

ESTTA Tracking number: **ESTTA373034**

Filing date: **10/13/2010**

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	OSRAM GmbH
Granted to Date of previous extension	10/13/2010
Address	Hellabrunner Str. 1 DEPT GC IP TM; 2010 I 14394US; Muenchen, D-81543 GERMANY
Party who filed Extension of time to oppose	OSRAM GmbH
Relationship to party who filed Extension of time to oppose	OSRAM GmbH is a company name, not a personal name

Domestic Representative	Milton Oliver, Esq. OLIVER INTELLECTUAL PROPERTY LLC PO BOX 1670 COTUIT, MA 02635-1670 UNITED STATES miltonoliver@IEEE.org Phone:774-521-3058
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Applicant Information

Application No	77558655	Publication date	06/15/2010
Opposition Filing Date	10/13/2010	Opposition Period Ends	10/13/2010
Applicant	Sunbeam Products, Inc. 2381 Executive Center Drive Boca Raton, FL 33431 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Easy read measuring cups; kitchen scales; measuring cups and spoons; refrigerator magnets; thermometers; timers; jiggers

Grounds for Opposition

The mark is primarily merely a surname	Trademark Act section 2(e)(4)
Other	Applicant's use of legal proceedings to interfere with legitimate business activities.

Related Proceedings	Opposition 91-171206, SUNBEAM PRODUCTS INC. v. OSRAM GmbH re mark OSTAR, S.N. 76/633,973
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Attachments	SN-77-558655-OPPN-n-EXHIBITS-A-to-E.pdf (15 pages)(1301349 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	/Milton Oliver/
Name	Milton Oliver, Esq.
Date	10/13/2010

IN THE US PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

In re SN 77/558,655)
for OSTER in CL. 09)
)
OSRAM GmbH)
 Opposer)
)
vs.)
)
)
SUNBEAM PRODUCTS INC.)
 Applicant)
)
_____)

Opposition # _____

NOTICE OF OPPOSITION

OSRAM GmbH believes it would be damaged by registration of the mark shown in pending application SN 77/558,655 and therefore opposes registration thereof, for the following reasons:

1. OSRAM GmbH is a limited liability company organized under German law, having a principal place of business at Hellabrunnerstr. 1, Munich, Germany D-81543.

2. Ranked by annual revenue, OSRAM GmbH is among the world's top two manufacturers of electric lamps and related lighting products.

3. OSRAM GmbH is affiliated with OSRAM SYLVANIA INC., headquartered in Danvers, Massachusetts, and both companies are majority-owned subsidiaries of SIEMENS AG, a global company whose shares are traded on the New York and other stock exchanges.

4. For more than five years, OSRAM GmbH and its affiliates have used the mark OSTAR in interstate commerce for "Light emitting diodes" and related class 9 electrical goods.
5. By reason of the continuous and substantially exclusive use of OSTAR for class 9 electrical goods for this five year period, OSTAR has become well-known among US purchasers of class 9 goods, as referring to electrical products emanating from Osram GmbH.
6. On or about MAR. 14, 2005, OSRAM GmbH filed application SN 76/633,973 to register OSTAR in CL. 9, and said application is currently the subject of Opposition # 91-171206, in which Sunbeam Products, Inc. is the Opposer. See EXHIBIT A attached hereto.
7. On information and belief, Applicant Sunbeam Products Inc. is a Delaware corporation, having a principal place of business at 2381 NW Executive Center Drive, BOCA RATON FL 33431-7321.
8. Application SN 77/558,655 for OSTER was electronically filed by Applicant on AUG. 29, 2008 as an intent-to-use application.
9. On information and belief, an Office Action dated DEC. 9, 2008 rejected application SN 77/558,655 on the grounds, inter alia, that "the applied-for mark is primarily merely a surname." See first five pages, attached hereto as EXHIBIT B.

