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

Proceeding	91222111
Party	Defendant Paul Howell
Correspondence Address	CARL J SPAGNUOLO MCHALE & SLAVIN PA 2855 PGA BLVD PALM BEACH GARDENS, FL 33410-2910 UNITED STATES ustrademarks@mchaleslavin.com
Submission	Answer
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Date	10/26/2015
Attachments	91222111AmAnswer.pdf(118072 bytes) OppAnsExA.pdf(897787 bytes)

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

SECURITY EQUIPMENT CORPORATION

Petitioner,

v.

HOWELL, PAUL

Applicant.

Opposition No. 91222111
Mark: POLICE MAGNUM
Serial No. 85907083

APPLICANT'S ANSWER TO AMENDED NOTICE OF OPPOSITION

Applicant, PAUL HOWELL responds to the Amended Notice of Opposition entered in this action by Petitioner SECURITY EQUIPMENT CORPORATION and states as follows:

1. Admitted.
2. Admitted.

COUNT I – LIKELIHOOD OF CONFUSION

3. Denied. As shown in Opposer's marketing materials in Exhibit "A" hereto, Opposer has never used the term POLICE MAGNUM as a trademark for its pepper spray product, which it promotes and sells under its registered SABRE® trademark.

4. Denied, as set forth in Paragraph 3 above.
5. Denied, as set forth in Paragraph 3 above.
6. Denied, as set forth in Paragraph 3 above.
7. Denied, as set forth in Paragraph 3 above.
8. Denied.

9. Denied.

COUNT II – THE MARK POLICE MAGNUM IS MERELY DESCRIPTIVE

10. Denied. The term POLICE MAGNUM has become distinctive of Applicant's goods in commerce by virtue of its continuous use of the term as a mark for over fourteen years.

11. Admitted. However, the disclaimer requirement was overcome through Applicant's claim of acquired distinctiveness under Section 2(f).

12. Admitted that Opposer's product was cited by the Examiner as an example of use of the term POLICE MAGNUM as a descriptor rather than as a trademark, belying Opposer's allegations of a likelihood of confusion. It is denied, however, that the term POLICE MAGNUM is merely descriptive of Applicant's goods, as evidenced by Applicant's having overcome the disclaimer requirement.

13. Denied.

COUNT III – FRAUD IN THE APPLICATION

14. Admitted.

15. Admitted.

16. Admitted.

17. Denied. Applicant is unaware of any third party using POLICE MAGNUM as a trademark.

18. Denied. Opposer has never used POLICE MAGNUM as a trademark.

19. Denied that Opposer has used POLICE MAGNUM as a trademark. Applicant is without knowledge as to Opposer's claim of being an industry leader, and therefore denies same.

20. Admitted that a print-out of an e-mail of April 25, 2013 from Bob Nance to Paul

Howell, with Mr. Howell's reply of April 26, 2013 thereto, is attached as Exhibit "A" to the Amended Notice of Opposition. The remaining allegations of this Paragraph are denied.

21. Admitted that in his e-mail Mr. Nance claimed that Opposer has used the term POLICE MAGNUM in its advertising since the 1970's. The remaining allegations of this Paragraph are denied.

22. Admitted.

23. Denied. Mr. Howell's offer did not constitute an acknowledgment of Opposer's baseless claim. Rather, Mr. Howell's e-mail indicates only that he offered to have the parties "go [their] separate ways and . . . not interfere with each other," consistent with his intent to "try to get along with [Opposer] and . . . work with cooperation being in the same industry."


24. Denied. The allegations of this Paragraph – namely, that Applicant acted to conceal evidence of Opposer's use of the term POLICE MAGNUM from the Examiner - are belied by those of Paragraph 10 above – namely, recounting that the Examiner had previously cited Opposer's use of POLICE MAGNUM as evidence of the term being merely descriptive.

WHEREFORE, Applicant requests that the Opposition be dismissed, and that the Application proceed toward Registration.

Dated: October 26, 2015

Respectfully submitted,

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ustrademarks@mchaleslavin.com

By: 
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Carl J. Spagnuolo
Attorneys for Applicant Paul Howell

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer to Amended Notice of Opposition was filed electronically through the Electronic System for Trademark Trials and Appeals on October 26, 2015. Notice of this filing will be sent to counsel for all parties by operation of the ESTTA, and via email per agreement of the parties. Counsel includes:

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Brian M. Taillon

EXHIBIT “A”



