

ESTTA Tracking number: **ESTTA158176**

Filing date: **08/21/2007**

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	Poly-Gel, L.L.C.		
Entity	Limited Liability Company	Citizenship	New Jersey
Address	30 Leslie Court Whippany, NJ 07981 UNITED STATES		

Attorney information	Edwin D. Schindler Edwin D. Schindler, Patent Attorney Five Hirsch Avenue P. O. Box 966 Coram, NY 11727-0966 UNITED STATES EDSchindler@worldnet.att.net Phone:(631)474-5373
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Applicant Information

Application No	78930776	Publication date	07/31/2007
Opposition Filing Date	08/21/2007	Opposition Period Ends	08/30/2007
Applicant	Benchmark Brands, Inc. Suite 104 5830 E. Shelby Drive Memphis, SD 381416880 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: cushions and pads namely, corn pads, callus pads, bunion pads
Class 010. All goods and services in the class are opposed, namely: Orthopedic supports, namely heel protectors, arch supports for boots and shoes
Class 025. All goods and services in the class are opposed, namely: socks and hosiery; shoe comfort aids namely, heel liners, forefoot cushions, sling back shoe cushioning straps, heel pads, insoles, half insoles, shoe padding, shoe thong strap padding, ball of foot cushions

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.</i> Fraud	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Trademark Application Serial No. 78/930,776 was "abandoned," pursuant to Â§12(b)(2) of the Trademark Act, 15 U.S.C. Â§1062(b)(2), for failure to timely file a Response to the first Office Action, issued December 13, 2006.

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78948496	Application Date	08/09/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GEL SMART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/02/06 First Use In Commerce:		

	<p>2006/02/06 cushions and pads, namely, corn pads, callus pads and bunion pads Class 010. First use: First Use: 2006/02/06 First Use In Commerce: 2006/02/06 ARCH SUPPORTS FOR BOOTS OR SHOES; ORTHOTIC INSERTS, NAMELY, INSOLES, HALF INSOLES, HEEL INSERTS IN THE NATURE OF HEEL LINERS, AND SHOE INSERTS FOR PRIMARILY ORTHOPEDIC PURPOSES IN THE NATURE OF FOREFOOT CUSHIONS, HEEL PADS AND HEEL CUSHIONS, SHOE PADDING, BALL OF FOOT CUSHIONS, AND HEEL PIECES FOR SHOES; ORTHOPEDIC SUPPORTS, NAMELY, HEEL PROTECTORS Class 025. First use: First Use: 2006/02/06 First Use In Commerce: 2006/02/06 SOCKS AND HOSIERY; SHOE COMFORT AIDS, NAMELY, INSOLES, HALF INSOLES, HEEL INSERTS IN THE NATURE OF HEEL LINERS, AND SHOE INSERTS FOR PRIMARILY NON- ORTHOPEDIC PURPOSES IN THE NATURE OF FOREFOOT CUSHIONS, CUSHIONED SLING BACK SHOE STRAPS, HEEL PADS AND HEEL CUSHIONS, SHOE PADDING, PADDED SHOE THONG STRAPS, AND BALL OF FOOT CUSHIONS; HEEL PIECES FOR SHOES, NAMELY, HEEL PROTECTORS</p>
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Attachments	<p>78948496#TMSN.jpeg (1 page)(bytes) Poly-Gel, L.L.C. v. Benchmark Brands, Inc.-Notice of Opposition (8- 21-2007).PDF (16 pages)(1097960 bytes)</p>
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Signature	/Edwin D. Schindler/
Name	Edwin D. Schindler
Date	08/21/2007

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

In the Matter of: Trademark Application Serial No. 78/930,776

For the Trademark: "GELSMART" (International Classes 5, 10 and 25)

Published in the *Official Gazette* on: July 31, 2007

POLY-GEL, L.L.C.,	:	
	:	Opposition No. _____
Opposer,	:	
	:	
v.	:	
BENCHMARK BRANDS, INC.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Poly-Gel, L.L.C. ("Opposer" or "Poly-Gel"), a limited liability company, organized and existing under the laws of the State of New Jersey, having its principal place of business at 30 Leslie Court, Whippany, New Jersey 07981, believes that it will be damaged by the registration of the trademark "GELSMART," for which registration has been applied for by Applicant, Benchmark Brands, Inc. ("Applicant" or "Benchmark"), by virtue of Benchmark's filing and prosecution of Trademark Application Serial No. 78/930,776, and, consequently, Poly-Gel hereby opposes registration of the trademark "GELSMART" to Benchmark.

