

Applicant did not file any evidence or brief in defense of its application. Applicant did not dispute Opposer's priority of use of its ORAL-B trademark, and did not object to Opposer's submission of its Notice of Reliance during its rebuttal testimony period. Under these circumstances, the Board should consider the evidence that was arguably submitted within the proper time limits.

II. In the Alternative, Opposer Moves that the Board Consider Testimony Submitted in Opposition No. 126,804, Gillette Canada Company v. Kivy Corp.

37 C.F.R. § 2.122(f) provides that the Board can allow testimony from previous proceedings to be used, subject to the adverse party's right to demand examination of the witness. Opposer attaches as Exhibit A a copy of the trial testimony of Alan Michaels in the case of *Gillette Canada Company v. Kivy Corp.*, Opposition No. 126,804. Opposer will give Applicant the opportunity to examine this witness if it wishes. However, Opposer submits that Applicant is no longer defending this case, and will not request an examination of this witness. Accordingly, Opposer requests that, provided that Applicant does not oppose Opposer's motion, the Board consider the testimony presented in the *Kivy* case.

When one examines the testimony in the *Kivy* case, it is clear that Opposer should prevail. The testimony presented in the *Kivy* case establishes use dating back at least to 1970 or 1971 (Tr. at 19, 20), well before Applicant's alleged first use date in 1999, so priority is not at issue.

The Board's decision also takes issue with a failure to prove a connection between the Opposer and the deponent, Heather Gregg. Opposer submits that the Board in *Kivy* accepted the testimony in that case, which also did not clearly spell out the relationship between Gillette Canada Company, which owns the trademarks, and The Gillette Company, which employed the deponents in *Kivy* and this case. It is readily apparent, by the common name "Gillette" that these

are related companies, and the use of the mark by The Gillette Company's Oral-B Laboratories division supports use of the mark by Gillette Canada Company. See 15 U.S.C. § 1055. If the Board accepted the testimony in *Kivy* as supporting Gillette Canada Company's use of the ORAL-B mark, there is no reason why it should not accept that testimony in this case to support such use and ownership.

III. Conclusion.

Applicant has ceased defending its application, and has not submitted any support for its position, or any objection to the evidence Opposer has submitted. Under these circumstances, the Board should liberally construe the Rules that arguably permit the Board to consider the evidence that has been submitted in order to render a just decision in Opposer's favor. For the reasons discussed above, Opposer respectfully requests that the Board grant Opposer's motion.

Dated: April 27, 2005

**GILLETTE CANADA COMPANY, DBA
ORAL-B LABORATORIES**

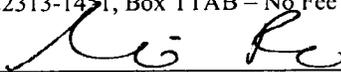


Michelle Brownlee, Esq.
The Gillette Company
Prudential Tower Building
Boston, MA 02199
(617) 421-7855

Attorneys for Opposer, Gillette Canada
Company dba Oral-B Laboratories

37 C.F.R. § 1.8 Certificate of Mailing:

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid in an envelope addressed to: Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451, Box TTAB - No Fee



(Name)

4/27/05

(Date)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Motion For Reconsideration of Final Decision is being served by first class mail, postage prepaid, upon the Applicant's attorney of record:

James M. Pacious
Collier Shannon Scott
3050 K Street, N.W.
Suite 400
Washington, D.C. 20007



Michelle Brownlee

4/27/05

Date

ORIGINAL

1

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

-----x

GILLETTE CANADA COMPANY,

Opposer,

Opposition

-against-

No. 116,804

KIVY CORPORATION,

Applicant.

-----x

July 10, 2001

10:05 a.m.

Testimony by way of Deposition of Gillette Canada
Comapny, by ALAN MICHAELS, taken by Opposer,
pursuant to notice, at the offices of Fross Zelnick
Lehrman & Zissu, Esqs., 866 United Nations Plaza,
New York, New York, before Nadia El Rez, a Shorthand
Reporter and Notary Public within and for the State
of New York.

A p p e a r a n c e s :

FROSS ZELNICK LEHRMAN & ZISSU, ESQS.
Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017

By: MARIE V. DRISCOE, ESQ.,
of Counsel

LAW OFFICES OF ALBERT J.C. CHANG
Attorneys for Applicant
19138 Walnut Drive
Suite 100
Rowland Heights, California 91748

By: TRAVIS J. TOM, ESQ.,
(Via teleconference) of Counsel

Also Present :

MICHELLE BROWNLEY, ESQ.
In-House Counsel
Gillette Canada Company
(Via Teleconference)

oOo

1

2 A L A N M I C H A E L S,

3 having been first duly sworn by the

4 Notary Public (Nadia El Rez), was

5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. DRISCOE:

8 Q. Would you state your name and
9 address for the record, please.10 A. Alan A. Michaels, and I live at
11 241 Montclair Road, in Los Gatos, California.12 MS. DRISCOE: Mr. Tom, are you
13 able to hear all of this?

14 MR. TOM: Yes.

15 MS. DRISCOE: Okay, fine.

16 Q. Are you employed, Mr. Michaels?

17 A. Yes, I am.

18 Q. By whom?

19 A. By the Gillette Company, the Oral
20 B Products Group in California.21 Q. And how long have you been with
22 the Oral B Products Group?23 A. I have been with Oral B for 31
24 years.

25 Q. Can you briefly trace for us your

Michaels

1
2 Oral B products to the dental professionals in
3 North America, including Canada and the United
4 States.

5 Q. Are you also familiar as a part
6 of being an employee of Oral B with the
7 consumer part of the business?

8 A. Yes, I spent most of my career on
9 the consumer side of the business before moving
10 into the professional products area and I
11 worked with the consumer group on a direct
12 basis in terms of developing marketing plans
13 and promotions for all of the Oral B products
14 in North America.

15 Q. During your entire 31 years, has
16 the company been named Oral B?

17 A. Yes, it has.

18 Q. And during that entire 31-year
19 period, has it also used Oral B as a trademark
20 for its products?

21 A. Yes.

22 Q. By whom were you employed prior
23 to coming with Oral B?

24 A. The Coca-Cola Company.

25 Q. And as an employee of Coca-Cola

1 Michaels

2 B and those are sold throughout North America
3 and throughout the world.

4 MS. DRISCOE: Would you mark this
5 as Exhibit 1, and I'm showing -- I will
6 be showing the witness, Mr. Tom, a 2000
7 and 2001 Oral B product catalogue.

