ESTTA Tracking number: **ESTTA291631**
Filing date: **06/24/2009**

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

Proceeding	91168015
Party	Plaintiff CAMPBELL LABORATORIES, INC.
Correspondence Address	DOUGLAS T. JOHNSON MILLER & MARTIN PLLC STE. 1000 VOLUNTEER BLDG. , 832 GEORGIA AVENUE CHATTANOOGA, TN 37402 UNITED STATES djohnson@millermartin.com
Submission	Response to Board Order/Inquiry
Filer's Name	Douglas T. Johnson
Filer's e-mail	djohnson@millermartin.com
Signature	/Douglas T. Johnson/
Date	06/24/2009
Attachments	KernRequestReopen.pdf (4 pages)(126158 bytes) KernDeclaration.pdf (32 pages)(844053 bytes)

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

SIGNAL INVESTMENT & MANAGEMENT CO., Opposer,	)	Opposition No. 91,168,015
	)	Application Ser. No. 78/043,651
v.	)	
	)	Published in the Official Gazette on November 1, 2005
DAVID A. KERN, Applicant.	)	

RESPONSE TO ORDER TO SHOW CAUSE
AND MOTION TO COMPEL AND REOPEN TESTIMONY AND BRIEFING PERIODS OR ALTERNATIVELY, TO DISMISS WITHOUT PREJUDICE

Opposer, Signal Investment & Management Co. ("Signal") responds to the order to show cause dated May 25, 2009, to request that judgment by default not be entered against it in this opposition. Signal also requests that answers to its discovery in this proceeding be compelled and that testimony periods in this proceeding be reopened, and the trial schedule be reset.

I. Background

The history of this dispute dates back to late 2005 when Signal filed opposition to Applicant's application to register the mark HERPACIL. The Applicant duly answered the notice of opposition and Signal served discovery on the Applicant. (Johnson Declaration, ¶ 3.) The parties then engaged in settlement discussions and filed for stipulations for extensions of time in 2006 by agreement. It was apparent that the parties' had achieved the outline of a settlement agreement by their communications at the end of January, 2007, however, both parties permitted substantial delays of several months in responding to the other.

II. Argument

As set forth in TBMP § 801.02(a), "it is the policy of the Board not to enter judgment against a Plaintiff, for failure to file a main brief on the case, if the Plaintiff, in its response to the show cause order, indicates that it has not lost interest in the case."

In this proceeding, the Opposer would prefer to secure a settlement in accordance with its last proposal of July 7, 2008, or alternatively, to secure dismissal of the proceeding without prejudice, or as a final alternative to have answers to the discovery served in 2006 compelled and testimony and briefing schedule reset. Copies of the discovery are attached as Exhibits A and B to the Johnson Declaration, and no objections were served to the discovery within the time permitted.

Signal did not move to compel responses to discovery earlier as it was believed the settlement would be achieved. That has not proved the case. The Board may reset the testimony and trial periods pursuant to Fed. R. Civ. P. 6(b)(2) and TBMP §509.01 and such periods may be designated to commence only after discovery to Signal's first interrogatories and request for production have been provided. Accordingly, the Applicant moves pursuant to TBMP §523 for an order to compel discovery and pursuant to TBMP §509.01 to reset a testimony and briefing periods to begin after the provision of that discovery.

Alternatively, upon consent of the Applicant, Signal would agree to dismissal of the present proceeding without prejudice.

In light of the lack of prejudice to the Applicant, minimal additional length of delay given the delays by Applicant in responding to settlement proposals, and Signal's good faith in pursuing a settlement of this dispute, Signal believes there is good and sufficient cause that judgment should not be entered against it and the relief sought pursuant to §§ 509 and 523 should be granted.

III. Conclusion

The Board has noted numerous times that the courts and the Board are reluctant to give judgments by default and tend to rule in favor of setting aside a default, since the law favors deciding cases on their merits. Signal respectfully requests that judgment by default not be entered against it in this opposition and that in the absence of a stipulated dismissal without prejudice, that discovery be compelled and the testimony periods in this proceeding be reopened, and the trial briefing schedule be reset.

