

ESTTA Tracking number: **ESTTA1230838**

Filing date: **08/23/2022**

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	CVB INC
Granted to date of previous extension	08/27/2022
Address	1525 WEST 2960 SOUTH LOGAN, UT 84321 UNITED STATES

Correspondence information	SCOTT E ROGERS ULMER & BERNE LLP 500 WEST MADISON ST. SUITE 3600 CHICAGO, IL 60661 UNITED STATES Primary email: srogers@ulmer.com Secondary email(s): jcsmith@ulmer.com 312-658-6530
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**Applicant information**

Application no.	90893285	Publication date	06/28/2022
Opposition filing date	08/23/2022	Opposition period ends	08/27/2022
Applicant	OMK Trading 29 DOULTON STREET CALAMVALE, QUEENSLAND, 4116 AUSTRALIA		

**Goods/services affected by opposition**

Class 020. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Pillows; Bed pillows
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**Grounds for opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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**Mark cited by opposer as basis for opposition**

U.S. registration no.	5582416	Application date	09/11/2017
Register	Principal		
Registration date	10/09/2018	Foreign priority date	NONE

Word mark	REST HAVEN
Design mark	
Description of mark	NONE
Goods/services	Class 020. First use: First Use: Feb 1, 2018 First Use In Commerce: Feb 1, 2018 Adjustable beds; Bed bases; Mattress toppers; Mattresses; Pillows

Attachments	Notice of Opposition NESTAVEN.pdf(144449 bytes )
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Signature	/srogers/
Name	Scott E Rogers
Date	08/23/2022

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

In the Matter of U.S. Application Serial No. 90/893,285  
For the mark: NESTAVEN  
Application Filing Date: August 20, 2021

CVB INC.,	)	
	)	
	)	Opposition Proceeding No. _____
	)	
v.	)	
	)	
OMK Trading	)	
	)	
	)	
	)	
	)	
	)	

**NOTICE OF OPPOSITION**

Opposer, CVB Inc. (“Opposer”), a Utah corporation with a principal place of business at 1525 W 2960 S, Logan, Utah 84321, believes that it will be damaged by registration of the trademark NESTAVEN (the “NESTAVEN Mark”), as set forth in Application Serial No. 90/893,285, filed by OMK Trading (“Applicant”), with an address of 29 Doulton Street, Calamvale, Queensland, Australia 4116. Opposer hereby opposes registration of the NESTAVEN Mark pursuant to Section 13(a) of Lanham Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1063(a).

As grounds for the opposition, Opposer alleges priority, likelihood of confusion, and specifically alleges that:

1. Opposer is a Utah corporation based in Utah. Opposer offers a wide array of pillows and bedding products and intends to use its mark on additional bed and household related goods and provides these products under the mark “REST HAVEN.”

2. Opposer is the owner of valid and subsisting United States Registration No. 87/978,317 registered on the Principal Register in the United States Patent and Trademark Office (“USPTO”) for the trademark REST HAVEN for use in connection with “Adjustable beds; Bed bases; Mattress toppers; Mattresses; Pillows” in International Class 20, (the “First REST HAVEN Mark”).

3. Opposer is the owner of an additional registered REST HAVEN mark, United States Registration No. 87/978,475, registered on the Principal Register in the United States Patent and Trademark Office (“USPTO”) for the trademark REST HAVEN BEDDING, stylized as



, for use in connection with “Adjustable beds; Bed bases; Mattress toppers; Mattresses; Pillows” in International Class 20, (the “Second REST HAVEN Mark”).

4. Opposer is the owner of an additional registered REST HAVEN mark, United States Registration No. 87/603,190, registered on the Principal Register in the United States Patent and Trademark Office (“USPTO”) for the trademark REST HAVEN for use in connection with “Bed sheets; Comforters; Mattress covers” in International Class 24, (the “Third REST HAVEN Mark”).

