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Filing date: **12/14/2007**

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

Proceeding	91177215
Party	Plaintiff ALBERTO-CULVER INTERNATIONAL, INC.
Correspondence Address	Craig S. Fochler Foley & Lardner LLP 321 North Clark Street, Suite 2800 Chicago, IL 60610-4764 UNITED STATES cfochler@foley.com, cmandly@foley.com, edepakakibo@foley.com
Submission	Motion to Compel Discovery
Filer's Name	Charles R. Mandly, Jr.
Filer's e-mail	cmandly@foley.com, ptomailchicago@foley.com, jolsen@foley.com
Signature	/Charles R. Mandly, Jr./
Date	12/14/2007
Attachments	3VO_MTC.pdf (27 pages)(282672 bytes)

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

ALBERTO-CULVER INTERNATIONAL, INC.	)	
Opposer,	)	Opposition No. 91177215
v.	)	
998232 ALBERTA LTD.,	)	
Applicant.	)	

OPPOSER ALBERTO-CULVER INTERNATIONAL, INC.'S
MOTION TO COMPEL DISCOVERY

In accordance with Rule 2.120(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.120(e), opposer, Alberto-Culver International, Inc. ("Alberto"), files this motion to compel discovery from applicant, 998232 Alberta Ltd. ("Alberta"). The following facts support the request for relief.

1. This is an opposition proceeding filed by Alberto based upon its rights in certain VO5 trademarks for hair products against an application filed by Alberta for the mark 3VO for skin products.

2. On September 11, 2007, Alberto served by first class post copies of its First Set of Interrogatories and its First Set of Document Requests (attached hereto as Exhibits A and B respectively) upon Alberta.

3. To date, Alberto has not received any written responses to its aforesaid written discovery requests.

4. By failing to timely respond to Alberto's written discovery requests, Alberta has waived any objections to such requests.

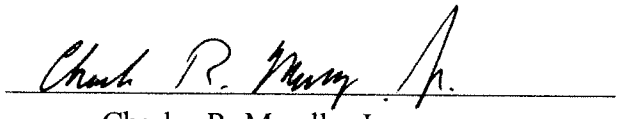
5. Subsequent to October 16, 2007, Alberto has exchanged written and electronic correspondence with *pro se* Alberta on several occasion, as well as speaking by telephone with Alberta' Director of Marketing, Mr. Chad Welechenko, in order to secure responses to Alberto's written discovery requests. During the course of these communications, Alberta has acknowledged its failure to serve written discovery responses but has not agreed to provide such responses by a date certain. Accordingly, Alberto's counsel certify that they have sought in good faith to resolve the present discovery dispute but have been unsuccessful to date.

Based upon the foregoing, Alberto moves this Board for an order compelling Alberta to provide written responses without objection to Alberto's written discovery responses.

Respectfully submitted,

FOLEY & LARDNER LLP

Date: December 14, 2007



Charles R. Mandly, Jr.
321 North Clark Street
Chicago, Illinois 60610-4764
Telephone: (312) 832-4500
Facsimile: (312) 832-4700

Attorneys for Opposer,
Alberto-Culver International, Inc.

CERTIFICATE OF SERVICE

I, Charles R. Mandly, Jr., counsel for opposer, hereby certify that, in accordance with Rules 2.101(b) and 2.119 of the Trademark Rules of Practice, a copy of ALBERTO-CULVER INTERNATIONAL INC'S MOTION TO COMPEL DISCOVERY was served upon, 998232 Alberta Ltd., 5923 3rd Street SE, Calgary TXH1K3, CANADA, marked to the attention of Chad Welechenko, on December 14, 2007, by first class mail, postage prepaid.

Charles R. Mandly, Jr.

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

ALBERTO-CULVER COMPANY,	)	
	)	
Opposer,	)	Opposition No. 91,177,215
	)	
v.	)	
	)	
998232 ALBERTA LTD.,	)	
	)	
Applicant.	)	
	)	

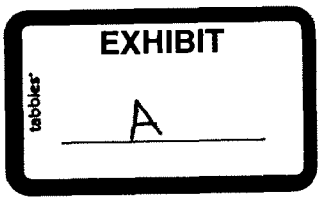
OPPOSER ALBERTO-CULVER COMPANY'S
FIRST SET OF INTERROGATORIES TO APPLICANT

In accordance with Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, opposer, Alberto-Culver Company ("Opposer"), requests applicant, 998232 Alberta Ltd. ("Applicant"), within thirty (30) days, answer each of the interrogatories set forth below, subject to the Instructions and Definitions provided below.

