

ESTTA Tracking number: **ESTTA201235**

Filing date: **03/27/2008**

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	Apex Medical Corporation		
Entity	Corporation	Citizenship	South Dakota
Address	921 East Amidon Street Sioux Falls, SD 57104 UNITED STATES		

Attorney information	Shannon S. King Heller Ehrman LLP 333 Bush Street San Francisco, CA 94104 UNITED STATES sf-trademark@hellerehrman.com, shannon.king@hellerehrman.com Phone:415-772-6000		
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Applicant Information

Application No	77264224	Publication date	03/04/2008
Opposition Filing Date	03/27/2008	Opposition Period Ends	04/03/2008
Applicant	Careux Inc. Ste. 105 601 Las Tunas Dr. Arcadia, CA 91007 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2006/12/01 First Use In Commerce: 2007/02/01
All goods and services in the class are opposed, namely: Dietary supplements; Food supplements; Nutritional supplements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1674129	Application Date	02/20/1990
Registration Date	02/04/1992	Foreign Priority Date	NONE
Word Mark	CAREX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 010. First use: First Use: 1982/04/00 First Use In Commerce: 1982/04/00 health care products; namely, walkers, walker pouches, walker baskets, [tripod canes, quad canes,] cane tips, crutch tips, crutch pads, crutch grips, crutches, dermatological cotton gloves, medicine droppers, medicine spoons, pill reminders, oral syringes, [tablet cutters, pill cases, medication organizers, urine collection bags,] invalid ring cushions, mattress covers[and waterproof bed sheeting for incontinence, rib belts other than bandages,] [cast protectors,] arm slings, [medical [exercise balls,] [exercise puddy,] pedal machines, [traction stands,] traction head halters, [traction spreader bars, traction iron weights, traction water weight bags, wheelchair ramps, wheelchair cushions, wheelchair carriers, handicapped access signs,] reachers that allow wheelchair-bound persons to pick up items beyond their immediate reach, [finger splints,] and bathroom safety products for medical purposes; namely, bath benches, bathtub grab bars, wall-mounted grab bars, toilet safety frames, raised toilet seats, transfer benches, commodes, shower stools and bath mats
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U.S. Registration No.	2666240	Application Date	02/04/2002
Registration Date	12/24/2002	Foreign Priority Date	NONE
Word Mark	CAREX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1975/06/16 First Use In Commerce: 1975/06/16 Canes; walker accessories, namely wheels, glides for walkers, platform attachments for walkers, baskets for walkers, and extension legs for walkers; metal bed rails, hand-held shower heads, and urinals all adapted for senior citizens, medical patients, or handicapped persons; hot and cold gel packs for medical purposes; cervical pillows and collars for medical use; and back cushions for medical use		

U.S. Registration No.	3349254	Application Date	08/21/2003
Registration Date	12/04/2007	Foreign Priority Date	NONE
Word Mark	CAREX CARING FOR YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2003/12/00 First Use In Commerce: 2003/12/00 Canes for medical purposes; invalid walker accessories, namely, wheels, glides for walkers, platform attachments for walkers, baskets for walkers, and extension legs for walkers; metal bed rails, hand-held shower heads, and urinals, all adapted for senior citizens, medical patients, or handicapped persons; chemically activated hot and cold gel packs for medical purposes; cervical pillows and collars for medical use; back cushions for medical use; medication organizers and containers, namely, dropper bottles for administering medication, sold empty		

Attachments	76366104#TMSN.gif (1 page)(bytes) 78290756#TMSN.gif (1 page)(bytes) NOO.pdf (14 pages)(260572 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Shannon S. King/
Name	Shannon S. King
Date	03/27/2008

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

In the Matter of Application Serial No. 77/264,224
Published in the *Official Gazette* on March 4, 2008
Trademark: **CAREUX**

