

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

SCHLAGE LOCK COMPANY,

Opposer,

Opposition No. 91 159885
Serial No. 76/493,797

v.

ALTO PRODUCTS CORP.,

Applicant.

OPPOSER'S MOTION TO COMPEL

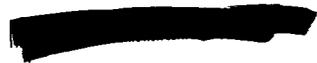
INTRODUCTION

Opposer, by its attorneys, hereby moves the Trademark Trial and Appeal Board (the "Board") for an order compelling Applicant to immediately supplement its responses and produce documents as requested below, and to suspend these proceedings and to reset trial dates upon lifting the suspension. Applicant has failed to adequately respond to certain written discovery and produce certain documents, even after Opposer's attempts to resolve these defects. Opposer's counsel states that it has made a good faith effort by correspondence with Applicant's attorneys to resolve the issues presented in this Motion with Applicant in accordance with 37 C.F.R. §§2.120 (e) and 2.120 (h). In support of its Motion, Opposer states as follows:

BACKGROUND

Applicant served Responses to Opposer's First Request for Production of Documents on July 14, 2004. See Exhibit A.

On July 29, 2004, Opposer sent a letter to Applicant that addressed a number of deficiencies with respect to Applicant's responses to Opposer's discovery requests. See Exhibit B. In particular, Opposer's July 29 letter took issue with Applicant's blanket objections set forth



10-25-2004

in response to a number of Opposer's document requests, that the request seeks confidential business information. Applicant raised this objection in response to requests seeking public information, including requests seeking samples of labels, packaging, advertisements (Request No. 2); documents relating to the channels of trade for Applicant's goods (Request Nos. 3 and 4); the file history of Applicant's application (Request No. 6); and printouts of any web page featuring Applicant's Mark (Request No. 18).

Opposer pointed out that in raising this objection, Applicant misapplied the definition set forth in the stipulated Protective Order, which was drafted by Applicant. The Protective Order definition of Confidential Information is: "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) See Exhibit C. This definition clearly does not encompass the public information sought by Opposer in the Requests identified above. Opposer also addressed deficiencies in Applicant's response to several of Opposer's interrogatory requests in its letter.

Applicant responded to Opposer's letter on August 25, 2004. See Exhibit D. In that letter, Applicant failed to address any of Opposer's issues raised with respect to Applicant's responses to Opposer's document requests. Accordingly, Opposer sent another letter to Applicant on September 2, 2004, pointing out that Applicant had not addressed the issues relating to Applicant's responses to Opposer's document requests raised in Opposer's July 29, 2004 letter. See Exhibit E. Opposer has yet to receive a response to these issues, and Applicant has yet to produce documents responsive to the requests identified below.

ARGUMENT

Applicant has failed to identify and/or produce documents responsive to a number of Opposer's document requests, and in particular has improperly claimed as confidential documents that are public, and not entitled to such protections. The deficient responses and improper objections are as follows:

1. All documents in any way relating directly or indirectly to:
 - (a) the original conception of Applicant's Mark;
 - (b) the development of Applicant's Mark;
 - (c) the evaluation of Applicant's Mark; and
 - (d) the ultimate selection of Applicant's Mark.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

2. Samples of all labels, packaging materials, advertisements, catalogs, brochures, business materials, website printouts, and other promotional materials bearing Applicant's Mark.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks

confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: Applicant's objection to the extent that this Request seeks confidential proprietary business information and attorney-client privilege and work product is completely improper and is inconsistent with the definition of "Confidential Information" contained in the Protective Order for this case. Labels, packaging, advertisements, catalogs, brochures and web site printouts are public information and under no logical definition would be considered confidential or attorney-client privilege or work product. No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

3. All documents and things 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 Mark.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

4. All documents 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 Mark.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: Applicant's objection to the extent that this Request seeks confidential proprietary business information and attorney-client privilege and work product is completely improper and is inconsistent with the definition of "Confidential Information" contained in the Protective Order for this case. Information relating to the channels of trade in which Applicant markets its goods or services is not private or confidential nor is such information work product or protected by attorney-client privilege. No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

6. All documents relating to Trademark Application Serial No. 76/452,177.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: Applicant's objection to the extent that this Request seeks confidential proprietary business information and attorney-client privilege and work product is completely improper and is inconsistent with the definition of "Confidential Information" contained in the

Protective Order for this case. The prosecution history for a trademark application is public information and under no logical definition would be considered confidential. No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

10. Any survey, investigation, or other market study conducted by or on behalf of Applicant relating to goods and services on or in connection with which Applicant's Mark is used or intended to be used.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

