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21 October, 2014

PHILLIPS ORMONDE FITZPATRICK
367 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Application No: 1545165
Applicant: The Gillette Company
Trade mark: DURACELL
Your ref: 964905



Report No. 2

What is in this report? This is my reply to your letter of 21 October 2014. There are still problems preventing acceptance of this application. Where possible I have suggested how you might be able to overcome them.

What should you do? If you believe you can overcome the problems, please submit your reply using IP Australia's eServices channel via the website at www.ipaustralia.gov.au. Alternatively, you can reply by letter to the postal address listed in the top right hand corner of the letter.

How much time do you have? The Trade Marks Act limits the time you have to overcome problems with this application. You must have overcome all the problems before the final date, which is **24 November 2014**.

Please allow time for me to consider your reply by sending it as soon as possible, **at the very least four weeks** before the final date. If you need more time you can ask for it before this date, but you must pay \$100 for each extra month.



REPORT

Thank you for your response to the first report.

I have considered the evidence you have supplied in support of your client's claim for a defensive trade mark and discussed the matter in consultation with a Principal Examiner.

Unfortunately, the evidence is not sufficient to show that the defensive is warranted.

Certainly, the evidence covers the duration and amount of use, and has also covered the advertising methods upon which the defensive is based.

However, absent from the evidence was an explanation which demonstrates the basis on which your client's claim for defensive registration is made. This might cover, for example, why potential consumers are likely to infer a connection with the applicant when the trade mark is used on different goods or services and the nature of that likely connection. Mere assertion is not a substitute for a convincing declaratory explanation of the applicant's case.

The closest the evidence comes to addressing this issue is when the declarant explains that they use a bunny mascot 'meets and greets customers' in supermarkets (Paragraph 29 Rosnell Declaration). The fact that the bunny mascot sometimes walks past or is positioned near areas where class 32 and 33 goods are sold is not sufficient to convince me that the divisional is warranted because:

- The mascot is not the trade mark for which the defensive is being sought
- Proximity to other goods does not immediately equate to confusion of customers. If this was the case, all traders would be seeking defensive marks for all goods that have the potential to be positioned near their advertising or their products. In addition, I would also assume that the mascot would walk past all manner of goods, so I am not sure why this is considered a valid argument for the granting of a defensive on these particular goods in classes 32 and 33.
- In the Ferodo case, Justice Evershed said that simply having a famous trade mark is not sufficient to allow a defensive claim because the fame of the trade mark is gained in relation to a certain specific set of goods or services. When transferred to unrelated goods or services it is unlikely that the fame would result in an inferred connection. In this case, the reputed fame of the Duracell trade mark is in relation to a very specific set of goods, that is predominantly batteries, and less well known but still related lanterns and torches. It is unlikely that consumers would assume that completely unrelated goods such as beverages would come from the same people who make batteries.
- It is up to the applicant to provide supporting evidence from people in the trade that shows that they believe that confusion between these goods is likely to be a reality. Without independent corroborating evidence such as a professionally conducted survey or supporting declarations from members of the trade related to the goods for which the defensive registration is sought, it is highly unlikely that the Registrar would accept this defensive claim.

For these reasons, I am unable to accept the defensive application.

Your client is invited to provide additional evidence that provides convincing information that explains the basis on which your client's claim for a defensive registration is made.

Andrew Lowe
Trade Mark Examiner
(02) 6283 7907

IP Australia Service Request

Trade Mark Number
1545165

Request Date & Time
11-Nov-2014 17:38:12

Submitting Party

Party Identifier	NBZ2930589813
Agency Code	PO
Name	
Customer's Reference	125446
Email	attorney@pof.com.au

Respond to an Examiner's Report

Fees

FANG Batch Identifier 8000278

Fee # 1	Fee Code	TXR
	Fee Type	OTHER
	Fee Description	Respond to an Examiner's Report
	Number of Goods and Services Classes	2
	Fee Unit Count	1
	Fee Amount	\$0.00
	Calculation Date & Time	11-Nov-2014 17:38:12

