

IN THE UNITED STATES PATENT AND TRADEMARK

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of the Trademark and Service Mark Application Serial No. 78/893,144 for "AQUAJETT" published in the Official Gazette on July 10, 2007

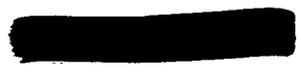
|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| SmithKline Beecham Corporation, | ) | Opposition No.: 91178539       |
|                                 | ) |                                |
| Opposer,                        | ) | ANSWER TO NOTICE OF OPPOSITION |
|                                 | ) |                                |
| vs.                             | ) |                                |
|                                 | ) |                                |
| Omnisource DDS, LLC             | ) |                                |
|                                 | ) |                                |
| Applicant.                      | ) |                                |
| _____                           | ) |                                |

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF OPPOSITION

COMES NOW the Applicant, Omnisource DDS, LLC, a California limited liability company (hereafter "Applicant"), by and through its attorney and pursuant to Rule 2.114 of the Trademark Rules of Practice and Rule 8(b) of the Fed. R. Civ. P., and for its Answer to the Notice for Opposition (hereafter the "Opposition"), filed by SmithKline Beecham Corporation (hereafter "Opposer") seeking to oppose the issuance of United States Trademark Application Serial No. 78/893,144 for "AQUAJETT", and answers the Opposition as follows:

ROZSA LAW GROUP LC  
ATTORNEYS AT LAW  
18757 BURBANK BOULEVARD, SUITE 220  
TARZANA, CALIFORNIA 91356-3346  
TELEPHONE (818) 783-0990



08-20-2007

1           1.        Answering Paragraph 1 of the Opposition, Applicant has insufficient  
2 information and belief to admit or deny the allegations contained therein and basing its  
3 denial on that ground, denies each and every, all and singular, the allegations of said  
4 Paragraph 1 of the Opposition.

5           2.        Answering Paragraph 2 of the Opposition, Applicant has insufficient  
6 information and belief to admit or deny the allegations contained therein and basing its  
7 denial on that ground, denies each and every, all and singular, the allegations of said  
8 Paragraph 2 of the Opposition.

9           3.        Answering Paragraph 3 of the Opposition, Applicant has insufficient  
10 information and belief to admit or deny the allegations contained therein and basing its  
11 denial on that ground, denies each and every, all and singular, the allegations of said  
12 Paragraph 3 of the Opposition.

13           4.        Answering Paragraph 4 of the Opposition, Applicant has insufficient  
14 information and belief to admit or deny the allegations contained therein, and basing its  
15 denial on that ground, denies each and every, all and singular, the allegations of said  
16 Paragraph 4 of the Opposition.

17           5.        Answering Paragraph 5 of the Opposition, Applicant admits the  
18 allegations of said Paragraph 5 of the Opposition.

19           6.        Answering Paragraph 6 of the Opposition, Applicant denies each and  
20 every, all and singular, the allegations of said Paragraph 6 of the Opposition.

21           7.        Answering Paragraph 7 of the Opposition, Applicant denies each and  
22 every, all and singular, the allegations of said Paragraph 7 of the Opposition.

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1 Merchandising Motivation, Inc., 184 U.S.P.Q. 364 (T.T.A.B. 1974). In Merchandising  
2 Motivation the Examiner stated that "no one has the right to incorporate the mark of  
3 another" and refused registration of mark "MMI MENSWEAR" over prior registration of  
4 mark "MEN'S WEAR". The Board reversed the Examiner's refusal because "the legal  
5 proposition put forth by the [E]xaminer [wa]s not absolute." Id., at 365.

