

ESTTA Tracking number: **ESTTA166385**

Filing date: **10/03/2007**

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

Name	Sunstar Americas, Inc.
Granted to Date of previous extension	10/03/2007
Address	4635 W. Foster Avenue Chicago, IL 60630 UNITED STATES

Attorney information	Charles A. Laff and Gretchen M. Hosty Michael Best & Friedrich LLP 180 N. Stetson Avenue, Suite 2000 Chicago, IL 60601 UNITED STATES chiipdocket@michaelbest.com, calaff@michaelbest.com, ghkotleba@michaelbest.com, dsternig@michaelbest.com, dlrupick@michaelbest.com Phone:312-222-0800
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Applicant Information

Application No	78775582	Publication date	06/05/2007
Opposition Filing Date	10/03/2007	Opposition Period Ends	10/03/2007
Applicant	OxyBand Technologies Inc 108 Caledonia Sausalito, CA 94965 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: oral oxygenation device that produces nanobubbles intended to improve healing of mouth and gum wounds
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	824430	Application Date	07/21/1966
Registration Date	02/21/1967	Foreign Priority Date	NONE

Word Mark	G.U.M.
Design Mark	
Description of Mark	NONE
Goods/Services	Class U029 (International Class 021). First use: First Use: 1958/07/00 First Use In Commerce: 1958/07/00 TOOTHBRUSHES

U.S. Registration No.	1826880	Application Date	09/18/1992
Registration Date	03/15/1994	Foreign Priority Date	NONE
Word Mark	GUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1992/09/00 First Use In Commerce: 1992/09/00 oral hygiene products; namely, floss threaders, floss handles and mouth mirrors		

U.S. Registration No.	1826950	Application Date	09/18/1992
Registration Date	03/15/1994	Foreign Priority Date	NONE
Word Mark	G-U-M		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1992/10/00 First Use In Commerce: 1992/10/00 interdental equipment; namely, handles, brushes, stimulator handles and tips, for home use		

U.S. Registration No.	1850157	Application Date	09/18/1992
Registration Date	08/16/1994	Foreign Priority Date	NONE
Word Mark	G-U-M		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/09/00 First Use In Commerce: 1992/12/00 dental tape, orthodontic wax, and plaque disclosing tablets Class 010. First use: First Use: 1992/09/00 First Use In Commerce: 1992/09/00 dental floss		

U.S. Registration No.	2199875	Application Date	10/15/1997
Registration Date	10/27/1998	Foreign Priority Date	NONE
Word Mark	GUM		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 1996/08/01 First Use In Commerce: 1996/08/01 TOOTHBRUSHES

U.S. Registration No.	2969874	Application Date	07/02/2003
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	GUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2000/01/00 First Use In Commerce: 2000/01/00 Tongue cleaners, namely, tongue cleaning handles for personal use Class 021. First use: First Use: 2000/01/00 First Use In Commerce: 2000/01/00 Hand held dental floss holders and applicators; handles for dental floss holders and applicators; handles for tooth brushes		

U.S. Registration No.	3045931	Application Date	12/01/2004
Registration Date	01/17/2006	Foreign Priority Date	NONE
Word Mark	G-U-M		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00 toothpaste		

U.S. Registration No.	3169695	Application Date	11/30/2004
Registration Date	11/07/2006	Foreign Priority Date	NONE
Word Mark	G-U-M		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00 dental oral rinse to relieve canker and mouth sore pain, and other mouth irritations; temporary dental filling material; dental cement		

Related Proceedings	Opposition No. 91178179
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Attachments	72250721#TMSN.gif (1 page)(bytes) 74314902#TMSN.gif (1 page)(bytes) 74315817#TMSN.gif (1 page)(bytes) 74315815#TMSN.gif (1 page)(bytes) 78525036#TMSN.jpeg (1 page)(bytes)
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Signature	/gretchen m. hosty/
Name	Charles A. Laff and Gretchen M. Hosty
Date	10/03/2007

1. Applicant is OxyBand Technologies, Inc., a Delaware corporation with a principal place of business at 108 Caledonia, Sausalito, CA 94965.

2. Applicant owns Application Serial No. 78/775,582 for the mark OXYGUM for “oral oxygenation device that produces nanobubbles intended to improve healing of mouth and gum wounds,” which was filed December 17, 2005. This mark was published for opposition on June 5, 2007. Opposer filed an Extension of Time to Oppose for Good Cause on June 28, 2007, requesting that the time period within which to file an opposition be extended until October 3, 2007.

3. Opposer is Sunstar Americas, Inc., a Delaware corporation with a principal place of business at 4635 W. Foster Avenue, Chicago, Illinois 60630.

4. Opposer has been engaged for many years in the business of manufacturing and distributing oral hygiene and dental products, including, but not limited to, toothbrushes, toothpaste, tongue cleaners, stimulator handles, interdental handles, interdental brushes, interdental picks, toothpicks, plaque removal picks, dental tape, orthodontic wax, dental floss, floss threaders, floss handles, mouth mirrors, dental plaque disclosing solutions, fluoride gels, prophy paste, denture creams and adhesives, dental oral rinses, temporary dental filling material, dental cement, mouthwash and home care kits.

