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Filing date: **08/05/2015**

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

|                           |   |
|---------------------------|---|
| Proceeding                | 91222111  |
| Party                     | Defendant<br>Howell, Paul   |
| Correspondence<br>Address | CARL J. SPAGNUOLO<br>MCHALE & SLAVIN, P.A.<br>2855 PGA BLVD<br>PALM BEACH GARDENS, FL 33410-2910<br><br>ustrademarks@mchaleslavin.com |
| Submission                | Answer  |
| Filer's Name              | Brian M. Taillon  |
| Filer's e-mail            | ustrademarks@mchaleslavin.com, litigation@mchaleslavin.com  |
| Signature                 | /Brian M. Taillon/  |
| Date                      | 08/05/2015  |
| Attachments               | 91222111Answer.pdf(114012 bytes )<br>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.

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

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

Applicant, PAUL HOWELL responds to the 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.

5. Admitted that Opposer and Applicant's goods are both pepper sprays. Applicant is without knowledge as to whether the goods themselves are identical.

6. Denied.

7. Denied.

## **COUNT II – THE MARK POLICE MAGNUM IS MERELY DESCRIPTIVE**

8. 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.

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

10. 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.

11. Denied.

## **COUNT III – FRAUD IN THE APPLICATION**

12. Admitted.

13. Admitted.

14. Admitted.

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

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

17. 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.

18. 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 Notice

of Opposition. The remaining allegations of this Paragraph are denied.

19. 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.

20. Admitted.

21. 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."

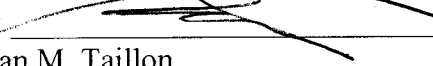
22. Denied. The allegations of this Paragraph – namely, that Applicant acted to conceal evidence of Opposer's use of the term POLICE MAGNUM from the Examiner - are belied by those of Paragraph 10 above – namely, recounting that the Examiner had previously cited Opposer's use of POLICE MAGNUM as evidence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

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

Dated: August 5, 2015

Respectfully submitted,

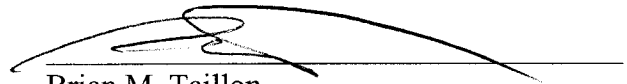
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By:   
Brian M. Taillon  
Carl J. Spagnuolo  
*Attorneys for Applicant Paul Howell*

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Answer to Notice of Opposition was filed electronically through the Electronic System for Trademark Trials and Appeals on August 5, 2015. Notice of this filing will be sent to counsel for all parties by operation of the ESTTA, and via email and U.S. mail. Counsel includes:

Glenn K. Robbins II  
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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**

Revised 1991  
Prices Subject to Change Without Notice



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(314) 776-6100

P.O. Box 22167  
St. Louis, MO 63118  
(800) 325-8568

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

### SABRE ORDER FORM

| ITEM  | MIN. 24 | MBL 72  | MBL 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** (SR14) and a **patented key case holder** with **key ring hole**

▶ **SR14** features a **key ball case** with **key ring hole**

## 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

▶ **SR17** features a **key ball case** and **key case holder**

▶ **SR35** features a **key ball case**

▶ **SR35** features a **key ball case** with **key ring hole**

## 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**

## 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)

**OPTIONAL KEY CHAIN** - This convenient gift includes key chain from the SABRE Lady Magnum, which includes a key chain from the SABRE Lady Magnum. The SABRE models SR14 and SR17 are also available.



1994



► **M-192X SABRE Red Magnum Unit**

**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 Sabre Magnum (the Shotgun Stream)**  
M-120 is the largest Sabre (1110 grams)



**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 Sabre Magnum (Shotgun Stream)**  
M-120 Sabre Magnum (Shotgun Stream) is the largest Sabre (1110 grams) and is now available for civilian use.



**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) let SABRE protection close at hand with our subcompact size dip. The SABRE models M-120L, P-22 and M-35 (figure B).

**SABRE® YOUR EDGE AGAINST PERSONAL CRIME**



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Long Answer Products • Security Equipment Corporation is a member of the following organizations: National Association of Wholesale Distributors, Security Manufacturers Association (SMA), American Fire Equipment Association (AFESA) and Chemical Specialty Manufacturers Association (CSMA).  
SABRE is non-flammable and non-toxic. Made in USA. Extensor mount option. See our pricing information for all options. We do not share information with third parties.



1994  
SECURITY  
EQUIPMENT  
CORPORATION  
POTTOM, MO  
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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

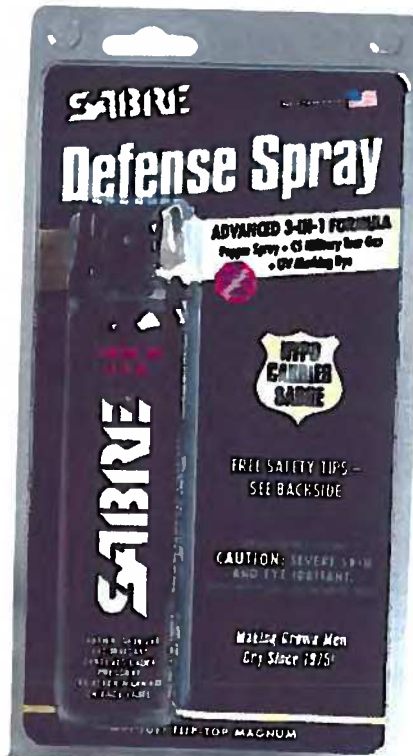
2.5 oz Lady Magnum Larger size with wall mount clip. Projects 8 to 10 Feet. Heavy Cone Delivery (15 1/2 second to 1 second bursts)

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



MADE IN U.S.A.

Red

Net 110 Grams

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Fenton, MO 63026

SKIN AND EYE IRRITANT  
KEEP OUT OF REACH OF CHILDREN  
KEEP UNDER LOCK AND KEY  
READ AND FOLLOW ALL LABEL INSTRUCTIONS  
SEE BACK FOR ADDITIONAL WARNINGS LABEL  
KEEP AWAY FROM HEAT, FLAME AND OPEN FLAMES

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