

ESTTA Tracking number: **ESTTA256079**

Filing date: **12/18/2008**

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	Four Paws Products, Ltd.		
Entity	Corporation	Citizenship	United States
Address	50 Wireless Boulevard Hauppauge, NY 11788 UNITED STATES		

Attorney information	Amy J. Benjamin Darby & Darby PC 7 WORLD TRADE CENTER 250 GREENWICH STREET NEW YORK, NY 10007-0042 UNITED STATES tmdocket@darbylaw.com, abenjamin@darbylaw.com, ssaxon@darbylaw.com Phone:212.527.7700		
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**Registration Subject to Cancellation**

Registration No	3121416	Registration date	07/25/2006
Registrant	Perry-Dale, Nancy P.O. Box 653 Gresham, OR 97030 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 018. First Use: 2005/08/00 First Use In Commerce: 2005/08/00 All goods and services in the class are cancelled, namely: pet blankets and pet clothing, namely, pet jackets and pet sweatshirts
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**Grounds for Cancellation**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	1420727	Application Date	06/11/1985
Registration Date	12/16/1986	Foreign Priority Date	NONE
Word Mark	FOUR PAWS		
Design Mark			
Description of Mark	NONE		


Goods/Services	<p>Class 003. First use: First Use: 1977/06/00 First Use In Commerce: 1977/06/00 STAIN REMOVER</p> <p>Class 005. First use: First Use: 1976/04/00 First Use In Commerce: 1976/04/00 PET CARE PRODUCTS, NAMELY, TREE AND SHRUB REPELLANT, SANITARY PANTS, SANITARY PADS, HAIR BALL REMOVER, CATNIP SPRAY, PUPPY HOUSEBREAKING SUBSTANCE, STYPTIC PREPARATIONS, AND ANTI-MATING SPRAY</p> <p>Class 006. First use: First Use: 1981/03/00 First Use In Commerce: 1981/03/00 [ NON-MECHANICAL METAL SECURITY SIGNS ]</p> <p>Class 008. First use: First Use: 1978/02/00 First Use In Commerce: 1978/02/00 METAL SCOOPER FOR PET WASTES</p> <p>Class 010. First use: First Use: 1979/09/00 First Use In Commerce: 1979/09/00 KITS USED FOR NURSING PETS</p>
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U.S. Registration No.	1353554	Application Date	11/19/1976
Registration Date	08/13/1985	Foreign Priority Date	NONE
Word Mark	FOUR PAWS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1970/04/15 First Use In Commerce: 1970/04/15 PET COLOGNE, PET SHAMPOO, PET SHAMPOO AND DEODORANT, TANGLE REMOVER FOR PET FUR, AND SKIN AND COAT CONDITIONER FOR PETS</p> <p>Class 005. First use: First Use: 1972/01/01 First Use In Commerce: 1970/04/15 PET DEODORANT, DIETARY FOOD SUPPLEMENT FOR ANIMALS, AND PET REPELLANT</p> <p>Class 018. First use: First Use: 1972/01/01 First Use In Commerce: 1970/04/15 PET HOUSE BREAKING PADS</p> <p>Class 022. First use: First Use: 1970/04/15 First Use In Commerce: 1970/04/15 DISPOSABLE LITTER PAN LINERS</p>		

U.S. Registration No.	925222	Application Date	05/27/1970
Registration Date	12/07/1971	Foreign Priority Date	NONE
Word Mark	FOUR PAWS		
Design Mark			


Description of Mark	NONE
Goods/Services	Class U051 (International Class 003). First use: First Use: 1970/04/07 First Use In Commerce: 1970/04/15 CANINE COLOGNE

U.S. Registration No.	1419662	Application Date	06/11/1985
Registration Date	12/09/1986	Foreign Priority Date	NONE

