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

Proceeding	91163999
Party	Defendant Thomas P. Muchisky Muchisky, Thomas P. 13250 Lakefront Drive Earth City, MO 63045
Correspondence Address	LIONEL L. LUCCHESI POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE, SUITE 200 ST. LOUIS, MO 63131
Submission	Motion for Summary Judgment
Filer's Name	Lionel L. Lucchesi
Filer's e-mail	llucchesi@patpro.com, nschomogy@patpro.com
Signature	/Lionel L. Lucchesi/
Date	12/16/2005
Attachments	Motion for Summary Judgment.pdf ( 2 pages ) Memo in support of motion for summary judgment.pdf ( 7 pages ) Declaration of Thomas Muchisky in Support of Motion for Summary Judgment.pdf ( 24 pages )

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

SYBARITIC, INC.,	)	
	)	
Opposer,	)	Opposition No.: 91163999
	)	Serial No. 78/282,661
v.	)	
	)	
THOMAS P. MUCHISKY,	)	
	)	
Applicant.	)	

**APPLICANT’S MOTION FOR SUMMARY JUDGMENT**

Applicant, Thomas P. Muchisky, hereby moves the Board, under Fed. R. Civ. P. 56, to enter summary judgment in his favor against Opposer in the above-entitled opposition.

This motion is made on the ground that there is no genuine issue of material fact to be decided by the Board.

Applicant’s motion is supported by the following documents:

- (a) Memorandum in Support of Applicant’s Motion for Summary Judgment;
- (b) The pleadings herein.

Respectfully Submitted,

By: /Lionel L. Lucchesi/  
Lionel L. Lucchesi, 25,891  
Polster, Lieder, Woodruff & Lucchesi, L.C.  
12412 Powerscourt Drive, Suite 200  
St. Louis, Missouri 63131  
(314) 238-2400 Phone  
(314) 238-2401 Fax

Attorneys for Applicant  
Thomas P. Muchisky

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of APPLICANT'S MOTION FOR SUMMARY JUDGMENT is being served via first class U. S. Mail, postage prepaid, this 16th day of December, 2005, upon the following:

Frank B. Janoski, Esq.  
Bridget Hoy, Esq.  
Lewis, Rice & Fingersh, L.C.  
500 North Broadway, Suite 2000  
St. Louis, Missouri 63102-2147

and

Nickolas E. Westman, Esq.  
Peter J. Ims, Esq.  
Westman, Champlin & Kelly, P.A.  
Suite 1400 – International Centre  
900 Second Avenue South  
Minneapolis, MN 55402

Attorneys for Opposer  
Sybaritic, Inc.

/Lionel L. Lucchesi/  
Lionel L. Lucchesi

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
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THOMAS P. MUCHISKY,	)	
	)	
Applicant.	)	

**MEMORANDUM IN SUPPORT OF APPLICANT’S  
MOTION FOR SUMMARY JUDGMENT**

**Statement of Facts**

On January 4, 2005, Opposer, Sybaritic, Inc., filed the instant opposition to the registration of the configuration trademark set forth in Application Serial No. 78/282,661. Opposer subsequently filed an Amended Notice Of Opposition on June 29, 2005. Applicant’s application was filed on August 4, 2003, for the configuration mark for “applicator for hand-held massager.” The mark is described in the application as “the configuration of an applicator for a hand-held massager. The applicator consists of a cone-shaped attachment having a firm rubber tip.”

Applicant’s mark has been used substantially exclusively and continuously since at least as early as 1965, and in interstate commerce at least as early as 1970.

Opposer has alleged that Applicant’s configuration design is functional, has not acquired secondary meaning, and does not function as a trademark. Opposer has also alleged that it is being damaged because it will not be able to use or sell a similarly configured functional hand-held massage applicator in commerce.

Applicant filed an Answer to the Amended Notice of Opposition on July 27, 2005, seeking dismissal of the Opposition on the ground that its configuration design is not functional, has acquired distinctiveness and secondary meaning, and functions as a trademark.

**Introduction**

The pleadings filed to date in this proceeding consist of Opposer’s Amended Notice of Opposition and Applicant’s Answer to Amended Notice of Opposition.

By this Motion, Applicant moves the Board summarily to determine whether Applicant’s mark is not functional, has acquired distinctiveness and secondary meaning, and functions as a trademark.

Under Rule 56(c) of the Federal Rules of Civil Procedure, a motion for summary judgment is proper when “there is no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law.”