Respectfully submitted,

Miller & Martin PLLC

Douglas T. Johnson
Reg. No. 31,841
Suite 1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402
423-756-6600
Attorneys for Opposer
Signal Investment & Management Co.

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with the foregoing document by placing a true and exact copy of said document in the United States mail, with adequate postage affixed thereupon to carry the same to its destination at the following address:

Allison L. Rapp
Lutzker, Lutzker & Settlemyer LLP
1000 Vermont Avenue, N.W., Suite 450
Washington DC 20005

This 23 day of June, 2009.

MILLER & MARTIN PLLC

By: _____
Douglas T. Johnson

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

SIGNAL INVESTMENT & MANAGEMENT CO., Opposer,	)	Opposition No. 91,168,015
	)	Application Ser. No. 78/043,651
v.	)	Published in the Official Gazette on November 1, 2005
DAVID A. KERN, Applicant.	)	

DECLARATION OF DOUGLAS T. JOHNSON

I, Douglas T. Johnson, declare as follows:

1. I am attorney in good standing admitted to the Bars of the States of Georgia and Tennessee. I am a member of Chattanooga, Tennessee office of Miller & Martin, PLLC, and am counsel for Opposer, Signal Investment & Management Co. The facts set forth in this declaration are based upon my personal knowledge.

2. On November 29, 2005, I filed a timely notice of opposition against Applicant's Application No. 78/043,651 for the mark HERPACIL on behalf of Signal Investment & Management Co. On December 15, 2005, the Trademark Trial and Appeal Board ("TTAB") issued a trial schedule for this opposition. According to this schedule, Applicant's answer was due January 24, 2006, discovery was set to close July 3, 2006 and Opposer's testimony period was set to close October 1, 2006.

3. Applicant filed an answer in a timely fashion on January 24, 2006 and on February 7, 2006 Opposer served a first set of interrogatories and first set of requests for production together with a form protective order upon Applicant's counsel. A copy of this discovery is attached as Exhibits A and B to this declaration.

4. On March 8, 2006, I agreed with Applicant's counsel to extend the deadline for responding to discovery requests until April 14, 2006.

5. Subsequent to service of discovery, discussions were held between counsel as to the possibility of settlement and on April 11, 2006 Applicant's counsel proposed several points suggested as the basis for possible settlement.

6. On about July 12, 2006, I responded to the initial settlement terms that had been proposed by Applicant's counsel.

7. Six months later, on January 30, 2007 Applicant's counsel indicated that Applicant was amenable to settlement on the terms proposed on July 12, 2006.

8. On February 2, 2007 I transmitted a draft "Consent Agreement" to Applicant's counsel. On June 28, 2007 I forwarded another draft "Agreement" to Applicant's counsel. Applicant's counsel did not respond to the draft Agreement until over ten months later on about May 21, 2008.

9. The parties reached an impasse over relatively minor issues and on May 25, 2009, I proposed a dismissal of the opposition without prejudice provided Applicant would consent to such dismissal. No acceptance or refusal of that offer has been received.

10. The parties agreed to stipulations for extensions of time on about April 12, 2006, June 9, 2006, September 10, 2006, October 17, 2006 and January 29, 2007. The parties also moved to suspend proceedings pending settlement negotiations in June, 2007 and June, 2008.

11. There has been no agreement to extend the time for Applicant to respond to Opposer's discovery requests since early 2007, however, Opposer has not moved to compel discovery pending settlement negotiations, and Applicant has not responded with any objections to such discovery.

12. In accordance with 28 U.S.C. §1746, under penalty of perjury of the laws in the United States that the foregoing is true and correct.

