

ESTTA Tracking number: **ESTTA493749**

Filing date: **09/11/2012**

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

Proceeding	91200803
Party	Plaintiff Remington Products Company
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Signature	/Laura J. Gentilcore/
Date	09/11/2012
Attachments	9-11-2012 Evidence And Argument--Standing.pdf (5 pages)(124176 bytes) Declaration of CKevinMcComas.pdf (2 pages)(51093 bytes) Shp.c.us8 Exhibit C.pdf (3 pages)(333540 bytes)

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

In the matter of Application Serial No. 77/837,542

For the Trademark AIRGEL

Published in the *Official Gazette* on March 29, 2011

REMINGTON PRODUCTS)	
COMPANY,)	
)	
Opposer)	Opposition No. 91200803
)	
v.)	
)	
FORTUNA, ANIBAL DE OLIVEIRA,)	
)	
Applicant.)	
)	
)	
)	

**EVIDENCE AND ARGUMENT ESTABLISHING THAT THERE IS NO GENUINE
DISPUTE AS TO ANY MATERIAL FACT RELATED TO REMINGTON PRODUCTS
COMPANY’S STANDING**

Now comes Opposer, Remington Products Company (“Remington”), and pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Order of the Board (Doc. 11, pp. 10-11), presents evidence and argument that there is no genuine dispute as to any material fact related to Remington’s standing, and it is entitled to summary judgment on the issue of standing as a matter of law. Remington’s argument, set forth with particularity below, is supported by the Declaration of C. Kevin McComas submitted herewith. Mr. McComas is the CFO of Remington.

I. Standing—Generally

In an opposition based on section 2(e) grounds (i.e., mere descriptiveness), as is the case here, an opposer need only plead and prove an equal right to use the mark for goods. *Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 U.S.P.Q.2d 2021, 2024 (Fed. Cir. 1987). Thus, an opposer in an opposition based on section 2(e) grounds may prove its standing by showing that it is engaged in the sale of the same or related products or services, and that it has an interest in using the term in its business. *Id.*

Further, a parent corporation has standing to oppose on the basis of a mark owned and controlled by its subsidiary. *Id.*, citing, *Universal Oil Prod. Co. v. Rexall Drug and Chem. Co.*, 463 F.2d 1122, 1124, 174 U.S. 458, 459 (C.C.P.A. 1976). The Lanham Act requires only a belief of damage resulting from the applicant’s registration (i.e., some reasonable basis in fact), and this requirement has been liberally construed. *Id.*

III. As Pled, And Shown By The Declaration of C. Kevin McComas, Remington Has Standing.

As sworn to in the Declaration of the CFO of Remington, Exhibit C to Remington’s Motion for Summary Judgment filed May 17, 2012 (Doc. 7) (also attached hereto) are pages from a Sroufe catalog. Those pages describe the products sold by Sroufe, and now sold by Remington under the Sroufe name. The products are healthcare products, including a line of products combining therapeutic gel and pneumatic (air) technology. The last of the pages of Exhibit C shows the offering for sale of a shoulder wrap expressly stated to have an “air/gel” bladder (Model 1509).

In addition to the shoulder wrap shown in Exhibit C, as pled and sworn to in the Declaration of the CFO of Remington, Remington also sells ankle braces and supports

comprising air and gel chambers, and like its competitors, has used various combinations of the words “air” and “gel” to describe these products.

The products described and shoulder wrap pictured in the pages of the Sroufe catalog of Exhibit C, and the ankle braces and supports also sold by Remington, fall within the description of goods recited in the application of Dr. Fortuna, namely “special air pressure cuffs with thermally conformable gel padded external walls for medical use.” As such, Sroufe was, and Remington is presently, engaged in the sale of “related products,” that is, therapeutic products (i.e., medical use products) comprising air and gel chambers.

Sroufe, at all times relevant, was either a wholly owned subsidiary of Remington or a part of Remington. See, the narrative of Exhibit C and the Declaration of McComas, ¶ 3. Because Sroufe at all times relevant was either a wholly owned subsidiary of Remington or a part of Remington, as a matter of law, Remington has a real interest in this proceeding and therefore standing to institute and maintain it. *Universal Oil Prod. Co.*, 174 U.S. at 459; and *Vigilance Committee Inc.*, 2 U.S.P.Q.2d at 2024.