Poly-Gel hereby alleges as its grounds for opposition that:

I. Applicant Benchmark's Trademark Application Has Been "Abandoned"
and Therefore Cannot Mature Into a Valid Trademark Registration

1. A first Office Action was issued for Trademark Application Serial No. 78/930,776 on December 13, 2006. (Notice of Opposition "Exhibit 1": *TARR Status Inquiry for Trademark Application Serial No. 78/930,776*)
2. A reply to the first Office Action was due within six months, or by June 13, 2007, pursuant to §12(b)(2) of the Trademark Act, 15 U.S.C. §1062(b)(2); June 13, 2007, being neither a Saturday, Sunday nor federal holiday within the District of Columbia.
3. A reply to the first Office Action, issued for Trademark Application Serial No. 78/930,776 on December 13, 2006, was not electronically filed by Applicant Benchmark until June 14, 2007; the provisions of 37 C.F.R. §1.8 being inapplicable to Applicant Benchmark's reply to the first Office Action. (Notice of Opposition "Exhibit 1": *TARR Status Inquiry for Trademark Application Serial No. 78/930,776*)
4. Trademark Application Serial No. 78/930,776 became "abandoned," pursuant to §12(b)(2) of the Trademark Act, 15 U.S.C. §12(b)(2), 15 U.S.C. §1062(b)(2), when Applicant Benchmark failed to file a timely reply to the first Office Action, due no later than June 13, 2007.
5. A valid trademark registration cannot be issued to Applicant Benchmark for the trademark "GELSMART," and Poly-Gel's Opposition must be sustained, because the underlying trademark application, *i.e.*, Serial No. 78/930,776, has been "abandoned."

II. A Likelihood of Confusion Exists under §2(d) of the Trademark Act
Between the Prior Trademark Rights of Opposer PolyGel to its “GEL SMART”
Trademark and the Alleged Rights of Benchmark to the “GELSMART” Trademark

6. Opposer Poly-Gel conceived of, and developed, the trademark, “GEL SMART” (written as two separate words) for the goods that have been recited by Applicant Benchmark in Trademark Application Serial No. 78/930,776.

7. Poly-Gel commenced use in U.S. interstate commerce of the “GEL SMART” trademark during (or about) February 2006 in connection with substantially the same, if not identical, goods that have been recited by Applicant Benchmark in its subsequently-filed Trademark Application Serial No. 78/930,776, through which Applicant Benchmark now seeks registration of the trademark “GELSMART,” written as a single word.

8. Opposer Poly-Gel is the owner of the “GEL SMART” trademark and all confusingly similar variations thereof, including, but not limited to, the trademark “GELSMART,” which Applicant Benchmark now seeks to register.

9. Poly-Gel, as the owner of the trademark “GEL SMART,” has filed Trademark Application Serial No. 78/948,496 seeking to register its “GEL SMART” trademark for substantially the same, if not identical, goods as recited by Benchmark in Trademark Application Serial No. 78/930,776, which seeks to register the alleged trademark “GELSMART.”

10. Poly-Gel’s rights to its “GEL SMART” trademark are prior to, and superior to, any alleged rights that Benchmark might seek to claim to the mark “GELSMART,” or

any confusingly similar variation thereof.

11. Registration by Benchmark of the “GELSMART” trademark will impair Opposer Poly-Gel’s rights in, and to, its trademark “GEL SMART,” including, but not limited to, Opposer Poly-Gel’s right to register its “GEL SMART” trademark on the Principal Register for substantially the same, if not identical, goods, and by causing confusion in the relevant industry and trade, as well as causing confusion among relevant purchasers in the public-at-large, consequently, Poly-Gel’s Opposition must be sustained.

