

TTAB

JONES DAY

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JP001404/naf  
COL-1311084v1  
709821-600003

May 16, 2005

Via Federal Express

Trademark Trial & Appeal Board  
c/o Trademark Assistance Center  
Madison East, Concourse Level Room C 55  
600 Dulany Street  
Alexandria, Virginia 22314

  
05-17-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

Re: *The West Seal, Inc. v. FD Management, Inc.*; Opposition No. 91157022  
re Serial No. 76/372,550 - ARDENBEAUTY

Dear Sir or Madam:

Attached please find a certified copy of the Testimony of James Thomas Perry taken on April 21, 2005 for filing with the Trademark Trial and Appeal Board in the above-referenced Opposition.

Please stamp the enclosed postage prepaid postcard and return it to me. Should you have any questions, please feel free to call the undersigned.

Sincerely,



Joseph R. Dreitler

cc: John M. Cone, Esq. (w/attachment)

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

IN THE MATTER OF:

TRADEMARK APPLICATION NO. 76/372,550 - ARDENBEAUTY

-----x

THE WET SEAL, INC.,

Opposer,

vs.

Opposition No.

FD MANAGEMENT, INC.,

91157022

Applicant.

-----x

DEPOSITION OF JAMES THOMAS PERRY

New York, New York

April 21, 2005

Reported by:

GLORIA HAGE

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April 21, 2005

8:35 a.m.

DEPOSITION of JAMES THOMAS PERRY, held at  
the offices of JONES DAY, 222 East 41st Street, New  
York, New York 10017, pursuant to Notice dated April  
7, 2005, before GLORIA HAGE, a Shorthand Reporter and  
Notary Public within and for the State of New York.

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A P P E A R A N C E S :

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for the Opposer

1700 Pacific Avenue, Suite 4100

Dallas, Texas 75201-4675

BY: JOHN MORANT CONE, ESQ.

JONES DAY

Attorneys for the Applicant

325 John H. McConnell Boulevard, Suite 600

P.O. Box 165017

Columbus, Ohio 43216-5017

BY: JOSEPH R. DREITLER, ESQ.

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2 J A M E S T H O M A S P E R R Y, stating his  
3 business address as 200 Park Avenue South, New  
4 York, New York 10003, having been first duly  
5 sworn by a Notary Public of the State of New  
6 York, was examined and testifies as follows:

7 EXAMINATION BY MR. DREITLER:

8 Q Please state your full name and address  
9 for the record, Mr. Perry?

10 A James Thomas Perry, 145 Scarborough Road,  
11 Briarcliff Manor, New York, New York 10510.

12 Q By whom are you currently employed?

13 A Elizabeth Arden, Inc.

14 Q What is the address of your employment?

15 A 200 Park Avenue South, New York, New York  
16 10003.

17 Q And how long have you been employed by  
18 Elizabeth Arden, Inc.?

19 A Since November 2002.

20 Q If you could just give us for say the five  
21 years prior to your employment with Elizabeth Arden,  
22 Inc. what was your occupation and where did you work?

23 A I was general counsel for the United  
24 States Playing Card Company in Cincinnati, Ohio.

25 Q What is your current title with Elizabeth

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James Thomas Perry

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2 Arden, Inc.?

3 A I'm vice-president, associate general  
4 counsel and assistant secretary.

5 Q In that position what are your duties and  
6 responsibilities?

7 A Whatever comes in the door I think is the  
8 general answer, but my principal responsibilities are  
9 for maintaining and managing the intellectual  
10 property portfolio of Elizabeth Arden, Inc. and its  
11 subsidiary companies. And I think that's the  
12 principal.

13 Q Are you the chief trademark counsel for  
14 Elizabeth Arden, Inc.?

15 A Yes, I am.

16 Q As the chief trademark counsel for  
17 Elizabeth Arden, Inc. do you know the legal  
18 relationship between Elizabeth Arden, Inc. and FD  
19 Management, Inc.?

20 A Yes. FD Management is a wholly-owned  
21 subsidiary of Elizabeth Arden, Inc.

22 Q What entity currently owns the Elizabeth  
23 Arden, Inc. trademarks?

24 A The Elizabeth Arden, Inc. branded  
25 trademarks are owned by FD Management.

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James Thomas Perry

1  
2 Q Mr. Perry, are you familiar with a company  
3 known as Unopco?

4 A Yes, I am.

5 Q What was Unopco or is Unopco?

6 A Unopco is a subsidiary of Unilever.

7 Q Are you familiar with a company called  
8 Conopco?

9 A Yes. It too is a subsidiary of Unilever.

10 Q You said that FD Management, Inc.  
11 currently owns the Elizabeth Arden trademarks, is  
12 that correct?

13 A Yes.

14 Q Can you explain how FD Management acquired  
15 the Elizabeth Arden trademarks?

16 A In January 2001, January 23rd, 2001, the  
17 asset acquisition agreement was consummated wherein  
18 Elizabeth Arden purchased from Unilever and its  
19 subsidiaries Conopco, Unopco, Elizabeth Arden branded  
20 business and Elizabeth Taylor branded business and a  
21 variety of other less well-known assets.