INSTRUCTIONS AND DEFINITIONS

1. These Interrogatories seek information current as of the date of service and to the full extent permitted under the Federal Rules of Civil Procedure and Trademark Rules of Practice. As these Interrogatories are of a continuing nature, you are obligated to promptly supplement or correct any response that is incomplete, inaccurate, or which requires an additional response to comply with the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 26(e).

2. Answer each Interrogatory in full. If you cannot do so, answer to the extent possible, explaining why you cannot answer completely and stating any knowledge, information, or belief you have concerning the unanswered portion of the Interrogatory.



3. The term "person" means a natural person, individual, partnership, firm, corporation, or any other kind of business or legal entity, or the agents or employees of a natural person, individual, partnership, firm, corporation, or any other kind of business or legal entity.

4. The term "Applicant" refers to 998232 Alberta Ltd., its officers, directors, agents, representatives, employees, and attorneys; any other person or entity acting on Applicant's behalf or upon whose behalf Applicant has acted; and any other person or entity otherwise subject to Applicant's control, or to whose control Applicant is subject – in whole or in part.

5. The term "Opposer" refers to Alberto-Culver Company and its officers, directors, agents, representatives, employees, and attorneys.

6. The term "Opposition" refers to the Opposition No. 91177215.

7. The term "Answer" refers to the communication from Applicant to Opposer dated June 22, 2007.

8. The term "Applicant's Mark" shall refer to the mark which is the subject of Trademark Application Serial No. 78/904,064 opposed herein.

9. The term "Application" shall refer to Trademark Application Serial No. 78/904,064 for Applicant's Mark.

10. The term "Opposer's Marks" shall refer to any mark used by Opposer consisting, in whole or in part, of "VO5," including, without limitation, the mark VO5 (Reg. No. 822,537), VO5 (Reg. No. 1,449,193), ALBERTO VO5 (Reg. No. 658,904), ALBERTO VO5 (Reg. No. 723,187), and ALBERTO VO5 & Design (Reg. No. 3,078,626) plead in the Notice of Opposition.

11. The term "document" is given the broadest scope and meaning permitted under the Federal Rules of Civil Procedure and the Trademark Rules of Practice. The term includes

information that is fixed in any tangible medium whatsoever, and includes – by way of illustration only and not by way of limitation – the following: e-mail or other computer or electronic information; notes; correspondence; communications of any kind; telegrams; memoranda; notebooks; summaries or records of personal conversations; diaries; routing slips or memoranda; reports; publications; photographs; minutes or records of meetings; transcripts of oral testimony or statements; reports and summaries of interviews; reports or summaries of investigations; agreements and contracts, including all modifications or revisions thereof; reports or summaries of negotiations; court papers; brochures; pamphlets; press releases; drafts of, revisions to, or translations of any document; tape recordings; records; and dictation tapes. For purposes of these Interrogatories, any document bearing any marks on any sheet or side of the document, such as stamped indicia, marginalia, or any comment or notation not part of the original text is deemed to be a separate document.

12. The terms "related to," "relating to," "relate to," "concern," "concerning," and "regarding" mean constituting, comprising, describing, explaining, summarizing, being logically connected to, being chronologically connected to, mentioning, or in any way concerning, whether directly or indirectly.

13. In construing these Interrogatories, the plural shall include the singular, the singular shall include the plural, and a masculine, feminine, or neuter term shall include all other genders. The words "and" and "or" mean "and/or" and should be read both ways so as to encompass both constructions and call for answers to be provided to both constructions. The word "each" includes the word "every," and the word "every" includes the word "each." The word "any" shall be understood to include and encompass "all," and "all" should be interpreted to include and encompass "any."

14. As required by Rule 26(b)(5) of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, with respect to any information you assert to be protected or privileged, you must expressly identify the nature of the privilege asserted, indicate the factual basis for the privilege, and describe the nature and the content of the allegedly-privileged information in sufficient detail to enable others to assess the applicability of the asserted privilege.

