

TTAB

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

In the Matter of Application Serial No. 76/515,958
Published in the Official Gazette on October 12, 2004
Mark: FRUIT SENSATION

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

Opposer,

Opposition No. 91164930

v.

MUELHENS GMBH & CO. KG

Applicant.

CERTIFICATE OF EXPRESS MAILING

Express Mailing Label No.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated below and is addressed to Commissioner for Trademarks, PO Box 1451, Alexandria, VA 22313-1451-- Attn: TTAB:

May 26, 2005
Date

Debra E. Kubice

ANSWER TO NOTICE OF OPPOSITION

BOX TTAB -- NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Muelhens GmbH & Co. KG ("Applicant") hereby answers the Notice of Opposition of Le Groupe Fruits & Passion Inc./The Fruits & Passion Group Inc., ("Opposer"). In the preamble, Opposer states that it has a principal place of business in Quebec, Canada. Applicant is without knowledge or information sufficient to form a belief as to the truth of these allegations. Applicant denies the allegations that Opposer will be damaged by Applicant's registration of the



FRUIT SENSATION mark, Serial No. 76/515,958. Applicant responds to the averments made in the numbered paragraphs as follows:

1. Applicant admits on information and belief that Opposer is the listed owner of U.S. Registration No. 2,175,134 for the mark FRUITS & PASSION.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 2, and therefore denies them.

3. Applicant admits on information and belief that Opposer is the listed owner of U.S. Application Serial No. 76/473,488 for the mark HUMAN FRUITS & PASSION. Applicant is without knowledge or information sufficient to form a belief as to whether Opposer has applied to register other marks containing "FRUITS & PASSION" in the United States Patent and Trademark Office, and therefore denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 4, and therefore denies them.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 5, and therefore denies them.

6. Applicant admits that it filed a trademark application seeking registration of the mark FRUIT SENSATION. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment that Opposer has prior rights, and therefore denies the same. Applicant denies the averment that FRUIT SENSATION is a mark very similar to Opposer's mark FRUITS & PASSION.

7. Applicant denies each and every averment set forth in paragraph 7.

8. Applicant admits that the goods listed in Applicant's application for FRUIT SENSATION are similar to the goods listed in Opposer's Registration No. 2,175,134 for the

mark FRUITS & PASSION. Applicant is without knowledge or information sufficient to form a belief as to the nature of the goods actually sold by Opposer, and therefore denies that the goods listed in Applicant's application for FRUIT SENSATION are closely related commercially to the goods sold by Opposer.

9. Applicant denies each and every averment set forth in paragraph 9.
10. Applicant denies each and every averment set forth in "Wherefore" paragraph.

AFFIRMATIVE DEFENSES

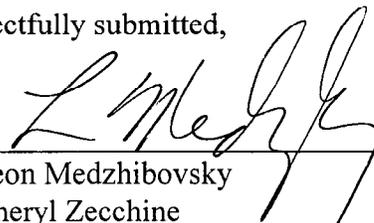
11. Opposer has failed to demonstrate its exclusive right to use FRUIT formative marks or marks containing the word FRUIT.
12. There is no likelihood of confusion, mistake or deception between Applicant's mark and Opposer's claimed marks as to source of goods.
13. Applicant's mark and Opposer's claimed marks can coexist in the marketplace without confusion..

WHEREFORE, Applicant requests that the Opposition be dismissed with prejudice and that the Applicant's mark proceed to registration.

DATED: May 26, 2005

Respectfully submitted,

By



Leon Medzhibovsky
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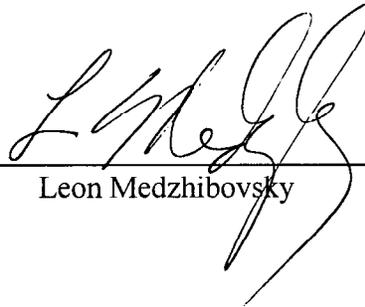
ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2005 a true and correct copy of the foregoing Answer to
Notice of Opposition was served by first class mail to:

Mary S. Mathew
Stewart J. Bellus
Collard & Roe PC
1077 Northern Boulevard
Roslyn, New York 11576

Date: May 26, 2005



Leon Medzhibovsky