

ESTTA Tracking number: **ESTTA28054**

Filing date: **03/11/2005**

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

<b>Proceeding</b>	91162932
<b>Party</b>	Defendant Williams, Walter Jr. Williams, Walter Jr. 706 BIBB ST. TUSKEGEE, AL 36088
<b>Correspondence Address</b>	Christopher J. Day Law Office of Christopher Day 340 East Palm Lane, Ste 282 Phoenix, AZ 85004
<b>Submission</b>	Motion to Set Aside Notice of Default, including Answer
<b>Filer's Name</b>	Christopher J. Day
<b>Filer's e-mail</b>	chris@daylawfirm.com
<b>Signature</b>	/Christopher J . Day/
<b>Date</b>	03/11/2005
<b>Attachments</b>	Uncle Walt's Motion to Set Aside.pdf ( 18 pages )

Christopher J. Day  
Law Office of Christopher Day  
340 East Palm Lane, Suite 282  
Phoenix, Arizona 85004  
(602) 258-4440

Attorney for Applicant  
Williams Jr., Walter

UNITED STATES DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

In re Application of:

Trademark Serial No.: 76383329

For the mark: UNCLE WALT'S

Applicant: Williams Jr., Walter

Opposer: Mars, Incorporated

MOTION TO SET  
ASIDE NOTICE OF  
DEFAULT

Opposition No.  
91162932

Box TTAB NO FEE  
Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Pursuant to Fed. R. Civ. Proc. 55(c) and for good cause shown herein, Applicant hereby moves for an order setting aside the Notice of Default mailed on March 1, 2005. Applicant further requests that the Board accept Applicant's Answer, which is enclosed herewith. This Motion is supported by the accompanying memorandum, incorporated by reference.

Dated this 11<sup>th</sup> day of March, 2005.

  
\_\_\_\_\_  
Christopher J. Day, Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that this Correspondence, Motion to Set Aside Notice of Default, is being deposited on March 11, 2005, in the U.S. mail, first class postage pre-paid, addressed to counsel for Opposer at the following address:

Timothy J. Kelly  
Fitzpatrick, Cella, Harper & Scinto  
30 Rockefeller Plaza  
New York, NY 10112



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Christopher J. Day, Attorney for Applicant

MEMORANDUM IN SUPPORT OF  
MOTION TO SET ASIDE NOTICE OF DEFAULT

Good cause why default judgment should not be entered against Applicant, for failure to file a timely answer to the Notice of Opposition, exists because (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of Applicant, (2) Opposer will not be substantially prejudiced by the delay, and (3) Applicant has a meritorious defense. Accordingly, this case meets the relevant standards for setting aside the Notice of Default. See Fed. R. Civ. Proc. 55(c); Paulo's Associates Ltd. Partnership v. Bodo, 21 USPQ2d 1899 (Comm'r 1990).

I. Applicant's Failure to File was Not the Result of Willful Conduct or Gross Neglect.

Applicant has had communication difficulties stemming from a move from Tuskegee, Alabama to Montgomery, Alabama in connection with two major surgeries. A letter from Applicant explaining his difficulties, together with surgery reports, is included herewith.

Applicant's failure to respond on a timely basis was unintentional, and Applicant fully intends to contest this opposition and prosecute the application to registration.

II. Opposer Will Not Be Substantially Prejudiced by the Delay.

Opposer has not yet propounded any discovery, and approximately half the original discovery period remains open. Opposer's basis for opposing is alleged confusion with marks that registered ranging between nine and 57 years ago. Applicant is not aware of any facts that would suggest opposer would be substantially prejudiced by this relatively small delay.

III. Applicant Has a Meritorious Defense.

Applicant has sold spices and seasonings under the name UNCLE WALT'S on a continuous basis since at least as early as 1984. During that long period of consecutive use, Applicant is aware of no instance of actual confusion. In addition, because the marks, when compared in their entireties are distinct, Applicant believes that it can show there will be no likelihood of confusion created by this mark, nor will registration of the mark to applicant cause harm to Opposer.