10. On information and belief, Applicant amended its application on JUNE 4, 2009 to add International Class 9 and a section 2(f) claim.
11. On information and belief, Applicant's section 2(f) claim **was and is** invalid, because it referred to Reg. No. **358,541** which is for the mark MIDNIGHT IN HARLEM and design, for "cosmetics, namely face powder and foundation cream" and thus has nothing to do with whether or not the surname OSTER has achieved any secondary meaning in the class(es) of goods recited in the application. See EXHIBIT C attached hereto.
12. On information and belief, Applicant's reliance on prior Reg. No. 515,517 is misplaced, at least with respect to the recited class 9 goods (easy read measuring cups, kitchen scales, measuring cups and spoons, refrigerator magnets, thermometers, timers and jiggers), because that registration covers the script mark *Oster* for motorized appliances, curling irons, and flat irons in class 9, clippers and shavers in class 8, and electric hair dryers and massagers in US class 44. See EXHIBIT D attached hereto.
13. On information and belief, use of the script mark *Oster* with only the first letter capitalized, on the goods recited in Reg. 515,517, would not change the perception by prospective purchasers of the goods recited in SN 77/558,655 that the term OSTER in all capitals is primarily merely a surname.

14. On information and belief, the goods recited in Reg. # 858,325 (primarily hair dryers, scalp cleaners, and massagers for human and animal use) are not sufficiently related to the goods recited in SN 77/558,655 to provide any support for the contention that OSTER is not perceived primarily as merely a surname. See EXHIBIT E attached hereto.

15. On information and belief, Applicant has shown a consistent pattern of exaggerating the "fame" of its OSTER marks, and of aggressively asserting that they (A) bar use of any of a range of non-identical marks, and (B) bar use of allegedly similar marks on goods substantially unrelated to the goods recited in Applicant's OSTER registrations. Applicant has repeatedly asserted, in Opposition # 91-171206 and elsewhere, that its rights in the OSTER marks extend to all "consumer goods."

16. On information and belief, if applicant Sunbeam Products, Inc. is granted a registration in International Class 9, it will attempt to assert it against legitimate uses by others, on Class 9 products, of any mark having the slightest arguable similarity to OSTER.

17. On or about JUL. 15, 2010, Osram GmbH was granted an extension until OCT. 13, 2010, within which to oppose SN 77/558,655.

WHEREFORE, OSRAM GmbH believes it would be damaged by grant of a class 9 registration for OSTER to Applicant, opposes the class 9 portion of application SN 77/558,655 and urges the US Patent & Trademark Office to deny registration of the mark OSTER for class 9 goods. Submitted herewith is the \$300 fee for opposition in International Class 9. To the extent any fees are not adequately paid herewith, authorization is given to charge Deposit Account 50-4732.

Respectfully submitted,
OSRAM GmbH
By its attorney

/Milton Oliver/

Milton Oliver, Reg. # 28,333
OLIVER INTELLECTUAL PROPERTY LLC
PO BOX 1670
COTUIT MA 02635

TEL: 774-521-3058
FAX: 774-521-3062
EMAIL: miltonoliver@IEEE.org

DATE: OCT. 13, 2010

Attachments:

- EX. A OSTAR S.N. 76/633,733 filing receipt
- EX. B Office Action of DEC. 9, 2008 in SN 77/558,655 (pp. 1-5)
- EX. C MIDNIGHT IN HARLEM Reg. # 358,541
- EX. D Oster (script) Reg. # 515,571
- EX. E OSTER Reg. 3858,325 in I.C. 7 & 10

FILING RECEIPT FOR TRADEMARK APPLICATION

Apr 5, 2005

This acknowledges receipt on the FILING DATE of the application for registration for the mark identified below. The FILING DATE is contingent upon all minimum filing date requirements being met. Your application will be considered in the order in which it was received. Action on the merits should be expected from the United States Patent and Trademark Office (USPTO) approximately six months from the FILING DATE. When inquiring about this application, include the SERIAL NUMBER, FILING DATE, OWNER NAME and MARK.

MILTON OLIVER
WARE, FRESSOLA, VAN DER SLUYS
P.O. BOX 224
MONROE, CONNECTICUT 06468-0224

**ATTORNEY
REFERENCE NUMBER**
871-001-294

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days. Such request may be submitted by mail to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451; by fax to 703-308-9096; or by e-mail to tmfiling.receipt@uspto.gov. The USPTO will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/633973
FILING DATE: Mar 14, 2005
REGISTER: Principal
LAW OFFICE:
MARK: OSTAR
MARK TYPE(S): Trademark
DRAWING TYPE: Standard Character Mark
FILING BASIS: Sect. 44 (Foreign Basis)

ATTORNEY: Milton Oliver
DOMESTIC REPRESENTATIVE: WARE FRESSOLA VDS & ADOLPHSON, LLP
OWNER: OSRAM GmbH (FED REP GERMANY, Limited Liability Company)
Hellabrunnerstr. 1
DEPT. GC IP TM
D-81543 MUNICH, FED REP GERMANY

FOR: Light emitting diodes; light emitting diode displays and display circuit modules; and components of the aforementioned goods
INT. CLASS: 009

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

OTHER DATA

OWNER OF U.S. REG. NOS.: 1929745, 2622242

FOREIGN REGISTRATION DATA

Sec 44(e) claimed on reg. no. 30442903.1, reg. dated Sep 27, 2004.

