

ESTTA Tracking number: **ESTTA399740**

Filing date: **03/24/2011**

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

Proceeding	91184978
Party	Defendant Walgreen Co.
Correspondence Address	MARK J. LISS LEYDIG, VOIT & MAYER, LTD. TWO PRUDENTIAL PLAZA, SUITE 4900 CHICAGO, IL 60601 UNITED STATES cstevens@leydig.com
Submission	Defendant's Notice of Reliance
Filer's Name	Michelle L. Calkins
Filer's e-mail	mcalkins@leydig.com, cstevens@leydig.com, mliiss@leydig.com
Signature	/Michelle L. Calkins/
Date	03/24/2011
Attachments	2011.03.24 Walgreen's Notice of Reliance on Discovery Deposition Transcripts (Redacted).pdf (51 pages)(1575678 bytes)

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**APPLICANT'S NOTICE OF RELIANCE ON
DISCOVERY DEPOSITION TRANSCRIPTS**

Applicant, Walgreen Company, by its undersigned attorneys and pursuant to Rule 2.120, of the Trademark Rules of Practice, hereby gives notice that it intends to rely at trial on the following material evidence, relevant to the issues raised by the pleadings herein:

Exhibit 101. Pursuant to 37 C.F.R. § 2.120(j)(1), excerpts from the deposition of R. Hooda, taken March 27, 2009, pursuant to a Rule 30(b)(6) deposition of McNeil-PPC. The excerpts submitted are as follows:

- Page 55, line 11 through Page 56, line 24
[Page 55, line 21 through Page 56, line 10 has been marked “Confidential” by Opposer]
- Page 63, lines 2-21
[This section has been marked “Confidential” by Opposer]
- Page 103, line 5 through Page 104, line 4
[Page 103, lines 5-23 have been marked “Trade Secret/Commercially Sensitive” by Opposer; Page 103, line 24 through Page 104, line 4 has been marked “Confidential” by Opposer]
- Page 122, lines 4-24
[Page 122, lines 4-8 have been marked “Trade Secret/Commercially Sensitive” by Opposer; Page 122 lines 16-24 have been marked “Trade Secret/Commercially Sensitive” by Opposer]

- Page 128, lines 13-18
[Page 128, lines 13-18 have been marked “Confidential” by Opposer]
- Page 139, line 25 through Page 141 line 13
[Page 139, line 25 through Page 140, line 24 have been marked “Trade Secret/Commercially Sensitive” by Opposer; Page 141, lines 6-13 have been marked “Trade Secret/Commercially Sensitive” by Opposer]
- Page 160, line 4, through Page 162, line 11
[Page 160, lines 6-11 have been marked “Trade Secret/Commercially Sensitive” by Opposer; Page 160, line 22 through Page 162, line 11 have been marked “Trade Secret/Commercially Sensitive” by Opposer]
- Page 172, line 11 through Page 174, line 7
[Page 172, line 11 through Page 174, line 7 has been marked “Trade Secret/Commercially Sensitive” by Opposer]
- Exhibit 16 to the Deposition of R. Hooda taken March 27, 2009, specifically the pages labeled McNeil 000855 and McNeil 000873
[Exhibit 16 has been marked “Trade Secret/Commercially Sensitive” by Opposer]

Exhibit 102. Pursuant to 37 C.F.R. § 2.120(j)(1), excerpts from the deposition of R.

Hooda, officer of Opposer McNeil, taken August 10, 2009. The excerpts submitted are as follows:

- Page 124, lines 4-9
[Page 124, lines 4-9 have been marked “Trade Secret/Commercially Sensitive” by Opposer]

Exhibit 103. Pursuant to 37 C.F.R. § 2.120(j)(4), excerpts from the deposition of R.

Tompkins, taken April 16, 2009 pursuant to a Rule 30(b)(6) deposition of Walgreen Co.

Excerpts from this deposition were submitted by Opposer McNeil in its Notice of Reliance,

Exhibit 107. Applicant submits the following additional pages in the interest of fairness so as

not to make the submissions by Opposer appear misleading. Applicant further explains its

reasons for each of the pages submitted in Applicant’s Exhibit 103:

- Page 73, line 10 through Page 75, line 14, which are necessary to further explain the reasons given by Mr. Tompkins as to why the mark “WAL-ZYR” was chosen.

- Page 161, line 6 through Page 162, line 5, which are necessary as further explanation after the inference left by the profit margin being higher on WAL-ZYR branded products. In fact, as further explained by Mr. Tompkins in the attached excerpt, Walgreens prefers that both the name brand and Walgreens private label brand products do well, as sales of one drive sales of the other.

