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

Proceeding	91188736
Party	Plaintiff Anastasia Beverly Hills, Inc., Anastasia Soare, and Anastasia Skin Care Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANASTASIA BEVERLY HILLS, INC.  
ANASTASIA SOARE  
ANASTASIA SKIN CARE, INC.

Plaintiffs/Opposers

v.

ANASTASIA MARIE LABORATORIES, INC.

Defendant/Applicant

Opposition No. 91188736

OPPOSERS' OPPOSITION TO APPLICANT'S MOTION TO COMPEL  
AND FOR AN EXTENSION OF TIME

Applicant Anastasia Marie Laboratories, Inc.'s ("AML") Motion to Compel and for Extension of Time should be denied. In its motion, AML asserts that Opposers must be hiding something simply because Opposers have been unable to produce documents containing precisely the information sought by AML and because Opposer Anastasia Beverly Hills, Inc. ("ABH") amended its registrations Nos. 2821892 and 2798069 for ANASTASIA BEVERLY HILLS and A ANASTASIA BEVERLY HILLS & Design (the "ABH Marks") to correct errors in the listing of goods in Class 3. AML's accusations are both conclusory and baseless and, for the most part, its motion to compel is moot.

AML's motion and supporting evidence demonstrate Opposers' continuing good-faith efforts to resolve the parties' discovery disputes. By AML's own admission, Opposers have been diligent in responding to AML's concerns regarding Opposers' discovery responses, and have continued to supplement Opposers' document production in an effort to allay those concerns. See Motion at 2.

Only three disputes remain at issue: (1) The sufficiency of Opposers' production of documents to support the first use dates for goods in Class 3 in ABH's amended registrations for the ABH Marks and to support ABH's claim of priority over AML with respect to skincare products; (2) The sufficiency of Opposers' production of documents to demonstrate the continuous use of the ABH Marks on goods in Class 3 ("ABH-branded goods") and in connection with salon services; and (3) The sufficiency of Opposers' response to two interrogatories concerning interruptions in the use of the ABH Marks on goods in Class 3.

ABH launched its ABH-branded line of products in the Anastasia Beverly Hills Beverly Hills Salon, located at 438 N. Bedford Drive, Beverly Hills, California (the "ABH Salon") in March of 2000. See Declaration of John May in Support of Opposition to Motion to Compel and for Extension of Time, attached as Exhibit 1 hereto, ("May Dec."), ¶ 2 and Exh. A. National distribution of ABH-branded goods in Nordstrom department stores throughout the country commenced in August 2000. See *id.* AML has requested documents sufficient to show the earliest sales of ABH-branded goods anywhere and the sale of ABH-branded goods in commerce, and documents supporting Opposers' claim to have prior rights in the ABH Marks specifically with respect to skincare products.

As early as 2009, Opposers produced to AML documents reflecting the sale in March 2000 of ABH-branded goods—including skincare products—to ABH from its vendor Kolmar Laboratories, Inc. ("Kolmar"); the interstate shipment in March 2000 of ABH-branded goods from Kolmar to ABH's fulfillment center, Advanced Distribution Systems, Inc. ("ADS"); and the sale and shipment in interstate commerce in August 2000 of a substantial opening order of ABH-branded goods—including skincare products—to Nordstrom. See *id.*, ¶¶ 3 - 4 and Exhs. B – C (filed under seal). In 2009 Opposers also produced to AML an August 2000 news article quoting Anastasia Soare, the President and CEO of Opposers ABH and Anastasia Skincare, Inc. ("ASC"), as

saying that her line of ABH-branded goods "launched" at the ABH Salon in March 2000 and at Fred Segal (in Santa Monica) in July 2000. See *id.*, ¶ 2 and Exh. A. Ms. Soare is also quoted in the article as stating that she was "doubling" her original \$1,000,000 retail sales target for the year 2000 to account for retail sales in 10 Nordstrom locations. See *id.*

In its motion, AML complains that the documents reflecting the sale and shipment of goods do not clearly indicate that the goods referenced therein were ABH-branded goods. AML offers no explanation as to why it believes that documents kept in the regular course of business, related to the sale and shipment of goods to retailers such as Nordstrom, necessarily would state explicitly that the goods sold or shipped bear any particular mark. Nor has AML explained why, in the two years since the documents were produced, AML failed to serve any discovery requests, or to take any depositions, that might shed light on the issue instead of relying solely on accusatory letters and the instant motion to compel.

AML also requested documents showing the "dollar value of actual sales" of ABH-branded goods and salon services "beginning with the date of first use of any of Opposers' Marks" in connection with the sale of such goods and services. Opposers explained to AML that ABH has not consistently created computerized records in a manner that allows Opposers to generate a complete and accurate summary of revenues derived from the sale of salon services or of individual ABH-branded goods, and produced to AML exemplars of what Opposers believes to be the most reliable records of the dollar value of the actual sales of ABH-branded goods. Specifically, Opposers produced exemplars of the documentation retained in connection with the routine processing of its Accounts Receivables, including invoices, payments, purchase orders shipping records evidencing the sale of ABH-branded goods, and have offered to make all such records of sales, from 2000 to the present, available to AML for inspection. See *id.*, ¶¶ 13, 17 and Exh. H (filed under seal).

