ESTTA Tracking number: **ESTTA277399**
Filing date: **04/10/2009**

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

| | |
|---|---|
| Proceeding | 91184978 |
| Party | Defendant<br>Walgreen Co. |
| Correspondence Address | Mark J. Nieds<br>Leydig, Voit & Mayer<br>Two Prudential Plaza, 180 North Stetson<br>Chicago, IL 60601<br>UNITED STATES<br>cstevens@leydig.com |
| Submission | Other Motions/Papers |
| Filer's Name | Caroline L. Stevens |
| Filer's e-mail | cstevens@leydig.com |
| Signature | /Caroline L. Stevens/ |
| Date | 04/10/2009 |
| Attachments | Reply in Support of Applicant's Motion.pdf ( 25 pages )(673155 bytes ) |

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

| | | |
|---|---|---|
| McNEIL-PPC, Inc. | ) | In re Trademark Application |
| | ) | Serial No. 76/682,070 |
| Opposer, | ) | |
| | ) | Opposition No. 91184978 |
| v. | ) | |
| | ) | Trademark: WAL-ZYR |
| WALGREEN CO., | ) | |
| | ) | |
| Applicant. | ) | |

**REPLY IN SUPPORT OF APPLICANT'S**
**CONTESTED MOTION FOR 90-DAY EXTENSION OF ALL DEADLINES**

Walgreens hereby submits the following Reply in Support of its "Contested Motion for 90-Day Extension of All Deadlines" and states as follows:

1. McNeil's Response fails to focus on the factors relevant to Walgreens' Motion, which are whether Walgreens has shown: (1) it has good cause for the ninety-day extension; and (2) it did not necessitate the extension. TBMP § 509.01(a).

2. Walgreens has good cause for the extension, because Walgreens needs ninety days after it takes McNeil's 30(b)(6) deposition to prepare its expert disclosures, which could include a survey and expert report. Walgreens has sought information from McNeil about McNeil's mark, goods, consumers, channels of trade, advertising methods, and more through interrogatories, discovery requests, and deposition testimony. (*See* Declaration of Caroline L. Stevens dated April 9, 2009 ("Stevens Declaration") ¶ 16). If Walgreens' expert is to conduct a survey and prepare an expert report, Walgreens' expert will need this type of information. Once Walgreens has taken McNeil's 30(b)(6) deposition, Walgreens must wait to receive the deposition transcript from the court reporter, review the transcript, and then provide the expert with the relevant information and decide whether to proceed with a survey and expert report. (*Id.*) Conducting a survey is an involved process that takes weeks or months, and preparing an expert report based on the survey results also takes a few more weeks. (*Id.*) Clearly, the thirty

extra days that McNeil was willing to grant Walgreens is not sufficient, and after further consideration, Walgreens determined that a sixty-day extension is not sufficient either. Ninety days are needed to complete any survey and expert report.

3. The following facts set forth in *McNeil's Response* show that Walgreens was diligent in requesting a deposition date in advance of the expert disclosure deadline, and that Walgreens did not necessitate the ninety-day extension (the facts are also set forth in Walgreens' Motion): (1) on October 8, 2008, Walgreens served McNeil with a Notice of 30(b)(6) Deposition and written discovery requests (Response p. 2); (2) Walgreens postponed scheduling the deposition until McNeil produced its documents (*Id.*); (3) on January 12, 2009, Walgreens contacted McNeil inquiring into McNeil's late documents and suggesting deposition dates (Popp-Rosenberg Decl. Ex. A); (4) on January 14, 2009, Walgreens sent McNeil another e-mail regarding McNeil's documents and deposition dates (Popp-Rosenberg Decl. Ex. B); (5) on January 29, 2009, Walgreens sent McNeil another e-mail requesting deposition dates. Walgreens also suggested that the parties *jointly* request a 60-day extension of *all* deadlines given the discovery delay (Popp-Rosenberg Decl. Ex. C); (6) on February 2, 2009, Walgreens sent McNeil another e-mail regarding the extension and citing the deadline for expert disclosures (Popp-Rosenberg Decl. Ex. C); (7) on February 3, 2009, McNeil said it agreed to the sixty-day extension (Popp-Rosenberg Decl. Ex. C); (8) on or about February 6, 2009, McNeil said it could not produce its 30(b)(6) witness until March 23, 2009 at the earliest. (Response p. 3). This was just thirteen business days before the expert disclosure deadline.

