

ESTTA Tracking number: **ESTTA403460**

Filing date: **04/13/2011**

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.		
Entity	Corporation	Citizenship	Delaware
Address	4635 W. Foster Avenue Chicago, IL 60630 UNITED STATES		

Attorney information	Luke W. DeMarte Michael Best & Friedrich LLP 180 N. Stetson, Suite 2000 Chicago, IL 60601 UNITED STATES lwdemarte@michaelbest.com, calaff@michaelbest.com, llsaret@michaelbest.com, dsternig@michaelbest.com Phone:312.222.0800		
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Applicant Information

Application No	85107108	Publication date	03/15/2011
Opposition Filing Date	04/13/2011	Opposition Period Ends	04/14/2011
Applicant	KEITH ALLEN BORNSTEIN 1137 6th Street #306 Santa Monica, CA 90403 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. All goods and services in the class are opposed, namely: DENTAL FLOSSING TOOLS AND FLOSSING ACCESSORIES, NAMELY, FLOSS STICKS, FLOSS FILAMENT, FLOSS CARTRIDGES, FLOSS HOLDERS, FLOSS DISPENSERS, FLOSS TOOL HOLDERS, FLOSS TOOLS IN THE SHAPE OF NUNCHUCKS, AND FLOSSING SYSTEMS COMPRISED OF FLOSS STICKS, FLOSS FILAMENT, FLOSS CARTRIDGES, FLOSS HOLDERS, AND FLOSS DISPENSERS
Class 028. All goods and services in the class are opposed, namely: TOY WEAPONS

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	824430	Application Date	07/21/1966
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No.			
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
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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	3045931	Application Date	12/01/2004
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No.			
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		

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) 78524360#TMSN.jpeg (1 page)(bytes) GUMCHUCKS Notice of Opposition.pdf (13 pages)(361893 bytes)
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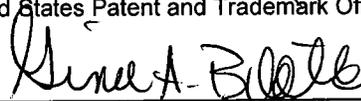
Certificate of Service

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	/Luke W. DeMarte/
Name	Luke W. DeMarte
Date	04/13/2011

CERTIFICATE OF TRANSMISSION

I hereby certify that this Notice of Opposition is being transmitted by the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on "April 13, 2011.



Signature of person sending paper

Gina A. Bilotto

Typed or Printed Name of person sending paper

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

SUNSTAR AMERICAS, INC.,

Opposer,

v.

KEITH ALLEN BORNSTEIN,

Applicant.

Opposition No. _____

Serial No.: 85/107108

Mark: GUMCHUCKS

NOTICE OF OPPOSITION

1. Applicant is Keith Allen Bornstein, an individual of U.S. citizenship with an address at 1137 6th Street #306, Santa Monica, California 90403.
2. Opposer is Sunstar Americas, Inc., a Delaware corporation with a principal place of business at 4635 W. Foster Avenue, Chicago, Illinois 60630.
3. Applicant filed Application Serial No. 85/107108 for the mark GUMCHUCKS for "dental flossing tools and flossing accessories, namely, floss sticks, floss filament, floss cartridges, floss holders, floss dispensers, floss tool holders, floss tools in the shape of

nunchucks, and flossing systems comprised of floss sticks, floss filament, floss cartridges, floss holders, and floss dispensers” in Class 21 and “toy weapons” in Class 28 on August 13, 2010. This application was published for opposition on March 15, 2011.

4. Opposer has been engaged for many years in the business of manufacturing and distributing a broad range of oral hygiene and preventive 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 August 13, 2010, the filing date of the application for the mark GUMCHUCKS, Opposer adopted and has continuously used in interstate commerce the marks GUM, G.U.M., and G-U-M (collectively, “Opposer’s GUM Marks”) in connection with its oral hygiene and preventive dental products.

6. Opposer owns 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 Opposer’s GUM Marks. Copies of the registration certificates are attached as Exhibits A-H. Opposer’s Registration Nos. 824,430; 1,826,950; 1,826,880; 1,850,157; and 2,199,875, are incontestable within the meaning of Section 15 of the Trademark Act, 15 U.S.C. §1065.

7. As a result of Opposer’s widespread and extensive use of Opposer’s GUM Marks, such marks 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 and Opposer has established exceedingly valuable goodwill in the mark.

8. As a result of Opposer's extensive use and advertising of Opposer's GUM Marks in connection with its goods throughout the United States, and the recognition of Opposer's marks by the trade and the public, Opposer's marks are distinctive and famous for Opposer's goods. Opposer's marks became distinctive and famous long prior to August 13, 2010, the filing date of the application for the mark GUMCHUCKS.

