

ESTTA Tracking number: **ESTTA164584**

Filing date: **09/24/2007**

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

| | |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 92044697 |
| Party | Plaintiff ACM ENTERPRISES, INC. |
| Correspondence Address | David Hong Law Office of David Hong P.O. Box 2111 Santa Clarita, CA 91386-2111 UNITED STATES david.hong@dhpattentlaw.com |
| Submission | Reply in Support of Motion |
| Filer's Name | David Hong |
| Filer's e-mail | david.hong@dhpattentlaw.com |
| Signature | /david hong/ |
| Date | 09/24/2007 |
| Attachments | 2007-09-24_ACM_reply_exhibits_footer.pdf (89 pages)(4339118 bytes) 2007-09-24_declaration_dh_reply.pdf (5 pages)(17829 bytes) 2007-09-24_ACM_msj_amend_reply.pdf (10 pages)(45725 bytes) |



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

Cancellation

Number: 92044697

Filing Date: 07/01/2005

Status: Pending

Status Date: 07/06/2005

Interlocutory Attorney: ANN LINNEHAN

Defendant

Name: Martello, JeannetteCorrespondence: Brandon M. Tesser

Tesser & Ruttenberg

12100 Wilshire Blvd., Ste. 220

Los Angeles, CA 90025

btesser@tesser-ruttenberg.comSerial #: 76581387Registration #: 2932593

Application Status: Cancellation Pending

Mark: "SKIN DEEP"

Plaintiff

Name: ACM ENTERPRISES, INC.Correspondence: David Hong

Law Office of David Hong

P.O. Box 2111

Santa Clarita, CA 91386-2111

david.hong@dhpattentlaw.com

Prosecution History

| # | Date | History Text | Due Date |
|----|------------|--------------------------------------------------------------------|----------|
| 30 | 09/07/2007 | <u>PAPER RECEIVED AT TTAB</u> | |
| 29 | 08/24/2007 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| 28 | 08/03/2007 | <u>EXHIBITS IN SUPPORT OF P'S MOTION FOR SUMMARY JUDGMENT</u> | |
| 27 | 08/07/2007 | <u>SUSPENDED PENDING DISP OF OUTSTNDNG MOT</u> | |
| 26 | 08/03/2007 | <u>P'S MOTION FOR SUMMARY JUDGMENT</u> | |
| 25 | 06/30/2007 | <u>EXTENSION OF TIME GRANTED</u> | |
| 24 | 06/30/2007 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| 23 | 05/31/2007 | <u>EXTENSION OF TIME GRANTED</u> | |
| 22 | 05/31/2007 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| 21 | 05/22/2007 | <u>ACKNOWLEDGMENT OF PROTECTING CONFIDENTIALITY OF INFORMATION</u> | |
| 20 | 05/04/2007 | <u>EXTENSION OF TIME GRANTED</u> | |
| 19 | 05/04/2007 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| 18 | 04/04/2007 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| 17 | 03/31/2007 | <u>EXTENSION OF TIME GRANTED</u> | |
| 16 | 03/01/2007 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| 15 | 12/27/2006 | <u>PETITIONER'S ACKNOWLEDGEMENT OF PROT AGREEMENT</u> | |
| 14 | 11/28/2006 | <u>PETITIONER'S MOTION TO COMPEL IS DENIED TRIAL DATES ARE</u> | |

Sept. 24, 2007 PET. REPLY EXHIBITS

Cancel #92044697

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9/19/2007

RESET AS FOLLOWS

13 05/20/2006 P'S REPLY IN SUPPORT OF MOTION
12 05/08/2006 D'S OPPOSITION/RESPONSE TO MOTION
11 05/05/2006 P'S RESPONSE TO BOARD ORDER/INQUIRY
10 04/26/2006 SUSPENDED
9 04/21/2006 P'S MOTION TO COMPEL DISCOVERY
8 12/30/2005 EXTENSION OF TIME GRANTED
7 12/22/2005 STIPULATION FOR AN EXTENSION OF TIME
6 12/22/2005 CHANGE OF CORRESPONDENCE ADDRESS
5 12/20/2005 CHANGE OF CORRESPONDENCE ADDRESS
4 08/29/2005 ANSWER
3 07/06/2005 PENDING, INSTITUTED
2 07/06/2005 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 08/15/2005
1 07/01/2005 FILED AND FEE

Results as of 09/20/2007 12:15 AM [Back to search results](#)Search: [| HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Interrogatory No. 16:

Explain in detail the Respondent's denial of the allegations in Paragraph 7 of the July 1, 2005 Petition for Cancellation and as stated in Paragraph 7 of the Respondent's Aug. 29, 2005 Answer to Petition for Cancellation, namely the two Respondent's Feb. 28, 2004 and Feb. 29, 2004 Specimens of Use.

Response:

Interrogatory No. 17:

Explain in detail the Respondent's denial of the allegations in Paragraph 8 of the July 1, 2005 Petition for Cancellation and as stated in Paragraph 8 of the Respondent's Aug. 29, 2005 Answer to Petition for Cancellation, namely the Respondent's Feb. 28, 2004 Specimen of Use.

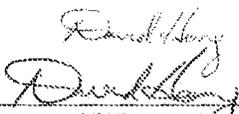
Response:

Interrogatory No. 18:

Explain in detail the Respondent's denial of the allegations in Paragraph 9 of the July 1, 2005 Petition for Cancellation and as stated in Paragraph 9 of the Respondent's Aug. 29, 2005 Answer to Petition for Cancellation.

Response:

DATED: Oct. 31, 2005

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O = Law
Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2005.10.31 12:45:35 -08'00'

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111

PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT JEANNETTE MARTELLO
Cancellation No.: 92044697
Page 12

Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpattentlaw.com
Attorney File No. 2005-02-0107

Certificate of Personal Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):

**PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT
JEANNETTE MARTELLO,**

was personally hand-delivered and served in an envelope addressed to:

**Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
Attorney for Respondent, Jeannette Martello,**

on Oct. 31, 2005.

By: *David Hong*
David Hong (Reg. No. 48704)

David Hong

Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O = Law
Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2005.10.31 12:45:49 -08'00'

PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT JEANNETTE MARTELLO

Cancellation No.: 92044697

Page 13

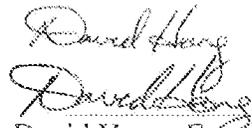
Request No. 15: Any invoices and receipts for any signs, stationery, business cards, brochures, and Web Sites, which the Respondent is or has used with the Respondent's Marks.

Response:

Request No. 16: Produce all documents identified in response to Petitioner's First Set of Interrogatories to Respondent, JEANNETTE MARTELLO not produced in response to the above requests, including without limitation, Interrogatories No. 3, 4, 6, 10, 11, 12, 15 and 16.

Response:

Dated: Oct. 31, 2005



David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O =
Law Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2005.10.31 11:31:52 -08'00'

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpatentlaw.com
Attorney File No. 2005-02-0107

PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697
Page 8

Certificate of Personal Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):

**PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
RESPONDENT JEANNETTE MARTELLO,**

was personally hand-delivered and served in an envelope addressed to:

Mr. Brandon Tesser, Esq.

TESSER & RUTTENBERG

12100 Wilshire Blvd., Suite 220

Los Angeles, CA 90025

Attorney for Respondent, Jeannette Martello.

on Oct. 31, 2005.

By:  _____

Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O = Law Office of David
Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2005.10.31 11:32:22 -08'00'

David Hong, Esq. (Reg. No. 45,704)

PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697

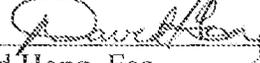
Page 9

Request for Admission No. 11

In U.S. Serial No. 76581391 for "Skin Deep Laser," the Respondent JEANNETTE MARTELLO submitted a copy of a Feb. 28, 2004 Sales Receipt for Ms. Christine Burgs as a specimen of use to the U.S. Patent and Trademark Office on March 15, 2004.

