

applicator for hand-held massager as evidenced by the publication of the mark in the Official Gazette on p. TM206 of the November 2, 2004 issue.

3. Upon information and belief, the applicator in the trademark application at issue includes functional aspects that cannot act as a trademark.

4. Upon information and belief, the applicator in the trademark application at issue has not acquired secondary meaning.

5. Upon information and belief, the applicator in the trademark application at issue does not function as a trademark.

5. If the Applicant is permitted to use and register its mark for its goods, as specified in the application herein opposed, Opposer will be damaged because it may not be able to use a similarly configured functional applicator in commerce, as it is entitled to do.

7. Opposer is thereby being damaged by Applicant's attempt to register the design of a hand-held massager that consists of a cone-shaped attachment having a firm rubber tip as a trademark for an applicator for hand-held massager a trademark in application serial no. 78/282,661.

WHEREFORE, Opposer, through its attorney, prays that application serial no. 76/282,661 be rejected and the marks therein sought for the goods specified in that application be denied and refused.

An original and two copies of this Notice of Opposition and the fee required in Section 2.6(a)(17) are enclosed herewith. The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 23-1123.

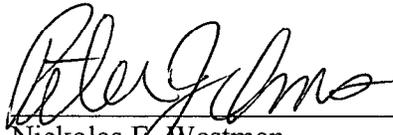
All correspondence should be addressed to **Brian Kidwell, Esq.**, Sybaritic, Inc., 9220 James Avenue, Bloomington, Minnesota 55431.

Respectfully submitted,

Westman, Champlin & Kelly, P.A.

Dated: January 3, 2005

By:



Nickolas E. Westman

Peter J. Inns

Suite 1600 - International Centre

900 Second Avenue South

Minneapolis, MN 55402-3319

Phone : 612-334-3222

Fax : 612-334-3122

**ATTORNEYS FOR OPPOSER
SYBARITIC, INC.**