

ESTTA Tracking number: **ESTTA7816**

Filing date: **04/20/2004**

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

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	John O. Butler
<b>Granted to Date of previous extension</b>	04/21/2004
<b>Address</b>	John O. Butler Company 4635 W. Foster Avenue Chicago, IL 60611 UNITED STATES
<b>Relationship to party who filed Extension of time to oppose</b>	The name of the opposer has not changed. John O. Butler Company is the name of the company that filed the previous extension of time to oppose.

<b>Attorney information</b>	JOSEPH F. SCHMIDT MICHAEL BEST & FRIEDRICH LLP 401 NORTH MICHIGAN AVENUE, SUITE 1900 CHICAGO, IL 60611 UNITED STATES chiipdocket@mbf-law.com, jfschmidt@mbf-law.com, dsternig@mbf-law.com Phone:312-222-0800
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#### Applicant Information

<b>Application No</b>	76455968	<b>Publication date</b>	12/23/2003
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<b>Opposition Filing Date</b>	04/20/2004	<b>Opposition Period Ends</b>	04/21/2004
<b>Applicant</b>	Dental Concepts LLC		

**Goods/Services Affected by Opposition**

Class 010. First Use: 20020731 First Use In Commerce: 20020731  
All goods and services in the class are opposed, namely: ORAL HYGIENE KITS FOR PERSONAL USE COMPRISED PRIMARILY OF ORAL HYGIENE IMPLEMENTS, NAMELY, GUM STIMULATORS, SULCUS BRUSHES AND DENTAL MIRRORS

<b>Attachments</b>	C0356214.PDF ( 1 page ) C0286818.PDF ( 7 pages )
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<b>Signature</b>	/joseph f. schmidt/
<b>Name</b>	JOSEPH F. SCHMIDT
<b>Date</b>	04/20/2004

1. Opposer has been engaged for many years in the business of manufacturing and distributing oral hygiene and preventive dental products, including toothbrushes, toothpaste, stimulator handles, interdental handles and twisted wire brushes, interdental picks, toothpicks, plaque removal picks, dental floss, floss threaders, floss handles, mouth mirrors, dental plaque disclosing solutions, fluoride gels, prophylaxis paste, denture creams and adhesives, mouthwash and home care kits.

2. Long prior to October 7, 2002, the filing date of the application for the mark ORACARE HEALTHY GUM KIT, opposer adopted, continuously used, and now uses in interstate commerce the marks G.U.M., G-U-M and GUM (hereinafter collectively referred to as "GUM") in connection with its oral hygiene and preventive dental products.

3. Opposer is the owner of U.S. Registration Nos. 824,430; 1,826,880; 1,826,950; 1,850,157; 2,049,833; 1,979,787; and 2,199,875 for the mark GUM, and the goodwill and business appurtenant thereto. With respect to Registration Nos. 824,430; 1,826,950; 1,826,880; 1,850,157; and 1,979,787 opposer has complied with the provisions of Section 15 of the Trademark Act, 15 U.S.C. § 1065, and the mark GUM has become incontestable thereunder.

4. As a result of opposer's widespread and extensive use of the mark GUM, the mark has become widely and favorably known throughout the United States and has become recognized by the trade and public as identifying opposer's goods and distinguishing them from the goods of others and opposer has established an exceedingly valuable goodwill in the mark.

5. As a result of opposer's extensive use and advertising of its mark GUM in connection with its goods throughout the United States, and the recognition of applicant's mark by the trade and the public, opposer's mark is distinctive and famous for opposer's goods.

6. The goods of applicant and the goods of opposer are closely related and sold through the same channels of trade to the same customers.

7. Applicant's alleged mark ORACARE HEALTHY GUM KIT, when applied to the goods of applicant, so resembles opposer's mark GUM as to be likely to cause confusion, or to cause mistake, or to deceive, all to opposer's irreparable damage and injury within the meaning of Section 2(d) of the Trademark Act.

8. Applicant's alleged mark ORACARE HEALTHY GUM KIT, when applied to the goods of applicant, is likely to cause dilution of the distinctive quality of opposer's famous mark within the meaning of Section 43(c)(1) of the Trademark Act.

WHEREFORE, opposer prays that this opposition be sustained and that registration of applicant's mark be refused.

PRINCIPAL REGISTER  
Trademark

Ser. No. 250,721, filed July 21, 1966

**G • U • M •**

John O. Butler Company (Illinois corporation)  
540 N. Lake Shore Drive  
Chicago, Ill.

For: TOOTHBRUSHES, in CLASS 29.  
First use in or about July 1958; in commerce in or  
about July 1958.

C. R. FOWLER, *Examiner.*

Int. Cl.: 10

Prior U.S. Cl.: 44

**United States Patent and Trademark Office** **Reg. No. 1,826,880**  
**Registered Mar. 15, 1994**

**TRADEMARK  
PRINCIPAL REGISTER**

**G·U·M**

JOHN O. BUTLER COMPANY (DELAWARE  
CORPORATION)  
4635 WEST FOSTER AVENUE  
CHICAGO, IL 60630

FOR: ORAL HYGIENE PRODUCTS;  
NAMELY, FLOSS THREADERS, FLOSS HAN-  
DLES AND MOUTH MIRRORS, IN CLASS 10  
(U.S. CL. 44).

