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

Proceeding	91184978
Party	Plaintiff McNEIL-PPC, Inc.
Correspondence Address	James D. Weinberger Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES jweinberger@fzlz.com, rlehv@frosszelnick.com, lrosenberg@frosszelnick.com
Submission	Opposition/Response to Motion
Filer's Name	Laura Popp-Rosenberg
Filer's e-mail	lpopp-rosenberg@frosszelnick.com
Signature	/Laura Popp-Rosenberg/
Date	04/06/2009
Attachments	Opposition to Motion to Extend (F0440083).PDF (9 pages)(327800 bytes) Declaration in Support of Opposition to Motion to Extend (F0440080).PDF (17 pages)(481664 bytes)

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

McNEIL-PPC, INC., Opposer, -against- WALGREEN CO., Applicant.	**Opposition No. 91184978**

OPPOSER'S OPPOSITION TO
APPLICANT'S MOTION FOR 90-DAY EXTENSION OF ALL DEADLINES

Opposer McNEIL-PPC, Inc. ("McNEIL") opposes the Contested Motion for 90-Day Extension of All Deadlines (the "Motion") filed by applicant Walgreen Co. ("Walgreens").

McNEIL has already consented to Walgreens' request for one 60-day extension of all discovery and trial dates in this matter. When Walgreens approached McNEIL about a second 60-day extension, McNEIL agreed only to an additional 30-day extension of all deadlines because Walgreens had not shown that another 60-day extension is necessary. McNEIL also told Walgreens that it would consider additional extensions as appropriate. Rather than accepting the 30-day extension (with the possibility of further extensions) to which McNEIL consented, Walgreens filed a contested motion seeking a *90*-day extension, filling its brief with misstatements of fact, omitting any mention of Walgreens' dilatory tactics in this proceeding and failing to show good cause for such a lengthy extension. Therefore, McNEIL respectfully requests that Walgreens' unnecessary request

for a 90-day extension be denied and that the Board instead extend the dates by the 30 days to which McNEIL consented.

BACKGROUND

Walgreens asserts that it "is not looking to point the finger of blame at any party" (Motion at ¶17), but it nonetheless attempts to portray McNEIL as the dilatory actor in this proceeding. But it is *Walgreens* and *not* McNEIL who is unnecessarily delaying this proceeding. Given the misstatements and mischaracterizations of fact that litter Walgreens' Motion, it is not surprising – and undoubtedly was calculated – that Walgreens did not support its Motion by any sworn declaration. McNEIL herein attempts to set the record straight.

This opposition was instituted on July 1, 2008. On October 8, 2008, Walgreens served McNEIL with written discovery requests and a deposition notice pursuant to Federal Rule of Civil Procedure 30(b)(6). (Declaration of Laura Popp-Rosenberg in Support of Opposer's Opposition to Applicant's Motion for 90-Day Extension of All Deadlines, dated April 6, 2009 ("Popp-Rosenberg Decl."), ¶ 2.) With regard to its 30(b)(6) deposition notice, Walgreens advised McNEIL that it served the notice merely to get it on record, and that it did not want to schedule the deposition until after McNEIL produced responsive documents. (*Id.* at ¶ 3.) On October 17, 2008, McNEIL served Walgreens with written discovery requests. (*Id.* at ¶ 4.) McNEIL timely served its written responses to Walgreens' discovery requests on November 14, 2008, and Walgreens served its written responses to McNEIL's discovery requests on November 21,

2008.[1] (*Id.* at ¶¶ 5-6.) Neither party produced responsive documents at the time of serving written responses. (*Id.*)

Walgreens first inquired into the status of McNEIL's document production on January 12, 2009 and indicated that it was itself just in the process of collecting responsive documents. (*Id.* at Exh. A.)Walgreens also for the first time inquired about scheduling the 30(b)(6) deposition. (*Id.*) McNEIL responded the next day, stating that it was in the process of collecting documents and that it would confer with its client regarding possible deposition dates. (*Id.*)

The parties next communicated regarding document production and deposition scheduling on January 28, 2009, when McNEIL initiated contact with Walgreens to advise that McNEIL expected to complete its review of (though not produce) potentially responsive documents by February 6, 2009 and would advise of available deposition dates the same day. (*Id.* at Exh. B.) Walgreens made no response.