15. In the event that a document is to be identified in response to any of these Interrogatories, the response hereto shall identify: the preparer of the document; its addresser (if different), addressee, and each recipient thereof; each person to whom it was distributed or shown; the date it was prepared; the date it was transmitted (if different); the date it was received; and a description of its contents and subject matter. Further, if such document has been destroyed, you shall also identify: the date of its destruction; the manner of its destruction; the name, title and address of person authorizing its destruction; the reason(s) for its destruction; the name, title and address of the person destroying the document; and a description of efforts to locate the document and copies of it.

16. Any responsive document that was created electronically, including without limitation e-mails, should be produced in its native electronic format.

17. Whenever an interrogatory inquires about the name or identity of a person and that person is an individual, the information requested includes: the person's full name; the person's employer; the person's position or title; and the person's last known address.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe Applicant's business and its operations.

INTERROGATORY NO. 2:

Identify by common commercial name the goods and services in connection with which Applicant uses Applicant's Mark in United States commerce.

INTERROGATORY NO. 3:

If not identified in response to Interrogatory 2 above, identify, by mark used and the common commercial name of the goods and services, the goods and services in connection with which Applicant uses any mark consisting, in whole or in part, the term "VO," in United States commerce.

INTERROGATORY NO. 4:

For each good or service to be identified in response to Interrogatories Nos. 2 and 3 above, identify by mark used and the common name of the applicable goods or services:

(a) the date of first use and the date of first use in United States commerce of the Applicant's Mark or other mark "VO" mark to be identified;

(b) each year in which such good or service were offered for sale or sold under such mark in United States commerce;

(c) the total annual sales in United States commerce, in units and United States dollars, of each such good or service under each such mark for each year sold in such commerce;

(d) by State, the total annual sales in United States commerce, in units and United States dollars, of each such good or service under each such mark for each year sold in such commerce;

(e) the total annual expenditure in United States dollars, Applicant has spent advertising or promoting the good or service in United States commerce;

(f) by State, the total annual expenditure in United States dollars, Applicant has spent advertising or promoting the good or service in United States commerce; and

(g) the channels of trade through which Applicant's identified goods and services are offered in United States commerce.

INTERROGATORY NO. 5:

(a) With respect to Applicant's Mark and any other "VO" mark to be identified in response to Interrogatory 3 above, identify, by the subject name or mark, the subject goods and services, the date of such agreement, and the parties involved, each trademark license, trademark coexistence or trademark consent agreement ever entered into by Applicant.

(b) For each agreement to be identified in response to Interrogatory 5(a) above, describe in detail the subject matter of each such agreement and the current status of such agreement.

INTERROGATORY NO. 6:

(a) With respect to Applicant's Mark and any other "VO" mark to be identified in response to Interrogatory 3 above, identify, by the subject name or mark, the subject goods and services, the date of such agreement, and the parties involved, each trademark assignment ever granted by or granted to Applicant.

(b) For each assignment to be identified in response to Interrogatory 6(a) above, describe in detail the subject matter of each such assignment and the current status of such assignment.

INTERROGATORY NO. 7:

(a) Identify the date and circumstances under which Applicant first became aware of Opposer's existence.

(b) If different than the response requested to Interrogatory 7(a) above, identify the date and circumstances under which Applicant first became aware of Opposer's VO5 and ALBERTO VO5 marks.

INTERROGATORY NO. 8:

Identify, by name or mark searched, person conducting, and date of search, each trade name or trademark search ever conducted by or on behalf of Applicant for Applicant's Mark or any other "VO" mark to be identified in response to Interrogatory 3 above.

INTERROGATORY NO. 9:

Identify, by applicable name or mark, by the goods or services in connection with which it is used, by the identity of the person making such use, and the dates of such use, each and every third party trade name or trademarks composed, in whole or in part, of the term "VO" ever used in United States commerce which are known to Applicant.

INTERROGATORY NO. 10:

Identify any surveys, consumer reaction tests, focus groups or other market research conducted by or on behalf of Applicant in connection with products and/or services in connection with any trade names or trademarks composed in whole or in part of "VO." For each such survey or market research study conducted, state

(a) the date it was conducted;

(b) the name, address, and qualifications of the person by whom it was made;

(c) a description of the methodology of the study; and,

(d) a description of the results of the study.