It is clear from the pleadings that there are no genuine issues of material fact regarding non-functionality, acquired distinctiveness, secondary meaning, and the ability of Applicant’s configuration mark to function as a trademark.

**Factors to be considered in determining Acquired Distinctiveness**

Under Section 1212.06 et seq. of the Trademark Manual of Examining Procedure, the relevant factors to be considered in determining whether a mark has acquired distinctiveness include (a) long use of the mark, (b) advertising expenditures in connection with such use, (c) statements from the trade tending to show that the mark distinguishes the goods.

The attached Declaration of Applicant demonstrates that Applicant has met the requirements for distinctiveness:

(a) Applicant has used its mark for at least forty years. This continuous and substantially exclusive use serves to identify Applicant as the source of applicator.

(b) Applicant's total sales of its applicator are more than \$195,000 per year and the cost of its advertising is more than \$104,000 per year. In addition, Applicant's mark has been advertised on the Internet since approximately 2000. The effect of such Internet advertising is greater than if Applicant spent millions of dollars in print or other media advertising (*Metro Kane Imports, Ltd. v. Federated Department Stores, Inc.* 228 USPQ 761, 762 (S.D.N.Y. 1985).

(c) The statements by a dealer and a customer which are attached to the Declaration are evidence of the recognition of Applicant's applicator as a mark. Professional purchasers of Applicant's product are clearly discriminating purchasers who undoubtedly recognize Applicant's applicator as an indication of source.

The attached Declaration clearly demonstrates that Applicant's applicator has acquired distinctiveness, and therefore functions as a trademark in accordance with Section 45 of the Trademark Act.

**Additional Factors to be considered in determining secondary meaning**

Attached to the Declaration are copies of Applicant's advertising. Applicant's mark is described and shown in these advertisements. The advertising clearly identifies the applicator, and also states that "WE'RE KNOWN BY OUR SHAPE AND BY OUR THREADS." This statement promotes Applicant's goods as an indication of source. The promotion of a product shape in advertising by directing customers to "look for" the

shape is recognized as upholding the trademark significance of a design (*McCarthy on Trademarks and Unfair Competition*, §7:30). Applicant's slogan "WE'RE KNOWN BY OUR SHAPE AND BY OUR THREADS" is equivalent to such "look for" promotion and therefore supports trademark significance of Applicant's design.

In addition, Applicant's advertising consists of "image advertising" that features Applicant's mark and as such clearly identifies Applicant's mark (*L.A. Gear Inc. v. Thom McAn Shoe Co.*, 12 USPQ2d 1001 (S.D.N.Y. 1989), rev'd on other grounds, 25 USPQ2d 1913 (Fed. Cir. 1993)).

Applicant's advertising manifestly supports the trademark significance of its mark and establishes the secondary meaning acquired by the mark.

#### **FACTORS TO BE CONSIDERED IN DETERMINING FUNCTIONALITY**

Section 1201.02(a)(v) of the Trademark Manual of Examining Procedure sets forth the relevant factors to be considered to determine functionality:

- (1) evidence of a utility patent that discloses utilitarian advantages of the design;
- (2) advertising by applicant that touts the utilitarian advantages of the design;
- (3) the availability of alternative designs; and
- (4) whether the design results from a comparatively simple or inexpensive method of manufacture.

When applied to Applicant's mark, the evidence reveals the following:

- (1) the configuration is not, and has not been, the subject of a utility patent. .

(2) it is evident from Applicant's advertisements attached to the Declaration that his advertising does not tout the utilitarian advantages of the design.

(3) The advertisements of a small sample of alternative hand-held massagers using different applicators are attached to the Declaration. These alternative designs are equally efficient and competitive (*In re Zippo Mfg. Co.*, 50 USPQ2d 1852 (TTAB 1999)). There is no evidence of any need by competitors to use the design in the forty years Applicant's applicator has been sold, despite the lack of patent protection or trademark registration (*In re Honeywell Inc.*, 8 USPQ2d 1600 (TTAB 1988)).

(4) In addition, there is no evidence to suggest that Applicant's design results from a comparatively simple or inexpensive method of manufacture, and in fact does not result from a simple or inexpensive method of manufacture.

The fact that Applicant's configuration design serves an intended function does not establish de jure functionality. In order to establish de jure functionality, it is necessary to show that the design of the applicator is a superior design which competitors need to be able to use to compete effectively (*In re Weber-Stephen Products Co.*, 3 USPQ2d 1659, 1669 (TTAB 1987)). As set forth in Applicant's Declaration, there are numerous alternative designs used by competitors. Competitors, therefore, do not need to use Applicant's design in order to compete effectively.