DATED: Oct. 31, 2005

Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O =
Law Office of David Hong
Reason: I am the author of this
document
Location: Santa Clarita, CA
Date: 2005.10.31 13:04:00 -08'00'

By: 

David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpattentlaw.com
Attorney File No. 2005-02-0107

PETITIONER'S FIRST REQUEST FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697
Page 6

Certificate of Personal Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):

PETITIONER'S FIRST SET OF REQUEST FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO,

was personally hand-delivered and served in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
Attorney for Respondent, Jeannette Martello,

on Oct. 31, 2005.

By: 
David Hong (Reg. No. 36,704)

Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O = Law
Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2005.10.31 13:04:18 -08'00'

PETITIONER'S FIRST REQUEST FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697
Page 7

ESTTA Tracking number: **ESTTA59073**

Filing date: **12/22/2005**

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

| | |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 92044697 |
| Party | Plaintiff ACM ENTERPRISES, INC. |
| Correspondence Address | DAVID HONG Law Office of David Hong P.O. Box 2111 Santa Clarita, CA 91386-2111 UNITED STATES david.hong@dhpattentlaw.com |
| Submission | Stipulated/Consent Motion to Extend |
| Filer's Name | David Hong, Esq., Reg. #45704 |
| Filer's e-mail | david.hong@dhpattentlaw.com |
| Signature | /david hong, Reg. #45704/ |
| Date | 12/22/2005 |
| Attachments | 2005-12-22 stip motion to extend discovery.pdf (1 page) 2005-12-22 signed stip tesser hong exhibit.pdf (1 page) |

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

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

MOTION TO EXTEND DISCOVERY PERIOD

Pursuant to TMBP 403.04 and 37 CFR Sec. 2.120(a), Petitioner ACM Enterprises, Inc. and Respondent Jeannette Martello, M.D. respectfully submit this motion to extend the end of the discovery period originally set for January 22, 2006 to February 22, 2006 or 30 additional days.

37 CFR Sec. 2.120(a) states: “[t]he discovery period may be extended upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.”

In support of this motion, please find attached a signed copy of the Stipulation to Extend the Discovery Period from January 22, 2006 to February 22, 2006, which includes the original and the proposed discovery and trial dates in a trial order format.

Dated: Dec. 22, 2005

Respectfully submitted,

/david hong, Reg. #45,704/
David Hong, Esq. (Reg. No. 45,704)
Attorney for Petitioner, ACM Enterprises, Inc.

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

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

STIPULATION TO EXTEND DISCOVERY PERIOD

Pursuant to TMBP 403.04 and 37 CFR Sec. 2.120(a), Petitioner ACM Enterprises, Inc. and Respondent Jeannette Martello, M.D. are the parties to this Cancellation Action (Cancellation No.: 92044697) and agree to extend the end of the discovery period originally set for January 22, 2006 to February 22, 2006 or 30 additional days.

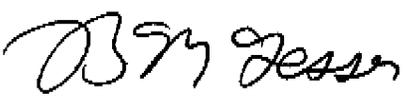
| <u>Stipulated Discovery and Trial Dates:</u> | <u>Original:</u> | <u>Proposed:</u> |
|-------------------------------------------------------|------------------|------------------|
| Discovery Period to Close: | 1/22/2006 | 2/22/2006 |
| 30-day testimony period for Plaintiff-close: | 4/22/2006 | 5/22/2006 |
| 30-day testimony period for Defendant-close: | 6/21/2006 | 7/21/2006 |
| 15-day rebuttal testimony period for Plaintiff-close: | 8/5/2006 | 9/5/2006 |

Dated: Dec. 22, 2005



David Hong, Esq.
Attorney for Petitioner, ACM Enterprises, Inc.

Dated: 12/22/05



Brandon Tesser, Esq.
Attorney for Respondent, Jeannette Martello, M.D.



Print - Close Window

From: "Brandon M. Tesser" <btesser@tesser-ruttenberg.com>
 To: "David Hong" <david_hong@sbcglobal.net>
 Subject: RE: stipulation to extend discovery
 Date: Thu, 22 Dec 2005 16:43:35 -0800

Hi David

1. I will try my best to have the documents available for you to pick up tomorrow afternoon. But don't count on it. That is one of the reasons why I wanted to further extend the deadlines. In any event, I thought we were simply going to send them to your office when they were ready. Let's touch base tomorrow to discuss this. I will definitely have the documents available for pick up by Tuesday afternoon.

2. This will confirm that we will agree with the proposal outlined in your 12/21/05 letter pursuant to which all discovery requests/responses/motions may be served via email or fax AND first class mail without extending the period to respond by an additional five days.

Regards,

Brandon

-----Original Message-----

From: David Hong [mailto:david_hong@sbcglobal.net]
 Sent: Thursday, December 22, 2005 3:46 PM
 To: Brandon M. Tesser
 Subject: RE: stipulation to extend discovery

Mr. Brandon Tesser, Esq.
 TESSER & RUTTENBERG

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
 CANCELLATION NO. 92044697
 Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
 Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
 Attorney File No. 2005-02-0107

Dear Brandon:

Please find attached two PDF documents for a Motion to Extend the Discovery Period and a Stipulation to Extend the Discovery Period by 30 days to Feb. 22, 2006. Please review, sign, and fax back to me, and I will file upon my receipt.

In addition, please let me know about:

1. Will the document production in response to the 10-31-2006 Document Request be ready for my pickup at your Wilshire office on Friday, Dec. 23 at 3 p.m.?
2. Response to my 12/21/2005 letter re: service by fax/e-mail and first class mail for discovery requests/responses/motions.

Very truly yours,

David Hong

"Brandon M. Tesser" <btesser@tesser-ruttenberg.com> wrote:

David, I think we should agree to extend the discovery period (and all other dates) by a period of 30 days, just to be on the safe side. If this is acceptable, please modify the stipulation and I will sign and return it to asap.

Sept. 24, 2007 PET. REPLY EXHIBITS
 Cancel #92044697

Page 12 of 89

Regards,

Brandon Tesser

-----Original Message-----

From: David Hong [mailto:david_hong@sbcglobal.net]

Sent: Tuesday, December 20, 2005 6:08 PM

To: Brandon Tesser

Subject: stipulation to extend discovery

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa

Petition to Cancel Registration No. 2932593

Petition Filed July 1, 2005

Serial No. 76581387 (filed March 15, 2004)

Mark: "SKIN DEEP"

Attorney File No. 2005-02-0107

Dear Brandon,

Please find two PDFs:

1. Motion to Extend Discovery;
2. Stipulation to Extend Discovery Period.

Please sign and e-mail or fax the stipulation back to me (501) 423-2265.

Reading the TMBP, when we extend the discovery closing period, it seems that the testimony periods are also extended correspondingly. I put the dates in the stipulation with reference to the old and new.

David Hong

TBMP 403.04

The closing date of the discovery period may be extended by stipulation of the parties approved by the Board, or on motion (pursuant to Fed. R. Civ. P. 6(b)) granted by the Board, or by order of the Board. An extension of the closing date for discovery will result in a corresponding extension of the testimony periods without action by any party.³⁰ A stipulation or consented motion to extend discovery and trial dates must be filed with the Board and should be presented in the form used in a trial order.

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property

Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
U.S. and Canada Tel & Fax: 866.824.8680 (toll-free)
International Tel: 805.807.0515
International Fax: 501.423.2265
E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net.

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David Hong, Esq.,

Sept. 24, 2007 PET. REPLY EXHIBITS

Cancel #92044697

Page 13 of 89

LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property

Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
U.S. and Canada Tel & Fax: 866.824.8680 (toll-free)
International Tel: 805.807.0515
International Fax: 501.423.2265
E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net.

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Request for Admission No. 19

Admit to the genuineness of the documents listed as Petitioner's Exhibit RFA No. 2 Pages 1-2, which are copies of the outside of one (1) VCD and seven (7) audiotapes, which were provided by the Respondent in response to the Petitioner's Document Request dated Oct. 31, 2005.