INTERROGATORY NO. 11:

(a) Identify, by persons involved, date of communication, method of communication, and general subject matter, any inquiry or other communication made by any person regarding the existence of any connection or association between, on the one hand, Opposer or its VO5 or ALBERTO VO5 products, and, on the other hand, Applicant and any of its products sold under a name or mark composed, in whole or in part, of the term "VO."

(b) For each communication to be identified in response to Interrogatory 11(a) above, identify each document which refers or relates in any way to such communication.

(c) For each communication to be identified in response to Interrogatory 11(a) above, identify each person with knowledge thereof.

INTERROGATORY NO. 12:

(a) Identify, by persons involved, date of event, and general circumstances of event, each instance of actual confusion involving, on the one hand, Opposer or its VO5 or ALBERTO VO5 products, and, on the other hand, Applicant and any of its products sold under a name or mark composed, in whole or in part, of the term "VO."

(b) For each event to be identified in response to Interrogatory 12(a) above, identify each document which refers or relates in any way to such instance of actual confusion.

(c) For each event to be identified in response to Interrogatory 12(a) above, identify each person with knowledge thereof.

INTERROGATORY NO. 13:

State whether Applicant has ever been a party to, or otherwise participated in, any litigation or administrative proceeding involving any trademark or trade name composed, in whole or in part, of "VO", and with respect to each such litigation or proceeding:

(a) Identify the names and marks at issue.

(b) State the full title of the litigation or proceeding, including the names of all parties, date of commencement, date of any decision rendered in same, any identifying docket number, the court or administrative body before which the litigation or proceeding was pending; and

(c) State the final resolution or current status of such litigation or proceeding.

INTERROGATORY NO. 14:

Identify each expert witness that Applicant intends to call to testify in this proceeding, and as to each, state the name, address, and telephone number of the witness; describe the substance of each opinion to be rendered, and identify all materials relied upon by such witness in rendering such opinion, including data or other information considered by the expert and any exhibits to be used as a summary of or support for each opinion; describe the qualifications of each expert witness, including a list of all publications authored by the witness within the preceding ten years, the compensation to be paid for the expert's services, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition with the preceding four years.

INTERROGATORY NO. 15:

(a) Identify all facts upon which Applicant relied in denying in its Answer, that Applicant's goods identified in United States Trademark Application Serial Number 78/904,064 are, or do not include, skin care preparations.

(b) If not identified in response to Interrogatory 15. (a) above, identify all facts known to Applicant which Applicant contends supports its contention that Applicants goods identified in United States Trademark Application Serial Number 78/904,064 are, or do not include, skin care preparations.

(b) For each fact to be identified in response to Interrogatories 15(a) and (b) above, identify each document which refers or relates in any way to such fact.

(c) For each fact to be identified in response to Interrogatories 15(a) and (b) above, identify each person with knowledge thereof.

INTERROGATORY NO. 16:

(a) Identify each fact upon which Applicant relied in denying in its Answer, that Applicant's Mark is not confusingly similar to Opposer's VO5 and ALBERTO VO5 marks plead in the Notice of Opposition filed in this proceeding.

(b) If not identified in response to Interrogatory 16(a) above, identify each fact which Applicant believes supports its contention that Applicant's Mark is not confusingly similar to Opposer's VO5 and ALBERTO VO5 marks plead in the Notice of Opposition filed in this proceeding.

(b) For each fact to be identified in response to Interrogatories 16(a) and (b) above, identify each document which refers or relates in any way to such fact.

(c) For each fact to be identified in response to Interrogatories 16(a) and (b) above, identify each person with knowledge thereof.

INTERROGATORY NO. 17:

(a) Describe in detail the circumstances surrounding Applicant's selection, adoption and first use of Applicant's Mark, as well as each additional "VO" mark to be identified in response to Interrogatory No. 3 above.

(b) For each description to be made in response to Interrogatories 17. (a) above, identify each document which refers or relates in any way to such events.

(c) For each description to be made in response to Interrogatories 17. (a) above, identify each person with knowledge of such events.

