

ESTTA Tracking number: **ESTTA507891**

Filing date: **11/28/2012**

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	Petco Animal Supplies Stores, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	9125 Rehco Road San Diego, CA 92121 UNITED STATES		

Attorney information	Michelle L. Mehok Pillsbury Winthrop Shaw Pittman LLP 12255 El Camino Real, Suite 300 San Diego, CA 92130 UNITED STATES sdipdocket@pillsburylaw.com, michelle.mehok@pillsburylaw.com		
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### Registration Subject to Cancellation

Registration No	1277293	Registration date	05/08/1984
Registrant	PRO-PET, L.L.C. 1400 MCKINLEY ROAD P.O. BOX 330 ST. MARYS, OH 45885 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 031. First Use: 1982/08/02 First Use In Commerce: 1982/08/02 All goods and services in the class are cancelled, namely: Pet Food
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### Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	ProPetPetitionforCancellation.pdf ( 7 pages )(290068 bytes )
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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	/michelle mehok/
Name	Michelle L. Mehok
Date	11/28/2012

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

_____	)	
Petco Animal Supplies Stores, Inc.,	)	Cancellation No. _____
	)	
Petitioner,	)	<u>PETITION FOR CANCELLATION</u>
	)	
vs.	)	
	)	
Pro-Pet, L.L.C.,	)	Trademark: BUSTER
	)	
Registrant.	)	Registration No.: 1277293
	)	
_____	)	

Petitioner Petco Animal Supplies Stores, Inc. is a Delaware corporation, having a place of business at 9125 Rehco Road, San Diego, California 92121, is a specialty pet retailer of pet food, pet supplies and companion animals and having over 1,000 locations across the United States (hereinafter, "Petco"). Petco believes that it is or will be damaged by the registration of the mark in Registration No. 1277293, owned by Pro-Pet L.L.C., ("Registrant"), having a place of business at 1400 McKinley Road, P.O. Box 330, St. Marys, Ohio 45885, and hereby petitions to cancel the registration of said mark on the following grounds.

**The grounds for the cancellation are as follows:**

1. Petco is the owner of United States Trademark Application Serial Number 85592614 for the mark "BUSTER" sought to be registered in connection with retail and online pet store services in the fields of pet foods, pet supplies, pet toys and pet products; retail services in the field of animal and pet supplies, in Class 35 (hereinafter "Petco's Mark").

2. Petco has used the BUSTER trademark in connection with retail and online pet store services in the fields of pet foods, pet supplies, pet toys and pet products; retail services in the field of animal and pet supplies since at least November 3, 2010, as stated in United States Trademark Application Serial Number 85592614.

3. Registrant has registered the mark BUSTER, United States Trademark Registration No. 1277293, filed on September 3, 1982, and registered on May 8, 1984 for “pet food” in Class 31 (“Registrant’s Mark”).

4. Petco’s Mark has been refused registration by the United States Patent and Trademark Office on the grounds that the Petco’s Mark is likely to be confused with the Registrant’s Mark.

5. Upon information and belief, Registrant is not using the Registrant’s Mark in commerce in the United States for the goods set forth in the Registration.

6. Registrant’s Mark is not listed as one of Registrant’s brands on the company’s website (See Exhibit A).

7. Upon information and belief, Registrant has no intention to use and/or resume use of the Registrant’s Mark in the United States for the goods set forth in the Registration.

8. Upon information and belief, Registrant has not used the Registrant’s Mark in commerce in the United States for the goods set forth in the Registration for a period of at least three (3) consecutive years.

9. Upon information and belief, Registrant has therefore abandoned any intention to use and/or actual use of the Registrant's Mark in the United States for the goods set forth in the Registration. Accordingly, the Registration is ripe for cancellation.

WHEREFORE, Petco is likely to be damaged by the continued existence of the Registration, and the Board should sustain this petition for cancellation and Registration No. 1277293, should be cancelled.

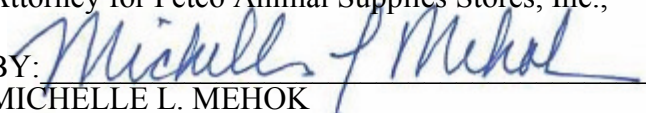
The official fee is submitted herewith. Please charge any missing fee to Account No. 033975 Order No. 044157-0000160.

Date: November 28, 2012

Respectfully submitted,

Attorney for Petco Animal Supplies Stores, Inc.,

BY:



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**EXHIBIT A**

# [Propet \(/index.php\)](/index.php)

## Our Brands



[\(#\)](#)



[\(#\)](#)



[\(#\)](#)



[\(#\)](#)



[\(#\)](#)



[\(#\)](#)



[Learn more about Pro-Pet > \(/brands/propet\)](/brands/propet)

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- Dog Biscuits (#)

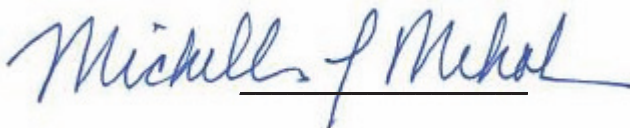
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Petitioner's foregoing **PETITION FOR CANCELATION** was served on Registrant by mailing said copy on November 28, 2012 via First Class Mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Amanda Pecchioni Thompson  
BARNES & THORNBURG  
11 S Meridian Street  
Indianapolis, Indiana 46204  
UNITED STATES

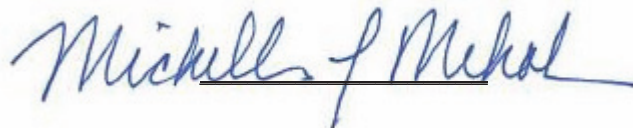
Executed: November 28, 2012

A handwritten signature in blue ink that reads "Mitchell J. Mehal". The signature is written in a cursive style and is positioned to the right of the "Executed" date.

CERTIFICATE OF FILING

I hereby certify that an electronic copy of Petitioner's foregoing **PETITION FOR CANCELATION** was electronically filed on November 28, 2012 in the United States Patent and Trademark Office Before the Trademark Trial and Appeal Board Electronic Filing System.

Executed: November 28, 2012

A handwritten signature in blue ink that reads "Mitchell J. Mehal". The signature is written in a cursive style and is positioned to the right of the "Executed" date.