Respectfully submitted,

Date: March 24, 2011



Mark J. Liss
Caroline L. Stevens
Michelle L. Calkins
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza
180 N. Stetson Avenue, Suite 4900
Chicago, IL 60601-6731
Tel: (312) 616-5600
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached APPLICANT'S NOTICE OF RELIANCE ON DISCOVERY DEPOSITIONS was served on March 24, 2011, via first class mail and email to the following:

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


Michelle L. Calkins

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that a copy of the attached APPLICANT'S NOTICE OF RELIANCE ON DISCOVERY DEPOSITIONS was electronically filed with the Trademark Trial and Appeal Board's "Electronic System for Trademark Trials and Appeals ("ESTTA") on the date shown below:

Dated: March 24, 2011


Michelle L. Calkins

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

EXHIBIT 101
TO
APPLICANT'S NOTICE OF RELIANCE ON
DISCOVERY DEPOSITION TRANSCRIPTS

REDACTED

CONFIDENTIAL

CONFIDENTIAL

TRADE SECRET - COMMERCIALY SENSITIVE
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x
McNEIL-PPC, INC.,

Opposer,

Opposition No.
91184978

-against-

WALGREEN CO.,

Applicant.

-----x

March 27, 2009
9:30 a.m.

Confidential Deposition of ROHINISH
HOODA, taken by the Applicant, pursuant to
Rule 30(b)(6) Notice, at the offices of Fross
Zelnick Lehrman & Zissu, P.C., 866 United
Nations Plaza, New York, New York, before
David Levy, CSR, a Notary Public of the State
of New York.

REDACTED Ex. 101 to Applicant's Notice of
Reliance on Discovery Deposition Transcripts
Offered by Walgreen Co.
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 101-1

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A P P E A R A N C E S :

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

Attorneys for Opposer

866 United Nations Plaza

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BY: LAURA POPP-ROSENBERG, ESQ.

RICHARD LEHV, ESQ.

LEYDIG, VOIT & MAYER, LTD.

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BY: MARK J. LISS, ESQ.

JAKE D. FELDMAN, ESQ.

Senior Trademark Attorney

Johnson & Johnson

One Johnson & Johnson Plaza

New Brunswick, New Jersey 08933

CONFIDENTIAL

1 Hooda - Trade Secret Commercially Sensitive
2 R O H I N I S H H O O D A , having been duly
3 sworn by the Notary Public, was examined and
4 testified as follows:

5 EXAMINATION BY

6 MR. LISS:

7 Q. Could you state your name, please.

8 A. Rohinish Hooda.

9 Q. And can you spell that for us,
10 please?

11 A. R-o-h-i-n-i-s-h, last name H-o-o-d-a.

12 Q. And are you employed, Mr. Hooda?

13 A. Yes.

14 Q. And where are you employed?

15 A. With McNeil Consumer Healthcare.

16 Q. Is McNeil Consumer Healthcare the
17 formal name of your company?

18 A. Yes.

19 Q. And do you know if McNeil Consumer
20 Healthcare is related to McNeil-PPC, Inc.?

21 A. Yes.

22 Q. And do you know the relationship?

23 A. It's an affiliate.

24 Q. And what is the business activity of
25 McNeil Consumer Healthcare?

Veritext Chicago Reporting Company
312-442-9087 800-248-3290

CONFIDENTIAL

1 Hooda - Trade Secret Commercially Sensitive
2 visits to the website?

3 A. Yes.

4 RQ MR. LISS: So we would ask for copies
5 of those reports, too.

6 Q. As long as we're on the website --

7 THE WITNESS: Please excuse me, I'll
8 just get some ice.

9 MR. LISS: Sure.

10 (A pause in the proceedings.)

11 Q. Does the website have a "contact me"
12 type page? Do you know what that means? If I
13 want to contact ZYRTEC or the makers of ZYRTEC --

14 A. Yes.

15 Q. -- is there a way I can do it
16 through the website?

17 A. Yes.

18 Q. Do consumers utilize that feature of
19 the website?

20 A. They do.

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Veritext Chicago Reporting Company
312-442-9087 800-248-3290

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Q. That number would be available to you if you asked for it, though?

A. I'm not sure.

Q. Has any one of those communications mentioned WAL-ZYR?

A. I don't recall.

Q. Did you look for that?

A. No.

Q. Do you know if anyone looked for that information?

A. I'm not aware of that.

Q. Are you aware of any communication from a consumer regarding WAL-ZYR?

A. No.

RQ MR. LISS: Okay, we would also ask

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Hooda - Trade Secret Commercially Sensitive

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Offered by Walgreen Co.
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McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 101-8**

CONFIDENTIAL

1 Hooda - Trade Secret Commercially Sensitive

2 A. Since I haven't taken it, I cannot
3 comment whether it will work better or different.

4

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9

10 Q. And Exhibit 8 in front of you, the
11 Costco product --

12 A. Yes.

13

14

15 Q. -- that uses the same language,
16 "Compare to ZYRTEC active ingredient," do you see
17 that?

18

19

20 A. Yes.

21

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23 Q. The typical, the there is a -- it's
24 fair to call these antihistamines generally, is
25 that right?