Moreover, Opposers have been diligent in their efforts to locate electronic data from which to extract the information sought by AML, and have now provided AML with reports, entitled "Sales by Item Detail," summarizing such computerized sales records as do exist for the years 2000 through 2004. See *id.*, ¶¶ 15 and Exh. F (filed under seal). These reports summarize Opposers' total sales of ABH-branded products, but do not constitute a complete record of sales of individual ABH-branded products sold by Opposers because complete computerized records of such sales simply do not exist. AML cannot be heard to insist that any gaps in the computerized records must be the result of evasiveness on the part of ABH when AML has rebuffed all offers by Opposers to examine the detailed hard-copy documentation retained by ABH of its sales of ABH-branded products.

As to the alleged deficiencies in Opposers' responses to interrogatories concerning interruptions in the use of the ABH Marks on goods in Class 3, AML's motion contains little more than conclusory accusations as to Opposers' alleged dishonesty. Nonetheless, Opposers have now provided AML with detailed supplemental responses to the interrogatories in question, rendering AML's motion as to those requests moot. See *id.*, ¶¶ 16 and Exh. G (filed under seal).

Applicant's request for an extension of discovery, beyond that already agreed to by Opposers, also should be denied. AML has not made good-faith efforts to resolve the discovery disputes between the parties, but instead squandered the time for discovery with numerous letters making unsupported, inflammatory accusations.

#### **I. Applicant's Motion to Compel**

In its motion, AML goes to great pains to portray Opposers as deliberately withholding relevant documents and information, even going so far as to express dismay that Opposers "have not produced documents which are sufficient to show annual sales of all of their products," Motion at 1, even though AML can identify no discovery request for such information and, not surprisingly, did not move to compel

such information. Applicant has presented no evidence whatsoever that Opposers have attempted to “withhold information and documents which would enable Applicant to evaluate its claims.” Motion at 5. To the contrary, Opposers have bent over backwards to provide exactly that information to Applicant. Specifically, Opposers repeatedly offered to assist AML in understanding how ABH’s records (both hard copy and electronic) are organized and what type of information is available for what time periods. Opposers also contacted Kolmar (the vendor of most of ABH’s cosmetics products) and ADS (ABH’s primary fulfillment vendor during the company’s early years) in an effort to supply AML with the information it seeks, even though Opposers are under no obligation to do so. See May Dec., ¶ 7.

**A. Documents Relating to Claims of First Use and Priority**

AML’s Request for Production No. 3 (“RFP 3”): RFP 3 seeks documents sufficient to show the earliest sales of ABH-branded goods anywhere and the sale of ABH-branded goods in commerce.

In its motion, AML dismisses documents, produced by Opposers in 2009 and identified in Opposers’ written response to RFP 3 as Bates Nos. ABH020101C – ABH020105C, as “a few documents showing shipments of products to [ABH’s] distributor.” Motion at 6; see Declaration of Brewster Taylor in Support of AML’s Motion to Compel and for Extension of Time (“Taylor Dec.”), Exh. 6; May Dec., ¶ 3 and Exh. B (filed under seal). The documents in question, however, reflect the shipment of After Tweeze Cream and Brow Powder—described in the registrations for the ABH Marks as eyebrow color products, eyebrow powder, facial moisturizers, eye creams and eye-area moisturizers—in interstate commerce in March 2000. Similarly, the document identified with Bates No. ABH022268C, produced to AML on or about April 14, 2011, reflects the shipment in interstate commerce of over 2,500 units of After Tweeze Cream on March 31, 2000. See *id.*, ¶ 10 and Exh. I.

Opposers also produced documents in early April 2011, identified with Bates Nos. ABH020338C – ABH020339C, entitled “AAS COSMETICS, Anastasia Beverly Hills Salon Opening Order: First Half.” See *id.*, ¶ 9 and Exh. D (filed under seal). These documents reflect the purchase by the ABH Salon of ABH-branded brow gel, lip gloss, eye shadow and blush. Similarly, the “Retail Sales by Vendor” report, produced by Opposers and identified with Bates Nos. ABH061641C – ABH061646C, reflects sales of ABH-branded goods by the ABH Salon during the period from January 1, 2000 through March 31, 2000. See *id.*, ¶ 12 and Exh. E (filed under seal).