IV. Conclusion.

Because Remington has shown that there is no genuine dispute as to the issue of its standing, Remington is entitled to summary judgment as a matter of law on this issue. Further, it having been previously determined that the term “AIRGEL” is merely descriptive of the goods identified in the involved application (Doc. 11, p. 10), this Opposition should be sustained in favor of Remington and the mark that is the subject of Application Serial No. 77/837,542 should be refused registration.

Respectfully submitted,

REMINGTON PRODUCTS COMPANY

/s/Laura J. Gentilcore

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Attorneys for REMINGTON PRODUCTS COMPANY

September 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon Applicant by email transmission and by placing a copy in the United States first class mail, postage prepaid, this 11th day of September 2012:

anibal.fortuna@uol.com.br

Anibal de Oliveira Fortuna
AV. ALM. Cochrane, 83 APTO. 161
Santos, SP 11040-001
Brazil

Laura J. Gentilcore

By: Laura J. Gentilcore (Registration No. 54,116)

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**DECLARATION OF C. KEVIN MCCOMAS IN SUPPORT OF REMINGTON
PRODUCTS COMPANY'S MOTION FOR SUMMARY JUDGMENT
ON THE ISSUE OF STANDING**

I, C. Kevin McComas, do hereby make this Declaration under penalty of perjury pursuant to 28 U.S.C. §1746:

1. I am the CFO of Remington Products Company ("Remington"). In my capacity as CFO, I have personal knowledge regarding the business of Remington.

2. Remington is a corporation duly organized and existing under the laws of the State of Ohio, having a place of business at 961 Seville Road, Wadsworth, Ohio 44218.

Remington offers for sale and sells, among others, healthcare products.

3. Sroufe Healthcare Products (“Sroufe”) was a wholly owned subsidiary of Remington. Sroufe has since been merged into Remington.

4. Sroufe offered for sale, and Remington continues to offer for sale under the Sroufe name, a line of healthcare products combining therapeutic gel and pneumatic (air) therapy. These are products, comprised of gel and air chambers, are designed to provide cold and compression therapy to facilitate healing and comfort following injury or surgery.

5. In my capacity as CFO, I reviewed the Motion for Summary Judgment filed by Remington in this Opposition on May 17, 2012, including Exhibit C.

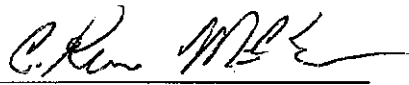
6. Exhibit C is comprised of pages from a Sroufe catalog. Those pages describe the products sold by Sroufe and presently sold by Remington under the Sroufe name, that is, healthcare products, including its line of products combining therapeutic gel and pneumatic (air) technology. The last of the pages shows the offering for sale of a shoulder wrap expressly stated to have an “air/gel” bladder (Model 1509).

7. In addition to the shoulder wrap product pictured on the last of the pages of Exhibit C, Remington offers for sale and sells a number of ankle braces and supports comprising gel and air chambers.

8. The description of goods in Application Serial No. 77/837,542 is such that Remington believes it will be effectively precluded from the use of the term AIRGEL and variations thereof to describe its therapeutic products comprising air and gel chambers, and therefore will be damaged by the registration of the mark AIRGEL.

I declare under penalty of perjury that the foregoing is true and correct.