12. All documents evidencing Applicant's annual dollar volume of sales of goods or services on or in connection with which Applicant's Mark has been used for every year from the date of first use to the present.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

13. All documents relating or referring to the amount of money expended annually by Applicant to advertise or promote goods on or in connection with which Applicant's Mark is used or intended to be used.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

14. All documents relating to communications with third parties other than Opposer regarding this proceeding or the subject matter hereof.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

16. All statements Applicant has obtained from any Person concerning the subject matter of this opposition.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

17. All marketing plans, marketing projections and other documents prepared by or for Applicant relating to its sale or proposed sale of products on or in connection with which Applicant's Mark is or will be used.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

18. A printout of the web pages from any web site relating to Applicant, Applicant's Mark or the products advertised, distributed or sold, or intended to be sold, under Applicant's Mark.

Response: This Request is overbroad, unduly burdensome and indefinite, seeks confidential proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Remarks: Applicant's objection to the extent that this Request seeks confidential proprietary business information and attorney-client privilege and work product is completely improper and is inconsistent with the definition of "Confidential Information" contained in the Protective Order for this case. Web site printouts constitute public information and under no logical definition would be considered confidential or attorney-client privilege or work product. No documents have been identified or produced that are responsive to this Request. A Protective Order was entered in this case on September 9, 2004, and Applicant swiftly demanded

production of Opposer's confidential documents; however, none of Applicant's confidential documents have been produced.

Opposer has made several attempts to obtain the documents and information identified above, to no avail. Applicant's failure to produce these documents is evasive and hypocritical, given Applicant's aggressive efforts to obtain documents from Opposer and given Applicant's premature filing of its Motion to Compel. Opposer respectfully moves the Board to compel Applicant's production of documents.

Request for Suspension

Pursuant to 37 C.F.R. § 2.120(e), Opposer requests that this proceeding be suspended pending the outcome of this motion.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board grant Opposer's Motion to Compel, and issue an Order to 1) require Applicant to immediately supplement Opposer's discovery responses as requested above; and produce the requested documents, 2) suspend these proceedings pending a decision on this Motion; and 3) reset the trial dates upon lifting the suspension.

Dated: October 12, 2004

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

By: 
Dyann L. Kostello
Lori S. Meddings
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's Motion To Compel has been served on Applicant by fax and sending the same via first-class regular United States mail to Applicant's attorney:

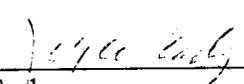
Stephen Feldman
Stephen E. Feldman, P.C.
12 East 41st Street
New York, NY 10017

Fax: 212 532 8598

on the 12 day of October, 2004.

and that the original of said document was filed on the same day with the TTAB by sending the same (plus two copies) via First Class Mail, postage prepaid, as addressed to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



Joyce Early

Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202
Telephone: (414) 271-6560
Facsimile: (414) 277-0656

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

SCHLAGE LOCK COMPANY,

Opposer,

v.

ALTO PRODUCTS, CORP.,

Applicant.

Opposition No. 159,885

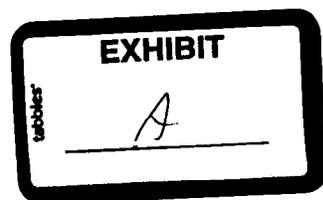
**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Applicant, Alto Products Corp., for its response to Opposer's First Set of Requests for the Production of Documents and Things propounded by responding to Opposer, Schlage Lock Company, states, as follows:

GENERAL OBJECTIONS

GENERAL OBJECTIONS

1. Alto Products Corp., (hereinafter occasionally referred to as ("Applicant")) makes this response to the requests that have been made with the understanding that the requests are directed at documents within its possession, custody or control.
2. The following response is based upon documents presently available to, and located by Registrant, and is given without prejudice to the right of Registrant to produce additional documents.
3. By producing or failing to produce some or all of the requested documents, Applicant does not concede the relevance or materiality of any request or of the subject to which it relates.