8 (Whereupon, 2000 and 2001 Oral B
9 product catalogue marked Opposer's'
10 Exhibit 1 for identification, as of
11 this date.)

12 Q. Can you identify Exhibit 1,
13 please?

14 A. Yes, this is an Oral B product
15 catalogue that's used by the professional
16 products group and it's distributed to dental
17 professionals throughout North America.

18 It includes a complete listing of
19 all of the products that we sell and market to
20 dental professionals throughout the United
21 States and Canada. And it basically has all of
22 the information on the products, product code
23 numbers, features and benefits of the products
24 and essentially, it's an information guide for
25 dental professionals who want to buy or

Michaels

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

distribute or use any of our professional and consumer OTC products.

Q. And does this catalogue also show the kinds of products that are distributed on a retail basis by Oral B?

A. Yes, this includes all of the products that we sell at retail in addition to some products that we sell only to the dental professionals.

Q. Do you know anything, Mr. Michaels, about the history of the Oral B company?

A. Yes.

Q. Could you give me a capsule history of Oral B?

A. The Oral B toothbrush was developed by a young dentist, Dr. Robert Hutson, the first young periodontist in the world, Dr. Robert II, and after the war he had the idea for a better toothbrush, a soft and rounded multitufted toothbrush that would be gentle on gums and effectively clean teeth.

So he invented the Oral B

Change to "and" "end"
↓

1 Michaels

2 trademark presently used, and by that I mean
3 on -- in what context is it used?

4 A. Well, the Oral B trademark is
5 essentially used on every product that we
6 currently market, all of our toothbrush
7 products, all of our dental floss products.
8 All of our products have Oral B as part of the
9 brand name, of the product.

10 For example, we have Oral B
11 Indicator toothbrushes, dental floss, Oral B
12 Minute Foam, so every product we sell has Oral
13 B in the name. And in terms of the packaging,
14 I believe on every product we sell Oral B is
15 clearly part of the package and part of the
16 trademark that's displayed on the -- on all of
17 our products.

18 Q. Now, you stated that Dr. Hutson
19 began to sell a toothbrush.

20 Are toothbrushes still an
21 important part of the Oral B product line?

22 A. Toothbrushes are the primary
23 product lines within the Oral B family. They
24 account for somewhere between 65 and 70 percent
25 of the total Oral B sales volume throughout

1 Michaels

2 (Whereupon, Oral B Advantage
3 toothbrush marked Opposer's Exhibit 2
4 for identification, as of this date.)

5 Q. Please identify Exhibit 2.

6 A. This is the Oral B Advantage
7 toothbrush. It's softer than the regular --

8 Q. Is that presently in the product
9 line?

10 A. Yes, it is.

11 Q. Do you know how long it's been in
12 the product line?

13 A. The Advantage toothbrushes has
14 been in the line, I believe, since the early
15 '90s.

16 MS. DRISCOE: Would you mark this
17 as Exhibit 3, please.

18 (Whereupon, Oral B Indicator
19 toothbrush marked Opposer's Exhibit 3
20 for identification, as of this date.)

21 Q. Would you identify Exhibit 3?

22 A. This is the Oral B Indicator
23 toothbrush.

24 Q. And is that presently in the
25 product line?

1 Michaels

2 toothbrush.

3 Q. How long has that been part of
4 the Oral B product line?

5 A. This was introduced approximately
6 in 1998.

7 Q. I note on the packaging for the
8 Oral B Cross-Action toothbrush, at the back it
9 says "not for retail sale."

10 A. Right.

11 Q. In fact, is that kind of brush
12 available at retail?

13 A. Yes, it is. This is a
14 professional package. In other words, this
15 package is sold to dental offices for
16 distribution to patients.

17 Since it is sold through dental
18 offices, the package is different and the
19 pricing is different. It's basically indicated
20 it's not for retail sale.

21 Q. But the retail toothbrush would
22 have the same appearance, would it not, as the
23 toothbrush in Exhibit 4?

24 A. Yes, it's the exact same
25 toothbrush. The packaging would be very

1 Michaels

2 similar, but slightly different because it
3 would be a retail package as opposed to a
4 professional package.

5 Q. Now, in Exhibits 2 through 4, is
6 it correct that the Oral B trademark is affixed
7 to the actual toothbrush handle?

8 A. Yes, the logo, the Oral B logo is
9 molded into the toothbrush handle in addition
10 to being very prominent on the package itself.

11 Q. And would that result in the Oral
12 B trademark being present every time the brush
13 was used?

14 A. Yes, it's on the handle, so every
15 time the patient or the consumer uses that
16 brush, they would be aware of the logo.

17 Q. Now, you referred to making sales
18 to dentists for distribution to their patients.

19 Is that a way in which Oral B
20 brushes are made available?

21 A. Yes, that's one of the methods by
22 which we distribute and sell the products. We
23 sell products to the dental profession,
24 directly or through dental dealers. They in
25 turn give those toothbrushes to their patients

1 Michaels

2 to use.

3 We also sell our products to all
4 retail classes of trade. That would include
5 drug, food, mass merchandisers. We also have
6 an extremely large presence in club stores like
7 Price Club or Costco or Sam's.

8 Q. And when the brushes, for
9 example, are sold directly in retail stores,
10 are you familiar with the way in which they are
11 presented on the shelves to consumers?

12 A. Yes.

13 Q. And would you describe that,
14 please?

15 A. Toothbrushes are displayed a
16 number of ways. The primary vehicle that's
17 used is what we would call either a gravity fed
18 or spring fed display. That is where the
19 brushes are loaded into the display and as the
20 consumer takes a toothbrush, another one gets
21 fed down, so there's always a toothbrush facing
22 the consumer.

23 There are also what we call egg
24 crate displays where toothbrushes are put into
25 individual slots and presented to the consumer

1 Michaels

2 in that manner.

3 They are also displayed in
4 secondary locations, like floor standing
5 displays, counter displays, check-out displays,
6 a variety of ways in which to present the
7 product to the consumer.

8 Q. And how are the Oral B
9 toothbrushes, for example, presented vis-a-vis
10 the brands from other companies?

11 A. Well, normally each brand has a
12 certain section of the display. And the amount
13 of real estate or the amount of space allotted
14 to a brand is usually based on either the
15 market share of the brand or the velocity of
16 sales for that brand.