Instead, on January 29, 2009, Walgreens made its first request for McNEIL's consent to a 60-day extension of all dates in the proceeding. (*Id.* at Exh. C.) McNEIL consented to the request (*id.*), and the Board granted the consented 60-day extension on February 3, 2009.

As promised, by February 6, 2009, McNEIL provided Walgreens with March 23 and March 27, 2009 as potential deposition dates for the requested 30(b)(6) deposition. (*Id.* at ¶ 11.) While these dates were relatively far out, these were the very first full days available for McNEIL's 30(b)(6) deponent, Rohinish Hooda, who, as Vice-President of Marketing at McNEIL, has a busy travel and meeting schedule. (*Id.*) Walgreens did not

[1] These written responses were deficient in numerous respects, and the parties are conferring in an attempt to resolve the open discovery disputes and avoid Board involvement. (Popp-Rosenberg Decl. at ¶ 7.)

make any complaints about suggested dates, and selected the latter of the two dates to conduct the deposition. (*Id.* at ¶ 12.)

Thereafter, on February 27, 2009, Walgreens served a notice seeking to take the individual deposition of Mr. Hooda on March 26, 2009, also sending McNEIL a courtesy copy of the deposition notice by email. (*Id.* at ¶ 15 and Exh. D.) McNEIL advised Walgreens the same day that Mr. Hooda would be McNEIL's 30(b)(6) deponent and suggesting that Walgreens take Mr. Hooda's deposition in his capacity of McNEIL's 30(b)(6) witness before deciding whether a second deposition would be necessary. (*Id.* at Exh. D.) McNEIL did not make this suggestion in order either to thwart Walgreens' deposition of Mr. Hooda or – contrary to Walgreens' false accusation – to make Walgreens' counsel travel twice to New York. (Motion at 11.) Rather, it made this suggestion to save both parties, their counsel and the witness the time and expense of an unnecessary deposition. (*Id.* at ¶ 16.)

When Walgreens responded by proposing to take Mr. Hooda's deposition as McNEIL's 30(b)(6) witness on March 26 and continue with his individual deposition March 27, McNEIL advised Walgreens that Mr. Hooda was not available on March 26. (*Id.* at Exh. D.) Walgreens then stated that it would take Mr. Hooda's deposition on March 27 as planned and then determine whether a second deposition would be necessary. (*Id.*)[2]

Walgreens seeks to make much of McNEIL's alleged delay in producing its 30(b)(6) witness for deposition and its alleged refusal to schedule the depositions on

[2] Notably, when Walgreens took Mr. Hooda's deposition as McNEIL's 30(b)(6) witness on March 27, it did not use the full seven hours allotted to it. (Popp-Rosenberg Decl. at ¶ 17.) Since Walgreens had the opportunity to ask Mr. Hooda further questions but did not do so, it clearly did not need to take two days of depositions with this witness.

consecutive days. However, it is *Walgreens* who has delayed far more than McNEIL and it is *Walgreens* who is refusing to schedule depositions back-to-back. McNEIL served two deposition notices on Walgreens on February 10, 2009. (*Id.* at ¶ 13.) After McNEIL contacted Walgreens numerous times to schedule these depositions, Walgreens finally agreed to produce two separate witnesses, one on April 16, 2009 and one on May 1, 2009. (*Id.*) Walgreens flatly refused to make the separate witnesses available on consecutive days, despite the fact that 80 days will have elapsed between McNEIL's service of the deposition notices and the taking of the second deposition. Walgreens cannot complain that McNEIL was unable to produce a busy business leader for two consecutive days of deposition on less than 30 days' notice when Walgreens refuses to make two separate witnesses – one of whom is retired (*id.*) – available for deposition on consecutive days despite *80* days' notice.