Request for Admission No. 20

Admit to the genuineness of the documents listed as Petitioner's Exhibit RFA No. 2 Pages 3-57, which were provided by the Respondent in response to the Petitioner's Document Request dated Oct. 31, 2005.

DATED: Feb. 22, 2006

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpatentlaw.com
Attorney File No. 2005-02-0107

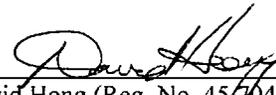
Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):
**PETITIONER'S SECOND SET OF REQUEST FOR ADMISSIONS TO RESPONDENT
JEANNETTE MARTELLO.**

(Note, the Exhibits to the Second Request for Admissions were provided in PDF format on a CD-ROM in the mailed confirmation copy).

was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello,
on Feb. 22, 2006.

By: 
David Hong (Reg. No. 45,704)

disseminated at any time by SARA HERRICK, and the location of said promotional materials or signs.

Response:

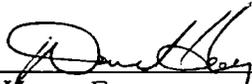
Interrogatory No. 24:

From Jan. 1, 2003 to Jan. 1, 2005, for invoices for the Respondent for services rendered to patients and clients at her Pasadena, CA office, please describe the Heading or Identifying Name of the Respondent on each invoice.

- (a) If there are differing Headings or Identifying Names, please describe how the Respondent used each Heading or Identifying Name on the invoices.
- (b) If there are differing Headings or Identifying Names, please describe the particular dates of use of each Heading or Identifying Name on the invoices.

Response:

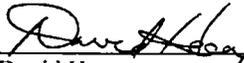
DATED: Feb. 22, 2006

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner.
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpatentlaw.com
Attorney File No. 2005-02-0107

Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s): PETITIONER'S SECOND SET OF INTERROGATORIES TO RESPONDENT JEANNETTE MARTELLO, was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to: Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220, Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello, on Feb. 22, 2006.

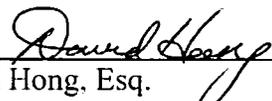

David Hong

PETITIONER'S SECOND SET OF INTERROG. TO RESP. JEANNETTE MARTELLO
Cancellation No.: 92044697

Request No. 31: Produce all documents identified in response to Petitioner's Second Set of Interrogatories to Respondent, JEANNETTE MARTELLO not produced in response to the above requests, including without limitation, Interrogatories No. 19-24.

Response:

Dated: Feb. 22, 2006

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner.
ACM ENTERPRISES. INC.

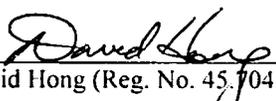
David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpattentlaw.com
Attorney File No. 2005-02-0107

Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):
PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT
JEANNETTE MARTELLO.

was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello.
on Feb. 22, 2006.

By: 
David Hong (Reg. No. 45,704)

LAW OFFICE OF DAVID HONG

David Hong, Esq.
P.O. Box 2111
Santa Clarita, CA 91386-2111

Telephone: (866) 824-8680
Facsimile: (866) 824-8680
david.hong@dhpattentlaw.com

Patent, Trademark, Copyright, Trade Secret &
Related Causes

April 20, 2006

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025

VIA MAIL & E-MAIL: btesser@tesser-ruttenberg.com

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This letter is regarding the April 14, 2006 Respondent's discovery responses, and a follow up to our telephone conversation today.

Petitioner served Requests for Admissions, Interrogatories, and Documents on Feb. 22, 2006. These responses were due in 30 days or March 24, 2006; Petitioner granted two extensions on March 23, 2006 (2-week ext.) and also on April 6, 2006 (1-week ext.), which totaled three additional weeks to a new deadline of April 14, 2006.

Your associate, Michelle Decasas, Esq., telephoned me on April 14, 2006 to request a third extension to respond; Ms. Decasas stated that due to the third party Ms. Sara Herrick's illness, you were not able to obtain the requested information and documents from Ms. Herrick.

Considering the already granted three weeks to respond, my client declined to grant another extension of time. Ms. Decasas informed me that your office would be providing objections to the Request for Documents and Interrogatories and a response to the Request for Admissions. I received your client's April 14, 2006 Responses on Wed., April 19, 2006.

Requests for Production of Documents

For Requests No. 17-21 and 25-31, Respondent replied that Petitioner will produce all responsive documents within her possession, custody, or control, if there are. As of today, I have not yet received any documents in response to the Feb. 22, 2006 Requests.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107
April 20, 2006
Page 2

In response to your objections to Requests No. 22-24, we sent these questions to further obtain relevant evidence as to the receipts and invoices that Dr. Martello allegedly used with the Mark for the patients that she identified and provided in her trademark applications. In other words, it is reasonable to ask any additional invoices and receipts for those same patients prior to and after the listed Feb. 2004 dates on the specimen invoices.

Interrogatories:

For Interrogatories No. 20, 21, and 22, your client only responded with objections, and we formally request a further response.

For Interrogatory No. 23, your client responded with objections and pursuant to FRCP 33(d) by producing business records and documents which contains the requested information. We ask again for these documents, and we not received any documents as of the date of this letter.

For Interrogatory No. 24, this interrogatory is clear and specific as to:

1. Time: Jan. 1, 2003 to Jan. 1, 2005.
2. Location: Respondent's Pasadena, CA Office.
3. Item/Document: Invoices.

As a result, we request a further response to this interrogatory. This interrogatory seeks relevant information because the Respondent submitted invoices (from approximately Feb. 2004) for her trademark applications.

Requests for Admissions (RFA):

RFA No. 12-14 request information regarding permanent signs. Your client objected as to "permanent" being vague and ambiguous; however, your client was able to understand the difference between "permanent" and a sign that "could be removed relatively easily." (See Respondent's 4-14-2006 Response to Request for Admission No. 12). As a result, we request further responses to RFA No. 14 and 15.

RFA No. 15, Petitioner requests a further response to regarding use of the terms "866WOMANDR" and "DOCTORMARTELLO.COM" during her FM 97.1 KLSX "SKIN DEEP" radio show. Petitioner requests that Respondent use the common dictionary definitions for "used" and "during" in responding to this request.

RFA No. 16-18, Petitioner requests a further response since this request is for relevant information regarding use of the marks "SKIN DEEP, SKIN DEEP LASER, and SKIN DEEP LASER MEDSPA," which are relevant to this proceeding.

Deadline to File Motion to Compel Discovery is APRIL 21, 2006

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107
April 20, 2006
Page 3

TBMP 523 & 524 and 37 CFR 2.120(e) require that any motions to compel need to be filed prior to the testimony period. Here, the Petitioner's testimony period starts Sat., April 22, 2006. As a result, I must file any Motions to Compel by Friday, April 21, 2006.

If I do not file any such motions, TBMP 523.04 states, "if a party that served a request for discovery receives a response thereto which it believes to be inadequate, but fails to file a motion to test the sufficiency of the response, it may not thereafter be heard to complain about the sufficiency thereof."

During our telephone conversation today, you informed me that you do not have the requested documents and information from your client, and I informed you that I will have to file a motion to compel to preserve my client's rights by Friday, April 21, 2006.

After the motion to compel is filed and served, and if your client provides the requested documents and information prior to your due date to respond to the motion, we have the option of taking the motion to compel off calendar.

This letter is to comply with the TBMP 523-524 and 37 CFR 121 requirements to meet and confer prior to filing any motions to compel discovery.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O =
Law Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2006.04.20 15:02:10 -07'00'

*Electronic System for Trademark Trials and Appeals***Receipt**

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: ESTTA77503

Filing date: 04/21/2006

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

| | |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 92044697 |
| Party | Plaintiff ACM ENTERPRISES, INC. |
| Correspondence Address | DAVID HONG Law Office of David Hong P.O. Box 2111 Santa Clarita, CA 91386-2111 UNITED STATES david.hong@dhpatentlaw.com |
| Submission | Motion to Compel Discovery |
| Filer's Name | David Hong, Reg #45704 |
| Filer's e-mail | david.hong@dhpatentlaw.com, david_hong@sbcglobal.net |
| Signature | /david hong, reg #45704/ |
| Date | 04/21/2006 |
| Attachments | 2006-04-21 motion to compel martello 01.pdf (10 pages)(38802 bytes) 2006-04-21 decl dh in support of mot compel.pdf (2 pages)(14292 bytes) A-2006_02_22 acm 2nd disc requests.pdf (22 pages)(980664 bytes) B-2006_04-14 martello resp 2nd reqs.pdf (17 pages)(951776 bytes) C-2006-04-20 ltr tesser re 4-14-2006 responses.pdf (3 pages)(328290 bytes) D-2005_12_09 martello resp 1st interrog p2-3.pdf (2 pages)(306631 bytes) E-martello tapes.pdf (1 page)(327086 bytes) |

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Sept. 24, 2007 PET. REPLY EXHIBITS

Cancel #92044697

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 26, 2006

Opposition No. 92044697

ACM ENTERPRISES, INC.

v.