Moreover, the standard for functionality is not whether individual elements could be categorized as functional, but whether the configuration "as a whole is functional" (15 U.S.C. Section 1052(e)(5)). Under this standard, Applicant's overall design is non-functional.

## CONCLUSION

The issues of acquired distinctiveness, secondary meaning, the ability of the design to function as a trademark, and functionality are issues of fact. These issues may, therefore, be resolved on a motion for summary judgment. Summary judgment for Applicant is clearly warranted in this instance since Applicant's mark has acquired secondary meaning through distinctiveness, is not functional, and functions as a trademark. There is, therefore, no genuine issue of material fact. Opposer cannot be damaged by the registration of Applicant's mark. Accordingly, the opposition to the registration of Applicant's mark should be dismissed and summary judgment in favor of Applicant and against Opposer granted.

Respectfully Submitted,

By: /Lionel L. Lucchesi/  
Lionel L. Lucchesi, 25,891  
Polster, Lieder, Woodruff & Lucchesi, L.C.  
12412 Powerscourt Drive, Suite 200  
St. Louis, Missouri 63131  
(314) 238-2400 Phone  
(314) 238-2401 Fax

Attorneys for Applicant  
Thomas P. Muchisky

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of MEMORANDUM IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT is being served via first class U. S. Mail, postage prepaid, this 16th day of December, 2005, upon the following:

Frank B. Janoski, Esq.  
Bridget Hoy, Esq.  
Lewis, Rice & Fingersh, L.C.  
500 North Broadway, Suite 2000  
St. Louis, Missouri 63102-2147

and

Nickolas E. Westman, Esq.  
Peter J. Ims, Esq.  
Westman, Champlin & Kelly, P.A.  
Suite 1400 – International Centre  
900 Second Avenue South  
Minneapolis, MN 55402

Attorneys for Opposer  
Sybaritic, Inc.

/Lionel L. Lucchesi/  
Lionel L. Lucchesi

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
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SYBARITIC, INC.,	)	
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THOMAS P. MUCHISKY,	)	
	)	
Applicant.	)	

**DECLARATION OF THOMAS P. MUCHISKY IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, Thomas P. Muchisky, state as follows:

1. I am the CEO of General Physiotherapy, Inc. (“General”), with offices at 13222 Lakefront Drive, St. Louis, Missouri 63045, and I have held that position continuously since 1978.

2. In 1957, Henri Cuinier formed the French company Societe D’Appareillage Du Sud-Quest (“SASO”) to manufacture and sell massage machines and related items, including the massage/head applicators in dispute in this lawsuit.

3. In 1990, SASO was acquired by Moroccan businessman Jacques Scrimali, and all of SASO’s assets were transferred into a new French company, Societe Industrielle D’Appareillage Medical (“SIAM”).

4. In 1995, SIAM was placed in receivership by the French government, and in 1998 all the assets of SIAM were acquired by Physiotherapie Generale France, a French company in which I am the majority shareholder.

5. Since 1973, General and its predecessor company General Theraphysical, Inc., both owned and operated by me, have continuously owned or were the exclusive

United States distributor for the massage head/applicators involved in the present opposition.

6. I am Applicant in the above-entitled opposition, and I am making this declaration in the belief that the product configuration trademark for which registration is sought in Application Serial No. 78/282,661, which was filed on August 4, 2003, has become distinctive of the goods of Applicant.

7. Applicant believes that the trademark has become distinctive of his goods by reason of substantially exclusive and continuous use as a configuration trademark for the goods “applicator for hand-held massager” in commerce for at least five (5) years prior to the date of the application for registration and this claim of distinctiveness.

8. The trademark has been in continuous use since 1965, and in commerce since 1970, and is currently in use in commerce, in connection with Applicant’s “applicator for hand-held massager”. The trademark is recognized in the trade and by customers as being the trademark of Applicant and denoting products from Applicant.

9. Attached hereto as Exhibits A and B are copies of Applicant’s advertising used to promote its hand-held massager bearing its distinctive configuration mark.

10. Applicant’s mark has been advertised on the Internet since approximately 2000.

11. Applicant’s sales figures are confidential. However, the total sales of its applicators are more than \$195,000.00 per year. Although its advertising expenditures are also confidential, the total cost of Applicant’s advertising to promote its applicators bearing its distinctive configuration mark is more than \$104,000.00 per year.