22 Q When you say "assets," what were included  
23 among those assets?

24 A Trademark registrations, applications,  
25 trade dress, product line, customer lists, that type

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James Thomas Perry

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of thing.

Q Did it have to do with any and all agreements that related to the business of Elizabeth Arden?

A Yes, it did.

Q I'm going to hand you a document that will be marked as Exhibit 1 for applicants. It also has Bates stamp numbers WS 001344 through WS 001353 and it's entitled "Settlement Agreement." I would ask you to take a look at that document, Exhibit No. 1, at your leisure. I also add that it's also Applicant's Exhibit No. 11 to the deposition testimony of Laura Nicholas.

A I have reviewed it briefly.

(Documents Bates Nos. WS 001344 through WS 001353, are received and marked Applicant's Exhibit Perry 1 for Identification.)

Q Have you ever seen this document before today, Mr. Perry?

A Yes, I have.

Q When and where did you first see it?

A Specifically the exact time I first saw it I'm not sure, but it would have been within the first three months of me coming to the company. It was a

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James Thomas Perry

1  
2 document that was included in a larger file of  
3 settlement agreements and consent agreements that we  
4 received after the acquisition from Unilever.

5 Q Is this settlement agreement a document  
6 that's maintained in the files of the trademark  
7 operation of Elizabeth Arden?

8 A Yes, it is.

9 Q Are those files maintained in the normal  
10 course of business as chief trademark counsel of  
11 Elizabeth Arden?

12 A Yes, they are.

13 Q In looking at the dates on page 6, was  
14 this settlement agreement signed and executed by the  
15 parties prior to your employment with Elizabeth  
16 Arden?

17 A Yes, it was.

18 Q Mr. Perry, I'm going to hand you a  
19 document which will be identified as Exhibit No. 2,  
20 Testimony Deposition Exhibit Perry, and it is Bates  
21 stamp numbers EA-000000893 through 899. Would you  
22 take a look at that document, please. It's dated  
23 December 18, 2001, on the letterhead of Abelman  
24 Frayne & Schwab entitled "Arden Beauty Search in  
25 Level 1 Countries."

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1 James Thomas Perry

2 (Documents Bates Nos. EA-000000893 through  
3 EA-000000899, are received and marked  
4 Applicant's Exhibit Perry 2 for Identification.)

5 Q Have you seen this document before?

6 A Yes, I have.

7 Q Do you have any recollection of when you  
8 first saw it?

9 A It must have also been shortly after my  
10 arrival at the company.

11 Q Is this a document that's maintained in  
12 your files at the trademark operations of Elizabeth  
13 Arden?

14 A Yes, it is.

15 Q Are these files maintained in the normal  
16 course of business in your duty as chief trademark  
17 counsel for Elizabeth Arden?

18 A Yes, it is, and they are.

19 Q Again just to be clear, December 18, 2001  
20 is prior to your joining Elizabeth Arden, Inc., is  
21 that correct?

22 A Yes.

23 Q Do you know who Cathy E. Shore-Sirotnin is?

24 A Yes, I do.

25 Q Who is she?

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1 James Thomas Perry

2 A She is the former chief trademark counsel  
3 for Elizabeth Arden.

4 Q Do you know approximately when she left  
5 Elizabeth Arden?

6 A She left the employ of the company in  
7 September of 2002.

8 Q Are you her immediate successor as  
9 trademark counsel for Elizabeth Arden?

10 A Yes, I am.

11 MR. DREITLER: I have no further questions  
12 at this time of Mr. Perry.

13 MR. CONE: Let's take a brief break then  
14 if you don't mind.

15 (A brief recess is taken.)

16 MR. CONE: I don't have any questions.  
17 Thank you.

18 (The witness is excused.)

19 (The proceedings are adjourned at 8:48  
20 a.m.)