2120 Miami St.
St. Louis, MO 63118
(314) 776-6100

P.O. Box 22167
St. Louis, MO 63116
(800) 325-9568

FAX (314) 776-7874
FAX (800) 765-7768

SABRE PRICE SCHEDULE 50-5-2% PROFIT

ITEM	RETAIL PRICE	YOUR COST	YOUR PROFIT
MODEL #KR-14 (Key Ring Unit)	6.95	3.25	3.70
MODEL #SPKC-14 (Pocket Key Case)	9.95	4.65	5.30
MODEL #SPKR-14 (Refill Unit)	5.95	2.79	3.16
MODEL #P-22 (Pocket Unit)	6.95	3.25	3.70
MODEL #SHAKC-22 (Home & Auto Key Case)	10.95	5.12	5.83
MODEL #M-35 (Magnum)	7.95	3.72	4.23
MODEL #CM-35 (Civilian Magnum)	13.95	6.52	7.43
MODEL #M-120 (Police Magnum)	9.95	4.65	5.30

NOTE: Minimum order: ONE GROSS (144 units) All Model sizes may be mixed to reach maximum discount.

50% PROFIT

ITEM	RETAIL PRICE	YOUR COST	YOUR PROFIT
MODEL #KR-14 (Key Ring Unit)	6.95	3.50	3.45
MODEL #SPKC-14 (Pocket Key Case)	9.95	5.00	4.95
MODEL #SPKR-14 (Refill Unit)	5.95	3.00	2.95
MODEL #P-22 (Pocket Unit)	6.95	3.50	3.45
MODEL #SHAKC-22 (Home & Auto Key Case)	10.95	5.50	5.45
MODEL #M-35 (Magnum)	7.95	4.00	3.95
MODEL #CM-35 (Civilian Magnum)	13.95	7.00	6.95
MODEL #M-120 (Police Magnum)	9.95	5.00	4.95

NOTE: Minimum order: SIX DOZEN (72 units) All Model sizes may be mixed to reach maximum discount.

40% PROFIT

ITEM	RETAIL PRICE	YOUR COST	YOUR PROFIT
MODEL #KR-14 (Key Ring Unit)	6.95	4.17	2.78
MODEL #SPKC-14 (Pocket Key Case)	9.95	5.97	3.98
MODEL #SPKR-14 (Refill Unit)	5.95	3.57	2.38
MODEL #P-22 (Pocket Unit)	6.95	4.17	2.78
MODEL #SHAKC-22 (Home & Auto Key Case)	10.95	6.57	4.38
MODEL #M-35 (Magnum)	7.95	4.77	3.18
MODEL #CM-35 (Civilian Magnum)	13.95	8.37	5.58
MODEL #M-120 (Police Magnum)	9.95	5.97	3.98

NOTE: Minimum order: TWO DOZEN (24 units) All Model sizes may be mixed to reach maximum discount.

COLORS: MODEL #SPKC-14 and SHAKC-22 are available in Tan, Black, Red, Blue and other assorted colors. Orders will be filled with an assortment of colors. Specific requests \$5.00 per case. However, we reserve the right to substitute when necessary.

FREE: ONE WIRE DISPLAY RACK AND SET OF SIGNS with Initial Order on Request.

FOR FAST SERVICE CALL 800-325-9568



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St. Louis, MO 63118
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FAX (800) 765-7768

SABRE ORDER FORM

ITEM	MIN. 24	MDL 72	MDL 144	QUANTITY	COLOR	AMOUNT
MODEL #KR-14	\$4.17	\$ 3.50	\$ 3.25	_____	_____	_____
MODEL #SPKC-14	5.97	5.00	4.65	_____	_____	_____
MODEL #SPKCR-14 (Refill Unit)	3.57	3.00	2.79	_____	_____	_____
MODEL #P-22	4.17	3.50	3.25	_____	_____	_____
MODEL #SHAKC-22	6.57	5.50	5.12	_____	_____	_____
MODEL #M-35	4.77	4.00	3.72	_____	_____	_____
MODEL #CM-35 (Civilian Magnum)	8.37	7.00	6.52	_____	_____	_____
MODEL #M-120	5.97	5.00	4.65	_____	_____	_____
MODEL #HCC-120	3.50	3.50	3.50	_____	_____	_____
MODEL #PRC-1000	19.95	19.95	19.95	_____	_____	_____
MODEL #S-QT	7.95	7.95	7.95	_____	_____	_____
WIRE DISPLAY RACK/SET OF SIGNS WITH INITIAL ORDER ON REQUEST, NO CHARGE				_____	_____	_____
TOTAL AMOUNT DUE						_____

COLORS: MODEL #SPKC-14 and #SHAKC-22 are available in Tan, Black, Red, Blue and other assorted colors.

MODEL #HCC-120 is available in Black and Tan.

Orders will be filled with an assortment of colors. Specific requests \$5.00 per case. However, we reserve the right to substitute when necessary.

