

ESTTA Tracking number: **ESTTA7823**

Filing date: **04/20/2004**

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

<b>Name</b>	Frisetta Kunststoff GmbH
<b>Granted to Date of previous extension</b>	04/21/2004
<b>Address</b>	Frisetta Kunststoff GmbH Oberfeld 1-5 Schonau, D-79677 GERMANY

<b>Domestic Representative</b>	Kurt Koenig Attorney Koenig & Associates 220 East Figueroa Street Santa Barbara, CA 93101 UNITED STATES kurt@incip.com, liz@incip.com Phone:805-965-4400
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#### Applicant Information

<b>Application No</b>	78248755	<b>Publication date</b>	12/23/2003
<b>Opposition Filing Date</b>	04/20/2004	<b>Opposition Period Ends</b>	04/21/2004
<b>Applicant</b>	Warsowe, Marc		

## **Goods/Services Affected by Opposition**

**Class 021. First Use: First Use In Commerce:**

All goods and services in the class are opposed, namely: toothbrushes; replacement heads for toothbrushes; and dental floss

<b>Attachments</b>	Notice of Opposition.pdf ( 4 pages )
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<b>Signature</b>	/kurt koenig/
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<b>Name</b>	Kurt Koenig
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<b>Date</b>	04/20/2004
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/248,755  
For the mark: FRISADENT  
Filing Date: May 12, 2003  
Publication Date: December 23, 2003

FRISETTA KUNSTSTOFF GMBH	)	
	)	
OPPOSER,	)	
	)	
v.	)	Opposition No. _____
	)	
MARC WARSOWE,	)	
	)	
APPLICANT.	)	
	)	

**NOTICE OF OPPOSITION**

In the matter of the application of Marc Warsowe, an individual citizen of the United States, having a mailing address of P.O. Box 5285, Redwood City, CA 94063 (“Applicant”), for registration of the trademark FRISADENT, Application Serial No. 78/248,755, published in the *Official Gazette* dated December 23, 2003, Frisetta Kunststoff GmbH, a corporation organized and existing under the laws of Germany, having an address of Oberfeld 1-5, 79677 Schönau, Germany (“Opposer”), believes it will be damaged by registration of the mark shown in Application Serial No. 78/026,535 and hereby opposes the same.

As grounds for the opposition, Opposer alleges the following:

1. Opposer has for many years, and long prior to any date of first use upon which Applicant can rely, continuously manufactured, sold, distributed, advertised and/or offered in interstate commerce dental hygiene products including toothbrushes and replacement brushes therefor (“Opposer’s Goods”) in connection with the marks TERRADENT and TERRADENT MED 5 (“Opposer’s Marks”) and under the trade name “Frisetta.”

2. Opposer is the owner of U.S. Registration No. 2,566,390 issued on May 7, 2002 for the mark TERRADENT for use on “toothbrushes.”

3. Opposer is the owner of U.S. Registration No. 2,825,049 issued on March 23, 2004 for the mark TERRADENT MED 5 for use on “toothbrushes and replacement brushes therefor.”

4. Opposer’s Marks are valid and subsisting and are conclusive evidence of Opposer’s exclusive right to use Opposer’s Marks on Opposer’s Goods in the United States.

5. Opposer’s Marks are arbitrary and strong and, as such, Opposer is entitled to protection of its distinctive marks.

6. Opposer’s Goods have been offered and advertised continuously to the public and throughout the United States and have traveled through various channels of trade in conjunction with Opposer’s Marks since at least as early as June 1998.

7. As a result of continuous and exclusive use of Opposer’s Marks in connection with the sale and promotion of Opposer’s Goods, Opposer has built extensive goodwill in connection with Opposer’s Marks.

8. By reason of such advertising and wide distribution of Opposer’s Goods, the public recognizes Opposer’s Marks as signifying Opposer as the exclusive source of Opposer’s Goods.

9. Notwithstanding Opposer’s long prior rights in and to Opposer’s Marks, on May 12, 2003, Applicant filed an application to register the word mark FRISADENT (“Applicant’s Mark”), later identified as Application Serial No. 78/248,755, for use in connection with “toothbrushes; replacement heads for toothbrushes; and dental floss” in Class 21 (“Applicant’s Goods”).

10. Applicant’s Mark was published for opposition in the *Official Gazette* dated December 23, 2003.

11. Applicant’s Mark is virtually identical to Opposer’s Marks on the basis that it incorporates elements of both Opposer’s registered trademark TERRADENT and Opposer’s trade name “Frisetta.”

12. Applicant has appropriated Opposer's prior-registered marks TERRADENT and TERRADENT MED5 and incorporated elements of Opposer's trade name in an attempt to trade on the goodwill of Opposer.

13. Because Applicant's Mark is virtually identical to Opposer's Marks, there is a likelihood of confusion between Applicant's Mark and Opposer's Marks.

14. Applicant's Goods are identical to and are competitive with Opposer's Goods.

15. Because the goods offered under both Applicant's Mark and Opposer's Marks are identical, the marks of each party are virtually identical and the primary target consumers are the same, there is a likelihood of confusion between Applicant's Mark and Opposer's Marks.

16. Applicant's Mark so resembles Opposer's Marks that the registration and use of Applicant's Mark on Applicant's Goods is likely to cause confusion, mistake, or deception among consumers within the meaning of Section 2(d) of the Trademark Act, all to Opposer's damage.

17. Applicant's Mark is confusingly similar to Opposer's Marks and thus interferes with Opposer's use of said marks.

18. Opposer's Marks qualify for protection under Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c), as amended.

19. Application Serial No. 78/026,535 was filed on May 12, 2003 and is therefore subject to the provisions of Section 43(c) of the Lanham Act, as amended.

20. Opposer's Marks are famous for toothbrushes and replacement brushes therefor and such marks became famous at least as early as December 1998.

21. Opposer believes the registration of Applicant's Mark in Class 21 will substantially damage Opposer in violation of Section 43(c) of the Lanham Act, as amended.

WHEREFORE, Opposer believes it will be damaged by said registration and requests that Application Serial No. 78/248,755 for the mark FRISADENT be denied registration on the grounds set forth herein and that this Opposition be sustained.

This Notice of Opposition is submitted electronically in conjunction with the required filing fee in the amount of \$300.

Respectfully submitted,

**FRISSETTA KUNSTSTOFF GMBH**

Dated: April 20, 2004

By: /Elizabeth A. Linford/  
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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on April 20, 2004.

/Elizabeth A. Linford/  
Elizabeth A. Linford