

exhibits G, H, I and J). Good faith efforts to resolve the discovery issues with Opposer's counsel have been made.

Please note, these discovery issues need immediate attention because discovery is to close on October 10, 2004 and the requested documents are essential to Applicant's defense of the present opposition. Applicant, therefore, challenges the sufficiency of Opposer's responses to the following Requests for Production, and/or seeks further answers specifically to:

First Request for Production of Documents

Request No. 15:

Summaries or schedules showing the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Response No. 15

Opposer objects to this Request as overbroad, unduly burdensome and seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request relating to the past five years pursuant to the entry of an acceptable Protective Order by the Board.

Reply: "The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case." *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect the annual unit and dollar

volume of sales of Opposer's Goods under Opposer's Mark

Request No. 16:

Representative documents prepared and used by or on behalf of Opposer, in the ordinary course of business, sufficient to reliably show the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Response No. 16

Opposer objects to this Request as overbroad, unduly burdensome and as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request relating to the past five years pursuant to the entry of an acceptable Protective Order by the Board.

Reply: "The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case." *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark.

Request No. 17:

Summaries or schedules showing the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark for each year from 1990

to the present.

Response No. 17

Opposer objects to this Request overbroad, unduly, burdensome and as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request relating to the past five years pursuant to the entry of an acceptable Protective Order by the Board.

Reply: "The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case." *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark

Request No. 18

Representative documents prepared and used by or on behalf of Opposer, in the ordinary course of business, sufficient to reliably show the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Response No. 18

Opposer objects to this Request as duplicative of No. 17.

Reply: "The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case." *Oregon Precision Ind. v. International Omni-*

Pac Corp., 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to Request 17, therefore, Opposer impliedly consented to this request. Opposer, however, has not produced any documents that reflect the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark.

Request No. 21:

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

Response No. 21

Opposer objects to this Request as seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request, to the extent such documents exist, pursuant to the entry of an acceptable Protective Order by the Board.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. Opposer, however, has not produced any documents that reflect 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.

Response No. 22

Opposer objects to this Request as nonsensical. To the extent Opposer understands this Request, see response to Request No. 21.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. Opposer, however, has not produced any documents that reflect 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.

Response No. 23

Opposer objects to this Request as seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request, to the extent such documents exist, pursuant to the entry of an acceptable Protective Order by the Board.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. Opposer, however, has not produced any documents that reflect 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.

Response No. 24

See response to No. 23.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. Opposer, however, has not produced any documents that reflect 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.

Response No. 25

Opposer objects to this request as duplicative of No. 21.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally,

Opposer consented to the production of documents responsive to Request 21, therefore, Opposer impliedly consented to this request. Opposer, however, has not produced any documents sent to retailers that reflect 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.

Response No. 26

Opposer objects to this request as duplicative of No. 23.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to Request 23, therefore, Opposer impliedly consented to this request. Opposer, however, has not produced any documents sent to wholesalers that reflect 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.

Response No. 27

Opposer objects to this request as seeking confidential proprietary business information. Subject to, and without waiving this objection, documents responsive to this Request will be produced pursuant to an acceptable Protective Order entered by the Board.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect 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.

Response No. 28

Opposer objects to this request as overbroad, unduly burdensome and as seeking confidential proprietary business information. Opposer further objects to this request as seeking information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, as the validity of Opposer's Marks is not in issue.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). This information is relevant as it will aid in the determination of the extent of Applicant's protection and policing of its mark.

Request No. 30:

An organizational chart of Opposer.

Response No. 30

Opposer objects to this request as seeking confidential proprietary business information. Subject to, and without waiving this objection, documents responsive to this Request will be produced pursuant to an acceptable Protective Order entered by the Board.

Reply: Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect Opposer's organizational structure.

Request No. 31:

Documents sufficient to identify all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

Response No. 31

Opposer objects to this request as seeking confidential proprietary business information. Subject to, and as assuming facts not in evidence. Without waiving

these objections, documents responsive to this Request and not subject to objection will be produced pursuant to an acceptable Protective Order entered by the Board.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. Opposer, however, has not produced any documents that reflect all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

Request No. 31:

Documents sufficient to identify all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

Response No. 31

See Response to Request No. 30, and all objections thereto.

Reply: All information involving related companies is discoverable. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581 (TTAB 1975). Additionally, Opposer consented to the production of documents responsive to this request. Opposer, however, has not produced any documents that reflect all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

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.

Response No. 34

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request, to the extent such documents exist.

Reply: "The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case." *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect 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.

Response No. 49

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will (produce representative non-privileged documents

responsive to this Request to the extent any such documents exist.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect 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.

Response No. 51

Opposer objects to this Request as seeking attorney-client privilege and work product information and materials.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

This information does not fall with attorney-client privilege or work product information. Applicant is asking for general trademark enforcement policies used by Opposer not specific information relating to communications or work product of Opposer's attorneys.

Request No. 63:

All agreements with DC Comics.

Response No. 63

Opposer objects to this Request as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request pursuant to the entry of an acceptable Protective Order by the Board.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect all agreements with DC Comics.

Request No. 64:

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

Response No. 64

Opposer objects to this Request as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request pursuant to the entry of an acceptable Protective Order by the Board.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-*

Pac Corp., 36 U.S.P.Q.2d 1117, (D. Or. 1995).

Opposer consented to the production of documents responsive to this request. However, Opposer has not produced any documents that reflect all agreements referred to in *DC Comics v. Kryptonite Corporation*.

Request No. 65:

All litigation and other papers and things referred to in *DC Comics v. Kryptonite Corporation*.

Response No. 65

Opposer objects to this Request as vague, overbroad and incomprehensible.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995).

This request is reasonable and fairly easy to understand. Applicant requests Opposer to produce all documents pertaining to the *DC Comics v. Kryptonite Corp.* litigation not requested in Request Nos. 63 and 64.

Second Request for Production of Documents

Request No.2.

All documents which show manufacture of products sold to automobile mechanics by Opposer using KRYPTONITE.

Response No. 2

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and

irrelevant.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995). This information is relevant as it will aid in the determination of Applicant’s presence in the automotive repair field.

Request No.3:

All documents which show sale of automobile products to automobile mechanics by Opposer.

Response No. 3

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, documents responsive to this request have been produced.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995). Opposer has not produced any documents reflecting the sales of automobile products to automobile mechanics by Opposer.

Request No.5

All documents which show the sale of products under the KRYPTONITE mark in the automotive repair field.

Response No. 5

Opposer objects to this Request as overbroad, unduly burdensome and indefinite.

Subject to and without waiving these objections, Opposer will produce documents responsive to this request, to the extent such documents exist.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995). Opposer has not produced any documents reflecting sales of products under the KRYPTONITE mark in the automobile repair field.

Request No.6

Documents which show marketing of products by Opposer to the automobile repair field.

Response No. 6

Opposer objects, to this Request as overbroad, unduly burdensome and indefinite.

Subject to and without waiving these objections, Opposer will produce documents responsive to this request, to the extent such documents exist.

Reply: “The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case.” *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995). Opposer has not produced any documents reflecting the marketing of products by Opposer to the automobile repair field.

Request No.7

All documents which show marketing of products under KRYPTONITE by Opposer to the automobile repair field.

Response No. 7

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, Opposer will produce documents responsive to this request, to the extent such documents exist.

Reply: "The scope of discovery is broad and encompasses any matter that bears on any issue that is or may be in the case." *Oregon Precision Ind. v. International Omni-Pac Corp.*, 36 U.S.P.Q.2d 1117, (D. Or. 1995). Opposer has not produced any documents reflecting marketing of products under KRYPTONITE by Opposer to the automobile repair field.

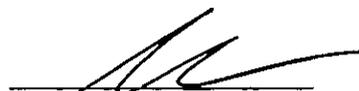
CONCLUSION

Opposer's counsel's behavior and comments cause concern that they have no intention to resolve the discovery issues that remain open.

Applicant therefore requests an order that Opposer be compelled to produce copies of all document and other items requested to be produced at the offices of Applicant's attorneys, and be deemed to have waived any objections thereto.

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

Respectfully submitted,



Stephen E. Feldman

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

CERTIFICATE OF SERVICE

A copy of the foregoing Applicant's Motion to Compel has been served by the undersigned, this ~~5~~ day of ~~July~~, 2004, upon Opposer's attorneys:

September

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



Leslie Hines

Dated: September 15, 2004



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

-----X
SCHLAGE LOCK COMPANY,

Opposer,

v.

ALTO PRODUCTS CORP.

Applicant.

Opposition No. 91159885
Serial No. 76493797

-----X
APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant requests Opposer to serve a written response to each request herein, and to produce each of the following documents and tangible things, organized and labeled to correspond with the categories in this request, at the offices of Stephen E. Feldman, P.C., 12 East 41st Street, New York, New York 10017, within (30) days of service hereof upon counsel of record for Opposer.

- A. The term "Opposer" shall mean the Opposer herein and any division, parent, subsidiary, affiliate, licensee, franchisee, or predecessor in interest of Opposer, and every officer, employee, agent or attorney acting on Opposer's behalf.
- B. The term "Opposer's Mark" shall mean the alleged mark KRYPTONITE.
- C. The term "Opposer's Goods" shall mean, individually and collectively, all the goods specified in paragraph 1 of the Notice of Opposition, except for bicycle locks.
- D. The term "Applicant" shall mean the Applicant herein and any division, parent, subsidiary, affiliate, licensee, franchisee, or predecessor in interest of Applicant, and every officer, employee, agent, or attorney acting on Applicant's behalf.
- E. The term "Market Research" shall mean all surveys, polls, focus groups, consumer interviews, market research studies and other investigations conducted by or on behalf of Opposer,

whether for marketing, litigation, or other purposes, and whether or not such investigations were completed, discontinued or fully carried out.

