

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS PET360, INC.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Montgomery, PA</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) See Attachment</p>	<p>DEFENDANTS PETSMD, INC.</p> <p>County of Residence of First Listed Defendant <u>Travis, TX</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width: 100%;"> <tr> <td style="width: 25%;">Citizen of This State</td> <td style="width: 5%;">PTF <input type="checkbox"/> 1</td> <td style="width: 5%;">DEF <input type="checkbox"/> 1</td> <td style="width: 45%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 5%;">PTF <input type="checkbox"/> 4</td> <td style="width: 5%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1051

Brief description of cause: Trademark Infringement

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ _____
 CHECK YES only if demanded in complaint:
PRELIMINARY INJUNCTION
JURY DEMAND:
 Yes
 No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE n/a
 DOCKET NUMBER n/a

DATE 01/31/2011
 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PET360, INC. v. PETSMD, INC.

ATTACHMENT TO CIVIL COVER SHEET

BOX 1(C) – PLAINTIFF’S ATTORNEYS

REGER RIZZO & DARNALL LLP

John J. Barrett, Jr., Esquire
Atty. Id. No.: 16847

Philip W. Fisher, Esquire
Atty. Id. No.: 56264

Daniel L. Fiore, Esquire
Atty. Id. No.: 81303

2929 Arch Street
Cira Centre, 13th Floor
Philadelphia, PA 19104
P: 215-495-6500
F: 215-495-6600

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: PET360, INC.

Address of Defendant: PETSMD, INC.

Place of Accident, Incident or Transaction: MONTGOMERY COUNTY, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [X] No []

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [X]

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [X] All other Federal Question Cases Trademark Infringement (Please specify)

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, DANIEL L. FIORE, counsel of record do hereby certify:
[] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
[X] Relief other than monetary damages is sought.

DATE: 01/31/2011

[Signature of Daniel L. Fiore]
Attorney-at-Law

81303
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 01/31/2011

[Signature of Daniel L. Fiore]
Attorney-at-Law

81803
Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA


CASE MANAGEMENT TRACK DESIGNATION FORM

PET360, INC.,
Plaintiff, : CIVIL ACTION
v. :
PETSMD, INC., :
Defendant. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

<u>01/31/2011</u>	<u>Daniel Fiore</u>	<u></u>
Date	Attorney-at-law	Attorney for Plaintiff
<u>(215) 495-6533</u>	<u>(215) 495-6600</u>	<u>dfiore@regerlaw.com</u>
Telephone	FAX Number	E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PET360, INC. 2250 Hickory Road Plymouth Meeting, PA 19462	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
PETSMD, INC. 6250 Fair Valley Trail Austin, TX 78749	:	
	:	No.
Defendant.	:	

CIVIL ACTION - COMPLAINT

I. THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Pet360, Inc. (“Pet360”) is a Delaware corporation with its principal place of business at 2250 Hickory Road, Plymouth Meeting, Montgomery County, Pennsylvania.

2. Defendant PetsMD, Inc. (“Defendant”) is a Delaware corporation with a principal place of business at 6250 Fair Valley Trail, Austin, Texas.

3. This Court has jurisdiction over the parties and subject matter of this civil action pursuant to 28 U.S.C. §§ 1331 and 1338, in that the action arises in part under the laws of the United States of America, specifically, 15 U.S.C. § 1051, *et seq.*, and supplemental jurisdiction over the claims arising under the laws of the Commonwealth of Pennsylvania pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy.

4. The Court has personal jurisdiction over Defendant because, among other things, Defendant conducts substantial business within this district; because the acts complained of

herein have been directly and specifically intended to cause injury to Pet360 in this district, and because the harm suffered by Pet360 within this district flows directly from such business conducted by Defendant.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 in that a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in this judicial district.

II. THE PET360 MARKS

6. Pet360 is the owner of the address on the internet, known as a Uniform Resource Locator (“URL”), www.petmd.com, through which it provides information to consumers via the Internet regarding health, grooming, breeding and nutrition of animals and pets (the “Website”).

7. Pet360 and its parent corporation, PetFoodDirect, Inc., are one of the industry’s leading Internet providers of pet care products and services.

8. This position was obtained through substantial time, effort, and investment in research and development, and by the acquisition of companies with complementary technologies and intellectual property.

9. As a result of its endeavors, Pet360 has created and owns valuable intellectual property in the form of trademarks, copyrights and trade secrets that together constitute the PETMD brand.

10. Pet360 (and its predecessors) have continually used and advertised PETMD throughout the United States of America since at least 1998.

