a service (SAAS) services, namely, hosting software for use by others for use in analyzing, measuring, evaluating, and optimizing organization and personal inventory management and data organization</p>		

Attachments	NEST TM Opposition 01-22-2021.pdf(179763 bytes )
Signature	/rbelous/
Name	RELANI BELOUS
Date	01/22/2021

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

NEST EGG LABS, INC.,

Opposer,

v.

PEEKNEST, INC.,

Applicant.

Opposition Proceeding No. \_\_\_\_\_

Application Serial No.: 88/746,125

Mark: NEST

**NOTICE OF OPPOSITION**

The opposer, NEST EGG LABS, INC. ("Opposer"), a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the above-referenced mark, and hereby opposes the same. As grounds for this Opposition, Opposer respectfully alleges, as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, having an address at 500 S. Dupont Hwy, c/o Incorporating Services Ltd., Kent, Delaware 19901.

2. Since early 2011, Opposer has established valid and enforceable common law rights in the NEST EGG trademark and service mark by virtue of its commercial use of the NEST EGG mark in connection with software products and application services in the personal inventory, consumer, organizational and small business application marketplaces, on, and, in connection with such extensive commercial use, Opposer's NEST EGG brand of products and services have met with great success and realized extensive recognition throughout the United

States and internationally, including being featured in a variety of large media and press outlets such as, Yahoo, CNBC and *The New York Times* (collectively, the “Common Law Rights”).

Opposer’s software is designed with the most simplified data entry, intuitive layouts and super-easy data organization that saves time and helps people and organizations stay on top of planning and logistics.

3. Opposer is the exclusive owner in the United States of the following federally registered NEST EGG mark, and of the Common Law Rights therein (collectively, the “NEST EGG Mark”):

Registration Number	Registration Date	Mark
6,236,897	January 5, 2021	NEST EGG

4. U.S. Registration No. 6,236,897 for the NEST EGG Mark is valid and enforceable and covers “Downloadable, computer application software for mobile phones, namely, software for assisting with the collection of data, organization and creating an inventory of items; downloadable computer software that provides web-based access to applications and services through a web operating system or portal interface” in International Class 009 and “Computer programming services; Consulting services in the field of the design of software that models, analyzes organization and inventory of various items; Design and development of computer software for computer software and systems for the hosting of computer website and storage of data; Design and development of market research software tools; Preparation, update, installation and maintenance of computer software; Providing a web site featuring technology that enables users to access platform software specializing in organizing and

inventory management of various items; Software as a service (SAAS) services, namely, hosting software for use by others for use in analyzing, measuring, evaluating, and optimizing organization and personal inventory management and data organization” in International Class 42 (collectively, along with the Common Law Rights, the “Goods and Services”), which Opposer has been continuously using the NEST EGG Mark on and/or in connection with since at least as early as May 5, 2011.

5. The mark subject to this Opposition is NEST, Serial No. 88/746,125 (the “Opposed Mark”) for “Function of downloadable software for use in displaying, grouping and organizing images and descriptions of possessions sold as a component of downloadable software in the nature of a mobile application for users to capture images and descriptions in order to catalog, organize, and inventory belongings, goods, service providers, experiences, documents, notes, and media; none of the foregoing relating to home or building automation or smart home or smart building products or services” in International Class 009 (collectively, the “Opposed Goods/Services”).

6. Applicant filed United States Application Serial No. 88/746,125 with the U.S. Patent and Trademark Office on or about January 3, 2020, based upon an alleged first “use-in-commerce” date of June 8, 2019.

7. Because Opposer first used the NEST EGG Mark on, and/or in connection with, the Goods and Services before Applicant alleges to have made any commercial use of the Opposed Mark, and such use has been continuous, Opposer has priority of use.

8. By virtue of Opposer’s continuous, extensive and exclusive use, marketing and sale of the Goods and Services under the NEST EGG Mark, the NEST EGG Mark has come to be

recognized by the relevant public as identifying the Goods and Services as having their origin, or otherwise associated exclusively, with Opposer. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's claimed mark, and incorrectly will give color of exclusive statutory rights to Applicant for such claimed mark, in violation and derogation of Opposer's prior and superior rights.

9. The Opposed Mark for the Opposed Goods/Services is confusingly similar, *inter alia*, in appearance, sound, meaning and overall commercial impression to the NEST EGG Mark. Any registration in favor of Applicant would be a source of damage and injury to Opposer.

10. The Opposed Goods/Services identified in the application to register the Opposed Mark are identical to, overlapping with and/or commercially related to the Goods and Services for which Opposer uses the NEST EGG Mark and/or are in the natural scope of expansion of the Goods and Services for which Opposer uses the NEST EGG Mark.

11. Opposer has not authorized or consented to Applicant's use or application to register the Opposed Mark.

12. Accordingly, it is likely that consumers will mistakenly believe that the Opposed Mark is connected to or associated with Opposer and/or the Goods and Services.

13. The registration of the Opposed Mark would be inconsistent with Opposer's rights in the NEST EGG Mark, will cause damage to Opposer and would destroy Opposer's investment and goodwill in the NEST EGG Mark.

14. Registration of the Opposed Mark is likely to cause confusion, cause mistake or to deceive the public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052 (d).

15. By reason of the foregoing, Opposer is likely to be harmed by registration of the Opposed Mark.


WHEREFORE, Opposer respectfully prays that registration of the Opposed Mark be denied and/or that the Honorable Trademark Trial and Appeal Board grant to Opposer such other and/or further relief as it may deem just and proper. The opposition fee in the amount of \$600 for a notice of opposition in one class is filed with this Notice of Opposition.

Please recognize Relani Belous, and the law firm of Belous Law Corporation, as the attorney for Opposer in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to Relani Belous at PO Box 40095, Pasadena, CA 91114, email: Relani@Belouslaw.com.

Dated: January 22, 2021

Respectfully submitted,

NEST EGG LABS, INC.

By:  \_\_\_\_\_  
Belous Law Corporation  
*Attorney for Opposer*