F. The term "concerning" shall mean relating to, referring to, describing, or constituting.

G. Whenever the terms "and" or "or" are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of these discovery requests responses which otherwise might be construed to be outside their scope.

H. Whenever the term "any" is used, it is to be construed to cover every responsive document, fact, or other thing to which it refers and not merely any one of such documents, facts, or other things.

I. The use of the plural form of any word shall include the singular and vice versa. References to the masculine gender shall apply equally to the feminine gender and vice versa.

J. The term "document" shall include, without limitation, any tangible item in Opposer's possession, custody or control, or of which Opposer has knowledge, wherever located, whether an original or a copy, including but not limited to, packaging, labels, tags, containers, configurations, illustrations, printed matter, correspondence, memoranda, agreements, reports, minutes, drafts, communications, books or records, notes, advertisements, trademark search reports, directories, publications, microfilms or the like, emails, electronic documents, computer tapes and printouts, photographs, and all other documents and things subject to a request for production under Rule 34 of the Federal Rules of Civil Procedure, whether or not claimed to be privileged from discovery on any ground.

K. The term "communication" shall include, without limitation, any oral or written statement or conversation or meeting, and any document, correspondence, email, telegram, mailgram, or facsimile, xerographic or electronic transmission.

L. The term "person" means any natural person, corporation, partnership, proprietorship, business concern or entity, association, organization, team or group of natural persons.

M. In responding to these requests, Opposer shall produce all available responsive documents, including those in possession of its attorneys or investigators. If a request cannot be responded to in full. Opposer shall respond to the extent possible.

N. Opposer is requested to quote each request in full immediately preceding its response.

O. In addition to providing amended responses and additional or corrective documents, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Opposer is requested to produce any additional responsive documents, acquired after responses to these requests have been furnished, within thirty (30) days after acquiring such documents.

P. If Opposer objects to furnishing documents in response to any request or portion thereof, Opposer shall specifically state all its objections, identify all documents to which an objection applies, and produce all requested documents to which no objection applies. When identifying a document pursuant to this Instruction, Opposer shall state the document's subject matter, its date, the name, title or position, and address of each writer or sender and each recipient, and its present location and custodian.

Q. Without limiting the generality of the foregoing Instruction, any claim or privilege, immunity or protection from discovery shall be made with sufficient particularity to enable Opposer to assess the applicability of the claimed privilege, immunity or protection, and documents withheld from production shall be identified in the privilege log specified in Request No. 65 herein.

R. Except where otherwise indicated, all requests concerning use, advertising, promotion, applications to register, sales and other activities are limited to the United States.

REQUESTS

Request No. 1:

All documents concerning the selection of Opposer's Mark.

Request No. 2:

All documents concerning the decision to use Opposer's Mark in connection with Opposer's Goods.

Request No. 3:

All documents concerning any decision to file, prosecute or discontinue prosecution of any application to register Opposer's Mark.

Request No. 4:

For each application to register Opposer's Mark, whether or not currently pending, all

documents sent to or received from the U.S. Patent and Trademark Office in connection with said application and/or registration.

Request No. 5:

For each application by Opposer to register Opposer's Mark, whether or not currently pending, all documents sent to or received from the U.S. Patent and Trademark Office in connection with said application and/or registration.

Request No. 6:

All documents concerning any descriptive significance of Opposer's Mark.

Request No. 7:

All documents that refer to the public's recognition or perception of the Opposer's Mark for Opposer's Goods.

Request No. 8:

For each year from 1990 to the present, representative photographs or specimens showing trademark use of Opposer's Mark for Opposer's Goods.

Request No. 9:

For each year from 1990 to the present, representative samples of advertisements which display Opposer's Mark for Opposer's Goods.

Request No. 10:

For each year from 1997 to the present, representative sample of hallmarks and quality marks displaying Opposer's Mark on Opposer's Goods, and/or the packaging therefore.

Request No. 11:

For each year from 1997 to the present, representative samples of brochures, mailing pieces, selling sheets, point-of-sale display items, and other items of promotional material which displayed Opposer's Mark for Opposer's Goods.

Request No. 12:

For each year from 1997 to the present, representative samples of media articles or comments, press releases or other items of publicity which display or mention Opposer's Mark for Opposer's Goods.

Request No. 13:

For each of Opposer's Goods, each different media article or comment, press release or other item of publicity distributed or published in the past ten years, which has used the Opposer's Mark other than as a service mark or trademark.

Request No. 14:

Each different marketing plan concerning Opposer's Goods, prepared by or for Opposer after 1997.

Request No. 15:

Summaries or schedules showing the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Request No. 16:

Representative documents prepared and used by or on behalf of Opposer, in the ordinary course of business, sufficient to reliably show the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Request No. 17:

Summaries or schedules showing the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Request No. 18:

Representative documents prepared and used by or on behalf of Opposer, in the ordinary course of business, sufficient to reliably show the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

Request No. 19:

A representative sample of advertisements, ad slicks, and other advertising materials which display or mention Opposer's Mark and were prepared by or for Opposer or for use by retailers of Opposer's Goods.

Request No. 20:

A representative sample of advertisements, ad slicks, and other advertising materials which display or mention Opposer's Mark and were prepared by or for Opposer for use by wholesalers of Opposer's Goods.

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. 29:

The most recent annual report of Applicant referring to Opposer's Goods marketed under

Opposer's Mark.

Request No. 30:

An organizational chart of Opposer.

Request No. 31:

Documents sufficient to identify all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

Request No. 31:

Documents sufficient to identify all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

Request No. 32:

All reports of trademark searches conducted by or on behalf of Opposer's concerning Opposer's Mark for Opposer's Goods.

Request No. 33:

All documents referring to any trademark search conducted by or for Opposer concerning Opposer's Mark for Opposer's Goods.

Request No. 34:

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

Request No. 35:

All documents concerning any survey or other Market Research conducted by or on behalf of Opposer which relates to any issue in this proceeding.

Request No. 36:

All documents comprising, referring or relating to any communication (oral or written) between Opposer or its counsel and any other person concerning that person's proposed statement, affidavit or declaration to be used by Opposer in support of its position in this opposition proceeding.

Request No. 37:

All documents comprising, referring or relating to any agreement or understanding (oral or written) between Opposer and any member of the trade or public concerning such person's statement, declaration, or affidavit used by Opposer in support of its position in this opposition

proceeding.

Request No. 38:

All documents concerning Opposer's awareness of the use or registration, not authorized by Opposer of any designation consisting in whole or in part of KRYPTONITE for Opposer's Goods.

Request No. 39:

All reports of trademark searches conducted by or for Opposer concerning KRYPTONITE other than Opposer's Mark.

Request No. 40:

All documents referring to any trademark search conducted by or for Opposer concerning KRYPTONITE other than Opposer's Mark.

Request No. 41:

All documents concerning the use, before 1990, by any party other than Opposer, of KRYPTONITE, whether as a trademark, service mark or otherwise, for Opposer's Goods.

Request No. 42:

All documents concerning the use, on or after 1990, by any party not authorized by Opposer of KRYPTONITE, whether as a trademark, service mark or otherwise, for Opposer's Goods.

Request No. 43:

All documents concerning any registration of, or application to register, KRYPTONITE by anyone other than Applicant, for Opposer's Goods.

Request No. 44:

All documents concerning any oral or written communication between Opposer and anyone rather than Applicant, relating to the use of KRYPTONITE, other than Opposer's Mark, for Opposer's Goods.

Request No. 45:

All documents concerning any oral or written communication between Opposer and anyone other than Applicant, relating to any registration of, or application to register KRYPTONITE, other than Opposer's Mark for Opposer's Goods.

Request No. 46:

All documents concerning any agreement (oral or written) to which Opposer has been a party concerning the use or registration of KRYPTONITE.

Request No. 47:

All documents referring to any similarity or dissimilarity between Opposer's Mark and any use of KRYPTONITE by others.

Request No. 48:

All documents referring to whether confusion is likely or is not likely between Opposer's Mark and any use of KRYPTONITE by others.

Request No. 49:

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

Request No. 50:

All documents concerning communications between Opposer and any member of the trade or public relating to the present opposition.

Request No. 51:

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

Request No. 52:

If Opposer contends that it is the only entity that can use KRYPTONITE for Opposer's Goods, all documents which support such contention.

Request No. 53:

All documents concerning the standards or specifications if any, that Opposer contends must be met in order for Opposer's Goods to be referred to as KRYPTONITE.

Request No. 54:

All documents, not produced in response to any other request herein, concerning the possible enforcement or non-enforcement or defense of Opposer's Mark.

Request No. 55:

All documents, not produced in response to any other request herein, concerning any

communication by Opposer's objecting on the basis of Opposer's Mark to the use or registration of any mark or name.

Request No. 56:

All documents, not produced in response to any other request herein, concerning any objection which Opposer has received relating to the use of Opposer's Mark.

Request No. 57:

All documents, not produced in response to any other request herein, concerning any objection which Opposer has received relating to the registration of Opposer's Mark.