17 So an Oral B brand may have 30
18 percent of the rack, another brand may have 10
19 or 15 percent of the rack. Usually the
20 toothbrushes are displayed together. Each
21 brand has a certain section within the rack.

22 But more often than not what
23 happens is the consumer will go pick a
24 toothbrush, they will look at one, take it out,
25 put it back in the rack. In many cases, they

1 Michaels

2 Q. Is Oral B also used on all
3 corporate stationery?

4 A. Yes, it's an integral part of the
5 company. In fact, most people know of us as
6 the Oral B company or Oral B Laboratories. The
7 brand is the company.

8 Q. Now, looking at the catalogue
9 that has been marked as Exhibit 1, I note that
10 there are depictions in this catalogue of
11 toothbrushes that are apparently directed
12 toward children. There is a Sesame Street
13 line, something called Blues Clues. Another is
14 Rug Rats.

15 Are you familiar with this?

16 A. Yes.

17 Q. How long has there been a
18 children's line of Oral B brushes?

19 A. Well, as long as I can remember
20 we sold children's toothbrushes, and I can go
21 back, my own experience, to 1970, '71, where we
22 had in addition to the adult toothbrushes we
23 sold children's toothbrushes of varying styles
24 and types.

25 Q. Was there also at one point over

1 Michaels

2 (Whereupon, selling sheet and
3 promotional sheet for Oral B
4 toothbrushes marked Opposer's Exhibit 5
5 for identification, as of this date.)

6 Q. What is Exhibit 5?

7 A. This is a selling sheet and a
8 promotional sheet for Oral B toothbrushes.

9 Q. Now, I note on page 1 of that
10 exhibit, there are depictions of what appear to
11 be floor stands. What are they?

12 A. Yes, these are disposable floor
13 stand units. They are designed primarily for
14 secondary locations for stores.

15 So in addition to a normal rack
16 that includes the toothbrushes, these floor
17 stand promotions and displays would be placed
18 in different locations in the stores, usually
19 high traffic areas where additional sales of
20 the product would be generated.

21 Q. And in that same Exhibit 5, on
22 the fifth page, if you could look at the fifth
23 page --

24 A. Right.

25 Q. -- what does that depict?

1 Michaels

2 A. This is an example of an egg
3 crate style counter display. This would be a
4 permanent plastic display that would be placed
5 on counters in various types of retail stores.
6 They would be placed together in tandem, so you
7 could have a toothbrush section that could be
8 anywhere from 18 inches long to 20 feet long,
9 depending on how many of these plastic egg
10 crate displays you wanted to connect, so they
11 are modular in nature.

12 Q. And this is how you would present
13 the Oral B toothbrushes to a consumer in the
14 retail environment?

15 A. This is one of the ways that they
16 are displayed directly to the consumer and
17 other ways, spring fed or gravity fed racks.

18 MS. DRISCOE: Would you mark this
19 as Exhibit 6.

20 (Whereupon, floor stand header
21 card marked Opposer's Exhibit 6 for
22 identification, as of this date.)

23 Q. What is Exhibit 6?

24 A. This is a floor stand header
25 card. That is placed on a floor stand which

1 Michaels

2 basically draws the consumer to the floor stand
3 with a specific purchase incentive or offer.

4 Q. Does that appear at point of
5 retail sale?

6 A. Yes. This would be attached to
7 the floor stand. This would be usually in a
8 secondary display location within a store.

9 Q. And is that one way in which Oral
10 B promotes its brushes to the public?

11 A. Yes, in addition to the standard
12 racks that are in the stores we have a fairly
13 extensive floor stand promotional program and
14 in some cases up to 20 percent or more of our
15 volume is generated through secondary display
16 and location.

17 Q. And I note in Exhibit 6 that an
18 offer is being made of a free toothbrush
19 holder, is that correct?

20 A. Yes, in this particular case the
21 incentive to buy from this floor stand would be
22 a pewter toothbrush holder for the Cross-Action
23 toothbrush.

24 Q. Could other brushes be put in
25 that holder as well?

1 Michaels

2 consumer is exposed to an ad on the product and
3 also given a purchase incentive which allows
4 them to buy the product at a reduced price
5 through coupon, so it's extremely important in
6 terms of generating volume throughout the year.

7 Q. Now, I note that in Exhibit 7,
8 the FSIs run from about '97 through '99.

9 Are FSIs still used by Oral B to
10 promote its product?

11 A. Yes, they are. They have been
12 used for the last 10 or 15 years on a regular
13 basis.

14 MS. DRISCOE: Would you mark this
15 as Exhibit 8, please.

16 (Whereupon, FSI for a
17 Cross-Action toothbrush offer marked
18 Opposer's Exhibit 8 for identification,
19 as of this date.)

20 Q. What is Exhibit 8?

21 A. This is an FSI for a Cross-Action
22 toothbrush offer. It's an ad on Cross-Action
23 and it offers a dollar off on Cross-Action,
24 plus a sweepstakes where you could win a trip
25 to Busch Gardens in Tampa.

1 Michaels

2 they have had a toothbrush in their bathroom
3 for a number of months and maybe it's time to
4 change, and they end up purchasing a
5 toothbrush.

6 MS. DRISCOE: Would you mark this
7 group of documents as Exhibit 9.

8 (Whereupon, group of storyboards
9 on various commercials developed for a
10 variety of Oral B products marked
11 Opposer's Exhibit 9 for identification,
12 as of this date.)

13 Q. What is Exhibit 9?

14 A. Exhibit 9 appears to be a number
15 of storyboards on various commercials that were
16 developed for a variety of Oral B products over
17 a number of years.

18 Q. And are these all storyboards for
19 television advertising?

20 A. A lot of them are. It appears
21 there are also some scripts here for radio
22 commercials that were done, radio. There
23 appears to be a number of them that indicate
24 various forms and copy platforms for various
25 numbers of products.

1 Michaels

2 A. Yes, this is called a shelf
3 dangler and it's placed in the pricing track of
4 a shelf in a store, and as you can see, the
5 message dangles from the shelf and it usually
6 advertises or promotes a specific product.

7 In this case it's promoting the
8 Oral B Cross-Action toothbrush and the fact
9 that it's clinically proven to remove more
10 plaque than today's leading toothbrushes.

