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

Proceeding	91182438
Party	Defendant BSH Bosch und Siemens Hausgeraete GmbH
Correspondence Address	RUSSELL W. WARNOCK BSH HOME APPLIANCES CORPORATION 100 BOSCH BLVD NEW BERN, NC 28562-6924 UNITED STATES
Submission	Answer
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Date	03/24/2008
Attachments	VITAFRESH Answer in Opposition.pdf (6 pages)(1202244 bytes)

4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition and therefore denies same.

5. Applicant denies the allegations contained in Paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations contained in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant admits that it makes electric food processing and blender products. Applicant is without sufficient knowledge or information concerning Opposer's electric blender products sold in conjunction with the registered trademark VITA-MIX and therefore denies same.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice of Opposition and therefore denies same.

12. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Notice of Opposition and therefore denies same.

13. Applicant denies the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in Paragraph 14 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

15. Applicant incorporates the contents of Paragraphs 1-14, above.

16. Opposer does not have the exclusive right to use the term "VITA" or terms similar thereto, as there are other third-party uses and other third-party published applications and registrations of marks containing the term "VITA" and terms similar thereto, for goods related to those of Opposer including, but not limited to:

Trademark	Reg./App. No.	Relevant Goods
VITACLAY	3,208,735 (Registered)	Electric cooking pots for household purposes
VITALIFE	2,977,580 (Registered)	Electric griddles; electric slow cookers; Cookware and bakeware, namely saucepans, pots, skillets, ricers, steamers, strainers, pasta baskets, dutch ovens, non-electric griddles, baking pans, roasting pans, cake pans, cookie sheets, pie pans, non-electric slow cookers, cookie cutters, kitchen tools, namely, ladles, spatulas, tongs, serving forks, pasta forks, serving spoons, and chopping boards, and non-electric juicers
VITALIFE	78/711,646 (Allowed)	Water purification systems for household use comprising water purification units, water purification tanks and household water purification units
VITAMIN BAR	1,778,831 (Registered)	Electric vegetable steamers and rice cookers
VITANTONIO	2,918,047 (Registered)	Electric toasters and toaster ovens
VITACONTROL ELECTRONIC	77/252,338 (Published)	Household and kitchen machines and equipment, namely, cooling devices, namely, refrigerators, freezers, combination refrigerator-freezers, deep freezers, ice making machines, ice-cream machines; parts of all aforementioned goods in this class

Trademark	Reg./App. No.	Relevant Goods
HOME VITA & Design	3,019,607 (Registered)	Electric mixers for household use; Household water purifiers; tableware sterilizers; kitchen oven ranges; sinks; hot water heaters and tanks; air conditioners; microwave ovens; electric fans; refrigerators; electric kettles; electric refrigerators for kimchi; humidifiers; electric stoves
HOMEVITA V & Design	77/053,605 (Publication Review Complete)	Electric mixers for household use; Household water purifiers; tableware sterilizers; kitchen oven ranges; sinks; hot water heaters and tanks; air conditioners; microwave ovens; electric fans; refrigerators; electric kettles; electric refrigerators for kimchi; humidifiers; electric stoves
DOLCEVITA	2,138,441 (Registered)	Electric coffee machines, electric espresso machines, electric cappuccino machines, and electric coffee percolators and their fittings for domestic and commercial use
MIVITTA	77/027,303 (Allowed)	Microwave ovens, water coolers, electric coffee makers, electric toasters, electric kettles, clothes dryers
ROSAVITA	78/750,885 (Allowed)	Coffee roaster
BIOVITALIC & Design	78/729,492 (Allowed)	Baking ovens; Convection ovens; Cook-and hold-ovens; Domestic cooking ovens; Electric cooking ovens; Electric toaster ovens; Gas cooking ovens; Microwave ovens; Microwave ovens for cooking

17. Opposer does not have the exclusive right to use the formative term “VITA”, as the term “VITA” is generic and/or descriptive of the goods allegedly offered under Opposer’s alleged VITA-MIX mark (“Opposer’s Alleged Mark”).

18. Opposer’s Alleged Mark, as set out in Paragraph 2 of the Notice of Opposition creates a different overall commercial impression from that of Applicant’s Mark.

19. Opposer’s goods and services and Applicant’s goods and services are distinct and are encountered by the relevant public in different ways.

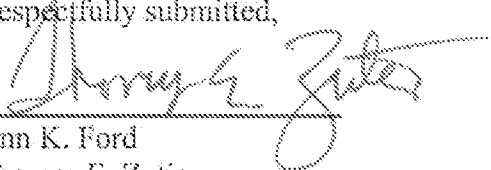
20. There is no likelihood of confusion between Opposer’s Alleged Mark and Applicant’s Mark.

21. Opposer will not be damaged and is not likely to be damaged by the registration of Application No. 77/111,139.

22. Opposer has failed to state a claim for which relief can be granted.
23. Opposer is estopped from asserting this opposition based on laches.
24. Opposer is estopped from asserting this opposition based on the doctrine of unclean hands.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

Respectfully submitted,



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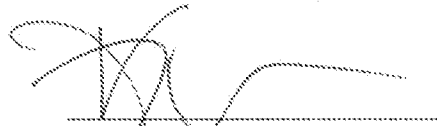
Attorneys for Applicant

March 24, 2008

CERTIFICATE OF SERVICE

I, Ryan C. Compton, do hereby certify that on this 24th day of March, 2008 the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served via U.S. mail, first class postage prepaid and addressed to:

Edward G. Greive
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