6  
7 In fact, the prior decision clearly indicates that there is no rule that confusion is  
8 automatically likely when an applicant's trademark contains in part the whole of a prior  
9 registered trademark. *See, e.g.*, S.C. Johnson & Sons, Inc. v. Johnson, 266 F.2d 129, 121  
10 U.S.P.Q. 63 (6th Cir. 1959), *cert. denied*, 361 U.S. 820, 80 S. Ct. 65, 4 L. Ed.2d 65, 123  
11 U.S.P.Q. 590 (1959); Clayton Mark & Co. v. Westinghouse Elec. Corp., 356 F.2d 943,  
12 53 C.C.P.A. 951, 148 U.S.P.Q. 672 (C.C.P.A. 1964); Colgate-Palmolive Co. v. Carter-  
13 Wallace, Inc., 432 F.2d 1400, 58 C.C.P.A. 735, 167 U.S.P.Q. 529 (C.C.P.A. 1970); Lever  
14 Bros. Co. v. Barcolene Co., 463 F.2d 1167, 59 C.C.P.A. 1162, 174 U.S.P.Q. 392  
15 (C.C.P.A. 1972); Application of Ferrero, 479 F.2d 1395, 178 U.S.P.Q. 167 (C.C.P.A.  
16 1973); Conde Nast Publications, Inc. v. Miss Quality, Inc., 5076 F.2d 1404, 184 U.S.P.Q.  
17 422 (C.C.P.A. 1975); Plus Prod. v. General Mills, Inc., 188 U.S.P.Q. 520 (T.T.A.B.  
18 1975); Lever Bros. Co. v. American Bakeries Co., 693 F.2d 251, 216 U.S.P.Q. 177 (2nd  
19 Cir. 1982). In the above cited cases, the following registration of applicant's trademarks  
20 are granted over prior registered trademarks which were respectively incorporated  
21 entirely into the applicant's trademarks:  
22  
23

| <u>Applicant's Trademark</u> | <u>Prior Registered Trademark</u> |
|------------------------------|-----------------------------------|
| MARK 75                      | MARK                              |
| JOHNSON MOP                  | JOHNSON                           |
| PEAK PERIOD                  | PEAK                              |

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|----------------|---------|
| ALL CLEAR      | ALL     |
| TIC TAC TOE    | TIC TAC |
| COUNTRY VOGUES | VOGUE   |
| PROTEIN PLUS   | PLUS    |
| AUTUMN GRAIN   | AUTUMN  |

It is noted that in the above cited cases, no likelihood of confusion was found, when the prior marks incorporated were found to be suggestive, or alternatively, conveyed a different meaning as used alone.

**FOURTH AFFIRMATIVE DEFENSE**

11. As a fourth, separate and distinct affirmative defense, Applicant alleges that the only commonality between the two marks is the term “AQUA” and “AQUA” is a very generic term and therefore, no one company has any exclusivity to the term “AQUA”. When considered in their entireties, “AQUAJETT” and “AQUAFRESH” are totally different.

**FIFTH AFFIRMATIVE DEFENSE**

12. As a fifth, separate and distinct affirmative defense, Applicant alleges that Opposer’s marks which are for “AQUAFRESH” and variations thereof have a totally different meaning from the Applicant’s mark “AQUAJETT” and have a totally different visual impression and no one would confuse the marks as emanating from the same source since they are totally different marks having totally different commercial impressions and totally different meanings in the marketplace.

**SIXTH AFFIRMATIVE DEFENSE**

13. As a sixth, separate and distinct affirmative defense, Applicant alleges that

1 when the Opposer's marks and Applicant's mark are compared in their entirety, the  
2 Applicant's mark for "AQUAJETT" and the Opposer's marks which include  
3 "AQUAFRESH" are not confusingly similar in overall sight, sound and meaning. The  
4 overall impression created by Applicant's mark is totally different from the overall  
5 impression created by Opposer's mark.

6  
7 **SEVENTH AFFIRMATIVE DEFENSE**

8 14. As a seventh, separate and distinct affirmative defense, Applicant alleges  
9 that there are numerous other uses of "AQUA" in International Class 10 which is the  
10 same class in which Applicant's mark has been applied for and numerous other uses of  
11 the term "AQUA" in dental products. Therefore, there is no distinctiveness to "AQUA"  
12 and the fact that Applicant's mark and Opposer's mark both have the term "AQUA" in  
13 them would not automatically lead to any confusion between the mark "AQUAJETT"  
14 and "AQUAFRESH".

15  
16 **EIGHTH AFFIRMATIVE DEFENSE**

17 15. As an eighth, separate and distinct affirmative defense, Applicant alleges  
18 that the Opposition and each and every paragraph stated therein fails to state a cause of  
19 action against the Applicant.

20  
21 **NINTH AFFIRMATIVE DEFENSE**

22 16. As a ninth, separate and distinct affirmative defense, Applicant alleges  
23 that the Opposer has sustained no damage, injury or prejudice as a result of the  
24 Applicant's trademark application for "AQUAJETT".

