

BACKGROUND

On July 29, 2004, Opposer sent a letter to Applicant discussing alleged deficiencies with Applicant's Responses to Interrogatories and Responses to Production of Documents. (Exhibit A). In that letter, Opposer gave a blanket objection to Applicant's Responses to Opposer's Document Request, mainly objecting to the form of the responses. The letter also addressed specific objections regarding Applicant's Interrogatory Responses. (In the July 29th letter, Opposer did not give Applicant any specific objections to its document production because Applicant was in the process of reviewing its documents when Applicant answered Opposer's letter on August 25, 2004 and had not produced any documents to Opposer at that time.) Therefore, in Applicant's August 25th response to the July 29th letter, Applicant only discussed the interrogatory objections. (Exhibit B).

Next, Opposer sent a second letter on September 2, 2004 re-alleging the same issues as set forth in their July 29th letter. (Exhibit C). In this letter, Opposer specifically requested that all production documents be produced by September 8, 2004.

In response to Opposer's August 25th letter, Applicant sent Opposer Applicant's first production on September 2, 2004, see Alto 0001 – 0015. (Exhibit D). Opposer received these documents but failed to mention this fact in their motion. (For proof that Opposer received Alto 001-0015, see Exhibit E; Opposer's Response to Applicant's Motion to Compel, Page 2, lines 4-5). The First Production reflected sample labels, packaging and advertisements of the Applicant's goods with regard to the Kryptonite mark.

On September 7, 2004, Applicant again produced documents -- Alto 0016 to Alto 0040. (Exhibit F). It is worthy to note that Applicant complied with Opposer's time requirement regarding production dates. That is, all of Applicant's documents were produced before Opposer's unilateral September 8th deadline. The second production contained the Kryptonite file history and web pages from Applicant's web site. Opposer, however, did not mention this production in their motion, even though they were faxed a letter regarding this production and sent a letter with the production via U.S. Mail on September 7. As a courtesy, Applicant again produces Alto 0016 –Alto 0040. (See Exhibit F).

ARGUMENT

The Kryptonite mark as used by Applicant is a very small part of Applicant's product line. This being the case, Alto has only a few documents regarding the Kryptonite trademark. Applicant has done its best in locating documents responsive to Opposer's request. Any documents that were found were produced. Applicant, however, does not have documents pertaining to all of Opposer's requests.

Request One

No documents exist in any way relating directly or indirectly to the original conception, the development, the evaluation or ultimate selection of Applicant's Kryptonite mark.

Request Two

Documents responsive to Request Two have been produced. (Alto 0001 -0015).

Request Three

No documents exist evidencing the classes of customers to whom Applicant markets or sells or intends to market or sell goods and services in connection with Applicant's Kryptonite mark.

Request Four

No documents exist evidencing the channels of trade in which Applicant markets or sells or intends to market or sell goods or services in connection with Applicant's Kryptonite mark.

Request Six

Documents responsive to Request Six have been produced. (Alto 0022 -0038).

Request Ten

No documents exist evidencing any survey, investigation, or other market study conducted by or on the behalf of applicant relating to goods and services on or in connection with which Applicant's Kryptonite mark is used or intended to be used.

Request Twelve

A document responsive to request twelve has been produced. (Alto 0041).

Request Thirteen

After an extensive review of Applicant's documents it was found that no documents exist as to Request 13.

Request Fourteen

After an extensive review of Applicant's documents it was found that no documents exist as to Request 14.

Request Sixteen

After an extensive review of Applicant's documents it was found that no documents exist as to Request 16.

Request Seventeen

After an extensive review of Applicant's documents it was found that no documents exist as to Request 17.

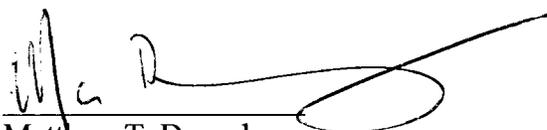
Request Eighteen

After an extensive review of Applicant's documents it was found that no documents exist as to Request 18.

CONCLUSION

Applicant respectfully submits that Opposer's motion should be denied as moot on the basis that Applicant has produced documents responsive to Opposer's discovery requests. Accordingly, Applicant should not be required to respond to Opposer's document requests as set forth in this motion.