Apex Medical Corporation, Opposer v. Careux, Inc., Applicant.	NOTICE OF OPPOSITION Opposition No. _____
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Apex Medical Corporation (“Opposer”), a South Dakota corporation having a principal place of business at 921 East Amidon Street, Sioux Falls, South Dakota 57104, believes it will be damaged by registration of the mark CAREUX shown in Serial No. 77/264,224 in International Class 5, and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Careux, Inc. (“Applicant”) has filed an application to register the mark CAREUX for “Dietary supplements; Food supplements; Nutritional supplements” in International Class 5, as evidenced by the publication of such mark in the *Official Gazette* on March 4, 2008.
2. Applicant is, upon information and belief, a California corporation having an address at 601 Las Tunas Drive, Ste 105, Arcadia, California 91007.
3. Opposer has, since at least as early as June 16, 1975, used the mark CAREX in connection with a wide variety of medical and health care products. Opposer is the

owner of incontestable registrations for the mark CAREX (Registration No. 1,674,129, issued February 4, 1992, and Registration No. 2,666,240, issued December 24, 2002) and a registration for the mark CAREX CARING FOR YOU and Design (Registration No. 3,349,254, issued December 4, 2007), all for a wide variety of health and medical care products in International Class 10. Attached as Exhibit A are current printouts from the Trademark Applications and Registrations Retrieval (TARR) database of Opposer's registrations of its CAREX and CAREX CARING FOR YOU and Design marks. Opposer's CAREX mark and CAREX CARING FOR YOU and Design mark are hereinafter referred to collectively as the "CAREX Marks."

4. There is no issue as to priority. Upon information and belief, Applicant has not used CAREUX on its goods prior to December 1, 2006, as evidenced by the alleged date of first use in its application. Upon information and belief, Applicant has not used CAREUX on its goods in commerce prior to February 1, 2007, as evidenced by the alleged date of first use in commerce in its application. The dates of registration of Opposer's Registration Nos. 1,674,129, and 2,666,240, for the mark CAREX are well prior to the claimed dates of first use of Applicant's CAREUX mark. Also, all dates of first use of the Opposer's CAREX Marks are prior to the claimed dates of first use of Applicant's mark.

5. Opposer has sold its goods and services under its CAREX Marks throughout the United States and has developed exceedingly valuable goodwill with respect to the CAREX Marks.

6. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods, Opposer has gained for its CAREX Marks a most valuable reputation and has created, in the minds of the buying public, an exclusive association between the CAREX Marks and its goods.

7. The trademark proposed for registration by Applicant, namely, CAREUX, is likely to be confused with Opposer's CAREX Marks because the marks are similar in appearance, sound, and overall commercial impression.

8. Applicant seeks to register CAREUX as a mark in connection with goods that are closely related to the goods of Opposer. Thus, Applicant's use is likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. Section 1052(d).

9. If Applicant is permitted to use and register the CAREUX mark for its goods as specified in the opposed application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's CAREUX mark is confusingly similar to Opposer's CAREX Marks. Persons familiar with Opposer's CAREX Marks would be likely to buy Applicant's CAREUX goods as goods offered and sold by Opposer or assume that there is some association between CAREUX goods and Opposer. Furthermore, any defect, objection, or fault found with Applicant's goods marketed under its CAREUX mark would be likely to reflect upon and

seriously injure the reputation that Opposer has established for its goods offered under its CAREX Marks.

10. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

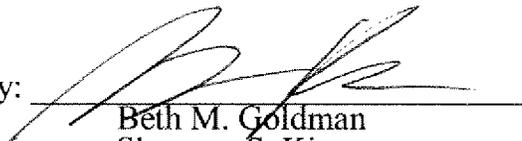
WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

Respectfully submitted,

HELLER EHRMAN LLP

Dated: March 27, 2008

By:


Beth M. Goldman
Shannon S. King

Attorneys for Apex Medical Corporation

333 Bush Street
San Francisco, CA 94104
415-772-6000

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing NOTICE OF OPPOSITION, including any exhibits, upon the Applicant at the correspondence address of record at the U.S. Patent and Trademark Office, via FedEx, overnight courier, on March 27, 2008, addressed as follows:

