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

SCHLAGE LOCK COMPANY,
Successor-in-Interest by merger to
KRYPTONITE CORPORATION,

Opposer,

v. Opposition No. 120,885

O.L. PRODUCTS,

Applicant.

MOTION PURSUANT TO FED. R. CIV. PROC. 30(b)(6), TBMP §§ 523.01, AND 37 C.F.R. §§ 2.120(e) FOR AN ORDER, COMPELLING ANSWERS TO THE OUTSTANDING DISCOVERY AND FOR PRODUCTION OF DOCUMENTS AND SUCH OTHER SANCTIONS AS THE BOARD DEEMS JUST AND APPROPRIATE

Opposer, by its attorneys, hereby moves the Board for an order compelling Applicant to serve supplemental and/or amended answers to discovery requests and compelling Applicant to produce documents identified in Applicant's Response to Opposer's First Request for Production of Documents and for such other sanctions as the Board deems just and appropriate. Applicant served Responses to Opposer's First Request for Production of Documents and Things and Opposer's First Set of Interrogatories on August 10, 2001. There were numerous stipulated extensions obtained, and both parties retained new counsel in 2002. Shortly thereafter, Opposer's new counsel sent a letter to Applicant's attorney, Jeffrey Sherman on November 14, 2002 requesting that Applicant serve supplemental and/or amended responses to Opposer's discovery requests and that Applicant produce the documents identified in Applicant's Response to Opposer's First Request for Production of Documents and Things. Meddings Aff.¶2, Ex. 1. Opposer has followed up with Applicant since then, but Applicant has to date failed to serve on

Opposer any supplemental and/or amended answers to Opposer's First Request for Production of Documents and Opposer's First Set of Interrogatories. Copies of these discovery requests and Applicant's responses are attached to the Affidavit of Lori S. Meddings as Exhibit 2.

Having received no response to the November 14, 2002 letter, Opposer's attorney, Lori S. Meddings, called Applicant's attorney, Mr. Sherman, on January 22, 2003. Mr. Sherman agreed to provide the requested responses by February 14, 2003. Ms. Meddings sent a letter to Mr. Sherman on January 22, 2003 confirming that such action would be taken. This letter was returned by the United States Postal Service on February 20, 2003. Meddings. Aff. ¶3. Exs. 3 & 4.

Ms. Meddings then called Mr. Sherman on February 20, 2003 regarding his failure to respond. Mr. Sherman requested that Ms. Meddings resend the November 14, 2003 letter and indicated that he would provide the supplemental responses by February 28, 2003 and produce documents by March 14, 2003. Aff. ¶4. Ms. Meddings confirmed that conversation with a letter sent via facsimile that same day. Aff. ¶4, Ex. 5.

Having received no answers or documents, Ms. Meddings telephoned Mr. Sherman on March 12, 2003 and left a message. That call was not returned. Meddings Aff. ¶5.

In short, Applicant has failed to serve supplemental answers to Opposer's discovery requests, despite Opposer's numerous attempts to obtain this information. As can be seen by the foregoing, Opposer has made a good faith effort to confer with Applicant and to obtain Applicant's supplemental answers.

Although there is no formal deadline for responding to Opposer's request for supplemental answers, the discovery period is closed in this case, and Opposer requires the requested information and documents in order to prepare for the testimony period, which will

presumably commence shortly after this case is set to reopen on May 20, 2003.[1] Therefore, Opposer seeks an order compelling Applicant to provide answers to the outstanding supplemental discovery requests and to produce documents. Fed. Rule Civ. Proc. 37, 37 C.F.R. 2.120(e), and TBMP §523.02.

Dated this 7th day of May, 2003.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Opposer

By: _____
Dyann L. Kostello
Lori S. Meddings

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[1] This case was suspended because the parties were discussing settlement. Those negotiations ended with no settlement being reached, which is why Opposer resumed efforts to obtain discovery responses from Applicant.

CERTIFICATE OF SERVICE

This is to certify that on May 7, 2003, I mailed via first class, prepaid mail, to Applicant's attorney at the address listed below

Jeffrey Sherman, Esq.
3874 Tampa Road
Oldsmar, FL 34677

a copy of the attached Motion to Compel.

Karen J. Brandt

Karen J. Brandt

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

SCHLAGE LOCK COMPANY,
Successor-in-Interest by merger to
KRYPTONITE CORPORATION

Opposer,

v. Opposition No. 120, 885

O.L. PRODUCTS,

Applicant.

DECLARATION OF LORI S. MEDDINGS UNDER 28 U.S.C. § 1746

I, Lori S. Meddings, declare under penalty of perjury as follows:

1. I am an attorney at Michael Best & Friedrich LLP, located in Milwaukee, Wisconsin.

2. On November 14, 2002 I sent a letter to Jeffrey Sherman, attorney for Applicant, requesting that Applicant amend or supplement its responses to Opposer's Request for Production of Documents and Interrogatories. Ex.1.

3. On January 22, 2003 I telephoned Mr. Sherman regarding our November 14, 2002 letter to which we had not received a response, and with regard to the production of documents. Mr. Sherman stated that he would provide us with supplemental or amended responses by February 14, 2003. I then sent a letter to Mr. Sherman memorializing that conversation. Ex. 3. That letter was returned by the U.S. Postal service as undeliverable on February 20, 2003. Ex. 4.

4. On February 20, 2003 I again telephoned Mr. Sherman and informed him that the letter had been returned. Mr. Sherman informed me that he still had not prepared supplemental or amended responses to our Requests, and had not prepared documents for production. Mr. Sherman no longer had our November 14, 2002 letter, and requested that I resend the letter to him by facsimile. Mr. Sherman stated that he would provide the supplemental answers by February 28, 2003 and the documents by March 14, 2003. Again, I memorialized this conversation in a letter sent to Mr. Sherman by fax on February 20, 2003. Ex. 5.

5. On March 12, 2003 I telephoned Mr. Sherman, and my call has not been returned.

6. As of today's date, neither Michael Best & Friedrich LLP nor I has received supplemental or amended responses from Applicant or documents. I also have not received an indication from the Applicant regarding its intent to continue with the Opposition.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated May 7, 2003.

Lori S. Meddings

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TTAB

MICHAEL BEST & FRIEDRICH LLP
Attorneys at Law
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Member: Lex Mundi,
A Global Network of more than
150 Independent Firms

May 7, 2003

05-09-2003
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #66

United States Patent & Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3514

Re: Schlage Lock Company v. O.L. Products
Opposition No. 120,885
Our File No. 56227/9009

Dear Clerk:

Enclosed please find a Motion to Compel and supporting Declaration of Lori S. Meddings Under 28 U.S.C. § 1746. By copy of this letter, counsel for Applicant is also being served.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP

Lori S. Meddings

LXM/kjb
Enclosure
cc: Jeffrey Sherman, Esq.
Dyann L. Kostello, Esq.

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