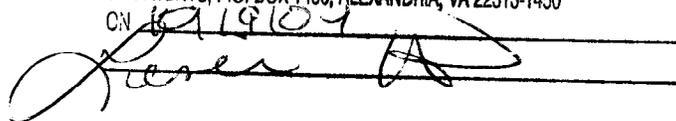
Respectfully submitted,



Matthew T. Dennehy
Stephen E. Feldman

STEPHEN E. FELDMAN, PC
12 East 41st Street
New York, NY 10017
(212) 532-8585

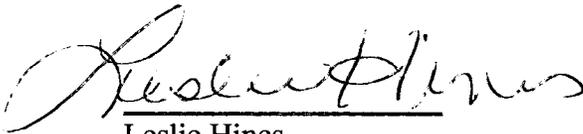
"I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS
AND IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER
OF PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450
ON 12/19/04



CERTIFICATE OF SERVICE

A copy of the foregoing Applicant's Response to Opposer's Motion to Compel has been served by the undersigned, this 9 day of October, 2004, upon Opposer's attorneys:

Michael Best & Friedrich LLP
Lori Meddings
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202


Leslie Hines

Dated: October 9, 2004

EXHIBIT A

July 29, 2004

VIA FACSIMILE and U.S. MAIL

Stephen E. Feldman, Esq.
12 East 41st Street
New York, NY 10017

Re: Schlage Lock Company v. ALTO Products Corp.
Opposition No. 91 159885
File No. 056227/9085

Dear Mr. Feldman:

We received Applicant's Responses to Opposer's First Set of Interrogatories and First Request for Production of Documents and Things. In most respects, Applicant's responses are grossly deficient and it is clear that Applicant put forth no time or effort in crafting its responses. In particular, Applicant's blanket objection and response (used in response to nearly every request), that a Request seeks confidential business information, is improper in almost every instance that it is raised by Applicant.

The Protective Order offered by Applicant includes the following definition of Confidential Information: "Materials which the Producing Party in good faith believes constitutes such material as matter used by it in, or pertaining to, its business which matter is not generally known and which the Producing Party would normally not reveal to third parties or would cause third parties to maintain in confidence." (emphasis added)

Pursuant to this definition, Applicant improperly identifies the following information as confidential: samples of labels, packaging, advertisements, etc... (Request No. 2); documents relating to the customers for and channels of trade in which Applicant's goods are sold (Request Nos. 3 & 4); file history for Serial No. 76/452,177 (Request No. 6); and printouts of any web pages featuring Applicant's Mark (Request No. 18).

In addition, documents relating to the factual bases for Applicant's affirmative defenses and any denial raised in the Answer would not, across the board, be considered confidential pursuant to the above definition, and documents relating to those affirmative defenses should be produced.

With respect to Applicant's responses to Opposer's Interrogatory Requests, Opposer notes deficiencies in the following responses:

Stephen E. Feldman, Esq.
July 29, 2004
Page 2

Interrogatory Response No. 5: Applicant must identify the documents reflecting sales, and is also to identify gross sales for each year since the date of first use of Applicant's Mark.

Interrogatory Response No. 7: Applicant states that it has no advertising or promotional materials bearing Applicant's Mark. Advertising and promotional material would include catalogs, brochures, information on Applicant's web site, as well as any other web sites that feature Applicant's products sold in connection with Applicant's Mark. We note that Applicant's response to Interrogatory No. 9 specifically identifies Applicant's web site and its catalog, which is a direct contradiction to Applicant's response to this Interrogatory. Please supplement this response.

Interrogatory Response No. 8: Applicant states that no monies have been spent advertising Applicant's Mark; however, catalogs and Applicant's web site advertise Applicant's products and surely cost money to produce and operate. Please supplement this response.

Interrogatory Response No. 17: Applicant identifies the mark KRYPTONITE as being the only mark relevant to this proceeding. Please identify who owns the relevant mark(s) KRYPTONITE that Applicant deems relevant to this proceeding.

Interrogatory Response No. 18: The commercial impression of Applicant's Mark is the message intended to be conveyed by Applicant in using the mark KRYPTONITE in connection with Applicant's goods. Please supplement this response.

Interrogatory Response No. 19: Opposer seeks the factual basis for each of Applicant's denials in the Answer to the Notice of Opposition. Such facts do not include legal opinions or impressions; thus, Applicant's objection is improper and Applicant must answer the Interrogatory.

Interrogatory Response No. 20: Opposer seeks the factual basis for each of Applicant's affirmative defenses in the Answer to the Notice of Opposition. Such facts do not include legal opinions or impressions; thus, Applicant's objection is improper and Applicant must answer the Interrogatory.

