

I. INSTRUCTIONS AND DEFINITIONS

A. These discovery requests require responses which are complete and accurate as of the date when such responses are made.

B. These discovery requests are continuing in character so as to require Opposer to supplement its responses as to:

1. the identity of persons having knowledge of discoverable matters;
2. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony. Fed.R.Civ.P. 26(e)(1).

C. Opposer has a duty to amend a response if Opposer obtains information indicating that the response was incorrect when made, or that the response, though correct when made, is in some material respect incomplete or incorrect. Fed.R.Civ.P. 26(e)(2).

D. As used herein, the following definitions apply:

1. "Communication". The term "communication(s)" means the information that has been transmitted (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized.

2. "Document". The term "document(s)" has the meaning ascribed to it in Fed.R.Civ.P. 34(a), and includes, but is not limited to, every writing or record of every type and description that is or has been in the possession, control, or custody of Opposer or which Opposer has knowledge, including without limitation: originals, masters and every copy of writings, including handwritings, and printed, typed or other graphic or

photographic matter including film or microfilm, video tape, recordings (tape, disc or other), correspondence, communications, contracts, agreements, assignments, licenses, purchase orders, invoices, statements, memoranda, notes (in pencil, ink, or typewritten), letters, notebooks, reports, photographs, drawings, tracings, sketches, charts, catalogs, brochures, advertisements, records of communications oral and otherwise, instructions, telegrams, studies, surveys, minutes, reports calendars, inter-office communications, price lists, bulletins, circulars, statements, manuals, summaries, maps, charts, graphs, invoices, canceled or voided checks, bills or statistical material. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

3. "Data". The term "data" shall mean any facts, documents or communications, oral or otherwise, of which Opposer has knowledge, information or belief.

4. "Identify" or "Specify". As used herein, "identify" or "specify" when used in reference to:

(a) a person who is an individual shall mean to state his or her full name, present or last known residence address (designating which), and present or last known position or business affiliation (designating which), job title, employment address, and business and residence telephone numbers;

(b) a person who is a firm, partnership, corporation, proprietorship, association, or other organization or entity shall mean to state its full name, present or last known (designating which) address, telephone number, legal form of such entity or organization, (including state and country of incorporation or organization) and the identity of its present and former officers, directors, controlling shareholder(s) and all employees, agents, and staff members who have responsibilities relating to use of trademarks;

(c) data, shall mean to state: in the case of a document, the title (if any), the date, author(s), sender(s), recipient(s), the identity of the persons signing it, type of document (i.e., a letter, memorandum, book, telegram, chart, etc.) or some other means of identifying it, its present location or custodian and whether Opposer is in the possession of the original, master, or a copy of the document, and if not in possession of the original, master or copy to furnish the name and last known address of the custodian of the original, master or copy; in the case of an oral communication, the date, subject matter, communicator, the recipient of the communication, nature of communication, whether it was recorded, and the identity of any witness thereto; and in the case of a fact, the source thereof.

5. The words/phrases "identity", "circumstances", "detail(s)", and "all information", whether used alone or in connection with any other words, shall include, but are not limited to, identifying all facts, persons, places, dates, events, documents, physical items of any kind, time periods, geographical locations, data, communications of any kind, or any other information in any way related to, pertaining to, connected with or otherwise responsive to the interrogatory or document request such that all information shall be brought within the scope of the interrogatory or document request which may otherwise be deemed not to be covered by the interrogatory or document request.

6. The words/phrases "respecting", "relating", "referring to", or "regarding", whether used alone or in connection with any other words, shall mean making a statement about, referring to, mentioning, discussing, describing, reflecting, dealing with, consisting of, comprising, recording or in any other way pertaining to the subject either in whole or in part directly or indirectly.

7. "Opposer". The term "Opposer" shall mean Artisan Cinematic Enterprises, Inc. and, where applicable, its officers, directors, employees, agents and representatives.

8. "Applicant". The term "Applicant" shall mean Artisan Entertainment Inc.

9. "Person". The term "person" shall include without limitation, any natural person or any business, business association, business entity, partnership, corporation, legal, or governmental entity. Whenever an interrogatory requests identification of persons, as to those individuals named in response to the interrogatory now in the employ of or associated with Applicant, state the title or position, duties and present residence and business addresses of each such individual. As to those "persons" who have previously been but are not now in the employ of or associated with Opposer, state the periods of employment or association with Applicant, the person's title or positions during that period, and the last known residences and business address of such persons. As to all "persons" state their residence and business addresses.