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Q. Does ZYRTEC have twelve-hour

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1 Hooda - Trade Secret Commercially Sensitive
2 formulations?

3 A. Yes, it does.

4 Q. It has 24-hour formulations?

5 A. Yes.

6
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9 **REDACTED**

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14 MR. LISS: Let me have this marked
15 the next number.

16 (Applicant's Exhibit 13, document
17 Bates numbered McNeil 001252 and 1253,
18 marked for identification, as of this
19 date.)

20 (Document placed before the witness.)

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23 **REDACTED**
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1 Hooda - Trade Secret Commercially Sensitive

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4 MR. LISS: Let's have this marked as
5 16, please
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11
12 Q. Mr. Hooda, before you look at
13 Exhibit 16, I've probably asked you this, but
14 where is your office located?

15 A. My office is located in Fort
16 Washington, Pennsylvania.

17 Q. Is that the marketing operation, is
18 that Fort Washington, Pennsylvania?

19 A. That is the headquarters of McNeil
20 Consumer Healthcare.

21 Q. Take a moment and look at Exhibit 16.
22

23 **REDACTED**
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Offered by Walgreen Co.
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McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 101-16**

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Hooda - Trade Secret Commercially Sensitive

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McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 101-19**

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

McNEIL-PPC, INC.,

Opposer,

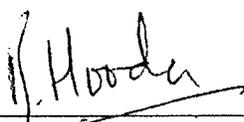
Opp. No. 91184978

-against-

WALGREEN CO.,

Applicant.

I, Rohinish Hooda, hereby certify that I have read the foregoing transcript of my deposition on March 27, 2009 in New York, New York, consisting of Pages 1-220, inclusive, and certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, including changes as shown on the following errata sheet.

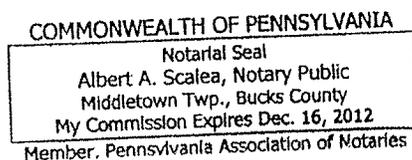


Rohinish Hooda

Sworn and subscribed before me, at LANSDORNE, PA
on the 7 day of February, 2011



Notary Public



REDACTED

Exhibit 101 to Applicant's Notice of
Reliance on Discovery Deposition Transcripts
Offered by Walgreen Co.
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 101-21 through 101-98

ERRATA SHEET

DEPOSITION OF: Rohinish Hooda

DATE OF DEPOSITION: March 27, 2009

IN THE MATTER OF: *McNeil-PPC, Inc. v. Walgreen Co.*, Opposition No. 91184978
(T.T.A.B.)

The following are the corrections that I have made to my transcript:

PAGE	LINE	CORRECTION	REASON
4	3	Change "marketing" to "distribution"	Transcription error
4	19	Change "were" to "are"	Transcription error
11	22	Change "brands" to "brand's"	Transcription error
12	5	Change line to "consumers do not understand allergy -- they do not often"	Transcription error
12	6	Change "science" to "science,"	Transcription error
12	15	Change "indications" to "symptoms"	Transcription error
25	20	Change "cetryzine" to "ceterizine"	Transcription error
25	25	Change "ZYRTEC" to "ziretec"	Transcription error
31	21	Change "assigning of" to "licensing"	Transcription error
33	7	Change "assigned" to "licensed"	Transcription error
33	9	Change "it" to "the license"	Transcription error
42	17	Change "trademarks" to "trademark rights"	Transcription error
56	9	Change line to read "several thousands, but I don't have even a rough"	Transcription error
114	4	Change "HOOBA" to "HOODA"	Transcription error
131	5	Change "one" to "what"	Transcription error
143	21	Change line to read "Q. On the front panel of the packaging."	Transcription error
163	11	Change "as" to "the"	Transcription error
166	10	Change "than" to "for"	Transcription error
166	16	Change "than" to "for"	Transcription error
217	16	Change "nut" to "but"	Transcription error

CONFIDENTIALITY DESIGNATIONS

DEPOSITION OF: Rohinish Hooda

DATE OF DEPOSITION: March 27, 2009

IN THE MATTER OF: *McNeil-PPC, Inc. v. Walgreen Co.*, Opposition No. 91184978
(T.T.A.B.)

