

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

In the matter of  
Trademark Application  
Serial No. 78/248,755  
Mark: FRISADENT  
Published: December 23, 2003

[REDACTED]

06-10-2004

U.S. Patent & TMOic/TM Mail Rpt Dt. #78

FRISSETTA KUNSTSTOFF GMBH, )  
)  
Opposer, )  
)  
v. )  
)  
WARSOWE, MARC, )  
)  
Applicant. )  
\_\_\_\_\_ )

Opposition No. 91160273

Box TTAB  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**ANSWER TO NOTICE OF OPPOSITION**

Sir:

Applicant Warsowe, Marc ("Applicant") hereby answers the Notice of Opposition filed by Frisetta Kunststoff GmbH, ("Opposer") as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1 and accordingly denies all such allegations.

2. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 2 and accordingly denies all such allegations.

3. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 3 and accordingly denies all such allegations.

4. Paragraph 4 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

5. Paragraph 5 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

6. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 6 and accordingly denies all such allegations.

7. Paragraph 7 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

8. Applicant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 8 and accordingly denies all such allegations.

9. Applicant admits the following allegations set forth in Paragraph 9:

“...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”).”

Applicant denies all other allegations in Paragraph 9.

10. Applicant admits the following allegations set forth in  
Paragraph 10:

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

11. Paragraph 11 appears to set forth a legal conclusion, and  
Opposer fails to allege any facts to establish trade name rights in the U.S., but to  
the extent that said paragraph sets forth any allegations of fact, Applicant denies  
any such allegations.

12. Paragraph 12 appears to set forth a legal conclusion, and  
Opposer fails to allege any facts to establish trade name rights in the U.S., but to  
the extent that said paragraph sets forth any allegations of fact, Applicant denies  
any such allegations.

13. Paragraph 13 appears to set forth a legal conclusion, but to the  
extent that said paragraph sets forth any allegations of fact, Applicant denies any  
such allegations.

14. Applicant is without sufficient knowledge or information to form  
a belief as to the allegations contained in Paragraph 14 and accordingly denies all  
such allegations.

15. Paragraph 15 appears to set forth a legal conclusion, but to the  
extent that said paragraph sets forth any allegations of fact, Applicant denies any  
such allegations.

16. Paragraph 16 appears to set forth a legal conclusion, but to the  
extent that said paragraph sets forth any allegations of fact, Applicant denies any  
such allegations.

17. Paragraph 17 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

18. Paragraph 18 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

19. Applicant admits the allegations set forth in Paragraph 19.

20. Paragraph 20 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

21. Paragraph 21 appears to set forth a legal conclusion, but to the extent that said paragraph sets forth any allegations of fact, Applicant denies any such allegations.

#### **FIRST DEFENSE**

1. As a first defense, Applicant alleges that the Notice of Opposition fails to allege facts sufficient to entitle Opposer to the remedy sought.

#### **SECOND DEFENSE**

2. As a second defense, Applicant alleges that there is no likelihood of confusion between Applicant's intended or actual use of the FRISADENT mark and Opposer's registered marks, TERRADENT and TERRADENT MED 5, and Opposer's trade name. The marks themselves are not confusingly similar and relevant consumers are not likely to be confused as to the source of Applicant's and Opposer's goods.

### **THIRD DEFENSE**

3. As a third defense, Applicant alleges that Opposer's registered marks do not qualify for protection under Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c), as amended. Applicant alleges that Opposer's registered marks are not famous within the meaning of Section 43(c) of the Lanham Act.

### **FOURTH DEFENSE**

4. As a fourth defense, Applicant alleges that Opposer has not alleged any facts to support its claim to trade name rights in the United States in Frisetta Kunststoff GmbH or "Frisetta."

