

TTAB TM



**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
	:	
ALTO PRODUCTS, CORP.,	:	
Applicant.	:	

REQUEST FOR RECONSIDERATION

This is a motion requesting the TTAB to reconsider its December 2, 2004 decision regarding Applicant's September 20, 2004 Motion. In that Motion, Applicant asked the Board to compel Opposer to produce certain documents.

Applicant appreciates the Interlocutory Attorney's opinion in which the Interlocutory Attorney partially granted Applicant's motion. Applicant, however, respectfully disagrees with the Board's decision regarding Requests No. 21-28, 31, 34, 49, 51 and 65. (Exhibit A). Applicant believes these issues are germane to this Opposition and Opposer has not yet produced documents pertaining to these requests.

Furthermore, Applicant has tried to call Opposer twice to resolve these issues. Opposer, however, has not returned Applicant calls. Since discovery is quickly coming to an end, Applicant would like to have these issues resolved and all trial dates reset.



12-28-2004

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I. Settlement and Contractual Agreements

As for Requests Nos. 21-28, the Board has already stated in its decision that settlement and contractual agreements between the responding party and third parties are discoverable. (See TTAB Decision, December 2, 2004, Page 3, lines 5-7). The TTAB's decision, however, only compels Opposer to produce documents regarding contracts with D.C. Comics. Applicant respectfully requests that the TTAB expand its decision to include all contractual agreements regarding the Kryptonite mark, regardless of the company it was with.

To date Applicant has not received any documents pertaining to these requests.

II. Trademark Searches/Surveys and Trademark Enforcement Policies

As for Requests Nos. 34, 49 and 51, trademark searches/surveys and trademark enforcement policies are highly relevant to the issues before the Board and are discoverable. TBMP § 414 (6). Applicant, therefore, respectfully requests the Board to reconsider its decision regarding the above requests.

To date Applicant has not received any documents pertaining to these requests.

III. All Federal Court Decisions and All USPTO Decisions pertaining to *D.C. Comics V. Kryptonite* and the Kryptonite Mark

As for Request No. 65, in a letter dated October 1, 2004, Applicant narrowed request No. 65 by only requesting Opposer to produce Federal Court decisions and USPTO decisions pertaining to the *D.C. Comics v. Kryptonite* litigation and the Kryptonite mark. (See Exhibit B).

Moreover, as stated in TTAB's Decision, Applicant is entitled to the outcome of

any legal proceeding involving the Kryptonite mark. (See TTAB Decision, December 2, 2004, Page 3, lines 13-21). Since the above request asks for decisions reflecting the outcome of particular legal proceedings involving the Kryptonite mark, Applicant respectfully requests the Board to reconsider its decision regarding the above request.

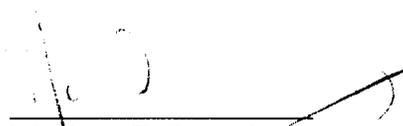
To date Applicant has not received all of the documents pertaining to this request.

CONCLUSION

Applicant, again, respectfully asks the Board to reconsider its decisions regarding the above requests. Applicant believes Opposer has no intention to resolve the above-mentioned discovery issues.

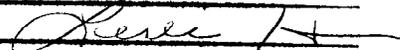
In addition, it is requested that discovery be extended and all trial dates be reset to permit completion of discovery.

Respectfully submitted,


Matthew T. Dennehy

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

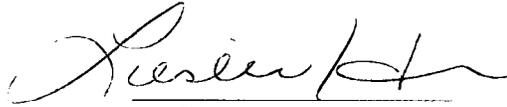
CERTIFY THAT THIS CORRESPONDENCE IS BEING
MAILED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS
ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER
P.O. BOX 1450, ALEXANDRIA, VA 22313-1450
Treda-ark

11/2/04 

CERTIFICATE OF SERVICE

A copy of the foregoing Applicant's Motion to Compel has been served by the undersigned, this 22 day of December, 2004, upon Opposer's attorneys:

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



Leslie Hines

Dated: December 22, 2004

EXHIBIT A

Request No. 21:

All documents concerning each different agreement between Opposer and any retailer concerning the use of Opposer's Mark.

Request No. 22:

All documents concerning each different agreement between Opposer and any wholesaler concerning the use of Opposer's Mark in said retailer's advertising or promotional materials for Opposer's Goods.

Request No. 23:

All documents concerning each different agreement between Opposer and any wholesaler concerning the use of Opposer's Mark for Opposer's Goods.