The passages listed below are hereby designated as follows:

“C” = Confidential

“TS/CS” = Trade Secret/Commercially Sensitive

<u>Page</u>	<u>Designation</u>
12:3-13:35	Trade Secret/Commercial Sensitive
15:20-16:6	Trade Secret/Commercial Sensitive
16:23-17:16	Trade Secret/Commercially Sensitive
17:25-18:17	Confidential
19:7-23	Confidential
20:12-22	Confidential
21:10-18	Confidential
25:15-26:5	Confidential
26:15-17	Confidential
27:15-18	Confidential
28:20-29:3	Confidential
29:19-23	Trade Secret/Commercially Sensitive
30:8-24	Trade Secret/Commercially Sensitive
31:6-8	Trade Secret/Commercially Sensitive
31:14-22	Trade Secret/Commercially Sensitive
32:20-33:3	Confidential
33:4-10	Trade Secret/Commercially Sensitive
34:7-37:15	Confidential
38:3-20	Confidential
38:24-39:3	Confidential
39:5-7	Trade Secret/Commercially Sensitive

39:20-25	Trade Secret/Commercially Sensitive
41:13-17	Trade Secret/Commercially Sensitive
41:23-42:2	Trade Secret/Commercially Sensitive
42:8-43:10	Trade Secret/Commercially Sensitive
43:17-44:2	Trade Secret/Commercially Sensitive
44:12-45:11	Trade Secret/Commercially Sensitive
45:14-46:2	Trade Secret/Commercially Sensitive
46:7-47:15	Trade Secret/Commercially Sensitive
48:6-24	Confidential
49:7-51:4	Confidential
51:21-23	Confidential
52:25-53:2	Confidential
53:13-16	Confidential
53:23-54:5	Confidential
54:8-24	Confidential
55:21-56:10	Confidential
57:21-58:10	Confidential
61:8-21	Confidential
62:2-8	Confidential
62:9-12	Trade Secret/Commercially Sensitive
62:15-21	Trade Secret/Commercially Sensitive
63:2-21	Confidential
63:22-64:8	Trade Secret/Commercially Sensitive
64:9-14	Confidential
65:5-10	Trade Secret/Commercial Sensitive
66:10-16	Trade Secret/Commercially Sensitive
68:2-10	Confidential
68:18-22	Confidential
69:2-70:24	Trade Secret/Commercially Sensitive
70:25-71:4	Confidential
71:5-72:10	Trade Secret/Commercially Sensitive

72:14-73:7	Trade Secret/Commercially Sensitive
73:17-23	Confidential
74:7-75:14	Trade Secret/Commercially Sensitive
76:7-15	Confidential
78:5-13	Trade Secret/Commercially Sensitive
78:14-23	Confidential
80:21-25	Confidential
81:16-25	Confidential
82:18-25	Trade Secret/Commercial Sensitive
83:2-19	Trade Secret/Commercially Sensitive
84:6-14	Trade Secret/Commercial Sensitive
84:18-85:20	Confidential
86:9-87:6	Confidential
87:11-23	Confidential
87:24-88:20	Confidential
88:24-89:2	Confidential
89:3-5	Trade Secret/Commercially Sensitive
89:12-16	Confidential
89:23 – 91:25	Confidential
92:20-21	Confidential
93:6-96:22	Confidential
97:2-16	Confidential
97:17-22	Trade Secret/Commercially Sensitive
97:23-98:9	Confidential
98:12-99:24	Trade Secret/Commercially Sensitive
99:25-100:18	Confidential
100:19-101:22	Trade Secret/Commercially Sensitive
102:7-103:4	Confidential
103:5-23	Trade Secret/Commercially Sensitive
103:24-104:4	Confidential
104:5-25	Trade Secret/Commercially Sensitive

106:6-8	Confidential
106:9-107:2	Trade Secret/Commercially Sensitive
107:3-14	Confidential
108:2-6	Confidential
108:7-16	Trade Secret/Commercially Sensitive
109:20-25	Confidential
110:9-111:14	Confidential
111:19-112:16	Confidential
113:2-10	Trade Secret/Commercially Sensitive
114:21-25	Confidential
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117:17-23	Confidential
118:13-18	Confidential
118:19-119:4	Trade Secret/Commercially Sensitive
119:5-22	Confidential
119:23-121:5	Trade Secret/Commercially Sensitive
122:4-8	Trade Secret/Commercially Sensitive
122:16 – 123:25	Trade Secret/Commercially Sensitive
124:7-15	Trade Secret/Commercially Sensitive
125:2-126:25	Trade Secret/Commercially Sensitive
127:3-128:9	Trade Secret/Commercial Sensitive
128:10-128:12	Trade Secret/Commercially Sensitive
128:13-22	Confidential
129:3-16	Trade Secret/Commercially Sensitive
129:20-131:13	Trade Secret/Commercially Sensitive
132:4-12	Confidential
132:13-134:7	Trade Secret/Commercially Sensitive
135:4-6	Trade Secret/Commercially Sensitive
135:24 – 136:3	Trade Secret/Commercially Sensitive
136:9-25	Trade Secret/Commercially Sensitive

