

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

ALDI, INC.,)	
)	
Opposer,)	Opposition No. 155,539
)	
v.)	
)	
S.C. JOHNSON & SON, INC.,)	
)	
Applicant.)	
)	

Commissioner for Trademarks
Box TTAB - NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

ANSWER AND DEFENSES TO NOTICE OF OPPOSITION

Applicant, S.C. Johnson & Son, Inc. ("S.C. Johnson"), by its attorneys, Sonnenschein Nath & Rosenthal, answers Opposer's Notice of Opposition as follows:

1. Aldi Inc. (hereinafter referred to as "Opposer") has been engaged in the business of marketing plastic food wrap in interstate commerce bearing the trademark KWIK N FRESH, since on or before August 24, 1977. Opposer is the owner of a Certificate of Registration No. 1,126,287 for the trademark KWIK N FRESH for plastic food wrap granted by the United States Patent and Trademark Office on October 23, 1979, on the Principal Register. A copy of the Certificate of Registration is attached hereto and made a part hereof Exhibit "A".

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 1 of Opposer's Notice of Opposition, and therefore denies same. Applicant notes Opposer's claimed ownership of Registration No. 1,126,287, and further notes that said "Supplemental" registration is now cancelled.

2. Opposer has been engaged in the business of marketing aluminum foil in interstate commerce bearing the trademark KWIK N FRESH, since on or before February 18, 1979. Opposer is the owner of a Certificate of Registration No. 1,316,561 for the trademark KWIK N FRESH for aluminum foil granted by the United States Patent and Trademark Office

on January 29, 1985, on the Principal Register. A copy of the Certificate of Registration is attached hereto and made a part hereof Exhibit "B".

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 2 of Opposer's Notice of Opposition, and therefore denies same.

3. Opposer has been engaged in the business of marketing storage containers namely disposable and reusable plastic containers for storing household and kitchen goods in interstate commerce bearing the trademark KWIK N FRESH since on or before November 18, 2000, which bears Serial No. 76/339,294.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 3 of Opposer's Notice of Opposition, and therefore denies same.

4. Opposer has been engaged in the business of marketing plastic and paper food storage bags, plastic and paper reclosable storage bags, plastic and paper bags for household use, and plastic and paper sandwich bags in interstate commerce bearing the trademark KWIK N FRESH since prior to March 20, 2001, the filing date of the above-referenced application by S.C. Johnson & Son, Inc. (hereinafter referred to as "Applicant").

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 4 of Opposer's Notice of Opposition, and therefore denies same.

5. On information and belief, Applicant has not used the mark, QUICK 'N FRESH, in interstate commerce.

ANSWER:

S.C. Johnson denies the allegations contained in Paragraph 5 of Opposer's Notice of Opposition.

6. The trademark KWIK N FRESH was adopted by the Opposer for plastic food wrap on or before August 24, 1977 and has been continually used since that date in interstate commerce by applying it to containers for the goods and in other ways customary to the trade.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 6 of Opposer's Notice of Opposition, and therefore denies same.

7. The trademark KWIK N FRESH was adopted by the Opposer for aluminum foil on or before February 18, 1979 and has been continually used since that date in interstate commerce by applying it to the containers for the goods and in other ways customary to the trade.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 7 of Opposer's Notice of Opposition, and therefore denies same.

8. The trademark KWIK N FRESH was adopted by the Opposer for storage containers namely disposable and reusable plastic containers for storing household and kitchen goods on or before November 18, 2000 and has been continually used since that date in interstate commerce by applying it to labels affixed to the containers for the goods and in other ways customary to the trade. This trademark is set forth in a pending application with the Trademark Office and has been assigned Serial No. 76/339,294.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 8 of Opposer's Notice of Opposition, and therefore denies same.

9. The trademark KWIK N FRESH was adopted by the Opposer for plastic and paper food storage bags, plastic and paper reclosable storage bags, plastic and paper bags for household use, and plastic and paper sandwich bags prior to March 20, 2001. This application is pending with the Trademark Office and has been assigned Serial No. 76/193,008.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 9 of Opposer's Notice of Opposition, and therefore denies same.

10. Opposer has sold, advertised and promoted the aforescribed goods bearing the trademark KWIK N FRESH and by reason of such efforts and the high quality of Opposer's products, said trademark has become known to the purchasing public and is a valuable asset of the Opposer.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 10 of Opposer's Notice of Opposition, and therefore denies same.

11. The Applicant's mark, QUICK 'N FRESH, is similar in sound, appearance, connotation and commercial impression to Opposer's mark, KWIK N FRESH.

ANSWER:

S.C. Johnson denies the allegations contained in Paragraph 11 of Opposer's Notice of Opposition.

12. The Applicant seeks registration of QUICK 'N FRESH for carpet and fabric deodorizer, which are household goods, and Opposer uses its mark KWIK N FRESH on household goods.