Martello, Jeannette

David Mermelstein, Attorney:

Proceedings herein are suspended pending disposition of the motion to compel, except as discussed below. The parties should not file any paper which is not germane to the motion to compel. See Trademark Rule 2.120(e)(2).

This suspension order does **not** toll the time for either party to respond to discovery requests which had been duly served prior to the filing of the motion to compel, nor does it toll the time for a party to appear for a discovery deposition which had been duly noticed prior to the filing of the motion to compel. See *Id.* The motion to compel will be decided in due course.

.oOo.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 28, 2006

Cancellation No. 92044697

ACM Enterprises, Inc.

v.

Jeannette Martello

Ann Linnehan, Interlocutory Attorney

This case now comes up for consideration of petitioner's motion (filed April 21, 2006) to compel discovery.¹ The motion has been fully briefed.

By way of background, on February 22, 2006, the last day of the discovery period as last reset, petitioner served its Second Request for Production of Documents, Second Set of Interrogatories, and Second Request for Admissions to Respondent. Respondent's responses to such requests were due on March 24, 2006. Respondent requested, and petitioner granted, two extensions to respond to such requests totaling three weeks of time, thereby setting the deadline for April 14, 2006. On April 14, 2006, petitioner denied respondent's third request for an extension to respond. On such date, petitioner also refused to agree to stipulate to extend the

¹ The Board notes that opposer also filed a motion to test the sufficiency of responses to admissions. The issues of such

discovery and testimony periods to allow more time to resolve the issues between the parties.

In support of its motion, petitioner asserts that responses to its discovery requests were not received until April 19, 2006 and such responses were incomplete and did not provide any documents.

In contesting this motion, respondent asserts that petitioner's motion to compel is premature inasmuch as petitioner has failed to make a sufficient good faith effort, as required by Trademark Rule 2.120(e)(1), to resolve the parties' discovery dispute prior to seeking Board intervention.

In response thereto, petitioner asserts that because it provided respondent the courtesy of an additional three weeks of time to respond to its requests it was left with very little time to review any responses and to communicate with respondent. Petitioner argues that upon receipt of the responses on April 19, 2006, it only had three days to review the responses, communicate with respondent by telephone and written letter, and then prepare its motion to compel by the April 21, 2006 deadline.²

Upon careful review of all the circumstances revealed in the documents submitted by the parties in question, the

motion were subsequently resolved between the parties and, consequently, will receive no consideration herein.

Cancellation No. 92044697

Board agrees with respondent that petitioner has failed to make a sufficient good faith effort, as required by Trademark Rule 2.120(e)(1), to resolve the parties' discovery dispute prior to seeking Board intervention Board. See *Angelica Corporation v. Collins & Airman Corporation*, 183 USPQ 378 (TTAB 1974); *Cool Ray, Inc. v. Eye Care, Inc.*, 183 USPQ 618 (TTAB 1974); *Varian Associates v. Fairfield-Noble Corporation*, 188 USPQ 581 (TTAB 1975); and *J.B. Williams Company, Inc. v. Pepsodent G.m.b.H.*, 188 USPQ 577 (TTAB 1975).

Prior to filing its motion, petitioner demonstrated a history of cooperation with respondent by granting respondent's requests for an extension on more than one occasion. By serving the discovery requests at issue on the final day of discovery and by agreeing to the extensions requested by respondent, petitioner left itself little time to resolve the issues presented in its motion. Petitioner's only effort to resolve the parties' discovery dispute consisted of a single telephone call made on April 20, 2006 and a letter sent to respondent on the same day, i.e., the day before it filed the motion to compel. As such, petitioner failed to allow respondent any meaningful opportunity to confer with petitioner to discuss the issues raised and to attempt to resolve the parties' discovery

² Petitioner's testimony period was scheduled to begin on April

dispute prior to filing the motion to compel. The more appropriate course of action would have been for petitioner to agree to respondent's suggestion of stipulating to an extension of the discovery and testimony periods and, hence, perhaps obviating the need for filing its motion.³

Accordingly, the motion to compel is denied.

To facilitate the exchange of discovery herein, the Board hereby imposes its standard protective order, which is available online at <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>, on both parties. A copy of the Board's standard form order is enclosed with each party's copy of this order. The

22, 2006.

³ Opposer must adhere to the strictures set forth in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986), and repeated below:

[E]ach party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case. Moreover, where the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

Cancellation No. 92044697

parties are directed to file with the Board, within thirty days of the mailing date of this order, signed copies of the attached acknowledgment form so that the terms of the protective order shall survive this proceeding.

In order to afford the parties ample time in which to complete discovery, trial dates, commencing with discovery, are reset as follows:

| | |
|--------------------------------------------------------|------------------|
| DISCOVERY PERIOD TO CLOSE: | 1/5/2007 |
| Plaintiff's 30-day testimony period to close: | 4/5/2007 |
| Defendant's 30-day testimony period to close: | 6/4/2007 |
| Plaintiff's 15-day rebuttal testimony period to close: | 7/19/2007 |

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

DATED: Jan. 5, 2007


By: /david hong/
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpatentlaw.com
Attorney File No. 2005-02-0107

Certificate of Service

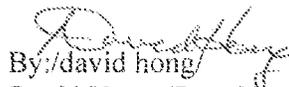
I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):

**PETITIONER'S THIRD SET OF REQUEST FOR ADMISSIONS TO
RESPONDENT JEANNETTE MARTELLO and EXHIBITS Pages 1-184.**

(Note for RFA 90-92, Respondent's Documents Marked with "MAR ####" labels and Produced in Response to Petitioner's Discovery Requests are being provided in PDF format on a CD-ROM in the mailed confirmation copy),

was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello,
on Jan. 05, 2007.


By: /david hong/
David Hong (Reg. No. 45,704)



Print - Close Window

From: "Brandon Tesser" <btesser@tesser-ruttenberg.com>
 To: "David Hong" <david_hong@sbcglobal.net>
 Subject: RE: [SPAM] - RE: ACM v Martello - Bayesian Filter detected spam
 Date: Fri, 9 Feb 2007 14:57:14 -0800

Confirmed. And yes, I will consider your revised language in responding to RFA No. 79.

-Brandon

From: David Hong [mailto:david_hong@sbcglobal.net]
 Sent: Friday, February 09, 2007 2:53 PM
 To: Brandon Tesser
 Subject: [SPAM] - RE: ACM v Martello - Bayesian Filter detected spam

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
 CANCELLATION NO. 92044697
 ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
 Attorney File No. 2005-02-0107

Dear Brandon:

Regarding the extension of time for responding to the Jan. 5, 2007 Request for Admissions:

Monday, Feb. 19, 2007 falls on a Federal Holiday. The due date for the responses for the 3rd Set of RFA should be moved to the next business day or Tues, Feb. 20, 2007 to comply with TBMP 112 and 37 CFR 2.196. Please confirm.

Request for Admission No. 79

Also, reading over my RFA No. 79, I realized that I inadvertently did not write: "Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:" in front of the identified listing.