Respectfully submitted,

FOLEY & LARDNER LLP

Date : September 11, 2007

Craig S. Fochler
Charles R. Mandly, Jr.
321 North Clark Street, Suite 2800
Chicago, Illinois 60610
Telephone No.: (312) 832-4500
Facsimile: (312) 832-4700

Attorneys for Opposer
ALBERTO-CULVER COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document entitled **OPPOSER ALBERTO-CULVER COMPANY'S FIRST SET OF INTERROGATORIES TO APPLICANT** was served upon attorneys for Applicant by First Class Mail, postage prepaid, to: 998232 ALBERTA LTD. 5923 3rd Street SE, Calgary, T2H1K3 Alberta, British Columbia, CANADA.

Dated: September 11, 2007

Charles R. Mandly, Jr.

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

ALBERTO-CULVER COMPANY,	)	
	)	
Opposer,	)	Opposition No. 91,177,215
	)	
v.	)	
	)	
998232 ALBERTA LTD.,	)	
	)	
Applicant.	)	
	)	

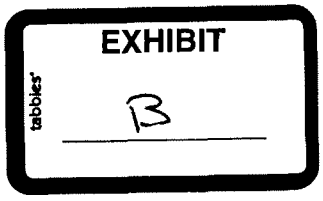
OPPOSER ALBERTO-CULVER COMPANY'S
FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, opposer, Alberto-Culver Company ("Opposer"), requests applicant, 998232 Alberta Ltd. ("Applicant"), within thirty (30) days, produce the documents requested below and respond to the following document requests, subject to the following Instructions and Definitions.

INSTRUCTIONS AND DEFINITIONS

1. These Requests seek information current as of the date of service and to the full extent permitted under the Federal Rules of Civil Procedure and Trademark Rules of Practice. As these Requests are of a continuing nature, you are obligated to promptly supplement or correct any response that is incomplete, inaccurate, or which requires an additional response to comply with the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 26(e).

2. Answer each Request in full. If you cannot do so, answer to the extent possible, explaining why you cannot answer completely and stating any knowledge, information, or belief you have concerning the unanswered portion of the Request.



3. The term "person" means a natural person, individual, partnership, firm, corporation, or any other kind of business or legal entity, or the agents or employees of a natural person, individual, partnership, firm, corporation, or any other kind of business or legal entity.

4. The term "Applicant" refers to 998232 Alberta Ltd., its officers, directors, agents, representatives, employees, and attorneys; any other person or entity acting on Applicant's behalf or upon whose behalf Applicant has acted; and any other person or entity otherwise subject to Applicant's control, or to whose control Applicant is subject – in whole or in part.

5. The term "Opposer" refers to Alberto-Culver Company and its officers, directors, agents, representatives, employees, and attorneys.

6. The term "Opposition" refers to the Opposition No. 91,177,215 filed by Opposer on March 29, 2006, in the above-captioned matter.

7. The term "Answer" refers to the communication from Applicant to Opposer dated June 22, 2007.

8. The term "Applicant's Mark" shall refer to the mark which is the subject of Trademark Application Serial No. 78/904,064 opposed herein.

9. The term "Application" shall refer to Trademark Application Serial No. 78/904,064 for the Applicant's Mark.

10. The term "Opposer's Marks" shall refer to any mark used by Opposer consisting, in whole or in part, of "VO5," including, without limitation, the mark VO5 (Reg. No. 822,537), VO5 (Reg. No. 1,449,193), ALBERTO VO5 (Reg. No. 658,904), ALBERTO VO5 (Reg. No. 723,187), and ALBERTO VO5 & Design (Reg. No. 3,078,626) plead in the Notice of Opposition.

11. The term "document" is given the broadest scope and meaning permitted under the Federal Rules of Civil Procedure and the Trademark Rules of Practice. The term includes information that is fixed in any tangible medium whatsoever, and includes – by way of illustration only and not by way of limitation – the following: e-mail or other computer or electronic information; notes; correspondence; communications of any kind; telegrams; memoranda; notebooks; summaries or records of personal conversations; diaries; routing slips or memoranda; reports; publications; photographs; minutes or records of meetings; transcripts of oral testimony or statements; reports and summaries of interviews; reports or summaries of investigations; agreements and contracts, including all modifications or revisions thereof; reports or summaries of negotiations; court papers; brochures; pamphlets; press releases; drafts of, revisions to, or translations of any document; tape recordings; records; and dictation tapes. For purposes of these Requests, any document bearing any marks on any sheet or side of the document, such as stamped indicia, marginalia, or any comment or notation not part of the original text is deemed to be a separate document.