In August 2000, the ABH-branded line of cosmetics and skincare products launched at Nordstrom department stores. In 2009, Opposers produced to AML “an invoice to Nordstrom dated August 21, 2000.” Motion at 6, see May Dec., ¶ 4 and Exh. C (filed under seal). This document, identified in Opposers’ original response to RFP 3 as Bates Nos. ABH020110C – ABH202115C, reflects the sale and shipment to a Nordstrom store in Iowa of each type of Class 3 product described in ABH’s amended registrations for the ABH Marks, including the ABH-branded skincare product After Tweeze Cream. See *id.* AML’s motion does not explain why this document is not “sufficient to show . . . the sale of the product under any of Opposers’ Marks in commerce.” AML’s primary qualm with this document, and with other documents produced by Opposers reflecting the sale and/or shipment of goods, appears to be that “it is simply unknown to what extent the products . . . were products bearing Opposer’ marks.” Motion at 7. AML has had since 2009 to ascertain, using any of the myriad discovery tools provided by the Federal Rules of Civil Procedure, whether the products described in the Nordstrom invoice, and other documents produced by ABH, were ABH-branded products. Yet, AML has not bothered to depose any employee or representative of Opposers. Nor did AML serve any Interrogatories or Requests for Admission addressing the issue. It is unclear why Applicant believes that a motion to compel is the appropriate way to unearth the information it seeks, particularly since, in a

letter dated April 18, 2011, counsel for Opposers explained to counsel for AML that all goods sold by ABH to Nordstrom were ABH-branded goods.<sup>1</sup>

AML's Request for Production No. 23 ("RFP 23"): RFP 23 seeks documents that "support Opposers' position of having prior rights with respect to use of 'ANASTASIA' as or in a mark for skin care products." As described above, several of the documents produced by Opposers that are responsive to RFP 3 also reflect that Opposers used the ABH Marks on After Tweeze Cream at least as early as March 2000.

**B. Documents Showing Sales of Products and Rendering of Services Under the Marks**

AML's Request for Production No. 9 ("RFP 9"): RFP 9 seeks documents sufficient to show the dollar value of actual sales of ABH-branded goods for each year beginning with the date of first use of the ABH Marks. As explained in the declaration of ABH's custodian of records, Constantin Stan, attached as Exhibit 2 hereto, ABH has not consistently kept computerized records of its revenues for specific products or product type. See Declaration of Constantin Stan in Support of Opposition to Motion to Compel and for Extension of Time ("Stan Dec.") at ¶ 9 (filed in part under seal).

ABH tracks amounts due from its wholesale customers by keeping an Accounts Receivable database using Quickbooks accounting software. See *id.*, ¶ 9 – 10. At various times prior to 2005, it was ABH's regular business practice to record in Quickbooks only total amounts invoiced to customers, and not to create detailed computerized records itemizing each product ordered by customers and the prices charged for each product. See *id.* Thus, ABH does not have, and knows of no convenient way to generate, complete and accurate reports summarizing ABH's total yearly revenues prior to 2005 from the sale of specific products or types of products. See *id.*, ¶ 19. Detailed information reflecting the specific products ordered by ABH's wholesale customers, and the specific amounts charged for each specific product

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<sup>1</sup> See Taylor Dec., Exh. 9, pp. 1-2 (filed under seal).

ordered, can be found in hard-copy records (e.g., invoices, purchase orders, shipping documents and/or packing lists) kept by ABH in the regular course of business. See *id.*, ¶ 9. ABH consistently and repeatedly has offered to make those documents available to AML, and did make those records available to AML's prior counsel, Daphne Bass, when she visited Opposers' warehouse in January 2010. See May Dec. at ¶ 5; Stan Dec. at ¶¶ 23 – 24; Taylor Dec., Exh. 9, pp. 1-2. Ms. Bass also had the opportunity at that time to interview ABH's custodian of records, Mr. Stan. See May Dec. at ¶ 5. Applicant's current counsel has been given, and has rejected, the same offer. See Taylor Dec., Exh. 10, ¶ 5. Nevertheless, on or about May 9, 2011, Opposers produced to AML a sample of its records of representative early sales of ABH-branded goods ABH's larger wholesale customers and, in supplemental responses to AML's requests for production, has again offered to make all other such documents in ABH's possession or control available for inspection and copying. See May Dec. at ¶ 13.

Until recently, Opposers' efforts to locate electronic records from which to generate any type of summary of sales prior to 2005 were unsuccessful. On or about April 29, 2011, Opposers located a Quickbooks file, containing historical sales and accounts receivable information, on one of ABH's computer servers. See Declaration of Raluca Carp in Support of Motion to Compel and For Extension of Time, attached as Exhibit 3 hereto, ("Carp Dec.") at ¶ 6 (filed in part under seal). From this file, Opposers created and produced to AML reports entitled "Sales by Item Detail" for the years 2000 through 2004. See *id.*; May Dec. at ¶ 15 and Exh. F (filed under seal). These reports summarize Opposers' total sales of ABH-branded products, but do not constitute a complete record of sales of individual ABH-branded product sold by Opposers because complete computerized records of such sales were never created. See Stan Dec. at ¶¶ 9 and 19; Carp Dec. at ¶¶ 7-8. Opposers are willing to give AML access to its Quickbooks database for examination by a forensic accountant to attempt to locate any such information contained therein.