Fee Total Amount \$0.00

Service Request Details

Channel B2B

Batch Identifier	SMBM-0000455038
Batch Reference	54277
Service Request Identifier	STXR-0000909447
Service Request Code	TER
Request Date & Time	11-Nov-2014 17:38:12
Customer's Reference	125446
Application numbers	Customer's IP Right Reference
1545165	964905
Contact Details	
Phone	03 9614 1944

Customer Supplied Documents

Document Sequence	Document Type	Document File Name	Physical Media
1	Exam Response	LOFF-964905.docx	No
2	Exam Response	img-501154252-0001.pdf	No
3	Exam Response	smbprn.7nk3HD.pdf	No
4	Exam Response	smbprn.NByqbJ.pdf	No



11 November 2014

Telephone Contact : Natasha Marshall Teoh
Speed Dial 527

The Registrar of Trade Marks
IP Australia
PO Box 200
WODEN ACT 2606

Dear Madam

**The Gillette Company
Australian Trade Mark Application 1545165**



Mark

Classes 32, 33

Our Ref 964905

We refer to the exam report of 21 October 2014 issued for this trade mark application and respond herein.

The examiner states that the evidence supplied does not support the applicant's claim for defensive trade mark registration.

The examiner acknowledges that the evidence "*covers the duration and amount of use, and has also covered the advertising methods upon which the defensive is based*". However, the examiner is of the view that the evidence needs an explanation of why potential consumers are likely to infer a connection with the applicant when the trade mark is used on different goods or services and the nature of that likely connection.

Respectfully, we submit that the examiner has not given due consideration to the fact that the applicant's trade mark is the famous DURACELL logo, which features the well-known copper and black background and distinct font in which the word DURACELL appears. The previously submitted Rosnell declaration of 12 September 2014 quite clearly establishes the fame of the trade mark. This is apparent when the unit value of products is considered against the value of sales made by the applicant, under confidential exhibit TMR-3. When one considers the small unit value of batteries compared to the high value of sales, it indicates that a very high number of units have been sold in the Australian market. As previously submitted, it is reasonable to infer that a significant portion of the Australian population have bought the applicant's goods bearing the DURACELL logo in question.

We respectfully submit that DURACELL is the leading brand of batteries in the battery market and is well-known by all Australian households. Information available online

from the news website abcnews.com contains an article called "Battle of the batteries" which discusses the battery industry and mentions "*DURACELL is the leading battery brand*" (**attached**).

The examiner states that the closest the evidence came to addressing a connection with the applicant's goods of batteries with the claimed goods in classes 32 and 33, was the "meet and greet" of the DURACELL bunny mascot in supermarkets. Respectfully, the examiner seems to have ignored the evidence under the Rosnell 12 September 2014 declaration, which clearly speaks to the fame of DURACELL logo in the Australian market. Evidence of proximity of the applicant's batteries with goods in classes 32 and 33, needs to be considered in the context of the applicant's DURACELL logo being famous. Indeed, we submit that the applicant's DURACELL logo is so well-known that if it was used on *any* goods that consumers would still be led to believe that there is a connection with the famous DURACELL logo and brand of batteries.

We agree with the examiner's observation that the mascot is not the trade mark for which defensive registration is being sought. The mascot is, however, a character which advertises the applicant's goods and which is used in close proximity to the DURACELL logo. Indeed, some of the evidence submitted under the 12 September 2014 Rosnell declaration show images of the DURACELL logo appearing on the back of the bunny mascot costume indicating that it is powered by a DURACELL battery.

The examiner referred to the Ferodo case and the words of Evershed J in which it was noted that "*simply having a famous trade mark is not sufficient to allow defensive claim because the fame of the trade mark is gained in relation to a certain specific set of goods and services*". We submit that the circumstances at hand are different to those in the Ferodo case as the subject trade mark is a well-known logo, which has its own very specific get-up of copper and black and distinct font, in which there is significant reputation. We respectfully disagree with the proposition that when the DURACELL logo in question is transferred to unrelated goods that it is unlikely that the fame would result in an inferred connection. Given the fame of this distinct DURACELL logo there is no other conclusion than consumers positively drawing a connection with the applicant and with the applicant's goods.