With regard to document production, it is also Walgreens who has delayed far more than McNEIL. While Walgreens is quick to point out that McNEIL's production took place 134 days after service of the written document requests, Walgreens carefully omits any mention of the fact that Walgreens itself did not produce its first responsive document until *154* days after service of written document requests. (*Id.* at ¶¶ 2, 4, 14 and 18.)

ARGUMENT

Despite Walgreens' clear delay tactics in this proceeding, McNEIL does not believe that either party needs an additional 90 days to continue discovery in this proceeding. Walgreens' claims that its primary basis for seeking a 90-day extension of all dates is that it cannot comply with the expert disclosure deadline of April 8, 2009.

(Motion at 12.) This is a sham basis, asserted to hide the fact that Walgreens' main interest in seeking the extension is simply to delay these proceedings as long as possible.

First, Walgreens has given no valid excuse for its inability to comply with the April 8 expert disclosure deadline. Although it claims that it needed McNEIL's 30(b)(6) deposition before it could prepare "any expert disclosures, expert report, or survey," Walgreens has not explained any theory under which McNEIL's 30(b)(6) testimony would be needed before Walgreens can supply its expert disclosures, report or survey. There is simply no connection between the two events. McNEIL's opposition is based on likelihood of confusion and dilution. An expert survey addressing either or both of these issues could have been commissioned immediately upon institution of these proceedings in July of last year, and Walgreens has not even attempted to explain why this is not the case.

Second, even if Walgreens did have a valid basis for needing more time to make its expert disclosures, it could have requested McNEIL's consent to an extension only of that particular deadline rather than seeking to move the entire discovery and trial schedule out by 90 days. Alternatively, it could have brought a motion seeking leave to make its expert disclosures at a later date, again rather than seeking to move the entire schedule out by 90 days.

Walgreens' decision not to explain how McNEIL's 30(b)(6) testimony has any bearing on Walgreens' planned expert disclosures, and its failure to suggest or take alternate, less disruptive routes to extend the expert disclosure deadline speaks volumes about its true intentions here: it simply wants to delay the trial of this opposition on the merits. Walgreens already lost one opposition proceeding involving a mark like the one

at issue here, *Wyeth v. Walgreen Co.*, Opposition No. 91165912 (concerning likelihood of confusion between ALAVERT and WAL-VERT), which decision Walgreens has appealed to the U.S. District Court for the Northern District of Illinois. Walgreens undoubtedly hopes that the District Court will overturn the Board's decision, and that the District Court's decision in that case will have an influence on this opposition proceeding.

But Walgreens should not be permitted to hold up McNEIL's opposition for this – or any other – purpose. McNEIL has expended valuable time and resources in prosecuting this opposition to Applicant's attempted registration. It desires to see a resolution of this matter without further delay and waste. Walgreens' request for an extension of the discovery and trial periods is a request solely for the purpose of delay. While McNEIL has extended all courtesies to Walgreens throughout this proceeding, it cannot consent to an unnecessary 90-day extension.

CONCLUSION

For the reasons stated above, McNEIL respectfully requests that the Board deny Applicant's Motion for 90-Day Extension of All Deadlines and instead extend the deadlines by only the 30 days to which McNEIL consented.

Dated: New York, New York
April 6, 2009

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: _____
Richard Z. Lehv
Laura Popp-Rosenberg
866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900
Email: rlehv@frosszelnick.com
lpopp-rosenberg@frosszelnick.com

Attorneys for Opposer McNEIL-PPC, Inc.

CERTIFICATE OF SERVICE

This is to certify that I caused a true and correct copy of the foregoing Opposer's Opposition to Applicant's Motion for 90-Day Extension of All Deadlines to be served via First Class Mail in an envelope addressed to counsel for Applicant, Mark J. Liss, Esq., Leydig, Voit & Mayer, Ltd, Two Prudential Plaza, Suite 4900, Chicago, Illinois 60601-6731, this 6th day of April, 2009.

