

ESTTA Tracking number: **ESTTA152805**

Filing date: **07/24/2007**

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

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	SmithKline Beecham Corporation		
Entity	Corporation	Citizenship	Pennsylvania
Address	709 Swedeland Road UW2221 King of Prussia, PA 19406 UNITED STATES		

Attorney information	Leigh Ann Lindquist Sughrue Mion, PLLC 2100 Pennsylvania Ave, NW Washington, DC 20037 UNITED STATES tm@sughrue.com, klash@sughrue.com Phone:2022937060		
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### Applicant Information

Application No	78893144	Publication date	07/10/2007
Opposition Filing Date	07/24/2007	Opposition Period Ends	08/09/2007
Applicant	Omnisource DDS, LLC 10902 Riverside Drive North Hollywood, CA 91602 UNITED STATES		

### Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Dental instruments, namely, oral irrigators
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1662981	Application Date	05/25/1990
Registration Date	10/29/1991	Foreign Priority Date	NONE
Word Mark	AQUAFRESH FLEX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 021. First use: First Use: 1990/07/15 First Use In Commerce: 1990/07/15 toothbrushes		
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U.S. Registration No.	1006821	Application Date	06/28/1974
Registration Date	03/18/1975	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1972/08/25 First Use In Commerce: 1972/08/25 TOOTHPASTE		

U.S. Registration No.	1805051	Application Date	06/26/1992
Registration Date	11/16/1993	Foreign Priority Date	NONE
Word Mark	AQUAFRESH SENSITIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1992/08/00 First Use In Commerce: 1992/08/00 toothpaste		

U.S. Registration No.	2304437	Application Date	04/29/1996
Registration Date	12/28/1999	Foreign Priority Date	NONE
Word Mark	AQUA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/08/01 First Use In Commerce: 1999/08/01 toothpaste Class 021. First use: First Use: 1999/08/01 First Use In Commerce: 1999/08/01 toothbrushes		

U.S. Registration No.	2706176	Application Date	04/17/2001
Registration Date	04/15/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	The mark consists of the word "AQUAFRESH" and the configuration of a toothbrush which has a handle in the shape of a cat with a baby cat standing in front; the drawing depicts both the front and back views of the design mark.		
Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 Toothbrushes		

U.S. Registration No.	2699482	Application Date	04/17/2001
Registration Date	03/25/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	The mark consists of the word "AQUAFRESH" and the configuration of a toothbrush which has a handle in the shape of a penguin with a baby penguin standing in front; the drawing depicts both the front and back views of the design mark.		
Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 Toothbrushes		

U.S. Registration No.	2706175	Application Date	04/17/2001
Registration Date	04/15/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 Toothbrushes		

U.S. Registration No.	2587675	Application Date	10/31/2000
Registration Date	07/02/2002	Foreign Priority Date	NONE
Word Mark	AQUAFRESH FLEX		
Design Mark			
Description of Mark	The mark consists of the stylized words "AQUAFRESH FLEX" in color dark blue with white outlining; these words appear on a bluish-green background in an elongated oval shape.		
Goods/Services	Class 021. First use: First Use: 1999/06/30 First Use In Commerce: 1999/06/30 Toothbrushes		

U.S. Registration No.	2759361	Application Date	05/19/2000
Registration Date	09/02/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH FLEX TIP MAX-ACTIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 toothbrushes		

U.S. Registration No.	2754841	Application Date	04/21/2000
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Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	The mark is consists of "AQUAFRESH" and the three-dimensional, overall appearance of a toothbrush featuring a white background color, a colored band just below the bristles, and on the FRONT: colored inserts, the larger of which has raised circular bumps on the top and bottom, three white stripes separated by two thinner colored stripes; on the BACK: colored inserts, the larger of which has raised circular bumps on the top and bottom, two white stripes separated by three thinner colored stripes, a vertical colored line running from the large insert, through the three stripes to the bottom of the smaller inserts; and, on the SIDE: a serpentine, repeated "S" design on the side of the toothbrush (towards the top of the handle) with a colored stripe running through the "S" design, and a bowed handle.		
Goods/Services	Class 021. First use: First Use: 1990/07/15 First Use In Commerce: 1990/07/15 toothbrushes		

U.S. Registration No.	2314839	Application Date	11/01/1996
Registration Date	02/01/2000	Foreign Priority Date	NONE
Word Mark	AQUAFRESH- ALL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/05/24 First Use In Commerce: 1999/05/24 toothpaste		

U.S. Registration No.	2615649	Application Date	10/07/1998
Registration Date	09/03/2002	Foreign Priority Date	NONE
Word Mark	AQUAFRESH EXTREME CLEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/05/20 First Use In Commerce: 2002/05/20 toothpaste Class 030. First use: First Use: 2002/05/20 First Use In Commerce: 2002/05/20 chewing gum		