In addition, please advise when you plan to send the revised Protective Order.

Very truly yours,
MICHAEL BEST & FRIEDRICH LLP


Lori S. Meddings

cc: Dyann L. Kostello, Esq.
Judith L. Grubner, Esq.

X:\clientb\056227\9085\A0884377.1

EXHIBIT B

Law Offices of
STEPHEN E. FELDMAN, P.C.

12 EAST 41st STREET
NEW YORK, NEW YORK 10017
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sfeldman@feldman-law.com

LONG ISLAND OFFICE
120 MAIN STREET (ROUTE 25A)
HUNTINGTON, NEW YORK 11743
PATENT AND TRADEMARK LAW

August 25, 2004

VIA FAX

Lori Meddings
Michael Best & Friedrich, LLP
101 East Wisconsin Avenue, Suite 3300
Milwaukee, Wisconsin 53202

Re: Schlage Lock Company v. ALTO Products
Corp.
Opposition No.: 91159885

Dear Ms. Meddings:

In your July 29, 2004 letter you note various deficiencies with respect to Applicant's responses to your Interrogatory Requests. Below we address your issues.

Interrogatory Response No. 5: Applicant is still in the process of reviewing its files. As soon as the sales files are found and the protective order is signed, all relevant documents reflecting sales with respect to products bearing the Kryptonite mark we be forwarded to you.

Interrogatory Response No. 7: Applicant does not directly advertise any Kryptonite product. Only a minute portion of its catalog and website are designated to Kryptonite Friction Material.

Interrogatory Response No. 8: Applicant's advertising consists of catalogs and a website for its entire product line. Any money spent on the pages listing Kryptonite Friction Material is negligible compared to monies spent on the catalogs and website as a whole.

Interrogatory Response No. 17: The mark Kryptonite with respect to "automotive parts namely: friction materials used on clutch plates sold through wholesalers to automotive professionals for their use in automotive repair, where the mark is not seen by the ultimate customer" is owned by Alto Products Corp.

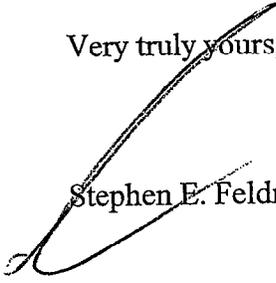
Interrogatory Response No. 18: This Interrogatory is duplicative of Interrogatories Nos. 11 and 19

Interrogatory Response No. 20: Applicant believes its denials stand on their own and any factual basis for these denials will be answered at a more appropriate time.

Interrogatory Response No. 21: Applicant believes its affirmative defenses stand on their own and any factual basis for these affirmative defenses will be answered at a more appropriate time.

Additionally, we have attached the revised protective order. Please sign it and return it to us so that we may file it with the TTAB.

Very truly yours,



Stephen E. Feldman

SEF/MTD

cc: Alto

EXHIBIT C

**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

www.mbf-law.com

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N18 W24133 Riverwood Drive
Suite 200
Waukesha, Wisconsin 53186-1174
FAX (262) 958-8565
Telephone (262) 958-8560Author: Lori S. Meddings
Writer's Direct Line: (414) 277-3484
Email: lsmeddings@mbf-law.comOffices In:
Milwaukee, Wisconsin
Madison, Wisconsin
Manitowoc, Wisconsin
Lehigh Valley, Pennsylvania
Chicago, Illinois
(Michael Best & Friedrich LLC)Member: Lex Mundi,
A Global Network of more than
150 Independent Firms

September 2, 2004

VIA FACSIMILE 212-532-8598 and U.S. MAILStephen E. Feldman, Esq.
12 East 41st Street
New York, NY 10017Re: Schlage Lock Company v. ALTO Products Corp.
Opposition No. 91 159885
File No. 056227/9085

Dear Mr. Feldman:

We received your letter of August 25, 2004. We note that your letter does not address all of the concerns raised in our July 29, 2004 letter. In particular, you have not responded with respect to any of the deficiencies noted in Applicant's Response to Opposer's First Request for Production of Documents and Things. In our July 29th letter, we noted that Applicant improperly identifies as "confidential" samples of labels, packaging, advertisements, etc., ... (Request No. 2); documents relating to customers for and channels of trade in which Applicant's goods are sold (Request Nos. 3 and 4); Applicant's file history for Serial No. 76/452,177 (Request No. 6); and printouts of any web pages featuring Applicant's mark (Request No. 18). In addition, in that letter we noted that documents relating to the factual bases for Applicant's affirmative defenses and any denial raised in the answer also are not confidential and any documents relating to those affirmative defenses should be produced.

