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

Proceeding	91203984
Party	Defendant FITZ SCIENTIFIC, LLC
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Date	03/16/2012
Attachments	CEP Answer to Opposition_031612.pdf ( 7 pages )(18599 bytes )

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

**IN THE MATTER OF Trademark Application Serial No. 85/331951**

**For the Mark: CEP**

**Filed: May 27, 2011**

**DATE OF PUBLICATION: October 25, 2011**

**CAREFUSION 2200, Inc**

**Opposer,**

**v.**

**FITZ SCIENTIFIC, LLC**

**Applicant**

**Opposition No: 91203984**

**APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION**

Applicant, Fitzco Scientific, LLC ("FITZCO"), for its answer to the Notice of Opposition filed by CareFusion 2200, Inc. ("Opposer"), denies each and every allegation contained therein except as hereinafter specifically admitted and further responds to each numbered paragraph of the Notice of Opposition as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Notice of Opposition, and therefore denies same.

2. Upon information included in USPTO records available to Applicant, it appears that CareFusion 2200, Inc. is the owner of the registered SEPP trademark, Registration Number 1,075,364; as for the remaining allegations in Paragraph 2, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of such allegations and therefore denies same.

3. Upon information included in USPTO records available to Applicant, it appears that Opposer is the owner of the registered SEPP trademark, Registration Number 1,075,364 for unitary antiseptic scrub solution sold with applicator; as for the remaining allegations in Paragraph 3, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of such allegations and therefore denies same.

4. Applicant specifically denies ownership of Opposer's mark as alleged in paragraph 4 of the Notice of Opposition. Upon information included in USPTO records and available to Applicant, it appears that Opposer's registration is valid and subsisting. As for the remaining allegations, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of such allegations and therefore denies same.

5. Applicant denies Opposer's allegations in paragraph 5.

6. Applicant denies Opposer's allegations in paragraph 6.

7. Upon information and belief, Applicant admits that there are no restrictions in the goods description of Applicant's application, but denies the allegation and presumption that Applicant's CEP goods are offered to and used by some of the same medical and health care customers and consumers who would also be in the market for and use Opposer's SEPP products.

8. Upon information and belief, Applicant denies Opposer's allegations in paragraph 8.

9. Applicant denies Opposer's allegations in paragraph 9.

10. Applicant is without sufficient knowledge or information to form a belief as the truth or falsity of the allegations set forth in Paragraph 10 of the Notice of Opposition, and therefore denies same.

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

12. Applicant denies Opposer's allegations in paragraph 12.

13. Applicant denies Opposer's allegations in paragraph 13.

14. Applicant denies Opposer's allegations in paragraph 14.

#### **AFFIRMATIVE DEFENSES**

15. Opposer's SEPP mark is pronounced "S-E-P-P" beginning with the letter "S" and having two "Ps" while Applicant's mark is "C-E-P" beginning with the letter "C" and is not identical to Opposer's mark.

16. Opposer's mark is registered in Class 05 for "Antiseptic scrub solution sold with applicator" while Applicant's mark is in Class 10 for "Medical apparatus, namely, handheld devices containing a foam swab for obtaining buccal cells."

17. Applicant asserts that the parties' respective consumers are not related, thus confusion in the marketplace is unlikely.

18. Applicant asserts that the parties' respective trade channels are not related, thus confusion in the marketplace is unlikely.

19. Applicant asserts that its goods are sold to discriminating consumers, thus confusion in the marketplace is unlikely.

20. Applicant reserves the right to raise such other defenses as may be warranted by discovery in this proceeding.

**WHEREFORE,** Applicant prays that this Opposition be dismissed and that the application for registration proceed to issuance forthwith.

Dated: March 16, 2012

By     /Mike Essien/      
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**CERTIFICATE OF TRANSMITTAL – ESTTA**

I hereby certify that this correspondence is being electronically transmitted through on-line TTAB filing systems, ESTTA on March 16, 2012

/Mike Essien/  
Michael A. Essien

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via both email to [jdreitler@ustrademarklawyer.com](mailto:jdreitler@ustrademarklawyer.com) and First Class U.S. Mail, postage prepaid this 16<sup>th</sup> day of March 2012 upon the following:

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Signed: /Mike Essien/  
Michael A. Essien