12. Applicant has promoted, and continues to promote, its distinctive configuration trademark through its print and Internet advertising, as well as distributor's catalogs, and through trade or professional journals throughout the United States.

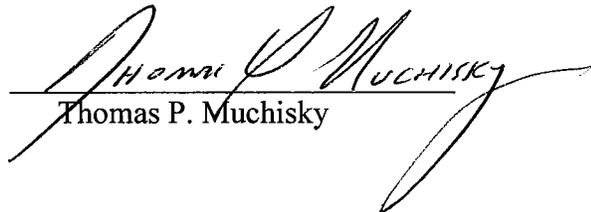
13. Attached as Exhibits C through H are several advertisements which illustrate alternative designs used by competitors. These designs, as well as others, are competing effectively without copying Applicant's design.

14. Applicant's configuration mark has become well associated with its applicator. Attached as Exhibits I and J are the statements of a dealer and a customer, respectively, evidencing recognition of the shape of the applicator as being associated with Applicant.

15. Applicant's design does not result from a comparatively simple or inexpensive method of manufacture.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of Applicant's trademark application.

DECEMBER 15, 2005

  
Thomas P. Muchisky

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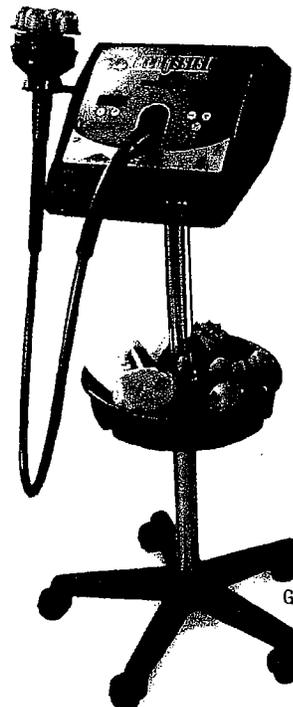
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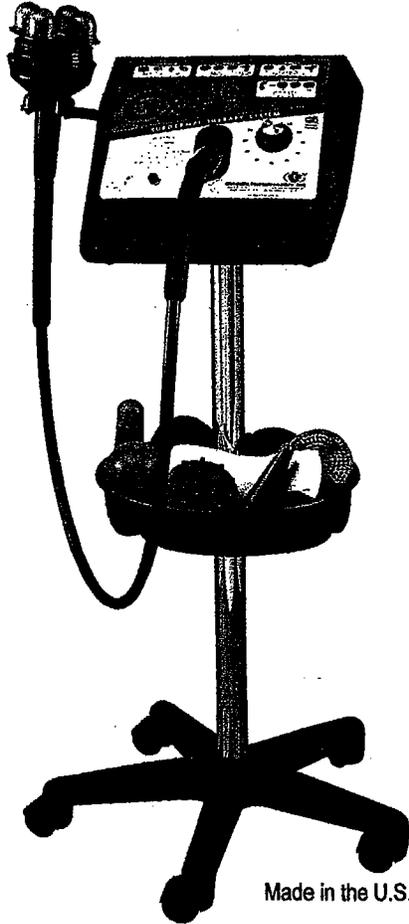


Serial No 78/282,661

Exhibit /  
page 2 of

# Gx-99

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With the Gx-99 Subdermal Therapy System you can provide your clients proven non-invasive body treatments that improve health and lift self image. Treatment options include:

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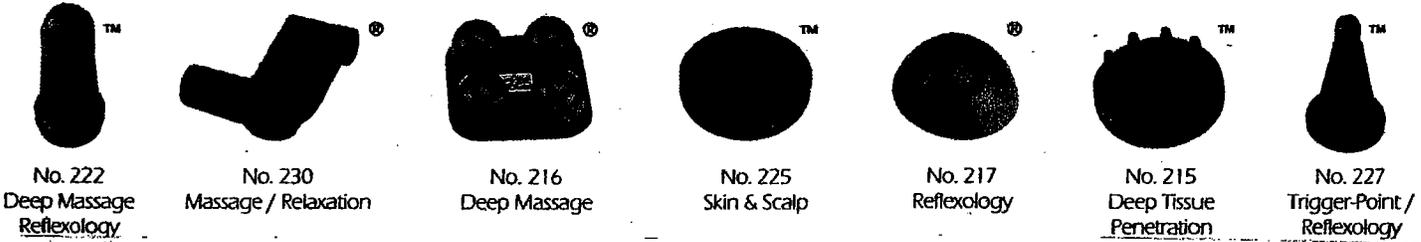
Exhibit A  
page 3 of

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Eagle River, WI.