With respect to your response concerning our objections to Applicant's interrogatory responses, we note that with regard to Response No. 7 you indicate that "Applicant does not directly advertise any Kryptonite product. Only a minute portion of its catalog and website are designated to Kryptonite Friction Material." This fact does not alleviate you from the need to produce information and documents responsive to this request. All documents and materials that incorporate, be it one page out of 50 or 25 out of 50, Applicant's Kryptonite branded products must be produced.

In addition, we have yet to receive any documents from Applicant. Again, this is surprising given the aggressive approach taken by Applicant with regard to gathering documents from Opposer, which were sent over a month ago. We note that Discovery closes in this case on October 10, 2004. As a result, we must receive Applicant's documents no later than

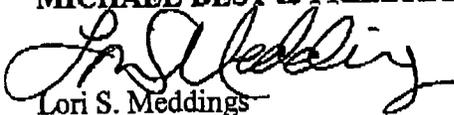
**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

Stephen E. Feldman, Esq.
September 2, 2004
Page 2

September 8, 2004 in order to allow us sufficient time to serve on Applicant requests to admit and any other additional discovery needed in this case. We look forward to receiving your prompt response to this letter along with Applicant's documents.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP



Lori S. Meddings

cc: Dyann L. Kostello, Esq.

X:\clientb\0562279085\A0922677.1

EXHIBIT D

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PATENT AND TRADEMARK LAW

September 2, 2004

VIA FIRST CLASS MAIL

Lori Meddings
Michael Best & Friedrich, LLP
101 East Wisconsin Avenue, Suite 3300
Milwaukee, Wisconsin 53202

Re: Schlage Lock Company v. ALTO Products
Corp.
Opposition No.: 91159885

Dear Ms. Meddings:

Enclosed are documents responsive to Opposer's First Request for Production of Documents.
(Alto 0001 - Alto 0015).

Very truly yours,

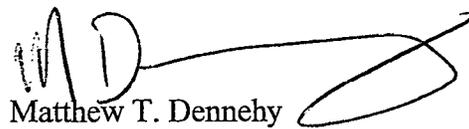

Matthew T. Dennehy
SEF

EXHIBIT E

Order (this despite the fact that many of the requests called for production of publicly disseminated documents like advertising materials and product packaging). Yet Applicant has failed to supplement its discovery responses and document production following entry of the Protective Order by the Board. Indeed, Applicant has thus far produced only 15 documents in contrast to the over 6500 documents that have now been produced by Opposer. It is completely unreasonable for Applicant to hold Opposer to a higher standard than it has applied to itself.

FACTS

On July 15, 2004, Opposer sent additional documents to Applicant marked Bates Nos. KRY-004528 through KRY-006445 via Federal Express. See Exhibit A. The next day, Opposer received a letter from Applicant by facsimile indicating that Applicant had not received any documents responsive to various requests. See Exhibit B. With respect to almost every request identified in that July 16, 2004 letter, Opposer had raised various objections, including an objection that the request sought confidential information of Opposer, and that responsive documents would be produced pursuant to the entry of an acceptable Protective Order by the Board. Applicant's July 16, 2004 letter did not acknowledge or address any of Opposer's objections made in its discovery responses.

Applicant sent a letter to Opposer on September 2, 2004, which essentially is a duplicate of Applicant's July 16, 2004 letter. See Exhibit C. Opposer promptly responded to Applicant's letter the same day, and indicated that it would produce its confidential documents upon entry of the Protective Order by the Board. See Exhibit D.

On September 9, 2004, the Board's approval and entry of the stipulated Protective Order was noted on TTABVUE. Applicant sent a letter to Opposer that same day demanding that Opposer "immediately" send confidential documents to Applicant. See Exhibit E. Applicant

EXHIBIT F

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PATENT AND TRADEMARK LAW

September 7, 2004

VIA Facsimile and U.S. Mail

Lori Meddings
Michael Best & Friedrich, LLP
101 East Wisconsin Avenue, Suite 3300
Milwaukee, Wisconsin 53202

Re: Schlage Lock Company v.
Alto Products Corp.
Opposition No.: 91159885

Dear Ms. Meddings:

This is in response to your September 2, 2004 letters.