Original RFA No. 79

79. "Company Name: SKIN DEEP, Santa Barbara , CA 93105-2625 , 805-687-9497; Sales Vol: \$1,200,000 Actual; Record # Source: 103055927 D&B; 'Toiletries, Cosmetics, and Perfumes'; 'Cosmetology and Personal Hygiene Salons'" on Page 204 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0315 of Respondent's provided documents.

I understand that you will most likely object to this RFA as being vague and ambiguous, but I would appreciate if you would consider the above language ("Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:") in responding to this RFA No. 79.

Revised RFA No. 79

Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed: "Company Name: SKIN DEEP, Santa Barbara, CA 93105-2625, 805-687-9497; Sales Vol: \$1,200,000 Actual; Record # Source: 103055927 D&B; 'Toiletries, Cosmetics, and Perfumes'; 'Cosmetology and Personal Hygiene Salons'" on Page 204 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0315 of Respondent's provided documents.

Very truly yours,

David Hong, Esq.

Sept. 24, 2007 PET. REPLY EXHIBITS
 Cancel #92044697

Page 29 of 88

Brandon Tesser <btesser@tesser-ruttenberg.com > wrote:

Confirmed.

Thank you for your professional courtesy and cooperation.

- Brandon

From: David Hong [mailto:david_hong@sbcglobal.net]
Sent: Friday, February 09, 2007 12:06 PM
To: btesser@tesser-ruttenberg.com
Subject: ACM v Martello

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Mr. Tesser:

My client is willing to grant Dr. Martello a 2-week extension to respond to the Jan. 5, 2007 Request for Admissions, including any objections. Note that the first response date was Feb. 5, 2007, and the new extended response date will be Feb. 19, 2007.

In return, we require that your client grant ACM Enterprises, Inc. any additional extensions of time, such as extending the time to file motions or extend any trial testimony periods accordingly.

I would also request that you e-mail me a PDF copy of the responses in addition to the mailed copy.

Please confirm your acceptance of these terms.

Also, as a reminder, please find a PDF of our e-mail agreement to waive the additional 5-days of time to respond when the request or paper was served by first class mail plus e-mail or first class mail plus fax.

Very truly yours,

David Hong, Esq.

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property
Mailing Address: P.O. Box 2111 , Santa Clarita , CA 91386-2111
E-Mail: david.hong@dhpatentlaw.com or david_hong@sbcglobal.net
866.824.8680 Tel & Fax
805.807.0515 Mobile & Int'l Tel

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Sept. 24, 2007 PET. REPLY EXHIBITS

Cancel #92044697

Page 39 of 89

must not use, disclose, disseminate, copy or print the contents. If you receive this e-mail in error, please notify the sender by reply e-mail and delete and destroy the message.

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property
Mailing Address: P.O. Box 2111 , Santa Clarita , CA 91386-2111
E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net
866.824.8680 Tel & Fax
805.807.0515 Mobile & Int'l Tel

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1 provided by the Respondent in response to Petitioner's Oct. 31, 2005 First Request for
2 Documents.

3 **Response:**

4 Martello admits the documents marked MAR 0001 to MAR 0027 are true and correct
5 copies of materials which were produced to ACM's counsel in this proceeding in response to
6 Petitioner's Oct. 31, 2005 First Request for Documents. Denied as to the remainder.

7 **Request for Admission No. 92:**

8 Admit the genuineness of the documents marked MAR 0402 to MAR 0613, which were
9 provided by the Respondent in response to Petitioner's Feb. 22, 2006 Second Request for
10 Documents.

11 **Response:**

12 Martello admits the documents marked MAR 0402 to MAR 0613 are true and correct
13 copies of materials which were produced to ACM's counsel in this proceeding in response to
14 Petitioner's Feb. 22, 2006 Second Request for Documents. Denied as to the remainder.

15 **Request for Admission No. 93:**

16 Admit the genuineness of the documents marked Petitioner's RFA No. 3 Exhibit Pages
17 1-184. Note pages 16-184 are printouts from www.skindeepworld.com radio program
18 transcripts.

19 **Response:**

20 Martello admits the documents marked Petitioner's RFA No. 3 Exhibit Pages 1-184
21 appear to be copies of modified transcripts of excerpted portions of certain of Respondent's radio
22 programs.

23 Dated: February 20, 2007

TESSER & RUTTENBERG

24
25 By:



26 Brandon M. Tesser
27 Attorneys for Respondent
28 Jeannette Martello, M.D.

VERIFICATION

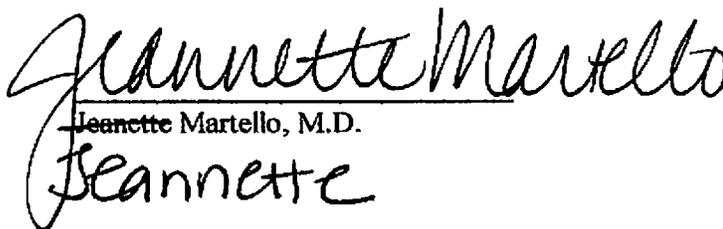
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

I have read the foregoing **RESPONSES TO REQUEST FOR ADMISSIONS** and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on February 20, 2007, at Pasadena, California.

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


Jeannette Martello, M.D.
Jeannette

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the COUNTY of LOS ANGELES, STATE of CALIFORNIA. I am
4 over the age of 18 and not a party to the within action; my business address is 12100 Wilshire
Boulevard, Suite 220, Los Angeles, California 90025.

5 On February 20, 2007, I served the foregoing document(s) described as
6 **RESPONDENT'S RESPONSES TO PETITIONER'S SECOND REQUEST FOR**
7 **ADMISSIONS** in this action by placing a true copy thereof enclosed in a sealed envelope
addressed as follows:

8 David Hong, Esq.
9 Law Office of David Hong
P.O. Box 2111
10 Santa Clarita, California 91386-2111
Tel/Fax: (866) 824-8680
Attorney for Petitioner ACM Enterprises, Inc.

- 11 **BY MAIL:** I am readily familiar with my firm's practice for the collection and
12 processing of correspondence for mailing with the United States Postal Service.
13 In the ordinary course of business, correspondence would be deposited with the
14 United States Postal Service that same day. I placed true copies of the above-
entitled document in envelopes addressed as shown above and sealed and placed
them for collection and mailing on the date stated above, following ordinary
business practices.
- 15 **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to
the offices of the addressee(s) as marked with an ***.
- 16 **BY FEDERAL EXPRESS:** I caused said envelope(s) to be sent by Federal
17 Express to the addressee(s) on the attached service list.
- 18 **BY TELECOPIER:** In addition to the above service by mail, hand delivery, or
19 Federal Express, I caused said document(s) to be transmitted by telecopier on June
24, 2005 at approximately 6:30 p.m. to the addressee(s) above.
- 20 (Federal) I declare that I am employed in the office of a member of the bar of this
21 court at whose direction the service was made.

22 Executed on February 20, 2007, at Los Angeles, California.

23 
24 Wendy Southart

LAW OFFICE OF DAVID HONG

David Hong, Esq.
P.O. Box 2111
Santa Clarita, CA 91386-2111

Telephone: (866) 824-8680
Facsimile: (866) 824-8680
david.hong@dhpatentlaw.com

Patent, Trademark, Copyright, Trade Secret &
Related Causes

February 27, 2007

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025

VIA MAIL & E-MAIL: btesser@tesser-ruttenberg.com

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This letter is regarding potential settlement for this Cancellation Proceeding and a follow up to your Feb. 27, 2007 e-mail letter.

As you know, Federal trademark rights arise out of use of the mark with the particular good or service in Interstate Commerce. This current cancellation proceeding specifically regards the right of your client to register the mark "SKIN DEEP" with the listed services (medical, health spa (cosmetic body care services), cosmetician, and physician) in the application.