Date: 6/24/09

Douglas T. Johnson

EXHIBIT A

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

Application Ser. No. 78/043,651

Published in the Official Gazette on November 1, 2005

SIGNAL INVESTMENT & MANAGEMENT CO.	)	
	)	
Opposer,	)	
	)	Opposition No. 91168015
v.	)	
	)	
DAVID A. KERN,	)	
	)	
Applicant.	)	

OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

In accordance with the Rules of Practice of the United States Patent and Trademark Office and Rule 34 of the Federal Rules of Civil Procedure, Opposer, Signal Investment & Management Co. ("Opposer"), requests that Applicant, David A. Kern ("Applicant"), within thirty (30) days, make available for inspection and copying at the offices of Miller & Martin, Suite 1000, Volunteer Building, 832 Georgia Avenue, Chattanooga, Tennessee 37402, all documents responsive to the following requests for production of documents subject to the following instructions and definitions.

I. INSTRUCTIONS AND DEFINITIONS

1. The term "Applicant" shall mean David A. Kern, and any present or former agent, attorney or other representative acting on his behalf.

2. The term "documents" means the original and all copies (whether or not different from the original because of notes made on or attached to each copy or otherwise) including written, printed, typed, and visually or aurally reproduced material of any kind, whether or not

privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, summaries, minutes, interoffice communications, invoices, purchase orders, records, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instruction bulletins, cables or telegrams, microfilm, video tapes, tape or other recordings, test data, and reports.

3. A document "relating" or which "relates" to any given subject means any document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any way pertinent to that subject including, without limitation, documents concerning the preparation of other documents. The terms "relate" or "relating to" shall include and be interpreted as meaning pertaining to, used in conjunction with, appurtenant to, recording, evidencing, showing, disclosing, describing, explaining, summarizing, concerning or referring to, whether directly or indirectly, in whole or in part.

4. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

5. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

6. As used herein, when referring to documents, "to identify" means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s).

7. The conjunction "and/or" shall be interpreted in every instance conjunctively and disjunctively so as to include any information within the scope of the requests in which it is contained.

8. As used herein, the term "all" and "each" shall be construed as all and each.

9. As used herein, the use of the singular form of any word includes the plural and vice versa.

10. The term "Applicant's mark" unless otherwise noted, means the mark subject of U. S. Trademark Application Ser. No. 78/043,651 for HERPASIL, and any variations thereof, whether alone or in combination with other words or symbols.

11. The term "Opposer's marks" means the HERPECIN-L mark that is the subject of U.S. Registration No. 912,472, and any variation thereof used by Opposer.

12. For each document requested herein which is sought to be withheld under a claim of privilege, provide the following information:

a. the place, approximate date, and manner of recording or otherwise preparing the document;

b. the name and title of the sender, and the name and title of the recipient of the document;

c. the name of each person (other than steno-graphical or clerical assistants) participating in the preparation of the documents;

d. the name of the corporate position, if any, of the person to whom the contents of the document have been heretofore communicated by copy, exhibition, reading, or substantial summarization;

e. a statement of the basis on which the privilege is claimed, and whether or not the subject matter or the content of the document is limited to legal advice or information provided for the purpose of securing legal advice; and

f. the identity and corporate position, if any, of the person or persons supplying the attorney with information requested in subsections a. through e. above.

13. This request is continuing in nature as provided by the Federal Rules of Civil Procedure so as to require Applicant to make available for inspection and copying additional documents if it obtains such documents subsequent to this request.

II. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents referring or relating to all search reports or other investigations conducted or caused to be conducted by Applicant of the records of the U.S. Patent and Trademark Office, or of any other records or publications, in connection with the adoption, use, acquisition, application for registration, or opposition to registration of the Applicant's mark or of the Opposer's mark.

RESPONSE:

2. Produce all documents referring or relating to all attempts Applicant has made to register Applicant's mark, or any variation thereof, under the laws of the United States or any states thereof.

RESPONSE:

3. Produce all documents referring or relating to Applicant's first acquisition of knowledge of Opposer's mark, or any variation thereof.

RESPONSE:

4. Produce all documents in Applicant's possession which refer or relate to Opposer or to the use of Opposer's mark, or any variation thereof.

RESPONSE:

5. Produce representative documents sufficient to fully describe and illustrate each advertising or promotional program for Applicant's mark in connection with Applicant's goods and services.

RESPONSE:

6. Produce all documents referring or relating to any marketing plans concerning Applicant's use of Applicant's mark in connection with Applicant's goods and services.