Careux Inc.
601 Las Tunas Dr, Ste 105
Arcadia, CA 91007-8483

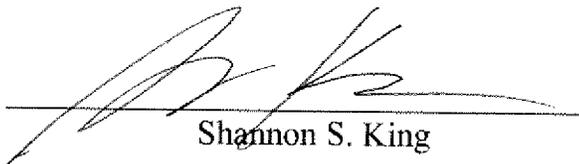

Shannon S. King

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-02-13 14:03:10 ET

Serial Number: 74030010 Assignment Information Trademark Document Retrieval

Registration Number: 1674129

Mark (words only): CAREX

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2002-08-27

Filing Date: 1990-02-20

Transformed into a National Application: No

Registration Date: 1992-02-04

Register: Principal

Law Office Assigned: LAW OFFICE 15

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-12-19

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. RUBBERMAID, INC.

Address:

RUBBERMAID, INC.
1147 Akron Road
Wooster, OH 44256
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Ohio

GOODS AND/OR SERVICES

International Class: 010

Class Status: Active

health care products; namely, walkers, walker pouches, walker baskets, cane tips, crutch tips, crutch pads, crutch grips, crutches, dermatological cotton gloves, medicine droppers, medicine spoons, pill reminders, oral syringes, invalid ring cushions, mattress covers arm slings, [medical pedal machines, traction head halters, reachers that allow wheelchair-bound persons to pick up items beyond their immediate reach, and bathroom safety products for medical purposes; namely, bath benches, bathtub grab bars, wall-mounted grab bars, toilet safety frames, raised toilet seats, transfer

benches, commodes, shower stools and bath mats

Basis: 1(a)

First Use Date: 1982-04-00

First Use in Commerce Date: 1982-04-00

ADDITIONAL INFORMATION

Prior Registration Number(s):

1039603

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-19 - Case File In TIGRS

2007-06-06 - Assignment Of Ownership Not Updated Automatically

2002-08-27 - First renewal 10 year

2002-08-27 - Section 8 (10-year) accepted/ Section 9 granted

2002-07-29 - Response received to Post Registration action - Sections 8 & 9

2002-07-29 - PAPER RECEIVED

2002-01-25 - Post Registration action mailed Sections 8 & 9

2001-11-13 - Combined Section 8 (10-year)/Section 9 filed

1998-02-12 - Section 8 (6-year) accepted & Section 15 acknowledged

1998-01-16 - Section 8 (6-year) and Section 15 Filed

1992-02-04 - Registered - Principal Register

1991-11-12 - Published for opposition

1991-10-11 - Notice of publication

1991-07-18 - Approved for Pub - Principal Register (Initial exam)

1991-06-28 - Communication received from applicant

1991-02-02 - Non-final action mailed

1990-11-13 - Communication received from applicant

1990-06-20 - Non-final action mailed

1990-05-23 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

RICHARD M. LABARGE

Correspondent

RICHARD M. LABARGE

MARSHALL, GERSTEIN & BORUN

SUITE 6300 SEARS TOWER

CHICAGO, IL 60606-6042

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-02-13 14:53:05 ET

Serial Number: 76366104 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2666240

Mark (words only): CAREX

Standard Character claim: No

Current Status: Registered.

Date of Status: 2002-12-24

Filing Date: 2002-02-04

Transformed into a National Application: No

Registration Date: 2002-12-24

Register: Principal

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2003-02-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Rubbermaid Incorporated

Address:

Rubbermaid Incorporated
1147 Akron Road
Wooster, OH 44691
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Ohio

GOODS AND/OR SERVICES

International Class: 010

Class Status: Active

Canes; walker accessories, namely wheels, glides for walkers, platform attachments for walkers, baskets for walkers, and extension legs for walkers; metal bed rails, hand-held shower heads, and urinals all adapted for senior citizens, medical patients, or handicapped persons; hot and cold gel packs for medical purposes; cervical pillows and collars for medical use; and back cushions for medical use

Basis: 1(a)

