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

Proceeding	91194012
Party	Defendant Frank Ottaviani and Todd Spinelli
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Date	06/01/2010
Attachments	AQUAFREE, Opp. No. 91194012-Applicant's ANSWER (6-1-2010).PDF (4 pages)(191782 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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GLAXOSMITHKLINE LLC,	:	
	:	Opposition No. 91194012
Opposer,	:	
	:	Tmk. Appl. Serial No. 77/757,308
v.	:	
	:	Trademark: "AQUAFREE"
TODD SPINELLI and	:	
FRANK OTTAVIANI,	:	
	:	
Applicants.	:	

APPLICANTS' ANSWER TO NOTICE OF OPPOSITION

Applicants, TODD SPINELLI and FRANK OTTAVIANI, hereby jointly answer the *Notice of Opposition*, as follows:

1. Applicants deny that "AQUAFRESH" is an inherently distinctive trademark for the goods recited in Opposer's various trademark registrations accompanying its *Notice of Opposition*; Applicants lack sufficient information and knowledge to form a belief as to the truth or falsity of all remaining allegations of ¶ 1 of the *Notice of Opposition*, and therefore deny the remaining allegations of ¶ 1 in their entirety.

2. Applicants lack sufficient information and knowledge to form a belief as to the truth or falsity of the allegations of ¶ 2 of the *Notice of Opposition*, and therefore deny the allegations of ¶ 2 in their entirety.

3. Applicants state that the allegations of ¶ 3 of the *Notice of Opposition* would appear to be correct and therefore admit the same, subject to further information intended to be sought in discovery.

4. Applicants deny the allegations of ¶ 4 of the *Notice of Opposition* in their entirety.

5. Applicants admit the allegations of ¶ 5 of the *Notice of Opposition*.

6. Applicants lack sufficient information and knowledge to form a belief as to the truth or falsity of the allegations of ¶ 6 of the *Notice of Opposition*, and therefore deny the allegations of ¶ 6 in their entirety.

7. Applicants deny the allegations of ¶ 7 of the *Notice of Opposition* in their entirety.

8. Applicants deny the allegations of ¶ 8 of the *Notice of Opposition* in their entirety.

9. Applicants deny the allegations of ¶ 9 of the *Notice of Opposition* in their entirety.

10. Applicants deny the allegations of ¶ 10 of the *Notice of Opposition* in their entirety.

11. Paragraph No. 11 of the *Notice of Opposition* is a request for relief, as opposed to a further allegation of purported fact. To the extent that it may be necessary, however, Applicant's deny the allegations of ¶ 11 of the *Notice of Opposition* in their entirety.

AFFIRMATIVE DEFENSES

1. Opposer can neither legally nor factually claim a “family of marks” for the term “AQUA” and, to the extent that Opposer is claiming a family of marks arising from the prefix “AQUA, Opposer’s *Notice of Opposition* presents a frivolous claim. *See, Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 863 (T.T.A.B. 1981) (“[I]t would appear that the presence of the ‘AQUA’ prefix in two otherwise dissimilar marks can be an insufficient basis upon which to predicate a holding that the marks as a whole are likely to conflict in the marketplace.”); *American Standard Inc. v. Scott & Fetzer Co.*, 200 USPQ 457, 461-462 (T.T.A.B. 1978) (“The term ‘AQUA’ possesses an obvious meaning or connotation of ‘water’ which would be known to the average purchaser of plumbing equipment, . . . as such, it is highly suggestive, if not descriptive of plumbing supplies.”).

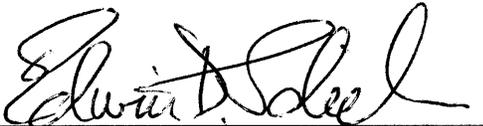
2. No likelihood-of-confusion exists between “AQUAFRESH” and “AQUA-FREE” based upon the suggestive, if not descriptive, nature of Opposer’s “AQUA-FRESH” trademark, thereby entitling Opposer’s trademark to only a narrow scope of protection.

WHEREFORE, Applicants TODD SPINELLI and FRANK OTTAVIANI

respectfully request that the *Notice of Opposition* be dismissed and that Applicants' "AQUAFREE" trademark proceed to registration forthwith.

Respectfully submitted,

TODD SPINELLI
and FRANK OTTAVIANI

By 
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June 1, 2010

CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that I served a true and complete copy of *Applicants' Answer to Notice of Opposition* upon the following counsel representing Opposer, GlaxoSmithKline LLC, via First-Class Mail, postage-prepaid:

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on June 1, 2010.


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