Currently, in response to Interrogatory No. 4 (earliest date that Respondent intends to rely on this proceeding), your client has provided a date of March 2001. I am assuming that this March 2001 date is your client's alleged first date of Interstate Commerce use. Your client's application lists a first use in Interstate Commerce date of Feb. 28, 2004.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107
Feb. 27, 2007
Page 2

Dr. Martello cannot claim priority to alleged use of another party's service mark if she did not indeed own that third party's (Ms. Sara Herrick) mark at the time of filing her application or March 15, 2004. See TMEP 803.01, 803.06 and 1201.02(b). Ms. Herrick's assignment to Dr. Martello is dated Dec. 2005, which is after the March 15, 2004 filing date.

In addition, even if she had acquired Ms. Herrick's mark as of the filing date of her application, Dr. Martello would not have the first use in Interstate Commerce with the services listed on her application.

Based on your client's Feb. 21, 2003 Thomson and Thomson search report, there appears to be several companies using the trademark SKIN DEEP in similar services in Interstate Commerce prior to March 2001. See Attachment A.

Based on the above, Dr. Martello does not right to register the SKIN DEEP mark for the listed medical, physician, cosmetician, and physician services. In view of the foregoing and the additional claims of fraud (i.e., Dr. Martello had knowledge of third party users of the SKIN DEEP mark and also had a duty based on the T&T search report to conduct a simple Internet search regarding these third party uses), settlement is the only reasonable and viable option for your client.

Please conduct your own search to confirm these results. After review, please contact me to discuss settlement terms to end this matter and to save our mutual clients' money.

This letter is not intended as a full statement of all of the facts in this matter, nor a waiver of any of my client's rights or remedies, whether at law or in equity, all of which are hereby expressly reserved. The content and terms of this letter are for settlement purposes only and shall be governed by the terms of California Evidence Code section 1152.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O = Law
Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2007.02.27 16:10:29 -08'00'

Enclosures: Attachment A; 2007-02-27_ACM_doc_prod_001_footer

To: B. Tesser, Esq.
From: D. Hong, Esq.
Re: ATTACHMENT A
Cancellation Proceeding 92044697 for "SKIN DEEP"

1. SKIN DEEP INC., Bloomfield, MI 48301-1775; Sales Vol: \$1,400,000 Estimate; Record # Source: 162243963-D&B; 'Plastic Surgeon,'" on Page 213 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0324 of Respondent's provided documents.

I was able to track down a website for this business at www.anewyou.com; see PDF searches on Google and Yahoo Yellow pages based on zip code listed in the T&T listing and also the business name "skin deep". A search of the free Michigan State corporate entity database shows this listing:
http://www.dleg.state.mi.us/bcs_corp/dt_corp.asp?id_nbr=22606A&name_entity=SKIN%20DEEP,%20INC.

The Internet Wayback Machine at www.archive.org lists an Internet library of web sites since 1996. A search for www.anewyou.com at www.archive.org reveals a search result with an earliest date of Dec. 2, 1998. When you click on this Dec. 2, 1998 listing, the Archive brings up a webpage showing the mark SKIN DEEP.

I have attached PDF pages of printouts for your reference (See pages 1-12 of the 2-27-2007 production).

2. SKIN DEEP THE BODY SPA, Huntington Beach, CA 92647-7318, 714-841-3313; Sales Vol: 300,000 ESTIMATE; Record # Source: 798262531-D&B; 'Facial Salons; Electrolysis and Epilatory Services; Massage Parlor,'" on Page 204 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0315 of Respondent's provided documents.

Similar searches on Yahoo Yellow Pages and Google for "skin deep" and "Huntington beach" uncovered a web site: www.e-skindeep.com.

A search on www.archive.org for www.e-skindeep.com finds a search result with an earliest date listing of March 2, 2001.

In addition, at the current version of www.e-skindeep.com, there appears to be press articles mentioning this company approximately Aug. 2000. See pages 13-20 of the 2-27-2007 production.

3. SKIN DEEP, Santa Barbara, CA 93105-2625, 805-687-9497; Sales Vol: \$1,200,000 Actual; Record # Source: 103055927 D&B; 'Toiletries, Cosmetics, and Perfumes'; 'Cosmetology and Personal Hygiene Salons'' on Page 204 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0315 of Respondent's provided documents.

Similar searches on Yahoo Yellow Pages and Google for "skin deep" and "93105" uncovered a web site: www.skindeepsalon.com.

A search on www.archive.org for www.skindeepsalon.com finds a search result with an earliest date listing of July 21, 2001. See pages 21-27 of the 2-27-2007 production.

In addition:

4. DUPAGE MEDICAL GROUP in Illinois (www.dupagemedicalgroup.com), which has a listing of medical articles about dermatology from Spring 2001 at their web site. See page 28 of the 2-27-2007 production.

Note that TMEP 904.06 and 710.01(b) discuss Internet based evidence.



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Shop for great deals on men's Apparel and millions of other products at
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on all our orders.

→ www.monstermarketplace.com

Yahoo! Yellow Pages

YELLOWPAGES.COM

Your Search: skin deep

Search

Location: Beyond Bloomfield Hills, MI 48301
Save Location | Change Location

Search by Category or Business Name (e.g. Hotel or Holiday Inn)

Top > Search for: skin deep

Sort by: Sponsored Businesses Name Distance

Showing 1 to 8 of 8

| Business Name: | Address: | Miles** |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------|
| Warm Spirit Self Care & Wellness Products All Nature-Based Body & Skin Care Products Free Samples & Catalog (703) 217-8846 Web Site More Info | Serving Bloomfield Hills, MI | |
| Warm Spirit Skin Care & Wellness Products Nature-Base Skin Care & Body Care (973) 297-1757 Web Site More Info | Serving Bloomfield Hills, MI | |
| Auster Barry I MD Contact Us Today for Additional Information (248) 538-0109 Web Site More Info | 31420 Northwestern Hwy Farmington, MI Map | 3.3 |
| Serendipity Health & Beauty Start Feeling Better Today! (248) 737-2773 Web Site More Info | 31154 Orchard Lake Road Farmington, MI Map | 4.1 |
| Radiance Medspa Love The Way You Look (248) 375-0877 Web Site More Info | 358 N. Adams Rd Rochester, MI Map | 10.7 |
| Petrusha And Company Hair Styling - Massage - Waxing (248) 625-6202 More Info | 5530 Sashabaw Rd Clarkston, MI Map | 13.0 |
| Simply Skin Essentials For Your Health Inside And Out (734) 455-3465 Web Site More Info | 696 N Mill St Suite 105 Plymouth, MI Map | 14.5 |
| Pretty Lady Salon Nails - Tanning (313) 386-5557 Web Site Yellow Page Ad More Info | 18728 Ecorse Rd. Allen Park, MI Map | 20.0 |

Sort by: Name Distance

Showing 1 to 4 of 4

| Business Name: | Address: | Miles* * |
|--------------------------------------------------------------------------------------|--------------------------------------------|----------|
| Gray, Michael DO - Skin Deep (248) 538-3333 Write a Review | 6635 Daly Rd West Bloomfield, MI | 4.1 |

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Sept. 24, 2007
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Skin Deep
 (248) 539-3223 [Write a Review](#)

6635 Daly Rd
West Bloomfield, MI [Map](#) 4.1

Skin Deep Tanning Salons
 (313) 724-5555 [Write a Review](#)

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Dearborn Heights, MI [Map](#) 14.0

Skin Deep Laser Assoc Llc
 (734) 432-9083 [Write a Review](#)

38253 Ann Arbor Rd
Livonia, MI [Map](#) 14.5

** Distances are in Miles from the center of Bloomfield Hills, MI 48301

Sort by: **Name** | **Distance**

Showing 1-4 of 4

Sponsor Results (What's this?)