4. Applicant objects to all requests to the extent they seek documents protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege.
5. Inadvertent production of privileged information by Applicant shall not constitute waiver of any applicable privilege or doctrine, including, but not limited to, objections on the basis of competency, confidentiality, relevancy, materiality, privilege and/or admissibility as evidence as such objections may apply at trial or otherwise in this action.
6. Applicant further objects to the definitions supplied to the extent they include privileged information or documents, and are vague and overly broad.
7. Applicant objects to the requests made to the extent they call for a duplicate production of documents previously produced to Defendants.
8. Applicant objects to each and every request to the extent they call for information protected by the United States Constitution and any applicable statutes, including, but not limited to, the right of privacy.
9. Applicant objects to each and every request that:
 - a. Is not relevant to any claim or defense alleged in the pleadings;
 - b. Is not reasonably calculated to lead to the discovery of admissible evidence;
 - c. Is unduly expensive, burdensome or oppressive to supply any reasonable response;
 - d. Seeks confidential information;
 - e. Is too vague and unintelligible to understand;
 - f. Requires the responding party to formulate a legal conclusion;
 - g. The requested item is not sufficiently designated; or
 - h. Is not in the possession, custody or control of the responding party.

SPECIFIC OBJECTIONS AND RESPONSES

Request No. 1:

All documents in any way relating directly or indirectly to:

- (a) the original conception of Applicant's Mark;
- (b) the development of Applicant's Mark;
- (c) the evaluation of Applicant's Mark; and
- (d) the ultimate selection of Applicant's Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No 2:

Samples of all labels, packaging materials, advertisements, catalogs, brochures, business materials, web site printouts, and other promotional materials bearing Applicant's Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No 3:

All documents and things 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 Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 4:

All documents 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 Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No.5:

All documents in any way evidencing any transfer, in whole or in part, of any ownership interest or any grant of any other right or interest, including license rights, by Applicant in Applicant's Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. The requested documents, however, do not exist.

Request No. 6:

All documents relating to Trademark Application Serial No. 76/452,177.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 7:

All documents or things that in any way relate to Opposer, Opposer's Mark, any other mark owned by Opposer incorporating or consisting of the word "KRYPTO" such as KRYPTONITE, or Opposer's goods or services.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. The requested documents, however, do not exist.

Request No. 8:

All documents relating to any litigation, opposition, cancellation, concurrent use proceeding, or other proceeding relating to Applicant's Mark and any demand letters and other documents relating to any challenge by a third party other than Opposer to Applicant's right to use or register Applicant's Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. The requested documents, however, do not exist.

Request No. 9:

All documents in any way relating to any opinion concerning possible conflict between Applicant and Opposer, or Applicant and an other third party arising from Applicant's use or intended use of Applicant's mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. The requested documents, however, do not exist.

Request No. 10:

Any survey, investigation, or other market study conducted by or on behalf of Applicant relating to goods and services on or in connection with which Applicant's Mark is used or intended to be used.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 11:

Copies of any searches, and all documents relating thereto, conducted by Applicant for the mark KRYPTONITE.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. The requested documents, however, do not exist.

Request No. 12:

All documents evidencing Applicant's annual dollar volume of sales of goods or services on or in connection with which Applicant's Mark has been used for every year from the date of first use to the present.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 13:

All documents relating or referring to the amount of money expended annually by Applicant to advertise or promote goods on or in connection with which Applicant's Mark is used or intended to be used.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 14:

All documents relating to communications with third parties other than Opposer regarding this proceeding or the subject matter hereof.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 15:

All documents relating to any reports or opinions rendered by expert witnesses retained by Applicant to give an opinion in this proceeding.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. The requested documents, however, do not exist.

Request No. 16:

All statements Applicant has obtained from any Person concerning the subject matter of this opposition.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 17:

All marketing plans, marketing projections and other documents prepared by or for Applicant relating to its sale or proposed sale of products on or in connection with which Applicant's Mark is or will be used.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 18:

A printout of the web pages from any web site relating to Applicant, Applicant's Mark or the products advertised, distributed or sold, or intended to be sold, under Applicant's Mark.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 19

All documents, not otherwise requested, identified in response to Opposer's First Set of Interrogatories.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 20:

All documents that support or relate to Applicant's Affirmative Defense No.1.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 21:

All documents that support or relate to Applicant's Affirmative Defense No.2.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 22:

All documents that support or relate to Applicant's Affirmative Defense No.3.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 23

All documents that support or relate to Applicant's Affirmative Defense No.4.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 24:

All documents that support or relate to Applicant's Affirmative Defense No.5.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 25:

All documents that support or relate to Applicant's Affirmative Defense No.6.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 26:

All documents that support or relate to Applicant's Affirmative Defense No.7.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 27:

All documents that support or relate to Applicant's Affirmative Defense No.8.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 28:

All documents that support or relate to Applicant's Affirmative Defense No.9.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 29:

All documents that support or relate to Applicant's Affirmative Defense No.10.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Request No. 30:

All documents that support or relate to any denial of any allegation in Applicant's Answer to the Notice of Opposition.