RESPONSE:

7. Produce all documents referring or relating to any disputes involving trademark, trade name, copyright, unfair competition, product labeling or false advertising issues relating to Applicant's mark in connection with Applicant's goods and services.

RESPONSE:

8. Produce all documents referring or relating to any instances of actual or possible confusion, or of any reports of such confusion, of which Applicant is aware between Applicant's goods and services promoted under Applicant's mark and the goods and services of any other party.

RESPONSE:

9. Produce all documents referring or relating to any investigations conducted by or on behalf of Applicant in connection with Opposer's mark.

RESPONSE:

10. Produce all documents referring or relating to each instance in which Applicant has ever disclaimed any association with any party in connection with their use of a mark containing the HERPASIL mark, or any variation thereof.

RESPONSE:

11. Produce all documents identified in Applicant's responses to Opposer's First Set of Interrogatories, as well as any documents alluded to or any documents that would clarify or expound upon such responses.

RESPONSE:

12. Produce all documents reflecting Applicant's ownership and use of internet domain names for websites offering any goods and services in connection with the mark HERPASIL, including contracts and correspondence with any website design or hosting services responsible for such websites.

RESPONSE:

Respectfully submitted,

MILLER & MARTIN PLLC

Douglas T. Johnson, Reg. No. 31,841
Attorneys for the Opposer,
Suite 1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402-2289
(423) 756-6600

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with the foregoing Opposer's First Request for Production of Documents by placing a true and exact copy of said document in the United States mail, with adequate postage affixed thereupon to carry the same to its destination at the following address:

Allison L. Rapp
Lutzker, Lutzker & Settlemyer LLP
1000 Vermont Avenue, N.W., Suite 450
Washington DC 20005

This 7 day of February, 2006.

MILLER & MARTIN PLLC

By: _____
Douglas T. Johnson

EXHIBIT B

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

Application Ser. No. 78/043,651

Published in the Official Gazette on November 1, 2005

SIGNAL INVESTMENT & MANAGEMENT CO.	)	
	)	
Opposer,	)	
	)	Opposition No. 91168015
v.	)	
	)	
DAVID A. KERN,	)	
	)	
Applicant.	)	

OPPOSER'S FIRST SET OF INTERROGATORIES, NOS. 1 - 37

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, David A. Kern is hereby required to answer separately and fully, in writing, under oath, each of the following Interrogatories:

DEFINITIONS AND INSTRUCTIONS

A. The term "Applicant" shall mean David A. Kern, and any present or former agent, attorney or other representative acting on his behalf.

B. The term "Signal" shall mean the Opposer, Signal Investment & Management Co., including its licensees and predecessors in title, all related companies, subsidiaries, representatives, and employees, including Signal's parent, Chattem, Inc.

C. As used herein, the term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

D. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

E. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

F. (1) As used herein, when referring to a natural person, "to identify" means to give, to the extent known, the person's full name; current or last known business and residence addresses, including telephone numbers; present employer, occupation, and position; and a brief description of the job responsibilities of such person.

(2) When referring to persons other than a natural person, "to identify" means to give, to the extent known, its full name or designation; the legal classification of the entity (e.g., corporation, partnership, etc.) giving the state of organization where appropriate; the principal place of business; the current or last known address and telephone number of the entity; and any other information reasonably necessary to permit efficient contact with the entity.

G. As used herein, when referring to documents, "to identify" means to give, to the extent known, the (1) type of document; (2) general subject matter; (3) date of the document; and (4) author(s), addressee(s) and recipient(s).

H. As used herein, when referring to a proceeding, the term "to identify" means to give, to the extent known, information sufficient to enable Signal to obtain documentation related to such proceeding and should specifically (1) specify the parties and marks involved; (2) specify the tribunal and the docket number of the proceeding; and (3) state the present status or ultimate disposition thereof.

I. The terms "relate" or "relating to" shall include and be interpreted as meaning pertaining to, used in conjunction with, appurtenant to, recording, evidencing, showing, disclosing, describing, explaining, summarizing, concerning or referring to, whether directly or indirectly, in whole or in part.

