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

Proceeding	91178539
Party	Plaintiff SmithKline Beecham Corporation
Correspondence Address	Leigh Ann Lindquist Sughrue Mion, PLLC 2100 Pennsylvania Ave, NW Washington, DC 20037 UNITED STATES tm@sughrue.com, klash@sughrue.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/LAL/
Date	01/02/2008
Attachments	Opposer's Motion to Amend.pdf (3 pages)(51563 bytes) Amended Notice of Opposition.pdf (5 pages)(111503 bytes)

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

SmithKline Beecham Corp.,

Opposer,

v.

Omnisource DDS, LLC.,

Applicant.

Opposition No.: 91/178,539

OPPOSER'S MOTION TO AMEND NOTICE OF OPPOSITION

Opposer, by its attorney, hereby requests that the Notice of Opposition be amended. Specifically, Opposer wishes to amend the Notice of Opposition to reflect the fact that, subsequent to the filing of the Notice of Opposition, Opposer acquired U.S. Trademark Registration No. 1,660,337 via assignment on September 21, 2007.

At the time Opposer filed the Notice of Opposition in the above-captioned matter on July 24, 2007, Opposer was the petitioner in a cancellation action involving Registration No. 1,660,337. The cancellation, No. 92/047,246, was suspended by the Trademark Trial and Appeal Board on July 19, 2007 because the parties were actively engaged in settlement negotiations. Those settlement negotiations culminated with the execution of an assignment of Registration No. 1,660,337 from the respondent in Cancellation No. 92/047,246 to Opposer here.

Under the Trademark Trial and Appeal Board's Rules, amendments to pleadings are to be freely granted. 37 C.F.R. §2.107. Discovery is not set to close in this matter until February 9, 2007. Moreover, Opposer has already produced to Applicant the assignment document whereby

Registration No. 1,660,337 was assigned to Opposer. Given Applicant's current knowledge of Opposer's acquisition of Registration No. 1,660,337 and the remaining time for discovery, there is no prejudice to Applicant in the granting of this Motion to Amend and it is respectfully requested that it be granted.

It is submitted that justice requires that this Motion to Amend be granted. Such action is respectfully requested.

An Amended Notice of Opposition is enclosed herewith.

Respectfully submitted,

SMITHKLINE BEECHAM CORP.

By: 

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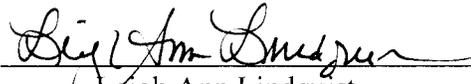
Dated: January 2, 2008

Enclosure: Amended Notice of Opposition

CERTIFICATE OF SERVICE

I, Leigh Ann Lindquist, hereby certify that true copies of the foregoing MOTION TO AMEND NOTICE OF OPPOSITION and AMENDED NOTICE OF OPPOSITION have been mailed this 2nd day of January, 2008, by first-class mail, postage prepaid to:

Erik M. Pelton, Esq.
P.O. Box 100637
Arlington, VA 22210


Leigh Ann Lindquist

**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.)	
)	

AMENDED 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.

4) Opposer is also the owner, by assignment, of the AQUA FLOSS mark for “Water jet oral hygiene device for cleaning and irrigating gums and spaces between teeth”.

5) 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

REGISTRATION NO.	MARK	GOODS	ISSUE DATE
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
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
1,660,337	AQUA FLOSS	Water jet oral hygiene device for cleaning and irrigating gums and spaces between teeth	October 8, 1991

6) 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.

7) 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.

8) 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.

WHEREFORE, Opposer respectfully prays that this Opposition be sustained and that registration to Applicant be refused. It is believed that no fee is required for the filing of this Amended Notice of Opposition. However, if a fee is required, you are authorized to charge any such government fee to the undersigned's Deposit Account, No. 19-4880.

Respectfully submitted,

SMITHKLINE BEECHAM CORPORATION

By:



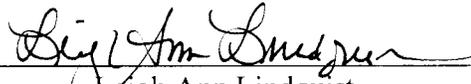
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Date: January 2, 2008

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