Respectfully, it is clear that the strength of the reputation that the applicant has in DURACELL logo both in Australia and overseas are shown in the evidence under the 12 September 2014 Rosnell declaration; and that there is no other conclusion than a positive likelihood of consumers drawing a connection between the DURACELL logo used on the registered goods and the DURACELL logo used on goods of alcoholic and non-alcoholic beverages in classes 32 and 33.

While goods of batteries, and beverages in classes 32 and 33 may be different, we respectfully submit that both are a source of energy. Batteries provide energy to electronic goods, and class 32 and 33 beverages, particularly energy drinks, provide energy to the human body. The DURACELL bunny TV commercials, one of which was submitted under the Rosnell declaration of September 2014, clearly show how the battery operated bunny becomes animated and lively and engages in energetic human activity when powered by a battery, in the same way that an energy drink or a soft drink may provide energy and stamina to the human body when consumed.

The examiner would be familiar with the strategy of brand extension used by marketing people. This is when companies have an existing established brand name and expand into new product categories, often with the help of licensees. This can be seen in the example of the Nike brand, whose core product is shoes but of which there is brand extension into sunglasses, soccer balls, basket balls, fragrances etc. We submit that it is clearly within the realm of brand extension for the DURACELL logo to be extended into beverages. Again, given that DURACELL batteries provide power to battery operated goods and beverages power the human body, there is a reasonable connection to make a brand extension of this kind

We also **attach** the Statutory Declaration of Natasha Marshall dated 30 April 2012, which annexes information which relates to a beverage manufacturer, El Nino AS, in the Czech Republic, who manufactured a canned energy drink that was packaged in a can that resembled a DURACELL battery in the exact same get-up of the trade mark at hand. This declaration provides information on El Nino AS's past activities and proceedings brought by the Procter & Gamble Group of Companies in relation to the same. We advise that the Procter & Gamble Group of Companies owns The Gillette Company.

In particular, we refer to Exhibit NM-1, which annexes a copy of a decision issued for a trade mark opposition case in the United Kingdom. The Opposition was to the registration of International Trade Mark No. 948728 (DURACELL ENERGY DRINK in Rectangle device) in the name of El Nino a.s. in classes 5, 32 and 33. The Opposition was filed by Duracell Batteries BVBA, which is part of The Procter & Gamble Group of Companies. This decision of the Trade Marks Office in the UK was to refuse protection of El Nino a.s.'s trade mark in the UK. In paragraph 22 of the said decision, the UK Trade Marks Office acknowledges that "*the distinctiveness and reputation of DURACELL is such that it will be called to mind by the average consumer of the goods of the international registration (goods in classes 5, 32, & 33); indeed it would be called to mind by any average consumer*". Furthermore, at paragraph 24, it is stated that "*The reputation of DURACELL is such that it will go beyond the relevant public for batteries, it is a universal reputation*".

We also refer to the English translation of a decision in the Czech Republic, annexed under Exhibit NM-2. In this decision, the High Court of the Czech Republic held that the word mark DURACELL is well known and enjoys good reputation in the Czech Republic. El Nino a.s.'s use of the "DURACELL" trade mark and trade indicia was held to be an infringement of Duracell Batteries BVBA's "DURACELL" trade marks, and to be conduct that constituted unfair competition.

We also note that International Registration No. 948728, owned by El Nino, was refused in a large number of countries in which it was designated. In the case of the Australian designation, El Nino requested renunciation of the IRDA (AU No. 1255652). In this regard, we refer the Examiner to Exhibit NM-3, which is a copy of a Notification of Withdrawal of International Registration Designating Australia issued by IP Australia.