137:10-13	Confidential
137:14-140:24	Trade Secret/Commercially Sensitive
141:6-13	Trade Secret/Commercially Sensitive
141:21-142:25	Trade Secret/Commercially Sensitive
144:8-14	Trade Secret/Commercially Sensitive
145:6-12	Confidential
145:13-15	Trade Secret/Commercially Sensitive
145:16-146:6	Trade Secret/Commercial Sensitive
150:18-22	Confidential
152:10-12	Confidential
154:7-12	Confidential
154:18-25	Confidential
155:15-22	Confidential
157:17-20	Confidential
158:9-13	Trade Secret/Commercially Sensitive
158:22-160:3	Confidential
160:6-11	Trade Secret/Commercially Sensitive
160:22-163:14	Trade Secret/Commercially Sensitive
164:2-178:22	Trade Secret/Commercially Sensitive
178:25-183:22	Trade Secret/Commercially Sensitive
184:3 – 189:22	Trade Secret/Commercially Sensitive
190:3-25	Trade Secret/Commercially Sensitive
191:8-193:6	Trade Secret/Commercially Sensitive
193:23-196:17	Confidential
196:18-25	Trade Secret/Commercially Sensitive
197:2-4	Confidential
197:5-14	Trade Secret/Commercially Sensitive
197:17-20	Confidential
198:4-200:2	Trade Secret/Commercially Sensitive
200:10-13	Confidential
200:18-20	Confidential

200:21-23	Trade Secret/Commercially Sensitive
201:11-13	Trade Secret/Commercially Sensitive
201:15-16	Confidential
202:2-14	Confidential
203:6-8	Trade Secret/Commercially Sensitive
203:9-22	Confidential
204:11-205:6	Confidential
205:7-13	Trade Secret/Commercially Sensitive
205:14-19	Confidential
206:5-219:18	Trade Secret/Commercially Sensitive
225:5-6	Trade Secret/Commercially Sensitive
226:15-18	Trade Secret/Commercially Sensitive
227:2-5	Trade Secret/Commercially Sensitive
227:15-19	Trade Secret/Commercially Sensitive

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

EXHIBIT 102
TO
APPLICANT'S NOTICE OF RELIANCE ON
DISCOVERY DEPOSITION TRANSCRIPTS

REDACTED

TRADE SECRET COMMERCIALY SENSITIVE
Deposition of Rohinish Hooda - August 10, 2009

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

3

4 -----x

5 McNEIL-PPC, INC.,

ORIGINAL

6

7 Opposer,

Op. No. 91184978

8 -against-

9

10 WALGREEN CO.,

11

12 Applicant.

13 -----x

14

15 "TRADE SECRET COMMERCIALY SENSITIVE"

16

17

18 DEPOSITION OF ROHINISH HOODA

19 Monday, August 10, 2009

20

21

22

23

24

THE VICTORIA NETWORK (800) 827-7708

REDACTED Ex. 102 to Applicant's Notice of
Reliance on Discovery Deposition Transcripts
Offered by Walgreen Co.
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 102-1

TRADE SECRET COMMERCIALY SENSITIVE
Deposition of Rohinish Hooda - August 10, 2009

1 Deposition of ROHINISH HOODA taken in the
2 above-entitled matter before Mark Iuzzolino, a
3 Certified Court Reporter (License No. X101103)
4 and Notary Public of the State of New Jersey,
5 taken at the offices Of FROSS ZELNICK LEHRMAN &
6 ZISSU, P.C., 6th Floor, 866 United Nations Plaza,
7 New York, New York 10017, on Monday, August 10,
8 2009, commencing at 9:34 a.m.

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Reliance on Discovery Deposition Transcripts
Offered by Walgreen Co.
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 102-2

TRADE SECRET COMMERCIALY SENSITIVE
Deposition of Rohinish Hooda - August 10, 2009

1 A P P E A R A N C E S:

2

3

LEYDIG, VOIT & MAYER, LTD.

4

BY: CAROLINE STEVENS, ESQ.

5

Two Prudential Plaza, Suite 4900

6

180 N. Stetson Avenue

7

Chicago, Illinois 60601-6731

8

Attorneys for the Applicant

9

10

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

11

BY: LAURA POPP-ROSENBERG, ESQ.

12

6th Floor, 866 United Nations Plaza

13

New York, New York 10017

14

Attorneys for the Opposer

15

16

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Offered by Walgreen Co.
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 102-3

TRADE SECRET COMMERCIALY SENSITIVE
Deposition of Rohinish Hooda - August 10, 2009

1 ROHINISH HOODA
2 7050 Camphill Road, Fort Washington, Pennsylvania,
3 having been first duly sworn, was examined and
4 testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. STEVENS:

8 Q. I've introduced myself before, but I'm
9 Caroline Stevens. For the record, this is the
10 discovery deposition of Rohinish Hooda being taken
11 pursuant to Rule 2.120 of the Trademark Rules of
12 Practice. My name is Caroline. I'm with the law
13 firm of Leydig, Voit & Mayer. We represent the
14 applicant Walgreens Company, and I will be
15 conducting today's deposition. Rohinish Hooda was
16 called as a witness today, and he has been duly
17 sworn.