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	\$160	300	\$48,000
	\$240	300	\$72,000
	\$320	300	\$96,000

\*Cellulite treatment data provided by NHSE.

FOR MORE INFORMATION CONTACT

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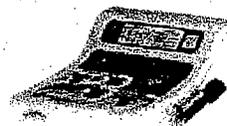
OR

**GENERAL PHYSIOTHERAPY, INC.**  
 13222 Lakefront Drive - Earth City, Missouri 63045-1504, U.S.A.  
 PHONE: (314) 291-1442 - Toll Free: 1-800-237-1832 - Fax: (314) 291-1485  
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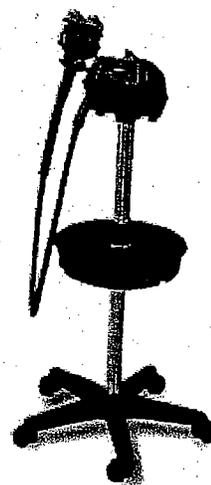
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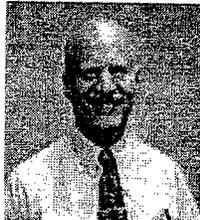
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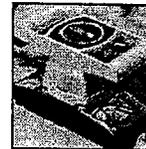


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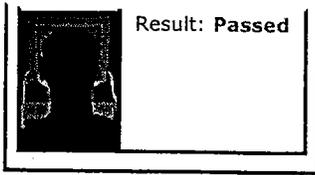
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**Exhibit C – Page 2**

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Too busy to get to your massage therapist? Rollers in these actually **knead the muscles**, for a sensation that is radical compared to oscillating or percussive units. It's the closest thing to a massage we are aware of. Just place your unit in the back of a chair or use it on your neck while lying in bed. Shoulder Flex, Kneading Finger Rollers D. Interactive Health, OttoMan



**FOOT MASSAGERS**

**Wake up your feet!!** Your extremities are the first place to get poor circulation. And so the nourishing flow of blood can't reach your feet. Your feet will love you for it; you will be hopping and skipping happily in no time. MediRub, Homedics, Interactive Health, Recharge, Body Rolling



**WOODEN MASSAGERS**

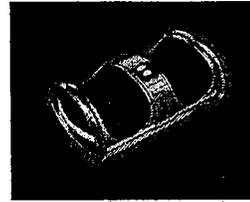
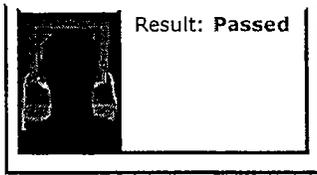
Whether you're looking for gifts for friends, family or your coworkers...our Wooden Massagers are the answer! Compact, lightweight and durable, it's the perfect way to give the gift of health.

Our Top Selling Massagers

Hitachi Magic Wand

Foot Massagers

AcuVibe "So



**The Most Popular Massager**  
**Only \$39.95!!**

Lots of units to choose from!  
**Starting at \$69.95!**

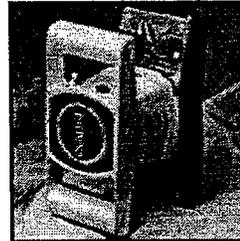
**Now Two Units:**  
**Cordless & Wh**  
**Heated Unit Av**  
**Starting at**

**90-DAY TRIPLE-PROTECTION GUARANTEE\*** mor  
**Same Day Shipping!**

**Reflex Roller**

**Jeanie Rub Massager**  
**We carry both the Single**  
**and Variable Speed!**

**Kneading Fini**



Now with a free Footsie  
Massager... Great kneading  
action for feet, legs & neck!  
**Only \$179.95!!**

Single-Speed:  
**Save \$80 off MSRP Now!**  
**\$124.95**

An electric |  
**\$169.**

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**New Products**

Here are some new and exciting products we've found. Some are additional product lines we already carry and some are brand new all together.

**Healthy Hands DVD**



This groundbreaking DVD offers six sets of techniques designed to create Pain-Free, Supple Hands, Wrists and Forearms.

[Learn More](#)

Retail Price  
**Your Price**

**Add To**

**Thera Cane**



Thera Cane is a self massager used to apply pressure to sore muscles. The unique design of the Thera Cane lets you apply deep pressure massage to hard to reach areas of your body on your own.