Request No. 58:

All documents showing the names of the parties, the jurisdiction, the proceeding number, the outcome, and, if published, the citation of each decision, concerning each trademark opposition, cancellation proceeding, and/or other inter partes proceeding or litigation, other than the present proceeding, which in whole or in part, was based on or directed against Opposer's Mark.

Request No. 59:

All documents, not produced in response to any other request herein, concerning any oral or written communication relating to the use or registration by any person other than Applicant of KRYPTONITE for any service or produce on which Opposer relies in this proceeding .

Request No. 60:

With respect to each expert that Opposer expects to call as a witness in this proceeding, a report containing the information specified in Rule 26(a) (2) (B) of the Federal Rules of Civil Procedure.

Request No. 61:

All documents identified in response to Applicant's First Set of Interrogatories to Opposer.

Request No. 62:

A privilege log identifying, for each of Applicants' First Set of Interrogatories to Opposer and for each request herein, each document, communication or thing that contains any information responsive to such interrogatories or requests and that is being withheld because of a claim of privilege, immunity, or other protection, and stating, for each such document, communication or thing, the basis for withholding it, its date and nature, the parties transmitting and receiving it, and

its subject matter.

Request No. 63:

All agreements with DC Comics.

Request No. 64:

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

Request No. 65:

All litigation and other papers and things referred to in DC Comics v. Kryptonite Corporation.

Request No. 66:

All papers in all disputes with DC Comics, and its predecessors.

Request No. 67:

All the files of the following Oppositions/cancellation proceedings 91153668, 76377515, 76377514, 91152807, 78039703, 91123908, 91122454, 91123452 and 91111872.

STEPHEN E. FELDMAN, P.C.

By: _____

**Stephen E. Feldman
Attorneys for Applicant
12 East 41st Street
New York, New York 10017
(212)532-8585**

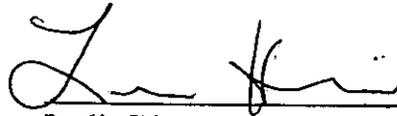
Sep 15

Dated: April 13, 2004

1 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 9/15/04

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, was duly sent by regular mail to Michael Best & Friedrich, LLP., 100 East Wisconsin Avenue, Suite 3300, Milwaukee, WI 52302, on this 13 day of April, 2004.

A handwritten signature in black ink, appearing to read "Leslie Hines", written over a horizontal line.

Leslie Hines

Stephen E. Feldman, P.C.
Attorneys for Petitioner
12 East 41st Street
New York, New York 10017
(212) 532-8585



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

_____x
:
SCHLAGE LOCK COMPANY,
:

Opposer, :

v.

**Opposition No. 91159885
Serial No. 76493797**

ALTO PRODUCTS CORP.
:
:

Applicant. :

_____x
APPLICANT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant requests Opposer to serve a written response to each request herein, and to produce each of the following documents and tangible things, organized and labeled to correspond with the categories in this request, at the offices of Stephen E. Feldman, P.C., 12 East 41st Street, New York, New York 10017, within (30) days of service hereof upon counsel of record for Opposer.

- A. The term "Opposer" shall mean the Opposer herein and any division, parent, subsidiary, affiliate, licensee, franchisee, or predecessor in interest of Opposer, and every officer, employee, agent or attorney acting on Opposer's behalf.
- B. The term "Opposer's Mark" shall mean the alleged mark KRYPTONITE.
- C. The term "Opposer's Goods" shall mean, individually and collectively, all the goods specified in paragraph 1 of the Notice of Opposition, except for bicycle locks.
- D. The term "Applicant" shall mean the Applicant herein and any division, parent, subsidiary, affiliate, licensee, franchisee, or predecessor in interest of Applicant, and every officer, employee, agent, or attorney acting on Applicant's behalf.
- E. The term "Market Research" shall mean all surveys, polls, focus groups, consumer interviews, market research studies and other investigations conducted by or on behalf of Opposer,

whether for marketing, litigation, or other purposes, and whether or not such investigations were completed, discontinued or fully carried out.

F. The term "concerning" shall mean relating to, referring to, describing, or constituting.

G. Whenever the terms "and" or "or" are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of these discovery requests responses which otherwise might be construed to be outside their scope.

H. Whenever the term "any" is used, it is to be construed to cover every responsive document, fact, or other thing to which it refers and not merely any one of such documents, facts, or other things.

I. The use of the plural form of any word shall include the singular and vice versa. References to the masculine gender shall apply equally to the feminine gender and vice versa.

J. The term "document" shall include, without limitation, any tangible item in Opposer's possession, custody or control, or of which Opposer has knowledge, wherever located, whether an original or a copy, including but not limited to, packaging, labels, tags, containers, configurations, illustrations, printed matter, correspondence, memoranda, agreements, reports, minutes, drafts, communications, books or records, notes, advertisements, trademark search reports, directories, publications, microfilms or the like, emails, electronic documents, computer tapes and printouts, photographs, and all other documents and things subject to a request for production under Rule 34 of the Federal Rules of Civil Procedure, whether or not claimed to be privileged from discovery on any ground.

K. The term "communication" shall include, without limitation, any oral or written statement or conversation or meeting, and any document, correspondence, email, telegram, mailgram, or facsimile, xerographic or electronic transmission.

L. The term "person" means any natural person, corporation, partnership, proprietorship, business concern or entity, association, organization, team or group of natural persons.

M. In responding to these requests, Opposer shall produce all available responsive documents, including those in possession of its attorneys or investigators. If a request cannot be responded to in full. Opposer shall respond to the extent possible.

N. Opposer is requested to quote each request in full immediately preceding its response.

O. In addition to providing amended responses and additional or corrective documents, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Opposer is requested to produce any additional responsive documents, acquired after responses to these requests have been furnished, within thirty (30) days after acquiring such documents.

P. If Opposer objects to furnishing documents in response to any request or portion thereof, Opposer shall specifically state all its objections, identify all documents to which an objection applies, and produce all requested documents to which no objection applies. When identifying a document pursuant to this Instruction, Opposer shall state the document's subject matter, its date, the name, title or position, and address of each writer or sender and each recipient, and its present location and custodian.

Q. Without limiting the generality of the foregoing Instruction, any claim or privilege, immunity or protection from discovery shall be made with sufficient particularity to enable Opposer to assess the applicability of the claimed privilege, immunity or protection, and documents withheld from production shall be identified in the privilege log specified in Request No. 65 herein.

R. Except where otherwise indicated, all requests concerning use, advertising, promotion, applications to register, sales and other activities are limited to the United States.

PRODUCE

1. All documents which show manufacture for, or by Opposer of automobile products under the mark KRYPTONITE.
2. All documents which show manufacture of products sold to automobile mechanics by Opposer using KRYPTONITE.
3. All documents which show sale of automobile products to automobile mechanics by Opposer.
4. All documents which show sale of automobile products by Opposer.
5. All documents which show the sale of products under the KRYPTONITE mark in the automobile repair field.
6. All documents which show marketing of products by Opposer to the automobile repair field.
7. All documents which show marketing of products under KRYPTONITE by Opposer to the

automobile repair field.

8. All documents which show sale of products by Opposer in the automobile field, under KRYPTONITE.

STEPHEN E. FELDMAN, P.C.

By: 

**Stephen E. Feldman
Attorneys for Applicant
12 East 41st Street
New York, New York 10017
(212)532-8585**

Dated: May 28, 2004

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing APPLICANT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS, was duly sent by regular mail to Michael Best & Friedrich, LLP., 100 East Wisconsin Avenue, Suite 3300, Milwaukee, WI 52302, on this 28th day of May, 2004.



Leslie Hines

Stephen E. Feldman, P.C.
Attorneys for Petitioner
12 East 41st Street
New York, New York 10017
(212) 532-8585



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

-----X
SCHLAGE LOCK COMPANY,

Opposer,

v.

ALTO PRODUCTS CORP.

Applicant.

Opposition No. 91159885
Serial No. 76493797

-----X
APPLICANT'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant requests Opposer to serve a written response to each request herein, and to produce each of the following documents and tangible things, organized and labeled to correspond with the categories in this request, at the offices of Stephen E. Feldman, P.C., 12 East 41st Street, New York, New York 10017, within (30) days of service hereof upon counsel of record for Opposer.

- A. The term "Opposer" shall mean the Opposer herein and any division, parent, subsidiary, affiliate, licensee, franchisee, or predecessor in interest of Opposer, and every officer, employee, agent or attorney acting on Opposer's behalf.
- B. The term "Opposer's Mark" shall mean the alleged mark KRYPTONITE.
- C. The term "Opposer's Goods" shall mean, individually and collectively, all the goods specified in paragraph 1 of the Notice of Opposition, except for bicycle locks.
- D. The term "Applicant" shall mean the Applicant herein and any division, parent, subsidiary, affiliate, licensee, franchisee, or predecessor in interest of Applicant, and every officer, employee, agent, or attorney acting on Applicant's behalf.
- E. The term "Market Research" shall mean all surveys, polls, focus groups, consumer interviews, market research studies and other investigations conducted by or on behalf of Opposer,

whether for marketing, litigation, or other purposes, and whether or not such investigations were completed, discontinued or fully carried out.

F. The term "concerning" shall mean relating to, referring to, describing, or constituting.

G. Whenever the terms "and" or "or" are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of these discovery requests responses which otherwise might be construed to be outside their scope.

H. Whenever the term "any" is used, it is to be construed to cover every responsive document, fact, or other thing to which it refers and not merely any one of such documents, facts, or other things.