11 Q. And is this dangler another
12 typical point of sale display of the trademark?

13 A. Yes, this is just one example of
14 the types of various point of sale, point of
15 purchase displays that are used for all of our
16 toothbrush lines.

17 MS. DRISCOE: Would you mark this
18 as Exhibit 10, please -- 11.

19 (Whereupon, coupon pad with
20 number of coupons for Oral B
21 Cross-Action toothbrush marked
22 Opposer's Exhibit 11 for
23 identification, as of this date.)

24 Q. What is Exhibit 11?

25 A. This is a coupon pad that

1 Michaels

2 which describes a promotion through the retail
3 trade, that looks at encouraging the consumers
4 to change their toothbrush.

5 It carries a promotional theme of
6 2000, change for a better future and in
7 addition to the promotional theme there is a
8 rainbow piece of artwork that is used to carry
9 through the promotional idea, change for a
10 brighter future.

11 It also includes floor stand
12 offers that are part of the promotion that
13 describe the promotion.

14 For example, the header card
15 would read change your brush, brighten a
16 child's future, and that would be on a
17 children's display and that would be a very
18 large rainbow across the display itself, in
19 addition to the offer that encourages consumers
20 to change their toothbrush on a regular basis.

21 MS. DRISCOE: And would you mark
22 this as 14, please.

23 (Whereupon, retail pack that goes
24 along with sell sheet marked Opposer's
25 Exhibit 14 for identification, as of

1 Michaels

2 this date.)

3 Q. What is Exhibit 14?

4 A. This is the retail pack that goes
5 along with the sell sheet that we just talked
6 about in terms of change for a brighter future.

7 This is the promotional pack that
8 was sold in conjunction with the offer. It's a
9 five-pack with the 2000 rainbow, change for a
10 brighter future and includes five toothbrushes
11 in new rainbow colors that are designed
12 specifically for this promotion.

13 It's a limited edition Advantage
14 toothbrush that's designed to encourage
15 families and consumers to purchase additional
16 toothbrushes, so they can change them because a
17 new toothbrush removes more plaque than an old
18 toothbrush.

19 Q. And do you know when this
20 promotion was used?

21 A. This promotion was used in the
22 year 2000. I could see from the sell sheet
23 that the basic theme of the promotion is 2000
24 change for a better smile, and I believe I can
25 see from the code number on the material that

Michaels

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

it was produced in '99.

And usually the materials are produced and the programs presented six to nine months prior to them showing up at retail, so the promotion was executed in the year 2000 and probably sold in the year 1999.

Q. Was Oral B's decision to use a rainbow in connection with this promotion, did it have anything at all to do with the fact that the Oral Magic mark, which is the mark involved in this proceeding, is shown sometimes with a rainbow?

A. No, this promotion was designed, creatively to change for a brighter future and a brighter future the rainbow was used to communicate brighter, sunnier, better, a brighter future.

Q. Now, we have been talking principally today about manual toothbrushes.

Did there come a time when Oral B branched out and began to sell electric or power toothbrushes?

A. We began to sell power toothbrushes in 1991 and we got together with

1 Michaels

2 another Gillette company and introduced the
3 Braun Oral B electric toothbrush.

4 Q. And does the Oral B trademark
5 appear in connection with the packaging of that
6 electric toothbrush?

7 A. Yes, the Braun Oral B logos are
8 included on all of the packaging and the oral B
9 logo and the Braun logo are included on the
10 product, either on the brush head or on the
11 handle.

12 Q. Now, going back to Exhibit 1, and
13 I'm looking at the cover, does the cover show
14 one of the power or electric brushes that Oral
15 B sells?

16 A. Yes, this includes the -- on the
17 cover of this, this includes the 3D -- the
18 Braun Oral B 3D toothbrush and as you can see,
19 it also includes the Braun and the Oral B logos
20 on the handles and on the brush head.

21 MS. DRISCOE: Would you mark this
22 as 15.

23 (Whereupon, refill pack of brush
24 heads for electric toothbrush marked
25 Opposer's Exhibit 15 for

1 Michaels

2 (Whereupon, documents describing
3 various types of Gillette sports
4 related promotions marked Opposer's
5 Exhibit 16 for identification, as of
6 this date.)

7 Q. What is the collection of
8 documents marked as 16?

9 A. This is a variety of blank fax
10 sheets that have as a theme various types of
11 Gillette sports related promotions and the
12 purpose of these sheets are to allow the sales
13 rep to design a specific promotion on various
14 types of products related to the overall sports
15 name for a specific account.

16 Q. And there are other promotions as
17 well as sports, is that correct?

18 A. Well, yes, there's a sports,
19 there's some that related to our children's
20 toothbrush lines. For example, there's one
21 here that's a Winnie-the-Pooh offer for the
22 purchase of products. There's a satin floss
23 sell sheet. There is one that's centered
24 around a special buy one, get one free
25 promotion on our Indicator series brushes, so

1 Michaels

2 for the purchase of Oral B products.

3 Q. Does Oral B also use direct
4 mailing as a promotional advertising tool?

5 A. Yes, periodically we'll do direct
6 mail to consumers and on a more regular basis
7 we'll execute numerous direct mail programs to
8 dental professionals.

9 MS. DRISCOE: Would you mark this
10 as 18, please.

11 (Whereupon, direct mail piece
12 marked Opposer's Exhibit 18 for
13 identification, as of this date.)

14 Q. Can you identify 18?

15 A. Yes, this is a direct mail piece
16 that has been sent to consumers, which talks
17 about our Cross-Action toothbrush and our satin
18 floss dental floss product. And it includes a
19 free sample of satin floss and a variety of
20 coupons for various Oral B products for up to a
21 \$5 savings.

22 And essentially this one appears
23 was done primarily for the Randall's, I
24 believe, chain of stores and it directs people
25 to go to Randall's to purchase these products

1 Michaels

2 and use these coupons.

3 Q. Do you know when that mailer was
4 used?

5 A. I am not completely familiar with
6 this mailer, I am not sure of the date on it.
7 But the coupon on the mailer says it expires
8 2/15/2001, so it's probably a promotion that
9 was distributed in the year 2000.

10 Q. And is this typical of the kinds
11 of mailings that Oral B uses?

12 A. Well, this is only one of the
13 types of mailings and this one was a specific
14 mailing that went to a number of consumers, but
15 on the dental professional side of the
16 business, we execute five, six, seven mailers a
17 year, some of those mailers go to as many as
18 200, 240,000 dental professionals each mailer,
19 food products and purchase offers, so this is
20 one sample of a type of mailer, but the variety
21 and the number of mailers are significantly
22 higher than what you see here.