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## I N D E X

## WITNESS

JAMES THOMAS PERRY

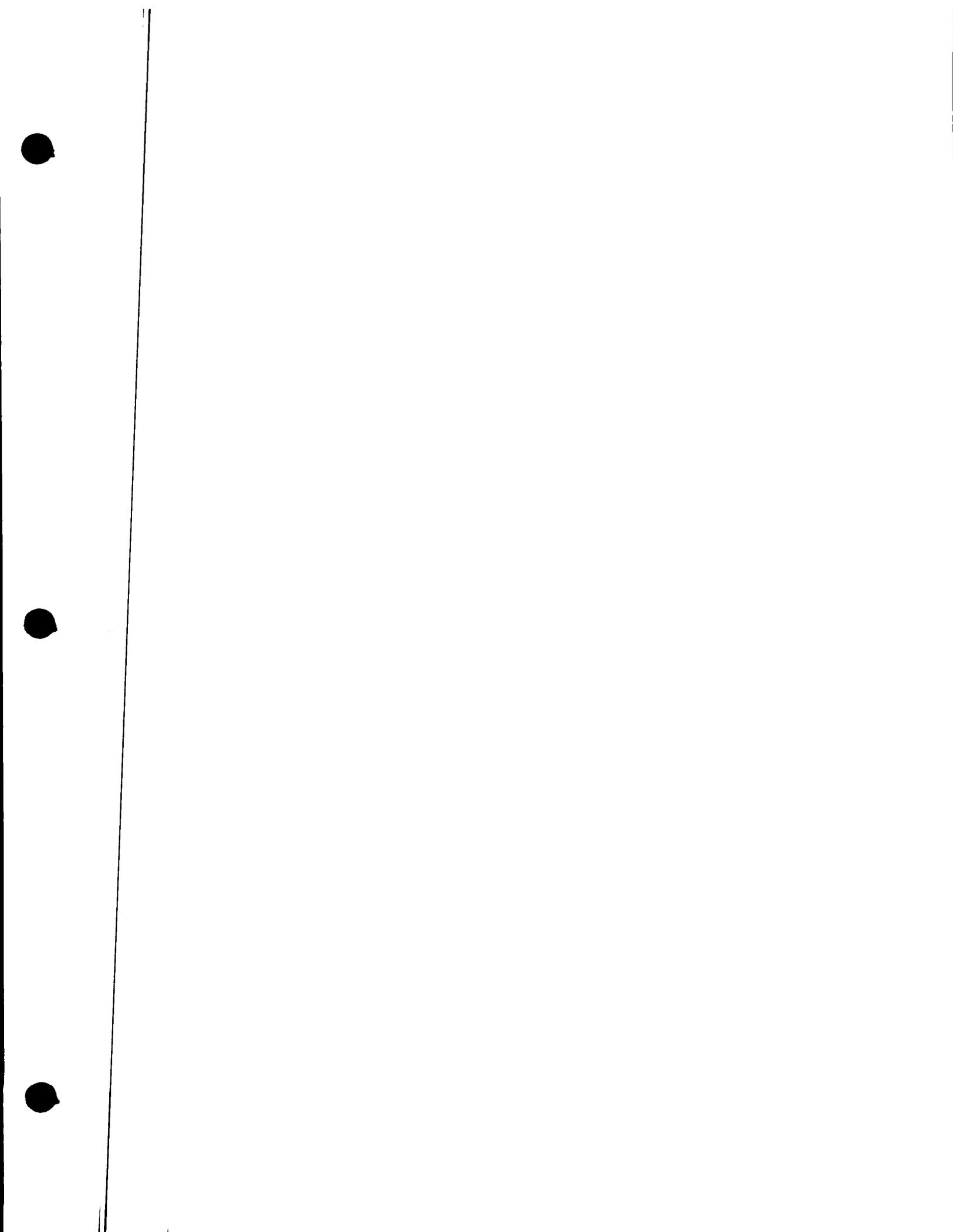
EXAMINATION BY:	PAGE
Mr. Dreitler	4

## E X H I B I T S

(Retained by the Reporter)

NUMBER	DESCRIPTION	PAGE
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Perry 2	Documents Bates Nos. EA-000000893 through EA-000000899	9