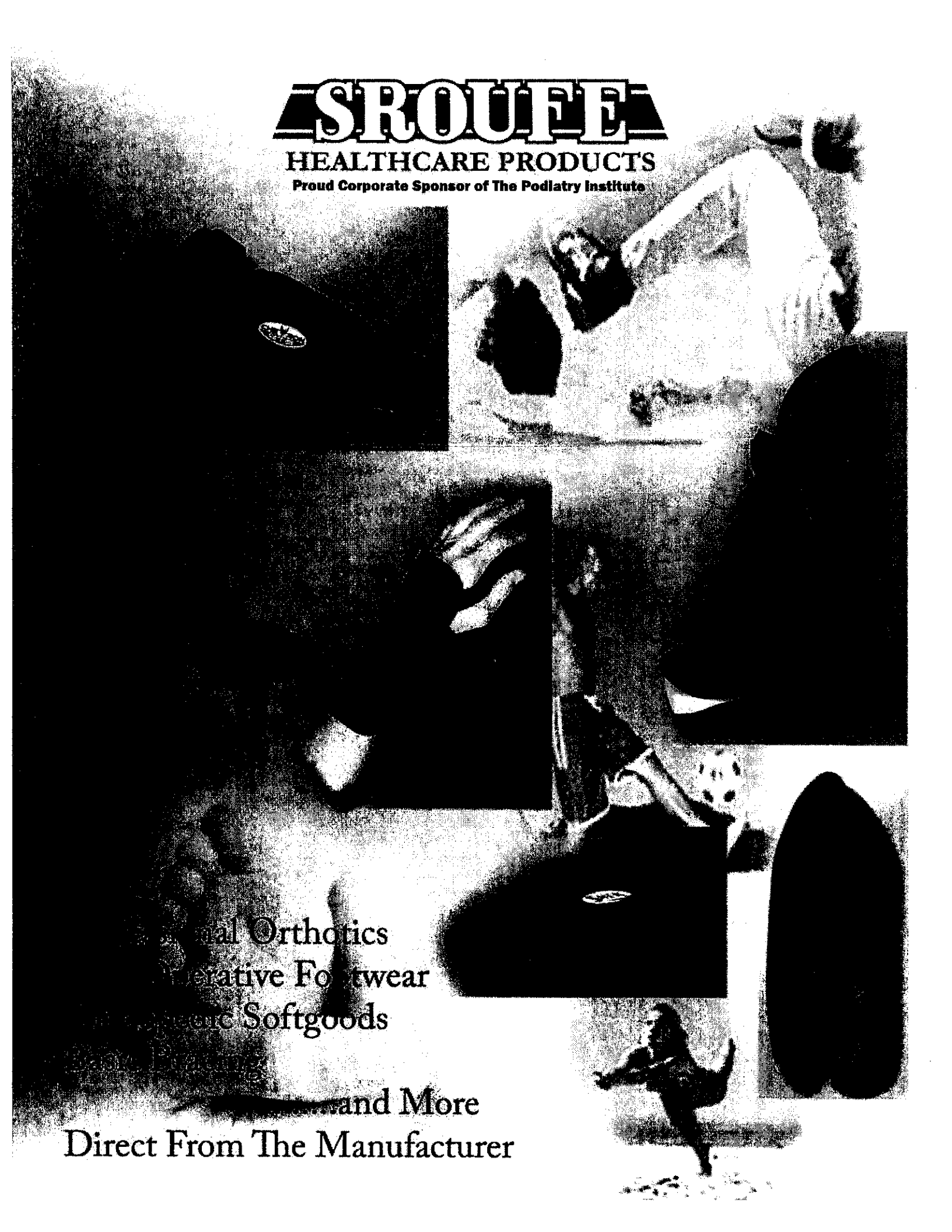
Dated: 9/6/12


C. Kevin McComas

SROUFE

HEALTHCARE PRODUCTS

Proud Corporate Sponsor of The Podiatry Institute



Special Orthotics
Surgical Footwear
Insoles Softgoods
Basic Bracing

and More
Direct From The Manufacturer



Sroufe Healthcare Products is a leading manufacturer and worldwide supplier of orthopedic softgoods, braces, post-operative footwear, and orthotics. With over thirty years of design and manufacturing experience, Sroufe Healthcare Products provides a full range of orthopedic and footcare products direct to medical professionals, distributors and our OEM private-label customers.



In 2007, with our parent company, Remington Products Company, Remington Sroufe International Company LTD (RSIL) was founded. RSIL is a wholly owned American company located in a modern industrial park in Southeast Asia. All RSIL manufacturing practices are based on US standards including quality control, employment practices and safety.

Through RSIL, Sroufe Healthcare and Remington Products are able to offer customers quality products at competitive prices direct from the manufacturer. With over 100 years of combined experience, the consolidation of both companies gives us continued growth potential with sufficient manufacturing capacity and innovative new product development capabilities.