23 Q. And do you have any idea of
24 how -- of the frequency with which dental
25 professionals give Oral B products such as

1 Michaels

2 B toothbrushes?

3 A. On many occasions.

4 Q. And how do they do it?

5 A. Well, they may have their own
6 fliers that go out to consumers that advertise
7 various promotions on various products.

8 You will see sections in
9 newspapers that are dedicated to one particular
10 account and they will be advertising 40, 50 or
11 a hundred different products.

12 So there are a variety of ways
13 that accounts advertise our products, both in
14 newspapers, in their own special catalogues, or
15 special fliers. Every account has a variety of
16 methods to which they reach their own
17 customers, some are directly through newspapers
18 where they place ads, some are distribution of
19 fliers at store levels, some are mailings to
20 their customers, and in many cases Oral B will
21 be part of the promotions and the advertising
22 that those accounts do to their customer base.

23 Q. And have you seen such
24 advertising yourself?

25 A. Yes.

1 Michaels

2 shows?

3 A. Yes. On the professional side of
4 the business, we attend approximately 80 dental
5 conventions or dental trade shows per year.
6 Across the country that includes as many as 25
7 or 30,000 professionals at a time.

8 Some of them are smaller, but in
9 general we are at every major dental convention
10 in the United States and Canada.

11 Q. And what's the purpose of your
12 attendance?

13 A. The purpose is to advertise our
14 products, to promote our products, to talk to
15 dental professionals about our products, to
16 encourage them to recommend our products, to
17 use our products,

18 We also use it as a venue to
19 introduce new products to the dental
20 profession. We include special promotions at
21 the conventions that are either designed to
22 encourage dentists to purchase our products or
23 designed to encourage dentists and hygienists
24 to try and use and recommend our products. We
25 have booths that are as large as 60 feet and

1 Michaels

2 manned by as many as 20 or by as many as 30
3 representatives.

4 Q. Does Oral B also attend any trade
5 shows for wholesalers, retailers or other
6 distributors of such products as toothbrushes?

7 A. Yes, there is a variety of shows
8 that are attended by the retail group, chain
9 drug association shows, various organizations
10 that are designed to address the retail side of
11 the business.

12 We also attend the housewares
13 show, gourmet show, and those are primarily
14 designed to display and promote our electric
15 toothbrush lines.

16 MS. DRISCOE: Would you mark this
17 as 22.

18 (Whereupon, selling aid used to
19 introduce Oral B Cross-Action
20 toothbrush to the dental profession
21 marked Opposer's Exhibit 22 for
22 identification, as of this date.)

23 Q. Can you identify 22?

24 A. Yes. This was the selling aid
25 that was used to introduce the Oral B

1 Michaels

2 Cross-Action toothbrush to the dental
3 profession. It includes a picture of the
4 toothbrush and specific information on product
5 benefits and features of the product, also the
6 primary claim on the product which is that it
7 is clinically proven to remove 25 percent more
8 plaque than the leading toothbrush.

9 Q. And who would utilize a selling
10 aid such as Exhibit 22?

11 A. In this particular case, this
12 piece was used by our professional selling
13 organization. They would use this when they
14 met with dentists or hygienists who present
15 this product, it would be used to demonstrate
16 the various features of the product.

17 And in addition to providing all
18 of the information that the dentist or
19 hygienist needs in terms of understanding how
20 the product works and what it does, it would
21 also be then left behind with the dentist or
22 hygienist so they would have not only the sales
23 presentation but they would also have the
24 literature that completely describes the
25 product.

1 Michaels

2 Q. Now, that sales aid happens to
3 refer to Oral B Cross-Action.

4 Would it be typical each time a
5 new improved toothbrush is introduced into the
6 product line to utilize similar kinds of sales
7 tools?

8 A. Yes.

9 MS. DRISCOE: Would you mark this
10 as 23, please.

11 (Whereupon, ad describing new
12 microtextured toothbrush technology
13 marked Opposer's Exhibit 23 for
14 identification, as of this date.)

15 Q. Would you identify 23?

16 A. Yes, this is an ad that describes
17 our new microtextured toothbrush technology.

18 Q. And is that ad also meant to
19 describe historically various developments
20 within Oral B for its toothbrushes over the
21 years?

22 A. Yes, this talks about design
23 changes and improvement to the Oral B
24 toothbrush since 1991 through 1996. It talks
25 about the new dual material handle development,

1 Michaels

2 the nonslip universal thumb grip, our patented
3 indicator bristles which tells the consumers
4 when it's time to change the toothbrush, our
5 power tip, power tip bristles which allow
6 people to clean their back teeth, in addition
7 to the microtextured bristle design that was a
8 revolutionary development in terms of bristle
9 technology.

10 Q. Now, I note that one of the
11 statements made on Exhibit 23 is that the
12 bristles were soft and end rounded.

13 Is that an important feature?

14 A. Yes. All Oral B bristles are
15 considered soft, they are all end rounded, and
16 basically what end rounding is that after the
17 bristle has been blade cut the tip of that
18 bristle is polished to a round surface.

19 So when a patient brushes their
20 teeth they don't damage their gums or over time
21 actually abrade enamel.

22 So it's important that
23 toothbrushes be designed in a manner that's
24 safe and effective and end rounding is one way
25 of ensuring that when the brush is used it is

1 Michaels

2 Our share is the number one share
3 in both the retail and the consumer side of the
4 business, which says that more consumers buy
5 our products than any competitor's.

6 The logo is synonymous with
7 quality, with high performance products, with
8 professional endorsement, professional use and
9 professional recommendation. It is a highly
10 recognizable logo and it carries the
11 connotation, as I said, of high value, quality
12 and performance.

13 Q. People recognize it as a brand
14 though, is that correct?

15 A. Yes.

16 Q. And is it a registered trademark,
17 to your knowledge?

18 A. Yes, it is.

19 Q. I will now show you a document
20 which we'll have the reporter mark as Exhibit
21 24.

22 (Whereupon, New York Times
23 Magazine crossword puzzle marked
24 Opposer's Exhibit 24 for
25 identification, as of this date.)

1 Michaels

2 would be?

