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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

#77004667

Traditional Medicinals, Inc. Opposer, v. K.U.M. Hair Care Products, Inc. Applicant.	Opp. No. 91182996 SN 004667 Mark: SMOOTH MOVES MOTION TO STRIKE DISCOVERY MEMORANDUM AND DECLARATION OF JAY H. GELLER IN SUPPORT

Pursuant to 35 CFR 2.120(a)(3) and F.R.Civ.P. 26, Opposer moves for an Order striking the discovery served by Applicant on May 27, 2008.

As grounds for this Motion, Opposer alleges the following facts:

1. The Board's March 14, 2008 Order set an initial disclosure due date of June 22, 2008.

2. Pursuant to 35 CFR 2.120(a)(3) "a party must make its initial disclosures prior to seeking discovery absent modification of this requirement by stipulation of the parties approved by the Board, or a motion granted by the Board or by Order of the Board.

3. There has been no modification of the initial disclosures procedures by a stipulation of the parties approved by the Board, or a motion granted by the board or by an Order of the Board.

4. On May 27, 2008, Applicant served the discovery (attached as Exhibit A) on Opposer.

5. As of May 27, 2008 and to the date of filing of this

06-17-2008

U.S. Patent & TMOfc/TM Mail Rcpt Dt #

Motion, Applicant has not made the Initial Disclosures required by 35 CFR 2.120 and F.R.Civ.P. 26 (Geller decl.)

6. By email sent to counsel for Applicant on Wednesday, June 4, 2008 (Ex. B attached to Geller decl.), Opposer notified Applicant that the discovery was untimely and requesting that the discovery be withdrawn. No response has been received to that email as of the filing of this Motion.

7. The discovery served by Applicant on May 27, 2008 is untimely and must be stricken.

WHEREFORE, Opposer requests that the Board enter an order striking the discovery served by Applicant on May 27, 2008 and ordering the Applicant to not serve any further discovery until after compliance with the Initial Disclosures as mandated in the Board's March 14, 2008 Order and further ordering that Opposer need not respond to the May 27, 2008 discovery.

Dated: June 12, 2008

Jay H. Geller
Jay H. Geller, A
Professional Corporation
West Tower, Suite 4000
2425 West Olympic Boulevard
Santa Monica, CA 90404
Telephone: 310-449-1399
Facsimile: 310-449-1394
Email: JHGELLER@aol.com

MEMORANDUM IN SUPPORT

On March 14, 2008, the Board entered its standard Scheduling Order. In that Order, the Board set an Initial Disclosures date of June 22, 2008. Under 35 CFR 2.120(a)(3), discovery cannot commence until a party has made its initial disclosures absent an Order or Stipulation (neither of which obtains here).

On May 27, 2008, Applicant served discovery on Opposer (attached as Exhibit A). As of that date, and to the date of filing of this Motion, Applicant has not made any Initial Disclosures (Geller decl.).

On June 4, 2008, Opposer notified Applicant through its counsel that the discovery was in violation of the Board's March 14, 2008 Order (see Ex. B to Geller decl.) and requested that the discovery be withdrawn. As of the filing of this Motion, no response to that email has been received.

Because the discovery was served in violation of the Board's Order, it is null and void and an Order should be entered striking the discovery, ordering that Opposer need not respond to the discovery, and that Applicant follow the dates set forth in the scheduling Order.

Dated: June 12, 2008

Jay H. Geller
Jay H. Geller, A Prof. Corp.
West Tower, Suite 4000
2425 West Olympic Boulevard
Santa Monica, CA 90404
Telephone: 310-449-1399
Facsimile: 310-449-1394
Email: JHGELLER@aol.com

DECLARATION OF JAY H. GELLER

Jay H. Geller, under penalty of perjury of the laws of the United States, declares and says as follows:

1. I am the attorney representing the Opposer in this matter and if called as a witness and I would testify to the following of my own personal knowledge.