First Use Date: 1975-06-16

First Use in Commerce Date: 1975-06-16

ADDITIONAL INFORMATION

Prior Registration Number(s):

1039603

1674129

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-04-11 - Assignment Of Ownership Not Updated Automatically

2002-12-24 - Registered - Principal Register

2002-10-01 - Published for opposition

2002-09-11 - Notice of publication

2002-06-18 - Approved for Pub - Principal Register (Initial exam)

2002-05-10 - Communication received from applicant

2002-05-10 - PAPER RECEIVED

2002-04-30 - Non-final action mailed

2002-04-23 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Richard M. LaBarge

Correspondent

RICHARD M. LABARGE

MARSHALL, GERSTEIN & BORUN

SEARS TOWER

233 S WACKER DR

CHICAGO IL 60606-6306

Phone Number: (312) 474-6300

Fax Number: (312) 474-0448

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-02-13 14:53:41 ET

Serial Number: 78290756 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3349254

Mark



(words only): CAREX CARING FOR YOU

Standard Character claim: No

Current Status: Registered.

Date of Status: 2007-12-04

Filing Date: 2003-08-21

Transformed into a National Application: No

Registration Date: 2007-12-04

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-11-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Apex Medical Corporation

Address:

Apex Medical Corporation
921 East Amidon Street
Sioux Falls, SD 57104
United States

Legal Entity Type: Corporation

State or Country of Incorporation: South Dakota

GOODS AND/OR SERVICES

International Class: 010

Class Status: Active

Canes for medical purposes; invalid walker accessories, namely, wheels, glides for walkers, platform attachments for walkers, baskets for walkers, and extension legs for walkers; metal bed rails, hand-held shower heads, and urinals, all adapted for senior citizens, medical patients, or handicapped persons; chemically activated hot and cold gel packs for medical purposes; cervical pillows and collars for medical use; back cushions for medical use; medication organizers and containers, namely, dropper bottles for administering medication, sold empty

Basis: 1(a)

First Use Date: 2003-12-00

First Use in Commerce Date: 2003-12-00

ADDITIONAL INFORMATION

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s):

26.03.03 - Incomplete ovals; Ovals, incomplete

26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

Prior Registration Number(s):

1039603

1674219

2666240

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-04 - Registered - Principal Register

2007-11-01 - Law Office Registration Review Completed

2007-11-01 - Allowed for Registration - Principal Register (SOU accepted)

2007-10-31 - Amendment From Applicant Entered

2007-10-31 - Communication received from applicant

2007-10-31 - Assigned To LIE

2007-09-27 - FAX RECEIVED

2007-04-12 - Non-final action mailed

2007-04-12 - SU - Non-Final Action - Written

2007-04-10 - Statement of use processing complete
2007-01-19 - Amendment to Use filed
2007-01-19 - TEAS Statement of Use Received
2006-12-26 - Notice of allowance - mailed
2006-11-01 - Extension Of Time To Oppose Process - Terminated
2005-10-17 - Extension Of Time To Oppose Received
2005-10-04 - Published for opposition
2005-09-14 - Notice of publication
2005-06-09 - Law Office Publication Review Completed
2005-06-03 - Assigned To LIE
2005-05-31 - Approved for Pub - Principal Register (Initial exam)
2005-05-26 - Teas/Email Correspondence Entered
2005-05-16 - Communication received from applicant
2005-05-16 - TEAS Response to Office Action Received
2004-11-17 - Final refusal mailed
2004-11-17 - Final Refusal Written
2004-09-09 - Teas/Email Correspondence Entered
2004-08-13 - Communication received from applicant
2004-08-17 - Email Received
2004-02-13 - Non-final action mailed
2004-02-05 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

John C. Wilson

Correspondent

JOHN C. WILSON
HELLER EHRMAN WHITE & MCAULIFFE LLP
333 BUSH ST
SAN FRANCISCO, CA 94104-2878
Phone Number: (415) 772- 6000
Fax Number: (415) 772- 6268