In lieu of providing an incomplete summary of the yearly dollar value of sales for each type of ABH-branded product, Opposers have endeavored to provide to AML records of shipments of ABH-branded goods to ABH's wholesale customers. Prior to 2005, ABH did not keep regular, detailed records of its inventory, but relied on its fulfillment centers, primarily Advanced Distribution Systems, Inc. ("ADS"), to keep track of inventory. See Stan Dec. at ¶ 11. ABH received detailed monthly inventory reports from ADS, but did not, as a regular business practice, retain the reports. See *id.* ABH has located inventory reports generated by ADS for the months of January through September 2002. On or about May 9, 2011, Opposers produced to AML ADS inventory reports for the month of September 2002 and, in supplemental discovery responses, has repeated their offer to make the remaining ADS inventory records for the months of January through August 2002 available for inspection and copying. See Taylor Dec., Exh.10; May Dec. at ¶¶ 14 and 17 and Exh. H (filed under seal).

From 2005 to the present, ABH has, in the regular course of business, kept detailed, computerized records of its sales and inventory using Fishbowl software. See Stan Dec. at ¶ 17. Opposers have produced to AML a summary, created using ABH's inventory records, reflecting units of ABH-branded goods shipped to ABH's wholesale customers on a semi-annual basis from 2005 to the present. See May Dec., ¶ 11. AML complains that this summary "does not even purport to show shipments from the warehouse of ABH-branded products." Motion at 9. To the contrary, as explained repeatedly to counsel for AML, including in letters dated April 5 and April 18, 2011,<sup>2</sup> that is exactly what the spreadsheet purports to show, and does show. Moreover, these figures paint a far more accurate picture of the volume of Opposers' of sales of ABH-

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<sup>2</sup> See Taylor Dec., Ex. 3, page 4, ¶ 5 ("We plan to supplement our production with a detailed listing of specific ABH-branded products shipped by the client organized for each semiannual period from 2005 to the present, and a summary thereof keyed to the IC003 goods described in our involved registrations.") (emphasis added) see also Taylor Dec., Ex. 9, page 1, ¶ 3 (filed under seal).

branded products from 2005 to the present, as the dollar value of sales tells AML nothing about how many products bearing the ABH Marks were shipped during a particular time period.

AML's Request for Production No. 10 ("RFP 10"): RFP 10 seeks documents sufficient to show dollar value of income received from rendering each of Opposers' Services for each year beginning with the first use of any of Opposers' Marks in connection with the rendering of the services. Despite AML's protestations to the contrary, Opposers do not have documents, other than the hard-copy reports already produced to AML, breaking down the dollar value per year of each individual service rendered in the ABH Salon. See Carp Dec. at ¶¶ 9 – 12. These consist of Operator Service Commission Reports for January, February and March 2000, May 2001 and January through December 2002. Opposers are prepared to provide testimonial evidence relating to the provision of salon services under the ABH Marks should Applicant choose to take discovery depositions.

### **C. Responses to Interrogatories Relating to Interruptions in Use**

Opposers provided responses to Interrogatories 10 and 11 based on the information available to Opposers at the time, reserving the right to update the Interrogatories to reflect new information as it became available. Opposers have now provided AML with supplemental responses to these and other interrogatories. See May Dec., ¶ 16 and Ex. G (filed under seal).

### **D. Motion for Extension of Time**

As noted by AML's motion, as part of Opposers' good-faith efforts to resolve the discovery disputes discussed herein, Opposers agreed to a 30 day extension of time for AML to take depositions concerning documents produced by Opposers. See Taylor Dec., Ex. 7, p. 3, ¶ 4. The 30 day extension offered to AML to take discovery depositions should be sufficient. Opposers have made extensive efforts informally to resolve discovery disputes with AML by attempting to explain to AML the scope and

types of documents in Opposers' possession or control, and to collaborate with AML to come to an agreement regarding reasonable solutions that would enable AML to discover relevant information. Applicant has made no real effort to attempt to reach any sort of agreement with Opposers but has instead squandered the discovery period by drafting correspondence insisting that Opposers must be hiding something, allowing the clock to run on discovery, thereby causing needless additional delay and expense to Opposers.

## II. CONCLUSION

For all the foregoing reasons, Opposers respectfully request that AML's Motion to Compel and For an Extension of Time be denied.

Dated: May 16, 2011

Respectfully submitted,  
/John M May/

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# EXHIBIT 1

## Declaration of John May

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

ANASTASIA BEVERLY HILLS, INC.  
ANASTASIA SOARE  
ANASTASIA SKIN CARE, INC.

Plaintiffs/Opposers

v.

ANASTASIA MARIE LABORATORIES, INC.