FIRST USE 9-0-1992; IN COMMERCE  
9-0-1992.

OWNER OF U.S. REG. NO. 824,430.

SN 74-314,902, FILED 9-18-1992.

JAMES A. RAUEN, EXAMINING ATTORNEY

Int. Cl.: 21

Prior U.S. Cls.: 21, 29, and 44

**United States Patent and Trademark Office**

Reg. No. 1,826,950

Registered Mar. 15, 1994

**TRADEMARK  
PRINCIPAL REGISTER**

**G·U·M**

JOHN O. BUTLER COMPANY (DELAWARE  
CORPORATION)  
4635 WEST FOSTER AVENUE  
CHICAGO, IL 60630

FOR: INTERDENTAL EQUIPMENT;  
NAMELY, HANDLES, BRUSHES, STIMULA-  
TOR HANDLES AND TIPS, FOR HOME USE,  
IN CLASS 21 (U.S. CLS. 21, 29 AND 44).

FIRST USE 10-0-1992; IN COMMERCE  
10-0-1992.

OWNER OF U.S. REG. NO. 824,430.

SN 74-315,817, FILED 9-18-1992.

JAMES A. RAUEN, EXAMINING ATTORNEY

Int. Cls.: 5 and 10

Prior U.S. Cls.: 18 and 44



**United States Patent and Trademark Office**

Reg. No. 1,850,157

Registered Aug. 16, 1994

**TRADEMARK  
PRINCIPAL REGISTER**

**G·U·M**

JOHN O. BUTLER COMPANY (DELAWARE  
CORPORATION)  
4635 WEST FOSTER AVENUE  
CHICAGO, IL 60630

FOR: DENTAL TAPE, ORTHODONTIC WAX,  
AND PLAQUE DISCLOSING TABLETS, IN  
CLASS 5 (U.S. CLS. 18 AND 44).

FIRST USE 9-0-1992; IN COMMERCE  
12-0-1992.

FOR: DENTAL FLOSS, IN CLASS 10 (U.S. CL.  
44).

FIRST USE 9-0-1992; IN COMMERCE  
9-0-1992.

OWNER OF U.S. REG. NO. 824,430.

SN 74-315,815, FILED 9-18-1992.

JAMES A. RAUEN, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

**United States Patent and Trademark Office** **Reg. No. 1,979,787**  
Registered June 11, 1996

**TRADEMARK  
PRINCIPAL REGISTER**

**G·U·M**

JOHN O. BUTLER COMPANY (DELAWARE  
CORPORATION)  
4635 WEST FOSTER AVENUE  
CHICAGO, IL 60630

FOR: COMBINATION STERILIZING AND  
DEFOGGING COMPOSITION FOR MIRRORS  
AND OTHER MEDICAL AND DENTAL IN-  
STRUMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44,  
46, 51 AND 52).

FIRST USE 3-0-1993; IN COMMERCE  
3-0-1993.

OWNER OF U.S. REG. NOS. 824,430 AND  
1,850,157.

SER. NO. 74-701,922, FILED 7-17-1995.

PAULA MAYS, EXAMINING ATTORNEY

**Int. Cl.: 3**

**Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 2,049,833**

**Registered Apr. 1, 1997**

**TRADEMARK  
PRINCIPAL REGISTER**

**G·U·M**

**JOHN O. BUTLER COMPANY (DELAWARE  
CORPORATION)  
4635 WEST FOSTER AVENUE  
CHICAGO, IL 60630**

**FIRST USE 8-0-1995; IN COMMERCE  
8-0-1995.**

**OWNER OF U.S. REG. NOS. 824,430 AND  
1,850,157.**

**FOR: TOOTH PASTE, IN CLASS 3 (U.S. CLS.  
1, 4, 6, 50, 51 AND 52).**

**SN 74-701,831, FILED 7-17-1995.**

**PAULA MAYS, EXAMINING ATTORNEY**

Int. Cl.: 21

Prior U.S. Cls.: 2, 13, 23, 29, 30, 33, 40 and 50

**United States Patent and Trademark Office**

Reg. No. 2,199,875

Registered Oct. 27, 1998

**TRADEMARK  
PRINCIPAL REGISTER**

**GUM**

JOHN O. BUTLER COMPANY (DELAWARE  
CORPORATION)  
4635 WEST FOSTER AVENUE  
CHICAGO, IL 60630

8-1-1996, FIRST USED IN COMMERCE IN AN-  
OTHER FORM IN JULY 1958.

OWNER OF U.S. REG. NOS. 824,430, 2,049,833  
AND OTHERS.

FOR: TOOTHBRUSHES, IN CLASS 21 (U.S.  
CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

SER. NO. 75-373,622, FILED 10-15-1997.

FIRST USE 8-1-1996, FIRST USED IN AN-  
OTHER FORM IN JULY 1958; IN COMMERCE

PAUL F. GAST, EXAMINING ATTORNEY