25  
26 **TENTH AFFIRMATIVE DEFENSE**

27 17. As a tenth, separate and distinct affirmative defense, Applicant attaches as  
28 **Exhibit 1** hereto a copy of a ruling by the Trademark Trial and Appeal Board wherein

1 the Opposer sought to cancel the registration for the mark "AQUA FLOSS" based on its  
2 "AQUAFRESH" trademarks and lost the Cancellation. Accordingly, the Opposer is  
3 engaged in a wanton and wrongful act as they have already lost in their attempt to cancel  
4 registrations that contain "AQUA" with other marks based upon their "AQUAFRESH"  
5 mark and therefore, this Opposition is groundless and baseless.

6  
7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 18. As an eleventh, separate and distinct affirmative defense, attached hereto  
9 as **Exhibit 2** is a true and correct copy of a letter received by Attorney Leigh Ann  
10 Lindquist from the law firm of Lord Bissell Brook LLP on August 11, 2005, clearly  
11 showing why there is no confusing similarity between the Applicant's marks  
12 "AQUAPIK" and "AQUAJET" and the Opposer's mark "AQUAFRESH". In spite of  
13 this, Opposer has brought this groundless, meritless Opposition.  
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15  
16 WHEREFORE, Applicant requests that the Opposition to Trademark Application  
17 Serial No. 78/893,144 be denied and that Opposer take nothing by way of its Opposition.

18 Applicant further requests Rule 11 sanctions against Opposer and that Applicant  
19 be awarded its costs and attorneys' fees in defending the meritless Opposition filed by  
20 Opposer.  
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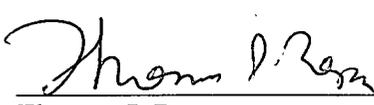
22 If there is any charge required for the filing of this Answer to Notice of  
23 Opposition, the Commissioner of Patents and Trademarks is hereby authorized to charge  
24 my Deposit Account No. 18-2222 for the appropriate fee.  
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Please send all correspondence concerning this Opposition to Thomas I. Rozsa, at  
the address listed below.

Respectfully submitted,

Date: August 14, 2007

  
\_\_\_\_\_

Thomas I. Rozsa  
Registration No. 29,210  
Attorney for Applicant  
Omnisource DDS, LLC  
18757 Burbank Boulevard, Suite 220  
Tarzana, California 91356-3346  
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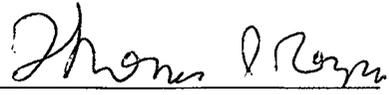
CERTIFICATE OF MAILING

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I hereby certify that the ANSWER TO NOTICE OF OPPOSITION,  
CERTIFICATE OF SERVICE, and CERTIFICATE OF MAILING are being deposited  
with the United States Postal Service with sufficient postage as Express Mail, Mail Label  
No. EM 084044224 US an envelope addressed to:

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Dated: August 14, 2007



Thomas I. Rozsa  
Registration No. 29,210  
Attorney For Applicant

In Re Opposition No. 91178539

ROZSA LAW GROUP LC  
ATTORNEYS AT LAW  
18757 BURBANK BOULEVARD, SUITE 220  
TARZANA, CALIFORNIA 91356-3346  
TELEPHONE (818) 783-0990

CERTIFICATE OF SERVICE

1  
2 I hereby certify that a copy of the document entitled ANSWER TO NOTICE OF  
3 OPPOSITION was sent on August 14, 2007 via first class mail, postage prepaid, to the  
4 attorneys for the Opposer at the following address:  
5

6 Leigh Ann Lindquist  
7 Sughrue Mion, PLLC  
8 2100 Pennsylvania Avenue, NW  
9 Washington, DC 20037

10 Dated: August 14, 2007

11  
12   
13 Thomas I. Rozsa  
14 Registration No. 29,210

15 In Re Opposition No. 91178539  
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TARZANA, CALIFORNIA 91356-3346  
TELEPHONE (818) 783-0990

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**EXHIBIT 1**

Hearing:  
December 9, 1997

Paper No. 44  
PTH

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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SmithKline Beecham Corporation  
v.  
Tocad Co., Ltd.

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Cancellation No. 23,622

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Roberta Jacobs-Meadway of Panitch Schwarze Jacobs & Nadel,  
P.C. and Gary D. Krugman of Sughrue, Mion, Zinn, MacPeak &  
Seas for SmithKline Beecham Corporation.

Michael O. Warnecke of Mayer, Brown & Platt for Tocad Co.,  
Ltd.