I. The use of the plural form of any word shall include the singular and vice versa. References to the masculine gender shall apply equally to the feminine gender and vice versa.

J. The term "document" shall include, without limitation, any tangible item in Opposer's possession, custody or control, or of which Opposer has knowledge, wherever located, whether an original or a copy, including but not limited to, packaging, labels, tags, containers, configurations, illustrations, printed matter, correspondence, memoranda, agreements, reports, minutes, drafts, communications, books or records, notes, advertisements, trademark search reports, directories, publications, microfilms or the like, emails, electronic documents, computer tapes and printouts, photographs, and all other documents and things subject to a request for production under Rule 34 of the Federal Rules of Civil Procedure, whether or not claimed to be privileged from discovery on any ground.

K. The term "communication" shall include, without limitation, any oral or written statement or conversation or meeting, and any document, correspondence, email, telegram, mailgram, or facsimile, xerographic or electronic transmission.

L. The term "person" means any natural person, corporation, partnership, proprietorship, business concern or entity, association, organization, team or group of natural persons.

M. In responding to these requests, Opposer shall produce all available responsive documents, including those in possession of its attorneys or investigators. If a request cannot be responded to in full. Opposer shall respond to the extent possible.

N. Opposer is requested to quote each request in full immediately preceding its response.

O. In addition to providing amended responses and additional or corrective documents, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Opposer is requested to produce any additional responsive documents, acquired after responses to these requests have been furnished, within thirty (30) days after acquiring such documents.

P. If Opposer objects to furnishing documents in response to any request or portion thereof, Opposer shall specifically state all its objections, identify all documents to which an objection applies, and produce all requested documents to which no objection applies. When identifying a document pursuant to this Instruction, Opposer shall state the document's subject matter, its date, the name, title or position, and address of each writer or sender and each recipient, and its present location and custodian.

Q. Without limiting the generality of the foregoing Instruction, any claim or privilege, immunity or protection from discovery shall be made with sufficient particularity to enable Opposer to assess the applicability of the claimed privilege, immunity or protection, and documents withheld from production shall be identified in the privilege log specified in Request No. 65 herein.

R. Except where otherwise indicated, all requests concerning use, advertising, promotion, applications to register, sales and other activities are limited to the United States.

PRODUCE

9. All documents relating to any reports, or opinions rendered by expert witnesses, retained by Opposer for this proceeding.

10. A printout of the web pages from any web site, relating to Opposer's mark, or the products distributed, or sold under the mark.

11. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 1.

12. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 2.

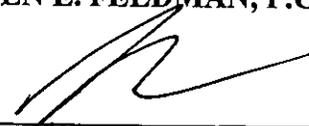
13. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 3.

14. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 4.
15. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 5.
16. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 6.
17. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 7.
18. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 8.
19. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 8.
20. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 9.
21. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 10.
22. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 11.
23. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 12.
24. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 13.
25. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 14.
26. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 15.
27. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in

paragraph 16.

28. All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 17.

STEPHEN E. FELDMAN, P.C.

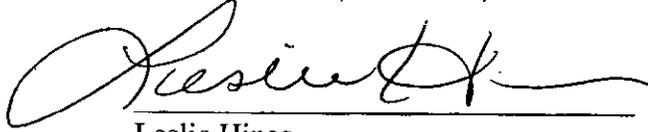
By: 

**Stephen E. Feldman
Attorneys for Applicant
12 East 41st Street
New York, New York 10017
(212)532-8585**

Dated: June 11, 2004

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing APPLICANT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS, was duly sent by regular mail to Michael Best & Friedrich, LLP., 100 East Wisconsin Avenue, Suite 3300, Milwaukee, WI 52302, on this 11TH day of June, 2004.



Leslie Hines

Stephen E. Feldman, P.C.
Attorneys for Petitioner
12 East 41st Street
New York, New York 10017
(212) 532-8585



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 RESPONSES TO
APPLICANT'S FIRST REQUEST FOR PRODUCTION OR DOCUMENTS

GENERAL OBJECTIONS

Each of Opposer's Responses is subject to the following objections:

1. Opposer submits these responses subject to, without intending to waive, and expressly reserving (a) any objections to relevancy, materiality, privilege, and admissibility in the above-captioned proceedings, or any other actions, of any document produced in response to these requests, and (b) the right to object to other discovery procedures involving or relating to the subject matter of the documents produced in response to the request.
2. Opposer's review of its files and documents is continuing and therefore it reserves the right to modify these requests and assert additional objections.
3. Opposer objects to these requests, including the instructions and definitions contained therein, to the extent that they seek to impose upon Opposer obligations beyond those imposed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice of the Patent and Trademark Office.

4. Opposer objects to these requests to the extent that they seek documents that are protected from disclosure by the work product doctrine, the attorney-client privilege, or any other privilege that is recognized by law, including, but not limited to, communications between Opposer and its counsel or documents that report, reflect, summarize or relate specifically to such communications, and documents prepared in anticipation of litigation by or on behalf of Opposer or its counsel. Opposer does not intend to waive any such objections by the production of any of the foregoing documents.

5. Opposer objects to these requests to the extent they seek information that is not relevant to the subject matter of this opposition or is not reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to these requests to the extent that they seek documents that are not presently within Opposer's possession, custody, or control, but in the possession of third parties or separate legal entities.

7. Opposer objects to these requests to the extent that they seek disclosure of confidential and proprietary business information.

8. Opposer objects to these requests to the extent that they purport to call for information or documents in the public domain and not in the exclusive possession, custody or control of Opposer. Such a request is beyond the scope of permissible discovery and would impose an undue burden on Opposer. Such information and documents are as available to Applicant as they are to Opposer.

9. Opposer specifically objects to Applicant's definition of "Opposer's Mark" as being the mark KRYPTONITE. Opposer plead numerous marks in the notice of opposition, including the mark KRYPTONITE as well as various "KRYPTO" formative marks. Thus,

Opposer's responses to these Interrogatories follow the definition of Opposer's Marks set forth in the Notice of Opposition.

10. Opposer specifically objects to Applicant's definition of "Opposer's Goods" as meaning, "individually and collectively, all the goods specified in paragraph 1 of the Notice of Opposition, except *for* bicycle locks," and Applicant's statement at the introduction of its Interrogatories "For the purpose of those interrogatories, Opposer's mark shall mean KRYPTONITE, and Opposer's goods shall be motorsport and automotive." Opposer objects to these definitions as unclear and as improperly characterizing the nature of Opposer's Goods. Opposer's responses to these Interrogatories assume that the proper definition of Opposer's Goods is "all of the goods set forth in Opposer's registrations."

REQUESTS

Request No. 1:

All documents concerning the selection of Opposer's Mark.

RESPONSE NO. 1

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce samples of non-privileged documents responsive to this request.

Request No. 2:

All documents concerning the decision to use Opposer's Mark in connection with Opposer's Goods.

RESPONSE NO. 2

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce samples of non-privileged documents responsive to this request.

Request No. 3:

All documents concerning any decision to file, prosecute or discontinue prosecution of any application to register Opposer's Mark.

RESPONSE NO. 3

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce samples of non-privileged documents responsive to this request.

Request No. 4:

For each application to register Opposer's Mark, whether or not currently pending, all documents sent to or received from the U.S. Patent and Trademark Office in connection with said application and/or registration.

RESPONSE NO. 4

Opposer objects to this Request as seeking information in the public record, which is readily available to Applicant.

Request No. 5:

For each application by Opposer to register Opposer's Mark, whether or not currently pending, all documents sent to or received from the U.S. Patent and Trademark Office in connection with said application and/or registration.

RESPONSE NO. 5

Opposer objects to this Request as duplicative of No. 4, and restates its objection here.

Request No. 6:

Any documents concerning any descriptive significance of Opposer's Mark.

RESPONSE NO. 6

There are no such documents in Opposer's possession or control.

Request No. 7:

All documents that refer to the public's recognition or perception of the Opposer's Mark for Opposer's Goods.

RESPONSE NO. 7

Opposer objects to this request as vague, overbroad, indefinite and unduly burdensome, indefinite. Subject to and without waiving these objections, documents responsive to this Request will be produced.

Request No. 8:

For each year from 1990 to the present, representative photographs or specimens showing trademark use of Opposer's Mark for Opposer's Goods.

RESPONSE NO. 8

Opposer objects to this request as overbroad and unduly burdensome. Subject to and without waiving these objections, representative documents responsive to this Request will be produced.

Request No. 9:

For each year from 1990 to the present, representative samples of advertisements which display Opposer's Mark for Opposer's Goods.

RESPONSE NO. 9

Opposer objects to this request as overbroad and unduly burdensome. Subject to and without waiving these objections, representative documents responsive to this Request will be produced.

Request No. 10:

For each year from 1997 to the present, representative sample of hallmarks and quality marks displaying Opposer's Mark on Opposer's Goods, and/or the packaging therefore.

RESPONSE NO. 10

Opposer objects to this Request as vague as the terms "hallmarks" and "quality marks" are not defined.

Request No. 11:

For each year from 1997 to the present, representative samples of brochures, mailing pieces, selling sheets, point-of-sale display items, and other items of promotional material which displayed Opposer's Mark for Opposer's Goods.

RESPONSE NO. 11

Opposer will produce documents responsive to this request.

Request No. 12:

For each year from 1997 to the present, representative samples of media articles or comments, press releases or other items of publicity which display or mention Opposer's Mark for Opposer's Goods.