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<p><b>A</b></p> <p>Abelman 8:23  acquired 6:14  acquisition 6:17 8:4  action 12:17  add 7:12  address 4:3,8,14  adjourned 10:19  after 8:4 9:9  Again 9:19  agreement 6:17 7:10  8:5,14  agreements 7:4 8:3,3  AKIN 3:4  among 6:23  answer 5:8  answered 11:11  answers 11:13  APPEAL 1:3  Applicant 1:11 3:11  applicants 7:8  Applicant's 7:13,17 9:4  APPLICATION 1:5  applications 6:24  approximately 10:4  April 1:18 2:3,8 11:9  12:21  Arden 4:13,18,21 5:2  5:10,14,17,18,21,23  5:24 6:11,15,18,19  7:5 8:7,11,16,24 9:13  9:17,20 10:3,5,9  ARDENBEAUTY 1:5  arrival 9:10  asked 11:11  asset 6:17  assets 6:21,22,23  assistant 5:4  associate 5:3  Attorneys 3:5,11  Avenue 3:6 4:3,15  a.m 2:4 10:20</p>	<p>Briarcliff 4:11  brief 10:13,15  briefly 7:15  business 4:3 6:20,20  7:4 8:10 9:16</p> <p><b>C</b></p> <p>C 3:2 11:2 12:2,2  called 6:7  Card 4:24  Cathy 9:23  certify 11:7 12:10,16  chief 5:13,16 8:10 9:16  10:2  Cincinnati 4:24  clear 9:19  Columbus 3:14  comes 5:7  coming 7:25  companies 5:11  company 4:24 6:2,7  7:25 9:10 10:6  complete 11:10  CONE 3:8 10:13,16  Conopco 6:8,19  consent 8:3  consummated 6:17  correct 6:12 9:21 11:11  11:14  counsel 4:23 5:4,13,16  8:10 9:17 10:2,9  Countries 8:25  COUNTY 11:4 12:6  course 8:10 9:16  current 4:25  currently 4:12 5:22  6:11  customer 6:25</p>	<p>duly 4:4 12:12  during 11:12  duties 5:5  duty 9:16</p> <p><b>E</b></p> <p>E 3:2,2 4:2,2 9:23 11:2  11:2 12:2 13:1,10  East 2:7  EA-00000893 8:21  9:2 13:14  EA-00000899 9:3  13:15  Elizabeth 4:13,18,21  4:25 5:10,14,17,18  5:21,22,24 6:11,15  6:18,19,20 7:4 8:7,11  8:15 9:12,17,20 10:3  10:5,9  employ 10:6  employed 4:12,17  employment 4:14,21  8:15  entitled 7:10 8:24  entity 5:22  ESQ 3:8,15  ever 7:19  exact 7:23  examination 4:7 12:12  12:14 13:5  examined 4:6  excused 10:18  executed 8:14  Exhibit 7:8,11,13,18  8:19,20 9:4  explain 6:14</p>	<p>give 4:20  given 11:13 12:15  GLORIA 1:22 2:9 12:8  12:25  going 7:7 8:18  GUMP 3:4</p> <p><b>H</b></p> <p>H 3:12 4:2 13:10  HAGE 1:22 2:9 12:8  12:25  hand 7:7 8:18 12:21  HAUER 3:4  having 4:4  held 2:6  her 10:8  hereinbefore 12:12  hereunto 12:20</p> <p><b>I</b></p> <p>Identification 7:18 9:4  identified 8:19  immediate 10:8  Inc 1:7,10 4:13,18,22  5:2,10,14,17,18,19  5:21,23,24 6:10 9:20  included 6:22 8:2  intellectual 5:9  interested 12:18</p> <p><b>J</b></p> <p>J 4:2  James 1:16 2:6 4:10  5:1 6:1 7:1 8:1 9:1  10:1 11:7,18 12:11  13:4  January 6:16,16  John 3:8,12  joining 9:20  JONES 2:7 3:10  JOSEPH 3:15  just 4:20 9:19</p>	<p>Level 8:25  line 6:25  lists 6:25  LLP 3:4  long 4:17  look 7:11 8:22  looking 8:13</p> <p><b>M</b></p> <p>M 4:2,2 11:2  maintained 8:6,9 9:11  9:15  maintaining 5:9  Management 1:10 5:19  5:20,25 6:10,14  managing 5:9  Manor 4:11  marked 7:8,17 9:3  marriage 12:18  matter 1:4 12:19  McConnell 3:12  mind 10:14  months 7:25  MORANT 3:8  must 9:9</p> <p><b>N</b></p> <p>N 3:2 11:2,2 12:2 13:1  name 4:8  New 1:17,17 2:7,8,10  4:3,4,5,11,11,15,15  11:3,4 12:5,6,9  Nicholas 7:14  normal 8:9 9:15  Nos 7:16 9:2 13:13,14  Notary 2:10 4:5 11:24  12:9  Notice 2:8  November 4:19  NUMBER 13:12  numbers 7:9 8:21</p> <p><b>O</b></p> <p>O 4:2 11:2 12:2  oath 11:9  occupation 4:22  OFFICE 1:2  offices 2:7  Ohio 3:14 4:24  operation 8:7  operations 9:12  Opposer 1:8 3:5  Opposition 1:9  other 6:21  outcome 12:19  owned 5:25  owns 5:22 6:11</p>
<p><b>B</b></p> <p>B 13:10  Bates 7:9,16 8:20 9:2  13:13,14  Beauty 8:24  before 1:3 2:9 7:19 9:5  11:21  between 5:18  blood 12:17  BOARD 1:3  Boulevard 3:12  Box 3:13  branded 5:24 6:19,20  break 10:13</p>	<p><b>D</b></p> <p>D 11:2 13:1  Dallas 3:7  dated 2:8 8:22  dates 8:13  day 2:7 3:10 11:21  12:21  December 8:23 9:19  deposition 1:16 2:6  7:13 8:20 11:9,12  DESCRIPTION 13:12  document 7:7,11,19  8:2,5,19,22 9:5,11  Documents 7:16 9:2  13:13,14  door 5:7  Dreitler 3:15 4:7 10:11  13:6  dress 6:25</p>	<p><b>F</b></p> <p>F 12:2  familiar 6:2,7  FD 1:10 5:18,20,25  6:10,14  FELD 3:4  file 8:2  files 8:6,9 9:12,15  first 4:4 7:22,23,24 9:8  five 4:20  follows 4:6  former 10:2  forth 12:12  Frayne 8:24  from 6:18 8:4  full 4:8  further 10:11 12:16</p> <p><b>G</b></p> <p>G 11:2  general 4:23 5:3,8</p>	<p><b>K</b></p> <p>K 11:2  know 5:17 9:23 10:4  known 6:3</p> <p><b>L</b></p> <p>L 11:2  larger 8:2  Laura 7:14  left 10:4,6  legal 5:17  leisure 7:12  less 6:21  letterhead 8:23  Let's 10:13</p>	



AVIRY

GH

1-15-01  
APR # 11

PERRY  
Exhibit No. 2

4-21-05

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between, on the one hand, Unopco Sub, Inc. ("Unopco"), a Delaware corporation having a principal place of business in Wilmington, Delaware and Conopco, Inc. d/b/a Elizabeth Arden Co. ("Elizabeth Arden"), a New York corporation having a principal place of business in New York, New York (Unopco and Elizabeth Arden sometimes hereinafter referred to collectively as "Opposers") and, on the other hand, The Wet Seal, Inc. ("Wet Seal"), a Delaware corporation having a principal place of business in California.