ANSWER:

S.C. Johnson admits that it seeks registration of QUICK 'N FRESH for carpet and fabric deodorizer. Applicant lacks knowledge or information sufficient to form an opinion as to the truth of the remaining allegations contained in Paragraph 12 of Opposer's Notice of Opposition, and therefore denies same.

13. On information and belief, Applicant's and Opposer's goods will be sold in the same channels of trade and to the same potential consumers.

ANSWER:

S.C. Johnson lacks knowledge or information sufficient to form an opinion as to the truth of the allegations contained in Paragraph 13 of Opposer's Notice of Opposition, and therefore denies same.

14. In view of the above allegations, the purchasing public is likely to be confused, mistaken, or deceived into thinking that Applicant's product emanates from or is sponsored by Opposer, or is related or connected in some way with Opposer's established KWIK N FRESH products, all to the damage of the Opposer.

ANSWER:

Applicant denies the allegations contained in Paragraph 14 of Opposer's Notice of Opposition.

15. This notice is filed in duplicate and the fee of THREE HUNDRED DOLLARS (\$300.00) is paid herewith.

16. Opposer's attorneys have an Office Account No. 500963. In the event there is a deficiency in the appropriate fee, please charge that account for the deficiency. Opposer's counsel would appreciate a telephone call for prior authorization of such charge with contact to be made to the undersigned, Allen L. Landmeier or Vincent Elders.

AFFIRMATIVE DEFENSES

1. Applicant's QUICK 'N FRESH mark is not likely to cause consumer confusion with Opposer's pleaded marks herein.

2. Applicant's goods that form the basis of the opposed application are unrelated to the goods offered by Opposer under its pleaded marks.

3. Opposer and Applicant direct and/or intend to direct their respective goods to different target markets.

4. Opposer's pleaded marks exist in a crowded field.

5. Applicant respectfully submits that because of the differences between the goods and target markets, as well as the existence of a crowded field, among other things, Applicant's registration of the opposed mark herein is not likely to cause confusion with Opposer's claimed rights.

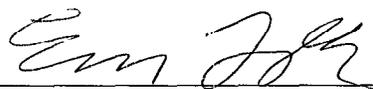
6. Applicant reserves the right to assert additional defenses and to supplement those asserted herein upon further analysis and discovery of information regarding Opposer's claims.

WHEREFORE, Applicant requests that the Notice of Opposition be denied and that the application at issue be allowed to mature to registration.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL

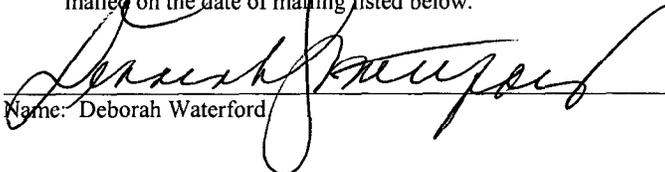
Dated: April 22, 2003

By: 
Erin M. Falk
Attorney for Applicant
S.C. JOHNSON & SON, INC.

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Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, with sufficient postage as first class mail, in an envelope addressed to BOX TTAB - FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, and mailed on the date of mailing listed below.


Name: Deborah Waterford
Date of Signature and Mailing: 4/22/03

CERTIFICATE OF SERVICE

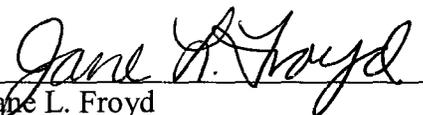
I hereby certify that I caused a true and correct copy of the foregoing ANSWER
AND DEFENSES TO NOTICE OF OPPOSITION to be served upon:

Allen L. Landmeier
P.O. Box 127
15 North Second Street
Geneva, IL 60134

By placing same in an envelope, properly sealed and addressed, with postage prepaid and
depositing same with the United States Postal Service on this 22nd day of April, 2003.

Dated: April 22, 2003

By:


Jane L. Froyd

Jane L. Froyd
415.882.5051
jfroyd@sonnenschein.com

April 22, 2003

VIA U.S. MAIL

BOX TTAB - NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Answer and Defenses to Notice of Opposition
Opposition No.: 155,539
Mark: QUICK 'N FRESH
Serial No.: 76/227,460
Applicant: S.C. Johnson & Son, Inc.

Dear Madam:

Enclosed you will find an original Answer and Defenses to Notice of Opposition, submitted by our client, S.C. Johnson & Son, Inc., in connection with the above-referenced Opposition.

Please note the date you received this submission on the enclosed postcard and return it to the undersigned.

Kindly address any communications concerning this matter to Erin M. Falk, Sonnenschein Nath & Rosenthal, P.O. Box # 061080, Wacker Drive Station, Sears Tower, Chicago, IL 60606-1080.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL

By:



Jane L. Froyd

Enclosure

cc: Erin M. Falk, Esq. (w/ encl.)



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04-25-2003

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