We refer to Exhibit NM-4, an article in the Sydney Morning Herald newspaper dated 16 October 2009, which reported on El Nino a.s.'s activities of manufacturing an energy drink and affixing the DURACELL trade mark to it, and "clothing" it in the same black and copper trade get-up of the subject trade mark.

Whilst the article makes the point that the offending energy drink is not related to The Gillette Company or The Procter & Gamble Company, this particular situation highlights that a *connection* with DURACELL batteries and DURACELL beverages is very likely and has indeed *already been made* in Australia, and supports our position that consumers would make the same connection with the subject DURACELL logo and alcoholic and non-alcoholic beverages.

We refer to Exhibit NM-5 which attaches a Caution Notice that was published in the Sydney Morning Herald newspaper, Weekend Edition of 21-22 November 2009. The Gillette Company took this Caution Notice out at the time that there was concern about the offending El Nino beverages being imported into Australia. The Caution Notice was aimed at the Australian public at large to notify them that The Gillette Company is the owner of DURACELL trade marks in Australia, and that any unauthorised use of its trade marks and trade get-up could cause consumers to be confused or deceived.

Also **attached** is another online article from "Sandboxworld" which features a large image of the offending "DURACELL" drink manufactured by El Nino Beverages. This image makes it clear that a battery and a canned beverage are the same shape. The particular canned beverage looks like a large DURACEL battery and would cause consumers to infer a connection with the applicant.

General Comments:

We submit that the evidence lodged under the Statutory Declaration of Ms Rosnell establishes that the Applicant has a significant reputation in the DURACELL logo. We further submit that this reputation transcends the goods of batteries, battery chargers, torches and the like. We are of the view that the Applicant's reputation in the DURACELL logo is so significant that consumers would draw a connection between it and goods of alcoholic and non-alcoholic beverages. This is further supported by there being a very plausible brand extension or connection with the DURACELL logo and goods of alcoholic beverages and non-alcoholic beverages, in the way that DURACELL goods have been advertised. This is particularly evident from the manner in which DURACELL goods are advertised with the "energetic" and "human-like" DURACELL bunny.

The potential for a connection to be drawn between the DURACELL logo and goods of alcoholic and non-alcoholic beverages is highlighted by the situation of the offending El Nino beverage marked with the "DURACELL" logo.

11 November 2014
The Registrar of Trade Marks

In light of all of the evidence that has been lodged and all of our submissions, we believe that it has been established that the registered trade mark has been used to such an extent, and that the Applicant's reputation in the DURACELL logo is such that the goods claimed in classes 32 and 33 will be taken by the public at large to indicate that there is a connection between these goods and the Applicant, and its trade mark. Therefore, we respectfully request reconsideration of this defensive application, and submit that it should be accepted for registration.

Respectfully
PHILLIPS ORMONDE FITZPATRICK

A handwritten signature in black ink, reading "Graham H. Cowen". The signature is written in a cursive style with a large initial 'G' and a distinct 'H'.

NIM

STATUTORY DECLARATION
Statutory Declarations Act 1959 (Cth)

IN THE MATTER OF:
Australian Trade Mark
Application No.1329713 (defensive)
“DURACELL” in classes 32 & 33
in the name of The Gillette Company

STATUTORY DECLARATION

I, Natasha Marshall, of Level 19, 133 Castlereagh Street, Sydney, NSW 2000, Australia, make the following declaration under the *Statutory Declarations Act 1959 (Cth)*:

1. I am employed as a Trade Marks Attorney by the firm Phillips Ormonde Fitzpatrick of Level 19, 133 Castlereagh Street, Sydney, NSW 2000, Australia (my firm) and in that capacity, I am responsible for the conduct of this trade mark application.
2. Matters declared to herein have been ascertained from information provided to me by The Gillette Company's parent company, The Procter & Gamble Company, and also from information held on file at my Firm.
3. Now shown to me, and marked under **Exhibit NM-1** is a copy of a Trade Mark Opposition decision issued in the United Kingdom, dated 6 October 2009. The Opposition was to the registration of International Trade Mark No. 948728 (DURACELL ENERGY DRINK & Device) in classes 5, 32 and 33, owned by El Nino A.S.. The Opposition to International Registration No. 948728 was filed by Duracell Batteries BVBA. It is stated in the said UK Opposition decision that DURACELL Batteries BVBA is part of The Procter and Gamble Group of Companies.
4. Now shown to me, and marked under **Exhibit NM-2** is a copy of a decision from the High Court of Prague in the Czech Republic, dated 27 March 2012, and an English translation thereof. The plaintiff in this matter is Duracell Batteries BVBA, who brought proceedings against El Nino Beverages A.S. of Prague concerning its unauthorised use of the trade mark “DURACELL” and related trade indicia, in relation to beverages in the EU. The decision was decided in favour of the plaintiff, Duracell Batteries BVBA.

5. Now shown to me, and marked under **Exhibit NM-3** is a copy of a Notification of Withdrawal of International Registration Designating Australia issued by IP Australia on 22 December 2009, in relation to International Trade Mark No. 948728 in the name of El Nino, a.s. and opposition by The Gillette Company.
6. Now shown to me, and marked under **Exhibit NM-4** is a copy of an article that was published in the Sydney Morning Herald newspaper, in the Business Day section, on 16 October 2009, entitled "Gillette calls in lawyers over 'unofficial' Duracell energy drink".
7. Now shown to me, and marked under **Exhibit NM-5** is a copy of a "Caution Notice" published in the Sydney Morning Herald newspaper Weekend Edition for 21-22 November 2009, in which The Gillette Company cautions the Australian trade and public at large that it is the owner of various Australian trade mark registrations for DURACELL and the owner of copyright in the "DURACELL copper and black get-up".

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959 (Cth)*, and I believe that the statements in this declaration are true in every particular.

DECLARANT: Natalia Leppell
DECLARED AT: Sydney NSW
DATED: 30 th April 2012
BEFORE ME: H Kavadias
NAME OF WITNESS HELEN KAVADIAS
QUALIFICATION OF WITNESS SOLICITOR OF NSW
ADDRESS OF WITNESS 133 CASTLEREAGH ST SYDNEY

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

IP Australia Service Request

Trade Mark Number
1545165

Request Date & Time
25-Sep-2014 17:36:37

Submitting Party

Party Identifier	NBZ2930589813
Agency Code	PO
Name	
Customer's Reference	123124
Email	attorney@pof.com.au

Respond to an Examiner's Report

Fees

FANG Batch Identifier 7977591

Fee # 1	Fee Code	TXR
	Fee Type	OTHER
	Fee Description	Respond to an Examiner's Report
	Number of Goods and Services Classes	2
	Fee Unit Count	1
	Fee Amount	\$0.00
	Calculation Date & Time	25-Sep-2014 17:36:37

Fee Total Amount \$0.00

Service Request Details

Channel B2B

Batch Identifier	SMBM-0000417702
Batch Reference	53955
Service Request Identifier	STXR-0000843355
Service Request Code	TER
Request Date & Time	25-Sep-2014 17:36:37
Customer's Reference	123124
Application numbers	Customer's IP Right Reference
1545165	964905
Contact Details	
Phone	03 9614 1944

Customer Supplied Documents

Document Sequence	Document Type	Document File Name	Physical Media
1	Exam Response	Duracell Stat Dec whole.pdf	No
2	Exam Response	LOFF-964905.docx	No

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

IN THE MATTER OF
Australian Trade Mark Application
1545165 for the trade mark
DURACELL Logo (defensive)



in classes 32 & 33
in the name of
The **Gillette Company**


STATUTORY DECLARATION

I, Tara M. Rosnell, of The Procter & Gamble Company having its office at 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202, United States of America do solemnly and sincerely declare as follows:

1. I hold the position of Assistant Secretary of The Gillette Company, a company incorporated in 1917, having its registered office at Boston, Massachusetts 02127, United States of America ("my Company"). The matters to which I declare in this Declaration are either known to me personally or have been ascertained for me from the Company's records.
2. The Gillette Company is a subsidiary of The Procter & Gamble Company.
3. My Company regards the information which is disclosed in this Declaration, particularly in relation to financial information, sales information, advertising expenditure, details of advertising and promotional activities, as relating to the business, commercial and financial affairs of the Company within the meaning of section 47G of the *Freedom of Information Act 1982 (Cth)*, and accordingly, as being strictly confidential.