J. The conjunction "and/or" shall be interpreted in every instance conjunctively and disjunctively so as to include any information within the scope of the requests in which it is contained.

K. As used herein, the term "all" and "each" shall be construed as all and each.

L. As used herein, the use of the singular form of any word includes the plural and vice versa.

M. If Applicant claims that any information, document or thing requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify separately each item of information, document or thing with respect to which Applicant claims a privilege with sufficient particularity for purposes of a Motion to Compel a Response or Production, and state:

(1) the basis on which the privilege is claimed;

(2) the author of the document;

(3) each individual or other person to whom the document or copy thereof was sent or otherwise disclosed; and

(4) the date of the document.

Applicant is not requested to provide privileged information or information for which Applicant claims privilege, but only to identify such information, document or thing.

N. These interrogatories shall be deemed continuing and supplemental answers shall be filed as required by the Federal Rules of Civil Procedure if further responsive information is obtained subsequent to the time the answers are served.

O. The mark "HERPASIL" unless otherwise noted, means the mark for which Applicant has applied in International Class 5, Serial No. 78/043,651, and any variations thereof, whether alone or in combination with other words or symbols.

P. Opposer's "HERPECIN-L mark" means the mark registered as U.S. Reg. No. 912,472, and any other variation thereof used by Opposer or its parent, Chattem, Inc..

INTERROGATORIES

INTERROGATORY NO. 1:

List the name and business address of each place of business which Applicant has previously maintained and/or presently maintains in the United States which has used in the past or is presently using the mark HERPASIL, or any variation thereof.

ANSWER:

INTERROGATORY NO. 2:

With respect to each of the places of business identified in Interrogatory No. 1, state the period of time during which Applicant, or any predecessors in title, used the mark HERPASIL at each place of business.

ANSWER:

INTERROGATORY NO. 3:

Identify and describe with specificity all goods and services in connection with which the mark HERPASIL, or any variation thereof, has been used or is currently being used by Applicant, or any authorized user of such marks, and identify the labeling and packaging for each good or service.

ANSWER:

INTERROGATORY NO. 4:

With regard to each of the goods and services identified in response to Interrogatory No. 3, specify in detail the circumstances under which the mark HERPASIL, or any variation thereof, was first used, as to both interstate and intrastate commerce, including date, customer, how mark was affixed, the location or the packaging or product, and at what point Applicant considers technical trademark use to have commenced.

ANSWER:

INTERROGATORY NO. 5:

With respect to each of the goods identified in response to Interrogatory No. 3, specify whether the mark HERPASIL, or any variation thereof, is currently being used by Applicant or any authorized user in the United States in conjunction therewith, and identify each such authorized user.

ANSWER:

INTERROGATORY NO. 6:

With respect to each of the goods and services identified in response to Interrogatory No. 3, state the annual sales in units and dollars for each of the last four (4) years, and identify the person or persons with the most complete knowledge thereof.

ANSWER:

INTERROGATORY NO. 7:

a. With respect to each of the goods identified in response to Interrogatory No. 3, describe with specificity the manner in which the mark HERPASIL, or any variation thereof, is used and promoted in the United States, and identify the person or persons with the most complete knowledge thereof.

b. For each advertising medium identified in response to part a of this Interrogatory, specify the annual expenditure for advertising and promotion during each of the past four (4) years.

ANSWER:

INTERROGATORY NO. 8:

With respect to each of the goods and services identified in response to Interrogatory No. 3, describe in detail the channels of trade or distribution by which the goods or services of the Applicant reach the ultimate user or consumer.

ANSWER:

INTERROGATORY NO. 9:

State whether anyone has ever sought to register the mark HERPASIL, or any variation thereof, under the laws of the United States or of any state of the United States for the benefit of or on behalf of Applicant, and, if so, describe fully each such attempt, identifying all documents relating to or comprising each such attempt, indicating the date of filing, the subject goods and/or services, and stating the present status or ultimate outcome of the attempted registration.