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Before Simms, Cissel and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

SmithKline Beecham Corporation has filed a petition to  
cancel the registration of the mark AQUA FLOSS for a "water  
jet oral hygiene device for cleaning and irrigating gums and  
spaces between teeth."<sup>1</sup>

As grounds for cancellation, plaintiff alleges that,  
through its related companies and predecessors, it has for  
many years developed, manufactured and sold pharmaceutical

and dental care products; that since at least as early as August 1972 plaintiff has used the marks AQUA FRESH and AQUAFRESH for toothpaste and other oral hygiene care products; that it is the owner of registrations for the following marks: AQUA FRESH<sup>2</sup>; AQUAFRESH<sup>3</sup>; and AQUA-FRESH<sup>4</sup> for toothpaste; and AQUA-FRESH FLEX for toothbrushes<sup>5</sup>; that the above marks constitute a family of AQUA FRESH marks; and that defendant's mark, when applied to the goods identified in its registration, so resembles plaintiff's previously used and registered marks for its products as to be likely to cause confusion.

Defendant, in its answer, has denied the salient allegations of the petition to cancel.<sup>6</sup>

The record includes, inter alia, the pleadings; the file of the involved registration; trial testimony taken by both parties; plaintiff's notice of reliance on its pleaded registrations as well as a number of its other registrations;<sup>7</sup> plaintiff's notice of reliance on third-

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<sup>1</sup> Registration No. 1,660,337 issued October 8, 1990; Section 8 affidavit accepted.

<sup>2</sup> Registration No. 1,006,820 issued March 18, 1975; renewed.

<sup>3</sup> Registration No. 1,006,821 issued March 18, 1975; renewed.

<sup>4</sup> Registration No. 1,097,151 issued July 25, 1978; Sections 8 & 15 affidavit filed.

<sup>5</sup> Registration No. 1,662,981 issued October 29, 1991; Sections 8 & 15 affidavit filed.

<sup>6</sup> Defendant, in its answer, also asserted the affirmative defense of laches. However, at the oral hearing on this case, defendant's counsel stated that defendant was not pursuing this defense and, thus, we have not considered it.

<sup>7</sup> We note that plaintiff has not relied on these other registrations in its likelihood of confusion claim.

Cancellation No. 23,622

party registrations to show the relatedness of the parties' goods; plaintiff's notice of reliance on defendant's responses to requests for admissions; defendant's notice of reliance on plaintiff's responses to requests for admissions; plaintiff's notice of reliance on excerpts from the NEXIS data base and the Internet to show the strength of plaintiff's AQUA FRESH mark; defendant's notice of reliance on third-party registrations to show the weakness of marks which include the term AQUA; and the parties' stipulation to admit into evidence copies of correspondence between the parties' counsel. In addition to the trial testimony, the record includes numerous exhibits introduced in connection therewith.

According to the record, plaintiff first sold toothpaste under the mark AQUA FRESH in 1972. However, it was not until 1979 that plaintiff began to heavily promote its AQUA FRESH toothpaste and to enjoy significant sales under the AQUA FRESH brand. In addition to its basic AQUA FRESH flouride toothpaste, plaintiff has developed and now offers several other toothpastes designed for specific purposes, i.e., AQUA FRESH TRIPLE PROTECTION, AQUAFRESH SENSITIVE, AQUAFRESH WHITENING and AQUA-FRESH FOR KIDS. Also, plaintiff offers toothbrushes under the marks AQUAFRESH FLEX, AQUA-FRESH FLEX; AQUAFRESH FLEX DIRECT and AQUAFRESH FLEX OUTRAGEOUS COLORS. According to plaintiff's

witness, each of the above marks was selected to take advantage of the fame and reputation of the AQUA FRESH mark.

Plaintiff's toothpastes and toothbrushes are sold in ninety-five percent of the grocery stores, drug stores and mass merchandisers in the United States. Plaintiff's toothpastes and toothbrushes retail for between \$1.00 and \$6.00. Its sales of toothpastes have risen from 70 million units in 1979 to 124 million units in 1995, and AQUA FRESH is and has been for many years the nation's third leading brand of toothpaste.