Word Mark	FOUR PAWS
Design Mark	

Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 1972/11/00 First Use In Commerce: 1972/11/00 PET PRODUCTS, NAMELY SHAMPOO, TANGLE REMOVER, COAT AND SKIN CONDITIONER AND STAIN REMOVER</p> <p>Class 005. First use: First Use: 1972/11/00 First Use In Commerce: 1972/11/00 PET CARE PRODUCTS, NAMELY, PET REPELLENT, TREE AND SHRUB REPELLENT, INSECT REPELLENT, SANITARY PADS, SANITARY PANTS, PADS FOR COLLECTION OF PET URINE, PUPPY HOUSEBREAKING SUBSTANCE, HAIR BALL REMOVER, CATNIP SPRAY, STYPTIC PREPARATIONS AND DIETARY FOOD SUPPLEMENT AND BONE MEAL FOR PETS</p> <p>Class 008. First use: First Use: 1978/02/00 First Use In Commerce: 1978/02/00 SCOOPERS FOR PET WASTES</p> <p>Class 010. First use: First Use: 1979/09/00 First Use In Commerce: 1979/09/00 PET NURSER KITS</p>

U.S. Application No.	77426525	Application Date	03/19/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FOUR PAWS		

Design Mark	
Description of Mark	The mark consists of an oval design which encircles the terms "FOUR PAWS" and animal paw prints.
Goods/Services	<p>Class 008. First use: Pet grooming products, namely, scissors, non-electric trimmers and nail clippers</p> <p>Class 010. First use: Kits used for nursing pets comprised of bottle, cap and nipples</p> <p>Class 011. First use: Heaters for domestic pet tanks and aquariums</p> <p>Class 020. First use: Beds for household pets; pill dispensers sold empty</p> <p>Class 021. First use: Metal scoops for the disposal of pet wastes; litter box accessory, namely, pet litter scoops; hand tool for removing loose hair from the coats of domestic animals, namely, pet brushes</p>

U.S. Application No.	77426511	Application Date	03/19/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FOUR PAWS		
Design Mark			
Description of Mark	The mark consists of an oval design which encircles the terms FOUR PAWS and animal paw prints.		
Goods/Services	<p>Class 001. First use: First Use: 2007/08/00 First Use In Commerce: 2007/08/00 Chemicals used for housebreaking pets</p> <p>Class 003. First use: First Use: 2006/10/00 First Use In Commerce: 2006/10/00 Pet products, namely; breath freshener for pets; non-medicated, non-veterinary pet grooming preparation, namely, a rabbit shampoo and deodorizer; tear stain remover for pets; bird bath and non-medicated shampoo; stain and odor remover; pet cologne; non-medicated pet shampoo and deodorant; tangle</p>		