(Please Print or Type)
SHIP TO:

COMPANY NAME _____
STREET ADDRESS (NO P.O. BOX #s) _____
CITY, STATE, ZIP _____

OWNER'S NAME _____
AREA CODE _____ TELEPHONE NUMBER _____
 FED. ID # OR SS # _____

- Residential or Business Location
- Payment with order - 3% Discount • C.O.D. • Cash or Certified Funds - ALL SALES ARE FINAL.
- MASTER CARD VISA AMERICAN EXPRESS

CARD NUMBER _____ CARD EXPIRATION DATE _____ AUTHORIZED SIGNATURE _____

All orders shipped F.O.B., St. Louis. Call for freight charges.

All orders must include a U.P.S. Shipping Address AND a Telephone Number with Area Code.

FOR FAST SERVICE, CALL (800) 325-8568 OR FAX (314) 776-7874, FAX (800) 765-7768

Revised 1991
Prices Subject to Change Without Notice

SABRE

MINI-HILL COMPANY

- Ultraviolet light sensitive dye for police suspect identification
- Highly effective results against individuals under the influence of drugs and/or alcohol
- Inconspicuous, hand-held size
- Patented Key Case Holders
- Easy operation

All SABRE consumer models are available in New SABRE Red, OC-Red Pepper Formula.

SABRE® 1/2 OZ. UNITS (14 GRAMS)

Just the right size to attach to your key chain for quick, convenient protection anytime.

Product Features:

- maximum effective range up to 8 feet
- approximately 35 - 1/2 second blasts

◆ **SR14** features a **key ball case** for easy attachment to your key chain with **Red Or. Red Pepper** formula.

SR14 Key Ball Case



SR22 Pocket Size with Pocket Clip



SABRE® 3/4 OZ. UNITS (22 GRAMS)

Still a convenient hand-held size, choose our 3/4 oz. units in the Home & Auto Key Case Holder or Pocket Clip style.

Product Features:

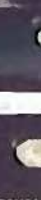
- maximum effective range up to 8 feet
- approximately 55 - 1/2 second blasts

◆ **SR24** features a **key ball case** and **SR25** features a **key ball case** with **Red Or. Red Pepper** formula.

SR24 Key Ball Case



SR25 Key Ball Case



SABRE® 1 1/2 OZ. UNITS (35 GRAMS)

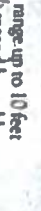
Truck drivers, campers and security guards prefer this larger size with the convenience of a Belt Clip.

Product Features:

- maximum effective range up to 10 feet
- approximately 80 - 1/2 second blasts

◆ **SR35** features a **key ball case** and **SR36** features a **key ball case** with **Red Or. Red Pepper** formula.

SR35 Key Ball Case



SR36 Key Ball Case



◆ **SR35** features a **key ball case** and **SR36** features a **key ball case** with **Red Or. Red Pepper** formula.



SABRE® LADY MAGNUM 3 OZ. UNIT (80 GRAMS)

With the increase in crime, women are looking for effective, personal protection that's easy to carry and use. That's why SABRE created Lady Magnum specifically for women.

Product Features:

- maximum effective range up to 10 feet
- approximately 5 - 1/2 second heavy blasts
- new firing mechanism for a powerful fog of protection
- wall mount unit (sold separately)

◆ **SR40** features a **key ball case** and **SR41** features a **key ball case** with **Red Or. Red Pepper** formula.

SR40 Key Ball Case



SR41 Key Ball Case



NEW! RELEASE KEY CHAIN - The convenient, gold-colored key chain from the Sabre Lady Magnum is now available in a new color. The Sabre Lady Magnum SR41 and SR42 are available in a new color.



1994

► **M-192X SABRE** has Nylon Magazine Lid

**SABRE® POLICE
MAGNUM 4 OZ. UNIT
(1110 GRAMS)**

Our largest unit, this size is preferred by law enforcement officials and is now available for civilian use.

Product Features:

- available in two delivery systems - powerful shotgun stream or fogger
- maximum effective range up to 12 feet
- approximately 90° 1/2 second blast
- wall mount unit (sold separately)

► **M-120** Nylon Magazine Lid (Nylon Magazine Lid Original)



HOW TO USE SABRE®

Be prepared - have extensor positioned for firing inside case. Slide white flange to unlock position. Pin hole will be visibly centered in U shaped opening in black collar. Shield face when firing into strong wind.

► **M-120** Nylon Magazine Lid with Lid On. Available in black and tan only. Order as well separately.



LOOK FOR EFFECTIVE SABRE® DISPLAYS

As a SABRE distributor, you will be backed by highly effective sales support - new packaging, products and merchandise displays. This marketing support will ensure that you receive optimal visibility and attention for all your SABRE items.

If you have any questions concerning our products, would like to place an order or would like to receive our FREE Pricing Catalog, contact your SABRE Sales Representative at 1-800-325-9568. It's time for you to take a look at SABRE - the best in personal defense.