Laura Popp-Rosenberg

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

McNEIL-PPC, INC., Opposer, -against- WALGREEN CO., Applicant.	**Opposition No. 91184978**

DECLARATION OF LAURA POPP-ROSENBERG IN SUPPORT OF OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR 90-DAY EXTENSION OF ALL DEADLINES

I, Laura Popp-Rosenberg, hereby declare under penalty of perjury:

1. I am a member of Fross Zelnick Lehrman & Zissu, P.C., attorneys for opposer McNEIL-PPC, Inc. ("McNEIL") in the above-captioned proceeding. I submit this declaration in support of Opposer's Opposition to Applicant's Motion for 90-Day Extension of All Deadlines. I make this declaration based on personal knowledge of the facts and circumstances set forth herein and on the records of my firm.

2. Walgreens served document requests and interrogatories dated October 8, 2008 on McNEIL in connection with this opposition proceeding. Walgreens also served a deposition notice on McNEIL pursuant to Federal Rule of Civil Procedure 30(b)(6), dated October 8, 2008.

3. Shortly after serving the 30(b)(6) deposition notice, counsel for Walgreens advised counsel for McNEIL by telephone that it served the 30(b)(6) deposition notice on MCNEIL merely to get the notice on record, and further advised counsel for McNEIL

that it did not want to schedule the deposition until after McNEIL produced documents responsive to Walgreens' document requests.

4. On October 17, 2008, McNEIL served Walgreens with document requests, interrogatories and requests for admission.

5. After receiving a two-day extension of time from Walgreens, McNEIL timely served its written responses to Walgreens' October 8 discovery requests on November 14, 2008. McNEIL did not produce responsive documents at the same time it served its written discovery responses.

6. Walgreens served its written responses to McNEIL's October 17 discovery requests on November 21, 2008. Walgreens did not produce responsive documents at the same time it served its written discovery responses.

7. McNEIL believes that Walgreens' November 21, 2008 written discovery responses are deficient. McNEIL advised Walgreens of these deficiencies by letter dated February 17, 2009. Counsel for the parties conferred by telephone on March 24, 2009 to discuss the deficiencies, and Walgreens responded in writing to the noted deficiencies on March 26, 2009. McNEIL is still reviewing Walgreens' responses to determine whether it must take the issues of Walgreens' discovery deficiencies to the Board.

8. Attached hereto as **Exhibit A** is a true and correct copy of email correspondence between Walgreens' counsel and McNEIL's counsel on January 12 and 13, 2009.

9. Attached hereto as **Exhibit B** is a true and correct copy of an email sent by McNEIL's counsel to Walgreens' counsel on January 28, 2009.

10. Attached hereto as **Exhibit C** is a true and correct copy of email correspondence between counsel for the parties concerning Walgreens' request for McNEIL's consent to a 60-day extension of all discovery and trial dates in this proceeding, and McNEIL's consent thereto.

11. On or before February 6, 2009, I advised Walgreens by telephone that the earliest dates McNEIL's 30(b)(6) deposition designee was available for deposition were March 23, 2009 or March 27, 2009. McNEIL's 30(b)(6) deponent, Rohinish Hooda, is Vice-President of Marketing at McNEIL, and has a busy travel and meeting schedule, making him unavailable for an earlier deposition.

12. On February 6, 2009, Walgreens selected the latter of the two proposed dates, March 27, 2009, to conduct the of McNEIL's 30(b)(6) deponent. At no time did Walgreens voice any concern about or objection to any delay in scheduling the deposition.

13. On February 10, 2009, McNEIL served two deposition notices on Walgreens: one seeking to take the deposition of Walgreens through a corporate designee, and one seeking to take the deposition of Daniel Potts, who Walgreens had identified in its initial discovery disclosures as a potential witness for Walgreens in this opposition. I contacted Walgreens' counsel on multiple occasions by both telephone and in writing seeking consecutive dates for the two depositions. Despite my multiple requests, Walgreens refused to make its deponents available on consecutive dates, instead offering only one date (April 16, 2009) for its 30(b)(6) witness and only one date (May 1, 2009) for Mr. Potts. Walgreens also advised that Mr. Potts was recently retired from Walgreens.