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www.offthehook-ringtones.com

Skin Deep Order Now and Save. Low Prices with Fast Free Shipping on First Order.
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Address:
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Country: [▼](#)

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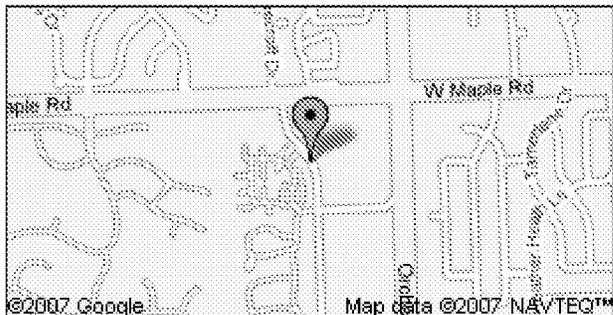
48301 "skin deep"

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Web

Results 1 - 10 of about 101 for 48301 "skin deep" . (0.32 seconds)

**Skin Deep**

www.anewyou.com

6635 Daly Rd
 West Bloomfield, MI 48322
 (248) 539-3223

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[More local results »](#)
Troy Skin Care | Troy Skin6.4MI from Troy. **SKIN DEEP**, 248-647-7546. 6405 Telegraph Rd # F-2 Bloomfield Twp, MI**48301** 7.4MI from Troy. JANINE ADAMS SKIN CARE CTR INC, 248-552-9450 ...www.magicyellow.com/category/Skin_Care/Troy_MI.html - 103k - [Cached](#) - [Similar pages](#)**Ann Arbor Skin Care | Ann Arbor Skin****SKIN DEEP**, 248-647-7546. 6405 Telegraph Rd # F-2 Bloomfield Twp, MI **48301** 30.1MI

from Ann Arbor. JANINE ADAMS SKIN CARE CTR INC, 248-552-9450 ...

www.magicyellow.com/category/Skin_Care/Ann_Arbor_MI.html - 104k -

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 Maple Rd Bimfld MI **48301**-3376 More Results For: Spas-Beauty, Day & Health ...
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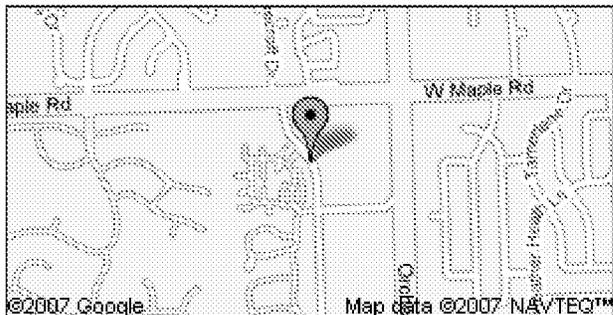
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Salon Dion 37591 Harper Clinton Twp., MI 48036 586-493-1998

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2/27/2007

www.womenslifestyledetroit.com/images/20050907.pdf - Similar pages

Michael W. Gray, DO West Bloomfield Michigan (MI), Breast ...

6635 Daly Rd. West Bloomfield, Michigan **48322** ... In Dr. Gray's new state of the art surgical facility and **Skin Deep** Spa, you will feel the confidence, ...

www.locateadoc.com/folio.cfm/sid/25/id/362678 - 76k - Cached - Similar pages

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The Michigan Cosmetic Surgery Center and **Skin Deep** Spa are located at: 6635 Daly Road West Bloomfield, MI **48322**. Just one light west of Orchard Lake Road, ...

www.locateadoc.com/directory.cfm/25/MI/West%20Bloomfield - 65k - Cached - Similar pages

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CORPORATE ENTITY DETAILS

Searched for: SKIN DEEP, INC.

ID Num: 22606A

Entity Name: SKIN DEEP, INC.

Type of Entity: Domestic Profit Corporation

Resident Agent: MICHAEL W GRAY

Registered Office Address: 6635 DALY RD WEST BLOOMFIELD MI 48322

Mailing Address: MI

Formed Under Act Number(s): 284-1972

Incorporation/Qualification Date: 9-20-1999

Jurisdiction of Origin: MICHIGAN

Number of Shares: 60,000

Year of Most Recent Annual Report: 06

Year of Most Recent Annual Report With Officers & Directors: 06

Status: ACTIVE **Date:** Present

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| 0 pages | 0 pages | 2 pages | 8 pages | 2 pages | 3 pages | 8 pages | 14 pages | 15 pages | 9 pages | 8 pages | 0 pages |
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| | | | Feb 04, 1999 | | Nov 26, 2001 | Jun 05, 2002 | Mar 25, 2003 | Apr 02, 2004 | Mar 04, 2005 | * Feb 07, 2006 | |
| | | | Feb 08, 1999 | | | Sep 24, 2002 | Apr 06, 2003 | Apr 20, 2004 | Mar 23, 2005 | Feb 09, 2006 | |
| | | | Apr 20, 1999 | | | Sep 26, 2002 | Apr 22, 2003 | May 09, 2004 | Jul 28, 2005 | Feb 14, 2006 | |
| | | | Apr 27, 1999 | | | Nov 21, 2002 | * May 24, 2003 | May 18, 2004 | Oct 30, 2005 | * Feb 25, 2006 | |
| | | | Apr 29, 1999 | | | Nov 27, 2002 | May 29, 2003 | May 20, 2004 | Nov 04, 2005 | * Mar 02, 2006 | |
| | | | May 05, 1999 | | | Nov 29, 2002 | Jun 20, 2003 | Jun 06, 2004 | Dec 23, 2005 | Apr 27, 2006 | |
| | | | | | | | Aug 05, 2003 | Jul 26, 2004 | Dec 24, 2005 | | |
| | | | | | | | Aug 08, 2003 | Jul 28, 2004 | | | |
| | | | | | | | Oct 11, 2003 | * Aug 28, 2004 | | | |
| | | | | | | | Nov 21, 2003 | Sep 20, 2004 | | | |
| | | | | | | | Nov 22, 2003 | Sep 21, 2004 | | | |
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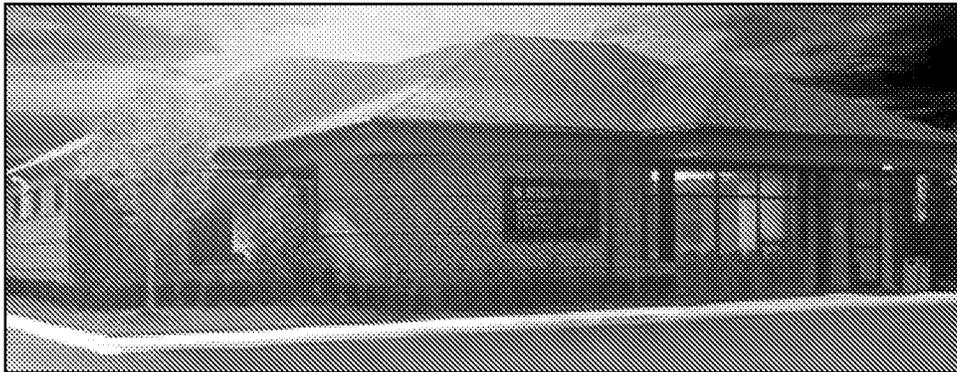
DR. MICHAEL W. GRAY, D.O.
Michigan Cosmetic Surgery Center

SKIN DEEP

NATURE ART SCIENCE

MICHIGAN COSMETIC SURGERY CENTER | SKIN DEEP SPA

Click above to find out more about the Michigan Cosmetic Surgery Center and Skin Deep Spa



Discover the fountain of youth: Michigan Cosmetic Surgery Center and Skin Deep Spa. This new 10,000 square foot marvel of modern medicine is home to renowned cosmetic surgeon Dr. Michael Gray.

We believe in changing with the times. And we have created a place where you can do the same. With everything from Cosmetic procedures and surgery, to non-invasive procedures and skincare products, now you can discover, a new you.