RESPONSE NO. 12

Documents responsive to this Request will be produced.

Request No. 13:

For each of Opposer's Goods, each different media article or comment, press release or other item of publicity distributed or published in the past ten years, which has used the Opposer's Mark other than as a service mark or trademark.

RESPONSE NO. 13

Opposer objects to this Request as overbroad, unduly burdensome and irrelevant. Subject to, and without waiving these objections, documents responsive to this Request will be produced, to the extent such documents exist.

Request No. 14:

Each different marketing plan concerning Opposer's Goods, prepared by or for Opposer after 1997.

RESPONSE NO. 14

Opposer objects to this Request as seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request pursuant to the entry of an acceptable Protective Order by the Board.

Request No. 15:

Summaries or schedules showing the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

RESPONSE NO. 15

Opposer objects to this Request as overbroad, unduly burdensome and seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request relating to the past five years pursuant to the entry of an acceptable Protective Order by the Board.

Request No. 16:

Representative documents prepared and used by or on behalf of Opposer, in the ordinary course of business, sufficient to reliably show the annual unit and dollar volume of sales of Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

RESPONSE NO. 16

Opposer objects to this Request as overbroad, unduly burdensome and as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request relating to the past five years pursuant to the entry of an acceptable Protective Order by the Board.

Request No. 17:

Summaries or schedules showing the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

RESPONSE NO. 17

Opposer objects to this Request overbroad, unduly, burdensome and as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request relating to the past five years pursuant to the entry of an acceptable Protective Order by the Board.

Request No. 18:

Representative documents prepared and used by or on behalf of Opposer, in the ordinary course of business, sufficient to reliably show the annual expenditures incurred for advertising and promoting Opposer's Goods under Opposer's Mark for each year from 1990 to the present.

RESPONSE NO. 18

Opposer objects to this Request as duplicative of No. 17.

Request No. 19:

A representative sample of advertisements, ad slicks, and other advertising materials which display or mention Opposer's Mark and were prepared by or for Opposer or for use by retailers of Opposer's Goods.

RESPONSE NO. 19

Opposer objects to this Request as duplicative of No. 9.

Request No. 20:

A representative sample of advertisements, ad slicks, and other advertising materials which display or mention Opposer's Mark and were prepared by or for Opposer for use by wholesalers of Opposer's Goods.

RESPONSE NO. 20

Opposer objects to this Request as duplicative of Nos. 9 and 19.

Request No. 21:

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

RESPONSE NO. 21

Opposer objects to this Request as seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request, to the extent such documents exist, pursuant to the entry of an acceptable Protective Order by the Board.

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.

RESPONSE NO. 22

Opposer objects to this Request as nonsensical. To the extent Opposer understands this Request, see response to Request No. 21.

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.

RESPONSE NO. 23

Opposer objects to this Request as seeking confidential and proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request, to the extent such documents exist, pursuant to the entry of an acceptable Protective Order by the Board.

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.

RESPONSE NO. 24

See response to No. 23.

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.

RESPONSE NO. 25

Opposer objects to this request as duplicative of No. 21.

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.

RESPONSE NO. 26

Opposer objects to this request as duplicative of No. 23.

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.

RESPONSE NO. 27

Opposer objects to this request as seeking confidential proprietary business information. Subject to, and without waiving this objection, documents responsive to this Request will be produced pursuant to an acceptable Protective Order entered by the Board.

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.

RESPONSE NO. 28

Opposer objects to this request as overbroad, unduly burdensome and as seeking confidential proprietary business information. Opposer further objects to this request as seeking information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, as the validity of Opposer's Marks is not in issue.

Request No. 29:

The most recent annual report of Applicant referring to Opposer's Goods marketed under Opposer's Mark.

RESPONSE NO. 29

There are no documents responsive to this request.

Request No. 30:

An organizational chart of Opposer.

RESPONSE NO. 30

Opposer objects to this request as seeking confidential proprietary business information. Subject to, and without waiving this objection, documents responsive to this Request will be produced pursuant to an acceptable Protective Order entered by the Board.

Request No. 31:

Documents sufficient to identify all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

RESPONSE NO. 31

Opposer objects to this request as seeking confidential proprietary business information. Subject to, and as assuming facts not in evidence. Without waiving these objections, documents responsive to this Request and not subject to objection will be produced pursuant to an acceptable Protective Order entered by the Board.

Request No. 31:

Documents sufficient to identify all of Opposer's current subsidiaries and affiliates, five retailers, three wholesalers who have used or are authorized to sell Opposer's Goods.

RESPONSE NO. 31

See Response to Request No. 30, and all objections thereto.

Request No. 32:

All reports of trademark searches conducted by or on behalf of Opposer's concerning Opposer's Mark for Opposer's Goods.

RESPONSE NO. 32

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, non-privileged documents responsive to this Request will be produced, to the extent such exist.

Request No. 33:

All documents referring to any trademark search conducted by or for Opposer concerning Opposer's Mark for Opposer's Goods.

RESPONSE NO. 33

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections. Opposer will produce non-privileged documents responsive to this request.

Request No. 34:

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

RESPONSE NO. 34

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request, to the extent such documents exist.

Request No. 35:

All documents concerning any survey or other Market Research conducted by or on behalf of Opposer which relates to any issue in this proceeding.

RESPONSE NO. 35

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, there are no documents responsive to this Request in Opposer's possession or control.

Request No. 36:

All documents comprising, referring or relating to any communication (oral or written) between Opposer or its counsel and any other person concerning that person's proposed

statement, affidavit or declaration to be used by Opposer in support of its position in this opposition proceeding.

RESPONSE NO. 36

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, there are no nonprivileged documents responsive to this Request in Opposer's possession or control.

Request No. 37:

All documents comprising, referring or relating to any agreement or understanding (oral or written) between Opposer and any member of the trade or public concerning such person's statement, declaration, or affidavit used by Opposer in support of its position in this opposition proceeding.

RESPONSE NO. 37

Opposer objects to this Request to the extent it seeks work product or other privileged information. Subject to this objection, there are no documents responsive to this Request.

Request No. 38:

All documents concerning Opposer's awareness of the use or registration, not authorized by Opposer of any designation consisting in whole or in part of KRYPTONITE for Opposer's Goods.

RESPONSE NO. 38

Opposer objects to this Request as over broad, unduly burdensome and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request.

Request No. 39:

All reports of trademark searches conducted by or for Opposer concerning KRYPTONITE other than Opposer's Mark.

RESPONSE NO. 39

Opposer objects to this Request as nonsensical; KRYPTONITE is Opposer's mark.

Request No. 40:

All documents referring to any trademark search conducted by or for Opposer concerning KRYPTONITE other than Opposer's Mark.

RESPONSE NO. 40

See Response No. 39.

Request No. 41:

All documents concerning the use, before 1990, by any party other than Opposer, of KRYPTONITE, whether as a trademark, service mark or otherwise, for Opposer's Goods.

RESPONSE NO. 41

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce representative non-privileged documents responsive to this Request, to the extent any such documents exist.

Request No. 42:

All documents concerning the use, on or after 1990, by any party not authorized by Opposer of KRYPTONITE, whether as a trademark, service mark or otherwise, for Opposer's Goods.

RESPONSE NO. 42

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving those objections, Opposer will produce representative non-privileged documents responsive to this Request.

Request No. 43:

All documents concerning any registration of, or application to register, KRYPTONTIE by anyone other than Applicant, for Opposer's Goods.

RESPONSE NO. 43

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request.

Request No. 44:

All documents concerning any oral or written communication between Opposer and anyone rather than Applicant, relating to the use of KRYPTONITE, other than Opposer's Mark, for Opposer's Goods.

RESPONSE NO. 44

Opposer objects to this Request as overbroad, unduly burdensome, vague, indefinite and as seeking attorney-client privilege and work product information and material and as nonsensical, since KRYPTONITE is Opposer's mark.

Request No. 45:

All documents concerning any oral or written communication between Opposer and anyone other than Applicant, relating to any registration of, or application to register KRYPTONITE, other than Opposer's Mark for Opposer's Goods.

RESPONSE NO. 45

Opposer objects to this Request as overbroad, unduly burdensome and as seeking attorney-client privilege and work product information and material and as nonsensical, since KRYPTONITE is Opposer's mark.

Request No. 46:

All documents concerning any agreement (oral or written) to which Opposer has been a party concerning the use or registration of KRYPTONITE.

RESPONSE NO. 46

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request.

Request No. 47:

All documents referring to any similarity or dissimilarity between Opposer's Mark and any use of KRYPTONITE by others.

RESPONSE NO. 47

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce representative non-privileged documents responsive to this Request to the extent any such documents exist.

Request No. 48:

All documents referring to whether confusion is likely or is not likely between Opposer's Mark and any use of KRYPTONITE by others.

RESPONSE NO. 48

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce representative, non-privileged documents responsive to this Request to the extent any such documents exist.

Request No. 49:

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

RESPONSE NO. 49

Opposer objects to this Request as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce representative non-privileged documents responsive to this Request to the extent any such documents exist.

Request No. 50:

All documents concerning communications between Opposer and any member of the trade or public relating to the present opposition.

RESPONSE NO. 50

There are no such documents in Opposer's possession or control.

Request No. 51:

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

RESPONSE NO. 51

Opposer objects to this Request as seeking attorney-client privilege and work product information and materials.