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/558655

MARK: OSTER

77558655

CORRESPONDENT ADDRESS:

LAWRENCE J. SHURUPOFF
SUNBEAM PRODUCTS, INC.
2381 NW EXECUTIVE CENTER DR
BOCA RATON, FL 33431-7321

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Sunbeam Products, Inc.

DEC. 9, 2008

CORRESPONDENT'S REFERENCE/DOCKET

NO:

Licens-4-104

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

Search Deferred

A search of the Office records is deferred until applicant responds to the issues raised in this Office action. TMEP §704.02.

Section 2(e)(4)—Surname Refusal

Registration is refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); see TMEP §1211. The primary significance of the mark to the purchasing public determines whether a term is primarily merely a surname. *In re Etablissements Darty et Fils*, 759 F.2d 15, 17-18, 225 USPQ 652, 653 (Fed. Cir. 1985); *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 832, 184 USPQ 421, 422 (C.C.P.A. 1975); see TMEP §§1211, 1211.01.

The following five factors are used to determine whether a mark is primarily merely a surname:

EXHIBIT B

- (1) Whether the surname is rare;
- (2) Whether anyone connected with applicant uses the term as a surname;
- (3) Whether the term has any recognized meaning other than as a surname;
- (4) Whether the term has the structure and pronunciation of a surname; and
- (5) Whether the term is sufficiently stylized to remove its primary significance from that of a surname.

In re Benthin Mgmt. GmbH, 37 USPQ2d 1332, 1333-34 (TTAB 1995); TMEP §1211.01.

Please see the attached evidence from a nationwide telephone directory, an online dictionary, and genealogical websites, establishing the surname significance of the surname "OSTER." This evidence shows the applied-for mark appearing over 300 times as a surname in a nationwide telephone directory of names. See Exhibits 1-4 attached.

There is no rule as to the kind or amount of evidence necessary to make out a prima facie showing that a term is primarily merely a surname. This question must be resolved on a case-by-case basis. TMEP §1211.02(a); see, e.g., *In re Monotype Corp. PLC*, 14 USPQ2d 1070 (TTAB 1989); *In re Pohang Iron & Steel Co.*, 230 USPQ 79 (TTAB 1986). The entire record is examined to determine the surname significance of a term. The following are examples of evidence that is generally considered to be relevant: telephone directory listings, excerpted articles from computerized research databases, evidence in the record that the term is a surname, the manner of use on specimens, dictionary definitions of the term and evidence from dictionaries showing no definition of the term. TMEP §1211.02(a). Accordingly, registration is properly refused under Section 2(e)(4) of the Trademark Act, since the attached evidence shows the mark to be primarily merely a surname.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

Applicant must respond to the requirements set forth below:

Insufficient Fees

The application identifies goods that could be classified in 11 different classes; however, the fees submitted are sufficient for only 1 class. In a multiple-class application, a fee for each class is required. 37 C.F.R. §2.86(a)(2); TMEP §§810.01, 1403.01.

Therefore, applicant must either (1) restrict the application to the number of classes covered by the fee(s) already paid, or (2) submit the fees for the additional classes.

Classification and Identification of Goods

Much of the wording in the identification of goods is indefinite and must be clarified because it is unclear as to the exact nature of the goods. Also, some of the wording is both indefinite and too broad because it could include goods in multiple international classes. See TMEP §§1402.01, 1402.03. The examining attorney has provided suggestions of acceptable wording below in bold typeface.

Applicant also classified all of the goods in International Class 8; however, the identification includes goods that may be properly classified in International Classes 6, 7, 8, 9, 11, 16, etc., as indicated below. Applicant must either delete these goods properly classified outside of International Class 8, or add the additional classes to the application. 37 C.F.R. §§2.32(a)(7), 2.85; TMEP §§1401.02(a), 1401.04(b).