IV. Equity Favors Setting Aside the Default.

The interests of justice require the Board to be reluctant to grant judgments by default. Because the law favors deciding cases on their merits, the Board has tended to resolve doubt in favor of setting aside a default. Paolo's Associates, at 1902; citing, *inter alia*, Thrifty Corp. v. Bomax Enterprises, 228 USPQ 62 (TTAB 1985). Because (1) Applicant's failure to timely file was not the result of willful conduct or gross neglect, (2) Opposer will not be substantially prejudiced by the delay, and (3) Applicant has a meritorious defense, this case meets the Paolo's Associates standard for setting aside the Notice of Default.

[SIGNATURE ON NEXT PAGE]

WHEREFORE, Applicant prays the Board (1) enter an order setting aside the Notice of Default mailed on March 1, 2005 and (2) accept Applicant's Answer, enclosed.

Dated this 11<sup>th</sup> day of March, 2005.



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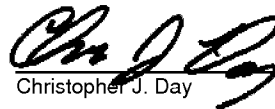
Christopher J. Day, Attorney for Applicant  
Law Office of Christopher Day  
340 East Palm Lane, Suite 282  
Phoenix, AZ 85004  
Telephone: (602) 258-4440  
Facsimile: (602) 258-4441

#### CERTIFICATE OF SERVICE

I hereby certify that this correspondence, is being deposited on March 11, 2005, in the U.S. mail, first class postage pre-paid, addressed to counsel for Opposer at the following

Address:

Timothy J. Kelly  
Fitzpatrick, Cella, Harper & Scinto  
30 Rockefeller Plaza  
New York, NY 10112



---

Christopher J. Day

LETTER FROM APPLICANT, INCLUDING SURGERY REPORTS  
IN SUPPORT OF  
MOTION TO SET ASIDE

2-0-f 7

Walter Williams, Jr.  
108 Coosada Drive  
Montgomery, Al. 36117  
Phone No. 334-215-3118  
FAX No. 334-215-3118

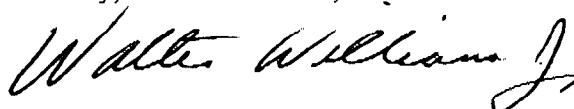
January 14, 2005

Attorney Christopher J. Day  
340 East Palm Lane Suite 282  
Phoenix, Arizona 85004

This letter is in reference to my Trademark (Uncle Walt's), Serial Number 76383329. I am requesting that you represent me in the Opposition filed by Uncle Ben's. Unfortunately, I have not been able to respond to your letter dated November 24, 2004, because of several reasons. First, I have moved from my previous address of 706 Bibb Street, Tuskegee, Alabama 36088 to 108 Coosada Drive, Montgomery, Alabama 36117. This move made it a problem for me to receive my mail timely. The main reason I moved to Montgomery, Alabama is because I recently have had two major surgeries, January 2004, anterior cervical fusion with implants from C4-C5, C5-C6 and C6-C7 and a frontal cervical plate C4 to C7 with screws attached and the other major surgery was for a massive tear of my left rotator cuff on August 23, 2004 which has been extremely difficult for me to function with increasing pain and discomfort. Therefore I moved to Montgomery, Alabama to enable me to be close to the best hospitals and medical care in the area. I have to wear a bone growth stimulator 24/7 until I have healed. I am also taking physical therapy to help rehabilitate me from these surgeries. I am also taking pain medication every 4-6 hours a day. Enclosed are copies of the surgery reports.

Therefore, under these circumstances I am requesting that you be allowed to proceed on my behalf and file a response to the Trademark Trial and Appeal Board.

Sincerely, Walter Williams, Jr.