10. "And" and "Or". The connectives "and" and "or" shall be construed broadly, both conjunctively and disjunctively, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. "Date". The term "date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation, including the temporal relationship to other events.

12. "Number". The use of the singular form of any word includes the plural and vice versa.

13. "Applicant's Mark". Unless otherwise specified, the phrase "Applicant's Mark" refers to the trademark and service mark ARTISAN ENTERTAINMENT (Stylized).

14. "Applicant's Services". Unless otherwise specified, the phrase "Applicant's Services" refers to "providing information on current and future movie offerings via a global computer network."

15. “Opposer's Mark”. Unless otherwise specified, the phrase “Opposer's Mark” refers to the service mark ARTISAN.

II. INTERROGATORIES

INTERROGATORY NO. 1

Identify each officer of Opposer and each officer's position with Opposer since 1985.

INTERROGATORY NO. 2

Identify each officer or employee responsible for production and distribution of commercial motion pictures, and identify each person's area of responsibility.

INTERROGATORY NO. 3

Identify each motion picture produced and distributed for theatrical release including:

- A. Title;
- B. Year of production;
- C. Year of theatrical release; and
- D. Territory in which each motion picture was theatrically released.

INTERROGATORY NO. 4

Identify each video encompassing a motion picture produced and distributed to the general public including:

- A. Title;
- B. Date of distribution of each title for release to the public.
- C. Year date of release of video;
- D. Territories in which the videos were distributed; and
- E. Number of videos sold for each title.

INTERROGATORY NO. 5

Identify each motion picture distributor to which Opposer has promoted The Driveaway Movie Project, including the individual contacted at each distributor.

INTERROGATORY NO. 6

Describe the circumstances in which Opposer became aware of Applicant's application herein opposed, including the date on which Opposer learned of the application.

INTERROGATORY NO. 7

Identify each business entity that has acted at the direction of Opposer or cooperation with Opposer in any way in connection with Opposer's commercial use of Opposer's mark and identify each person that has acted as Opposer's business partner, agent, representative, or managerial employee in any way in connection with Opposer's commercial use of Opposer's mark.

INTERROGATORY NO. 8

Identify any actions Opposer has taken against third party uses of ARTISAN in any aspect of the entertainment industry, including;

- (a) Name of person or entity against which action was taken.;
- (b) Basis on which the action was taken; and
- (c) Resolution of action.

INTERROGATORY NO. 9

Identify all searches conducted by Opposer for the mark ARTISAN prior to:

- (a) the filing of Application Serial No. 75/765,407
- (b) prior to the filing of the subject opposition

INTERROGATORY NO. 10

Identify each instance of actual confusion of which Opposer is aware and which was occasioned by Applicant's use of the mark **ARTISAN ENTERTAINMENT (stylized)**. With respect to each instance of actual confusion describe:

- (a) The person or entity confused;
- (b) The nature of the confusion;
- (c) The date and circumstances under which the confusion occurred; and
- (d) The damage suffered by Opposer as the result of the confusion.

INTERROGATORY NO. 11

Identify the names of Opposer's properties registered with the Motion Picture Association of America including identification of the screenplay submitted to the Guild.

INTERROGATORY NO. 12

Identify each instance in which Opposer's mark was featured in a newspaper or was the subject of a radio or television interview, including: the media in which Opposer's mark was featured and the date of each feature in each media.

INTERROGATORY NO. 13

Identify and describe in detail all types of media, including publications, radio and television, through which Opposer has advertised its services, and state the dollar amounts, by type of media and by date, which have been expended by Opposer in advertising its services under the **ARTISAN** mark.

INTERROGATORY NO. 14

Identify the person or persons most knowledgeable about:

- (a) The marketing and advertising of the services offered under the **ARTISAN** mark, and
- (b) The sale or licensing of services under the **ARTISAN** mark.

INTERROGATORY NO. 15

For each and every Interrogatory above, identify the individual or individuals answering the Interrogatory, and each person who provided any information including opinions, advice, reports, studies, or facts on which you are answered to any of the foregoing Interrogatories was based, specifying each and true Interrogatory to which he or she contributed information.

III. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Opposer is hereby requested to produce for inspection and/or copying by Applicant, or to cause copies to be provided to Applicant, the documents and things specified hereunder, to the extent that such documents and things are in the possession, custody or control of Opposer or Opposer's attorneys:

REQUEST NO. 1

Any documents, other than those subject to attorney-client privilege, identified in response to Interrogatory No. 1.

REQUEST NO. 2

Any documents, other than those subject to attorney-client privilege, identified in response to Interrogatory No. 2.