11. The PETMD brand includes the distinctive and arbitrary marks currently pending registration on the principal register of the United States Patent and Trademark Office in connection with providing, without limitation, downloadable scientific and medical information

regarding pets and animals as follows (collectively the “Marks”):

PETMD	Serial No. 85209224
PETMD AND DESIGN	Serial No. 85209340
PETMD.COM	Accepted for Registration – Number pending. Serial No. 77506598
PETMD ESPANOL	Serial No. 77518364

12. The PETMD brand also includes the rights to the following distinctive and arbitrary related marks (collectively the “Related Marks”) in connection with the same or similar services:

BREEDOPEDIA	Reg. No. 3635233
BECAUSE PETS CAN’T TALK	Reg. No. 3557488
PET360	Serial No. 77932648
PET360 and DESIGN	File Pending

13 As a direct result of Pet360’s efforts the PETMD brand is recognized by consumers throughout the United States of America as one of the leading providers of up to date information on pet health and science.

III. THE INFRINGEMENT

14. Defendant is the registrant of the website URL www.petsmd.com, through which it provides consumers with information related to health, grooming, breeding and nutrition of animals and pets under the “PETSMD” design and standard character marks (the “Infringing Marks”).

15. Defendant’s use of the Infringing Marks in its promotion and advertising of its services constitutes the use in commerce of a colorable imitation, copy and reproduction of Pet 360’s PETMD brand, for the same services.

16. The marks share an identical sight and sound and a strong similarity of meaning.

17. Defendant's use of the Infringing Marks is deceptively and confusingly similar to Pet360's long-standing rights in PETMD.

18. Defendant's services are distributed and sold in the same types of channels of trade and to the same classes of purchasers as Pet360's services.

19. Defendant's use of Infringing Marks is likely to cause confusion, mistake, or deception in the mind of the public.

20. Defendant's infringement constitutes a willful and malicious violation of Pet360's trademark rights, aimed at preventing Pet360 from continuing to build a business around a mark that it has long possessed.

COUNT I – INFRINGEMENT OF REGISTERED MARK

20. Pet360 incorporates by reference the averments set forth in paragraphs 1 through 20 above as though the same were set forth at length herein.

21. Defendant's above averred acts constitute infringement of federally registered service marks in violation of 15 U.S.C. § 1114.

22. Defendant's use of the Infringing Marks in connection with the advertising, use, and/or sale of information related to health, grooming, breeding and nutrition of animals and pets is likely to cause confusion, to cause mistake, and/or to deceive the public regarding the source of such services.

23. Defendant has acted willfully with the knowledge that its activities are intended to cause confusion, to cause mistake, and to deceive, and are attended by circumstances of malice or of a wanton and reckless disregard for Pet360's rights, entitling Pet360 to an award of treble damages and reasonable attorney's fees.

24. Pet360 has sustained irreparable harm to its business, reputation, and goodwill, and, unless Defendant is enjoined and restrained by this Court, Defendant will continue in the activities alleged herein and as a result thereof, Pet360 will continue to sustain irreparable harm to its business, reputation and goodwill.

25. As a direct and proximate result, Pet360 has suffered damage to its business, reputation and goodwill.

WHEREFORE, plaintiff, Pet360, Inc., respectfully requests judgment in its favor and against Defendant as follows:

(i) A preliminary and permanent injunction enjoining Defendant and its licensees, agents, employees and any person or entity acting in concert with them from using the Infringing Marks, www.petsmd.com, or any colorable imitation in any manner whatsoever;

(ii) An order requiring Defendant to deliver up www.petsmd.com, all catalogues, labels, signs, prints, packages, wrappers, receptacles, and advertisements in its possession bearing the Infringing Mark or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same pursuant to 15 U.S.C. § 1118;

(iii) An accounting of and a judgment for the profits and damages to which Pet360 may be entitled;

(v) Treble Damages;

(vi) Punitive damages;

(vii) Attorneys' fees;

(viii) Costs of this action; and

(ix) Such further relief as this Court deems just and proper.

**COUNT II - FALSE REPRESENTATIONS AND FALSE DESIGNATION OF ORIGIN –
SECTION 43(a) LANHAM ACT**

26. Pet360 incorporates by reference the averments set forth in paragraphs 1 through 25 above as though the same were set forth at length herein.

27. Defendant's acts constitute false designation of origin and/or false description in violation of 15 U.S.C. § 1125(a).

28. Defendant's use of the Infringing Marks in connection with the advertising, use, and/or sale of downloadable information related to health, grooming, breeding and nutrition of animals and pets falsely describes or represents to the public the source of the infringing services.

29. Defendant's use of the Infringing Marks is calculated to trade on Pet360's goodwill, deceive the public and pass off Defendant's services as the services of Pet360.

30. Defendant has knowingly caused its services and products to enter into and affect commerce with knowledge of the falsity of such designation of origin and/or description or representation.

31. Upon information and belief, Defendant, by its unfair and improper use of the Infringing Marks, have made profits to which they are not entitled in law or in equity.