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HUGHSTON SPORTS MEDICINE HOSPITAL  
100 FRIST COURT  
P.O. BOX 7188  
COLUMBUS, GA 31908-7188

=====  
Patient Name : WILLIAMS, WALTER                    Attending Physician: Dorchak MD, John David  
Account Number: X00200177512                    Admit Date : 01/07/04  
Unit Number : X000070970                        Room : X.ICU2  
=====

Patient Name: WILLIAMS, WALTER  
Account Number: X00200177512                    Admit Date: 01/07/2004  
MRN number: X000070970                        Room/Bed: X.ICU2

ATTENDING PHYSICIAN: John Dorchak, MD  
DATE OF PROCEDURE: 01/07/2004

PREOPERATIVE DIAGNOSIS:

- 1. Herniated nucleus pulposus C4-C5 with associated myeloradiculopathy.
- 2. Cervical spondylosis C5-C6 and C6-C7 with associated myeloradiculopathy.

POSTOPERATIVE DIAGNOSIS:

- 1. Herniated nucleus pulposus C4-C5 with associated myeloradiculopathy.
- 2. Cervical spondylosis C5-C6 and C6-C7 with associated myeloradiculopathy.

PROCEDURE PERFORMED:

- 1. C4-C5, C5-C6 and C6-C7 anterior cervical diskectomy/decompression.
- 2. C4-C5, C5-C6 and C6-C7 anterior cervical fusion.
- 3. Implantation PEEK material fusion implants, single implant C4-C5, single implant C5-C6 and single implant C6-C7.
- 4. Use of bone morphogenetic protein/BMP.
- 5. Anterior cervical plate/anterior instrumentation C4 to C7.

SURGEON:  
John Dorchak, MD.

ASSISTANT:  
Henry Aucoin, PA-C.

ESTIMATED BLOOD LOSS:  
50 cc.

COMPLICATIONS:  
None.

DRAINS:  
1/8 inch Hemovac x 1.

ANESTHESIA:

4 of 7

Patient Name : WILLIAMS, WALTER  
Account Number: X00200177512  
Unit Number : X000070970

General.

INDICATIONS:

This 59-year-old male slipped and fell in a hotel in Orlando, Florida injuring his neck. He has developed chronic pain in his neck with radiation to both upper extremities. Myelo CT shows evidence of a central and right-sided disk herniation at C4-C5.

At C5-C6 and C6-C7 he has severe central and neuroforaminal stenosis secondary to spondylosis. He has exhausted conservative measures. He is to undergo three level anterior cervical fusion with PEEK material fusion implants, BMP and anterior cervical plate.

FINDINGS:

Findings were that of a central and right-sided disk herniation at C4-C5 with compression on the right C5 nerve root and spinal cord. At C6-C7 and C5-C6 there was advanced spondylosis with large posterior osteophytes with compression on the spinal cord and nerve roots bilaterally at both levels. Following anterior cervical discectomy/decompression at all three levels interbody fusion was performed using PEEK material fusion implants, BMP and anterior cervical plate. There were no complications.

PROCEDURE IN DETAIL:

After induction of adequate general anesthesia with endotracheal intubation the patient was placed supine on the operating table.

The neck was then prepped and draped in the usual sterile fashion for orthopedic surgery to the anterior cervical spine. A 2 inch incision was then made over the C5-C6 disk space on the left side of the neck. The platysma muscle was divided in line with the skin incision, the sternocleidomastoid and carotid sheath were retracted laterally while the trachea, esophagus and strap muscles were retracted medially, this exposed the anterior cervical spine. The prevertebral fascia was then incised longitudinally, the longus Colli muscles were released bilaterally about the C4-C5, C5-C6 and C6-C7 disk spaces. A radiographic marker was placed in the C4-C5 disk and a lateral x-ray was taken to confirm its location. A self-retaining retractor was placed and then distracting pins were placed, one in C6 and one in C7 and then distraction was applied across the disk space and then discectomy was completed. A high speed bur was used to bur down the posterior osteophytes and uncovertebral joints. The posterior longitudinal ligament was gently elevated with a small angled nerve hook and then removed with a Kerrison.