2.. On May 27, 2008 Applicant mailed the discovery attached as Exhibit A to me which was received on or about June 2, 2008.

3. As of May 27, 2008 and to the date of execution of this declaration, Applicant has not made any of the initial disclosures as required by the Board's March 14, 2008 Order.

4. On June 4, 2008, I sent an email to counsel for Applicant (attached as Exhibit) advising him of the requirements for the Initial Disclosures prior to serving discovery and requesting that the discovery be withdrawn. As of the date of execution of this Declaration I have received no response to my June 4, 2008 email.

Dated this 12th day of June, 2008 at Santa Monica, CA.

Jay H. Geller

EXHIBIT A

EXHIBIT A

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

In the matter of Trademark Application Serial No. 77004667:	OPPOSITION NO. 91182996
"SMOOTH MOVES"	
TRADITIONAL MEDICINALS, INC.,	
Opposer,	
v.	
K.U.M. HAIR CARE PRODUCTS, INC.,	
Applicant.	

APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO OPPOSER

Plaintiff, pursuant to Rule 36 of the Federal Rules of Civil Procedure ("F.R.C.P.", or the "Rules", as the context requires), by its undersigned attorney, hereby requests the Defendant to respond to the following requests by answering the same on or before thirty (30) days following the date of service.

I.
INSTRUCTIONS

Please follow these instructions and use the following definitions in responding to this request for discovery.

a. Each of the following requests for discovery shall be responded to separately and fully in writing. The responses shall be signed and verified by the person making them. Objections, if any, shall be signed by the attorney making them. Where the space provided is insufficient, please attach and refer to a separate sheet of paper, sufficient to complete said answer.

If your response to any request is not an unqualified admission, your answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you should specify so much of it as is true and qualify or deny the remainder.

b. Once any person, document or other matter required to be identified has been identified properly, it shall be sufficient thereafter, when identifying that same person, document or other matter, to state the name of the person, title of the document or sufficient information to refer to the previous response in which a complete identification has been given.

c. Where knowledge or information in possession of a party is requested, such request includes knowledge of such party's agents, employees, servants, officers, directors, accountants, attorneys (except only to whatever extent privileged), and any other person acting or purporting to act on behalf of the party to whom these requests for discovery are addressed. You must make inquiries of your agents, employees, etc., whenever such inquiry is necessary to enable you to re-

spond to this request for discovery completely and accurately.

d. When, after a reasonable and thorough investigation, you are unable to answer any request for discovery, or any part thereof, because of lack of information available to you, specify in full and complete detail the reason the information is not available to you and what has been done to locate such information. In addition, specify what knowledge or belief you have concerning the unanswered portion of the request for discovery and set forth the facts upon which such knowledge or belief is based.

e. Where a request for discovery does not specifically request a particular fact, but where such fact or facts are necessary to make the response to discovery either comprehensible, or complete, or not misleading, you are required to include such fact or facts as part of the response, and the request shall be deemed specifically to require such fact or facts.

f. If, in responding to these requests for discovery, you encounter any ambiguity in a question, instruction, or definition, set forth the matter deemed ambiguous and the interpretation you used in responding.

g. If you assert a privilege, work product immunity, or decline to provide an answer on the basis of some other objection:

i. identify and describe the document or communication in question;
ii. describe the basis for the asserted privilege or objection;
iii. identify every person to whom the document was sent, or every person present when the communication was made;
iv. identify the present custodian of the document, if any; and
v. include sufficient facts for the Court to make a full determination of whether the claim or objection is valid.

h. Unless otherwise indicated, these requests for discovery refer to the time, places and circumstances of the occurrences mentioned or complained of in pleading. If the responding party has filed (or intends to file prior to responding to these requests for discovery) any responsive pleadings, then unless otherwise indicated, these requests for production refer to the times, places and circumstances of the occurrences mentioned or complained of in said responsive pleadings.

i. Unless otherwise specifically stated, the time period to which these requests for discovery pertain to is from January, 2003, to the date on which these requests for discovery are responded to, inclusive.

j. These requests for discovery are deemed to be continuing to the fullest extent provided in the Rules.

k. To the extent that any request for discovery made herein duplicates any other request for production made in another request for discovery otherwise fully responded to, then you may specifically identify such the other response in lieu of providing a response for the request made herein.