Defendant/Applicant

Opposition No. 91188736

DECLARATION OF JOHN MAY IN SUPPORT OF OPPOSERS' OPPOSITION TO  
APPLICANT'S MOTION TO COMPEL AND FOR AN EXTENSION OF TIME

1. I, John May, hereby declare and say:
2. I am an attorney at the law firm of Berliner & Associates, counsel for Opposers in the above-captioned matter. All of the facts stated in this declaration are known to me unless otherwise so indicated and if called upon to testify, I am competent to testify to such facts.
3. In or about August 2009, as part of their initial disclosures, Opposers produced to Applicant Anastasia Marie Laboratories, Inc. ("AML") the UNRESTRICTED document attached hereto as Exhibit A and labeled with Bates No. ABH010023.
4. In or about September 2009, as part of their initial disclosures, Opposers produced to AML the documents attached as Exhibit B to this declaration (filed under seal) and labeled with Bates Nos. ABH020101C – ABH020105C.
5. In or about September 2009, as part of their initial disclosures, Opposers produced to AML the documents attached as Exhibit C to this declaration (filed under seal) and labeled with Bates Nos. ABH020110C – ABH020115C.

6. On or about January 15, 2010, Daphne Bass, then-counsel for Applicant, visited ABH's Sylmar warehouse accompanied by her husband, Pierre Bass. I provided ABH's custodian of records, Constantin Stan, with written instructions in plain English summarizing the types of historical documents that I then understood were being sought by AML's discovery requests and instructed Mr. Stan to make all such documents available to Ms. Bass, including all hard-copy records of shipments of ABH-branded goods. When Ms. Bass visited the warehouse, Mr. Stan was available to answer, and did answer, any questions Ms. Bass asked about ABH's past and current record-keeping practices.

7. On behalf of Opposers, on numerous occasions from the opening of discovery in April 2009 until the filing of the instant Motion, I have made extensive efforts informally to avoid wasteful and unnecessary discovery disputes with AML by proposing what I believed to be reasonable solutions that would enable AML to discover all relevant information in Opposers possession and control without undue burden to Opposers.

8. In or about August 2009, as part of their initial disclosures, Opposers produced to AML an "INITIAL DISCLOSURE of ABH Potential Witness Information" bearing Bates Nos. ABH030018TS - ABH030019TS, which was marked TRADE SECRET and included a list of ABH's current and past consultants and vendors, including ABH's primary manufacturer and fulfillment house during the company's early years, Kolmar Laboratories, Inc., ("Kolmar") and Advanced Distribution Systems, Inc. ("ADS").

9. On behalf of Opposers, on or about March 22, 2011, after it had become evident that this matter would not be settled prior to the completion of discovery, I contacted ADS, it being my understanding that ADS was responsible for all warehousing and distribution services during the early days of ABH, and inquired whether the company still had any records of receiving or shipping ABH-branded goods. I was informed by Joe Napolitano, the president of ADS, that it had been more than 7 years since ADS had performed any services for ABH, and that in all likelihood no such records still existed.

10. After learning that neither ADS nor ABH had any convenient way to search for records of sales or shipments of specific products prior to 2005 (when ABH's Fishbowl inventory control system was installed) and that all available records were in the form of unweildy paper documents, I contacted Kolmar in early April 2011 and inquired whether they still retained any electronic records with details of any sales to ABH and shipments to ADS prior to January 2005. I was informed that Kolmar still had computer records of all such shipments and could reprint all invoices to ABH from that time period upon receiving written request from its customer (ABH). Such a request from Luca Carp was faxed to Kolmar on or about April 12, 2011, and I received a CD-ROM with the requested reprinted invoices shortly thereafter. These invoices were produced to AML on or about April 14, 2011, and included an invoice showing the shipment of After Tweeze Cream by Kolmar on March 31, 2000, labeled with Bates No. ABH022268C, attached hereto as Exhibit I (filed under seal).

11. On behalf of ABH, I have made repeated offers to make available to AML individual re-printed invoices and in corresponding hard-copy records (e.g., purchase orders, shipping documents and/or packing lists), containing detailed information reflecting the specific products ordered by ABH's wholesale customers, and the specific amounts charged for each specific product ordered, kept by ABH in the regular course of business.

12. On or about April 5, 2011, Opposers produced to AML documents, entitled "AAS COSMETICS, Anastasia Beverly Hills Salon Opening Order: First Half," labeled with Bates Nos. ABH020338C – ABH020339C, true and correct copies of which are attached hereto as Exhibit D (filed under seal).

13. On or about April 5, 2011, Opposers produced to AML documents entitled "Operator Service Commission Reports" reflecting the dollar value of salon services rendered in the ABH Salon in January, February and March 2000, May 2001 and January through December 2002.

14. On or about April 19, 2011, Opposers produced to AML a summary, created using ABH's Fishbowl inventory records, of units of ABH-branded goods shipped to ABH's wholesale customers on a semi-annual basis from 2005 to the present.