[Learn More](#)

Retail Price  
**Your Price**

**Add To**

**Ting Ting**



This handheld device gently stimulates millions of nerve endings on the scalp, as well as acupressure points that create a pleasant tingling sensation.

[Learn More](#)

**Your Price**

**Add To**

**Yamuna Basic Back Routine CD**



This audio CD routine starts with a gentle release of the ham-strings, rolls through the back, then ends with a neck release.

[Learn More](#)

**Your Price**

**Add To**

**Jeanie Rub Single Speed 220volt with Accessory Kit**



The Single Speed 220volt massager with a toggle on/off switch and shaded pole motor that operates at 3240 rpm and a 3-piece kit with attachments.

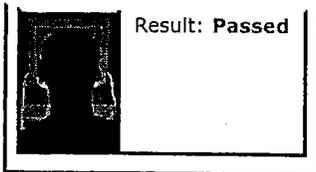
[Learn More](#)

John's Favorite Jeanie Rub Massager.  
**The first choice of chiropractors for their patients!**



Retail Price  
**Your Price**

**Add To**



**Detoxi-Pad**



**Detoxi-Pad** is a revolutionary new product that detoxifies the body using a natural extract from certain trees called *pyroligneous acid* or wood vinegar.

Retail Price  
**Your Price**

**Add To**

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**Kneading Foot Massager**



This unit must have been designed by the angels themselves. Five minutes on this unit and your feet are totally revitalized. You can make it as deep or as relaxing as you want, simply by the pressure you apply. Optional Infrared Heat penetrates to soothe and comfort those unhappy places.

Retail Price  
**Your Price**

**Add To**

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**Old Friend Lady's Scuff Sheepskin Slippers**



Old Friend sheepskin slippers are made with super soft, silk-like sheepskin covered with a soft-napped, durable suede leather. Enjoy the comfort of nature's finest insulator any season of the year.

- ~~\$34.95~~
- ~~\$34.95~~
- ~~\$34.95~~
- ~~\$34.95~~
- ~~\$34.95~~

**Add To**

[Learn More](#)

**Old Friend Men's Loafer Moccasins**



Old Friend sheepskin slippers are made with super soft, silk-like sheepskin covered with a soft-napped, durable suede leather. Enjoy the comfort of nature's finest insulator any season of the year.

- ~~\$44.95~~
- ~~\$44.95~~
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**Specialty Massagers**

Our Wooden Massagers are made of **high-quality wood and precision crafts**men. Whether you're looking for gifts for friends, family or your co-workers...our Wood Massagers are the answer! Compact, well-crafted and durable, its the perfect way gift of health. It's a great way to say "thank you", a pick-me-up gift, and more! C the whole office! **Call us at 1-800-456-9655 for our Wooden Massager who specials!**

**Healthy Hands DVD**



*This groundbreaking DVD offers six sets of techniques designed to create Pain-Free, Supple Hands, Wrists and Forearms.*

[Learn More](#)

Retail Price  
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**Add To**

**Goosie footsie**



**Refresh your body, mind and "sole"** with the rubbery massage fingers spanning the length of this massager roller.

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Knobbie 4**



**Release tension, relieve headaches and refresh your mind** with this head massager! Holding the bigger ball as a handle, circle your scalp with the three smaller balls to **stimulate circulation**. Or press on the neck or shoulder area for a big release.

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Thera Cane**



Thera Cane is a self massager used to apply pressure to sore muscles. The unique design of the Thera Cane lets you apply deep pressure massage to hard to reach areas of your body on your own.

[Learn More](#)

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**Add To**

**Wahl Hot-Cold Rolling Massager**

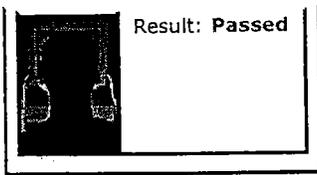


The Wahl® Sports Relief Hot/Cold Massage Roller, as a hand-held body massager, can be used in your microwave, stove, fridge or freezer for a heated or chilled massage experience. The special massage nodules penetrate and stimulate nerve endings, while the varied temperature helps activate muscle tissue and blood vessels.

[Learn More](#)

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**Add To**



**The Trigger Point Therapy Workbook**



Learn More

Trigger point therapy is one of the most intriguing and fastest-growing bodywork styles in the world. Medical doctors, chiropractors, and alternative health practitioners are all beginning to use this technique to relieve the pain of individuals suffering from undiagnosable soft tissue pain—a condition that studies have shown to be the cause of nearly 25 percent of all doctor visits.

