

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

In the matter of Trademark Application Serial No. 76/515,958

Filed: May 21, 2003

Published in Official Gazette on October 12, 2004

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LE GROUPE FRUITS & PASSION INC./THE :
FRUITS & PASSION GROUP, INC. :
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Opposer, :
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MUELHENS GMBH & CO. KG :
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Applicant. :
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Box: TTAB FEE
Assistant Commissioner for Trademarks
P.O. Box 1415
Alexandria, VA 22313-1451

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NOTICE OF OPPOSITION

In the matter of an application for registration upon the Principal Register of a trademark for FRUIT SENSATION used in connection with "perfumeries, essential oils for personal use, cosmetics, namely eye make-up and facial make-up, skin care preparations, namely, creams, lotions



04-14-2005

moisturizers, texturizers and toners; bath gel, shower gel, foam bath and personal deodorants; hair lotions, dentifrices, toilet soaps " in International Class 3, Serial Number 76/515,958, filed on May 21, 2003, by MUELHENS GMBH & CO KG (hereinafter referred to as "Applicant"), LE GROUPE FRUITS & PASSION INC./THE FRUITS AND PASSION GROUP INC., having a principal place of business of 21 Paul Gauguin Street, Candiac, Quebec J5R 3X8, Canada (hereinafter referred to as "Opposer"), believes that it will be damaged by said registration and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is the owner of U.S. Registration Number 2,175,134 for the mark FRUITS & PASSION for use in connection with "bubble baths, bath oils, body soaps, hair shampoo, toilet water, body creams and milks, essential oils for personal use, potpourri and sea water bath salts," as well as "jams, fruit preserves, dried fruits, olive oil and candles."

2. Opposer, continuously from a date prior to the filing date of May 21, 2003 alleged by Applicant in its application to register the mark FRUIT SENSATION, has been using the mark FRUITS & PASSION on or in connection with the goods referred to in paragraph 1 of this Notice of Opposition, and otherwise has prior rights to Applicant by virtue of Opposer's filing date of August 25, 1997, a date that pre-dates Applicant's date. Opposer has also used its mark FRUITS & PASSION in commerce from as early as May 13, 1993.

3. Opposer has applied to register other marks containing "FRUITS & PASSION" in the United States Patent and Trademark Office, including, but not limited to: Serial Number 76/473,488 for the mark HUMAN FRUITS & PASSION filed on November 29, 2002 for goods

including "personal care products."

4. Opposer's FRUITS & PASSION mark has been used and promoted, and as a result, is well-known in the trade and among relevant consumers.

5. Opposer has created wide-spread good will under its FRUITS & PASSION mark. As a result, the trade and the relevant purchasing public have come to recognize the goods bearing the FRUITS & PASSION mark as emanating from Opposer.

6. Notwithstanding Opposer's prior rights, Applicant filed an application seeking registration of a trademark consisting of FRUIT SENSATION, a mark very similar to Opposer's mark FRUITS & PASSION.

7. The commercial impression of Applicant's mark FRUIT SENSATION is very close to Opposer's mark FRUIT & PASSION, as the marks are phonetically similar, create the same connotation, and contain similar wording.

8. Applicant's goods, as described in its Application, are closely related commercially to the goods sold by Opposer and referred to in Opposer's registration for the mark FRUITS & PASSION.

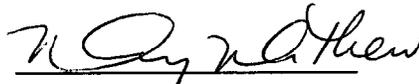
9. Due to similarities between Opposer's and Applicant's marks and the related nature of the goods upon which those marks are used, there is a likelihood that the purchasing public will

be confused, mistaken and/or deceived into believing that Applicant's goods emanate from, or in some way are associated or connected with, or sponsored, authorized or warranted by Opposer, all to the detriment of Opposer, and Opposer will be damaged if a registration is granted to Applicant.

WHEREFORE, Opposer requests that this opposition be sustained and that the requested registration of Applicant's mark in Application Serial Number 76/515,958 be denied.

A check in the amount of \$300.00, required in connection with the filing of this opposition proceeding is enclosed.

LE GROUPE FRUITS & PASSION INC./THE
FRUITS & PASSION GROUP, INC.



Mary S. Mathew
Stewart J. Bellus
Collard & Roe, P.C.
Attorneys for Opposer

Date: 4/11/05

1077 Northern Boulevard
Roslyn, NY 11576
(516) 365-9802

Enclosures:
Duplicate copy of Notice
Check in the amount of \$300.00

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Trademarks, P.O. Box 1451 Alexandria, VA 22313-1451, on April 11, 2005

Date: 4-11-05



~~Maria Guastella~~
I. Mitterdorf