15. On or about May 9, 2011, Opposers produced to AML documents, entitled "Retail Sales by Vendor," labeled with Bates Nos. ABH061641C – ABH061646C, true and correct copies of which are attached hereto as Exhibit E to this declaration (filed under seal).

16. On or about May 9, 2011, Opposers produced to AML a sample of its hard-copy records of sales of ABH-branded goods ABH's larger wholesale customers.

17. On or about May 9, 2011, Opposers produced to AML inventory reports generated by Advanced Distribution Systems ("ADS") for the month of September 2002.

18. On or about May 15, 2011, Opposers produced to AML reports entitled "Sales by Item Detail" for the years 2000 through 2004. A true and correct copy of an exemplar of pages from one of these reports, specifically, pages from the 71-page report for the year 2002, is attached hereto as Exhibit F (filed under seal).

19. On or about May 15, 2011, Opposers served supplemental discovery responses to AML's Interrogatory Nos. 3, 4, 5, 10 and 11. A true and correct copy of the supplemental interrogatory responses are attached hereto as Exhibit G (filed under seal).

20. Concurrently herewith, Opposers are serving supplemental discovery responses to AML's Request for Production Nos. 3, 9 and 10. A true and correct copy of the supplemental responses to the requests for production are attached hereto as Exhibit H (filed under seal).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 16, 2011

Respectfully submitted,

/John M. May/

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# EXHIBIT A

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# FRIDAY

Aug 18 2000

## Nordstrom Welcomes Eyebrow Guru

**LOS ANGELES** — Beginning next month, busy-browed shoppers visiting Nordstrom can leave the cosmetics department plucked, penciled and perfectly arched.

Along with launching her signature cosmetics and beauty accessories line, celebrity eyebrow queen Anastasia Soare has decided to personally hire and train aestheticians at the first 10 Nordstrom stores in the north and west that carry the 182-stockkeeping-unit collection.

Fred Segal Essentials-Studio 500 in Santa Monica began featuring the line in late July. Soare's own shop, Anastasia in Beverly Hills, began introducing the products in late March.

"It will be something new, a new service in the stores. I think that will be a big point of difference from all the other makeup lines," said Soare, who made her mark at Juan Juan in Beverly Hills before opening her salon in 1997.

There she provides what she dubs "an instant facelift," shaping and grooming the famous brows of Chloe Sevigny, Julianna Margulies, Kate Capshaw and Madonna. "Nordstrom," she noted, "is very excited about it."

Dale Crichton, executive vice president for cosmetics at Nordstroms, concurred. "I just felt like her brow products were a strong point of difference in our department. The brow is such an important feature and no one else in the department was addressing it that seriously. These counter browers will bring to every location a whole new standard of expertise. It's an incredible service for our customer."

Crichton added that the 10 doors were chosen based on "a great cosmetics following" among the chain's retail customers. The line was originally slated for a June rollout in Nordstrom, but the fall 2000 collection was delayed due to quality problems with manufacturing the brushes, said Soare.) Soare, in fact, is raising her sales expectations with



Anastasia Soare in her Beverly Hills salon.

WWD, that retail sales were targeted at \$1 million in 2000 at her salon. "With only four months remaining once distribution extends to Nordstrom, she's doubling that initial figure."

The plan is to introduce the eyebrow service as a walk-up, then, as business builds, provide it by appointment.

"I'm going to train all of them. I'm going to fly most of the aestheticians here because then they could see me working on the clients," she noted.

Soare said she tends the brows of up to 50 clients a day at her salon.

"Having such a wide variety of eyebrow products, you need to teach the clients how to use every product

and how to do the eyebrows," she said, her words flavored by her native Romania, where she studied graphic design, architecture and chemistry. "A makeup artist isn't allowed to shape the eyebrows, use the wax, so you need [an aesthetician]."

Soare and French designer Etienne Jarrel created the Anastasia packaging with a French antique aesthetic and a modern flair.

Soare also co-designed the counter-top point-of-purchase displays with Montebello-based California Display. The rectangular department store model is contemporary and sleek. An earlier grate-oval sits next to this newer incarnation at the Anastasia salon.

The debut Fall Colors 2000 collection celebrates Hollywood style with two palettes — one that is "glamorous" and warm and one that is "chic and downtown."

Soare started the cosmetics line with Arnold Simton, chairman and chief executive officer of Arts Industries, and Deborah Simon, Aps board member and, at the time, head of overseas sales for Anastasia. That relationship ended in April when Soare decided to finance the line herself.

Nonetheless, plans are still underway to make Anastasia a global name. "I especially want to take it to Europe, Japan and Saudi Arabia," said Soare, who is relying on word of mouth and editorial exposure to spread brand awareness.

Of the overall goals for the line, she admitted "step two," a full skin care collection, is underway, as is step three, a fragrance. She already has begun the painstaking process of identifying scents, but she's in no rush to bring out either category.

As for spreading her salon concept outside of 90210 borders, Soare said she is seriously considering the possibility. "Everyone keeps asking me, but right now I'm managing everything. I am such a control freak that I want to run everything. But definitely, that is my goal."