	<p>remover for pet fur; skin and coat conditioner for pets; non-medicated wax material used on dog's paws to protect and condition dog's paws all year round from ice, snow, salt and hot pavement</p> <p>Class 005. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 Pet products, namely; medicated pet shampoo and deodorizer for use with ferrets; substance applied to body parts of a pet to discourage oral contact; tree and shrub repellent; sanitary pants; sanitary pads; hair ball removers; catnip spray; puppy housebreaking substance; styptic preparations; anti-mating spray; pet deodorant; dietary food supplement for animals; pet repellent and natural repellent for animals; insect repellent; pads for collection of pet urine; puppy housebreaking substance; bone meal for pets; medication for cats for the elimination of hair balls; vitamin supplement spray for reptiles; housebreaking pads for dogs; medicated anti-itch spray for use on pets; medicated flea and tick shampoo; pharmaceutical for the treatment of coprophagia</p> <p>Class 006. First use: First Use: 2007/03/00 First Use In Commerce: 2007/03/00 Pet restraining devices, namely metal stakes with dog tie-out cable; portable tie up cable for dogs</p> <p>Class 016. First use: First Use: 2007/00/00 First Use In Commerce: 2007/00/00 Pet scoop up bags, namely, plastic bags used to retrieve dog waste; disposable housebreaking pads for pets; disposable housebreaking pads for training puppies</p> <p>Class 018. First use: First Use: 2006/00/00 First Use In Commerce: 2006/00/00 Anti-barking muzzle for dogs; muzzles; sanitary products for pets, namely, protective elastic pants for animals; pet house breaking pads; leashes, collars; harnesses, chokes and leads for pets; pet products, namely, bedding for reptiles; cat scratching posts; reflective cord reels for tethering pets; halters for domesticated animals; pet house breaking pads; pet products in the nature of restraining devices, namely, tie out stakes and tie out chains; pet products, namely, leashes, dog collars and animal leashes made of chains; diapers for dogs and disposable pet diapers; housebreaking pads for dogs; diaper garment pads</p> <p>Class 020. First use: First Use: 2006/00/00 First Use In Commerce: 2006/00/00 Cat scratching post with catnip sold as a unit</p> <p>Class 021. First use: First Use: 2007/03/00 First Use In Commerce: 2007/03/00 Pet grooming aids, namely, brushes and combs; pet food dispenser; pet cages; pet care products, namely, pet brushes for removing pet hair from carpets, furniture, clothing, auto interiors and pet beds; rake and pan sold as a unit for picking up and disposing of pet waste; pet waste retrieval scoops</p> <p>Class 025. First use: First Use: 2007/00/00 First Use In Commerce: 2007/00/00 Washable, re-usable textile garment for use over disposable pet diapers</p> <p>Class 028. First use: First Use: 2006/00/00 First Use In Commerce: 2006/00/00 Cat toys; catnip balls; dog toys</p> <p>Class 031. First use: First Use: 2007/06/00 First Use In Commerce: 2007/06/00 Edible plants for cats; wood chips and shavings used for lining reptiles tanks; grass seed used to repair brown spots on lawns damaged by animal urine</p>
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Attachments	<p>72361055#TMSN.gif ( 1 page )( bytes )  73542458#TMSN.gif ( 1 page )( bytes )  77426525#TMSN.jpeg ( 1 page )( bytes )  77426511#TMSN.jpeg ( 1 page )( bytes )  PETITION TO CANCEL.PDF ( 7 pages )(273094 bytes )</p>
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## 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	/amy j. benjamin/
Name	Amy J. Benjamin
Date	12/18/2008

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

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FOUR PAWS PRODUCTS, LTD.,	:	
	:	
Petitioner,	:	
	:	Cancellation No. _____
v.	:	(Reg. No. 3,121,416)
	:	
NANCY PERRY-DALE,	:	
	:	
Respondent.	:	
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**PETITION TO CANCEL**

Petitioner, Four Paws Products, Ltd. (“Four Paws”), a corporation organized and existing under the laws of the State of New York, with a place of business at 50 Wireless Boulevard, Hauppauge, NY 11788, through its undersigned attorneys, believes it is being damaged by Registration No. 3,121,416 and hereby petitions to cancel the same.

The grounds for cancellation are:

1. Four Paws is one of the leading manufacturers and wholesale distributors of pet products in the country.
  
2. Since at least as early as 1970, Four Paws has manufactured and sold in interstate commerce, a wide variety of products for dogs, cats, birds, reptiles and other small animals under the mark FOUR PAWS, including but not limited to housebreaking pads, grooming products, such as brushes, combs, and trimmers, collars and leashes, vitamin supplements, pet shampoo, cologne, breath freshener and deodorizer, litter scoops, food dispensers, catnip, pet toys, and pet beds.

3. Four Paws is the owner of U.S. Registration No. 1,420,727 for the mark FOUR PAWS for “stain remover; pet care products, namely, tree and shrub repellent, sanitary pants, sanitary pads, hair ball remover, catnip spray, puppy housebreaking substance, styptic preparations and anti-mating spray.” Registration No. 1,420,727 is valid, subsisting and incontestable.