III. Applicant Benchmark’s Trademark Application, Serial No. 78/930,776,
is Void on the Ground that Benchmark Committed Fraud Upon
the Patent and Trademark Office When Benchmark Knowingly Filed
a Materially False Declaration in Support of its Trademark Application

12. Poly-Gel hereby incorporates by reference the allegations of ¶¶ 6 – 11, as if fully repeated and set forth herein.

13. Applicant Benchmark entered into a distribution agreement with Opposer Poly-Gel on, or about, October 13, 2005, to distribute goods manufactured by Poly-Gel under the trademark “GEL SMART,” which goods Applicant Benchmark subsequently recited in Trademark Application Serial No. 78/930,776, which seeks registration of the trademark “GELSMART,” written as a single word.

14. Notwithstanding its distribution agreement with Opposer Poly-Gel, Benchmark never distributed any goods for Poly-Gel and Poly-Gel commenced its marketing, sale and distribution of its goods bearing the “GEL SMART” trademark in U.S. interstate

commerce during (or about) February 2006, via means not involving, or otherwise utilizing the services of, Applicant Benchmark.

15. On July 17, 2006, Applicant Benchmark filed an “intent-to-use” trademark application, *i.e.*, U.S. Trademark Application Serial No. 78/930,776, for the purported mark “GELSMART,” written as one word, for substantially the same, if not identical, goods that Opposer Poly-Gel was already marketing, selling and distributing for many months under Opposer Poly-Gel’s “GEL SMART” trademark.

16. In support of Applicant Benchmark’s trademark application, Benchmark’s corporate president electronically executed a *Declaration* on July 17, 2006, in support of Benchmark’s trademark application to register “GELSMART,” which *Declaration* stated that:

“The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made on his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

Notice of Opposition “Exhibit 2”: *Benchmark’s Electronically-Filed Trademark*

Application, Serial No. 78/930,776, filed July 17, 2006.

17. By virtue of its distribution agreement with Opposer Poly-Gel, Applicant Benchmark's corporate president knew, or should have known, that Poly-Gel was using the trademark "GEL SMART" on substantially the same, if not identical, goods recited by Benchmark in its "intent-to-use" trademark application, filed July 17, 2006, said trademark application having been accorded Application Serial No. 78/930,776.

18. By virtue of its distribution agreement with Opposer Poly-Gel, Applicant Benchmark's corporate president knew, or should have known, that Poly-Gel was the owner of the "GEL SMART" trademark for substantially the same, if not, identical goods recited in Benchmark's trademark application, which seeks to register the alleged "GELSMART" trademark.

19. By virtue of its distribution agreement with Opposer Poly-Gel, Applicant Benchmark's corporate president knew, or should have known, that Benchmark was not the owner of the alleged "GELSMART" trademark, or of any mark having a near resemblance thereto as to be likely, when used on or in connection with the goods recited in Applicant Benchmark's trademark application, to cause confusion, or to cause mistake or to deceive.

20. By virtue of its distribution agreement with Opposer Poly-Gel, Applicant Benchmark's corporate president knew, or should have known, that the alleged trademark of Benchmark, "GELSMART," has a "near resemblance" to Poly-Gel's "GEL

SMART” trademark for substantially the same, if not identical, goods as Benchmark recited in its trademark application seeking to register “GELSMART” and, further, that Benchmark’s corporate president knew, or should have known, that the near resemblance of “GEL SMART” to “GELSMART,” for substantially the same, if not identical, goods, would be likely to cause confusion, or to cause mistake, or to deceive.

21. Applicant Benchmark’s corporate president electronically executed a *Declaration* containing false statements in support of Benchmark’s trademark application seeking to register the alleged trademark “GELSMART” on July 17, 2006, when Benchmark’s corporate president declared, in relevant part, and with full knowledge of Benchmark’s distribution agreement with Opposer Poly-Gel, that:

“he/she believes applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive,”

said false statements that: (a) Benchmark’s corporate president believed Benchmark “to be the owner of the trademark/service mark sought to be registered”; and/or (b) Benchmark’s corporate president believed Benchmark “to be entitled to use such mark in commerce, either in the identical form or in such near resemblance [as, or to, Poly-Gel’s “GELSMART” trademark] as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive,” said false statements, which Benchmark’s corporate president knew, or should have known, to be false, constituting one or more material misrepresentations of fact

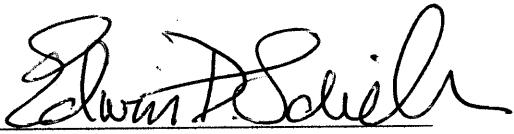
made to the United States Patent and Trademark Office which, if known to the Patent and Trademark Office, would have caused Applicant's Benchmark's trademark application, seeking to register "GELSMART" to be refused by the Patent and Trademark Office.