ANSWER:

INTERROGATORY NO. 10:

With respect to each attempted registration identified in response to Interrogatory No. 9, identify each person who participated in each decision to apply for registration of the mark HERPASIL, state the date when the decision was made, and identify each person who is contributing or has contributed to the pursuit of the mark.

ANSWER:

INTERROGATORY NO. 11:

Describe in detail any search or investigation made or caused to be made by Applicant of the records of the U.S. Patent and Trademark Office, or of any other records or publications, in connection with the adoption, use, acquisition, application for registration, or opposition to registration of the mark HERPASIL, and identify all documents referring or relating thereto.

ANSWER:

INTERROGATORY NO. 12:

If Applicant claims the benefit of any use of the mark HERPASIL, or any variation thereof by any predecessor in title, identify the predecessor in title and describe in detail the nature and extent of the predecessor's use of the mark, and identify all documents referring or relating thereto, and identify the person or persons with the most complete knowledge thereof.

ANSWER:

INTERROGATORY NO. 13:

Identify the manufacturer or provider of each of the goods listed in response to Interrogatory No. 3.

ANSWER:

INTERROGATORY NO. 14:

Describe in detail each instance wherein Applicant has licensed, franchised, or authorized another person to use the mark HERPASIL, or any variation thereof.

ANSWER:

INTERROGATORY NO. 15:

Identify any other adversarial proceeding involving the mark HERPASIL, or any variation thereof, in which Applicant has been involved including, without limitation, proceedings before the T.T.A.B., the FDA, Bureau of Customs, F.T.C. or any court.

ANSWER:

INTERROGATORY NO. 16:

Specify any time periods when use of the mark HERPASIL was discontinued in the United States since its initial adoption by the Applicant and its predecessors in title and the reasons therefor and identify all documents relating thereto.

ANSWER:

INTERROGATORY NO. 17:

Identify the person or persons who, from the date of Applicant or Applicant's predecessors' in title first use of the mark HERPASIL to the present, have been responsible for the marketing and/or promotion of goods and services under the mark HERPASIL, indicating the period during which each person was so responsible.

ANSWER:

INTERROGATORY NO. 18:

Describe the nature and basis of any objection Applicant has ever received to its use or attempted registration of the mark HERPASIL, or any variation thereof, from whom received and when received, and the disposition of each objection, and identify all documents relating to or comprising each objection.

ANSWER:

INTERROGATORY NO. 19:

Describe with specificity all instances of actual or possible confusion, or of any reports of such confusion, of which Applicant is aware between Applicant's goods marketed under the mark HERPASIL, and any variations thereof, and Opposer's goods and services marketed under the HERPECIN-L marks, and any variations thereof, and identify all documents referring or relating to such instances.

ANSWER:

INTERROGATORY NO. 20:

Describe with specificity any instance in which Applicant's use of the mark HERPASIL, or any variation thereof suggested a connection or affiliation with Signal, or when such use led others to believe that the goods and/or services of Applicant originated from, or were sponsored by, or were in any way associated with Signal, and identify all documents referring or relating to such instances.

ANSWER:

INTERROGATORY NO. 21:

Describe specifically every investigation conducted by or on behalf of Applicant in connection with Applicant's HERPASIL mark.

ANSWER:

INTERROGATORY NO. 22:

Describe in detail each instance in which Applicant has ever disclaimed any association with Signal in connection with the use of the mark HERPASIL or the HERPECIN-L mark, or any variation thereof.

ANSWER:

INTERROGATORY NO. 23:

Identify with specificity each objection made by Applicant to the use by others of any trademark believed by Applicant to be confusingly similar to the mark HERPASIL.

ANSWER:

INTERROGATORY NO. 24:

Specify the time periods when any of the goods and services identified in the answer to Interrogatory No. 3 have been offered by Applicant without using the mark HERPASIL.

ANSWER:

INTERROGATORY NO. 25:

State the results of each survey Applicant has ever conducted or had conducted to determine whether there exists any likelihood of confusion between the mark HERPASIL, or any variation thereof, and any other marks.