— Rose Apodaca Jones

# EXHIBIT B

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT C

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT D

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT E

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT F

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT G

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT H

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

# EXHIBIT I

## FILED UNDER SEAL

DECLARATION OF JOHN MAY IN SUPPORT OF  
OPPOSERS' OPPOSITION TO MOTION TO  
COMPEL AND FOR EXTENSION OF TIME

## EXHIBIT 2

### Declaration of Constantin Stan

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

ANASTASIA BEVERLY HILLS, INC.  
ANASTASIA SOARE  
ANASTASIA SKIN CARE, INC.

Plaintiffs/Opposers

v.

ANASTASIA MARIE LABORATORIES, INC.

Defendant/Applicant

Opposition No. 91188736

**FILED UNDER SEAL AS  
TRADE SECRET/  
COMMERCIALY  
SENSITIVE**

**Declaration of Constantin Stan in Support of Opposers' Opposition to  
Applicant's Motion to Compel**

I, Constantin Stan, declare as follows:

1. I am employed by Anastasia Beverly Hills, Inc. ("ABH"). I make this declaration in support of Opposers' Opposition to Applicant's Motion to Compel. Except where otherwise noted, I have personal knowledge of the facts set forth herein, and if called as a witness could and would competently testify thereto.
2. In late 1999 or early 2000 until sometime in 2003, I worked for Anastasia Skin Care, Inc. ("ASC") as manager of what was then known as the Anastasia Skin & Body Care salon, and is now known as the Anastasia Beverly Hills salon (the "ASC Salon"). The ASC Salon was and is located at 438 N. Bedford Drive in Beverly Hills, California. As manager of the ASC Salon, my job duties included purchasing supplies, paying bills, paying commissions to independent contractors and taking care of other accounts payable for the salon.

3. Before I began working at the ASC Salon, Anastasia Soare, President and CEO of ASC, formed A.A.S. Cosmetics, Inc. A.A.S. Cosmetics later changed its name to Anastasia Beverly Hills, Inc. (hereafter, the company will be referred to as "ABH"). It is my understanding that ABH was originally jointly owned by Anastasia Soare and Arnold Simon. Mr. Simon was located in New York. During the time of the joint ownership of ABH by Ms. Soare and Mr. Simon, the accounting and procurement functions of ABH were run out of the New York offices of another company owned by Mr. Simon, Aris Industries, Inc. Aris Industries was located in Manhattan. It is my understanding that, in late 2000 or early 2001, Arnold Simon sold his share of the business to Anastasia Soare, and she became the sole owner of the company, as well as its CEO and President.
4. During the time I worked for ASC as manager of the ASC Salon, I was aware of the business activities of ABH. In fact, shortly after Anastasia bought Arnold Simon's share of the business, I began to handle accounts payable and accounts receivable for ABH as well as managing the salon.
5. When I started working for ASC, ABH was already in the process of developing and finalizing a new line of color cosmetics and skincare products to be sold both in the ASC Salon and at retail outlets throughout the United States.
6. Kolmar Laboratories, Inc. ("Kolmar"), located in Port Jervis, New York, became the manufacturer of much of the new line of ABH-branded cosmetics and skin care products. ABH hired Advanced Distribution Systems, Inc. ("ADS") to act as a fulfillment center. Kolmar and other manufacturers shipped finished and unfinished goods to ADS. ADS was responsible for warehousing the products and for assembling certain products, such as five- and seven-item brow kits, which included components from several vendors.

7. ADS shipped the finished products to retailers including the ASC Salon in Beverly Hills, Fred Segal in Santa Monica, Tootsie's in Houston, Texas, and Nordstrom stores around the country. ADS also generated invoices and packing lists, and kept and provided ABH with detailed shipping records and monthly reports showing the inventory of goods stored by ADS.
8. To the best of my knowledge, ADS sent shipping records and inventory reports to ABH's New York offices during the time that that business was jointly owned by Anastasia Soare and Arnold Simon. After the buyout, ABH's California office took over all administrative and business functions, including accounts receivable, from the New York office. At that time, ADS began to send hard-copy invoices, packing lists and monthly, detailed inventory reports to ABH in California.
9. REDACTED
10. REDACTED
11. REDACTED
12. REDACTED
13. In 2003, Raluca Carp was hired as manager of the ASC Salon, and I began to work solely for ABH. At about that same time, ABH discontinued its relationship with ADS. ABH began to use another company, Interfashion, located in Teterboro, New Jersey, as a fulfillment center.
14. Interfashion assumed many of the responsibilities once held by ADS, including sending invoices and packing lists to ABH in California, but with lower overhead costs involving simpler procedures and fewer reports. ABH continued the practice of recording in Quickbooks the total value of orders from the invoices or shipping documents generated by Interfashion, and keeping hard copies of invoices, packing

lists, shipping records and related documents as detailed records of customer orders.