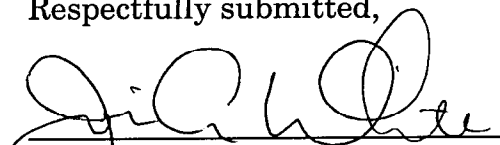
### **FIFTH DEFENSE**

5. As a fifth defense, Applicant is informed and believes that TERRADENT branded products were not distributed in interstate commerce prior to January 5, 1999, the filing date of U.S. Registration No. 2,566,390, and therefore, the registration is void and/or subject to invalidation on the grounds of fraud.

WHEREFORE, Applicant prays that Opposer's Notice of Opposition be

dismissed and that judgment be entered in favor of Applicant.

Respectfully submitted,



Jefferson F. Scher, Esq.

Joi A. White, Esq.

Attorneys for Applicant

CARR & FERRELL LLP

2200 Geng Road

Palo Alto, California 94303

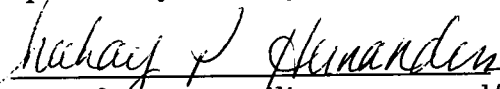
(650) 812-3400

Dated: June 7, 2004

### CERTIFICATE OF MAILING

I hereby certify that this paper and/or fee is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Box TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202 on June 7, 2004.

Deposited by: Suehay P. Hernandez



(Signature of person mailing paper and/or fee)

PROOF OF SERVICE BY MAIL

I declare that:

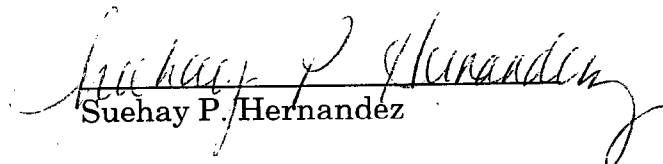
I am employed in the County of Santa Clara, California.

I am over the age of eighteen years and not a party to the within cause; my business address is 2200 Geng Road, Suite 200, Palo Alto, California 94303. On the date below, I served the within ANSWER TO NOTICE OF OPPOSITION, on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope and placing the envelope for collection and mailing at the above address, following ordinary business practices, addressed as follows:

Mr. Kurt Koenig  
Ms. Elizabeth A. Linford  
Koenig & Associates  
220 East Figueroa Street  
Santa Barbara, CA 93101

I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the U.S. Postal Service. This correspondence would be deposited with the U.S. Postal Service this same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Palo Alto, California, this 7th day of June, 2004.

  
Suehay P. Hernandez

CARR & FERRELL LLP  
ATTORNEYS AT LAW

TTAB

June 7, 2004

WRITER'S DIRECT DIAL NUMBER  
(650) 812-3461  
jwhite@carrferrell.com

06-10-2004

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VIA FIRST CLASS MAIL

Box TTAB  
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2900 Crystal Drive  
Arlington, Virginia 22202-3514

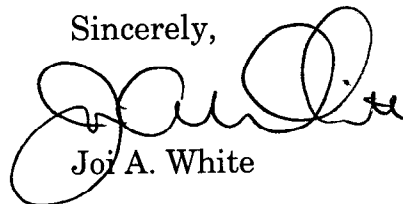
Re: Answer to Notice of Opposition  
Opposition No.: 91160273  
Opposer: Frisetta Kunststoff GMBH  
Applicant: Warsowe, Marc

Dear Sir:

Enclosed for filing are the following: (1) Answer to Notice of Opposition; (2) Proof of Service by Mail; and (3) Acknowledgement Card.

Applicant believes that no fees are due with this Request. However, should any additional fees be required to avoid defaulting, please charge our Deposit Account No. 06-0600 for such necessary fees.

Sincerely,



Joi A. White

JAW:agt

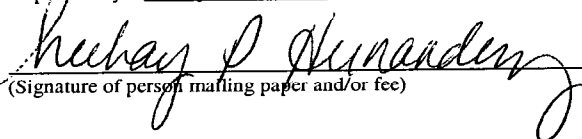
Enclosures

cc: Mr. Kurt Koenig, Koenig & Associates  
Ms. Elizabeth A. Linford, Koenig & Associates

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Deposited by: Suchay P. Hernandez



(Signature of person mailing paper and/or fee)

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