Our SABRE wall mount extensor lets you attach your SABRE unit to the wall for quick protection. The SABRE models M-120 and M-120L (figure A) and SABRE models M-120L, P-22 and M-35. (figure B)

SABRE® YOUR EDGE AGAINST PERSONAL CRIME



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Long Range Products • Security Equipment Corporation is a member of the following organizations: National Fire Equipment Association (NFPA), Association of Defense-Space Manufacturers (ADSM), Association of Factory Sales (AIFS), International Firearm Industry Association (IFIA), International Firearm Manufacturers Association (IFMA), International Firearm Dealers Association (IFDA), International Firearm Trainers Association (IFTA), International Firearm Users Association (IFUA), International Firearm Collectors Association (IFCA), International Firearm Manufacturers Association (IFMA), International Firearm Trainers Association (IFTA), International Firearm Users Association (IFUA), International Firearm Collectors Association (IFCA).

SABRE®



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SABRE Magnum Models
M 60L 2.00 oz pocket magnum

2.0 oz Magnum 60 Larger, yet compact model.
Projects 8 to 10 Feet.
Heavy Cone Delivery (10 1/2 second to 1 second bursts).

Price: \$ 13.99

M 120L 4.36 oz police magnum

4.4 oz Magnum 120 Largest self defense spray
Projects 8 to 10 Feet
Heavy Cone Delivery (30 1/2 second to 1 second bursts)

Price: \$ 15.99

NLM 80 2.50 oz lady magnum

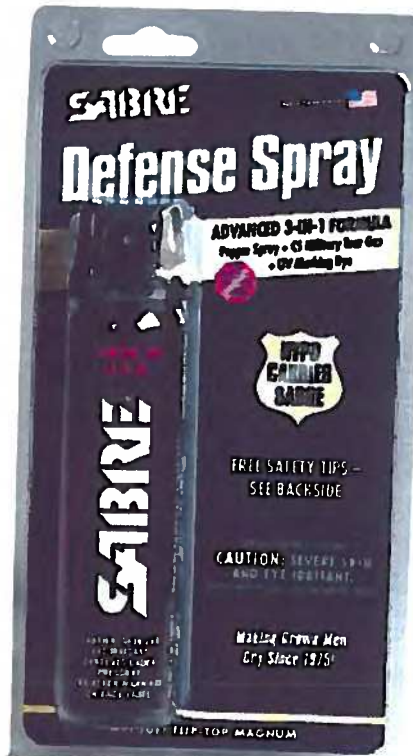
2.5 oz Lady Magnum Larger size with wall mount clip.
Projects 8 to 10 Feet.
Heavy Cone Delivery (15 1/2 second to 1 second bursts)

Price: \$ 14.99

AUG. 4. 2005

Magnums & Holsters

The **MAGNUM** line is perfect for individuals and private security requiring larger sizes, the flip-top firing mechanism, or a holster model. All options are available to ship with holster.



Shown left to right: M-60L-OC, M-120FT, M-120L-OC

Model Numbers:

M-60L (Locking Top, Advanced 3-In-1 Formulation)

BG-M-60L-NH (Locking Top, Advanced 3-In-1 Formulation, Includes Nylon Holster)

M-60L-OC (Locking Top, SABRE Red Formulation)

BG-M-60L-NH-OC (Locking Top SABRE Red Formulation, Includes Nylon Holster)

Weight: 1.8 ozs / 50.4 gr / 54 ml

Contents: Approximately 20 Bursts

Distance: 10 feet (3 meters)

Spray Pattern: Heavy Cone

Point of Aim: Center of Face

Spray Pattern Advantage: Greater Respiratory Affect

Model Numbers:

M-120FT (Flip Top, Advanced 3-In-1 Formulation)

BG-M-120FT-NH (Flip Top, Advanced 3-In-1 Formulation, Includes Nylon Holster)

M-120FT-OC (Flip Top SABRE Red Formulation)

BG-M-120FT-NH-OC (Flip Top SABRE Red Formulation, Includes Nylon Holster)

Weight: 4.36 ozs / 122 gr / 128.9 ml

Contents: Approximately 40 Bursts

Distance: 12 feet (4 meters)

Spray Pattern: Powerful Stream

Point of Aim: Eyes

Spray Pattern Advantage: Decreases Wind Blow-Back

Model Numbers:

M-120L (Locking Top, Advanced 3-In-1 Formulation)

BG-M-120L-NH (Locking Top, Advanced 3-In-1 Formulation, Includes Nylon Holster)

M-120L-OC (Locking Top SABRE Red Formulation)

BG-M-120L-NH-OC (Locking Top SABRE Red Formulation, Includes Nylon Holster)

Weight: 4.36 ozs / 122 gr / 128.9 ml

Contents: Approximately 35 Bursts

Distance: 12 feet (4 meters)

Spray Pattern: Heavy Cone

Point of Aim: Center of Face

Spray Pattern Advantage: Greater Respiratory Affect

2013



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