Background:

4. I am aware that my Company has applied for defensive registration of the trade mark

DURACELL  ("the **DURACELL Logo**") on 7 March 2013 under trade mark application No. 1545165 in relation to the following goods:

***Class: 32** Isotonic beverages, energy drinks, natural or artificial mineral waters; sparkling beverages and other non-alcoholic beverages, fruit and vegetable drinks and juices, non-alcoholic aperitifs, lemonades, unfermented grape must, cider (non-alcoholic), non-alcoholic cocktails, lithia water, almond milk (beverage), cider (non-alcoholic), musts, (soft drinks), whey drinks, soft drinks, fruit essences without alcohol, non alcoholic fruit nectars, orgeat (soft drinks), fruit juices, hopped beer wort, tomato juice (beverage), seltzer-water (mineral water), syrups for making beverages, syrups for grenadine, malt beverages, malt beer, beers, light beers and double beers, table waters, sorbets (beverages), sorbets (sweetened fruit beverages), sparkling waters containing natural mineral substances and natural mineral ingredients, waters containing lithium, water (beverages), table waters, ginger beer, vegetable juices (beverages), soda-waters*

***Class: 33** Alcoholic essences, alcoholic fruit essences, alcoholic extracts, aniseed liqueur, aperitifs, arrack, arrack (liqueur), brandy, curacao (liqueur from oranges), digesters (liqueurs and eaux-de-vie), digesters (bitter liqueurs), essences for spirits, alcohol extracts, gin, alcoholic beverages made out of morello cherries, pear must (with alcohol), cider (with alcohol), alcoholic cocktails, spirits, liqueurs aniseed, liqueurs, piquette, hydromel, mint liqueurs, distilled beverages (eaux-de-vie), rum, spirits from rice, sake, rice wines, alcoholic fruit extracts, whiskey, alcoholic beverages (except beers)*

5. The application for registration of the DURACELL Logo is based on:


- registration 1500055 - , in class 9 for the goods: **Class: 9** Electric

and electronic apparatus and instruments and parts thereof; electric storage cells; electric accumulators; lead-acid batteries, chlorine batteries and alkaline batteries and electric storage cells; apparatus for testing and monitoring battery performance capabilities and capacity; batteries and re-chargeable batteries, including automotive, marine and industrial batteries; electric dry cells and batteries, including alkaline dry cells; electric powered smoke detection apparatus; electric cell and battery chargers; light activated and power failure activated equipment in this class; standby power battery system or uninterrupted power supply applications; battery powered or operated items of electrical and electronic equipment in this class

6. It is because of the use of the DURACELL Logo in relation to various different types of batteries including rechargeable batteries, battery chargers, torches, flashlights and lanterns in Australia and globally, that use of the DURACELL Logo in relation to the goods claimed under application 1545165 will be taken to indicate a connection between those goods and the Applicant.

7. In addition to the trade mark registrations referred to above, I am aware that my Company is also the owner of the Australian trade mark registrations listed below, which are related to the DURACELL brand:

No.	Priority Date	Mark	Class
198216	27 OCT-1965	DURACELL	9
768482	24 JUL-1998	DURACELL	11
967761	26-AUG-2003	DURACELL EXPLORER	11
1016543	19-AUG-2004	DURACELL	9
1272270	13-NOV-2008	DURACELL	16
1325307	08-OCT-2009	DURACELL RECHARGEABLE STAYCHARGED	9
1340576	14-JUL-2009	DURACELL SMARTPOWER	9