REQUEST NO. 3

Documents which support Opposer's answer to Interrogatory No. 3.

REQUEST NO. 4

Documents which support Opposer's answer to Interrogatory No. 4.

REQUEST NO. 5

Documents which support Opposer's answer to Interrogatory No. 5.

REQUEST NO. 6

Documents that refer to or relate to the circumstances identified by Opposer in answer to Interrogatory No. 6.

REQUEST NO. 7

Documents involved in any actions identified in Opposer's answer to Interrogatory No. 8.

REQUEST NO. 8

Copies of any searches identified by Opposer in response to Interrogatory No. 9.

REQUEST NO. 9

Documents upon which Opposer relied in its Answer to Interrogatory No. 10.

REQUEST NO. 10

For each video marketed under or by reference to the Applicant's Mark, a sample of each different package, label, wrapper, instructional manual, package insert or other form of packaging on which the Opposer's Mark has appeared.

REQUEST NO. 11

Copies of the Motion Picture Association of America's listing of Opposer's properties and a copy of any material from the Guild evidencing submission of the screenplay as identified in response to Opposer's Answer to Interrogatory No. 11.

REQUEST NO. 12

Copies of all documents or videos on interviews identified in Opposer's answer to No. Interrogatory No. 12.

REQUEST NO. 13

Documents which evidence, refer to, or otherwise relate to Applicant's actual annual advertising expenses and gross sales or license fees, for videos and motion picture, in terms of units and dollars, of each product and service which has been offered by Opposer under or by reference to Opposer's Mark.

REQUEST NO. 14

Copies of the results of any survey, poll or similar investigation conducted by or on behalf of Opposer relating to recognition of Opposer's Mark by the public or the trade.

REQUEST NO. 15

A sample of each different print media advertisement, catalog, direct mail piece, brochure, or other item of printed promotional material which Opposer has prepared, caused to be prepared and/or distributed in connection with the advertising and promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 16

A copy of the script for each different television or radio advertisement, on interview Opposer has prepared, caused to be prepared and/or used in connection with the advertising and promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 17

For each sample of promotional material produced in response to Request No. 15 above, and for each script produced in response to Request No. 16 above, documents which set forth, establish, or substantiate the periods of time during which Opposer used such promotional materials and scripts in marketing products or services in the United States, or enjoyed unpaid promotional endorsements, print exposure or television interviews.

REQUEST NO. 18

Documents which evidence, refer to or otherwise relate to any monetary expenditures which Opposer has made in connection with the advertising and promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 19

All correspondence between any advertising agencies and Opposer relating or referring to the advertising or promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 20

All documents, other than those subject to attorney-client privilege, relating or referring to the creation and selection of Opposer's Mark.

REQUEST NO. 21

Copies of the findings resulting from any market research or competitive research done by or for Opposer in relation to Opposer's or Applicant's Mark.

REQUEST NO. 22

All documents, other than documents subject to attorney-client privilege, wherein Applicant or Applicant's Mark is referred to or mentioned.

REQUEST NO. 23

Copies of all letters and other communications published, sent to and/or addressed to third parties by Opposer relating or referring to the subject matter of this action.

REQUEST NO. 24

All documents, other than those subject to attorney-client privilege, referring or relating to any investigation, including any inquiry, survey, poll, credit check or other type of investigation Opposer has ever conducted or caused to be conducted involving:

- (a) Applicant's business;
- (b) Applicant's Mark; or
- (c) Applicant.

REQUEST NO. 25

All documents, other than those subject to attorney-client privilege, that refer or relate to any instances wherein a person has been confused, mistaken or deceived as to the source of products and/or services offered under or by reference to Opposer's Mark or Applicant's Mark.

REQUEST NO. 26

Copies of all written agreements to which Opposer is a party that relate to the acquisition, registration, use, promotion, and/or licensing of Opposer's Mark, and all correspondence, other than correspondence subject to attorney-client privilege, relating or referring to such agreements.

REQUEST NO. 27

All documents relating or referring to any license, assignment or right granted by Opposer to a third party, or by a third party to Opposer, regarding use of Opposer's Mark, including correspondence, other than correspondence subject to attorney-client privilege, relating to the same.

IV. REQUESTS FOR ADMISSION

Applicant hereby requests that Opposer admit the truth of the matters set forth below. In accordance with Fed. R. Civ. P. 36(a), the answer must admit the matter; or specifically deny the matter; or set forth in detail the reasons why Opposer cannot truthfully admit or deny the matter. Opposer may not give lack of information or knowledge as a reason for failure to admit or deny unless Opposer states that it has made reasonable inquiry and that the information known or readily obtainable by Opposer is insufficient to enable it to admit or deny.