14. McNEIL produced documents responsive to Walgreens written document requests on February 19, 2009.

15. Without first consulting with McNEIL's counsel about deponent or counsel availability, Walgreens served McNEIL with a notice dated February 27, 2009 seeking to take the deposition of Mr. Hooda less than one month later, on March 26, 2009. Walgreens also sent me a courtesy copy of the deposition notice by email.

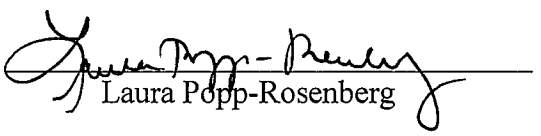
16. Attached hereto as **Exhibit D** is a true and correct copy of email correspondence between counsel for the parties concerning the scheduling of Mr. Hooda's deposition. Because Mr. Hooda would be appearing as McNEIL's 30(b)(6) witness, and because his schedule was very busy, I suggested that Walgreens take Mr. Hooda's deposition in his 30(b)(6) capacity first, and then determine whether a second deposition in his individual capacity would be necessary.

17. Walgreens took Mr. Hooda's deposition as McNEIL's 30(b)(6) designee on March 27, 2009. Walgreens did not utilize the full seven hours allotted to it under Federal Rule of Civil Procedure 30(d)(1).

18. Walgreens produced documents responsive to McNEIL's written document requests on March 20, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of April, 2009.



Laura Popp-Rosenberg

EXHIBIT A

Laura Popp-Rosenberg

From: James Weinberger
Sent: Tuesday, January 13, 2009 6:29 PM
To: Stevens, Caroline
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Caroline -

We are in the process of collecting documents ourselves and I will follow up with an update as soon as I have one. I am amenable to an agreement on an exchange, rather than an inspection, but I would like to get a sense of the volume before we commit (i.e., if one party has one box and the other has 25, that might not be the best situation). Finally, I will check with the client on the deposition dates.

Regards,
James

From: Stevens, Caroline [mailto:cstevens@leydig.com]
Sent: Monday, January 12, 2009 10:23 AM
To: James Weinberger
Cc: Liss, Mark
Subject: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Mr. Weinberger,

We are writing with regard to the above-referenced matter. First, we would like to inquire into the status of McNeil's production of documents in response to our discovery requests. We are in the process of gathering documents ourselves. Rather than have each party visit the other (through its counsel) to inspect and copy responsive documents, we would suggest that the parties agree to copy and ship responsive documents to each other. We believe this will be easier than on-site inspections and review.

Second, we would like to proceed with planning the 30(b)(6) deposition of McNeil. We can travel to your office, and we propose the dates of Wednesday, February 25, 2009 or Wednesday, March 4, 2009.

We look forward to hearing from you regarding these matters.

Very truly yours,

Caroline

Caroline L. Stevens
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza, Suite 4900
Chicago, Illinois 60601
Tel: (312) 616-5600
Fax: (312) 616-5700
cstevens@leydig.com

EXHIBIT B

Laura Popp-Rosenberg

From: Richard Lehv
Sent: Wednesday, January 28, 2009 12:28 PM
To: 'Stevens, Caroline'; James Weinberger
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Caroline:

I am one of the partners in the Fross Zelnick litigation department. I am now working with James and Laura on this matter. Because of their absence from the office on other matters, we have not yet been able to complete our review of the client's documents. We expect to have that done by the end of next week. We will also get back to you at that time about dates for the depositions you wish to take.

I look forward to working with you.

Sincerely,
Richard Lehv

From: Stevens, Caroline [mailto:cstevens@leydig.com]
Sent: Wednesday, January 14, 2009 3:56 PM
To: James Weinberger
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

James,

At this stage, we have 1 to 2 boxes of documents. Please let us know how many boxes you expect to have for production. We also look forward to hearing from you regarding the deposition dates.