1355186	07-APR-2010		9
1504880	25-JUL-2012	DURACELL TOUGH	11

8. My Company, and predecessors of the DURACELL business, have been manufacturing batteries and selling them under the DURACELL logo worldwide, for almost half a century. My Company is also the registered proprietor of the DURACELL Logo and DURACELL (word mark) Trade Marks in a significant number of countries including the United States of America, Canada, Mexico, Brazil, Colombia, New Zealand, Japan, Singapore, Malaysia, China, Hong Kong and Taiwan.
9. Exhibited to me at the time of making this declaration and marked **EXHIBIT TMR-1** is a list showing the details of My Company's pending and registered DURACELL Trade Marks in other countries.
10. As a result of the widespread use and promotion of goods bearing the DURACELL Logo, it has, in my opinion, become famous and internationally recognized as being synonymous with my Company and its predecessors in title.

History of the Trade Mark

11. The original DURACELL battery product was created by a Scientist, Samuael Ruben, and businessman, Phillip Rogers Mallory in the 1920s in the United States of America. Samuael Ruben and Phillip Rogers Mallory went on to form a company and called it P.R. Mallory Company. The P.R. Mallory Company went on to be innovative in battery technology in the 1940s and 1950s, and built up a robust battery manufacturing business.
12. In the 1960s, new photography technology created a demand for alkaline batteries.

This led the P.R. Mallory Company to create the alkaline cell battery, which went on to become the popular DURACELL alkaline battery.

13. The Trade Mark, DURACELL was coined in 1964, as a combination of the words "durable" and "cell".
14. The market for DURACELL batteries was so strong in the 1970s that supplies had to be held back until manufacturing capacity caught up with demand.
15. The DURACELL business was owned and run by P.R. Mallory Company until 1978, when it was acquired by Dart Industries. Dart Industries subsequently merged with Kraft in 1980. The private equity firm, Kohlberg Kravis Roberts, then bought the DURACELL business in 1980, and floated the company in 1989. Then, in 1996, The Gillette Company bought the Duracell business.
16. Since the Trade Mark DURACELL was coined in 1964, it has been used continuously, extensively and substantially throughout the world, by The Gillette Company and its predecessors in title.
17. Alkaline batteries sold under the DURACELL Logo are now one of the world's most popular alkaline batteries. The Gillette Company operates 6 facilities worldwide that manufacture DURACELL batteries.
18. In addition, lithium, silver oxide and zinc air batteries are also manufactured and bear the DURACELL Logo and other DURACELL Trade Marks. More recently, the DURACELL Logo has been used in relation to flashlights, battery chargers, rechargeable batteries and batteries for specialist applications such as watch batteries.

Use of the Trade Mark in Australia

19. My Company's Australian subsidiary, Procter & Gamble Australia Pty Ltd uses the DURACELL Logo under license in Australia.
20. Batteries bearing the DURACELL Logo were first sold in Australia in 1980 and have been sold continuously in all States and Territories. Torches and lanterns bearing the DURACELL Logo were first sold in Australia in 1995 and have been sold continuously in all States and Territories. Battery chargers and NiMH (nickel-metal hydride cell) rechargeable batteries bearing the DURACELL Trade Marks and DURACELL Logo were first sold in Australia in around 2000 and have been sold continuously in all

States and Territories. Exhibited to me at the time of making this declaration and marked "**EXHIBIT TMR-2**" are examples of packaging for the aforementioned goods, on which the DURACELL Logo appears.