22. By failing to inform, in any manner, the Patent and Trademark Office of Poly-Gel's "GEL SMART" trademark and/or Applicant Benchmark's distribution agreement with Poly-Gel for goods that Benchmark was to distribute for Poly-Gel in connection with Opposer Poly-Gel's "GEL SMART" trademark, said goods being substantially the same, if not identical, to the goods later recited in Applicant Benchmark's trademark application seeking to register "GELSMART," and by virtue of Applicant Benchmark's corporate president's *Declaration*, which neither qualified nor explained how, or why, Applicant Benchmark might have either ownership or the right to use, in commerce, the "GELSMART" trademark, nor why there would be no likelihood of confusion, mistake or deception resulting from two unrelated entities using the "GEL SMART" and "GELSMART" trademarks for substantially the same, if not identical, goods, Applicant Benchmark committed fraud in the prosecution of Trademark Application Serial No. 78/930,776 and, consequently, Opposer Poly-Gel's Opposition must be sustained.

WHEREFORE, Opposer Poly-Gel, L.L.C., respectfully demands that its Opposition be sustained and that the trademark application of Benchmark Brands, Inc., Trademark Application Serial No. 78/930,776, which seeks registration of the trademark "GELSMART" for goods recited in International Classes 5, 10 and 25, be refused.

The filing fee of \$900.00 in support of Poly-Gel's *Notice of Opposition*, pursuant to 37 C.F.R. 2.6(a)(17), for opposing Benchmark's application seeking registration of the "GELSMART" trademark in International Classes 5, 10 and 25, is being concurrently remitted via EFT.

POLY-GEL, L.L.C.

By 
Edwin D. Schindler
Attorney for Opposer

Five Hirsch Avenue
P. O. Box 966
Coram, New York 11727

(631)474-5373

E-Mail: EDSchindler@att.net
EDSchindler@optonline.net

August 21, 2007

Enc.: "Exhibit 1": *TARR Status Inquiry for Trademark Application Serial No. 78/930,776*; and,

"Exhibit 2": *Benchmark's Electronically-Filed Trademark Application, Serial No. 78/930,776, filed July 17, 2006.*

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

This page was generated by the TARR system on 2007-08-21 18:51:47 ET

Serial Number: 78930776 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

GELSMART

(words only): GELSMART

Standard Character claim: Yes

Current Status: Application has been published for opposition.

Date of Status: 2007-07-31

Filing Date: 2006-07-17

The Information will be/was published in the Official Gazette on 2007-07-31

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 101

Attorney Assigned:
CLARKE IDI A Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-06-28

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

1. Benchmark Brands, Inc.

Address:

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=78930776&action=Request+Status>

8/21/2007

EXHIBIT 1

Benchmark Brands, Inc.
Suite 104 5830 E. Shelby Drive
Memphis, SD 381416880
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Tennessee
Phone Number: 678-533-2808
Fax Number: 770-242-1962

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

cushions and pads namely, corn pads, callus pads, bunion pads

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 010

Class Status: Active

Orthopedic supports, namely heel protectors, arch supports for boots and shoes

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 025

Class Status: Active

socks and hosiery; shoe comfort aids namely, heel liners, forefoot cushions, sling back shoe cushioning straps, heel pads, insoles, half insoles, shoe padding, shoe thong strap padding, ball of foot cushions

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2007-07-31 - Published for opposition

2007-07-11 - Notice of publication

2007-06-28 - Law Office Publication Review Completed

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=78930776&action=Request+Status>