WHEREAS, Wet Seal has adopted and is currently using, as a trademark and service mark, the term ARDEN B (the "Arden B Mark") in a distinctively styled script ("Stylized Format") depicted in attached Exhibit A;

WHEREAS, Wet Seal has filed applications for registration of the Arden B Mark in the Stylized Format, in connection with men's, women's and children's clothing and retail apparel store services, such application being identified as Serial No. 75/365,543, filed September 30, 1997 ("First Application"), and in connection with eyewear, jewelry, handbags, purses and backpacks, and hair ornaments, such application being identified as Serial No. 75/365,543, filed November 21, 1997 ("Second Application");

WHEREAS, Opposers have filed a Notice of Opposition to First Application, such proceeding identified as Opposition No. 112,906 ("First Opposition"), and a Notice of Opposition to Second Application, such proceeding identified as Opposition No. 112,592 ("Second Opposition"), based upon Opposers' prior use and/or registration of the trademark and service mark ELIZABETH ARDEN ("Elizabeth Arden Mark") in connection with a variety of products and services;

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ATTORNEY'S EYES ONLY

The Wet Seal, Inc., Opposer  
v.  
FD Management, Inc., Applicant  
Opposition No. 91,157022  
APPLICANT'S EXHIBIT NO. 11

WHEREAS, the parties wish to settle their differences relating to the issues raised by the First Opposition and Second Opposition, and in a manner designed to avoid potential confusion in the marketplace;

NOW, THEREFORE, in consideration of the premises, the terms and conditions herein, and for other good and valuable consideration, the receipt of which being acknowledged by the parties, the parties have agreed and do agree as follows:

1. Unopco and Elizabeth Arden shall not object to, and hereby consents and agrees to consent to, Wet Seal's use and registration of the Arden B Mark in the United States, or in any other country in which Elizabeth Arden has established trademark rights in the Elizabeth Arden mark, only if Wet Seal complies with all of the following conditions:

a. Wet Seal to neither use nor seek registration of the Arden B Mark as applied to cosmetics, skin care, hair care or fragrance products (including, but not limited to, eau de toilette, eau de cologne, eau de parfum, parfum, body lotion, body talc and power, bath and shower gel, body oil, body soap, body wash, body splash, facial moisturizer, facial wash, after shave lotion/balm, deodorants, antiperspirants and such other products commonly sold in a full fragrance line of goods) or their packaging, or as the name of spas, salons or stores specializing in the sale of cosmetics, skin care, hair care or body products or services in the United States or, as applicable, in the respective country in which Elizabeth Arden has established trademark rights in the Elizabeth Arden mark;

b. the Arden B Mark to only be commercially used and registered as a trademark or service mark in the United States or, as applicable, the respective country in which Elizabeth Arden has established trademark rights in the Elizabeth Arden Mark, in

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the Stylized Format; or if different than the Stylized Format, in a distinctively stylized form which is not the same as, nor likely to cause consumer confusion with, any of the stylized forms by which the Elizabeth Arden Mark is commercially portrayed in the United States, or the particular country of relevance;

c. Wet Seal not to use the Arden B Mark in the United States in connection with eyewear except in connection with eyewear, particularly sunglasses, sold and offered for sale in retail outlets and facilities bearing the Arden B Mark; and

d. Wet Seal not to register the Arden B Mark in the United States in connection with eyewear; provided that Elizabeth Arden shall not object to the use or registration by Wet Seal of the Arden B Mark in connection with eyewear, including sunglasses, anywhere in the world, except to the extent expressly prohibited by this Agreement.

2. Promptly after execution of this Agreement, and Wet Seal's deletion of "eyewear" from the Second Application, Opposers shall dismiss the First Opposition and Second Opposition, such dismissals to be with prejudice so long as Wet Seal is in compliance with the conditions recited in paragraph 1 hereof.

3. The parties to this Agreement acknowledge and recognize that avoidance of consumer confusion between Wet Seal's products and retail outlets bearing the Arden B Mark and Elizabeth Arden's products and retail outlets is a principal objective of this Agreement. Accordingly, to facilitate such objective, the parties hereto have respectively agreed as follows:

a. Wet Seal shall avoid the use of the distinctive trade dress features of the Elizabeth Arden "red door" spas, including but not limited to the color red, whether on its Arden B. clothing labels, in signage for its Arden B. stores, or elsewhere in the conduct

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of its operations or the advertising or promotion of its goods or services, where such use will result in consumer confusion, mistake or deception as to the source of goods or services of the parties. While the parties recognize there is a good faith dispute as to whether the labels like that attached as Exhibit B would result in consumer confusion, mistake or deception, for purposes of early resolution of this dispute, Wet Seal will discontinue use of the Exhibit B labels within six (6) months of this Agreement.

b. Wet Seal shall avoid the use of the name "Elizabeth" (or commonly known variations of such name such as Beth or Liz) as a prominent feature of its advertising or as the name of any spokesperson which it uses to promote the stores or products bearing the Arden B Mark, where such use in either the conduct of its operations or the advertising or promotion of its goods or services, will result in consumer confusion, mistake or deception as to the source of goods or services of the parties;

c. Wet Seal's sale of the branded cosmetics of third parties within any of its Arden B's outlets shall only be under circumstances where such sales do not cause consumer confusion, mistake or deception as to the source of goods or services of the parties; and

d. the parties shall hereafter reasonably confer and work together, cooperatively and in good faith, for the purpose of avoiding consumer confusion, mistake or deception as to the source of goods or services of the parties.