Response:

This Request is overbroad, unduly burdensome and indefinite, seeks confidential and proprietary business information, and is protected under attorney-client privilege and work product. Documents, however, will be produced subject to Applicant's objection and upon the signing of a Protective Order.

Respectfully submitted,
STEPHEN E. FELDMAN, P.C.

By:

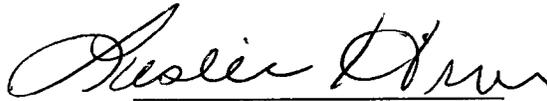

STEPHEN E. FELDMAN
Attorney for Applicant

Dated: July 14, 2004

CERTIFICATE OF SERVICE

A copy of the foregoing Applicant's Response To Opposer's First Set of Requests
For The Production Of Documents And Things, has been served by the undersigned, this 14th
day of July, 2004, upon Opposer's attorneys:

Michael Best & Friedrich LLP
Dyann L. Kostello
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202



Leslie Hines

Dated: July 14, 2004

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:

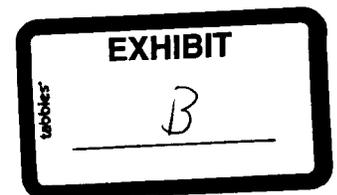
We received Applicant's Responses to Opposer's First Set of Interrogatories and First Request for Production of Documents and Things. In most respects, Applicant's responses are grossly deficient and it is clear that Applicant put forth no time or effort in crafting its responses. In particular, Applicant's 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.

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

SCHLAGE LOCK COMPANY,

Opposer,

v.

Opposition No. 91/159,885
Serial No. 76/493,797

ALTO PRODUCTS, CORP.,

Applicant.

STIPULATED PROTECTIVE ORDER

The enclosed Stipulated Protective Order concerning disclosure of confidential information is submitted in connection with the above-referenced opposition proceeding.

The parties hereby request that the Board approve the proposed order.

Dated this 30th day of August 2004.

Respectfully submitted,
SCHLAGE LOCK COMPANY, INC.

By: 

Dyann L. Kostello
Lori S. Meddings
Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202
Phone: (414) 271-6560
Fax: (414) 277-0656

EXHIBIT

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Protective Order has been mailed to Applicant by fax and sending the same via first-class regular United States mail to Applicant's attorney:

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

on the 30 day of August, 2004.

and that the original of said document was filed on the same day with the TTAB by sending the same (plus two copies) via First Class Mail, postage prepaid, as addressed to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



Joyce Early

X:\clientb\056227\9085\A0920294.1

SCHLAGE LOCK COMPANY, INC.,

Opposer,

v.

ALTO PRODUCTS, CORP.,

Applicant

Opposition No. 91/159,885

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

PROTECTIVE ORDER

The parties hereto, by their respective counsel, recognizing that the parties and potential third party witnesses may possess confidential or proprietary information which may be necessary or desirable to reveal to other parties during the course of this action, and desiring to obtain a Protective Order sanctioned by this Court to protect such information from unnecessary disclosure to others, hereby STIPULATE AND AGREE, subject to the TTAB's approval in accordance with the Federal Rules of Civil Procedure, that the following provisions shall govern the handling of such confidential information and documents in these proceedings:

DEFINITIONS

- A. The terms "Party" or "Parties" shall include the following: the above-named Parties to this litigation, all predecessors or successors thereof, all past or present divisions, subsidiaries or affiliates, and all present directors, officers, employees, agents or representatives of any of the foregoing entities.
- B. The term "Producing Party" shall mean the party (and its Outside Counsel) who is supplying information to any other party.
- C. The term "Outside Counsel" shall mean the lawyers engaged by the parties to represent them in this litigation.
- D. The term "Confidential Information" shall mean 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.

1. Upon the signing of this Protective Order all documents produced in this action and all depositions, interrogatory responses, responses to requests for admissions, production of documents and other information and documents given or exchanged in this action which the designated party reasonably believes contains information which the party has an interest in protecting from unrestricted disclosure may be marked as "Confidential information" and may be designated as protected within the meaning of Rule 26(c)(7) of the Federal Rules of Civil Procedure and all use thereof will be subject to this Order.

2. Each and every document, deposition, interrogatory response and other information produced, at the time it is produced or shortly thereafter, may be designated as "Confidential". Such designation shall be made by stamping or affixing thereto a legend "Confidential". Any and all copies of such documents so designated which are supplied will, when supplied, be also marked "Confidential" and be subject to the following provisions of this Order.

