

and has made no use of said STAND-UP PROTECTION mark in the United States prior to that date.

3. Opposer is the owner of United States Registration No. 2,724,654, issued June 10, 2003 for the mark STAND UP for "disposable portable urinary aid, namely, a plastic container device primarily for use by females," in Class 10. A copy of said registration is attached hereto as Exhibit A. Opposer has continuously used the trademark STAND UP since at least as early as December 17, 2002 in connection with disposable portable urinary aid, namely, a plastic container device primarily for use by females.

4. Since its initial use of its STAND UP mark, Opposer has spent considerable effort and expense in promoting and publicizing the mark in connection with the products described in paragraph 3, above, with the result that Opposer's customers and the public in general have come to know, rely upon, and recognize Opposer's mark and associate same with Opposer and/or products sold by Opposer. Opposer has established a valuable reputation, good will, and recognition in the mark STAND UP, inuring to the benefit of Opposer.

6. In view of Opposer's Registration No. 2,724,654 for the mark STAND UP, there is no issue of priority concerning Opposer's adoption and use of its STAND UP mark prior to any adoption and any alleged use of the mark STAND-UP PROTECTION by Applicant.

7. Applicant's mark STAND-UP PROTECTION for the goods noted in paragraph 1, above, so resembles Opposer's previously used and registered STAND UP mark, noted in paragraph 3, above, as to be likely to cause confusion, mistake, or to deceive as to the source of origin of Applicant's goods by creating the erroneous impression that Applicant's goods originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Opposer.

8. Upon information and belief, Applicant's goods are offered to the same class of purchasers as those that purchase Opposer's goods, are sold through the same channels of trade, and are related to those sold by Opposer.

9. Because Applicant's mark and Opposer's mark are nearly identical and are used on related goods, and the goods are sold in the same channels of trade to like purchasers, the trade and purchasing public are likely to be confused, mistaken or deceived as to the source of Applicant's goods marketed under Applicant's STAND-UP PROTECTION mark, and misled into believing that such goods originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Opposer, to the damage of Opposer and its goodwill represented by its long-used mark.

10. Registration of Applicant's mark shown in the opposed application will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. §1052(d), pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the registration sought by Applicant in U.S. Trademark Application Serial No. 78/298378 be refused and that this Notice of Opposition be sustained in favor of Opposer.

Please direct all correspondence to the attention of Sandra Epp Ryan, Merchant & Gould P.C., Box 2910, Minneapolis, Minnesota 55402-0910. Telephone (612) 332-5300.

The Opposer appoints Sandra Epp Ryan, 39,667, Gregg I. Anderson, Reg. No. 28,828; Brian H. Batzli, Reg. No. 32,960; John L. Beard, Reg. No. 27,612; Linda M. Byrne, Reg. No. 32,404; John A. Clifford, Reg. No. 30,247; Kristina M. Foudray; Gregory C. Golla; Scott W. Johnston, Reg. No. 39,721; Anna W. Manville; Brent E. Routman; Michael D. Schumann, reg.

No. 30,422, and Paul A. Welter, Reg. No. 20,890 of the firm of MERCHANT & GOULD P.C.,
its attorneys with the full power to represent the Opposer in connection with this Opposition.

An original and one copy of this Notice of Opposition are being filed. Please charge the
\$300.00 filing fee and any excess fees, or credit any overpayment, to Deposit Account No. 13-
2725 of Opposer's counsel noted above.

Respectfully submitted,

FEMMED, INC.

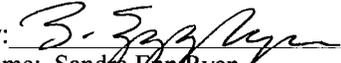
By its Attorney(s),

Dated: 10-27-04



Michael D. Schumann
Sandra Epp Ryan
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910
(612) 332-5300

CERTIFICATE UNDER 37 CFR 2.197: The undersigned hereby certifies that this Notice of Opposition is being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner for Trademarks, PO Box 1451, Alexandria, VA 22313-1451, on October 27, 2004.

By: 

Name: Sandra Epp Ryan

EXHIBIT A

EXHIBIT A

Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

United States Patent and Trademark Office

Reg. No. 2,724,654

Registered June 10, 2003

**TRADEMARK
PRINCIPAL REGISTER**

STAND UP

**FEMMED, INC (MINNESOTA CORPORATION)
11601 MINNETONKA MILLS ROAD
MINNETONKA, MN 55305**

FIRST USE 12-17-2002; IN COMMERCE 12-17-2002.

**FOR: DISPOSABLE PORTABLE URINARY AID,
NAMELY, A PLASTIC CONTAINER DEVICE PRI-
MARILY FOR USE BY FEMALES, IN CLASS 10 (U.S.
CLS. 26, 39 AND 44).**

SN 75-825,833, FILED 10-18-1999.

MICHAEL SOUDERS, EXAMINING ATTORNEY

Merchant & Gould

An Intellectual Property Law Firm

P.O. Box 2910
Minneapolis, Minnesota
55402-0910
TEL 612.332.5300
FAX 612.332.9081
www.merchant-gould.com

Direct Contact | 612.336.4781
seppryan@merchant-gould.com

TTAB

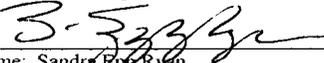
A Professional Corporation

FemMed, Inc.,)
Opposer,)
v.)
The Procter & Gambel Company,) Opposition No. _____
Applicant)
)

Mark: STAND-UP PROTECTION
Serial No.: 78/298378
Docket Number: 10561.2US02
Official Gazette: June 29, 2004

Due Date: October 27, 2004
Filing Date: October 27, 2004

CERTIFICATE UNDER 37 CFR 2.197: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner for Trademarks P.O. Box 1451 Alexandria, Virginia 22313-1451, on October 27, 2004.

By: 
Name: Sandra Epp Ryan

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Commissioner:

We are transmitting herewith the attached:

- Return postcard.
- Transmittal Sheet in duplicate containing Certificate Under 37 C.F.R. 1.8
- Notice of Opposition (1 Original and 1 Copy)
- Exhibit A

Please charge fees to Deposit Account No. 13-2725. A duplicate copy of this sheet is enclosed.

By: 
Name: Sandra Epp Ryan
Reg. No.: 39,667
SER



11-01-2004

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #74

(CONTESTED MATTER)