Request No. 24:

All documents concerning each different agreement between Opposer and any wholesaler concerning the use of Opposer's Mark in said wholesaler's advertising or promotional materials.

Request No. 25:

All documents, sent by Opposer to any retailer containing requirements, guidelines, or recommendations concerning the use of Opposer's Mark for Opposer's Goods by retailers.

Request No. 26:

All documents, sent by Opposer to any wholesaler containing requirements, guidelines, or recommendations concerning the use of Opposer's Mark by retailers for Opposer's Goods.

Request No. 27:

All documents concerning any consent, license, assignment, and/or agreement (oral or written) between Opposer and another party relating to the use, registration, and/or ownership, or Opposer's Mark for Opposer's Goods.

Request No. 28:

For each license of Opposer's Mark for any of Opposer's Goods, documents sufficient to show the nature and extent of the quality control exercised by or on behalf of Opposer in connection with said consent license or assignment, for each year from 1990 to the present.

Request No. 34:

All documents concerning each surveyor other Market Research conducted by or behalf of Opposer which relates to Opposer's Mark for Opposer's Goods.

Request No. 49:

All documents concerning any surveyor other Market Research conducted by or for Opposer which relates to use of KRYPTONITE by others.

Request No. 51:

All documents concerning Opposer's trademark enforcement policy relating to Opposer's Mark.

Request No. 63:

All agreements with DC Comics.

Request No. 64:

All agreements referred to in *DC Comics v. Kryptonite Corporation*.

EXHIBIT B

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

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PATENT AND TRADEMARK LAW

October 1, 2004

VIA Facsimile

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

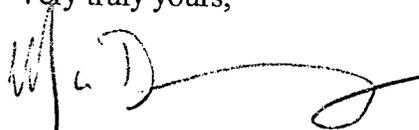
Re: Schlage Lock Company v.
Alto Products Corp.
Opposition No.: 91159885

Dear Ms. Meddings:

This is a memorialization of our September 28, 2004 conversation. In that conversation, I asked if you would be opposed to resetting the trial dates for the above proceeding. You responded in the negative, and added, Opposer has all the discovery it needs to proceed to trial. Based on this information, Applicant believes it has fulfilled its discovery obligations and will not produce any additional discovery.

Additionally, Applicant filed a Motion to Compel Document Production on September 20, 2004. On September 22, 2004, Opposer sent documents to Applicant in response to Applicant's Motion to Compel. This discovery, however, did not cover all of the items listed in the Motion. Please send Applicant all of the requested documents as soon as possible so that we may dispose of the Motion. To aid Opposer, we narrowed our requests with respect to Requests Nos. 63-65. Please send us (1) all Federal Court decisions pertaining to *D.C. Comics v. Kryptonite*, (2) all USPTO Decisions pertaining to *D.C. Comics v. Kryptonite* and the Kryptonite mark and (3) all contracts with D.C. Comics pertaining to the Kryptonite mark.

Very truly yours,



Matthew T. Dennehy
Stephen E. Feldman

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

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(Michael Best & Friedrich LLC)Member: Lex Mundi,
A Global Network of more than
150 Independent Firms

October 1, 2004

VIA FACSIMILEMr. Matthew T. Dennehy
Law Offices of Stephen E. Feldman, P.C.
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. Dennehy:

We received your letter today "memorializing" our conversation. Your letter is a mischaracterization of our September 28, 2004 conversation. I indicated during that conversation that Opposer has *served* all of the discovery that it plans to serve on Applicant, i.e., that Opposer does not intend to serve any additional requests for production of documents, interrogatories or requests to admit. I did not say that we have *received* everything from Applicant that has been requested or that we need or desire. In fact, while Applicant was busy drafting its motion to compel, a bit prematurely I might add, it should have been paying attention to producing its own documents that it still owes to Opposer. Indeed, in our September 22, 2004 letter sending our confidential documents, we reminded Applicant that we are still awaiting production of Applicant's confidential documents.

We plan to oppose your motion, as we maintain our objections raised in response to Applicant's requests. We also plan to file our own cross-motion with respect to the deficiencies in Applicant's production. According to 37 C.F.R. §2.120(e)(2), neither the filing of a motion to compel nor the Board's suspension order tolls the requirement to respond to outstanding discovery requests. Accordingly, we look forward to receiving *your* confidential documents promptly.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP
Lori S. Meddings

cc: Dyann L. Kostello, Esq.

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