U.S. Registration No.	2811892	Application Date	03/26/2003
Registration Date	02/03/2004	Foreign Priority Date	NONE
Word Mark	AQUAFRESH AQUABLAST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/08/18 First Use In Commerce: 2003/08/18		

	toothbrush cleaners and oral appliance cleaners		
U.S. Registration No.	3058216	Application Date	03/31/2004
Registration Date	02/07/2006	Foreign Priority Date	NONE
Word Mark	AQUAFRESH XTENSIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2005/02/01 First Use In Commerce: 2005/02/01 Toothbrushes		
U.S. Registration No.	3218965	Application Date	10/28/2005
Registration Date	03/13/2007	Foreign Priority Date	NONE
Word Mark	AQUAFRESH WHITE & SHINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2006/02/28 First Use In Commerce: 2006/02/28 Oral care preparations, namely dental gels, dentifrices		
U.S. Registration No.	3110249	Application Date	06/24/2004
Registration Date	06/27/2006	Foreign Priority Date	NONE
Word Mark	AQUAFRESH IMPACT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2005/02/07 First Use In Commerce: 2005/02/07 Toothpaste		
U.S. Registration No.	2985548	Application Date	07/21/2004
Registration Date	08/16/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH DIRECT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2002/09/30 First Use In Commerce: 2002/09/30 Toothbrushes		
Attachments	75095460#TMSN.gif ( 1 page )( bytes ) 76242063#TMSN.gif ( 1 page )( bytes )		

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Signature	/LAL/
Name	Leigh Ann Lindquist
Date	07/24/2007

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

SmithKline Beecham Corporation,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
Omnisource DDS,	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Smithkline Beecham Corporation, a Pennsylvania corporation with a principal place of business at 709 Swedeland Road UW2221, King of Prussia, Pennsylvania 19406, believes that it will be damaged by the registration of the mark AQUAJETT which is the subject of Application Serial No. 78/893,144 and hereby opposes registration of said mark.

As grounds for opposition, it is asserted that:

1) Opposer, since at least as early as 1972 and since long prior to any date of first use upon which Applicant can rely, has manufactured, distributed, marketed and sold various oral care products under the mark AQUAFRESH, both alone and together with another word or words and/or design.

2) As a result of Opposer's long and extensive use and promotion of its AQUAFRESH marks in connection with oral care products, the AQUAFRESH brand has become a well-known, renowned and famous mark and has become an extremely valuable asset of Opposer.

3) Opposer has also, since prior to any date of first use upon which Applicant can rely, used the mark AQUA as a trademark to identify its toothpaste and toothbrushes.

Notice of Opposition  
 Mark: AQUAJETT  
 Serial No. 78/893,144

4) Opposer is the owner of following United States trademark registrations, among others, which are valid, subsisting, unrevoked and uncanceled:

REGISTRATION NO.	MARK	GOODS	ISSUE DATE
1,662,981	AQUAFRESH FLEX	Toothbrushes	October 29, 1991
1,006,821	AQUAFRESH	Toothpaste	March 18, 1975
1,805,051	AQUAFRESH SENSITIVE	Toothpaste	November 16, 1993
2,304,437	AQUA	Toothpaste and toothbrushes	December 28, 1999
2,706,176	AQUAFRESH and Design	Toothbrushes	April 15, 2003
2,699,482	AQUAFRESH and Design	Toothbrushes	March 25, 2003
2,706,175	AQUAFRESH and Design	Toothbrushes	April 15, 2003
2,587,675	AQUAFRESH FLEX	Toothbrushes	July 2, 2002
2,759,361	AQUAFRESH FLEX TIP MAX-ACTIVE	Toothbrushes	September 2, 2003
2,754,841	AQUAFRESH and Design	Toothbrushes	August 26, 2003
2,314,839	AQUAFRESH-ALL	Toothpaste	February 1, 2000
2,615,649	AQUAFRESH EXTREME CLEAN	Chewing gum; toothpaste	September 3, 2002
2,811,892	AQUAFRESH AQUABLAST	Toothbrush cleaners and oral appliance cleaners	February 3, 2004

REGISTRATION NO.	MARK	GOODS	ISSUE DATE
3,058,216	AQUAFRESH XTENSIVE	Toothbrushes	February 7, 2006
3,218,965	AQUAFRESH WHITE & SHINE	Oral care preparations, namely dental gels, dentifrices	March 13, 2007
3,110,249	AQUAFRESH IMPACT	Toothpaste	June 27, 2006
2,985,548	AQUAFRESH DIRECT	Toothbrushes	August 16, 2005

5) Applicant has filed an application to register the mark AQUAJETT for goods described as Dental instruments, namely, oral irrigators. This application was assigned Application Serial No. 78/893,144 and was published for opposition on July 10, 2007. The application was filed based on Applicant's bona fide intention to use the mark in commerce.

6) Applicant's AQUAJETT mark so resembles Opposer's previously used and registered AQUA and AQUAFRESH marks as to be likely, when applied to Applicant's goods, to cause confusion, mistake or deception within the meaning of Section 2(d) of The Trademark Act, thereby resulting in damage to Opposer.

7) Registration of the mark sought by Applicant herein is barred by the provisions of The Trademark Act of 1946, as amended, for the reason that the Application consists of a mark which is so similar to Opposer's previously used, registered and famous mark, as to dilute the distinctive quality of Opposer's marks within the meaning of the Lanham Act, thereby resulting in damage to Opposer.

Notice of Opposition  
Mark: AQUAJETT  
Serial No. 78/893,144

WHEREFORE, Opposer respectfully prays that this Opposition be sustained and that registration to Applicant be refused. Please charge the \$300 filing fee for this Notice of Opposition to the undersigned's Deposit Account No. 19-4880. You are authorized to charge any difference or credit any overpayment to the undersigned's Deposit Account, No. 19-4880, as well.

Respectfully submitted,

SMITHKLINE BEECHAM CORPORATION

By:



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Attorneys for Opposer

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Date: July 24, 2007