Discover the Sroufe Healthcare Product Lines



Sher™ Brand

Sher is a recognized brand of quality crafted orthotics for nearly 40 years. Sher Brand products use the finest materials in orthotics such as supple leathers, EVA, polyurethane foams, and more, produced in time-tested designs based on hand-craftsmanship.



PneuGel®

Sroufe Healthcare Products developed and patented the bi-component PneuGel technology for the combination of therapeutic gel and pneumatic (air) therapy in the healthcare industry. Products are design to provide cold and compression therapy to facilitate healing and comfort following injury or surgery.



Chevron®

Sroufe Healthcare Products provides a full range of post-operative foot care devices including our new Chevron STS Med Surg Post-Op Shoe, Ankle Walkers and other bracing products.



Sof-Seam™

Sroufe Healthcare Products offers a full line of neoprene knee supports under our Sof-Seam brand. Available in a variety of styles to provide comfortable compression.

To Order from Sroufe Healthcare Products:
Call Customer Service at 1-888-894-4171
Or Fax Orders to 1-877-894-4092

Shoulder Immobilizers



Shoulder Immobilizer with Abduction Pillow Model 1506

Made in a comfortable foam loop laminated material with easy hook and loop closures. Includes an anatomically shaped pillow to hold the shoulder/arm in an abducted position to allow for healing. Adjustable waist and shoulder straps with double D-rings and hook and loop closures. Comfort neck foam padding on shoulder strap. Indicated for shoulder immobilization and abduction. Fits right or left arm. Color: Black.

Features:

- Abduction Pillow
- Adjustable Shoulder and Waist Straps
- Comfort Neck Foam Pad

PDAC Approved for HCPCS Code L3660



Model 1506

Shoulder Immobilizer with Abduction Pillow

Part No.	Size	Pouch Height	Pouch Length	Waist Strap Min. - Max.	Shoulder Strap Min. - Max.
1506-10	SM	6"	14"	27" - 38"	13" - 33"
1506-12	MED	7"	16"	29" - 43"	13" - 37"
1506-14	LG	8"	18"	31" - 49"	13" - 41"

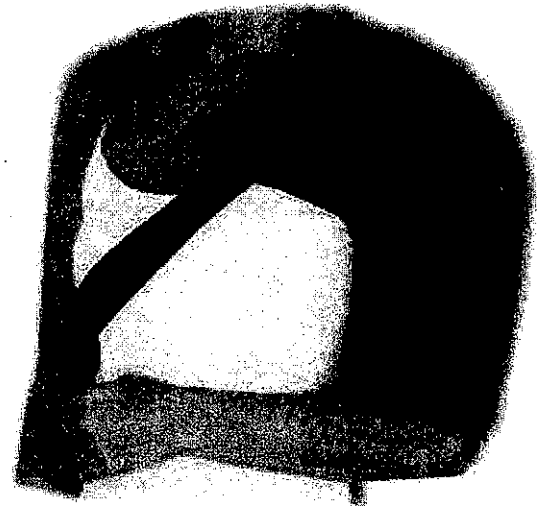
PneuGel® Shoulder Wrap Model 1509

Designed for post-op or post injury use this wrap includes our unique PNEUGEL air/gel bladder. The shoulder wrap is made of a lightweight fabric foam cover with an internal, fabric-lined pocket for the PNEUGEL bladder. The bladder can be placed in the freezer for cold therapy. The outer pneumatic compartment of the bladder can be inflated for a customized fit and to adjust the amount of compression to help control edema. Adjustable chest and arm closures. Fits right or left. Color: Black.

Features:

- PneuGel Bladder – Can be placed in the freezer for cold therapy and the pneumatic portion is adjustable for a customized fit and compression control.
- Adjustable Shoulder and Waist Straps
- Fabric Lined for Increased Comfort
- Universal Comfort Shoulder Immobilizer

PDAC Approved for HCPCS Code L3670



Model 1509

PneuGel® Shoulder Wrap

Part No.	Size	Chest Size
1509-00	UNIV	27" - 49"