

# Exhibits

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

In the matter of application Serial No. 75/902,893  
For the Trademark ORALBOTICS  
Published in the Official Gazette on January 8, 2002 at TM 411



05-08-2002

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #26

|                              |   |
|------------------------------|---|
| GILLETTE CANADA COMPANY, dba | ) |
| ORAL-B LABORATORIES,         | ) |
|                              | ) |
| Opposer,                     | ) |
|                              | ) |
| v.                           | ) |
|                              | ) |
| ORALBOTIC RESEARCH, INC.,    | ) |
|                              | ) |
| Applicant.                   | ) |
|                              | ) |

Opposition No.

### NOTICE OF OPPOSITION

Opposer Gillette Canada Company dba Oral-B Laboratories ("Opposer" or "Oral-B"), a corporation organized under the laws of Nova Scotia, Canada and having its principal place of business in the United States at Prudential Tower Building, Boston, MA 02199, believes that it will be damaged by the issuance of a registration for the mark ORALBOTICS (the "Mark"), as applied for in application Serial No. 75/902,893 (the "Application"), filed on January 24, 2000 by Applicant Jay W. Hegemann (the "Applicant"), and hereby opposes the same.

As grounds for opposition, Oral-B alleges that:

1. Oral-B is, and for many years its predecessors in title have been, engaged in the manufacture, distribution and sale of a wide range of dental care products, including both manual and power-operated toothbrushes, dental floss and toothpaste.

2. In or about 1949, Opposer's predecessor in title adopted and began to use ORAL B as a trademark and trade name in connection with the manufacture and sale of

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toothbrushes. In or about 1977, Opposer's predecessor in title began to use the hyphenated form of the mark, ORAL-B. The mark has been used continuously and exclusively by Oral-B since its adoption and has come to represent a business and goodwill of tremendous value. The line of products identified by the ORAL-B mark and trade name has been expanded and now includes power-operated toothbrushes, denture brushes, interdental toothbrushes and toothbrush systems, dental floss, dental trays, toothpaste, prophy angles, oxygenating mouth rinse and topically-applied gels.

3. ORAL-B brand toothbrushes have attained the number one share position in the United States and, through extensive sales and advertising of those and other products bearing the ORAL-B trademark, said trademark and the ORAL-B trade name have become a well known indication of source, both in the United States and internationally. The ORAL-B mark and trade name serve to identify to the public and the trade products emanate from Opposer exclusively, and the ORAL-B trademark has become a famous mark with an exceedingly valuable reputation and a substantial amount of goodwill.

4. Opposer is the owner of all right, title and interest in and to the following United States trademark registrations, all of which are valid, subsisting and incontestable:

| <u>Mark</u>       | <u>Registration No.</u> |
|-------------------|-------------------------|
| ORAL B            | 547,130                 |
| ORAL-B and Design | 1,106,587               |
| ORAL-B            | 1,197,304               |
| ORAL-B            | 1,501,858               |
| ORAL-B            | 1,502,069               |
| ORAL-B            | 1,502,752               |
| ORAL-B            | 2,084,928               |

Copies are attached hereto as Exhibits 1 through 8.

5. By the application herein opposed, Applicant seeks to register the mark ORALBOTICS as a trademark for an "electric toothbrush."

6. As Applicant's application is based on intent to use, there is no question that Oral-B has priority in use over Applicant's proposed use of its mark.

7. Applicant's ORALBOTICS mark is deceptively similar to Opposer's ORAL-B trademark, and the goods identical to Opposer's goods, so as to cause confusion and lead to deception as to the origin of the goods bearing Applicant's mark. Accordingly, Oral-B will be damaged by registration of Applicant's mark as such registration would support and assist Applicant in the confusing and misleading use of its proposed mark, and will give color of exclusive statutory rights in said mark to Applicant in violation and derogation of the prior and superior rights of Oral-B in the trademark and trade name ORAL-B.

8. Opposer's ORAL-B mark is famous and distinctive.

9. Applicant's ORALBOTICS mark is likely to cause dilution of the distinctive quality of Oral-B's famous mark. Accordingly, Oral-B will be damaged by registration of Applicant's mark.

10. The Application was filed in the name of Jay W. Hegemann. The applicant listed in the publication is Oralbotics Research, Inc. Correspondence submitted by the Applicant to the Patent and Trademark Office shows that Mr. Hegemann is the president of Oralbotics Research, Inc. Because the Application was filed in the name of the wrong party, it is void and registration cannot be granted.

11. Wherefore, Oral-B prays that this Opposition be sustained and that the Application be denied and refused.

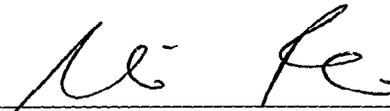
12. A duplicate copy of this Notice of Opposition is enclosed herewith.

13. Oral-B requests that the filing fee of \$300.00 required by 37 C.F.R. § 2.6(a)(17) be charged to DEPOSIT ACCOUNT NO. 500841. The U.S. Patent and Trademark Office is hereby authorized to charge any additional fees or credit any overpayments to the deposit account listed above and notify Oral-B accordingly.

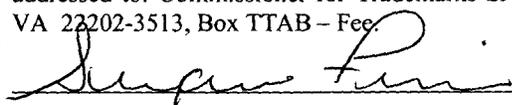
13. Oral-B will be represented in this proceeding by Raymond J. De Vellis and Michelle Brownlee of The Gillette Company, attorneys admitted to practice in the State of Massachusetts. Oral-B requests that all correspondence be directed to Michelle Brownlee at the address given below.

Dated: May 3, 2002

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

  
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Michelle Brownlee, Esq.  
The Gillette Company  
Prudential Tower Building  
Boston, MA 02199  
(617) 421-7855  
(617) 421-7866 (fax)

Attorneys for Opposer,  
**GILLETTE CANADA COMPANY  
DBA ORAL-B LABORATORIES**

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| 37 C.F.R. § 1.8 Certificate of Mailing:<br><br>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 2900 Crystal Drive, Arlington, VA 22202-3513, Box TTAB - Fee.<br><br> (Name)<br><br>5/16/02 (Date) |
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