18 And for the record, could you, please,
19 state your name?

20 A. Rohinish Hooda.

21 Q. And for the record, could you spell it,
22 please?

23 A. R-o-h-i-n-i-s-h, H-o-o-d-a.

24 Q. And for the record, could you, please,

THE VICTORIA NETWORK (800) 827-7708

TRADE SECRET COMMERCIALY SENSITIVE
Deposition of Rohinish Hooda - August 10, 2009

1 Q. Does McNeil intent to continue using
2 Zyrtec.com to advertise the product?

3 A. Yes.

4

5

6

REDACTED

7

8

9

10 Q. Does McNeil receive consumer comments?

11 A. What do you mean by "consumer comments"?

12 Q. Is there any way for a consumer to
13 contact McNeil Consumer Healthcare?

14 A. Yes.

15 Q. In what way?

16 A. Through our 1-800 number.

17 Q. And where is that 1-800 number
18 available?

19 A. It's on the label on our packages.

20 Q. Is it available on the Zyrtec.com web
21 site?

22 A. Yes.

23 Q. And Zyrtopia.com, too?

24 A. I think so.

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Reliance on Discovery Deposition Transcripts
Offered by Walgreen Co.
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 102-5

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

McNEIL-PPC, INC.,

Opposer,

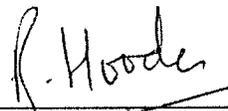
-against-

WALGREEN CO.,

Applicant.

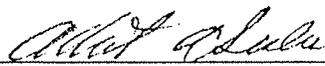
Opp. No. 91184978

I, Rohinish Hooda, hereby certify that I have read the foregoing transcript of my deposition on August 10, 2009 in New York, New York, consisting of Pages 1-160, inclusive, and certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, including changes as shown on the following errata sheet.



Rohinish Hooda

Sworn and subscribed before me, at LANGHORNE, PA
on the 7 day of February, 2011



Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Albert A. Scalea, Notary Public
Middletown Twp., Bucks County
My Commission Expires Dec. 16, 2012
Member, Pennsylvania Association of Notaries

Transcript of Deposition of Rohinish Hooda, taken August 10, 2009

Errata

PAGE	LINE	CORRECTION	REASON
10	4	Change "sells" to "license"	Clarification
11	8	Delete "Because"	Clarification
11	9	Delete "yes"	Clarification
11	11	Change "markets the trademark" to "is hired by McNEIL to help with the marketing of the product"	Clarification
12	13	Change "Correct" to "Johnson & Johnson is the parent company of both McNEIL and Johnson & Johnson Sales and Logistics Company"	Clarification
19	18	Delete "They are engaged in"	Clarification
19	19	Delete	Clarification
19	20	Delete	Clarification
37	1	Change "sale" to "the sale of the product"	Clarification
60	4	Change "target" to "Target's"	Transcription error
69	7	Change "adult is" to "adult other is"	Clarification

Transcript of Deposition of Rohinish Hooda, taken August 10, 2009

McNEIL PPC, Inc.'s Designations of Confidentiality
(Made pursuant to the protective order entitled "Provisions for Protecting Confidentiality
of Information Revealed During Board Proceeding")

<u>Page: Lines</u>	<u>Designation</u>
5: 2-3	Confidential
9: 14-24	Trade Secret/Commercially Sensitive
10: 1-19	Trade Secret/Commercially Sensitive
11: 6-24	Trade Secret/Commercially Sensitive
12: 1-24	Trade Secret/Commercially Sensitive
13: 1-24	Trade Secret/Commercially Sensitive
14: 1-24	Trade Secret/Commercially Sensitive
15: 1-24	Trade Secret/Commercially Sensitive
16: 1-24	Trade Secret/Commercially Sensitive
17: 1-24	Trade Secret/Commercially Sensitive
18: 1-24	Trade Secret/Commercially Sensitive
19: 1-20	Trade Secret/Commercially Sensitive
25: 9-24	Confidential
26: 1-14	Confidential
32: 3-9	Confidential
32: 12-20	Confidential
33: 6-8	Confidential
33: 18-23	Confidential
34: 4-8	Confidential
34: 17-24	Confidential
35: 1-10	Confidential
35: 17-20	Confidential
35: 24	Trade Secret/Commercially Sensitive
36: 1	Trade Secret/Commercially Sensitive
36: 2-24	Confidential
37: 1-4	Confidential