Foraminotomies were performed. After decompression the nerve canals and central canal was palpated and excellent decompression had been obtained. Following decompression a high speed bur was used to bur down the endplates to bleeding bone, the posterior shelf was fashioned to prevent retroulsion of the graft. The defect was then measured and then a PEEK material fusion implant was selected, the center was filled with a BMP soaked sponge and then tamped into position. Excellent fit was obtained. The

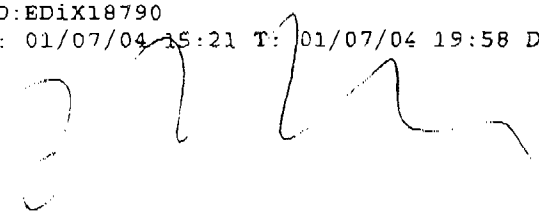
59

Patient Name : WILLIAMS, WALTER  
Account Number: X00200177512  
Unit Number : X000070970

distractor pins were then removed from the C7 vertebral body and placed in the C5 vertebral body and the exact same procedure was performed at C5-C6. After placement of the second implant the distracting pin was removed from the C6 vertebral body and placed in the C4 vertebral body and the exact same procedure was performed at C4-C5. After placement of the third implant the distracting pins were removed and an Atlantis plate was selected and placed over the construct. Two screws were then placed in C4, two screws in C5, two screws in C6 and two screws in C7. A lateral x-ray was then taken to confirm appropriate length of the screws and appropriate placement of the implants. The locking buttons were then tightened. The wound was then closed in layers with Vicryl sutures over a 1/8" Hemovac drain. The skin was closed with a running subcuticular stitch of 3-0 Vicryl followed by Steri-Strips. The wound was then dressed with Adaptic, plains and Microfoam tape was applied. There were no complications. Estimated blood loss was 50 cc. The patient tolerated the procedure well.

JD:EDiX18790

D: 01/07/04 15:21 T: 01/07/04 19:58 DOCUMENT: 200401070047881900

  
\_\_\_\_\_  
John Dorchak, MD

Tex ID: 58115460

billing phone: (706) 324-6663

dept phone: (334) 826-3090

GUARANTOR NAME AND ADDRESS  
WALTER J WILLIAMS  
706 BIBB STREET  
TUSKEGEE INSTITUTE AL, 36088

807965 WALTER JR WILLIAMS (M) JOHN DORCHAK, MD 06/28/2004 08:30 AM Auburn - Hughston Clinic

08/28/1944 (334) 727-7277 THE MAIL HANDLERS BENEFIT PLAN - FIRST HEALTH (PPO) 420801108 41532662HR2-3 DAYS

APPT TYPE: RECHECK

04/02/2004 hlyarm: recheck spine

### HUGHSTON CLINIC VISIT STATUS REPORT

D I A G N O S I S	CODE	DETAIL	CHECK-IN - _____
	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	CHECK-OUT - _____
4. _____	_____	_____	

**PRESCRIBE:** Pain Medication      NASID      Steroids      Antibiotic  
Steroid Injection      Therapy      Slng/Brace      Splint/Cast

**TESTING:** MRI      CT      EMG/NVC      Myelogram  
Arthrogram      Labwork      Other: \_\_\_\_\_      Bone Scan

**RECOMMEND:** Functional Capacity Evaluation      Work Hardening/Conditioning

**MMI REACHED:**  Today      \_\_\_\_\_ Weeks      \_\_\_\_\_ Months      PPI: \_\_\_\_\_ % Extremity      13 % Whole Person

**SURGERY:** \_\_\_\_\_

**RETURN TO WORK:** Today \_\_\_\_\_ Other: \_\_\_\_\_

**WORK RESTRICTIONS:** YES NO NO WORK

<b>SEDENTARY:</b> Lift/Carry/Push/Pull/0-10 lbs.	<b>TASKS DONE AT (level):</b> Waist Shoulder Overhead	<b>BENDING AT WAIST LEVEL:</b> None Occasional Frequent
<b>LIGHT DUTY:</b> Lift/Carry/Push/Pull/10-25 lbs.	<b>CLIMBING TO UNPROTECTED HEIGHTS:</b> None Occasional Frequent	<b>KNEELING:</b> None Occasional Frequent
<b>MEDIUM DUTY:</b> Lift/Carry/Push/Pull/25-50 lbs.	<b>JOB ROTATION:</b> Frequent/Micro Breaks	<b>SQUATTING:</b> None Occasional Frequent
<b>HEAVY DUTY:</b> Lift/Carry/Push/Pull/50-100 lbs.	Non-Production Work	<b>STANDING:</b> None Occasional Frequent
<b>REPETITIVE MOTION:</b> None Occasional Frequent	Modify Workstation	<b>OR</b> _____ Hours per Day
<b>PUSH/PULL TASKS:</b> None Occasional Frequent	<b>BRACE/SLING/CRUTCH/ CANE AT WORK:</b> Optional Mandatory	<b>DRIVING:</b> _____ None _____ Hours per Day