Request No. 52:

If Opposer contends that it is the only entity that can use KRYPTONITE for Opposer's Goods, all documents which support such contention.

RESPONSE NO. 52

Opposer objects to this Request as seeking attorney-client privilege and work product information and materials. Subject to this objection, see Opposer's registrations for its KRYPTONITE mark, which under applicable law give it the exclusive right to control the use of that mark in commerce for Opposer's Goods and related goods and services.

Request No. 53:

All documents concerning the standards or specification if any, that Opposer contends must be met in order for Opposer's Goods to be referred to as KRYPTONITE.

RESPONSE NO. 53

Opposer objects to this Request as nonsensical and incomprehensible.

Request No. 54:

All documents, not produced in response to any other request herein, concerning the possible enforcement or non-enforcement or defense of Opposer's Mark.

RESPONSE NO. 54

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request.

Request No. 55:

All documents, not produced in response to any other request herein, concerning any communication by Opposer's objecting on the basis of Opposer's Mark to the use or registration of any mark or name.

RESPONSE NO. 55

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request.

Request No. 56:

All documents, not produced in response to any other request herein, concerning any objection which Opposer has received relating to the use of Opposer's Mark.

RESPONSE NO. 56

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Opposer also objects that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, since the validity of Opposer's Marks is not in issue.

Request No. 57:

All documents, not produced in response to any other request herein, concerning any objection which Opposer has received relating to the registration of Opposer's Mark.

RESPONSE NO. 57

Opposer objects to this Request as overbroad, duly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Opposer also objects that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, since the validity of Opposer's Marks and registrations is not in issue.

Request No. 58:

All documents showing the names of the parties, the jurisdiction, the proceeding number, the outcome, and, if published, the citation of each decision, concerning each trademark opposition, cancellation proceeding, and/or other inter parties proceeding or litigation, other than the present proceeding, which in whole or in part, was based on or directed against Opposer's Mark.

RESPONSE NO. 58

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request, except as those against Opposer's Mark, which are objected to for the reasons set forth in response to Request No. 57.

Request No. 59:

All documents, not produced in response to any other request herein, concerning any oral or written communication relating to the use or registration by any person other than Applicant of KRYPTONITE for any service or product on which Opposer relies in this proceeding.

RESPONSE NO. 59

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and as seeking attorney-client privilege and work product information and material. Subject to, and without waiving these objections, Opposer will produce non-privileged documents responsive to this request.

Request No. 60:

With respect to each expert that Opposer expects to call as a witness in this proceeding, a report containing the information specified in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

RESPONSE NO. 60

Opposer has not identified an expert in this case.

Request No. 61:

All documents identified in response to Applicant's First Set of Interrogatories to Opposer.

RESPONSE NO. 61

Documents responsive to this Request will be produced.

Request No. 62:

A privilege log identifying, for each Applicants' First Date of Interrogatories to Opposer and for each request herein, each document, communication or thing that contains any information responsive to such interrogatories or requests and that is being withheld because of a claim of privilege, immunity, or other protection, and stating, for each such document, communication or thing, the basis for withholding it, its date and nature, the parties transmitting and receiving it, and its subject matter.

RESPONSE NO. 62

A privilege log will be produced.

Request No. 63:

All agreements with DC Comics.

RESPONSE NO. 63

Opposer objects to this Request as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to

this Request pursuant to the entry of an acceptable Protective Order by the Board.

Request No. 64:

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

RESPONSE NO. 64

Opposer objects to this Request as seeking confidential proprietary business information. Subject to, and without waiving these objections, Opposer will produce documents responsive to this Request pursuant to the entry of an acceptable Protective Order by the Board.

Request No. 65:

All litigation and other papers and things referred to in DC Comics v. Kryptonite Corporation.

RESPONSE NO. 65

Opposer objects to this Request as vague, overbroad and incomprehensible.

Request No. 66:

All papers in all disputes with DC Comics, and its predecessors.

RESPONSE NO. 66

Opposer objects to this Request as vague, overbroad and incomprehensible.

Request No. 67:

All the files of the following Oppositions/cancellation proceedings 91153668, 76377515, 76377514, 91152807, 78039703, 91123908, 91122454, 91123452 and 91111872.

RESPONSE NO. 67

Opposer objects to this Request as seeking information in the public record, which is readily available to Applicant.

Dated: May 18, 2004

Respectfully submitted,

MICHAEL BEST & FRIEDRICH, LLP

By: 

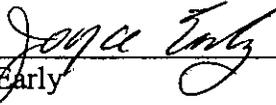
Dyann L. Kostello

Lori S. Meddings

101 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, was duly sent by regular mail to Stephen Feldman, Stephen E. Feldman, P.C., 12 East 41st Street, New York, NY 10017, on the 18 day of May, 2004.



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,

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

v.

ALTO PRODUCTS CORP.,

Applicant.

OPPOSER'S RESPONSES TO
APPLICANT'S SECOND REQUEST FOR PRODUCTION OR DOCUMENTS

GENERAL OBJECTIONS

Each of Opposer's Responses is subject to the following objections:

1. Opposer submits these responses subject to, without intending to waive, and expressly reserving (a) any objections to relevancy, materiality, privilege, and admissibility in the above-captioned proceedings, or any other actions, of any document produced in response to these requests, and (b) the right to object to other discovery procedures involving or relating to the subject matter of the documents produced in response to the request.
2. Opposer's review of its files and documents is continuing and therefore it reserves the right to modify these requests and assert additional objections.
3. Opposer objects to these requests, including the instructions and definitions contained therein, to the extent that they seek to impose upon Opposer obligations beyond those imposed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice of the Patent and Trademark Office.

4. Opposer objects to these requests to the extent that they seek documents that are protected from disclosure by the work product doctrine, the attorney-client privilege, or any other privilege that is recognized by law, including, but not limited to, communications between Opposer and its counsel or documents that report, reflect, summarize or relate specifically to such communications, and documents prepared in anticipation of litigation by or on behalf of Opposer or its counsel. Opposer does not intend to waive any such objections by the production of any of the foregoing documents.

5. Opposer objects to these requests to the extent they seek information that is not relevant to the subject matter of this opposition or is not reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to these requests to the extent that they seek documents that are not presently within Opposer's possession, custody, or control, but in the possession of third parties or separate legal entities.

7. Opposer objects to these requests to the extent that they seek disclosure of confidential and proprietary business information.

8. Opposer objects to these requests to the extent that they purport to call for information or documents in the public domain and not in the exclusive possession, custody or control of Opposer. Such a request is beyond the scope of permissible discovery and would impose an undue burden on Opposer. Such information and documents are as available to Applicant as they are to Opposer.

REQUESTS

Request No. 1:

All documents which show manufacture for, or by Opposer of automobile products under the mark KRYPTONITE.

RESPONSE NO. 1

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and irrelevant.

Request No. 2.

All documents which show manufacture of products sold to automobile mechanics by Oppose using KRYPTONTIE.

RESPONSE NO. 2

Opposer objects to this Request as overbroad, unduly burdensome, indefinite and irrelevant.

Request No. 3:

All documents which show sale of automobile products to automobile mechanics by Opposer.

RESPONSE NO. 3

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, documents responsive to this request have been produced.

Request No. 4:

All documents which show sale of automobile products by Opposer.

RESPONSE NO. 4

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, documents responsive to this request have been produced.

Request No. 5

All documents which show the sale of products under the KRYPTONITE mark in the automobile repair field.

RESPONSE NO. 5

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, Opposer will produce documents responsive to this request, to the extent such documents exist.

Request No. 6

All documents which show marketing of products by Opposer to the automobile repair field.

RESPONSE NO. 6

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, Opposer will produce documents responsive to this request, to the extent such documents exist.

Request No. 7

All documents which show marketing of products under KRYPTONITE by Opposer to the automobile repair field.

RESPONSE NO. 7

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, Opposer will produce documents responsive to this request, to the extent such documents exist.

Request No. 8

All documents which show sale of products by Opposer in the automobile field, under KRYPTONITE.

RESPONSE NO. 8

Opposer objects to this Request as overbroad, unduly burdensome and indefinite. Subject to and without waiving these objections, documents responsive to this request have been produced.

Dated: July 2nd 2004

Respectfully submitted,

MICHAEL BEST & FRIEDRICH, LLP

By: 

~~Dyann L. Kostello~~

Lori S. Meddings

101 East Wisconsin Avenue, Suite 3300

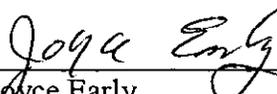
Milwaukee, WI 53202

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S SECOND REQUEST FOR PRODUCTION OR DOCUMENTS, was duly sent by regular mail to:

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

on the 2 day of July, 2004.



Joyce Early

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



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 RESPONSES TO
APPLICANT'S THIRD REQUEST FOR PRODUCTION OR DOCUMENTS

REQUESTS

Request No. 9:

All documents relating to any reports, or opinions rendered by expert witnesses, retained by Opposer for this proceeding.

RESPONSE NO. 9

Opposer has not yet retained an expert in this case.

Request No. 10:

A printout of the web pages from any web site, relating to Opposer's mark, or the products distributed, or sold under the mark.

RESPONSE NO. 10

The documents responsive to this request have been produced.

Request No. 11:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 1.

RESPONSE NO. 11

The documents responsive to this request have been produced.

Request No. 12:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 2.