<u>Page: Lines</u>	<u>Designation</u>
37: 11-24	Confidential
38: 1-7	Confidential
38: 10-16	Confidential
38: 23-24	Trade Secret/Commercially Sensitive
39:7-24	Confidential
40:1-4	Confidential
40: 7-15	Confidential
40: 21-24	Confidential
41: 1-19	Confidential
42: 4-24	Confidential
43: 1-10	Confidential
44: 12-24	Confidential
45: 1-24	Confidential
46: 1-24	Confidential
47: 1-24	Confidential
48: 1-24	Confidential
49: 1-24	Confidential
50: 1-24	Confidential
51: 1-22	Confidential
51: 23-24	Trade Secret/Commercially Sensitive
52: 1-6	Trade Secret/Commercially Sensitive
52: 7-19	Confidential
53: 1-24	Trade Secret/Commercially Sensitive
54: 1-19	Trade Secret/Commercially Sensitive
54: 20-24	Confidential
55: 1-24	Confidential
56: 1-24	Confidential
57: 1-24	Confidential
58: 1-24	Confidential
59: 1-13	Confidential

<u>Page: Lines</u>	<u>Designation</u>
60: 16-21	Trade Secret/Commercially Sensitive
64: 24	Trade Secret/Commercially Sensitive
65: 1-8	Trade Secret/Commercially Sensitive
66: 9-16	Trade Secret/Commercially Sensitive
67: 11-24	Trade Secret/Commercially Sensitive
68: 1-2	Trade Secret/Commercially Sensitive
68: 17-24	Trade Secret/Commercially Sensitive
69: 1-23	Trade Secret/Commercially Sensitive
70: 19-23	Trade Secret/Commercially Sensitive
76: 1-24	Trade Secret/Commercially Sensitive
77: 1-24	Trade Secret/Commercially Sensitive
78: 1-24	Trade Secret/Commercially Sensitive
79: 1-24	Trade Secret/Commercially Sensitive
80: 1-24	Trade Secret/Commercially Sensitive
81: 1-24	Trade Secret/Commercially Sensitive
82: 1-24	Trade Secret/Commercially Sensitive
83: 1-24	Trade Secret/Commercially Sensitive
84: 1-24	Trade Secret/Commercially Sensitive
85: 1-24	Trade Secret/Commercially Sensitive
86: 1-24	Trade Secret/Commercially Sensitive
87: 1-24	Trade Secret/Commercially Sensitive
88: 1-24	Trade Secret/Commercially Sensitive
89: 1-24	Trade Secret/Commercially Sensitive
90: 1-12	Trade Secret/Commercially Sensitive
92: 8-24	Trade Secret/Commercially Sensitive
93: 1-15	Trade Secret/Commercially Sensitive
93: 24	Trade Secret/Commercially Sensitive
94: 1-24	Trade Secret/Commercially Sensitive
95: 1-24	Trade Secret/Commercially Sensitive
96: 1-24	Trade Secret/Commercially Sensitive

<u>Page: Lines</u>	<u>Designation</u>
97: 1-24	Trade Secret/Commercially Sensitive
98: 1-24	Trade Secret/Commercially Sensitive
99: 1-24	Trade Secret/Commercially Sensitive
100: 1-24	Trade Secret/Commercially Sensitive
101: 1-24	Trade Secret/Commercially Sensitive
102: 1-24	Trade Secret/Commercially Sensitive
103: 1-24	Trade Secret/Commercially Sensitive
104: 1-24	Trade Secret/Commercially Sensitive
105: 1-12	Trade Secret/Commercially Sensitive
106: 13-24	Trade Secret/Commercially Sensitive
107: 1-18	Trade Secret/Commercially Sensitive
109: 7-20	Trade Secret/Commercially Sensitive
110: 17-24	Trade Secret/Commercially Sensitive
111: 1-17	Trade Secret/Commercially Sensitive
113: 14-16	Trade Secret/Commercially Sensitive
114: 22-24	Trade Secret/Commercially Sensitive
115: 1-24	Trade Secret/Commercially Sensitive
116: 1-24	Trade Secret/Commercially Sensitive
117: 1-24	Trade Secret/Commercially Sensitive
118: 1-23	Trade Secret/Commercially Sensitive
121: 14-20	Trade Secret/Commercially Sensitive
122: 1-3	Trade Secret/Commercially Sensitive
124: 4-9	Trade Secret/Commercially Sensitive
125: 1-6	Trade Secret/Commercially Sensitive
126: 21-23	Confidential
127: 20-24	Confidential
128: 1-3	Confidential
128: 4-24	Trade Secret/Commercially Sensitive
129: 1-24	Trade Secret/Commercially Sensitive
130: 1-24	Trade Secret/Commercially Sensitive