**\*\*NO DRIVING OR OPERATING MACHINERY WHILE TAKING NARCOTIC PAIN MEDICATION\*\***

COMMENTS: \_\_\_\_\_

**RETURN TO CLINIC:** \_\_\_\_\_ DAYS      \_\_\_\_\_ WEEKS      \_\_\_\_\_ MONTHS      PRN

POST TEST/SURGERY      MD TO CALL      PATIENT TO CALL      RETURN APPOINTMENT

**PROGRESS CALL:** \_\_\_\_\_ DAYS      \_\_\_\_\_ WEEKS      \_\_\_\_\_ MONTHS      DATE: \_\_\_\_\_

IR to DR. *WJC* for the Evaluation of *ED shoulder*      TIME: \_\_\_\_\_

\_\_\_\_\_ Patient is dismissed from care this date.

SERVICES FOR THIS PATIENT WERE RENDERED AT: \_\_\_\_\_

Physician Signature: \_\_\_\_\_



# TALLASSEE REHAB PC

1524 Gilmer Avenue • Tallassee, AL 36078  
Ph: 334-283-8032 • Fax: 334-283-1136



# CRAIN REHAB\*

802 Crawford Street • Tuskegee, AL 36083  
Ph: 334-725-1261 • Fax: 334-725-1262

Tom Crain Pt, ECS

Tyler Hale PT

Sterling Turner PTA, ATC

### PROGRESS REPORT

Patient Name: Walter Williams Date: 9/22/04

Diagnosis: sp Massive RC Repair, SLAP Repair Physician: Dr. Lyle

Patient Status: The patient has remained compliant & PT's treated 2x/wk as ordered.

Pain level is decreasing.

PROM: Flexion 135°, ER 30°

He is having no problems w/ elbow ARM.

Recommendations: Progress as you advise.

Please call if any questions.

Thanks,

Tyler Hale PT

Physical Therapist's Signature

To be completed by PHYSICIAN:

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Physician's Signature

Date

Please return via patient or fax (334) 283-1136.

East Alabama Medical Center  
2000 Pepperell Parkway  
Opelika, Alabama 36801-5456  
(334)749-3411

Williams Jr, Walter  
Physician: James E. Lyle, MD  
Admit Date: 08/23/2004  
Location: OV  
Disch Date: 08/24/2004

**DATE OF SURGERY:** 08/23/2004

**PREOPERATIVE DIAGNOSIS:** rotator cuff tear, left shoulder

**POSTOPERATIVE DIAGNOSES:** rotator cuff tear and SLAP tear, left shoulder

**PROCEDURE:**

1. left shoulder mini open rotator cuff repair
2. arthroscopic SLAP repair
3. arthroscopic partial acromioplasty and subacromial decompression

**SURGEON:** Dr. James Lyle

**ANESTHESIA:** general endotracheal plus axillary block.

**ESTIMATED BLOOD LOSS:** 50 cc

**COMPLICATIONS:** none

**INDICATIONS:** Mr. Williams is a 59 year-old gentleman with chronic pain in his left shoulder. He has failed conservative management thus far. He has an MRI and clinical evidence consistent with a full thickness rotator cuff tear with minimal retraction. He is now presenting for operative shoulder arthroscopy and rotator cuff repair. He understands all of the risks, benefits and alternatives of all of this and wishes to proceed. The risks include but are not limited to risk of infection, risk of anesthesia, risk of nerve injury, risk of failure of fixation, risk of continued pain after the surgery, risk of stiffness, etc.