Since 1979 plaintiff has spent tens of millions of dollars in advertising and promoting its products.<sup>8</sup> It has nationally advertised its products through a variety of media, including television, newspapers and magazines. In addition, plaintiff has promoted its products through the use of coupons, inserts in publications, in-store displays and by sponsorship of a race car. By virtue of the extensive advertising, promotion and sale of AQUA FRESH toothpaste, plaintiff's AQUA FRESH mark is well known. This fact is confirmed by two market research studies, one of which was conducted by the Landis Research Group in April-May 1994. According to this study, eighty percent of the respondents had heard of AQUA FRESH toothpaste; fifty-seven percent remembered seeing advertising in the past year for

Cancellation No. 23,622

AQUA FRESH toothpaste and forty-three percent had used AQUA FRESH toothpaste. The second study was conducted by the Icon research organization in February 1996 and demonstrated an aided awareness of AQUA FRESH brand toothpaste of ninety-five percent and an unaided awareness of forty-six percent.

Defendant's primary business is as a manufacturer of photographic and video accessories. In 1989 defendant was approached by Ricoh Elemex, a Japanese corporation, about distributing an oral irrigator within the United States. An oral irrigator is a battery-operated appliance that generates a stream of water through a nozzle to remove particles from the surfaces of the teeth and gums. Prior to beginning sales of the oral irrigator, defendant obtained approval from the Food and Drug Administration and a product endorsement from the American Dental Association. Defendant considered several possible trademarks to identify its oral irrigator and, after settling on AQUA FLOSS, began sales of the product under this mark at least as early as June 1, 1990. Defendant priced the oral irrigator at a suggested retail price of \$39.95. According to defendant's witness, during the period of 1990 to 1995 defendant's oral irrigator was nationally distributed through direct mail catalogs, catalog showroom stores, drug store chains, department stores and warehouse club merchandisers. Defendant has

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<sup>8</sup> Plaintiff's sales and advertising figures have been made of

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advertised the oral irrigator on television and in print advertisements and promoted the product at trade shows. From 1990 to 1995 defendant spent between \$300,000 - \$500,000 on the advertisement and promotion of the AQUA FLOSS oral irrigator. Defendant has employed several independent sales representatives to nationally promote and sell the AQUA FLOSS oral irrigator. Most recently, the oral irrigator has been sold primarily through direct mail catalog merchandisers due to cost efficiencies. Also, defendant has been unable to maintain an inventory of oral irrigators due to a manufacturing problem. However, defendant's witness testified that in 1996 defendant shipped 300-400 units to customers and it fully intends to continue sales of the oral irrigator.

Turning first to the issue of priority, the record clearly establishes plaintiff's continuous use of the mark AQUA FRESH (and the variations AQUA-FRESH and AQUAFRESH) for toothpaste. Thus, plaintiff has established its priority with respect to these marks. We note that plaintiff has claimed ownership of a family of marks characterized by AQUA FRESH. However, in the context of this petition for cancellation, such a claim is not understood. Plaintiff owns the mark AQUA FRESH (and the variations AQUA-FRESH and AQUAFRESH) and that mark is well-known. That is the mark

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record under seal.

that must be compared with defendant's mark AQUA FLOSS. Accordingly, we need not decide whether plaintiff has established a family of AQUA FRESH marks."<sup>9</sup>

We turn then to the issue of likelihood of confusion. Upon consideration of the relevant factors set forth in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, it is our view that confusion as to source or sponsorship is not likely to occur. We acknowledge, in this regard, that while many factors favor plaintiff and, thus, a finding that confusion is likely, such factors are simply outweighed by the significant differences in the overall commercial impressions of the parties' respective marks.

There is no question that plaintiff's toothpastes and respondent's oral irrigators are sold through some of the same channels of trade to the same classes of customers. In addition, the substantial sales and advertising by plaintiff of its AQUA FRESH toothpaste, and the many years it has continuously used such mark, establish the considerable renown of the mark which, generally speaking,

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<sup>9</sup> If plaintiff were arguing that it had a family of AQUA marks (AQUA followed by different word marks), however, this would be relevant to the question of likelihood of confusion. That is, to the extent the purchasing public identified the prefix AQUA for oral care products with plaintiff, that would make more likely the confusion with defendant's AQUA FLOSS oral irrigator because the public may tend to believe that that product comes from plaintiff.