9. The goods of Applicant and the goods of Opposer are closely related and, on information and belief, are sold through the same channels of trade.

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

11. Applicant's alleged mark GUMCHUCKS, 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 application, Serial No. 85/107108, be denied and refused.

Dated: April 13, 2011

Respectfully submitted,

Sunstar Americas, Inc.

By: W. C. Donahue
One of its Attorneys

Luke W. DeMarte
Charles A. Laff
Larry L. Saret
Michael Best & Friedrich LLP
Two Prudential Plaza
180 N. Stetson Ave., Suite 2000
Chicago, Illinois 60601
(312) 222-0800

Attorneys for Sunstar Americas, Inc.

200700-9482\9063323.1

United States Patent Office

824,430
Registered Feb. 21, 1967

PRINCIPAL REGISTER Trademark

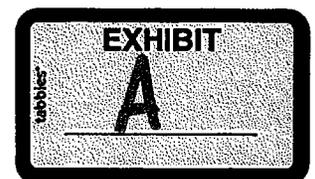
Ser. No. 250,721, filed July 21, 1966

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.*



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

B

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Int. Cl.: 21

Prior U.S. Cls.: 21, 29, and 44

Reg. No. 1,826,950

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

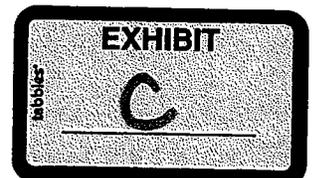
FOR: INTERDENTAL EQUIPMENT;
NAMELY, HANDLES, BRUSHES, STIMULA-
TOR HANDLES AND TIPS, FOR HOME USE,
IN CLASS 21 (U.S. CLS. 21, 29 AND 44).

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



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

tabbies

Int. Cl.: 21

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

Reg. No. 2,199,875

United States Patent and Trademark Office

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

Int. Cls.: 10 and 21

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

Reg. No. 2,969,874

Registered July 19, 2005

United States Patent and Trademark Office

**TRADEMARK
PRINCIPAL REGISTER**

GUM

SUNSTAR AMERICAS, INC. (DELAWARE COR-
PORATION)
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

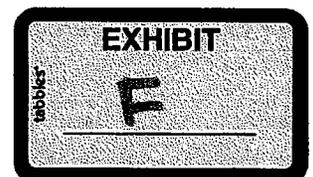
FOR TOOTH BRUSHES, IN CLASS 21 (U.S. CLS. 2, 13,
23, 29, 30, 33, 40 AND 50).

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 ATTOR-
NEY



Int. Cl.: 3

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

Reg. No. 3,045,931

United States Patent and Trademark Office

Registered Jan. 17, 2006

**TRADEMARK
PRINCIPAL REGISTER**

G·U·M

SUNSTAR AMERICAS, INC. (DELAWARE COR-
PORATION)
4635 W. FOSTER AVENUE
CHICAGO, IL 60630

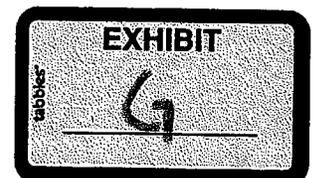
OWNER OF U.S. REG. NOS. 1,826,880, 1,850,157
AND OTHERS.

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**

G-U-M

SUNSTAR AMERICAS, INC. (DELAWARE COR-
PORATION)
4635 W. FOSTER AVENUE
CHICAGO, IL 60630

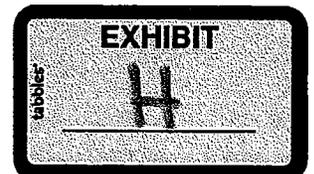
FOR: DENTAL ORAL RINSE TO RELIEVE CAN-
KER AND MOUTH SORE PAIN, AND OTHER
MOUTH IRRITATIONS; TEMPORARY DENTAL
FILLING MATERIAL; DENTAL CEMENT, IN
CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

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.

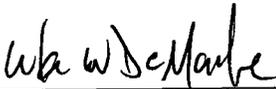
RENEE MCCRAY, EXAMINING ATTORNEY



CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing Notice of Opposition has been served upon Applicant by mailing said copy on April 13, 2011 via first class mail, postage prepaid, to:

Jason P. Webb
Webb IP Law Group
8841 S. Redwood Rd. Suite C
West Jordan, UT 84088-9289



Luke W. DeMarte