Retail Price  
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**Add To**

**Wooden Massager Gift Basket**



Learn More

A Beautiful Gift Basket filled with an assortment of Wooden Massagers.

Retail Price  
On Sale! \$

**Add To**

**Grenade Footsie**



Learn More

**Put a spring back in your step.** This foot massager will help your tired feet feel re-energized.

Retail Price  
On Sale! \$

**Add To**

**Double footsie**



Learn More

Pamper your feet at work with this roller - its **triangular tips and wooden finger revitalize your body and mind**, whether you're actively massaging your feet or just resting them atop this tool!

Retail Price  
On Sale! \$

**Add To**

**Trigger pointer**



Learn More

**Reflexology on the feet and palms** is the forte of this tool, designed for professionals (but easy enough for anyone to use!). Use it to **work out tiny, hard knots (called "trigger points")** and help ease back and neck tension. Great tool for massaging oil on your tired muscles!

Retail Price  
On Sale! \$

**Add To**

**Goose ball**



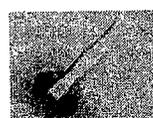
Learn More

An **array of massage finger nubs** on this ball help to effectively massage your neglected soles! Actually made of a hard, durable rubber, we've got them on sale so you can get two for the price of one!

Retail Price  
On Sale! \$

**Add To**

**Rolling massager 2**

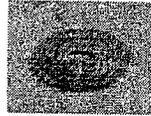


Get a friend to roll the two wheels of this massager slowly down your spine from your shoulders to your hips, to **relieve back pain and relax your body.**

Retail Price  
On Sale! \$

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**Palm massager**



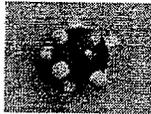
The knobby texture of this palm massager **refreshes both body AND mind**. Grip the massager in your palm and allow the sensations to relax you anywhere from the office to the outdoors! **Great for preventing carpal tunnel syndrome!** Doctor recommended.

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Goose ball 2**



**Stimulate specific sole acupoints** with this specialized wooden massager. Also wonderful for use on shoulders and neck!

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Back archer**



Get the **benefits of shiatsu** without expensive equipment or the hassle of hiring a massage therapist! This massager relieves back pain by rolling across your muscles as you slide slowly across the device.

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Rolling massager 4**



**Relax and relieve back pain** with this four-wheel design, that massages muscles along the spine from shoulders to hips

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Back 2 U**



**Say goodbye to back pain and headaches with this massager.** Massage from the top of your head to your hips on both sides of your spine with this massager's two balls. Good for one-person use, but better when you have a friend to help out!

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**Full body 4**



Massage muscles all over your body – shoulders, back, hips, legs and soles – with **this massager that gives you four more fingers.**

[Learn More](#)

Retail Price  
**On Sale! \$**

**Add To**

**The Reflexology Manual**



With this guide, anyone can **master the basic techniques of reflexology**, alleviate energy blocks that cause pain and restore optimum health. An Easy-to-Use Illustrated Guide to the Healing Zones of the Hands and Feet

Retail Price  
**Your Price**

Learn More By Pauline Wills. 144 pages, 8 x 11, 200 col  
photos and illustrations

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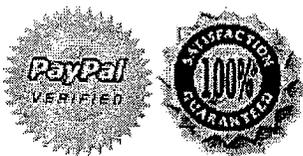
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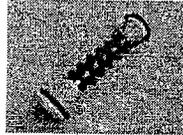
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**Goosie footsie**

E-mail friend about this product



**Refresh your body, mind and "sole"** with the massage finger the length of this massager roller. Hard rubber nodules put pre acupressure points on the bottom of the feet, giving an amazing treatment. Our staff has them under their desks. Or put it next to your feet, especially if you have hard floors or walk barefoot.

9 inches long, 2.5 inches high.

Retail Price: \$24.95

**On Sale! \$14.95**

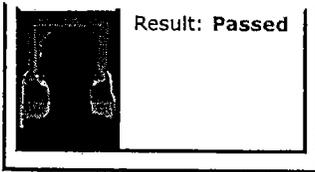
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The Reflexology Manual

+ \$19.95



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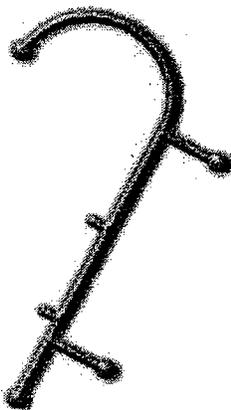
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TREAT YOURSELF TO DEEP RELIEF FROM PAIN  
KNOTTED, SPASMED MUSCLES - EVEN IN THE  
OF YOUR BACK!