II.
DEFINITIONS

All definitions provided in this Section II of this request for discovery shall apply to the term so defined, and also to such term whether or not capitalized, and also to grammatical variations (including, without limitation, mood, tense, number) of such term. Such definitions shall be broadly construed so that the construction provides the broadest request for discovery permitted under the Rules. Specific requests are intended to supplement the following definitions.

a. "You" (including "your" and "yourself"), and "Company" refers to the party to whom the request for discovery is addressed, acting in any capacity, and any person, including agents, representatives, attorneys (except only to whatever extent privileged), and each person acting or purporting to act on behalf of the party to whom the request for discovery is addressed. Additionally, if "you" is a corporation or other business entity, then "you" refers to each parent, predecessor, subsidiary, affiliate, and each present and former officer, employee, agent, representative, and attorney of the party to whom this request for discovery addressed.

b. "Representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the principal in question.

c. "Person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, or other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau or department.

d. "Document" means any medium in which information, data or intelligence can be contained, recorded or retrieved, and includes, without limitation, the original (or copy if the original is unavailable), regardless of origin and location, and all tangible things of every type and description, however produced, copied or reproduced, whether draft or final, original or reproduction, signed or unsigned, approved, sent, received, redrafted, executed, erased or otherwise defaced or mutilated, from whomever and wherever obtained, along with all non-identical (or, by reason of subsequent annotation, no longer identical) copies, drafts, or versions thereof and all copies thereof containing any commentary, notations or markings, whatsoever, which is or was in your possession, custody or control, including, but not limited to: any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), invoice, bill, magnetic media, order, form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet, or data processing card, or any other written, recorded, transcribed, punched, taped, filed, or graphic materials.

e. The word "identify" (including, without limitation, "identification" and "identity") when used in reference to:

i. a natural individual, requires you to state his or her full name, and present or last known residential address, business address, and telephone number;

ii. a corporation, requires you to state its full corporate name, and any names under which it does business, its state of incorporation, the address and telephone number of its principal place of business, and the name, address and telephone number for each and

every officer;

iii. a business, other than a corporation, requires you to state the full name or style under which the business is conducted, the types of businesses in which it is engaged and the geographic areas in which it conducts those businesses, each business address, its telephone number, and the name, address and telephone number for each and every of person and/or business entity which owns, operates, and/or controls each such business;

iv. a document, requires you to state its title, its date, the names of its authors and/or recipients, number of pages and nature of the document, and its present or last known location and custodian, including any documents prepared subsequent to any time period; and

v. a communication, requires you: A) if any part of the communication was written, to identify the documents (as provided above) which refer to or evidence the communication; and B) to the extent that the communication is unwritten, to identify each and every person participating in, or otherwise present during, all or any part of the communication, and to describe the communication and to state the date, manner, place and substance of the communication. Where a communication occurs over the telephone, the location of such communication is requested, and state the location of the parties thereto.

f. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, correspondence, documents, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings.

g. When request for discovery requests that you "describe," or to "state the basis of," or to "state the facts" on which you rely to support a particular claim, contention, or allegation, state in your answer each and every fact and legal theory, and identify each and every communication and/or document, which you contend supports, refers to, or evidences such claim, contention, or allegation. When request for discovery requires you otherwise to describe or state the facts relating to any particular set of circumstances, act, event, transaction, occurrence, meeting, purchase, sale, agreement, contract, venture, relationship, conversation, representation, communication, or other item of information, state in your answer the facts (including dates and places) relating to such transaction, occurrence, relationship, set of circumstances, etc., as the case may be; and identify any persons who are or were parties thereto or have knowledge thereof; and identify any communications and documents relating to, or evidencing, such transaction, occurrence, relationship, set of circumstances, etc., as the case may be.