REQUEST FOR ADMISSION NO. 1.

Opposer has never produced and distributed an motion picture for theatrical release under Opposer's mark.

REQUEST FOR ADMISSION NO. 2.

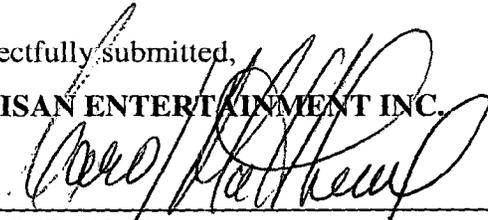
Opposer has never produced and distributed videos embodying motion pictures for general distribution to the public under Opposer's mark.

REQUEST FOR ADMISSION NO. 3.

Admit that the services claimed in Opposer's Application Serial No. 75/765,407 were not rendered in interstate commerce as of September 1, 1985, Opposer's claimed date of first use.

Respectfully submitted,
ARTISAN ENTERTAINMENT INC.

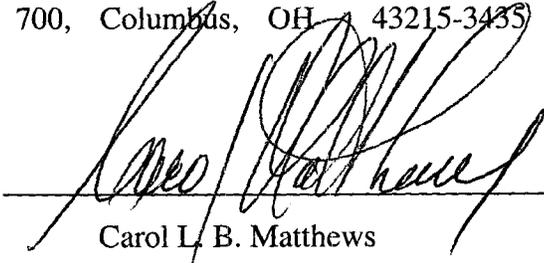
By: _____


Carol L. B. Matthews
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
(202) 955-3000

Date: 9 June 03

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND REQUESTS FOR ADMISSION** was sent by first class mail, postage pre-paid to James R. Eley, Esq. at Thompson Hine LLP, located at 10 W. Broad Street, Suite 700, Columbus, OH 43215-3435 on June 9th, 2003.



Carol L. B. Matthews



* N E W D O C *

TTAB

Express Mail No. EL587741846US
Attorney Docket: UNV.01-TM

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

In re: Serial No. 78/087,352
NATURE TECHNOLOGIES, INC.
Opposer,
v.
UNIVERA, INC.
Applicant.

Opposition No. 91152667

Commissioner of Trademarks
Box TTAB No Fee
2900 Crystal Drive
Arlington, VA 22202-3513



06-06-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

MOTION TO AMEND GOODS WITH CONSENT

Applicant hereby moves to amend the goods in the above-captioned application to read as follows:

Please delete Classes 3 and 5, leaving only the goods in Class 40, "Custom manufacture of nutritional products and cosmetics for others."

This amendment is being made in order to conform with requirements of the Co-Existence Agreement which has now been executed by both parties. A copy of the Co-Existence Agreement is attached.

Applicant hereby appoints Swanson & Bratschun, LLC, its attorneys, with full power of substitution and revocation, to represent Applicant in this proceeding and to transact all business in the U.S. Patent and Trademark Office connected herewith. Please direct all communications to the undersigned.

Respectfully submitted,

Date: June 6, 2003



Darla G. Yoerg
Swanson & Bratschun, L.L.C.
1745 Shea Center Drive, Suite 330
Highlands Ranch, Colorado 80129
(303) 268-0066 Telephone
(303) 268-0065 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2003, I placed a true and correct copy of the above and foregoing MOTION TO AMEND GOODS WITH CONSENT in the United States Mail, postage prepaid and addressed as follows:

Melody Kim
Univera, Inc.
100 Technology Drive, Suite 160
Broomfield, Colorado 80021

H. William Larson
Larson & Larson, P.A.
11199 69th Street North
Largo, FL 33773


Elizabeth A. McArthur

CO-EXISTENCE AGREEMENT

Agreement made by and between Univera, Inc., a corporation of the State of Delaware, with offices at 1100 Technology Drive, Suite 130 Broomfield, Colorado 80021 (hereafter "Univera"), and Nature Technologies, Inc., a corporation of the State of Florida, with offices at P.O. Box 20455 Bradenton, FL 34204 (hereafter "Nature Technologies").