Kind regards,

Caroline

From: James Weinberger [mailto:jweinberger@fzlz.com]
Sent: Tuesday, January 13, 2009 5:29 PM
To: Stevens, Caroline
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Caroline -

We are in the process of collecting documents ourselves and I will follow up with an update as soon as I have one. I am amenable to an agreement on an exchange, rather than an inspection, but I would like to get a sense of the volume before we commit (i.e., if one party has one box and the other has 25, that might not be the best situation). Finally, I will check with the client on the deposition dates.

Regards,
James

From: Stevens, Caroline [mailto:cstevens@leydig.com]
Sent: Monday, January 12, 2009 10:23 AM
To: James Weinberger

Cc: Liss, Mark
Subject: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Mr. Weinberger,

We are writing with regard to the above-referenced matter. First, we would like to inquire into the status of McNeil's production of documents in response to our discovery requests. We are in the process of gathering documents ourselves. Rather than have each party visit the other (through its counsel) to inspect and copy responsive documents, we would suggest that the parties agree to copy and ship responsive documents to each other. We believe this will be easier than on-site inspections and review.

Second, we would like to proceed with planning the 30(b)(6) deposition of McNeil. We can travel to your office, and we propose the dates of Wednesday, February 25, 2009 or Wednesday, March 4, 2009.

We look forward to hearing from you regarding these matters.

Very truly yours,

Caroline

Caroline L. Stevens
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cstevens@leydig.com

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EXHIBIT C

Laura Popp-Rosenberg

From: Richard Lehv
Sent: Tuesday, February 03, 2009 12:40 PM
To: 'Stevens, Caroline'; James Weinberger
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Caroline:

We agree to this.

Richard

From: Stevens, Caroline [mailto:cstevens@leydig.com]
Sent: Monday, February 02, 2009 12:17 PM
To: Richard Lehv; James Weinberger
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Richard,

We are writing to follow-up on the email below. Because February 7, 2009 is the deadline for the parties to make expert disclosures, we ask that you let us know whether your client is willing to agree to a 60-day extension of all deadlines in this case no later than Wednesday, February 4, 2009.

Thank you,

Caroline

Caroline L. Stevens - (312) 616-5731 - cstevens@leydig.com

From: Stevens, Caroline
Sent: Thursday, January 29, 2009 4:07 PM
To: Richard Lehv; James Weinberger
Cc: Liss, Mark; Laura Popp-Rosenberg
Subject: RE: McNeil v. Walgreen Opposition Matter concerning "WAL-ZYR" application; LVM Ref. 262981

Dear Richard,

We are writing with regard to the above-referenced matter. We previously suggested the dates of Feb. 25 and Mar. 4-6 for a 30 (b)(6) deposition of McNeill. The dates of March 4, 5, and 6 still work for us, but we are no longer available on February 25. Please let us know if one of the March dates works for you, and if they do not, please propose alternate dates.

In view of the delay of discovery in this case, we suggest that the parties jointly request a 60-day extension of all deadlines in this opposition. Please let us know your thoughts on this suggestion.

Kind regards,

Caroline

Caroline L. Stevens - (312) 616-5731 - cstevens@leydig.com

EXHIBIT D

Laura Popp-Rosenberg

From: Stevens, Caroline [cstevens@leydig.com]
Sent: Monday, March 02, 2009 12:17 PM
To: Laura Popp-Rosenberg
Cc: Liss, Mark; Richard Lehv
Subject: RE: Notice of Deposition; McNeil v. Walgreen; LVM Ref. 262981

Dear Laura,

Given Mr. Hooda's schedule, let's go forward with the 30(b)(6) deposition on March 27 as originally planned, and we will not schedule any deposition for March 26. After the 30(b)(6) deposition, we will discuss whether an individual deposition of Mr. Hooda is necessary.