RESPONSE NO. 12

Opposer objects to this Request as irrelevant. Applicant did not counterclaim to cancel or otherwise challenge Opposer's registrations and the registration dates thereof and the dates of first use identified therein predate Applicant's filing date which conclusively establishes Opposer's prior rights in Opposer's Marks. Subject to and without waiving these objections, copies of the registration certificates for Opposer's Marks have been produced.

Request No. 13:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 3.

RESPONSE NO. 13

Opposer objects to this Request as irrelevant. Applicant did not counterclaim to cancel or otherwise challenge Opposer's registrations and the registration dates thereof and the dates of first use identified therein predate Applicant's filing date which conclusively establishes Opposer's prior rights in Opposer's Marks. Subject to and without waiving these objections, copies of the registration certificates for Opposer's Marks have been produced.

Request No. 14:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 4.

RESPONSE NO. 14

Opposer objects to this Request as irrelevant. Applicant did not counterclaim to cancel or otherwise challenge Opposer's registrations and the registration dates thereof and the dates of first use identified therein predate Applicant's filing date which conclusively establishes Opposer's prior rights in Opposer's Marks. Subject to and without waiving these objections, copies of the registration certificates for Opposer's Marks have been produced.

Request No. 15:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 5.

RESPONSE NO. 15

The documents responsive to this request have been produced.

Request No. 16:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 6.

RESPONSE NO. 16

The documents responsive to this request have been produced.

Request No. 17:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 7.

RESPONSE NO. 17

The documents responsive to this request have been produced.

Request No. 18:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 8.

RESPONSE NO. 18

The documents responsive to this request have been produced.

Request No. 19:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 8.

RESPONSE NO. 19

Duplicative of Request No. 18; see response to same.

Request No. 20:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 9.

RESPONSE NO. 20

The documents responsive to this request have been produced.

Request No. 21:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 10.

RESPONSE NO. 21

The documents responsive to this request have been produced.

Request No. 22:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 11.

RESPONSE NO. 22

Opposer objects to this Request as irrelevant. Applicant did not counterclaim to cancel or otherwise challenge Opposer's registrations and the registration dates thereof and the dates of first use identified therein predate Applicant's filing date which conclusively establishes Opposer's prior rights in Opposer's Marks. Subject to and without waiving these objections, copies of the registration certificates for Opposer's Marks have been produced.

Request No. 23:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 12.

RESPONSE NO. 23

The documents responsive to this request have been produced.

Request No. 24:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 13.

RESPONSE NO. 24

Opposer objects to this request as irrelevant and nonsensical. Paragraph 13 of the Notice of Opposition identifies Applicant's application which is the subject of this proceeding. Subject to and without waiving these objections, the documents in Opposer's possession relating to Applicant's Mark have been produced.

Request No. 25:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 14.

RESPONSE NO. 25

Opposer objects to this Request as the statements set forth in Paragraph 14 of the Notice of Opposition speak for themselves. Subject to and without waiving these objections, documents relating to the commercial impression of the parties' marks have been produced.

Request No. 26:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 15.

RESPONSE NO. 26

Opposer objects to this Request as irrelevant and nonsensical. Paragraph 15 of the Notice of Opposition states that Applicant's use and registration of Applicant's Mark is likely to cause confusion with Opposer's Mark, which is a legal conclusion derived from considering the legal factors analyzed in determining whether there is a likelihood of confusion between two marks. Subject to and without waiving these objections, Opposer has produced documents showing similarity of the parties' marks, and overlap of the parties' goods and channels of trade.

Request No. 27:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 16.

RESPONSE NO. 27

Opposer objects to this Request as irrelevant and nonsensical as the statements set forth in Paragraph 16 of the Notice of Opposition are legal conclusions.

Request No. 28:

All documents that support, or relate to the allegations in Opposer's Notice of Opposition in paragraph 17.

RESPONSE NO. 28

Opposer objects to this Request as irrelevant and nonsensical as the statement set forth in paragraph 17 of the Notice of Opposition speaks for itself, and Applicant has made no claim that Opposer has consented to its use of Opposer's Marks. No documents can exist to prove a negative.

Dated: July 15, 2004

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

By:



Dyann L. Kostello

Lori S. Meddings

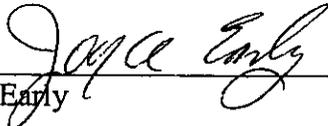
101 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S THIRD REQUEST FOR PRODUCTION OR DOCUMENTS, was duly sent by regular mail to:

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

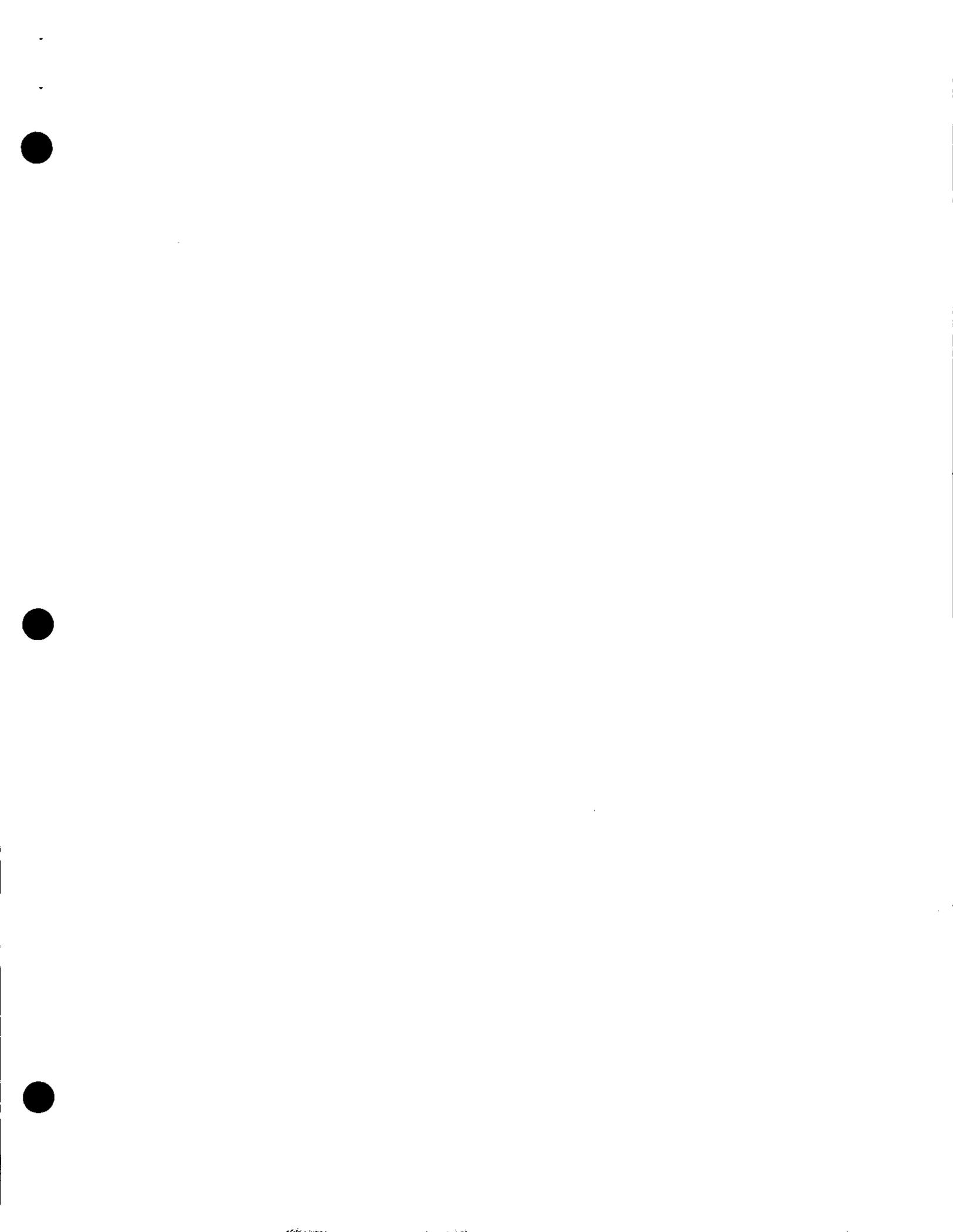
on the 15 day of July, 2004.



Joyce Early

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

July 16, 2004

VIA FAX

Dyann L. Kostello
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. Kostello:

We recently received your document production and Opposer's Responses to Applicant's First and Second Request for Production of Documents. We find your responses inadequate and your production incomplete. Specifically, Applicant did not receive any documents covering the following:

- A. The annual unit and dollar volume of sales of goods sold under Opposer's Mark. (See App. First Doc. Request Nos. 15 and 16).
- B. The annual expenditures incurred for advertising and promotion of goods sold under Opposer's Mark. (See App. First Doc. Request Nos. 17 and 18).
- C. Any agreements between Opposer and any retailers or wholesalers which sell Opposer's goods under Opposer's Mark. (See App. First Doc. Request Nos. 21 to 28).
- D. An organizational chart of Opposer. (See App. First Doc. Request No. 30).
- E. Documents sufficient to identify Opposer's subsidiaries and affiliates. (See App. First Doc. Request No. 31).
- F. Any Market Research performed by Opposer for goods sold under Opposer's Mark. (See App. First Doc. Request Nos. 34, 35 and 49).

- G. Opposer's trademark enforcement policies. (See App. First Doc. Request No. 51).
- H. All agreements and litigation papers in connection with *DC Comics v. Kryptonite Corp.*, No. 00 Civ. 5562 AGS. (See App. First Doc. Request Nos. 63 to 65).