12. The terms "related to," "relating to," "relate to," "concern," "concerning," and "regarding" mean constituting, comprising, describing, explaining, summarizing, being logically connected to, being chronologically connected to, mentioning, or in any way concerning, whether directly or indirectly.

13. In construing these Requests, the plural shall include the singular, the singular shall include the plural, and a masculine, feminine, or neuter term shall include all other genders. The words "and" and "or" mean "and/or" and should be read both ways so as to encompass both constructions and call for answers to be provided to both constructions. The word "each" includes the word "every," and the word "every" includes the word "each." The word "any"

shall be understood to include and encompass "all," and "all" should be interpreted to include and encompass "any."

14. If any document is known to exist but cannot be produced, that document is to be specifically identified as precisely as possible and the reasons for the inability to produce the document stated.

15. As required by Rule 26(b)(5) of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, with respect to any information you assert to be protected or privileged, you must expressly identify the nature of the privilege asserted, indicate the factual basis for the privilege, and describe the nature and the content of the allegedly-privileged information in sufficient detail to enable others to assess the applicability of the asserted privilege.

16. For each document to be identified in response to any of these Interrogatories, the response hereto shall identify: the preparer of the document; its addresser (if different), addressee, and each recipient thereof; each person to whom it was distributed or shown; the date it was prepared; the date it was transmitted (if different); the date it was received; and a description of its contents and subject matter. Further, if a document has been destroyed, you shall also identify: the date of its destruction; the manner of its destruction; the name, title and address of person authorizing its destruction; the reason(s) for its destruction; the name, title and address of the person destroying the document; and a description of efforts to locate the document and copies of it.

17. Any responsive document that was created electronically, including without limitation e-mails, should be produced in its native electronic format.

DOCUMENT REQUESTS

1. Two (2) specimens of each good bearing or using Applicant's Mark and each of the other "VO" marks to be identified in response to Interrogatory 3 served concurrently herewith.

2. Two (2) specimens evidencing service mark use, if any, of Applicant's Mark and each of the other "VO" marks to be identified in response to Interrogatory 3 served concurrently herewith.

3. Documents sufficient to establish the dates of first use of the Applicant's Mark for each of the goods and/or services identified in the Application.

4. Documents sufficient to establish Applicant's continuous use of Applicant's Mark in connection with each of the goods identified in the Application since the asserted dates of first use.

5. If not previously produced, documents sufficient to establish Applicant's continuous use of Applicant's Mark for each of the goods to be identified in response to Interrogatory No. 2 served concurrently herewith since the respective dates of first use thereof.

6. If not previously produced, documents sufficient to establish Applicant's continuous use of any other "VO" mark to be identified in response to Interrogatory No. 3 served concurrently herewith, for each good or service to be identified therein, since the respective dates of first use thereof.

7. Representative specimens of advertising materials, marketing materials, and promotional items used or proposed to be used in connection with Applicant's Mark.

8. If not previously produced, representative specimens of advertising materials, marketing materials, and promotional items used or proposed to be used in connection with any

other "VO" mark to be identified in response to Interrogatory No. 3 served concurrently herewith.

9. Documents sufficient to establish the amount Applicant annually spends on advertising, marketing, and promoting goods and/or services under Applicant's Mark, including identification of specific media outlets and costs incurred for such advertising, for each year such advertising has occurred.

10. If not previously produced, documents sufficient to establish the amount Applicant annually spends on advertising, marketing, and promoting goods and/or services under each of the other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith, including identification of specific media outlets and costs incurred for such advertising, for each year such advertising has occurred.

11. Documents sufficient to establish the geographic scope, by medium employed, of all advertising conducted by or on behalf of Applicant under Applicant's Mark.

12. Documents sufficient to establish the geographic scope, by medium employed, of all advertising conducted by or on behalf of Applicant under each of the other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith.

13. If not previously produced, two (2) specimens of each tag, label, and package used or proposed to be used in connection with the sale of goods bearing Applicant's Mark for each good with which it has been used.

14. If not previously produced, two (2) specimens of each tag, label, and package used or proposed to be used in connection with the sale of goods bearing each of the other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith, for each good to be identified therein.