Caroline

Caroline L. Stevens - (312) 616-5731 - cstevens@leydig.com

-----Original Message-----
From: Laura Popp-Rosenberg [mailto:lpopp-rosenberg@frosszelnick.com]
Sent: Monday, March 02, 2009 10:38 AM
To: Stevens, Caroline
Cc: Liss, Mark; Richard Lehv
Subject: RE: Notice of Deposition; McNeil v. Walgreen; LVM Ref. 262981

Dear Caroline:

Mr. Hooda is not available for deposition on any day prior to March 27.
My
proposal was that you first take his deposition as McNEIL's 30(b)(6) designee, and only then determine whether you need to depose him in his personal capacity. If you would prefer to schedule this individual deposition now, before assessing whether you will actually need to take it, we can do that -- but given Mr. Hooda's schedule, the deposition will not
take place until after March 27.

Please advise.

Regards,
Laura

-----Original Message-----
From: Stevens, Caroline [mailto:cstevens@leydig.com]
Sent: Saturday, February 28, 2009 6:15 PM
To: Laura Popp-Rosenberg
Cc: Liss, Mark; Richard Lehv
Subject: RE: Notice of Deposition; McNeil v. Walgreen; LVM Ref. 262981

Dear Laura,

We are writing with regard to the designation of Mr. Hooda as McNeil's
30(b)(6) witness and also as the individual with information about the topics related to the opposition. We are agreeable to taking the
30(b)(6) deposition first (on March 26), and taking Mr. Hooda's individual deposition second (on March 27), but only if needed depending on the
30(b)(6)
testimony.

We can begin the 30(b)(6) deposition on March 26 at 9 am or at 1 pm. If we begin at 1 pm, we expect the depositions to continue into the next day.
Please let us know your preference for scheduling.

Kind regards,

Caroline

Caroline L. Stevens - (312) 616-5731 - cstevens@leydig.com

-----Original Message-----
From: Laura Popp-Rosenberg [mailto:lpopp-rosenberg@frosszelnick.com]
Sent: Friday, February 27, 2009 4:44 PM
To: Stevens, Caroline
Cc: Liss, Mark; Richard Lehv; James Weinberger
Subject: RE: Notice of Deposition; McNeil v. Walgreen; LVM Ref. 262981

Dear Caroline:

We have received your email below, attaching a Notice of Deposition for Mr. Rohinish Hooda. Mr. Hooda will be McNEIL's 30(b)(6) witness. (I apologize for being able to get back to you earlier in response to your email of yesterday inquiring as to the identify of McNEIL's 30(b)(6) witness.) While we understand that you are entitled to take Mr. Hooda's deposition individually as well as in his capacity as McNEIL's representative, we would prefer to avoid a second deposition unless necessary. Could we agree to schedule the second deposition for Mr. Hooda only after the 30(b)(6) deposition is completed, when you can determine whether a separate deposition is actually necessary?

Please note that Richard Lehv and I are the active attorneys on this matter, and that there is no need for you to address correspondence to James Weinberger.

Thanks,
Laura

-----Original Message-----
From: Stevens, Caroline [mailto:cstevens@leydig.com]
Sent: Friday, February 27, 2009 5:34 PM
To: James Weinberger; Laura Popp-Rosenberg
Cc: Liss, Mark
Subject: Notice of Deposition; McNeil v. Walgreen; LVM Ref. 262981

Dear Mr. Weinberger and Ms. Popp-Rosenberg,

Please find Notice of Deposition attached. We also sent a copy of the Notice of Deposition by first class mail.

Regards,

Caroline

Caroline L. Stevens
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
Chicago, Illinois 60601
Tel: (312) 616-5671
Fax: (312) 616-5700
E-mail: cstevens@leydig.com

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CERTIFICATE OF SERVICE

This is to certify that I caused a true and correct copy of the foregoing Declaration of Laura Popp-Rosenberg in Support of Opposer's Opposition to Applicant's Motion for 90-Day Extension of All Deadlines to be served via First Class Mail in an envelope addressed to counsel for Applicant, Mark J. Liss, Esq., Leydig, Voit & Mayer, Ltd, Two Prudential Plaza, Suite 4900, Chicago, Illinois 60601-6731, this 6th day of April, 2009.

Laura Popp-Rosenberg