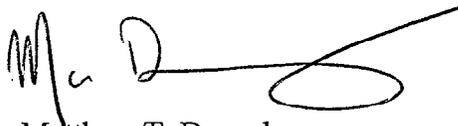
On the day you sent your letters, Applicant produced samples of labels, packaging and advertisements as requested in Opposer's Request Nos. 2 and 7. Therefore, the objections to Request Nos. 2 and 7 are moot. As for Opposer's requests for documents relating to customers and channels of trade in which Applicant's goods are sold (see Opposer's Request Nos. 3 and 4), these requests ask for confidential information and will not be produced until the protective order is entered by the board as per your suggestion.

Additionally, Opposer's Request Nos. 6 and 18 are readily available from public sources but in order to expedite discovery we have enclosed (1) Applicant's file history for App. No. 76/576,026 and (2) web pages from Applicant's website. (Alto 0016-0040).

Also note, immediately after the TTBA enters the protective order, we expect production of all documents referred to in our July 16th and September 2nd letters. If we do not receive these documents promptly, a motion compelling production will be filed.

Further, we are operating under the belief that all of the documents mentioned in our July 16th and September 2nd letters will be produced, specifically, all agreements with DC Comics, all litigation and other paper and things referred to in *DC Comics v. Kryptonite Corp.* and all papers in all disputes with DC Comics, and its predecessors. (App. First Request for Docs., Request Nos. 63-65). If this is not the case, please notify us immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. T. Dennehy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Matthew T. Dennehy
Stephen E. Feldman

Enclosure:

Alto 0016-0040 by U.S. Mail Only

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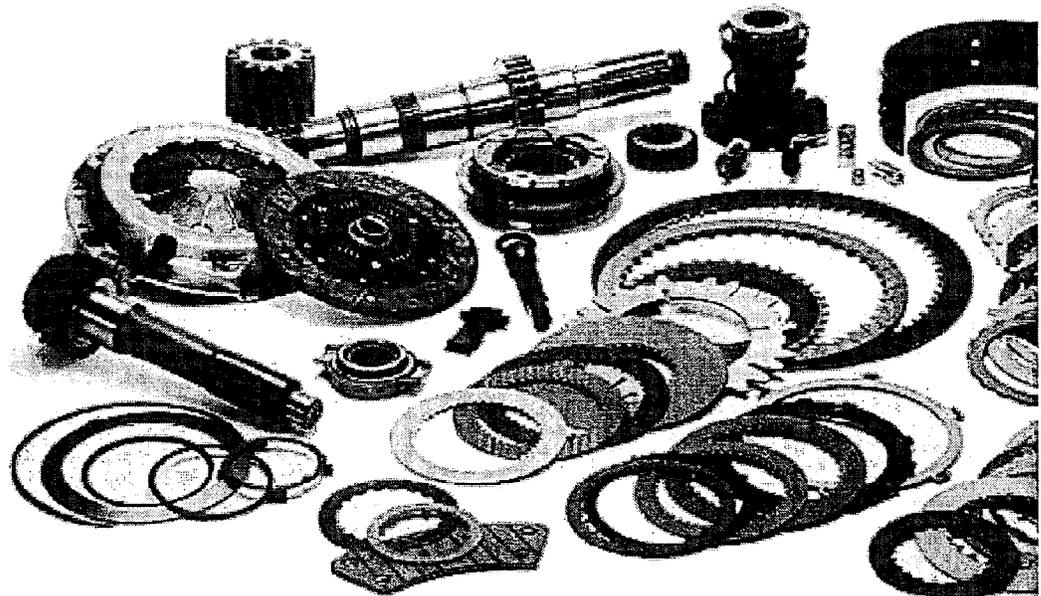
One Alto Way
P.O. Box 1088
Atmore, AL 36504