4. Should either party consider the other party to have breached or violated any term or provision of this Agreement, the complaining party shall notify the allegedly breaching party, in writing and by certified mail, return receipt requested, specifying the nature of such alleged breach or violation. The allegedly breaching party shall thereafter have thirty (30) days from

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receipt of such written notice to cure the breach, if any. In the event that such breach is cured during the thirty (30) day period, then the situation shall be such as if such breach or violation had never occurred.

5. This Agreement and the terms and provisions hereunder shall bind and apply, as well inure to the benefit of, the successors and assigns of, and companies parent or subsidiary to or affiliated with, the parties hereto.

6. This instrument constitutes the sole agreement of the parties hereto relating to the subject matter hereof. Any prior agreements, promises, negotiations, representations not expressly set forth in this Agreement are of no force or effect. Any modifications of this Agreement shall only be in writing in an instrument executed by all the parties.

7. This Agreement may be disclosed by either party to the United States Patent and Trademark Office or to any governmental agency responsible for the registration of trademarks or service marks.

8. This Agreement and any disputes arising under or related thereto (whether for breach of contract, tortious conduct or otherwise) shall be governed by the laws of the State of New York, without reference to its conflicts of law principles. Any legal actions, suits or proceedings arising out of this Agreement whether for breach of contract, tortious conduct or otherwise) shall be brought exclusively in the state courts of New York ("New York State Court") or the United States District Court for the Southern District of New York ("New York Federal Court"), and the parties to this Agreement hereby accept and submit to the personal jurisdiction of these New York courts with respect to any legal actions, suits or proceedings arising out of this Agreement; provided that nothing herein shall be interpreted to restrict any party's right to file (or remove from State Court) any action to the New York Federal Court, if otherwise appropriate.

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UNOPCO SUB, INC.

Date: Jan. 9, 2001

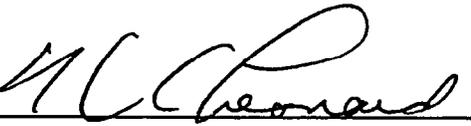
By: 

Print Name: K. C. LEONARD

Title: ASST. SECRE.

CONOPCO, INC. dba  
ELIZABETH ARDEN CO.

Date: Jan. 9, 2001

By: 

Print Name: K. C. LEONARD

Title: ASST. SECRE.

THE WET SEAL, INC.

Date: JAN. 15, 2001

By: 

Print Name: Ann Cadier Kim

Title: Senior Vice President,  
Chief Financial Officer

CONFIDENTIAL - FOR  
ATTORNEY'S EYES ONLY

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CONFIDENTIAL - FOR  
ATTORNEY'S EYES ONLY

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ATTORNEYS' EYES ONLY

WS 001352



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ATTORNEY'S EYES ONLY**

**ATTORNEYS' EYES ONLY**

**WS 001353**

AVIRY

DEC-18-2001 11:29

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December 18, 2001

BY FACSIMILE - 7 PAGES  
212-261-1060

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New York, New York 10003

*The Wet Seal, Inc. v. FD  
Management, Inc.*  
Opposition No. 91157022

PERRY  
Exhibit No.         

GH

4-21-05

Dear Cathy:

Re: **ARDEN BEAUTY** Search in Level 1 Countries  
Our Ref.: 07369

I refer to our telephone discussion today.

Attached are the search results for the United States and Canada. As anticipated, there are a number of trademarks containing the word "BEAUTY" or a variation of the word such as "BEAUTE" for perfumes and beauty products in Class 3 owned by the major companies in this field.

Estee Lauder Inc. has the following registered, pending and abandoned trademarks in the United States:

1. **ESTEE LAUDER BEAUTIFUL & Design** Reg. No. 1,353,598 for "cologne," in Class 3 registered Aug. 13, 1985.
2. **ESTEE LAUDER DEFINING BEAUTY** Appln. No. 76-320,687 for "cosmetics, toiletries and fragrances," in Class 3 filed Oct. 3, 2001.
3. **ESTEE LAUDER BEAUTY SPA** Appln. No. 74-028,806 for "facial masks," in Class 3 abandoned Jan. 9, 1992.
4. **ESTEE LAUDER BEAUTY SPA** Appln. No. 74-035,415 for "skincare treatment kits containing moisturizers for the face and eyes, facial cleanser and facial tonics," in Class 3 abandoned Sept. 23, 1991.

CONFIDENTIAL EA-000000893

Cathy E. Shore-Sirotn, Esq.