This amazingly simple yet effective self-massager  
easy to apply pain-relieving deep compression dir  
knotted "trigger points" anywhere they occur - br  
tension even in the hardest-to-reach muscles bet  
shoulder blades! If you have limited strength or n  
Thera Cane's patented design gives you all the re  
leverage you need!

HOW DOES IT WORK? Pressure applied to the r  
the Thera Cane helps to maximize the flow of oxy  
blood to the muscles. This pressure aids in restori  
function by breaking up adhesions in muscle fiber  
tendons. The increased circulation helps the musc

more efficiently.

TRIGGER POINTS DEVELOP AS A RESULT of muscular injuries, strains  
and trauma. Additionally, structural imbalances, improper body mechanics,  
poor nutrition and mental or emotional stress are all factors. When muscle  
fibers, fascia, ligaments or tendons become weakened, overstretched or  
inflamed, tiny tears in the associated soft tissue can occur. As the tissue  
heals it contracts, becoming twisted and knotted. These knotted fibers  
restrict the fresh blood supply needed by the muscle cells. In addition  
there is often a shortening of the muscle fiber to protect itself from further  
injury. In effect, the muscle learns to avoid pain and guards against it by  
limiting its movement. This results in a loss of range of motion of the joint  
and the probability that the muscle and associated structures will develop  
trigger points.

Important Note: We highly recommend that you also purchase The Trigger Point  
Workbook to help guide you with your self-treatment. We offer the Thera Cane a  
Workbook in a *convenient, money saving package*. **VIEW PACKAGE.**

Retail Price: \$49.99  
Your Price: \$39.95

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Add These Related Products (additional shipping charges may apply)

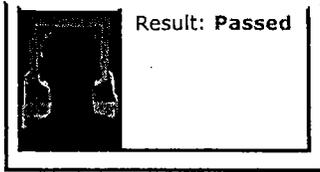
Theracane Video

+ \$6.95



The Trigger Point Therapy Workbook

+ \$19.95



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Ser. No. 78/282,146

Exhibit **I**

2081 N Webb Rd  
Wichita, KS 67206  
Phone: 316-689-8888  
Fax: 316-685-8652

**Norris Enterprises**  
**DBA: Pain Reliever.com**

6-14-04

Mr. Jeff Robertson  
President  
GENERAL PHYSIOTHERAPY, INC.  
13222 Lakefront Drive  
St. Louis, Mo. 63045

Dear Mr. Robertson:

We want to confirm to you that, as Distributors of G5<sup>®</sup>-Brand Massage Machines for the past twenty years or more, we absolutely recognize the shapes of your G5<sup>®</sup> Applicators as being associated with your wonderful G5<sup>®</sup> Brand Massage Machines, and with the quality of your products.

It's always amazed us that a powerful vibrating machine such as you manufacture can last for 10, 15 or 20 years in continuous operation without any servicing whatsoever. Your G5<sup>®</sup> Massage Machines are really amazing, and yes, we do associate the shapes of your many G5<sup>®</sup> Applicators with your G5<sup>®</sup> Massagers. The two go hand-in-hand, as symbols of high quality and high reliability.

Yours Truly

  
Kim Perry

Kim Perry  
Office Manager  
Pain Relievers  
2081 N Webb Rd  
Wichita, Ks 67206

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Exhibit J

May 12, 2004

Mr. Jeff Robertson  
President  
General Physiotherapy, Inc  
13222 Lakefront Dr  
St Louis, Mo 63145

Dear Jeff,

I WAS AT A trade show LAST week AND I SAW A MASSAGE machine with all of your APPLICATORS. THE machine didn't have a GS logo on it, but I knew it WAS A GS I know your APPLICATORS very well. THE APPLICATORS even HAD your GS threads, so I know the machine was yours.

- But over in your display booth, your SALES person told me that the other machine was not a genuine GS MASSAGE machine. JUST AS AN ASIAN "knock-off". But the APPLICATORS sure looked like GS APPLICATORS so the machine must have been a GS MASSAGE machine. Right?

Sincerely,

Cynthia Edwards  
618 692-9653