5. Long prior to December 17, 2005, the filing date of the application for the mark OXY-GUM, opposer adopted, continuously used, and now uses in interstate commerce the marks GUM, G.U.M., and G-U-M (hereinafter collectively referred to as "GUM") in connection with its oral hygiene and dental products.

6. Opposer is the owner of U.S. Registration Nos. 824,430; 1,826,880; 1,826,950; 1,850,157; 2,199,875; 2,969,874; 3,045,931; and 3,169,695 for the mark GUM, and the goodwill and business appurtenant thereto. Copies of the registration certificates are attached as Exhibits A

through H. With respect to Registration Nos. 824,430; 1,826,950; 1,826,880; 1,850,157; and 2,199,875, 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.

7. 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. Opposer has established an exceedingly valuable goodwill in the mark.

8. 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 opposer's mark by the trade and the public, opposer's mark is distinctive and famous.

9. The goods of applicant and the goods of opposer are closely related.

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

11. Applicant's alleged mark OXYGUM, 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.*

EXHIBIT

A

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Int. Cl.: 10

Prior U.S. Cl.: 44

Reg. No. 1,826,880

United States Patent and Trademark Office 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

EXHIBIT

tabbles

B

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

EXHIBIT

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C

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

EXHIBIT

D

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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).

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

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

PAUL F. GAST, EXAMINING ATTORNEY

EXHIBIT

E

tabbles

Int. Cls.: 10 and 21

Prior U.S. Cls.: 2, 13, 23, 26, 29, 30, 33, 39, 40, 44 and 50

United States Patent and Trademark Office

Reg. No. 2,969,874

Registered July 19, 2005

**TRADEMARK
PRINCIPAL REGISTER**

GUM

SUNSTAR AMERICAS, INC. (DELAWARE CORPORATION)
4635 W. FOSTER AVENUE
CHICAGO, IL 60630

FOR: TONGUE CLEANERS, NAMELY, TONGUE CLEANING HANDLES FOR PERSONAL USE, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 1-0-2000; IN COMMERCE 1-0-2000.

FOR: HAND HELD DENTAL FLOSS HOLDERS AND APPLICATORS; HANDLES FOR DENTAL FLOSS HOLDERS AND APPLICATORS; HANDLES

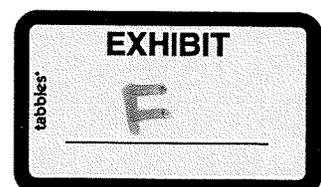
FOR TOOTH BRUSHES, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 1-0-2000; IN COMMERCE 1-0-2000.

OWNER OF U.S. REG. NOS. 824,430, 2,199,875 AND OTHERS.

SER. NO. 78-269,757, FILED 7-2-2003.

JOHN SCHUYLER YARD, EXAMINING ATTORNEY



Int. Cl.: 3

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

United States Patent and Trademark Office

Reg. No. 3,045,931

Registered Jan. 17, 2006

**TRADEMARK
PRINCIPAL REGISTER**

G-U-M

SUNSTAR AMERICAS, INC. (DELAWARE CORPORATION)
4635 W. FOSTER AVENUE
CHICAGO, IL 60630

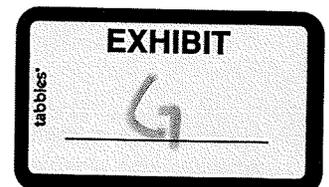
OWNER OF U.S. REG. NOS. 1,826,880, 1,850,157
AND OTHERS.

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

SER. NO. 78-525,036, FILED 12-1-2004.

FIRST USE 6-0-2004; IN COMMERCE 6-0-2004.

JOHN HWANG, EXAMINING ATTORNEY



Int. Cl.: 5

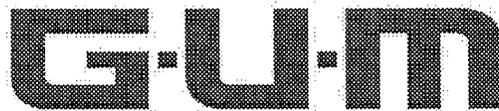
Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,169,695

Registered Nov. 7, 2006

**TRADEMARK
PRINCIPAL REGISTER**



SUNSTAR AMERICAS, INC. (DELAWARE CORPORATION)
4635 W. FOSTER AVENUE
CHICAGO, IL 60630

FOR: DENTAL ORAL RINSE TO RELIEVE CANKER AND MOUTH SORE PAIN, AND OTHER MOUTH IRRITATIONS; TEMPORARY DENTAL FILLING MATERIAL; DENTAL CEMENT, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 1-0-2004; IN COMMERCE 1-0-2004.

OWNER OF U.S. REG. NOS. 1,826,880, 1,850,157, AND OTHERS.

SN 78-524,360, FILED 11-30-2004.

RENEE MCCRAY, EXAMINING ATTORNEY