Cancellation No. 23,622

would entitle it to a substantial degree of protection against similar marks.<sup>10</sup>

Nevertheless, in this case, the mark AQUA FRESH and the related marks AQUA-FRESH and AQUAFRESH on the one hand, and the mark AQUA FLOSS, on the other, engender such different overall commercial impressions that there is no likelihood of confusion. We recognize that each of the marks includes the word AQUA followed by a short one-syllable word beginning with the letter "f", i.e., FRESH and FLOSS. However, "fresh" and "floss" have very different meanings. That is, "fresh" indicates an attribute as in "freshens breath" and "floss" indicates a function as in the action of defendant's oral irrigator. Plaintiff's AQUA FRESH, AQUA-FRESH and AQUAFRESH marks, on the one hand, connote freshness and defendant's AQUA FLOSS mark, on the other, connotes flossing with water. Thus, the marks in their entireties engender very different connotations and commercial impressions. Under such circumstances, the mere inclusion of the word "aqua" in the parties' marks is an

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<sup>10</sup> We should point out that the third-party registrations offered by defendant with respect to the alleged weakness of marks which include the word "aqua" in no way diminished the scope of protection to be accorded plaintiff's AQUA FRESH mark. Only three of the registrations covered oral care products, and there was no evidence that the marks listed in the registrations are in use. More importantly, the substantial sales and advertising by plaintiff of its AQUA FRESH toothpaste is more than sufficient to overcome any alleged weakness in the mark due to the inclusion of the word "aqua."

Cancellation No. 23,622

insufficient basis on which to hold that the marks are in conflict.

We should emphasize that, in arriving at our conclusion that confusion as to source is not likely, we are not relying on defendant's argument concerning the absence of evidence of instances of actual confusion. Our conclusion that confusion is not likely is based, quite simply, on the overall differences in the connotations and commercial impression of these marks. This fact is more important to the resolution of the issue of likelihood of confusion here than the strength of the AQUA FRESH mark as applied to toothpaste and the fact that the parties' marks are applied to goods which fall into the category of oral care products. See e.g., *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

Cancellation No. 23,622

Decision: The petition to cancel is denied.

R. L. Simms

R. F. Cissel

P. T. Hairston  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

QW 100

QW 100

August 11, 2005

James H. Wynn

213.687.6769

Fax: 213.341.6769

jwynn@lordbissell.com

Ms. Leigh Ann Lindquist  
Sughrue Mion, PLLC  
2100 Pennsylvania Avenue, N.W.  
Washington, D. C. 20037

Re: U.S. Trademark Applications  
Serial Nos.: 76/594,979 and 76/594,977  
Marks AQUAPIK and AQUAJET  
Applicant: Omnisource D.D.S.  
Your Ref: D-0726  
Our File No.: 1001281-0001

Dear Ms. Lindquist:

We are in receipt of your June 13, 2005 letter demanding that our client, Omnisource D.D.S. abandon its trademark applications for the AQUAPIK and AQUAJET marks. We have thoroughly reviewed the matter and advise you that Omnisource respectfully rejects your demand.

First, the Omnisource applications for the AQUAPIK and AQUAJET marks are for oral irrigators. The SmithKline marks you identify are for the unrelated products of toothpaste and toothbrushes.

Second, both the AQUAPIK and AQUAJET marks have different connotations and commercial meaning in comparison to AQUAFRESH marks.

Third, there is an existing registered mark AQUAFLOSS for oral irrigators. In 1997 your client filed a petition with the Trademark Trial and Appeal Board ("TTAB") to cancel the AQUAFLOSS mark. That petition was denied. I assume you have a copy of the TTAB's opinion but for ease of reference a copy is attached for your review.

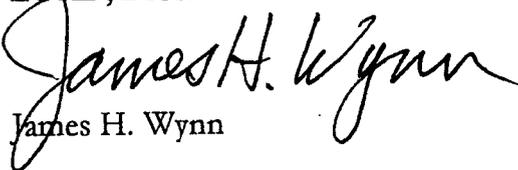
We believe it is unlikely, given the prior written opinion, that the TTAB will reach a different conclusion in the case of the AQUAPIK and AQUAJET marks.

Leigh Ann Lindquist  
August 11, 2005  
Page 2

In summary we do not believe your demand that Omnisource abandon its applications for the AQUAPIK and AQUAJET marks is well founded either factually or legally. We hope the above adequately explains Omnisource's position and that this will conclude the matter. Should you wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

LORD, BISSELL & BROOK LLP



James H. Wynn

JHW:sc

Enclosure

cc: William R. Weissman, D.D.S.