4. Four Paws is also the owner of U.S. Registration No. 1,353,554 for the mark FOUR PAWS for “pet cologne, pet shampoo, pet shampoo and deodorant, tangle remover for pet fur, and skin and coat conditioner for pets; pet deodorant, dietary food supplement for animals, and pet repellent; and pet housebreaking pads.” Registration No. 1,353,554 is valid, subsisting and incontestable.

5. Four Paws is also the owner of U.S. Registration No. 925,222 for the mark FOUR PAWS and Design for “canine cologne.” Registration No. 925,222 is valid, subsisting and incontestable.

6. Four Paws is also the owner of U.S. Registration No. 1,419,662 for the mark FOUR PAWS and Design for “pet products, namely, shampoo, tangle remover, coat and skin conditioner and stain remover; pet care products, namely, pet repellent, tree and shrub repellent, insect repellent, sanitary pads, sanitary pants, pads for collection of pet urine, puppy housebreaking substance, hair ball remover, catnip spray, styptic preparations and dietary food supplement and bone meal for pets; scoopers for pet wastes; pet nurser kits.” Registration No. 1,419,662 is valid and subsisting and incontestable.

7. Four Paws is also the owner of pending application Serial No. 77/426,525 for the mark FOUR PAWS and Design for “pet grooming products, namely, scissors, non-electric trimmers and nail clippers; kits used for nursing pets comprised of bottle, cap and nipples;



heaters for domestic pet tanks and aquariums; beds for household pets; pill dispensers sold empty; metal scoops for the disposal of pet wastes; litter box accessory, namely, pet litter scoops; hand tool for removing loose hair from the coats of domestic animals, namely, pet brushes.”

8. Four Paws is also the owner of pending application Serial No. 77/426,511 for the mark FOUR PAWS and Design for “chemicals used for housebreaking pets; pet products, namely, breath freshener for pets; non-medicated, non-veterinary pet grooming preparation, namely, a rabbit shampoo and deodorizer; tear stain remover for pets; bird bath and non-medicated shampoo; stain and odor remover; pet cologne; non-medicated pet shampoo and deodorant; tangle remover for pet fur; skin and coat conditioner for pets; non-medicated wax material used on dog's paws to protect and condition dog's paws all year round from ice, snow, salt and hot pavement; pet products, namely; medicated pet shampoo and deodorizer for use with ferrets; substance applied to body parts of a pet to discourage oral contact; tree and shrub repellent; sanitary pants; sanitary pads; hair ball removers; catnip spray; puppy housebreaking substance; styptic preparations; anti-mating spray; pet deodorant; dietary food supplement for animals; pet repellent and natural repellent for animals; insect repellent; pads for collection of pet urine; puppy housebreaking substance; bone meal for pets; medication for cats for the elimination of hair balls; vitamin supplement spray for reptiles; housebreaking pads for dogs; medicated anti-itch spray for use on pets; medicated flea and tick shampoo; pharmaceutical for the treatment of coprophagia; pet restraining devices, namely metal stakes with dog tie-out cable; portable tie up cable for dogs; pet scoop up bags, namely, plastic bags used to retrieve dog waste; disposable housebreaking pads for pets; disposable housebreaking pads for training puppies; anti-barking muzzle for dogs; muzzles; sanitary products for pets, namely, protective elastic pants for animals; pet house breaking pads; leashes, collars; harnesses, chokes and leads for pets;

pet products, namely, bedding for reptiles; cat scratching posts; reflective cord reels for tethering pets; halters for domesticated animals; pet house breaking pads; pet products in the nature of restraining devices, namely, tie out stakes and tie out chains; pet products, namely, leashes, dog collars and animal leashes made of chains; diapers for dogs and disposable pet diapers; housebreaking pads for dogs; diaper garment pads; cat scratching post with catnip sold as a unit; pet grooming aids, namely, brushes and combs; pet food dispenser; pet cages; pet care products, namely, pet brushes for removing pet hair from carpets, furniture, clothing, auto interiors and pet beds; rake and pan sold as a unit for picking up and disposing of pet waste; pet waste retrieval scoops; washable, re-usable textile garment for use over disposable pet diapers; cat toys; catnip balls; dog toys; edible plants for cats; wood chips and shavings used for lining reptiles tanks; grass seed used to repair brown spots on lawns damaged by animal urine.”