15. Documents sufficient to establish Applicant's annual sales, in unit and United States dollar volume, in United States commerce for each good bearing, and each service offered under, Applicant's Mark for each year in which such goods have been sold.

16. If not previously produced, documents sufficient to establish Applicant's annual sales, in unit and United States dollar volume, in United States commerce for each good bearing, and each service offered under, each of Applicant's other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith, for each year in which such goods have been sold.

17. If not previously produced, documents sufficient to establish Applicant's annual sales by State, in unit and United States dollar volume, in United States commerce for each good bearing, and each service offered under, Applicant's Mark for each year in which such goods have been sold.

18. If not previously produced, documents sufficient to establish Applicant's annual sales by State, in unit and United States dollar volume, in United States commerce for each good bearing, and each service offered under, each of Applicant's other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith, for each year in which such goods have been sold.

19. Documents sufficient to identify Applicant's channels of trade for Applicant's goods and/or services offered under Applicant's Mark in United States commerce.

20. If not previously produced, documents sufficient to identify Applicant's channels of trade for Applicant's goods and/or services offered under each of Applicant's other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith in United States commerce.

21. Documents sufficient to identify the class or classes of consumers to whom Applicant sells or intends to sell its goods and services in United States commerce under Applicant's Mark.

22. If not previously produced, documents sufficient to identify the class or classes of consumers to whom Applicant sells or intends to sell its goods and services in United States commerce under each of Applicant's other "VO" marks to be identified in response to Interrogatory No. 3 served concurrently herewith.

23. All documents relating to Opposer and Opposer's Marks, including but not limited to minutes, notes, e-mails, correspondence, and records of any meetings at which Opposer or Opposer's Marks were discussed.

24. All documents which refer or relate in any way to the adoption and first use of the name "998232 Alberta Ltd."

25. All documents that reflect, refer, or relate to any request or opinion of counsel concerning the adoption or use of Applicant's Mark or any other name or mark composed, in whole or in part, of "VO."

26. All document that refer or relate in any way to any application to register or record Applicant's Mark with any government agency.

27. If not previously produced, all document that refer or relate in any way to any application to register or record any other mark composed, in whole or in part, of "VO" with any government agency.

28. All documents which refer or relate in any way to any instances in which Applicant has identified Applicant's Mark as "3VO" rather than "3EVO."

29. All documents that reflect, refer, or relate to all searches, surveys and investigations in connection with the terms "3EVO," "3VO" and any other name or mark composed, in whole or in part, of "VO."

30. All documents that reflect, refer, or relate to studies regarding the likelihood of confusion between Applicant's Mark and Opposer's Marks.

31. If not previously produced, all documents to be identified in response to Interrogatory No. 5 served concurrently herewith.

32. If not previously produced, all documents to be identified in response to Interrogatory No. 6 served concurrently herewith.

33. If not previously produced, all documents to be identified in response to Interrogatory No. 8 served concurrently herewith.

34. If not previously produced, all documents to be identified in response to Interrogatory No. 10 served concurrently herewith.

35. If not previously produced, all documents to be identified in response to Interrogatory No. 11 served concurrently herewith.

36. If not previously produced, all documents to be identified in response to Interrogatory No. 12 served concurrently herewith.

37. If not previously produced, all documents to be identified in response to Interrogatory No. 14 served concurrently herewith.

38. If not previously produced, all documents to be identified in response to Interrogatory No. 15 served concurrently herewith.

39. If not previously produced, all documents to be identified in response to Interrogatory No. 16 served concurrently herewith.

40. If not previously produced, all documents to be identified in response to Interrogatory No. 17 served concurrently herewith.

If not previously produced, all documents to be identified in response to Interrogatory No. 18 served concurrently herewith.

Respectfully submitted,

FOLEY & LARDNER LLP

Date : September 11, 2007

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Attorneys for Opposer
ALBERTO-CULVER COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document entitled **OPPOSER ALBERTO-CULVER COMPANY'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT** was served upon attorneys for Applicant by First Class Mail, postage prepaid, to: 998232 ALBERTA LTD. 5923 3rd Street SE, Calgary, T2H1K3 Alberta, British Columbia, CANADA.

Dated: September 11, 2007

Charles R. Mandly, Jr.