h. "Or" appearing in a request for discovery should not be read so as to eliminate any part of the request for discovery, but, whenever applicable, it should have the same meaning as the word "and." For example, a request for discovery stating "support" or "refer" should be read as "support and refer" if a response that does both can be made.

i. Unless otherwise specified, any reference to a judicial pleading, including, without limitation, complaint, answer, new matter, and counterclaim, refers to such pleading as served in the same action for which this request for discovery relates.

j. "Mark at Issue" means "Smooth Moves", including reasonable formatives and

facsimiles thereof, regardless of font or design, and including any design reasonably symbolizing the word "Smooth Moves."

III.
REQUESTS FOR ADMISSIONS

1. Admit that the mark in question has been used on Applicant's website since July 2007.

Admitted _____ Denied _____

2. Admit that you are not aware of any actual instances of confusion between Applicant's mark and the Registered Marks.

Admitted _____ Denied _____

3. Admit that the Applicant and Opposer's respective goods bearing the mark in question are not competing.

Admitted _____ Denied _____

4. Admit that the Applicant and Opposer's respective goods bearing the mark in question are not marketed through the same channels of trade.

Admitted _____ Denied _____

5. Admit that the Applicant and Opposer's respective goods bearing the mark in question are not advertised through the same media.

Admitted _____ Denied _____

6. Admit that the Applicant and Opposer's sales efforts are targeted at a different type of consumer.

Admitted _____ Denied _____

7. Admit that there is no relationship between Applicant's goods and Opposer's goods.

Admitted _____ Denied _____

8. Admit that the Applicant and Opposer's goods do not have similar functions.

Admitted _____ Denied _____

9. Admit that Opposer's goods are not sold to hair salons.

Admitted _____ Denied _____

10. Admit that there are numerous registered wordmarks that utilize the name Smooth Moves, whether plural or singular, filed with the U.S. Patent and Trademark Office.

Admitted _____ Denied _____

11. Admit that there are numerous internet uses of the term "smooth moves" or "smooth move".

Admitted _____ Denied _____

12. Admit that there is a domain name registered smoothmoves.com.

Admitted _____ Denied _____

13. Admit that there is a domain name registered smoothmove.com.

Admitted _____ Denied _____

14. Admit that there is a domain name registered smoothmoves.net.

Admitted _____ Denied _____

15. Admit that there is a domain name registered smoothmove.net.

Admitted _____ Denied _____

REQUESTS FOR PRODUCTION OF DOCUMENTS

IV.
INSTRUCTIONS

Please follow these instructions and use the following definitions in responding to this request for discovery.

a. Each of the following requests for discovery shall be responded to separately and fully in writing. The responses shall be signed and verified by the person making them. Objections, if any, shall be signed by the attorney making them. Where the space provided is insufficient, please attach and refer to a separate sheet of paper, sufficient to complete said answer.

b. Once any person, document or other matter required to be identified has been identified properly, it shall be sufficient thereafter, when identifying that same person, document or other matter, to state the name of the person, title of the document or sufficient information to refer to the previous response in which a complete identification has been given.

c. Where knowledge or information in possession of a party is requested, such request includes knowledge of such party's agents, employees, servants, officers, directors, accountants, attorneys (except only to whatever extent privileged), and any other person acting or purporting to act on behalf of the party to whom these requests for discovery are addressed. You must make inquiries of your agents, employees, etc., whenever such inquiry is necessary to enable you to respond to this request for discovery completely and accurately.

d. When, after a reasonable and thorough investigation, you are unable to answer any request for discovery, or any part thereof, because of lack of information available to you, specify in full and complete detail the reason the infor-

mation is not available to you and what has been done to locate such information. In addition, specify what knowledge or belief you have concerning the unanswered portion of the request for discovery and set forth the facts upon which such knowledge or belief is based.