3 A. The promotion did take place,
4 yes.

5 Q. Now, you identified today product
6 catalogues for the years 2000 to 2001, and just
7 so they are in the record, I'd like you to
8 identify some of the past ones we happen to
9 have here.

10 MS. DRISCOE: And would you mark
11 this as 25.

12 (Whereupon, 1999 Oral B product
13 catalogue marked Opposer's Exhibit 25
14 for identification, as of this date.)

15 Q. What is 25?

16 A. This is our 1999 Oral B product
17 catalogue.

18 MS. DRISCOE: And would you mark
19 this as 26.

20 (Whereupon, 1997 to 1998 product
21 catalogue marked Opposer's Exhibit 26
22 for identification, as of this date.)

23 Q. And what is 26?

24 A. This is our 1997 to 1998 product
25 catalogue.

1 Michaels

2 card for the Oral Magic toothbrush, which is
3 involved in this opposition proceeding.

4 Do you believe from a marketing
5 standpoint that Oral B would be damaged by the
6 use of the mark Oral Magic on a toothbrush?

7 A. Yes, I do.

8 Q. And what's the basis for your
9 belief?

10 A. Well, I think that oral and Oral
11 B, when used in conjunction with a toothbrush
12 trademark are really synonymous with the Oral B
13 brand. I don't think you can separate oral
14 from Oral B, particularly when you are talking
15 about toothbrushes. Oral B is a trademark that
16 has been established over the last five or so
17 years as being synonymous with a toothbrush
18 brand, and not only a toothbrush brand, but the
19 leading toothbrush brand.

20 All of our products carry the
21 word "oral" in the trademark. A number of our
22 products not only say Oral B but also have a
23 second designator like Oral B Indicator, or
24 Oral B Cross-Action.

25 There is no reason why a consumer

1 Michaels

2 wouldn't assume that an Oral Magic is just not
3 another brand or line of Oral B toothbrushes or
4 Oral B products.

5 I think if you look at the shelf
6 in terms of how toothbrushes are stocked and
7 racked at the consumer level and you look at
8 the confused nature of the shelves and the fact
9 that in many cases toothbrush brands end up
10 being together in the same section because of
11 the messy nature of how they are stocked and
12 how consumers put them back after they have
13 looked at them, I think there's clear
14 indication that there's cause for concern in
15 terms of confusion of Oral Magic and Oral B.

16 I am not saying that I don't
17 believe the word "oral" can be used in
18 descriptive copy, but clearly in terms of
19 making the word "oral" part of a trademark for
20 a toothbrush or an oral care product, clearly
21 in my mind would cause confusion and cause
22 consumers to purchase a product they thought
23 was an Oral B product when in fact it was not
24 an Oral B product, it was somebody else's
25 product.

1 Michaels

2 We have spent billions of dollars
3 over the years in terms of building this brand
4 and creating the Oral B trademark and the Oral
5 B logo and the fact that Oral B is synonymous
6 with quality, with performance, with
7 professional recommendation, that any
8 toothbrush or oral care trademark with the word
9 "oral" as part of that trademark is reason for
10 concern in terms of confusion by our customers.

11 MS. DRISCOE: I am now going to
12 offer in evidence Exhibits 1 through
13 30, and ask Mr. Tom, before I ask if
14 you have questions, would you be
15 willing to allow Mr. Michaels to sign
16 before any notary?

17 MR. TOM: Yes.

18 MS. DRISCOE: Thank you.

19 Do you want a few minutes before
20 you start cross-examination?

21 MR. TOM: Yes.

22 (Recess taken)

23 MS. DRISCOE: Mr. Tom, if you
24 have any questions, we are all set.

25 CROSS-EXAMINATION

1 Michaels

2 vice president. Then I believe in 1989, I
3 moved to the position of the general manager of
4 the professional products division for the U.S.
5 and then in 1995 or 1996 I was given Canada as
6 part of my responsibility.

7 I became the general manager for
8 Oral B professional products, North America and
9 approximately two years ago there was a
10 restructure in the company and my title was
11 changed to vice president, professional
12 products group, North America, but I
13 essentially had the same position that I had
14 before, but there was just an organizational
15 change that necessitated the title change, and
16 that's where I am today.

17 Q. For each of the job titles that
18 you held solely related to the Oral B division
19 of Gillette?

20 A. Yes. With the exception of the
21 Oral B corporate vice president position, but
22 it was the Oral -- a position within the Oral B
23 worldwide group, so yes, most of my 31 years,
24 if not all of them, I was involved in the Oral
25 B business.

1 Michaels

2 Q. In your current job title, do you
3 play any role in the application or enforcement
4 of trademark?

5 A. No.

6 Q. When did you first become aware
7 of the mark Oral Magic?

8 A. I think about a month or two ago.

9 Q. Had you ever used an Oral Magic
10 product?

11 A. No, I haven't seen the product,
12 I've just seen the trademark and the logo.

13 Q. Where did you see that trademark
14 and logo?

15 A. The attorney showed it to me.

16 Q. Would that be Exhibit 30 that we
17 referred to earlier?

18 A. Yes.

19 Q. You have never viewed an Oral
20 Magic in any type of a retail setting?

21 A. I haven't seen it, no.

22 Q. Ever heard of Oral Magic as a
23 company or a mark prior to one month ago?

24 A. I don't believe so. I can't
25 remember it.

1 Michaels

2 Q. The first person that informed
3 you of the existence of a product bearing the
4 name Oral Magic was your attorney approximately
5 one month ago?

6 A. I believe so, yes.

7 Q. Have you discussed the Oral Magic
8 mark with any other Oral B employees?

9 A. No.

10 Q. At the time when you first saw
11 the Oral Magic mark approximately a month ago,
12 is there any other instances before today in
13 which you have viewed the mark or a product
14 bearing that mark?

15 A. Not that I can recall.

16 Q. As part of your job duties, do
17 you keep up-to-date on all of the products of
18 the other toothbrush manufacturers?

19 A. To some degree. I am primarily
20 responsible at this point for professional
21 products. I may not have all the information
22 on all of the retail products in any one given
23 time.

24 Q. What are some of the main
25 competitors to Oral B in the sale of

1 Michaels

2 I also believe that the Oral
3 Magic is confusing in terms of Oral B
4 Indicator. We use second designators with the
5 logo to describe various number of products
6 that we sell, so yes, I do think it's confusing
7 and I do have a problem with it.