21. Batteries bearing the DURACELL Logo are sold in Australia in major supermarkets, service stations, convenience stores and wholesalers such as: Coles, Woolworths, Big W, Target, Kmart, IGA , Metcash and Costco.
22. Since first being sold in Australia in 1980, sales of goods bearing the DURACELL Logo in Australia have been continuous and significant. Exhibited to me at the time of making this declaration and marked "**CONFIDENTIAL EXHIBIT TMR-3**" is a table showing the yearly value of sales from the financial year July 2007 – June 2008 to the current financial year.
23. My Company spends a significant amount of money each year in promoting the DURACELL Logo and goods through the media. The majority of this expenditure is for television promotion, and also on advertising in magazines and newspapers. Exhibited to me at the time of making this declaration and marked "**CONFIDENTIAL EXHIBIT TMR-4**" is a table showing the annual spend on advertising and promotion of goods bearing the DURACELL Logo for the financial years July 2007 – June 2008 through to and including the current financial year.
24. A central feature of My Company's advertising campaigns for goods bearing the DURACELL Logo is a pink bunny character known as the "Duracell Bunny". The Duracell Bunny has been used throughout the world including in Australia to demonstrate that batteries sold under the DURACELL Trade Marks, including the DURACELL Logo, are long lasting. The Duracell Bunny has been used in Australia to promote DURACELL batteries, flashlights and chargers since at least 1992.
25. Advertisements that feature the Duracell Bunny have frequently featured the Bunny engaging in high impact, energetic activity, such as running, jumping, playing drums and operating toy helicopters and cars.
26. Exhibited to me at the time of making this Declaration and marked **EXHIBIT TMR-5** is an example of a television commercial that has aired in Australia between 2000 to the present day, and which features the Duracell Bunny leaping across the air and climbing on buildings.
27. My Company's goods of batteries bearing the DURACELL Logo are also promoted in

major supermarkets by way of colourful and eye-catching point of sale displays. Point of sale displays are sometimes cross promotional activities, with for example, Mattel in association with battery operated toys, and the supermarket Big W, who has created Battery Bar display units. A life-size "DURACELL Bunny" mascot is sometimes deployed to supermarket promotions, to "meet and greet" shoppers.

28. Exhibited to me at the time of making this Declaration and marked **EXHIBIT TMR-6** are images of examples of Point of Sale promotions in Australia used to promote my Company's goods bearing the DURACELL Logo.
29. Supermarket promotions of goods bearing the DURACELL Logo have not been confined to the supermarket aisle in which batteries are sold. Promotions and displays of goods bearing the DURACELL Logo have also been located near supermarket check-outs, in front of shop areas and front of aisle areas. The DURACELL Bunny Mascot has been able to move around supermarkets, including being able to walk near areas in supermarkets in which alcoholic and non-alcoholic beverages are sold.
30. Exhibited to me at the time of making this Declaration and marked **EXHIBIT TMR-7** are images of examples of front of shop and front of aisle promotional displays, and of the DURACELL Bunny moving around supermarkets in Australia.
31. My Company's Australian subsidiary, Procter & Gamble Australia Pty Ltd has sponsored the well-known "Pride of Australia" awards in association with the DURACELL brand, since 2000. "Pride of Australia" awards are awarded yearly to recognize and celebrate "everyday Australians" who do extraordinary things in Australian society.
32. Exhibited to me at the time of making this Declaration and marked **EXHIBIT TMR-8** are images of the DURACELL Logo being used in association with sponsorship of the "Pride of Australia" awards.
33. My Company's goods bearing the DURACELL Logo are also advertised in Australia on the website www.duracelldirect.com.au.
34. Exhibited to me at the time of making this Declaration and marked **EXHIBIT TMR-9** are images of the DURACELL Logo being used to promote goods on the said website address.

AND I MAKE this solemn declaration by virtue of the *Statutory Declarations Act 1959*, as amended. I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

I solemnly and sincerely declare that the content of this declaration are true and correct and that this declaration is signed with my true name and signature.

Declarant: *Tara M. Rosnell*

Tara M. Rosnell

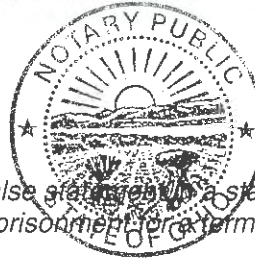
Dated:September 12, 2014.....

Declared at:Cincinnati, Ohio USA.....

Before me: *Sherry Beth Arbuckle*

.....Sherry Beth Arbuckle, Notary Public, State of Ohio.....

(Print name and qualification of witness)



Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 — see section 5A of the Statutory Declarations Act 1959.