e. Where a request for discovery does not specifically request a particular fact, but where such fact or facts are necessary to make the response to discovery either comprehensible, or complete, or not misleading, you are required to include such fact or facts as part of the response, and the request shall be deemed specifically to require such fact or facts.

f. If, in responding to these requests for discovery, you encounter any ambiguity in a question, instruction, or definition, set forth the matter deemed ambiguous and the interpretation you used in responding.

g. If you assert a privilege, work product immunity, or decline to provide an answer on the basis of some other objection:

i. identify and describe the document or communication in question;
ii. describe the basis for the asserted privilege or objection;
iii. identify every person to whom the document was sent, or every person present when the communication was made;
iv. identify the present custodian of the document, if any; and
v. Include sufficient facts for the Court to make a full determination of whether the claim or objection is valid.

h. Unless otherwise indicated, these requests for discovery refer to the time, places and circumstances of the occurrences mentioned or complained of in pleading. If the responding party has filed (or intends to file prior to responding to these requests for discovery) any responsive pleadings, then unless otherwise indicated, these requests for production refer to the times, places and circumstances of the occurrences mentioned or complained of in said responsive pleadings.

i. Unless otherwise specifically stated, the time period to which these requests for discovery pertain to is from January, 1999, to the date on which these requests for discovery are responded to, inclusive.

j. These requests for discovery are deemed to be continuing to the fullest extent provided in the Rules.

k. To the extent that any request for discovery made herein duplicates any other request for production made in another request for discovery otherwise fully responded to, then you may specifically identify such the other response in lieu of providing a response for the request made herein.

II.
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party to whom the request for discovery is addressed. Additionally, if "you" is a corporation or other business entity, then "you" refers to each parent, predecessor, subsidiary, affiliate, and each present and former officer, employee, agent, representative, and attorney of the party to whom this request for discovery addressed.

b. "Representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the principal in question.

c. "Person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, or other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau or department.

d. "Document" means any medium in which information, data or intelligence can be contained, recorded or retrieved, and includes, without limitation, the original (or copy if the original is unavailable), regardless of origin and location, and all tangible things of every type and description, however produced, copied or reproduced, whether draft or final, original or reproduction, signed or unsigned, approved, sent, received, redrafted, executed, erased or otherwise defaced or mutilated, from whomever and wherever obtained, along with all non-identical (or, by reason of subsequent annotation, no longer identical) copies, drafts, or versions thereof and all copies thereof containing any commentary, notations or markings, whatsoever, which is or was in your possession, custody or control, including, but not limited to: any book, pamphlet, periodical, letter, memorandum, (including any memorandum or report of a meeting or conversation), invoice, bill, magnetic media, order, form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet, or data processing card, or any other written, recorded, transcribed, punched, taped, filed, or graphic materials.

e. The word "identify" (including, without limitation, "identification" and "identity") when used in reference to:

i. a natural individual, requires you to state his or her full name, and present or last known residential address, business address, and telephone number;

ii. a corporation, requires you to state its full corporate name, and any names under which it does business, its state of incorporation, the address and telephone number of its principal place of business, and the name, address and telephone number for each and every officer;

iii. a business, other than a corporation, requires you to state the full name or style under which the business is conducted, the types of businesses in which it is engaged and the geographic areas in which it conducts those businesses, each business address, its telephone number, and the name, address and telephone number for each and every of person and/or business entity which owns, operates, and/or controls each such business;

iv. a document, requires you to state its title, its date, the names of its authors and/or recipients, number of pages and nature of the document, and its present or last known location and custodian, including any documents prepared subsequent to any time pe-

riod; and

v. a communication, requires you: A) if any part of the communication was written, to identify the documents (as provided above) which refer to or evidence the communication; and B) to the extent that the communication is unwritten, to identify each and every person participating in, or otherwise present during, all or any part of the communication, and to describe the communication and to state the date, manner, place and substance of the communication. Where a communication occurs over the telephone, the location of such communication is requested, and state the location of the parties thereto.

f. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, correspondence, documents, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings.

g. When request for discovery requests that you "describe," or to "state the basis of," or to "state the facts" on which you rely to support a particular claim, contention, or allegation, state in your answer each and every fact and legal theory, and identify each and every communication and/or document, which you contend supports, refers to, or evidences such claim, contention, or allegation. When request for discovery requires you otherwise to describe or state the facts relating to any particular set of circumstances, act, event, transaction, occurrence, meeting, purchase, sale, agreement, contract, venture, relationship, conversation, representation, communication, or other item of information, state in your answer the facts (including dates and places) relating to such transaction, occurrence, relationship, set of circumstances, etc., as the case may be; and identify any persons who are or were parties thereto or have knowledge thereof; and identify any communications and documents relating to, or evidencing, such transaction, occurrence, relationship, set of circumstances, etc., as the case may be.

h. "Or" appearing in a request for discovery should not be read so as to eliminate any part of the request for discovery, but, whenever applicable, it should have the same meaning as the word "and." For example, a request for discovery stating "support" or "refer" should be read as "support and refer" if a response that does both can be made.

i. Unless otherwise specified, any reference to a judicial pleading, including, without limitation, complaint, answer, new matter, and counterclaim, refers to such pleading as served in the same action for which this request for discovery relates.

j. "Respective Marks" shall mean Opposer's registered marks at issue herein, namely, those mentioned in Opposer's opposition, namely, Registration Nos. 1258223, 2520275, and 3344362.

V. DOCUMENT REQUESTS

1. All documents that refer or relate to and/or establish Registrant's origin, selection, adoption and first use of the Respective Marks.

2. Specimens of each label, trade dress or package for each product in connection with which registrant has used the Respective Marks.

3. Any and all documents which establish all the specific products in which Opposer is using the Respective Marks, including dates of first use and last use and any termination date for abandoned products.

4. Specimens of each advertisement and promotional material used or distributed by registrant that refers to any product or service in connection with which registrant has used the Respective Marks.

5. All documents that refer or relate to the sales and distribution of goods bearing the Respective Marks, including cessation of sales of any goods or services in connection with which registrant has used the Respective Marks.

6. All documents that include, contain, refer to, and/or relate to sales, marketing, promotion and/or advertising of the product or service, including documents that establish the annual advertising and promotional expenses for all goods and services bearing the Respective Marks.

7. All documents that support Opposer's assertion that Applicant's registration of the mark "Smooth Moves" is likely to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act as stated in paragraph 7 of the Opposition.

8. All documents that refer or relate to any instances of actual confusion, mistake or deception that have or may have occurred as to any relationship or possible association between the Respective Marks and either Applicant or third party use of marks incorporating "Smooth Moves."

9. All documents relating to any registration or application to register the Respective Marks as a domain name, trademark or service mark or trade name in the United States Patent and Trademark Office or in any of the states of the United States, or with any other governmental body, whether valid, cancelled, pending or abandoned, including but not limited to applications, office actions, responses to office actions and any documents relating to any opposition proceeding relating to the Respective Marks.

10. Any discovery responses served by Opposer in any opposition proceeding relating to the Respective Marks.

11. All documents referring or relating to or constituting contracts, agreements, licenses, consents, and the like to which Opposer is a party and which relate to any of the Respective Marks.

12. Samples of all labels, containers, stickers, boxes, bags, packaging, and/or other means by which Opposer has applied the Respective Marks to the product or service.

13. Any cease and desist letters sent or received by Opposer with regard to the Respective Marks at issue at any time.

14. All documents pertaining to any litigation, cancellation, opposition, or adversary proceeding between Opposer and any other party which included an allegation of infringement, likelihood of confusion or dilution involving the Respective Marks.