If we do not receive the above documents, we will be forced to file a motion with the TTBA requiring Opposer to so.

Additionally, Applicant in its Second Document Request asked Opposer to provide documentation regarding:

- A. All documents showing the manufacture and sale of automobile products to automobile mechanics. (See App. Second Doc. Request Nos. 2 to 3). and
- B. All documents showing the sale and marketing of products to the automotive repair field. (See App. Second Doc. Request Nos. 5 to 7).

Opposer responded with multiple objections and did not produce the requested papers. Applicant believes these documents go to the heart of the case (i.e., whether or not Opposer has a market for automotive repair parts under the Kryptonite Mark.) and should be produced.

It is noted that Opposer has produced a small amount of advertisements containing an automotive security lock. (See, e.g., KRY 646-647, 661-664, 752-753, and 2580-2582). These documents, however, are not related to the automotive repair field. We, therefore, ask Opposer to reconsider its objections and either produce the above-requested papers or admit that these documents do not exist because Opposer has no plans to enter the automotive repair field.

Very truly yours,

Stephen E. Feldman

SEF/MTD

cc: Alto



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PATENT AND TRADEMARK LAW

September 2, 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:

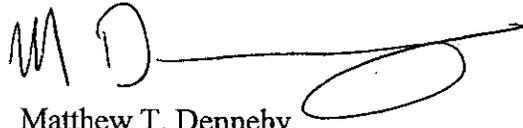
On July 16, 2004, we sent a letter to your colleague Dyann L. Kostello. In it, we asked Opposer to supplement its document production because Applicant did not receive any documents covering the following:

- A. The annual unit and dollar volume of sales of goods sold under Opposer's Mark. (See App. First Doc. Request Nos. 15 and 16).
- B. The annual expenditures incurred for advertising and promotion of goods sold under Opposer's Mark. (See App. First Doc. Request Nos. 17 and 18).
- C. Any agreements between Opposer and any retailers or wholesalers which sell Opposer's goods under Opposer's Mark. (See App. First Doc. Request Nos. 21 to 28).
- D. An organizational chart of Opposer. (See App. First Doc. Request No. 30).
- E. Documents sufficient to identify Opposer's subsidiaries and affiliates. (See App. First Doc. Request No. 31).
- F. Any Market Research performed by Opposer for goods sold under Opposer's Mark. (See App. First Doc. Request Nos. 34, 35 and 49).
- G. Opposer's trademark enforcement policies. (See App. First Doc. Request No. 51).

- H. All agreements and litigation papers in connection with *DC Comics v. Kryptonite Corp.*, No. 00 Civ. 5562 AGS. (See App. First Doc. Request Nos. 63 to 65).
- I. All documents showing the manufacture and sale of automobile products to automobile mechanics. (See App. Second Doc. Request Nos. 2 to 3). and
- J. All documents showing the sale and marketing of products to the automotive repair field. (See App. Second Doc. Request Nos. 5 to 7).

Consequently, we never received a response to the July 16th letter nor did we receive any additional documents. Therefore, if we do not receive the requested documents within a week, a motion compelling production will be filed with TTBA.

Very truly yours,

A handwritten signature in black ink, consisting of a stylized 'M' followed by a 'D' and a long horizontal line that loops back under the 'D'.

Matthew T. Dennehy
SEF



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LONG ISLAND OFFICE
120 MAIN STREET (ROUTE 25A)
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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.

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

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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 just received your letter of September 2, 2004. As stated in our letter sent earlier today, while Opposer has produced over 4,500 documents thus far in this proceeding, Applicant has not produced a single document. In addition, while Applicant has addressed some of the concerns raised in our July 29, 2004 letter relating to the deficiencies in Applicant's responses to Opposer's discovery requests, we still await a response with respect to Applicant's improper objections to Opposer's Requests for Production of Documents and Things. As stated in our earlier letter, if a prompt response is not received, we will be the ones filing a motion to compel.

Further, the Protective Order in this case was just filed this week, and as stated in Opposer's responses to Applicant's document requests, any confidential documents will only be produced once a Protective Order has been entered by the Board. All of the document requests identified in your letter today relate to confidential documents, which is why Applicant has not been given copies of these documents.

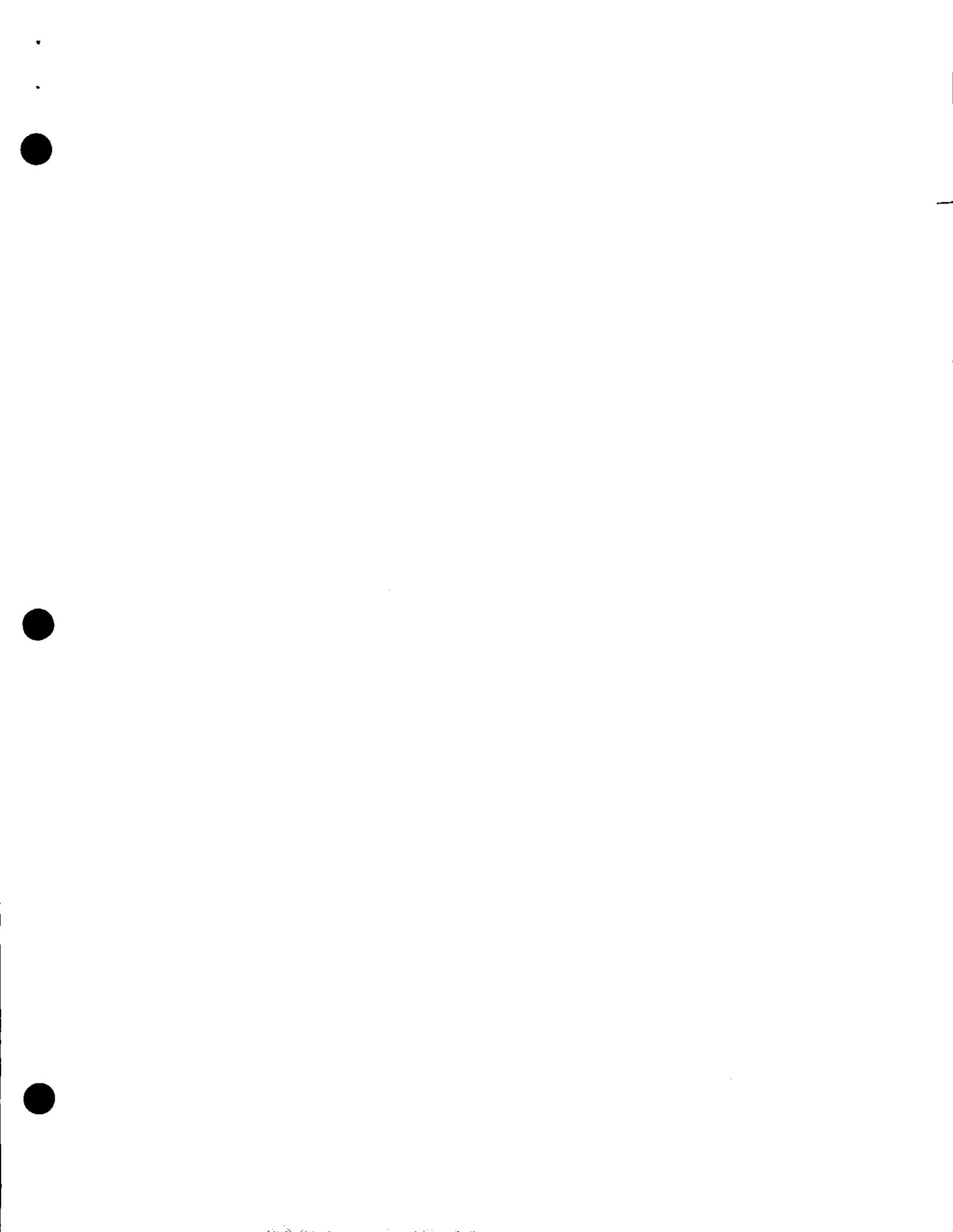
Applicant has already received copies of all non-privileged documents responsive to its discovery other than those deemed confidential. Again, any confidential documents will only be produced after the Protective Order has been approved and entered by the Board.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP


Lori S. Meddings

cc: Dyann L. Kostello, Esq.



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PATENT AND TRADEMARK LAW

September 9, 2004

VIA Facsimile

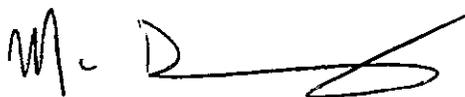
Lori Meddings
Michael Best & Friedrich, LLP
101 East Wisconsin Avenue, Suite 3300
Milwaukee, Wisconsin 53202

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

Dear Ms. Meddings:

This letter is to inform you that the TTBA has entered our Protective Order. We, therefore, expect production of all documents referred to in our July 16th and September 2nd letters. If the requested documents are not received immediately, we will be forced to file a motion compelling production.

Very truly yours,



Matthew T. Dennehy
Stephen E. Feldman

Attachment

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: September 9, 2004

Opposition No. 91159885

SCHLAGE LOCK COMPANY

v.

Alto Products, Corp.

Rochelle Ricks, Paralegal Specialist:

The stipulated protective agreement filed on September 2, 2004 is noted. The parties are referred, as appropriate, to TBMP §§ 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

Trial dates remain as set in the Board's March 24,
2004 institution order.

Notice Regarding TTAB Electronic Resources and New Rules

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.

The second edition of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.