-2-

December 18, 2001

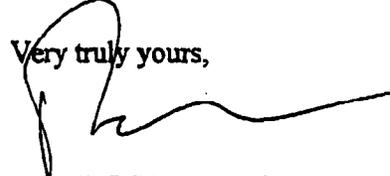
And, the following registration in Canada:

**ESTEE LAUDER BEAUTIFUL & Design** Reg. No. TMA310,536 for "toilet soap, shampoos, perfumes, colognes, essential oils, bath oils, cleansing creams and oils, skin creams, skin lotions, skin emollients, deodorants, anti-perspirants, astringents, hair sprays, pre-shave and after shave creams and lotions" registered Jan. 17, 1986.

In view of the number trademarks using the word "BEAUTY" or a variation in Class 3, we believe the trademark **ARDEN BEAUTY** will be able to coexist with these trademarks, including Estee Lauder's trademarks, provided that **ARDEN** is used together with **BEAUTY** in equal prominence.

As soon as receive the results for Korea and South Africa, we will contact you.

Very truly yours,



PETER J. LYNFIELD

df

Enclosures

**ABELMAN FRAYNE & SCHWAB  
150 EAST 42ND STREET  
NEW YORK, NY 10017-5612**

**TRADEMARK SEARCH IN THE UNITED STATES**

For: ELIZABETH ARDEN

Our Ref: PJL / JMD

Date: 11/30/01

- 1. Mark Searched: **ARDEN BEAUTY**
- 2. Goods Searched: **PERFUME**
- 3. Classes Searched: **03 (cosmetics and cleaning preparations)**

**SEARCHED FOR THE EXACT TRADEMARK IN ALL CLASSES**

4. Marks Found:

Federal Register

**AMERICAN BEAUTY** sn. 76-114,264 - perfumes, eau de colognes...bath products...soaps, splashes...moisturizers, oils... lotions.... Owner: Robert Kapnek (see page 1; also note related **AMERICAN BEAUTY**, page 16).

**RALPH LAUREN BEAUTY** sn. 76-160,416 - cosmetics, namely, foundation, blush, lipstick.... Owner: PRL USA Holdings, Inc. (see page 2).

**ESTEE LAUDER BEAUTIFUL** rn. 1,353,598 - cologne. Owner: Estee Lauder, Inc. (see page 3; also note related **ESTEE LAUDER DEFINING BEAUTY** and **ESTEE LAUDER BEAUTY SPA**, pages 3-4).

**KAREN OKADA BEAUTE** sn. 76-068,182 - clothing...and fragrances. Owner: George Latos (see page 5).

**NIVEA BEAUTE** sn. 76-204,797 - perfume, eau de toilette; make-up preparations for eyes, face and lips.... Owner: Beiersdorf Aktiengesellschaft (see page 6; also note related **N NIVEA BEAUTE**, page 7).

**LUXBEAUTY** sn. 76-107,364 - cosmetics, namely; hair care... facial care...body care...shaving accessories...beauty tools.... Owner: Lux Incorporated (see page 8).

**JACQUES DESSANGE BEAUTE** rn. 2,163,377 - skin soaps, perfume, essential oils.... Owner: Franklin Holding S.A. (see page 9; also note related **JD EXPERTISE BEAUTE**, page 56).

**BACHMANN SPRINGS BEAUTY** sn. 78-067,927 - perfumes and self-care products...toners, scented body spray...balms for shaving.... Owner: Bachmann Springs Ltd. (see page 10).

**HELENA RUBINSTEIN BEAUTY GALLERY** sn. 75-556,428 - retail store services featuring cosmetic, skincare and fragrance products. Owner: Parbel of Florida, Inc. (see page 11; also note related **GOLDEN BEAUTY**, page 23).

**MARCHAM AMERICAN BEAUTY** sn. 75-278,747 - skin creams and lotions.... Owner: Marcham Laboratories, Inc. (see page 28).

**DELEON BEAUTY FLUID** rn. 2,097,955 - cosmetics, namely facial lotions for women. Owner: Federico Deleon, dba Deleon Research Company (see page 30).

**WALT DISNEY'S SLEEPING BEAUTY** sn. 75-543,891 - cosmetics and toiletries, namely hair shampoo...and perfumes and cologne.... Owner: Disney Enterprises, Inc. (see page 33).

**SALLY BEAUTY** sn. 78-061,857 - retail store services in the field of beauty supplies and equipment. Owner: Sally Beauty Holdings, Inc. (see page 39; also note related **SALLY BEAUTY**, page 60).

**LULU BEAUTY** sn. 75-918,325 - cosmetics and beauty items... perfume, body lotion, bubble bath...body soap. Owner: Julie Merriman (see page 44).

**SELLECCA BEAUTY** sn. 75-892,517 - ...skin care and make-up products.... Owner: Connie Sellecca (see page 45).

**OIL OF BEAUTY** rn. 2,410,777 - hydrating body and face lotion; face and body wash.... Owner: Cumberland Swan Holdings, Inc. (see page 54).

**TAMARA DE BEAUTY** rn. 2,214,675 - ...skin cleansing milks, facial and mud masks...hand and body moisturizers...lotions.... Owner: Tamara D. Berkovich (see page 57).