15. Any and all documents reflecting Opposer's policing of the Respective Marks.

16. All documents that relate to any trademark searches, clearance, counsel opinion letters, surveys, market studies or the like, and/or evaluations relating to the Respective Marks.

17. Any and all documents that refer or relate to any third party use of Marks incorporating the terms "Smooth Moves."

18. Any and all documents that record, summarize, or otherwise refer to monthly, quarterly and/or annual sales of any of registrant's products or services in connection with which registrant has used the Respective Marks.

19. Any and all documents that record, summarize, or otherwise refer to monthly, quarterly and/or annual advertising and/or promotional expenditures for products in connection with which registrant has used the Respective Marks.

20. All documents that refer or relate to the marketing, sale or distribution of registrant's products or services in connection with which registrant has used the Respective Marks.

21. All documents that summarize, describe or otherwise demonstrate the exact nature of each product and service in connection with which registrant has used its Respective Marks, including but not limited to the ways in which each such product and service might be used by a purchaser.

22. All documents that refer or relate to the advertising or promotion of registrant's products or services in connection with which registrant has used its Respective Marks.

23. All documents that refer or relate to proposals for, preparation or selection of, registrant's advertisements or promotions that use the Respective Marks.

24. All documents that refer or relate to any marketing studies, focus group studies, polls or surveys that relate to the Respective Marks.

25. All documents that refer or relate to registrant's use or potential use, of the Respective Marks.

26. All documents that establish Opposer's intention to abandon the use of the Respective Marks on specific products.

27. All documents that refer or relate to any oral or written assignment, license or any other transfer to or form registrant of the right to use the Respective Marks.

28. All documents that refer or relate to any litigation or administration proceeding relating in whole or in part to any products or services in connection with which registrant has used the Respective Marks.

29. Any and all documents that refer or relate to any federal, state or local government inquiry, investigation or action relating in whole or in part to any products or services in connection with which registrant has used the Respective Marks.

30. All documents that refer or relate to any complaints, protests, objections, demands, threats or other claims to or from registrant relating in whole or in part to any products or services in connection with which registrant has used the Respective Marks.

31. Any and all documents that establish Opposer's due diligence before filing its opposition action in regards to whether there is a likelihood of confusion with Applicant's proposed mark.

32. All documents that refer or relate to Applicant's use of the mark "Smooth Moves" including internal memorandums, e-mails, or meeting notes.

33. All documents that refer or relate to any instances of actual confusion, mistake or deception that have or may have occurred between any of registrant's products or services in connection with which registrant has used the Respective Marks and Applicant or its products.

34. All documents that refer or relate to registrant's present and future marketing plans with regard to products or services bearing the Respective Marks.

35. All documents that support or otherwise refer or relate to the Opposer's statements in its Opposition action.

36. All documents that establish, describe, discuss, state, refer to and/or relate to the respective trade channels or intended trade channels of the products and services in regards of which the Opposer's Respective Marks are used.

37. All documents that establish, identify, classify, refer to, and/or relate to the actual and/or intended purchasers of the Opposer's product or service.

38. All documents that state, describe, identify, refer to, and/or relate to the geographical areas in which Opposer markets and/or intends to market the product or service in regards of which the Opposer's Respective Marks are used.

39. All documents that establish when Opposer first discovered Applicant's use of the mark "Smooth Moves."

40. All documents supporting your assertion in paragraph 6 of the Opposition that the goods upon which Applicant intends to use its Mark is identical to those goods upon which Opposer uses its Marks.

41. All documents supporting your assertion in paragraph 8 of the Opposition that Registration of Applicant's trademark will dilute Registrant's famous Mark.

42. All documents supporting your assertion in paragraph 8 of the Opposition that Registrant's Mark/s are famous under the newly revised trademark dilution laws.

43. All documents supporting your assertion in paragraph 9 of the Opposition that registration of Applicant's Mark will damage Opposer's Mark and business.