Last, the identification of goods contains parentheses. Generally, parentheses and brackets should *not* be used in identifications. Parenthetical information is permitted in identifications only if it serves to explain or translate the matter immediately preceding the parenthetical phrase in such a way that it does not affect the clarity of the identification, e.g., “obi (Japanese sash).” TMEP §1402.12.

Therefore, applicant must remove the parentheses from the identification of goods and incorporate the parenthetical information into the description.

The examining attorney suggests, and applicant may adopt, any or all of the following identification of goods, if accurate:

“Kitchen hooks, namely, metal cup hooks; power clips, namely, metal cable clips,” in International Class 6.

“Electric apple peeling machines; electric can openers; electric egg beaters; electric food choppers; electric rotary graters; electric nut choppers; electric fruit and vegetable peelers,” in International Class 7.

“Non-electric kitchen tools and gadgets namely, apple corers, slicers and apple peeling machines; non-electric can openers; cheese slicers, namely, cheese planes; cheese slicers; clam knives; crab mallets; dough scrapers; egg slicers and piercers; hand-operated food choppers; French fry cutters; ice picks; kitchen tools, namely, [specify common commercial name of goods, e.g., thin-bladed kitchen knives, kitchen mallets, etc.]; lemon zesters; mandoline slicers; meat tenderizer, namely, [specify common commercial name of goods, e.g., a kitchen mallet, a pronged instrument for pounding meat, etc.]; mortar and pestles; nut and lobster crackers; hand-operated nut choppers; non-electric fruit and vegetable peelers; pizza cutters; power clip, namely, electric and battery-powered hair clippers; hand tools in the nature of seafood accessories, namely, seafood picks, shrimp deveiners; tongs, namely, [specify common commercial name of goods, e.g., ice tongs, sugar tongs, etc.]; hand-operated vegetable shredders,” in International Class 8.

“Easy read measuring cups; kitchen scales; measuring cups and spoons; refrigerator magnets; thermometers; timers,” in International Class 9.

“Barbecue accessories and tools, namely, [specify common commercial name of goods, e.g., lava rock for use in barbecue grills, barbecue smokers, etc.]; electric vegetable steamers,” in International Class 11.

“Coasters of paper, cook book holders; parchment paper,” in International Class 16.

“Bag clips, namely, plastic clips for sealing bags; drinking straws; kitchen hooks, namely,

[specify common commercial name of goods, e.g., non-metal cup hooks, towel hooks not of metal, etc.],” in International Class 20.

“Baking accessories, **namely, [specify common commercial name of goods, e.g., baking dishes, pie pans, etc.]; paper** baking cups; barware, **namely, [specify common commercial name of goods, e.g., seltzer bottles, shot glasses, etc.];** food basters and basting brushes; barbecue accessories and tools, **namely, forks, tongs, and turners;** stove burner covers; cake decorating sets **primarily consisting of [specify primary goods of set by common commercial name, e.g., cake brushes, cake stands, etc.];** cake testers; bottle openers; canister **sets;** citrus juicers; **coasters, namely, [specify common commercial name of goods, e.g., leather coasters, plastic coasters, wine coasters of precious metal, etc.];** coffee brushes; coffee measures; colanders; cookie and **cookie** decorating presses; cookie cutters and droppers; cooling racks; **manual** corkscrews; corn **cob** holders; cutting boards; decorating bags **for confectioners;** **non-electric** egg beaters; egg separators; flexible turners; **non-electric coffee makers, namely,** French presses; funnels and funnel sets; garlic presses; glass lined thermal carafes; **graters for household purposes, namely, flat and box graters, grating planes;** gravy separators; hamburger patty makers; ice cream scoops and spades; icing spatulas; jar and lid lifters and openers; kitchen brushes, **namely, [specify common commercial name of goods, e.g., cake brushes, brushes for basting meat, etc.];** kitchen squeegees; kitchen tools, **namely, [specify common commercial name of goods, e.g., kitchen ladles, kitchen urns, etc.];** **manual juicers; bowls, manual juicers, meal trays, colanders and batter bowls made of melamine;** melon ballers; mixing bowls; paper towel holders, **namely, dispensers for paper towels;** pastry blenders; pizza peels; pizza stone; range pans; recipe boxes; rolling pins; rubber **household** gloves; salad spinners; salt and pepper grinders; scoop colanders; **cooking** sifters; spice racks; splatter screens and shields; spoon rests; storage jugs and canisters; **serving** tongs; trivets; turkey lifters, **namely, [specify common commercial name of goods, e.g., serving tongs, turners, etc.];** **non-electric** vegetable steamers; **coolers for wine;** wine savers, **namely, [specify common commercial name of goods, e.g., wine jugs, vacuum pumps for wine bottles, etc.];** oil and vinegar mixers, **namely, cruets,”** in International Class 21.