ANSWER:

INTERROGATORY NO. 26:

Identify all advertising agencies, public relations agencies, market research agencies, or other service providers which Applicant has used, participated with, or cooperated with in advertising, marketing, or promoting the goods and services identified in response to Interrogatory No. 3, and state the time period(s) during which such activities were conducted.

ANSWER:

INTERROGATORY NO. 27:

Describe in detail any plans or steps to expand the number of products or services with which the HERPASIL mark, or any related mark, is used to alter the channels of trade mentioned in the answer to Interrogatory No. 8, or to sell such goods and services to purchasers other than those mentioned in the answer to Interrogatory Nos. 8 and/or 30.

ANSWER:

INTERROGATORY NO. 28:

Identify any authorized users of the HERPASIL mark who have conducted advertising, and set forth, on a monthly basis, the amount of money spent for such advertising by each identified authorized user and the proportionate amount of money or percentage spent for advertising goods or services in connection with the HERPASIL mark and the media (i.e., television, radio, newspapers, etc.) in which each identified authorized user has conducted such advertising.

ANSWER:

INTERROGATORY NO. 29:

Identify target markets to which ads and promotions utilizing the HERPASIL mark have been and are being directed.

ANSWER:

INTERROGATORY NO. 30:

Describe in detail the type of consumer to whom Applicant's products under the HERPASIL mark are provided or intended to be provided by Applicant.

ANSWER:

INTERROGATORY NO. 31:

Describe why Applicant adopted the HERPASIL mark, and the meaning or suggestiveness it was or is intended to project or convey to consumers, and identify the individuals that could describe these reasons for adopting the HERPASIL mark.

ANSWER:

INTERROGATORY NO. 32:

Identify any labels, tags, containers, stencils, mock-ups, packages, shelf talkers, signs, brochures, price lists, or other materials, whether actual, planned, or proposed, which have ever been used, or are intended to be used on or in connection with any of the goods or services sold under the HERPASIL mark.

ANSWER:

INTERROGATORY NO. 33:

Identify any oral or written report or opinion which Applicant has ever received from an attorney, whether or not such attorney was or is employed by Applicant, concerning:

a. its rights in and the scope of protection in and to the HERPASIL mark, and;

b. the effect of Signal's use or registration of the HERPECIN-L mark upon Applicant's mark or goodwill.

ANSWER:

INTERROGATORY NO. 34:

Identify any expert witnesses that Applicant intends to call to testify on its behalf in this opposition proceeding, and describe the substance of the testimony to be offered by any such witness.

ANSWER:

INTERROGATORY NO. 35:

a. Identify all policy statements or directives, or other forms of guidance or direction, that Applicant or its sales force gives to sellers of goods and services under Applicant's HERPASIL mark, including, but not limited to, advising how to assist potential customers in the selection and purchase of such goods or services.

b. Identify all documents relating to any market research or other studies which bear on the issue of how the goods or services offered under Applicant's mark are selected or purchased by end-users. **ANSWER:**

INTERROGATORY NO. 36:

Describe any relationship between the Applicant and SkinChoice.com, LLC and identify all documents relating thereto.

ANSWER:

INTERROGATORY NO. 37:

For each of the preceding Interrogatories, identify: all persons who were consulted or participated in the preparation of the answer to each Interrogatory; all persons who are presently knowledgeable as to any of the facts recited in the answer to each Interrogatory; whether or not such persons were consulted or participated in the preparation of the answer; and all files and areas searched in attempting to locate any documents requested to be identified by each Interrogatory.

ANSWER:

Respectfully submitted,

MILLER & MARTIN PLLC

By: _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of the foregoing document has been served upon all parties at interest or counsel for same in this case, by delivering a true and exact copy to the offices of counsel of record shown at the addresses below, by placing a copy in the United States mail or by Federal Express delivery, postage pre-paid.

Allison L. Rapp
Lutzker, Lutzker & Settlemyer LLP
1000 Vermont Avenue, N.W., Suite 450
Washington DC 20005

This 7 day of February, 2006.

MILLER & MARTIN PLLC

By: _____
Douglas T. Johnson

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