**PROCEDURE:** the patient was taken to the Operating Room and after adequate general anesthesia was administered, as well as axillary block anesthesia, examination under anesthesia was performed. There was no asymmetry or instability on the left shoulder compared to the right shoulder. The patient essentially had full passive range of motion. The patient was then placed in the beach-chair position. The left shoulder was then prepped and draped in a sterile fashion. 10 cc of 0.5% Marcaine with Epinephrine were injected into the subacromial space to aid in hemostasis later on in the procedure. A

Williams Jr, Walter  
Acct No: 0422900168  
MR#: 0000-82-19-64  
Location: OV

**OPERATIVE REPORT** 1 of 3

Copy for James E. Lyle, MD

posterolateral portal was then established just below the posterior lateral edge of the acromion. The scope was then introduced into the glenohumeral joint and standard arthroscopic examination was performed. An anterior portal was established just lateral to the coracoid process under direct visualization from within the joint. A probe was then inserted into this portal. There were no abnormalities of the humeral head or glenoid. No abnormalities of the inferior labrum or biceps tendon itself or subscapularis. The posterior labrum was intact. The superior labrum and biceps anchor did show a type II SLAP lesion with fraying at the edges. We proceeded with spreading down the frayed edges of the SLAP tear and some of the superior labrum until the edges were nice and smooth. Further probing did verify that this was a complete type II lesion. Additionally we looked at the rotator cuff and there was evidence as expected of a full thickness rotator cuff tear involving the supraspinatus tendon and possibly some of the infraspinatus tendon as on the greater tuberosity. We then proceeded with an arthroscopic SLAP repair. The scope was placed in the anterior portal. A posterolateral port of gloaming type portal was additionally placed giving us a nice entrance angle onto the superior aspect of the glenoid. The superior glenoid was then decorticated just medial to the superior rim down to bleeding bone. We then proceeded with placing a Bio-Knotless suture anchor just posterior to the biceps tendon. This was done in the usual fashion. This was done from the two posterior portals. We then proceeded reviewing this both anteriorly and posteriorly and this did give excellent stabilization of the superior labrum and the biceps anchor, and it was felt given the stability that we did not need any additional fixation. We then proceeded with going into the subacromial space, the bursa was removed using a combination of the high-tech vapor as well as the arthroscopic shaver. The coracoacromial ligament was dissected off of the anterior acromion. There was a large anterior acromial spur. We then proceeded with removing the anterior acromial spur with the bur placed in the lateral portal. A cutting block type technique was utilized until the anterior aspect of the acromion was flushed and parallel with the posterior surface of the acromion. It should be noted that most of our work in the subacromial space was done through a lateral working portal. This was established about 2 centimeters or so below the anterior lateral aspect of the acromion. We then proceeded with a rotator cuff repair through a mini open incision. This was done by enlarging previously placed lateral portal about 2 centimeters in either direction. Full thickness skin flaps were then developed exposing the deltoid. The deltoid was then split off of the lateral aspect of the acromion for a distance of about 3 or 4 centimeters. A Steri-Strip was placed distally to inhibit any propagation of the deltoid split further. Dissection was taken through the deltoid split down to the subacromial space. Any remaining bursa was then excised. The rotator cuff was then evaluated under direct visualization. This was actually quite a large tear though with minimal retraction. It was at least 4 centimeters in length and involved all of the supraspinatus tendon and a portion of the infraspinatus tendon. The distal portion of the infraspinatus tendon appeared to be fully intact. The straight edges were then débrided down to good tissue. Stay sutures were placed in the edge of the tendon. Adhesions were released from the superior aspect and we were able to get excellent mobilization of the rotator cuff easily pulling it well onto the greater tuberosity. We then proceeded with decortivating the greater tuberosity. Next several transosseous bony tunnels were then made from the decorticated surface just off of the articular aspect of the humerus exiting out the lateral aspect of the greater tuberosity distally. Care was taken to place 1 centimeter bone in between the tunnels themselves and

