

ESTTA Tracking number: **ESTTA226286**

Filing date: **07/24/2008**

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	Breg, Inc.
Granted to Date of previous extension	07/26/2008
Address	2611 Commerce Way Vista, CA 92081 UNITED STATES

Attorney information	Rodney F. Brown 3365 Baltimore Street San Diego, CA 92117 UNITED STATES rbrownjd@pacbell.net Phone:858-272-8705
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Applicant Information

Application No	77391011	Publication date	05/27/2008
Opposition Filing Date	07/24/2008	Opposition Period Ends	07/26/2008
Applicant	Smith & Nephew Orthopaedics AG Erlenstrasse 4a Rotkreuz, 6343 SWITZERLAND		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Othopaedic implants, namely, hip stems and acetabular cups

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.	2445909	Application Date	10/22/1999
Registration Date	04/24/2001	Foreign Priority Date	NONE
Word Mark	POLAR CARE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 010. First use: First Use: 1991/12/01 First Use In Commerce: 1991/12/01 cryotherapy equipment and devices namely, cold therapy fluid circulation systems and cold therapy pads and wraps for the treatment and rehabilitation of bones, joints, muscles, tendons and ligaments
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	POLAR		
Goods/Services	cold therapy pads, wraps and dressing for the treatment and rehabilitation of bones, joints, muscles, tendons and ligaments		

Attachments	75829160#TMSN.gif (1 page)(bytes) statement of grounds-polarcup.pdf (3 pages)(16531 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 First Class Mail on this date.

Signature	/Rodney F. Brown/
Name	Rodney F. Brown
Date	07/24/2008

STATEMENT OF GROUNDS FOR OPPOSITION

1. Opposer is the registrant in U.S. Trademark Registration No. 2,445,909 (the '909 Registration) registered on April 24, 2001 for the mark POLAR CARE in International Class 010 reciting "cryotherapy equipment and devices, namely, cold therapy fluid circulation systems and cold therapy pads and wraps for the treatment and rehabilitation of bones, joints, muscles, tendons, and ligaments".
2. Applicant applied on February 7, 2008 to register the mark POLARCUP ("Applicant's Mark") under U.S. Application No. 77/391,011 (the '011 Application) reciting "orthopaedic implants, namely, hip stems and acetabular cups" in International Class 010.
3. Since at least 16 years prior to the filing date of the '011 Application, Opposer has adopted and continuously used the mark POLAR CARE for cryotherapy equipment and devices, namely, cold therapy fluid circulation systems and cold therapy pads and wraps for the treatment and rehabilitation of bones, joints, muscles, tendons, and ligaments.
4. Opposer has long prior to the filing date of the '011 Application adopted and continuously used the mark POLAR for cold therapy pads, wraps and dressing for the treatment and rehabilitation of bones, joints, muscles, tendons, and ligaments.
5. Opposer claims priority for its marks POLAR CARE and POLAR by virtue of having used its marks for cryotherapy equipment and devices before Applicant filed the '011 Application.
6. On information and belief, the goods covered under Applicant's Mark, namely,

“orthopaedic implants, namely, hip stems and acetabular cups” are similar to those goods recited in the ‘909 Registration, namely, “cryotherapy equipment and devices, namely, cold therapy fluid circulation systems and cold therapy pads and wraps for the treatment and rehabilitation of bones, joints, muscles, tendons, and ligaments” and those goods Opposer sells under the mark POLAR, namely, cold therapy pads, wraps and dressing for the treatment and rehabilitation of bones, joints, muscles, tendons, and ligaments.

7. On information and belief, the goods covered under Applicant’s Mark will be advertised, marketed, promoted and sold in identical and/or substantially similar channels of trade as Opposer’s products covered under the marks POLAR CARE and POLAR to the same classes of consumers and the purchasing public.

8. Applicant’s Mark POLARCUP so resembles Opposer’s POLAR CARE and POLAR marks in terms of sight, sound, meaning, and commercial impression, as to be likely, when used on or in connection with Applicant’s products, to cause confusion, or to cause mistake or to deceive consumers and members of the trade into believing that Applicant’s products originate from, are sponsored by, or are otherwise authorized by Opposer when, in fact, they are not.

9. On information and belief, Applicant’s products are so similar to those products offered by Opposer in connection with its POLAR CARE and POLAR marks that consumers and members of the trade are likely to believe that they emanate from the same source.

10. Registration of Applicant’s Mark would be a source of damage to Opposer

because consumers and members of the trade are likely to attribute the source or sponsorship of Applicant's products to Opposer.

11. Registration of Applicant's Mark would be a source of damage to Opposer because registration would confer upon Applicant statutory presumptions to which Applicant is not entitled in view of Opposer's priority for its marks POLAR CARE and POLAR.