15. REDACTED

16. In late 2004 or early 2005, ABH stopped using Interfashion, and moved its fulfillment functions in-house. ABH leased a warehouse in Sylmar, California. All goods stored at the fulfillment houses were transferred to the Sylmar warehouse, and the manufacturers were instructed to direct new shipments to Sylmar as well. At the Sylmar warehouse ABH assembles and ships finished goods to retailers (including the ASC Salon). I was and remain responsible for overseeing the warehousing, assembly and fulfillment activities at the Sylmar warehouse.

17. In 2005, ABH began using a program called Fishbowl to keep track of inventory. Orders from smaller customers are entered manually in Fishbowl. Fishbowl is used to generate invoices for such smaller orders. Larger retailers send their orders to ABH using EDI, an online system for managing retail orders that is the industry standard. When a customer uses EDI place an order, EDI generates an invoice, which is automatically sent to the customer. At the same time, EDI automatically transfers the order information to ABH's Fishbowl database. In this way, ABH uses Fishbowl to keep detailed records of the inventory in the Sylmar warehouse and of customer orders.

18. REDACTED

19. REDACTED

20. ABH's operational headquarters has switched locations several times over the years. At first, it was based in New York, with some records and samples stored at the ASC Salon and at Anastasia Soare's home in Beverly Hills. After Anastasia

Soare assumed full ownership, AAS changed its name to Anastasia Beverly Hills and established an office at 9040 W. Sunset Boulevard, Suite 204, in West Hollywood. In or about 2002, AAS's corporate office moved to 1722 Westwood Boulevard, Suite 204A in Los Angeles. In or about 2005, ABH moved its main office to a new address: 1762 Westwood Boulevard, Suite 260, Los Angeles. In or about 2009, ABH moved to its current offices at 11933 Wilshire Boulevard in Los Angeles.

21. REDACTED

22. ABH and ASC were and are very different types of business entities. ASC Salon is and was a retail establishment. In contrast, ABH's business consists primarily of the sale of wholesale goods to retailers. ASC Salon uses salon management software, called Pro Salon, to keep records of the dollar value of the services rendered and goods sold at the salon and of commissions paid to independent contractors working at the salon. A Quickbooks database, separate and apart from the Quickbooks database used to manage accounts receivable for ABH, is used keep track of receipts and expenses incurred by the ASC Salon and to generate commission checks to the salon's independent contractors.

23. On or about January 15, 2010, Daphne Bass, then-counsel for Applicant, visited the Sylmar warehouse accompanied by her husband, Pierre Bass. I was instructed by John May, counsel for Opposers, to make all historical documents available to Ms. Bass, including all hard-copy records of shipments of ABH-branded goods, and to answer any questions Ms. Bass had about ABH's past and current record-keeping practices.

REDACTED

24. I directed Ms. Bass to what hard-copies we had been able to locate, which were contained in approximately two pallets of boxes. I made available to Ms. Bass whatever documents she specifically asked for.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

This Declaration is being executed on May 11, 2011.

/Constantin Stan/

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Constantin Stan

## EXHIBIT 3

### Declaration of Raluca Carp

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

ANASTASIA BEVERLY HILLS, INC.  
ANASTASIA SOARE  
ANASTASIA SKIN CARE, INC.

Plaintiffs/Opposers

v.

ANASTASIA MARIE LABORATORIES, INC.

Defendant/Applicant

Opposition No.

91188736

**FILED UNDER SEAL  
AS TRADE SECRET/  
COMMERCIALY  
SENSITIVE**

**Declaration Of Raluca Carp In Support Of Opposers' Opposition To Applicant's  
Motion To Compel And For An Extension Of Time**

I, Raluca Carp, declare as follows:

1. I have been working for Anastasia Beverly Hills, Inc. ("ABH") and Anastasia Skin Care, Inc. ("ASC") from 2003 to the present. I make this declaration in support of Opposers' Opposition to Applicant's Motion to Compel. Except where otherwise noted, I have personal knowledge of the facts set forth herein, and if called as a witness could and would competently testify thereto.
2. In the course of my work for ABH, I have become familiar with the manner in which ABH and the Anastasia Beverly Hills Salon ("ABH Salon"), owned by Opposer Anastasia Skin Care, Inc. ("ASC"), keep records in the regular course of business.

3. During discovery in this matter, I estimate that I have spent hundreds of hours searching for information concerning the early history of ABH, and in particular for information concerning the sale of Anastasia Beverly Hills branded products. My efforts have included searching through the voluminous paper files stored in the company's Sylmar warehouse and searching for electronic files kept on individual computers and on the company's servers.
4. REDACTED
5. REDACTED
6. REDACTED
7. REDACTED
8. REDACTED
9. REDACTED
10. REDACTED
11. REDACTED.
12. REDACTED

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

This Declaration is being executed on May \_16\_, 2011.

/Raluca Carp/

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Raluca Carp