

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

In the matter of Application Serial No. 77/111,139

For the Trademark VITAFRESH

Published in the *Official Gazette* on August 14, 2007

VITA-MIX CORPORATION)

Opposer)

v.)

BSH BOSCH UND)

SIEMENS HAUSGERATE GMBH)

Applicant)

Opposition No. _____

CERTIFICATE OF MAILING

I hereby certify that this correspondence was deposited with the United States Postal Service as Express mail in an envelope addressed to:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
on this 6th day of February 2008

Patricia Oakes, Secretary to Edward G. Greive
Express Mail Label No.: EL 725991725 US

NOTICE OF OPPOSITION

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

VITA-MIX CORPORATION, a corporation duly organized and existing under the laws of the State of Ohio and having a principal place of business at 8615 Usher Road, Cleveland, Ohio 44138, believes that it will be damaged by registration of the mark "VITAFRESH" as represented by Application Serial No. 77/111,139 filed February 20, 2007 by BSH Bosch und Siemens Hausgeraete

02/11/2008 HPHAM1 00000070 77111139

01 FC:6402

300.00 DP



02-07-2008

GmbH, of Carl-Wery-Strasse 34, Munich 81739, Fed Rep Germany, and published for opposition on August 14, 2007. Opposer requested and received a first extension of time to oppose for good cause to December 12, 2007, and a second extension of time to oppose with consent until February 10, 2008.

A check in the amount of \$300.00 to cover the cost of the Opposition fee, as set forth in 37 C.F.R. §2.6(a)(17), is submitted. Please charge any additional fees or credit any overpayment to Deposit Account No. 18-0987.

Based upon information and belief, Opposer avers the following reasons why it will be damaged by the registration of the opposed mark:

1. Applicant is attempting to register VITAFRESH as a trademark in International Class 11 for HOUSEHOLD AND KITCHEN MACHINES AND EQUIPMENT, NAMELY, REFRIGERATORS, FREEZERS, COMBINATION REFRIGERATOR-FREEZERS, DEEP FREEZERS, ICE MAKING MACHINES, ICE-CREAM MACHINES; PARTS OF ALL AFOREMENTIONED GOODS, as evidenced by the publication of the mark in the August 14, 2007 issue of the *Official Gazette* of the U.S. Patent and Trademark Office.
2. Opposer is the owner of U.S. Registration No. 2,021,896 for the trademark VITA-MIX for ELECTRIC FOOD PROCESSORS AND ELECTRIC FOOD BLENDERS FOR DOMESTIC AND COMMERCIAL USE in International Class 7. The trademark was registered on December 10, 1996 based upon a date of first use of May 1, 1937 and date of first use in commerce of May 1, 1937.
3. Opposer has continuously used this trademark in commerce in association with the identified goods and others since May 1, 1937 and has not abandoned the trademark.

4. Opposer has used VITA-MIX throughout the United States as a trademark in conjunction with the goods recited in said trademark registration and other related goods.
5. Opposer's VITA-MIX mark is inherently distinctive and thereby operates as a source identifier for Opposer's products.
6. Applicant's use of the mark VITAFRESH will create a likelihood of confusion in the marketplace, and damage Opposer's rights in the mark VITA-MIX as it is used in conjunction with its products.
7. The parties' marks are similar in appearance.
8. The parties' marks are similar in sound when spoken.
9. Applicant makes electric food processing and blender products which compete with Opposer's electric blender products sold in conjunction with the registered trademark VITA-MIX.
10. Applicant's proposed VITAFRESH marks conveys a similar commercial impression, both visually and aurally, to that conveyed by Opposer's registered trademark VITA-MIX as it is used by Opposer.
11. The goods intended by Applicant to be sold under the mark VITAFRESH will travel through the same channels of trade as Opposer's goods sold in conjunction with the registered trademark VITA-MIX.
12. The goods intended by Applicant to be sold under the mark VITAFRESH will be sold to the same class of purchasers as Opposer's goods sold in conjunction with the registered trademark VITA-MIX.

13. The similarity of the parties' marks in appearance and sound, similarity in the parties' goods, themselves, similar commercial impression conveyed by the parties' marks, and similarity in the channels of trade through which the parties' goods will travel and purchasers of the parties' goods, will lead to a likelihood of confusion in the marketplace.

14. The grant of a federal registration for Applicant's mark VITAFRESH will be inimical to Opposer's superior rights, established since May 1, 1937, in the registered trademark VITA-MIX and, therefore, will damage Opposer.

Because Opposer will be damaged by the registration of the opposed mark VITAFRESH, Opposer requests that Application Serial No. 77/111,139 be denied and that the mark that is the subject of that application be refused registration. Accordingly, Opposer respectfully requests that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

VITA-MIX CORPORATION



By: Edward G. Greive (Registration No. 24,726)
Laura J. Gentilcore (Registration No. 54,116)
RENNER, KENNER, GREIVE, BOBAK,
TAYLOR & WEBER
Fourth Floor, First National Tower
Akron, Ohio 44308-1456
Telephone: (330) 376-1242
Facsimile: (330) 376-9646

Attorneys for VITA-MIX CORPORATION