8 Q. Well, the actual question was, it
9 resembles and that's what you're testifying to?

10 A. Yes, I think it does.

11 Q. The typeface that was mentioned
12 in the last -- in your answer to the last
13 question, you said that that was a typeface
14 that was used in the past, is that correct?

15 A. Well, we've used what I consider
16 a similar typeface in various types of
17 materials in the past. I'm not saying it was
18 specifically part of the logo, but clearly we
19 have used a similar typeface to describe our
20 products to customers. I believe it's similar
21 anyway.

22 Is it exactly the same? No. Is
23 it similar? Yes. Is it the fact that it's
24 part of a toothbrush logo and that it's blue
25 and that it says "oral" and Oral B is pretty

1 Michaels

2 much synonymous with blue and white? Yes, I
3 think it's similar.

4 Q. The typeface that you just
5 mentioned that wasn't -- that's not part of the
6 Oral B mark as it's ever been used?

7 A. I don't think it's exactly the
8 same, but I think if you look at the current
9 Oral B logo, the word "oral" and your "oral" in
10 terms of Oral Magic are similar typefaces.

11 I am not saying it's exactly the
12 same, but I think if you look at the typeface,
13 it's certainly similar. If you look at an Oral
14 B logo and look at the word "oral," the
15 typeface used is similar.

16 Q. The color I think you
17 mentioned -- what color are you referring to,
18 the fact that the Oral Magic mark is blue on
19 Exhibit 30?

20 A. Oral is blue, Oral B is a blue
21 and white logo, in some cases Oral B is blue.
22 I think it's similar.

23 Q. If we can just -- look at the
24 exhibit, the Oral Magic mark you are referring
25 to as possibly being similar is a blue mark.

1 Michaels

2 Is that what you are referring to?

3 A. Well, the only mark I have seen
4 is the blue Oral Magic mark with the rainbow
5 splash behind it. It's primarily -- it's blue
6 typeface. The "oral" is in blue, the "magic"
7 is in blue.

8 Q. And the Oral B mark that you are
9 referring to is a blue overlay with white
10 lettering, is that correct?

11 A. That's one of them, yes.

12 Q. The rainbow color scheme that you
13 mentioned as part of the brighter smile
14 campaign of 2000 --

15 A. Uh-huh.

16 Q. -- was that rainbow scheme only
17 used for that promotion?

18 A. As far as I know, it was.

19 Q. Do you have any knowledge of when
20 Oral Magic began using the rainbow color
21 scheme?

22 A. No.

23 Q. Does Oral B make any mechanical
24 toothbrushes where either the head or the
25 bristles can be replaced?

1 Michaels

2 bristles are interchangeable.

3 In other words, we have two types
4 of bristles. We have conical type of bristle,
5 we have what we call a cylindrical type, we
6 have a Christmas tree type. Those particular
7 bristles are interchangeable, so you would take
8 those out, you would replace it into the handle
9 with a different or a new bristle, so we have
10 that. That is a toothbrush with
11 interchangeable and replaceable bristles.

12 Q. The interdental brush that you
13 are referring to, is that a supplementary brush
14 or can that be used as the only brush that a
15 person would use?

16 A. That toothbrush is used primarily
17 as an additional oral care device that would be
18 used to clean between teeth for people who had
19 specific periodontal problems or problems
20 cleaning under bridges or problems in general,
21 cleaning their interdental space, so it is not
22 the primary or only brush that should be used.

23 Q. Do you have any knowledge of what
24 entities or retail customers Oral Magic sells
25 its products to?

1 Michaels

2 A. Not that I know of.

3 Q. Does Gillette have any trademark
4 that employs the word "oral" other than the
5 Oral B mark?

6 A. I can't answer that. I don't
7 know all of the marks that the Gillette Company
8 has.

9 Q. Are you aware of any instances in
10 which any person or entity in the process of
11 looking for an Oral B product has accidentally
12 purchased an Oral Magic product?

13 A. I'm sorry. Could you repeat that
14 question.

15 Q. Are you aware of any instances or
16 events in which a person or an entity looking
17 for an Oral B product has purchased an Oral
18 Magic product by mistake?

19 A. I am not personally aware, no.

20 Q. Have you ever viewed an Oral
21 Magic advertisement?

22 A. Not that I can recall.

23 Q. Are you aware of any instances in
24 which consumers of Oral Magic products have
25 returned their products to Oral B?

Michaels

1

2

Q. Are you aware of when Oral Magic began to sell toothbrushes?

3

4

A. No.

5

6

Q. Are you aware of any companies or entities which currently sell a manual

7

toothbrush with a replaceable head?

8

9

A. I have seen a couple over the years. I just can't remember who they are. I

10

don't remember the names of them.

11

12

Q. Okay. Do you have any knowledge

of what price Oral Magic charges for its

13

product?

14

A. No.

15

Q. Okay. Just a few more questions.

16

Earlier in your testimony, on

17

direct, you referred to what you believe would

18

be impulse buying by the consumer. Do you

19

recall that?

20

A. Yes.

21

Q. What products were you referring

22

to as in regard to impulse buying?

23

A. Toothbrush products.

24

Q. Manual or electric?

25

A. Primarily manual.

1 Michaels

2 Q. Do you know if that other product
3 is marketed to replace the Oral B head?

4 A. The specific product is designed
5 to fit an electric toothbrush for another
6 company, while at the same time it will fit a
7 Braun unit. So I believe it not only fits the
8 unit for that company, but it also fits the
9 Braun unit.

10 Q. Is it marketed in such a manner
11 that it states it can replace an Oral B head?

12 A. I believe it is, yes.

13 Q. Do you personally attend any of
14 the trade shows or sales marketing shows that
15 occur throughout the United States and Canada?

16 A. I attend some of the dental
17 professional shows.

18 Q. Have you ever seen a presence by
19 Oral Magic at any of these shows?

20 A. I just don't remember.

21 Q. Okay.

22 A. It's possible, I could walk right
23 by the booth, there are thousands of booths at
24 these conventions. I could have walked by and
25 didn't notice it. Chances are, if you are at

1 Michaels

2 that.

3 No, I don't have anything to add.

4 REDIRECT EXAMINATION BY

5 MS. DRISCOE:

6 Q. Do you know any specifics more
7 than what you've already testified to,
8 Mr. Michaels, about the retail stores in which
9 Oral B brushes are sold?

