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

Proceeding	91187042
Party	Defendant ZENTIS GmbH & Co. KG
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Attachments	91187042 Answer to Notice of Opposition.pdf ( 4 pages )(13225 bytes )

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

In the Matter of Trademark Application Serial No. 77/230,379  
For the mark belFRUIT  
Published in the Official Gazette of June 24, 2008

UNIFINE F & Bi B.V.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91187042
	)	
ZENTIS GmbH & Co. KG,	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

For its answer to Opposer’s Notice of Opposition (the “Opposition”), and without prejudice to or waiver of Applicant’s right to move to suspend proceedings pending a final determination in one or more previously filed actions, Applicant responds as follows:

Applicant is without knowledge or information as to the truth or falsity of the averments contained in the introductory paragraph of the Opposition and therefore denies those allegations. Applicant specifically denies that Opposer will be damaged by registration of the Applicant’s mark belFRUIT (“Applicant’s Mark”).

1. Applicant is without knowledge or information as to the truth or falsity of the averments contained in Paragraph 1 of the Opposition and therefore denies those allegations.
  
2. Applicant is without knowledge or information as to the truth or falsity of the averments contained in Paragraph 2 of the Opposition and therefore denies those allegations.

3. Applicant admits that there is an Internet webpage posted at the Uniform Resource Locator, *www.unifine.com*, but is without knowledge or information as to the truth of falsity of the remaining averments contained in Paragraph 3 of the Opposition and therefore denies those allegations.

4. Applicant admits that the U.S. Patent and Trademark Office's Trademark Electronic Search System ("TESS") lists Unifine F&Bi B.V. as the owner of U.S. Registration No. 3,165,380 for the mark FRUIBEL and that Exhibit A attached to the Opposition appears to be a copy of said registration. Applicant admits that the U.S. Patent and Trademark Office's Trademark Assignments on the Web System purports to reflect a March 7, 2008 recordation of an assignment of the registration from Koninklijke Coöperatie Cosun U.A. to Unifine F&Bi B.V., dated February 12, 2008. Applicant is without knowledge or information sufficient to form a belief as to whether such registration is actually owned by Unifine F&Bi B.V., or whether it is valid and subsisting, and therefore denies those allegations.

5. To the extent that the averments of Paragraph 5 are factual allegations, Applicant is without knowledge or information sufficient to form a belief as to the truth thereof and therefore they are denied; to the extent that they are Opposer's legal conclusions, no responsive pleading is required.

6. To the extent that the averments of Paragraph 6 are factual allegations, Applicant is without knowledge or information sufficient to form a belief as to the truth thereof and therefore they are denied; to the extent that they are Opposer's legal conclusions, no responsive pleading is required.

**AFFIRMATIVE DEFENSES**

1. Applicant and Opposer have distinctly different marks.
2. Applicant's Mark and Opposer's mark are used with distinctly different goods.
3. Applicant's customers and Opposer's customers are sophisticated purchasers of goods for different purposes.
4. Coexistence of Applicant's Mark and Opposer's mark does not now, and is not likely to, cause confusion, mistake or deceive consumers of Applicant's or Opposer's goods.
5. On information and belief, Opposer was not making, and has not made, continuous and exclusive use of the FRUIBEL mark in interstate commerce with all of the goods listed in Registration No. 3,165,380, since the October 31, 2006 registration date.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed and judgment be entered in its favor.

Dated: December 31, 2008

Respectfully Submitted,

/Steven E.Klein/  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Answer to Notice of Opposition** on the following named person on the date indicated below by mailing with postage prepaid to said person a true copy thereof, contained in a sealed envelope, addressed to said person at his last-known address indicated below:

David B. Kirschstein  
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DATED: December 31, 2008

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