32. Pet360 has sustained irreparable harm to its business, reputation, and goodwill, and, unless Defendant is enjoined and restrained by this Court, Defendant will continue in the activities alleged herein and as a result thereof, Pet360 will continue to sustain irreparable harm to its business, reputation and goodwill.

33. Defendant's acts have been willful and/or with a wanton and reckless disregard for Pet360's rights.

34. As a direct and proximate result, Pet360 has suffered damage to its business, reputation and goodwill.

WHEREFORE, plaintiff, Pet360, Inc., respectfully requests judgment in its favor and against Defendant as follows:

(i) A preliminary and permanent injunction enjoining Defendant and its licensees, agents, employees and any person or entity acting in concert with them from using the Infringing Marks, www.petsmd.com, or any colorable imitation in any manner whatsoever;

(ii) An order requiring Defendant to deliver up www.petsmd.com, all catalogues, labels, signs, prints, packages, wrappers, receptacles, and advertisements in its possession bearing the Infringing Mark or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same pursuant to 15 U.S.C. § 1118;

(iii) An accounting of and a judgment for the profits and damages to which Pet360 may be entitled;

(iv) Treble Damages;

(v) Punitive damages;

(vi) Attorneys' fees;

(vii) Costs of this action; and

(viii) Such further relief as this Court deems just and proper.

COUNT III – CYBERSQUATTING IN VIOLATION OF 15 U.S.C. § 1125(d)

35. Pet360 incorporates by reference the averments set forth in paragraphs 1 through 34 above as though the same were set forth at length herein.

36. The domain name “petsmd.com” is confusingly similar to the Marks and domain name owned by Plaintiff.

37. Defendant uses the domain name “petsmd.com” with the bad faith intent to profit from the mark.

38. Defendant uses the domain name for the primary purpose of attracting internet customers to the “petsmd.com” website for commercial gain. Defendant’s sole intent in using the domain name was to seek commercial gain by trading on Plaintiff’s goodwill, by attempting to divert consumers from Plaintiff’s online location, and by creating a likelihood of confusion as to the source, sponsorship, affiliation and endorsement of the website.

39. Upon information and belief, the registrants of the “petsmd.com” domain name seek and at all relevant times have sought to profit from the unauthorized and illegal use of an iteration of the Marks.

40. Plaintiff did not consent to Defendant’s use of the domain name “petsmd.com”.

41. Defendant will continue, unless restrained, to use the “petsmd.com” domain names, causing irreparable damage to Plaintiff’s business, goodwill and reputation.

42. Plaintiff has no adequate remedy at law. Unless Defendant is preliminarily and permanently enjoined from committing these unlawful acts as set forth above, and the domain name associated with Defendant’s website is ordered transferred to Plaintiff, Plaintiff will continue to suffer irreparable harm.

WHEREFORE, plaintiff, Pet360, Inc., respectfully requests judgment in its favor and against Defendant as follows:

(i) A preliminary and permanent injunction enjoining Defendant and its licensees, agents, employees and any person or entity acting in concert with them from using the Infringing Marks, www.petsmd.com, or any colorable imitation in any manner whatsoever;

(ii) An order requiring Defendant to deliver up www.petsmd.com, all catalogues, labels, signs, prints, packages, wrappers, receptacles, and advertisements in their possession bearing the Infringing Marks or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same;

(iii) Transfer of the www.petsmd.com domain name under 15 U.S.C. § 1125(d);

(iv) An accounting of and a judgment for the profits and damages to which Pet360 may be entitled;

(v) Attorneys' fees;

(vi) Costs of this action; and

(vii) Such further relief as this Court deems just and proper.

COUNT IV - VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT – 73 P.S. § 201-1, et. seq.

43. Pet360 incorporates by reference the averments set forth in paragraphs 1 through 42 above as though the same were set forth at length herein.

44. Defendant's willful, intentional and malicious conduct, as alleged above, presents a likelihood of public confusion or misunderstanding as to the source, sponsorship or approval of Defendant's services.

45. Defendant's conduct has created a likelihood of confusion as to affiliation, connection or association between the respective services provided by Defendant and Plaintiff.

46. Defendant has so closely imitated the Marks and System so as to create a likelihood of confusion or misunderstanding in the marketplace as to the source of the respective services provided by Pet360 and Defendant.

47. Pet360 has suffered and continues to suffer irreparable harm as a result of Defendant's acts and has no adequate remedy at law.

48. The foregoing misconduct of Defendant constitutes violations of the Pennsylvania Unfair Trade Practices & Consumer Protection Law, 73 P.S. § 201-1, et. seq.