<u>Page: Lines</u>	<u>Designation</u>
131: 1-24	Trade Secret/Commercially Sensitive
132: 1-15	Trade Secret/Commercially Sensitive
133: 7-24	Confidential
134: 1-10	Confidential
134: 23-24	Confidential
135: 1-10	Confidential
135: 11-24	Trade Secret/Commercially Sensitive
136: 1-24	Trade Secret/Commercially Sensitive
137: 1-24	Trade Secret/Commercially Sensitive
138: 8-24	Confidential
139: 1-5	Confidential
139: 12-24	Trade Secret/Commercially Sensitive
140: 1-24	Trade Secret/Commercially Sensitive
141: 1-24	Trade Secret/Commercially Sensitive
142: 1-12	Trade Secret/Commercially Sensitive
142: 20-24	Trade Secret/Commercially Sensitive
143: 1-24	Trade Secret/Commercially Sensitive
144: 1-24	Trade Secret/Commercially Sensitive
145: 1-5	Trade Secret/Commercially Sensitive
146: 3-24	Trade Secret/Commercially Sensitive
147: 1-24	Trade Secret/Commercially Sensitive
148: 1-24	Trade Secret/Commercially Sensitive
149: 1-8	Trade Secret/Commercially Sensitive
150: 16-24	Confidential
151: 1-11	Confidential
152: 1-24	Confidential
156: 6-24	Trade Secret/Commercially Sensitive
157: 1-9	Trade Secret/Commercially Sensitive
158: 13-24	Confidential
159: 1-21	Confidential

<u>Page: Lines</u>	<u>Designation</u>
159: 22-24	Trade Secret/Commercially Sensitive
160: 1-17	Trade Secret/Commercially Sensitive

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

EXHIBIT 103
TO
APPLICANT'S NOTICE OF RELIANCE ON
DISCOVERY DEPOSITION TRANSCRIPTS

REDACTED

1 11:48:27

2 11:48:32

3 11:48:36

4 11:48:36

REDACTED

5 11:48:51

6 11:48:55

7 11:48:59

8 11:49:02

9 11:49:05

10 11:49:09 Q. Do you know who originally came up with

11 11:49:37 the name WAL-ZYR?

12 11:49:37 A. I'm not sure.

13 11:49:42 Q. Was it you?

14 11:49:44 A. I'm not sure.

15 11:49:45 Q. You don't remember whether you

16 11:49:47 originally came up with the name WAL-ZYR?

17 11:49:52 A. I do not.

18 11:49:52 Q. Do you have any reason to believe it was

19 11:49:53 you?

20 11:49:53 A. As I said, I'm not sure.

21 11:49:57 Q. Why did Walgreens eventually decide on

22 11:50:09 the WAL-ZYR name for the cetirizine-based product?

23 11:50:14 A. We felt that it was the most compelling

24 11:50:28 from a marketing standpoint, that it fell within a

Page 103-1
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
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1 11:50:33 previously used nomenclature of putting "WAL" in
2 11:50:38 front of OTC names.

3 11:50:47 Q. Anything else?

4 11:50:49 A. Those would be the main reasons, I
5 11:50:53 believe.

6 11:50:53 Q. And why did you believe the WAL-ZYR name
7 11:50:56 was the most compelling name from a marketing
8 11:50:59 standpoint?

9 11:51:00 A. We believed given all the options based
10 11:51:14 on our marketing expertise that it was the most
11 11:51:17 marketable of the names we looked at and that we
12 11:51:22 had built up -- already built up a heritage under
13 11:51:26 Walgreens OTCs using the WAL prefix.

14 11:51:39 MS. POPP-ROSENBERG: Could you read back his
15 11:51:40 answer?

16 11:51:40 (WHEREUPON, the record was read
17 11:51:59 by the reporter as requested.)

18 11:51:59 BY MS. POPP-ROSENBERG:

19 11:52:02 Q. Why did you believe the WAL-ZYR name was
20 11:52:03 the most marketable of the names that you looked
21 11:52:06 at?

22 11:52:07 A. We think it sounded the best.

23 11:52:18 Q. Anything else?

24 11:52:19 A. We believed that the WAL prefix conveys



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McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
Page 103-2

1 15:47:46

2 15:47:50

3 15:47:55

REDACTED

4 15:47:59

5 15:48:02

6 15:48:02

Q. And do you know why the private label

7 15:48:08

brand generally does well when the national brand

8 15:48:09

does well?

9 15:48:13

A. Consumers see the value of the private

10 15:48:24

brand on the shelf.

11 15:49:04

MS. POPP-ROSENBERG: Could you mark that as

12 15:49:07

No. 15?

13 15:49:07

(WHEREUPON, said document was marked

14 15:49:07

Opposer's Deposition Exhibit No.

15

15, for identification, as of

16 15:50:20

4/16/09.)

17 15:50:20

BY MS. POPP-ROSENBERG:

18 15:50:20

Q. Okay. If you could look at what's been

19 15:50:22

marked Plaintiff's Exhibit 15 and let me know when

20 15:50:24

you are ready.

21 15:51:40

A. Okay.

22 15:51:40

Q. Could you tell me what number appears on

23 15:51:42

the front of that document at the bottom? Is it

24 15:51:47

0578?

Page 103-3
McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)
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