Williams Jr, Walter  
 Acct No: 0422900168  
 MR#: 0000-82-19-64  
 Location: OV

**OPERATIVE REPORT** 2 of 3

Copy for James E. Lyle, MD

between other tunnels. We then placed three modified Mason-Allen sutures within the rotator cuff tissue with 2-0 fiber wire. Additionally three Bio-corkscrew suture anchors were placed just lateral to the junction of the articular surface and the bony trough and the greater tuberosity. These were placed just medial to the transosseous suture holes. We then proceeded with pulling the cuff laterally onto the greater tuberosity. The sutures from the Bio-corkscrew anchors were then passed all through the rotator cuff tissue. In each case there were two separate sutures on each anchor giving us multiple points of fixation. With the cuff fully advanced laterally over the greater tuberosity, the Bio-corkscrew sutures were then tied on top of the rotator cuff giving us a mattress type closure medially. Next the 2-0 fiber wire sutures from our modified Mason-Allen stitches were then passed through the transosseous drill holes from proximal to the distal. These sutures were then tied over the distal transosseous holes. This basically gave us a nice secure double row fixation technique. At that point the rotator cuff was fully examined through range of motion with internal external rotation. There was excellent repair all throughout the extent of the tear. The undersurface of the acromion was then palpated manually and it was smoothed down either further with a rasp. Good hemostasis was obtained. We thoroughly irrigated the wound. The deltoid split was reapproximated with figure-of-eight 0 Vicryl suture. The subcutaneous tissue was reapproximated with simple interrupted 2-0 Vicryl suture. The skin was reapproximated with staples as well as the portal sites. A sterile compressive dressing was then placed over the wound and a sling was placed over the arm. The patient tolerated the procedure well and was transferred to the Recovery Room in stable condition.



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James E. Lyle, MD

TR: crc  
DD: 08/24/2004  
DT: 08/25/2004 3:54 P  
Doc: 687495  
cc: James E. Lyle, MD

Williams Jr, Walter

Acct No: 0422900168  
MR#: 0000-82-19-64  
Location: OV

**OPERATIVE REPORT** 3 of 3

Copy for James E. Lyle, MD



Christopher J. Day  
Law Office of Christopher Day  
340 East Palm Lane, Suite 282  
Phoenix, Arizona 85004  
(602) 258-4440

Attorney for Applicant  
Williams Jr., Walter

UNITED STATES DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

In re Application of:

Trademark Serial No.: 76383329

For the mark: UNCLE WALT'S

Applicant: Williams Jr., Walter

Opposer: Mars, Incorporated

ANSWER

Opposition No.  
91162932

ANSWER TO OPPOSITION

COMES NOW, Applicant, Walter Williams Jr., and files this Answer to the Notice of Opposition filed with respect to the above referenced matter and answers as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and therefore denies such allegations.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and therefore denies such allegations.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 and therefore denies such allegations.
4. Admitted.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and therefore denies such allegations.
6. Denied.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and therefore denies such allegations.
8. Denied.
9. Denied.
10. Denied.
11. Applicant believes, to the contrary, that it is entitled to registration of its mark UNCLE WALT'S and that it is entitled to the exclusive use thereof.

WHEREFORE, Applicant respectfully requests that Opposer's opposition be denied, and that registration of Applicant's mark be granted.

Dated this 11<sup>th</sup> day of March, 2005.



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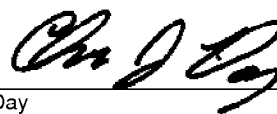
Christopher J. Day, Attorney for Applicant  
Law Office of Christopher Day  
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Phoenix, AZ 85004  
Telephone: (602) 258-4440  
Facsimile: (602) 258-4441

CERTIFICATE OF SERVICE

I hereby certify that this correspondence, is being deposited on March 11, 2005, in the U.S. mail, first class postage pre-paid, addressed to counsel for Opposer at the following

Address:

Timothy J. Kelly  
Fitzpatrick, Cella, Harper & Scinto  
30 Rockefeller Plaza  
New York, NY 10112



---

Christopher J. Day