WHEREFORE, plaintiff, Pet360, Inc., respectfully requests judgment in its favor and against Defendant as follows:

(i) A preliminary and permanent injunction enjoining Defendant and its licensees, agents, employees and any person or entity acting in concert with them from using the Infringing Marks, www.petsmd.com, or any colorable imitation in any manner whatsoever;

(ii) An order requiring Defendant to deliver up www.petsmd.com, all catalogues, labels, signs, prints, packages, wrappers, receptacles, and advertisements in their possession bearing the Infringing Marks or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same;

(iii) An accounting of and a judgment for the profits and damages to which Pet360 may be entitled;

(iv) Treble damages;

(v) Punitive damages;

(vi) Attorneys' fees;

(vii) Costs of this action; and

(viii) Such further relief as this Court deems just and proper.

COUNT V – COMMON LAW UNFAIR COMPETITION

49. Pet360 incorporates by reference the averments set forth in paragraphs 1 through 48 above as though the same were set forth at length herein.

50. Defendant continues to operate under the Infringing Marks and to make use of and to otherwise trade on the goodwill, reputation and position of Pet360.

51. Defendant's above averred acts constitute infringement and unfair competition in violation of the both the federal common law and that of the Commonwealth of Pennsylvania.

52. As a direct and proximate result, Pet360 has suffered, and continues to suffer, damage to its business, reputation and goodwill.

53. Unless Defendant's acts of infringement and unfair competition are restrained and enjoined, Pet360 will be seriously and irreparably damaged.

WHEREFORE, plaintiff, Pet360, Inc., respectfully requests judgment in its favor and against Defendant as follows:

(i) A preliminary and permanent injunction enjoining Defendant and its licensees, agents, employees and any person or entity acting in concert with them from using the Infringing Marks, www.petsmd.com, or any colorable imitation in any manner whatsoever;

(ii) An order requiring Defendant to deliver up www.petsmd.com, all catalogues, labels, signs, prints, packages, wrappers, receptacles, and advertisements in their possession bearing the Infringing Marks or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same;

(iii) An accounting of and a judgment for the profits and damages to which Pet360 may be entitled;

(iv) Punitive damages;

(v) Attorneys' fees;

(vi) Costs of this action; and

(vii) Such further relief as this Court deems just and proper.

Respectfully submitted,

REGER RIZZO & DARNALL LLP

Dated: 01/31/2011

By: 

John J. Barrett, Jr., Esquire

Atty. Id. No.: 16847

Philip W. Fisher, Esquire

Atty. Id. No.: 56264

Daniel L. Fiore, Esquire

Atty. Id. No.: 81303

2929 Arch Street

Cira Centre, 13th Floor

Philadelphia, PA 19104

P: 215-495-6500

F: 215-495-6600

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

PET360, INC.,
Plaintiff, :
 :
 V. : Civil Action
 : No: _____
PETSMD, INC., :
Defendant. :

DISCLOSURE STATEMENT FORM

Please check one box:

- The nongovernmental corporate party, _____, in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.
- The nongovernmental corporate party, PET360, INC., in the above listed civil action has the following parent corporation(s) and publicly held corporation(s) that owns 10% or more of its stock:

PARENT CORPORATION: PETFOOD DIRECT, INC.

01/31/2011 _____
Date Signature

Counsel for: Plaintiff

Federal Rule of Civil Procedure 7.1 Disclosure Statement

- (a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file two copies of a disclosure statement that:
 - (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
 - (2) states that there is no such corporation.
- (b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:
 - (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
 - (2) promptly file a supplemental statement if any required information changes.

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court EDPA on the following Patents or Trademarks:

DOCKET NO. 11-821	DATE FILED 02/03/2011	U.S. DISTRICT COURT EDPA Clerk's Office Room 2609, 601 Market St, Philadelphia, PA 19106
PLAINTIFF PET360, INC.		DEFENDANT PETSMD, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 85209224		PETMD
2 85209340		PETMD AND DESIGN
3 77506598		PETMD.COM
4 77518364		PETMD ESPANOL
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3635233		BREEDOPEDIA
2 3557488		BECAUSE PETS CAN"T TALK
3 77932648		PET360
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK MICHAEL E. KUNZ	(BY) DEPUTY CLERK	DATE 2/3/11
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PET360, INC.)	
2250 Hickory Road)	
Plymouth Meeting, PA 19462)	
Plaintiff,)	Civ. No.: 11-821
)	
v.)	
)	
PETSMD, INC.)	
6250 Fair Valley Trail)	
Austin, TX 78749)	
Defendant.)	

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE

Pursuant to a Federal Rule of Civil Procedure 41(a)(1)(A)(i), plaintiff, Pet360, Inc., hereby gives notice that the above-captioned case is voluntarily DISMISSED WITH PREJUDICE.

REGER, RIZZO & DARNALL, LLP



John J. Barrett, Jr., Esquire
Atty. ID No. 16847
Philip W. Fisher, Esquire
Atty. ID No. 56264
Daniel L. Fiore, Esquire
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Dated: May 11, 2011