4. Rather than focus on these pertinent facts, McNeil accuses Walgreens of having misstated and mischaracterized the facts, and McNeil says that Walgreens' omission of a sworn statement "undoubtedly was calculated." (Response pp. 1-2). These accusations are befuddling as well as baseless. First, McNeil does not identify a single fact that Walgreens' allegedly misstated or mischaracterized (indeed, there is none). Second, *McNeil's own Response* supports virtually all of the facts alleged by Walgreens. (*See* Para. 4 *supra*). Although Walgreens does

not agree that sworn statements are necessary for what should have been a simple motion and where McNeil's own Response supports Walgreens' facts, to avoid any doubt, Walgreens submits herewith two sworn statements. (*See* Stevens Declaration, and Declaration of Mark J. Liss dated April 9, 2009 ("Liss Declaration")).

5. McNeil complains that, while Walgreens said it was "not looking to point the finger of blame at any party," Walgreens nonetheless recounted the ways in which McNeil has been dilatory. (Response p. 2). Walgreens set forth these facts, because Walgreens is required to show that it did not necessitate the extension. Walgreens did not set forth the facts for any other reason, and Walgreens first tried to resolve the matter amicably to avoid filing the Motion.

6. McNeil states that it was Walgreens who did not want to schedule McNeil's 30(b)(6) deposition until after McNeil produced its documents. (Response p. 2). This is correct: Walgreens needed McNeil's documents before the deposition, so Walgreens could ask McNeil's witness about the documents and could prepare for the deposition itself. Notwithstanding, Walgreens still expected McNeil to produce its documents and then its witness in a timely manner, and McNeil was required to do so.

7. McNeil argues that "Walgreens clearly did not need to take two days of deposition of" Mr. Hooda, because when Walgreens took McNeil's 30(b)(6) deposition on Friday, March 27, 2009, Walgreens did not use the full seven hours allotted for the deposition. (Response p. 4, fn. 2). To the contrary, Walgreens took full advantage of the time scheduled for deposition. The 30(b)(6) deposition began at approximately 9:30 am. (Liss Decl. ¶ 3). McNeil's counsel and Walgreen's counsel agreed to take a lunch break at 12:30 pm, and to resume the deposition at 1:30 pm. (*Id.* at ¶ 4). Walgreens' counsel was prepared to resume at 1:30 pm as agreed, but McNeil's counsel and witness were late returning from lunch, so the deposition could not resume until 1:50 pm. (*Id.* at ¶¶ 5, 6). Walgreens' counsel adjourned the deposition at 4:52 pm, because the court reporter said, for religious reasons, he could not work past 5:00 pm on Fridays. (*Id.* at ¶ 7). Had Walgreens' counsel been allowed more time, he

would have used it. (*Id.*) Moreover, as McNeil is fully aware, Walgreens is entitled to take two full-day depositions of Mr. Hooda, one in his capacity as McNeil's 30(b)(6) witness, and the other of him individually. (*See* Stevens Decl. Ex. 6).

8. McNeil argues that in Walgreens' Motion, Walgreens failed to address McNeil's allegations of Walgreens' delay. (Response pp. 1, 5). To the contrary, Walgreens addressed these allegations in its Motion. (*See* Motion p. 4 and p. 4 fn. 1). However, the allegations have no bearing on McNeil's ability or obligation to produce its documents and 30(b)(6) witness in a timely manner, or on Walgreens' need for an extension of the expert disclosure deadline. TBMP § 403.03.