5. Opposer is the owner of an additional applied for REST HAVEN mark United States Serial No. 90/471,961, applied for on the Principal Register in the United States Patent and Trademark Office (“USPTO”) for the trademark REST HAVEN for use in connection with “On-line retail store services featuring adjustable beds, bed bases, bed headboards, beds, furniture, mattress toppers, mattresses, pillows and bed linens” in International Class 35 (the “Applied-For

REST HAVEN Mark”) (together with the First REST HAVEN Mark, Second REST HAVEN Mark, and Third REST HAVEN Mark, the “REST HAVEN Marks”).

6. The REST HAVEN Marks are valid, have not been abandoned by Opposer, and are in full force and effect.

7. Since at least as early as February 1, 2018, Opposer has been, and is now, using the First REST HAVEN Mark in interstate commerce in connection with the sale, offer for sale, advertising, marketing, and promotion of its various pillow and bedding products.

8. Opposer has built up significant consumer recognition of the REST HAVEN Marks through its substantial time, money, and resources in advertising, marketing, and promoting the goods sold under the REST HAVEN Marks. As such, Opposer’s REST HAVEN Marks have come to serve as a unique identifier of Opposer’s pillows, mattresses, beds, sheets, and other bedding goods. Opposer’s REST HAVEN Marks evidence the wide recognition of the term “REST HAVEN” with the related goods of pillows, mattresses, bedding, sheets, and other bedding goods. Thus, consumers have come to recognize the use of the term “REST HAVEN” to also serve as a unique identifier of Opposer’s pillows, mattresses, beds, sheets, and other bedding goods.

9. As a result of Opposer’s widespread, continuous, and exclusive use of the REST HAVEN Marks in interstate commerce, the REST HAVEN Marks have acquired extensive and valuable goodwill and are recognized as identifying high quality furniture goods that have their origin with Opposer. Opposer’s REST HAVEN Marks are distinctive to both the consuming public and Opposer’s trade.

10. On August 20, 2021, Applicant filed an application to register the NESTAVEN Mark, under Application Serial No. 90/893,285, for “Pillows; Bed pillows” in International Class 20.

11. Applicant is not affiliated with or sponsored by Opposer, and has never been authorized by Opposer, to use the REST HAVEN Marks, or any of Opposer's other marks, in any form.

12. Opposer's REST HAVEN Marks were well-established long before the filing of Applicant's application for the NESTAVEN Mark, and any other date on which Applicant may rely on for purposes of priority, including at the time that Applicant may have first used its mark and at the time that Applicant filed the subject application.

13. Applicant's proposed NESTAVEN Mark is confusingly similar to Opposer's REST HAVEN Marks. The dominant portions of both marks are almost identical phonetically. The words "REST" and "NEST" also have a similar connotation and feeling because, in its ordinary use, the word "NEST" refers to the place where a bird or other creature goes to rest. Additionally, when NESTAVEN is pronounced fully, the "AVEN" portion sounds phonetically identical to "HAVEN." The differences between "REST" and "NEST" and "AVEN" and "HAVEN", are not sufficient to obviate consumer confusion with Opposer's REST HAVEN Marks.

14. The goods identified in Applicant's NESTAVEN Mark application, i.e., "Pillows" and "Bed pillows" directly overlap with the goods "Pillows" and other bedding products Opposer offers under its registered REST HAVEN Marks.

#### **GROUND FOR OPPOSITION -- LIKELIHOOD OF CONFUSION**

15. The proposed NESTAVEN Mark is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used and registered REST HAVEN Marks as to be likely, when used in connection with the alleged pillow and bed pillow related goods of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

16. As competing online retailers for pillow and bedding goods, Opposer and Applicant are in similar trade channels and have similar classes of purchasers of the above goods who encounter or will encounter these marks in similar online, brick and mortar, retail, and/or tradeshow environments.

17. In view of the similarity of the respective marks and the overlapping goods offered for sale by Opposer and Applicant, Applicant's NESTAVEN Mark so resembles Opposer's REST HAVEN Marks as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods originate or are associated with, or are approved, endorsed, affiliated, authorized, licensed, or sponsored by, Opposer.

18. Opposer will be harmed by registration of Applicant's NESTAVEN Mark.

WHEREFORE, Opposer prays that Application No. 90/893,285 for the NESTAVEN Mark be refused registration and, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Dated: August 23, 2022

Respectfully submitted,

By: /Scott E. Rogers/  
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