9. The FOUR PAWS® trademark has been extensively promoted by Four Paws. Advertising and packaging for all of Four Paws’ goods prominently feature the FOUR PAWS® trademark.

10. Four Paws’ goods are sold nationwide in major pet retail stores such as Petco, PetLand Discounts and Pet Supermarket, in smaller, local pet stores and over the Internet. Four Paws also maintains a website with product information at [www.fourpaws.com](http://www.fourpaws.com).

11. As a result of Four Paws’ long and continuous use of its FOUR PAWS® trademark, its extensive sales of pet products and Four Paws’ efforts to promote the FOUR PAWS® mark, the FOUR PAWS® trademark has developed significant secondary meaning and good will, such that members of the trade and the public come to associate goods bearing the FOUR PAWS® trademark as emanating exclusively from Four Paws, and the FOUR PAWS® trademark has become famous.

12. Upon information and belief, Respondent Nancy Perry-Dale is an individual residing in Gresham, Oregon.

13. Upon information and belief, Respondent sells pet products such as pet blankets and pet clothing.

14. Upon information and belief, Respondent is the owner of U.S. Registration No. 3,121,416 for the mark FOUR PAWS ONLY for “pet blankets and pet clothing, namely, pet jackets and pet sweatshirts” (“Respondent’s Goods”).

15. Upon information and belief, Respondent began using the mark FOUR PAWS ONLY on pet products in or about August 2005, more than thirty-five (35) years after Four Paws’ first use of its FOUR PAWS® trademark on pet products.

16. On June 25, 2008 an Office Action issued in connection with Four Paws’ pending application for FOUR PAWS and Design, Serial No. 77/426,511, in which Respondent’s FOUR PAWS ONLY registration was cited as a basis for refusing registration of FOUR PAWS and Design in Classes 18 and 25 under Section 2(d) of the Trademark Act. Prior to the issuance of the Office Action, Four Paws was unaware of Respondent, her alleged use of FOUR PAWS ONLY and Registration No. 3,121,416.

17. Upon information and belief, when used in connection with Respondent’s Goods, FOUR PAWS ONLY is likely to cause confusion with Four Paws FOUR PAWS® trademark in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) and, therefore, is subject to cancellation.

18. Upon information and belief, the continued registration of FOUR PAWS ONLY would bestow upon Respondent the right to use a mark which confuses consumers and the trade

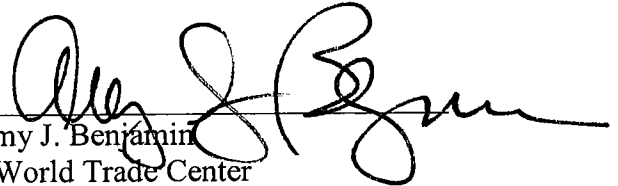
into mistakenly believing that Respondent's Goods emanate from Four Paws, or are associated or approved by Four Paws, when in fact they are not.

19. Four Paws has been and will be damaged by the continued registration of FOUR PAWS ONLY for Respondent's Goods.

WHEREFORE, Petitioner respectfully requests that this Petition to Cancel be sustained and that Registration No. 3,121,416 be cancelled in its entirety.

Respectfully submitted,

DARBY & DARBY P.C.



Amy J. Benjamin  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Tel.: 212-527-7700


Dated: December 18, 2008

*Attorneys for Petitioner  
Four Paws Products, Ltd.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing PETITION TO CANCEL was served via first class mail, postage prepaid, this 18<sup>th</sup> day of December 2008 upon Respondent at the following address:

Nancy Perry-Dale  
P.O. Box 653  
Gresham, OR 97030

  
Sheila Saxon