**ANNEMARIE BORLIND NATURAL BEAUTY** rn. 2,393,952 - perfumery and cosmetics.... Owner: Borlind Gesellschaft Far Kosmetische Erzeugnisse MbH (see page 63).

**State Register**

**AMERICAN BEAUTY** (California rn. 99,344) - perfume, cosmetics. Owner: Steven Bajorr (see page 68).

**JUDITH'S BEAUTH SALON** (California rn. 50,074) - hair cuts, hair styling.... Owner: Judith Ospina (see page 70).

**FRANCESCA BEAUTY** (Massachusetts rn. 58,942) - cosmetics and stores. Owner: Francesca Guerrera Olsen (see page 75; also note related **VISAGE BEAUTY**, page 74).

**Common Law**

**ELIZABETH ARDEN BEAUTY SLEEP** - trademark registration in the United Kingdom, in International Class 3, owned by Unilever N.V. (see page 81; also note additional UK registration, page 82).

**ARDEN BEAUTY PARLOUR** - company name of barber shop, located in Happy Valley, Hong Kong (see page 85).

**Internet Domain Names**

NO PERTINENT RECORDS FOUND.

**Internet Websites**

CONSULT THE FULL SEARCH FOR PRINTOUTS FROM WEBSITES REVEALED DURING A REVIEW OF VARIOUS INTERNET SEARCH ENGINES.

PLEASE NOTE THAT THE PROGRAM UTILIZED ONLY SUPPLIES THE FIRST 100 CITATIONS AS A MEANS FOR PROVIDING A *SAMPLING* OF POSSIBLE RELEVANT REFERENCES.

**ABELMAN FRAYNE & SCHWAB  
150 EAST 42ND STREET  
NEW YORK, NY 10017-5612**

**TRADEMARK SEARCH IN CANADA**

For: ELIZABETH ARDEN

Our Ref: P JL / JMD

Date: 11/30/01

- 1. Mark Searched: **ARDEN BEAUTY**
- 2. Goods Searched: **PERFUME**
- 3. Classes Searched: **03 (cosmetics and cleaning preparations)**

**SEARCHED FOR THE EXACT TRADEMARK IN ALL CLASSES**

4. Marks Found:

Canadian Register

**ESTEE LAUDER BEAUTIFUL** m. TMA310,536 - toilet soaps, shampoos, perfumes, colognes, essential oils, bath oils...skin lotions...deodorants...after shave creams and lotions. Owner: Estee Lauder Cosmetics Ltd. (see page 1).

**LUXBEAUTY** app. 1069,962 - cosmetics, namely; hair care... facial care...body care...shaving accessories...beauty tools.... Owner: Lux Incorporated (see page 2).

**DAPHNE BEAUTE** m. TMA344,833 - cosmetics and care products for women...lotions.... Owner: Lise Watier Cosmetiques Inc. (see page 3; also note related **ASTROLOGIE BEAUTE DE LISE WATIER**, page 8).

**GISELE DELORME BEAUTE** m. TMA400,684 - soaps, creams, lotions...eaux de toilette...essential oils.... Owner: Gisele Delorme (see page 4).

**DESSANGE BEAUTE PARIS** app. 1027,988 - perfumes, shampoos, hair lotions, cosmetics.... Owner: Franklin Holding S.A. (see page 6; also note related **JD EXPERTISE BEAUTE**, page 53).

**AVON BODY BEAUTY** rn. TMA279,325 - ...cleanser, body massage cream, bath and shower gellee, and body refresher cream. Owner: Avon Canada Inc. (see page 25; also note related **AVON BEAUTY FLUID**, page 26; **AVON PORE MINIMIZER BEAUTY MASK**, page 32; and **AVON PERSONALIZED BEAUTY CONSULTANT**, page 38).

**CULLIGAN BEAUTY WATER** rn. TMA176,799 - water processed or purified to be used as a cosmetic application.... Owner: Culligan of Canada, Ltd. (see page 28).

**HELENA RUBINSTEIN BEAUTY GALLERY** app. 1011,028 - perfumes, eaux de toilette, bath and shower gels and salts... body deodorants...essential oils for the body for personal use.... Owner: Helena Rubinstein (see page 30; also note related **GOLDEN BEAUTY**, page 10).

**HANORAH DAILY BEAUTY** rn. TMA305,186 - cosmetics, namely creamy cleansers, fluid cleansers...tonic lotions.... Owner: Hanorah S.p.A. (see page 58).

**OIL OF BEAUTY** rn. TMA279,322 - skin moisturizing lotion. Owner: Shoppers Drug Mart Inc. (see page 60).

**ANNEMARIE BORLIND NATURAL BEAUTY** rn. TMA551,232 - perfumery; cosmetics and personal care products...pre-shave and after-shave lotions...toilet water.... Owner: Borlind Gesellschaft Fur Kosmetische Erzeugnisse MbH (see page 65).

Canadian Common Law

NO PERTINENT RECORDS FOUND.

Canadian Domain Names

NO PERTINENT RECORDS FOUND.

Internet Websites

PLEASE CONSULT THE U.S. PORTION OF THIS REPORT.