3. In the event that a Party inadvertently fails to stamp or otherwise designate a document or other information as Confidential at the time of its production, the Producing Party shall inform the recipient Party promptly after the discovery of such failure. The recipient Party shall thereafter mark the document or information in the manner requested by the Producing Party and thereafter treat the document in accordance with such marking.

4. Information designated as "Confidential" may be disclosed only to the following persons:

a. the outside counsel working on this action on behalf of any Party, all paralegal assistants, stenographic and clerical employees performing work related to this litigation;

b. any person not affiliated with a Party who is expressly retained by any attorney described in paragraph 4(a) to provide expert testimony in this matter or to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;

5. Pursuant to this Protective Order, as to those documents so designated as "Confidential", copies thereof and information contained therein will be made available only to and inspected by designated counsel, its employees and outside experts as defined in paragraph 4, and will be used only for the purposes of preparation for trial, the trial of this case and any appeal, unless and until such designation is removed by notice from the producing party, agreement of outside counsel for the parties or by Order of the TTAB. All produced Confidential Information shall be carefully maintained so as to preclude access by persons who are not authorized herein to receive such information.

6. The persons described in paragraph 4 shall have access to the Confidential Information once they have been made aware, and agreed to the provisions of this Order.

7. Any Confidential Information which is inadvertently disclosed by any Party shall still be deemed to be Confidential Information in accordance with this Order. However, any information which is subsequently designated as "Confidential" or as "Confidential Information" shall not be considered confidential with respect to the persons who already have it.

8. The failure to designate information as "Confidential" in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or seeking to challenge the propriety of such designation.

9. If any documents designated as "Confidential", or any pleadings, motions or other papers disclosing Confidential Information, are to be filed with or delivered to the TTAB for any purpose, the proposed filing shall be accompanied with an application to file the papers or confidential portion thereof under seal pursuant to this Order. Where possible, only portions of the filings with the TTAB which contain Confidential Information shall be filed under seal. Nothing in this Stipulated Protective Order shall prohibit the admission of Confidential Information into evidence if such information is otherwise admissible under the rules of evidence.

10. In the case of depositions:

a. designation of the portion of the transcript which contains Confidential Information shall be made by a statement to such effect on the record in the course of the deposition or upon review of such transcript by counsel for the Party to whose Confidential Information the deponent has had access. Said review by counsel shall occur within thirty (30) days after counsel's receipt of the transcript. If no such designation is made within thirty (30) days after counsel's receipt of the transcript, the transcript shall be considered not to contain any Confidential Information. Counsel shall list on a separate paper the numbers of the pages of the transcript containing Confidential Information, inserting the list at the end of the

transcript, and mailing copies of the list to counsel for all Parties so that it may be affixed to the face of the transcript and also to each copy thereof.

b. The disclosing party shall have the right to exclude from attendance at said deposition during such time as Confidential Information is to be disclosed any person other than the deponent, parties, person under Section 4, and counsel (including their staff and associates, and the Court Reporter).

11. Within sixty (60) days of the termination of litigation between the Parties, all Confidential Information or material marked as "Confidential", and all copies thereof, shall be returned to the Party which produced it or destroyed, with a letter to the Producing Party certifying its destruction.

12. Neither the taking of any action in accordance with the provisions of this Protective Order, nor the failure to object thereto, shall be construed as a waiver of any claim or defense in this action. The entry of this Order shall not be construed as a waiver of any right to object to the furnishing of information in response to discovery or to object to a requested inspection of documents and things, and, except as expressly provided, shall not relieve any Party of the obligation to produce information in the course of discovery.

13. Either party may challenge the designation of a document as "Confidential" by the other party in Court.

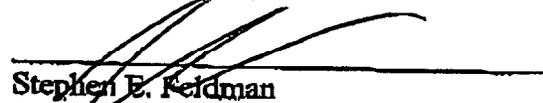
14. This Protective Order may be amended by express, written agreement by the Parties, subject to the approval of the TTAB.

Dated: August 20, 2004

Stipulated and agreed to:



Lori S. Meddings
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STEPHEN E FELDMAN, PC

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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:

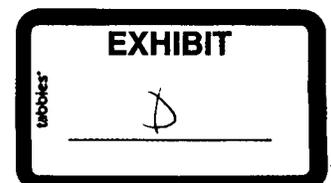
In your July 29, 2004 letter you note various deficiencies with respect to Applicant's responses to your Interrogatory Requests. Below we address your issues.

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.



08/25/2004 WED 13:18 [TX/RX NO 84121] 002

08/25/2004 WED 13:32 [TX/RX NO 77611] 002

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

September 2, 2004

VIA FACSIMILE 212-532-8598 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 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



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.