“Turkey lacers, **namely, twine for trussing turkeys,”** in International Class 22.

“**Barbecue accessories and tools, namely, barbecue mitts; cloth coasters; grippers, namely, oven mitts,”** in International Class 24.

“**Meat tenderizers,”** in International Class 30.

TMEP §1402.01.

Identifications of goods can be amended only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification

For assistance with identifying and classifying goods or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

Combined Applications

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods based on an intent to use the mark in commerce under Trademark Act Section 1(b):

- (1) Applicant must list the goods and/or services by international class; and
- (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at <http://www.uspto.gov>).

See 37 C.F.R. §§2.34(a)(2)-(3), 2.86(a); TMEP §§1403.01, 1403.02(c).

/Allison P. Schrody/
Examining Attorney
Law Office 115
(571) 272-5893
(571) 273-9115 (fax)

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Registered July 19, 1938

Trade-Mark 358,541

UNITED STATES PATENT OFFICE

Larilab, New York, N. Y.

Act of February 20, 1905

Application November 24, 1937, Serial No. 400,107



STATEMENT

To the Commissioner of Patents:

Larilab, a firm domiciled in New York city, New York, doing business at 224 East 38th Street, New York, New York, and composed of the following members, Gertrude H. Brown and Merle McVeigh Chamberlain, both citizens of the United States, has adopted and used the trade-mark shown in the accompanying drawing, for COSMETICS—NAMELY, FACE POWDER AND FOUNDATION CREAM—in Class 6, Chemicals, medicines, and pharmaceutical preparations, and presents herewith five specimens, showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended. The trade-mark has been continuously used and applied to said goods in applicant's business since November 12, 1937.

The trade-mark is usually applied or affixed to the goods, or to the packages containing the same, by means of labels having the mark printed thereon. No claim is made to the word "Harlem" apart from the mark shown on the drawing.

The undersigned hereby appoints Zoltan H. Polachek, of 1234 Broadway, New York, N. Y., attorney, with full powers of substitution, association and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

LARILAB,
By MERLE McVEIGH CHAMBERLAIN,
A Member of the Firm.

EXHIBIT C

Registered Sept. 27, 1949

Registration No. 515,517

PROPERTY OF THE U S PATENT OFFICE
NOT TO BE TAKEN FROM THE FILES

PRINCIPAL REGISTER

Trade-Mark

Section 2 (f)

UNITED STATES PATENT OFFICE

John Oster Manufacturing Company,
Racine, Wis.

Act of 1946

Consolidation of application originally filed under act of 1905, December 15, 1945; amended to application under act of 1946, Principal Register, August 7, 1947, Serial No. 493,390; application August 29, 1947, Serial No. 532,862; and application August 29, 1947, Serial No. 532,863, under Section 30

Oster

(Statement)

John Oster Manufacturing Company, a corporation duly organized under the laws of the State of Wisconsin and located at Racine, Wisconsin, and doing business at 1 Main Street, Racine, Wisconsin, has adopted and is using the trade-mark shown in the accompanying drawing:

For PORTABLE ELECTRIC HAND OPERATED GRINDERS; ELECTRIC LATHER DISPENSING MACHINES; ELECTRIC MOTORS; ELECTRIC TOASTERS; ELECTRIC FOOD MIXERS; ELECTRIC DRINK MIXERS; ELECTRIC FOOD CHOPPERS; ELECTRIC FOOD LIQUIFIERS; ELECTRIC FOOD BLENDERS; ELECTRIC HAIR STYLING IRONS; ELECTRIC MARCEL IRON HEATERS; ELECTRIC FLAT IRONS; ELECTRIC FANS; ELECTRIC VACUUM CLEANERS; AND REPAIR AND REPLACEMENT PARTS FOR THE ABOVE GOODS, in Class 21, Electrical apparatus, machines, and supplies; and