WITNESSETH

WHEREAS, Nature Technologies is the owner of the trademark NATURE TECH for nutritional supplements in Int. Cl. 5 and owns registrations and/or applications for the mark NATURE TECH in numerous countries around the world, including U.S. Application No. 76/401,478 for "nutritional supplements, in Int. Cl. 5;"

WHEREAS, Univera, Inc. is the owner of the trademark NATURETECH and owns U.S. Application No. 78/087,352 for registration of NATURETECH for "cosmetics, in Int. Cl. 3, nutritional products, namely nutritional supplements, in Int. Cl. 5, and custom manufacture of nutritional products and cosmetics for others, in Int. Cl. 40" and and owns U.S. Application No. 78/087,353 for registration of NATURETEC for "cosmetics, in Int. Cl. 3, nutritional products, namely nutritional supplements, in Int. Cl. 5, and custom manufacture of nutritional products and cosmetics for others, in Int. Cl. 40;"

WHEREAS, Nature Technologies have filed opposition proceedings against Univera's pending Ser. Nos. 78/087,352 (Docket No.: UNV.01-TM) and 78/087,353 (Docket No.: UNV.02-TM) for NATURETECH and NATURETEC, respectively;

WHEREAS, the parties hereto are desirous of resolving the above-mentioned opposition proceedings and any potential future conflict with regard to use of their respective trade marks;

NOW, THEREFOR, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

- 1) All of the foregoing prefatory clauses are incorporated by reference herein and made a part of this Agreement.
- 2) Univera will delete "cosmetics" and "nutritional products, namely nutritional supplements" from the specification of goods in their Application Ser. Nos.

78/087,352 and 78/087,353 (hereafter "Univera's Amended Goods"). Univera shall abandon classes 003 and 005 in application serial numbers 78/087,352 and 78/087,353.

- 3) Univera agrees further not to use or license the trademarks NATURETECH or NATURETEC in respect of "cosmetics" or "nutritional products, namely nutritional supplements".
- 4) Nature Technologies agrees to not use or license the trademark NATURE TECH for "custom manufacture of nutritional products or cosmetics for others."
- 5) Within ten (10) business days of receipt of a copy of this Agreement fully executed by both parties, Univera shall abandon classes 003 and 005 in application serial numbers 78/087,352 and 78/087,353, and shall amend the identification of goods in its pending applications and for NATURETECH and NATURETEC to expressly limit the goods identified in those applications or registrations to Univera's Amended Goods.
- 6) Nature Technologies further agrees to withdraw their opposition to Ser Nos. 78/087,352 and 78/087,353 within ten (10) business days of request of a fully executed copy of this Agreement, and this Agreement having been accepted by the Trademark Examiner in Nature Technologies's Application Serial No. 76/401,478 such that Nature Technologies's Application is allowed by the Examiner for publication for opposition.
- 7) Nature Technologies further agrees not to object to the use or registration by Univera of the trade marks NATURETECH and NATURETEC for "custom manufacture of nutritional products and cosmetics for others" in Int. Cl. 40 anywhere in the world. Univera will not oppose, seek to cancel or file any action, legal or equitable, in any court against Nature Technologies's use, application or registration of its trademark NATURE TECH or trade name NATURE TECHNOLOGIES anywhere in the world.
- 8) Both parties agree to bear their own costs in connection with the opposition proceedings.
- 9) This Agreement shall bind and inure to the benefit of the parties and their respective successors, heirs, assigns, licensees and affiliates.
- 10) This Agreement is effective worldwide, and shall be valid so long as the parties do not abandon their respective trademarks.

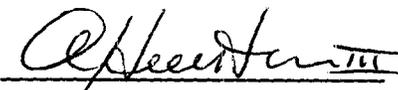
- 11) Waiver of any breach of any provision of this Agreement will not be deemed to be a waiver of any other breach of such provision or any breach of any other provision hereof.
- 12) This Agreement constitutes the entire agreement between the parties with respect to this subject matter and supersedes all prior understandings and written or oral agreements relating thereto, and can only be modified in writing signed by the parties.
- 13) If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining portions shall remain in full force and effect unless a party establishes that the provision which was invalidated or held unenforceable constituted material consideration for that party to enter into this Agreement.
- 14) This Agreement shall be governed by the United States trademark law and the laws of the State of Colorado or Florida depending upon the venue of the action.
- 15) This Agreement shall be effective on the date last signed below.
- 16) This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which then together shall constitute but one and the same single Agreement.

IN WITNESS WHEREOF, this Agreement has been accepted and agreed to by the following authorized representatives of each party:

UNIVERA, INC.

By: 
 Name: H.Y. SUNG
 Title: CEO
 Date: 6/3/03

NATURE TECHNOLOGIES, INC.

By: 
 Name: A. HUESTON III
 Title: CEO
 Date: 7/18/03