10 A. Well, I think we are sold in
11 virtually every -- in terms of food, drug, mass
12 merchandisers and club stores, we are in
13 virtually every major account. We are in
14 chains like Eckerd's, Rite-Aid, Walgreen's,
15 just virtually every chain drug and every major
16 food account and mass merchandisers like
17 Wal-Mart and Kmart and Target and in club
18 stores we have a very strong presence, in
19 Price-Rite, Costco.

20 So virtually wherever you find a
21 toothbrush being sold, you will find Oral B.

22

23

24

(Continued on next page)

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Michaels

MS. DRISCOE: Now, do you,
Mr. Tom, have any questions about that?

MR. TOM: No.

MS. DRISCOE: Okay, fine. I
think we can then close the deposition
and I thank everybody.

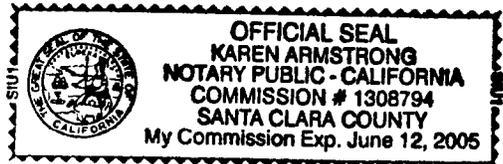
(Time noted: 12:00 noon)

8/13/01 *Alan Michaels*
Alan Michaels

ALAN MICHAELS

State of California
County Santa Clara
Subscribed and sworn to before me
this 13 day of August, 2001.
Alan Michaels

Karen Armstrong



1

2 July 10, 2001

3

I N D E X

4

WITNESSPAGE

5

Alan Michaels 3

6

Michaels - Direct 3

Michaels - Cross 69

7

Michaels - Redirect 90

8

9

E X H I B I T S

10

OPPOSER'SFOR IDENTIFICATIONPage

11

1 2000 and 2001 Oral B product catalogue 7

12

13

2 Oral B Advantage toothbrush 12

14

3 Oral B Indicator toothbrush 12

15

4 Oral B Cross-Action toothbrush 13

16

5 Selling sheet and promotional sheet for Oral B toothbrushes 21

17

6 Floor stand header card 22

18

7 Compilation of various FSI offers 25

19

20

8 FSI for a Cross-Action toothbrush offer 27

21

9 Group of storyboards on various commercials developed for a variety of Oral B products 30

22

23

24

10 Shelf dangler 31

25

1

2 July 10, 2001

3

E X H I B I T S
(Continued)

4

OPPOSER'S

5

FOR IDENTIFICATIONPage

| | | | |
|----|----|---|----|
| 6 | 11 | Coupon pad with number of coupons for Oral B Cross-Action toothbrush | 32 |
| 7 | | | |
| 8 | 12 | Four-page brochure | 33 |
| 9 | 13 | Selling sheet | 34 |
| 10 | 14 | Retail pack that goes along with sell sheet | 35 |
| 11 | | | |
| 12 | 15 | Refill pack of brush heads for electric toothbrush | 38 |
| 13 | 16 | Documents describing various types of Gillette sports related promotions | 40 |
| 14 | | | |
| 15 | 17 | Stack of documents, cover sheet being home page of Oral B Web site | 41 |
| 16 | | | |
| 17 | 18 | Direct mail piece | 43 |
| 18 | 19 | Ad for Advantage toothbrush | 45 |
| 19 | 20 | Sales aid | 46 |
| 20 | 21 | Cover advertising program done with People Magazine | 51 |
| 21 | | | |
| 22 | 22 | Selling aid used to introduce Oral B Cross-Action toothbrush to the dental profession | 53 |
| 23 | | | |
| 24 | 23 | Ad describing new microtextured toothbrush technology | 55 |
| 25 | | | |

1

2 July 10, 2001

3

E X H I B I T S
(Continued)

4

OPPOSER'S

5

FOR IDENTIFICATIONPage

6

24 New York Times Magazine
crossword puzzle

61

7

25 1999 Oral B product catalogue

63

8

26 1997 to 1998 product catalogue

63

9

27 1996 through 1997 product
catalogue

64

10

11

28 1990 to 1991 Oral B catalogue

64

12

29 Product catalogue used in
1980 or 1981 from the files
of Oral B

65

13

14

30 Photograph of product card
for Oral Magic Sh

65

15

16

17

18

19

20

21

22

23

24

25

ERRATA SHEET FOR TRANSCRIPT OF

Alan Michaels

Re: Gillette Canada Company, Opposer,
 -against-
Kivy Corporation, Applicant

Date Taken: July 10, 2001, 10:05 a.m.

| Page | Line No. | Correction | Reason for Correction |
|--------|----------------|--|-----------------------|
| Passim | | Change "Driscoe" to "Driscoll" | transcription error |
| Passim | | Change "Brownley" to "Brownlee" | transcription error |
| Passim | | Change "Oral B" to "Oral-B" | transcription error |
| Passim | | Change "Cross-Action" to "CrossAction" | transcription error |
| 1 | Par. 1, line 2 | Change "Comapny" to "Company" | transcription error |
| 5 | 11 | Change "worked" to "work" | transcription error |
| 6 | 17 | Place period after "products" | transcription error |
| 6 | 17 | Change "on a" to "On the" | transcription error |
| 6 | 19 & 20 | Change "for dental consumers" to "of dental consumables" | transcription error |
| 8 | 22 | Change "and" to "end" | transcription error |
| 12 | 13 | Change "toothbrushes" to "toothbrush" | transcription error |
| 17 | 4 | Change "floor standing" to "floor stand" | transcription error |
| 40 | 9 | Change "fax" to "fact" | transcription error |
| 40 | 18 | Delete "a" | transcription error |
| 44 | 19 | Change "food to "for" | transcription error |
| 54 | 14 | Change "who" to "to" | transcription error |
| 56 | 3 | Change "indicator" to "Indicator" | transcription error |
| 56 | 5 | Change "power tip" to "Power Tip" | transcription error |
| 58 | 10 | Change "23" to "323" | transcription error |
| 66 | 16 | Change "five" to "fifty" | transcription error |
| 74 | 5 | Change "Sonic Care" to "sonicare" | transcription error |
| 74 | 18 | Change "Sonic Care" to "sonicare" | transcription error |
| 87 | 23 | Delete "an oral brush, Oral-B toothbrush" | transcription error |
| 90 | 19 | Change "Price-Rite" to "price clubs" | transcription error |



Alan Michaels

State of California
 County Santa Clara
 Subscribed and sworn to before me
 This 13 day of August, 2001