8/21/2007

2007-06-27 - Approved for Pub - Principal Register (Initial exam)
2007-06-26 - Teas/Email Correspondence Entered
2007-06-26 - Communication received from applicant
2007-06-26 - Assigned To LIE
2007-06-14 - TEAS Response to Office Action Received
2007-04-11 - TEAS Change Of Correspondence Received
2006-12-13 - Non-final action e-mailed
2006-12-13 - Non-Final Action Written
2006-12-13 - Assigned To Examiner
2006-07-22 - Notice Of Pseudo Mark Mailed
2006-07-21 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Benchmark Brands, Inc.
Suite 104
5830 E. Shelby Drive
Memphis TN 38141-6880
Phone Number: 678-533-2808
Fax Number: 770-242-1962

Trademark/Service Mark Application, Principal Register

Serial Number: 78930776

Filing Date: 07/17/2006

The table below presents the data as entered.

MARK SECTION	
MARK	GELSMART
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	GELSMART
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Benchmark Brands, Inc.
INTERNAL ADDRESS	Suite 104
STREET	5830 E. Shelby Drive
CITY	Memphis
STATE	South Dakota
ZIP/POSTAL CODE	38141-6880
COUNTRY	United States
PHONE	678-533-2808
FAX	770-242-1962
EMAIL	anikolas@bellsouth.net
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	Tennessee
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	025
DESCRIPTION	socks and hosiery; shoe comfort aids namely, heel protectors, heel liners, forefoot cushions, sling back shoe cushioning straps, heel pads, insoles, half insoles, shoe padding, arch supports, shoe thong strap padding, ball of foot cushions
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION	

EXHIBIT 2

INTERNATIONAL CLASS	005
DESCRIPTION	cushions and pads namely, corn pads, callus pads, bunion pads
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/Alan Beychok/
SIGNATORY NAME	Alan Beychok
SIGNATORY DATE	07/17/2006
SIGNATORY POSITION	President
PAYMENT SECTION	
NUMBER OF CLASSES	2
NUMBER OF CLASSES PAID	2
SUBTOTAL AMOUNT	650
TOTAL AMOUNT	650
PAYMENT METHOD	CC
CORRESPONDENCE SECTION	
NAME	Benchmark Brands, Inc.
INTERNAL ADDRESS	Suite 104
STREET	5830 E. Shelby Drive
CITY	Memphis
STATE	South Dakota
ZIP/POSTAL CODE	38141-6880
COUNTRY	United States
EMAIL	anikolas@bellsouth.net
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Mon Jul 17 13:00:45 EDT 2006
TEAS STAMP	USPTO/BAS-121297727-20060 717130045286721-78930776- 20092c7d765aa32e0acdb78ae e11dacb24b-CC-1771-200607 17125835542961

Trademark/Service Mark Application, Principal Register

Serial Number: 78930776

Filing Date: 07/17/2006

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of GELSMART.

The applicant, Benchmark Brands, Inc., a corporation of Tennessee, residing at Suite 104, 5830 E. Shelby Drive, Memphis, South Dakota, United States, 38141-6880, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 025: socks and hosiery; shoe comfort aids namely, heel protectors, heel liners, forefoot cushions, sling back shoe cushioning straps, heel pads, insoles, half insoles, shoe padding, arch supports, shoe thong strap padding, ball of foot cushions

International Class 005: cushions and pads namely, corn pads, callus pads, bunion pads

The USPTO is authorized to communicate with the applicant or its representative at the following email address: anikolas@bellsouth.net.

A fee payment in the amount of \$650 will be submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Alan Beychok/ Date: 07/17/2006

Signatory's Name: Alan Beychok

Signatory's Position: President

Mailing Address:

Benchmark Brands, Inc.

Suite 104

5830 E. Shelby Drive

Memphis, South Dakota 38141-6880

RAM Sale Number: 1771

RAM Accounting Date: 07/17/2006

Serial Number: 78930776

Internet Transmission Date: Mon Jul 17 13:00:45 EDT 2006

TEAS Stamp: USPTO/BAS-121297727-20060717130045286721

-78930776-20092c7d765aa32e0acdb78ace11da

cb24b-CC-1771-20060717125835542961

GELSMART