For HAND OPERATED HAIR CLIPPERS FOR HUMAN, ANIMAL AND INDUSTRIAL USES, AND SEPARATE BLADES THEREOF; PORTABLE ELECTRIC HAIR CLIPPERS FOR HUMAN, ANIMAL, AND INDUSTRIAL USES AND SEPARATE CUTTER HEADS AND CLIPPER BLADES THEREFOR; ELECTRIC RAZORS; AND REPAIR AND REPLACEMENT PARTS FOR THE ABOVE GOODS, in Class 23, Cutlery, machinery and tools and parts thereof; and

For ELECTRIC HAIR DRYERS, HAND OPERATED AND STAND TYPE; ELECTRIC MASSAGE MACHINES FOR HUMAN AND ANIMAL

USE; AND REPAIR AND REPLACEMENT PARTS FOR THE ABOVE GOODS, in Class 44, Dental, medical, and surgical appliances; and presents herewith five specimens showing the trade-mark as actually used by applicant in connection with such goods, the trade-mark being applied or affixed directly to the goods by stamping, embossing or otherwise delineating the same thereon, by separate labels or name plates applied to the goods, or by affixing the same in any suitable manner upon the boxes, cartons and packages containing the goods, and requests that the same be registered in the United States Patent Office on the Principal Register in accordance with the provisions of section 2(f) of the act of July 5, 1946.

The applicant has been using the trade-mark in interstate commerce upon its goods substantially exclusively and continuously for more than five years next preceding the filing of this application, and said mark has become distinctive of the applicant's goods in commerce.

The trade-mark was first used on goods in Class 21 as aforesaid on November 1, 1924, and first used on said goods in commerce among the several States which may lawfully be regulated by Congress, on November 1, 1924.

The trade-mark was first used on goods in Class 23 as aforesaid on November 1, 1924, and first used on said goods in commerce among the several States which may lawfully be regulated by Congress, on November 1, 1924.

The trade-mark was first used on goods in Class 44 as aforesaid on November 1, 1924, and first used on said goods in commerce among the

EXHIBIT D

several States which may lawfully be regulated by Congress, on November 1, 1924.

The applicant is the owner of the Trade-Mark Registration No. 207,269, registered December 22, 1925, and subsequently renewed; and Registration No. 368,541, registered June 20, 1939.

(Declaration)

John Oster, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes said corporation to be the owner of the trade-mark which is in use in commerce among the several States and that no other person, firm, corporation or association, to the best

of his knowledge and belief, has the right to use such trade-mark in commerce which may lawfully be regulated by Congress, either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive, that the drawing and description truly represent the trade-mark sought to be registered, that the specimens show the trade-mark as actually used in connection with the goods, and that the facts set forth in the statement are true.

JOHN OSTER MANUFACTURING COMPANY,
By JOHN OSTER,
President.

Witness my hand and seal of office this 1st day of June 1940 at Washington, D.C.

Handwritten signature or initials.

Int. Cls.: 7 and 10

Prior U.S. Cl.: 44

United States Patent and Trademark Office

Renewal

Reg. No. 858,325

Registered Oct. 8, 1968

OG Date Nov. 22, 1988

**TRADEMARK
PRINCIPAL REGISTER**

OSTER

SUNBEAM CORPORATION (DELA-
WARE CORPORATION)
1333 BUTTERFIELD ROAD
DOWNERS GROVE, IL 60515, BY MERG-
ERS AND CHANGES OF NAMES
FROM JOHN OSTER MANUFACTUR-
ING CO. (WISCONSIN CORPORA-
TION) MILWAUKEE, WI

OWNER OF U.S. REG. NOS. 515,517,
834,711 AND 835,917.

FOR: ELECTRIC HAIR DRYERS FOR
HUMAN AND ANIMAL USES, ELEC-
TRIC MASSAGE MACHINES FOR
HUMAN AND ANIMAL USES, ELEC-
TRIC HEAT MASSAGE MACHINES,
ELECTRIC FOOT BATH MASSAGE MA-
CHINES, ELECTRIC SCALP CLEANER,
AND PARTS THEREOF, IN CLASS 44
(INT. CLS. 7 AND 10).

FIRST USE 7-30-1930; IN COMMERCE
7-30-1939.

SER. NO. 297,329, FILED 5-10-1968.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Nov. 22, 1988.*

COMMISSIONER OF PATENTS AND TRADEMARKS

EXHIBIT E