EMAIL:
sales@altousa.com

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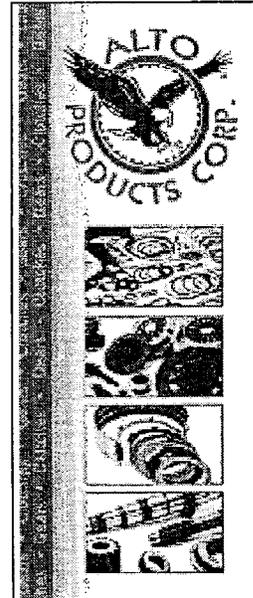
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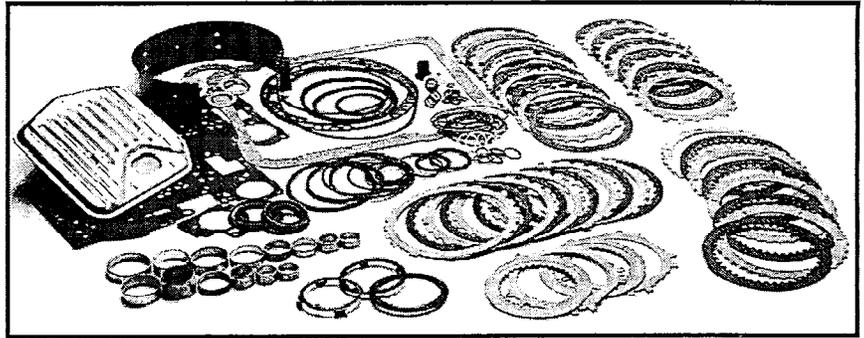
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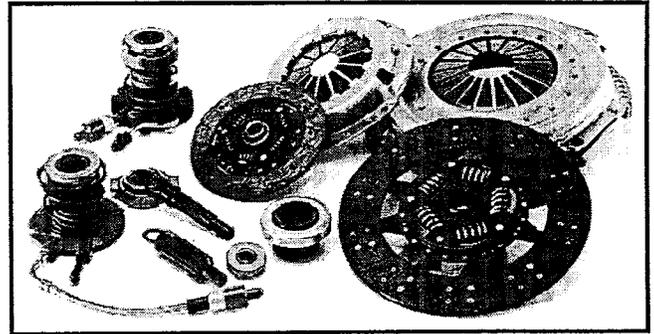
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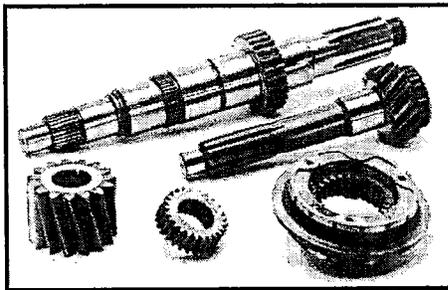


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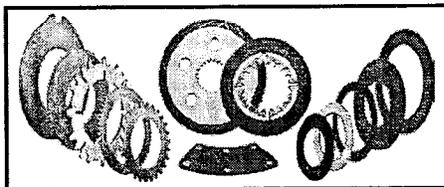


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ALTO
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www.altostandard.com

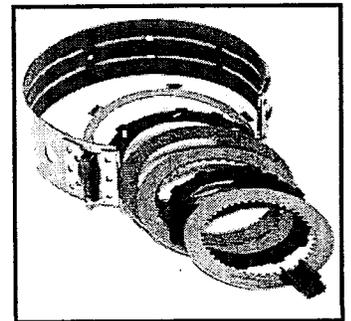


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:

Applicants : ALTO PRODUCTS, CORP..
Application No. : 76/493,797
Filed : February 24, 2003
Mark : KRYPTONITE
Law Office : 110
TM Attorney :

Assistant Commissioner
For Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

LETTER

In response to the October 14, 2003 office action.

Applicant is incorporated in the State of Alabama.

REMARKS

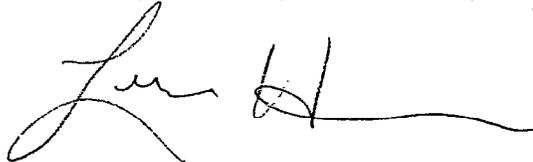
Charge any pertinent fees to Deposit Account No. 06-0515.

Respectfully submitted,

Stephen E. Feldman
Reg. No. 22,473

STEPHEN E. FELDMAN, P.C.
Attorneys for Applicant
12 East 41st Street
New York, New York 10017
(212) 532-8585

I hereby certify that this correspondence is being deposited with
the United States Postal Service as first class mail in an envelope
addressed to : Commissioner of Patents and Trademarks,
P.O. Box 1450, Alexandria, VA 22313-1450, on: 10/17/03



ALTO
0022

RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

The official stamp of the United States Patent and Trademark Office hereon indicated that the LETTER and CERTIFICATE OF MAILING, in re:

Applicant: ALTO PRODUCTS CORP.

Application No.: 76/493,797

Filed: February 24, 2003

Mark: KRYPTONITE

Law Office: 110

TM Attorney:
has been received on:

ALTO
0023