Respectfully submitted,

Dennis M. Moskal, Esq.
Attorney for Applicant
K.U.M. Hair Care Products, Inc.

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
Allegheny Building, 12th Floor
Pittsburgh, PA 15219-1616
412.765.04015

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Applicant's FIRST SET OF REQUESTS FOR ADMISSION AND FIRST SET OF REQUESTS FOR DOCUMENTS was served postage pre-paid by first class mail on May 27, 2008 to:

Jay H. Geller, Esq.
2425 Olympic Building, Suite 4000W
Santa Monica, CA 90404, USA

Respectfully submitted,

Dennis M. Moskal, Esq.
Attorney for Applicant
K.U.M. Hair Care Products, Inc.

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
Allegheny Building, 12th Floor
Pittsburgh, PA 15219-1616
412.765.0405

EXHIBIT B

From: jhgeller@aol.com
To: dennis.moskal@zegarelli.com
Subject: Re: SMOOTH MOVES
Date: Wed, 4 Jun 2008 12:01 pm

Thanks Dennis. I have reviewed the TTAB rules and I believe that the discovery you served is NOT timely. Under 35 CFR 2.120(a)(3), "a party must make its initial disclosures prior to seeking discovery, absent modificatio of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board, or by order of the Board."

The following has not taken place as required by FRCivP26(a):
(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
(iii) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Nor has a discovery schedule or plan been worked out as required by FRCivP 26(f). When we spoke last month, you brought to my attention the fact that the Notice of Opposition had the wrong party and I have moved to correct that. It would appear until that Motion is acted upon the matter is in limbo. Nevertheless, your discovery is premature and not in accord with the rules of the TTAB or the Federal Rules of Civil Procedure. In light of this, please formally withdraw the discovery. If you fail to do, I will file a Motion to Strike the discovery as untimely.

I look forward to hearing from you tomorrow.

Jay H. Geller
Jay H. Geller, a Prof. Corp.
2425 W. Olympic Bl., Suite 4000W
Santa Monica, CA 90404
T: 310-449-1399
F: 310-449-1394
C: 310-383-6228

-----Original Message-----
From: Dennis M. Moskal <dennis.moskal@zegarelli.com>
To: jhgeller@aol.com
Sent: Wed, 4 Jun 2008 11:46 am
Subject: RE: SMOOTH MOVES

Thanks for your e-mail; however, i have a couple deadlines that need to be addressed. Will call you tomorrow.

Dennis M. Moskal, Esq.
Direct Dial: 412.765.0405
Facsimile: 412.765.0531
dennis.moskal@zegarelli.com

-----Original Message-----
From: jhgeller@aol.com [mailto:jhgeller@aol.com]
Sent: Tuesday, June 03, 2008 4:09 PM
To: Dennis M. Moskal
Subject: SMOOTH MOVES

Hi Dennis - I received your discovery. I have also filed a Motion with the TTAB that was served on you but no response has yet been made. Do you plan to respond?

I tried to call you but (strangely) the call went to an answering service and not your office. Anyway, I have some questions about this and depending on the answers, there might be a way to resolve this without further litigation (I would have to discuss this with my client). Please give me a call at your earliest convenience so we can talk about this.

I look forward to hearing from you.

Jay H. Geller
Jay H. Geller, a Prof. Corp.
2425 W. Olympic Bl., Suite 4000W
Santa Monica, CA 90404
T: 310-449-1399
F: 310-449-1394
C: 310-383-6228

Stay informed, get connected and more with AOL on your phone.

Stay informed, get connected and more with AOL on your phone.

CERTIFICATE OF SERVICE

I certify that the foregoing was served postage prepaid by first class mail from Santa Monica, CA on June 12, 2008 in an envelope addressed to: Dennis M. Moskal, Zegarelli Technology and Entrepreneurial Ventures Law Group, PC, Allegheny Building, 12th Floor, Pittsburgh, PA 15219-1616.

Jay H. Geller