9. McNeil argues that Walgreens' reason for requesting the extension is a "sham," and that Walgreens wants to "delay these proceedings as long as possible." (Response p. 6). Walgreens does not want to delay this opposition in any way. Indeed, as McNeil is aware, it was Walgreens who contacted McNeil on January 12, 2009 to ask for McNeil's late documents and to suggest deposition dates after McNeil had been out of touch for months. (Stevens Decl. Ex. 1; Popp-Rosenberg Ex. A).

10. McNeil argues that Walgreens could have requested an extension of only the expert disclosure deadline, rather than of all the deadlines. (Response p. 6). Allowing additional time for Walgreens' expert disclosure affects the remaining discovery deadline and the other deadlines in the opposition, such that all of the deadlines should all be extended.

Date: April 10, 2009

Respectfully submitted,

Mark J. Liss
Caroline L. Stevens
Leydig, Voit & Mayer
Two Prudential Plaza, Suite 4900
Chicago, Illinois 60601
(312) 616-5600
Attorneys for Applicant Walgreen Co.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this "Reply in Support of Applicant's Contested Motion for 90-Day Extension of all Deadlines" was served by Federal Express in a prepaid envelope on the date indicated below and to the following:

Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

Date: April 10, 2009

Caroline Stevens

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

| | | |
|---|---|---|
| McNEIL-PPC, Inc. | ) | In re Trademark Application |
| | ) | Serial No. 76/682,070 |
| Opposer, | ) | Opposition No. 91184978 |
| | ) | Trademark: WAL-ZYR |
| v. | ) | |
| | ) | |
| WALGREEN COMPANY, | ) | |
| | ) | |
| Applicant. | ) | |

**DECLARATION OF CAROLINE L. STEVENS IN SUPPORT OF APPLICANT'S CONTESTED MOTION FOR 90-DAY EXTENSION OF ALL DEADLINES**

I, Caroline L. Stevens, hereby declare under penalty of perjury:

1. I am a Member of Leydig, Voit & Mayer, Ltd., attorneys for Applicant Walgreen Company ("Walgreens") in the above-captioned proceeding. I submit this declaration in support of Walgreens' Contested Motion for 90-Day Extension of All Deadlines. I make this declaration based on personal knowledge of the facts and circumstances set forth herein.

2. On October 8, 2008, Walgreens served McNeil with interrogatories, document requests, and a Notice of 30(b)(6) Deposition.

3. Walgreens postponed scheduling the date of the 30(b)(6) deposition until after McNeil provided Walgreens with its written discovery responses and with responsive documents.

4. On November 14, 2008, McNeil sent Walgreens its written responses to Walgreens' discovery requests. However, McNeil did not produce any documents at that time.

5. As of January 12, 2009, McNeil still had not produced any documents.

6. Attached hereto as Exhibit 1 is a true and correct copy of correspondence between Walgreens' counsel and McNeil's counsel on January 12, 2009.

7. Attached hereto as Exhibit 2 is a true and correct copy of correspondence between Walgreens' counsel to McNeil's counsel on January 13 and 14, 2009.

8. Attached hereto as Exhibit 3 is a true and correct copy of correspondence between Walgreens' counsel to McNeil's counsel on January 28 and 29, 2009.

9. Attached hereto as Exhibit 4 is a true and correct copy of an email sent by Walgreens' counsel to McNeil's counsel on February 2, 2009.

10. Attached hereto as Exhibit 5 is a true and correct copy of correspondence between Walgreens' counsel and McNeil's counsel on February 3, 2009.

11. On February 6, 2009, McNeil's counsel contacted Walgreens' counsel by telephone and said that Walgreens' proposed deposition dates were not workable, and proposed March 23 or 27, 2009 instead. Walgreens' counsel had a scheduling conflict on March 23, 2009, so Walgreens' counsel agreed to the March 27, 2009 date.

12. McNeil identified Mr. Rohonish Hooda in its Initial Disclosures as a potential witness.

13. On February 27, 2009, Walgreens sent McNeil a Notice of Deposition for the individual deposition of Mr. Hooda to take place at 1:00 pm on March 26, 2009 in New York, NY. Walgreens chose this date, because Walgreens was already scheduled to travel to New York for the 30(b)(6) deposition of McNeil on March 27, 2009. Mr. Hooda was scheduled to be McNeil's 30(b)(6) witness.

14. Attached hereto as Exhibit 6 is a true and correct copy of correspondence between Walgreens' counsel and McNeil's counsel dated February 27 and 28, 2009, and March 2, 2009.

15. On March 13, 2009, Walgreens' counsel suggested that the parties extend the deadlines in the opposition by sixty days.

16. Walgreens has sought information from McNeil about McNeil's mark, goods, consumers, channels of trade, advertising methods, and more through interrogatories, discovery requests, and deposition testimony. Once Walgreens has taken McNeil's 30(b)(6) deposition, Walgreens must wait to receive the deposition transcript from the court reporter, review the transcript, and then provide the expert with the relevant information and decide whether to proceed with a survey and expert report. Conducting a survey is an involved process that takes weeks or months, and preparing an expert report based on the survey results also takes a few more weeks.

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

Executed this 9th day of April, 2009.

Caroline Stevens

Caroline L. Stevens

# EXHIBIT 1

## Stevens, Caroline

**From:** Stevens, Caroline
**Sent:** Monday, January 12, 2009 9:23 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 2

## Stevens, Caroline

**From:** Stevens, Caroline
**Sent:** Wednesday, January 14, 2009 2:56 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
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza, Suite 4900
Chicago, Illinois 60601
Tel: (312) 616-5600
Fax: (312) 616-5700
cstevens@leydig.com

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# EXHIBIT 3

## Stevens, Caroline

**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

---

**From:** Richard Lehv [mailto:RLehv@frosszelnick.com]
**Sent:** Wednesday, January 28, 2009 11:28 AM
**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

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**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

# EXHIBIT 4

## Stevens, Caroline

**From:** Stevens, Caroline
**Sent:** Monday, February 02, 2009 11:17 AM
**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 5

## Stevens, Caroline

**From:** Stevens, Caroline
**Sent:** Tuesday, February 03, 2009 12:15 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

Richard,

Thank you for getting back to us on this. We will file the request today.

Caroline

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

---

**From:** Richard Lehv [mailto:RLehv@frosszelnick.com]
**Sent:** Tuesday, February 03, 2009 11:40 AM
**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

# EXHIBIT 6

## Stevens, Caroline

**From:** Laura Popp-Rosenberg [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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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| McNEIL-PPC, Inc. | ) | In re Trademark Application |
| | ) | Serial No. 76/682,070 |
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| | ) | Trademark: WAL-ZYR |
| v. | ) | |
| | ) | |
| WALGREEN COMPANY, | ) | |
| | ) | |
| Applicant. | ) | |

**DECLARATION OF MARK J. LISS IN SUPPORT OF APPLICANT'S CONTESTED MOTION FOR 90-DAY EXTENSION OF ALL DEADLINES**

I, Mark J. Liss, hereby declare under penalty of perjury:

1. I am a Member of Leydig, Voit & Mayer, Ltd., attorneys for Applicant Walgreen Company ("Walgreens") in the above-captioned proceeding. I submit this declaration in support of Walgreens' Contested Motion for 90-Day Extension of All Deadlines. I make this declaration based on personal knowledge of the facts and circumstances set forth herein.

2. Walgreens' 30(b)(6) deposition of McNeil took place on Friday, March 27, 2009.

3. The deposition began at approximately 9:30 am.

4. McNeil's counsel and Walgreens' counsel (myself) agreed to take a lunch break at 12:30 pm, and to reconvene at 1:30 pm to resume the deposition.

5. I returned from lunch and was prepared to resume the deposition at 1:30 pm.

6. McNeil's counsel and witness were late in returning from lunch, so the deposition could not be resumed until 1:50 pm.

7. I adjourned the deposition at approximately 4:52 pm, because the court reporter said, for religious reasons, he could not work past 5:00 pm on Fridays. Had I been allowed more time, I would have used it.

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

Executed this 9th day of April, 2009.

Mark J. Liss