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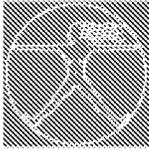
6635 DALY ROAD | WEST BLOOMFIELD | 248.536.3333

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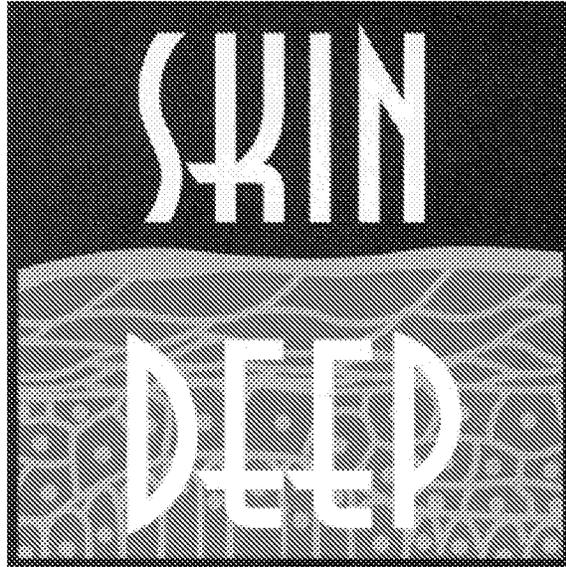
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DR. MICHAEL W. GRAY, D.O.
Michigan Cosmetic Surgery Center

Dr. Gray - Making dreams come true

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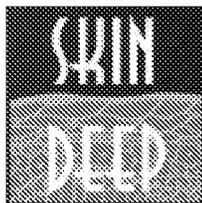


Discover the fountain of youth at Skin Deep

Detroit News

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Skin Deep
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Home

About Us

Power Peel

Hair Removal

Body Wrap

Glycolic Acid

Oxy Facial

Supra Peel

Pumpkin Peel

Fruit Facials

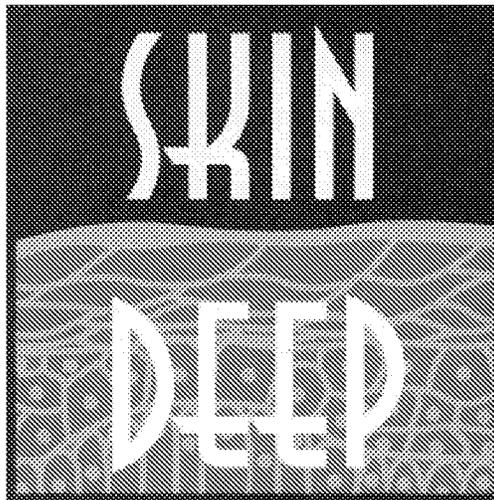
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Bono-Blend

Spa Treatments

Cool Touch

Coupons



The Skin Enhancement Center

NOW 2 Locations

NEW! 37650 Professional Center Drive, Suite 145A
Livonia, MI 48154

6405 Telegraph Road, Suite F-2
Bloomfield Hills, MI 48301

Tel (248) 647-SKIN | Fax (248) 593-8003

Days: Monday - Saturday

Hours: M 9am-8pm/T, W, Th 9am-7pm/F 9am-6pm/Sat 9am-4pm

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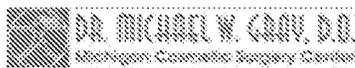
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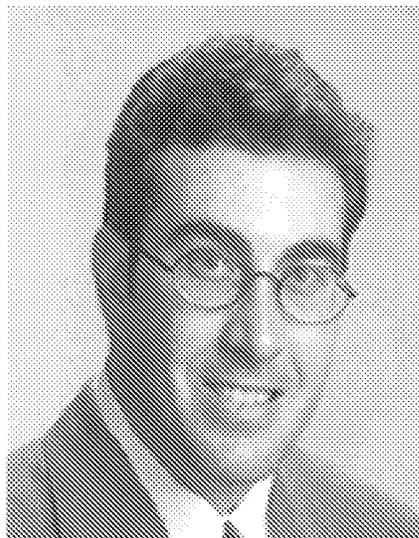
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- Procedure Information
- Practice Information
- Patient Testimonials
- Skin Care
- Information Request Form
- Let's Ask the Doctor
- How to Find Us
- Financing

The Detroit News

The Oakland Press

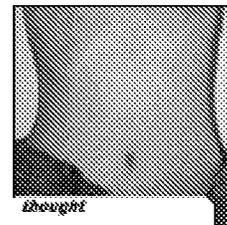


With the arrival of Dr. Michael W. Gray, D.O. to Detroit, Michigan the status quo of cosmetic surgery in the area has been dramatically changed. He has been sought for guest appearances on 95.5 with "Meet the Plastic Surgeon" with Danny Bonaduce and Kevin O'Neal; 950 am WWJ with Laura Teisher; as well as Channel 2-Fox, 4-WDIV, 12 (Flint), 50-UPN. Not only has radio and television reporters been interested in Dr. Gray, but the local press all have actively pursued interviews with him. (The

Oakland Press, The Detroit News, The Jewish News, Hour Magazine and Style Magazine to name a few.)

Dr. Michael Gray, specializes in all areas of cosmetic surgery. Following several years of schooling, internship, residency, fellowships and positions in various educational institutes and hospitals throughout the country, Dr. Gray most recently decided to call the metro Detroit area home. As a cosmetic surgeon, he specializes in Total body aesthetic surgery and today is a leading surgeon in Endoscopic Breast Augmentation and Ultrasonic Liposuction to name a few. He was one of the first surgeons in Michigan to perform Internal Ultrasonic assisted Liposuction and the safer form of the same procedure known as External Ultrasonic assisted Liposuction. Having performed hundreds of these procedures he has become a local expert in this area. As one of a few surgeons in the country formally trained to perform Endoscopic Breast Enlargement (ENDOBAM for short) and the first to perform this procedure in Michigan, he has been performing this procedure with excellent results since 1993. This procedure, hailed as a cosmetic breakthrough allows breast enlargement surgery to be performed in a Scarless manner with minimal to no discomfort and short recovery. Due to his extensive experience, Dr. Gray can typically perform this operation in less than 30 minutes thus reducing the time required for anesthesia. One patient's husband stated, "You have exceeded our expectations." His wife added, "Endobam is the best gift I have ever treated myself to." M.K. a 26 year old nurse went on to say, "No scars, no pain, and I went from an A-cup to a good C in minutes." A mother of a new born is quoted, "I chose this procedure for faster recovery. I have a baby to care for. It was so easy I wished I did this years ago!" These are only a few of the hundreds of favorable comments made to our Doctor.

"...Let me help you fulfill your dreams..." Dr. Gray 1998



Hours
Monday to Saturday
9 to 5



Complimentary
Consultations
Available

View an audio/video clip

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Dr. Gray

Site design and implementation by P.M. Info Systems, Inc.

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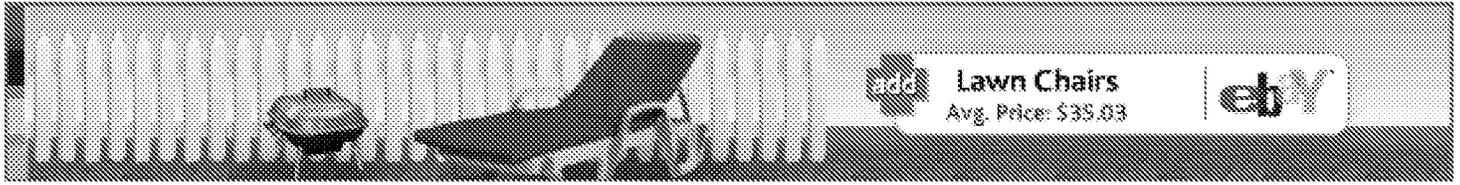
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Yellow Pages Home - Help



Yahoo! Yellow Pages

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Your Search: skin deep Search

Search by Category or Business Name (e.g. Hotel or Holiday Inn)

Location: ☆ Huntington Beach, CA 92647
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Top > Search for: skin deep

Sort by: Sponsored Businesses Name Distance

Showing 1 to 4 of 4

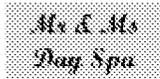
Business Name:

Address:



Amadeus Spa
Escape To Tranquility With LA's Best Day Spa!!!
(626) 578-3404 [Web Site](#) [Local Listings](#) [More Info](#)

Serving Huntington Beach, CA



Mr & Ms Day Spa
"The Affordable Spa" Offering Massage Therapy
(562) 498-1300 [Web Site](#) [More Info](#)

1847 Ximeno Ave
Long Beach, CA [Map](#)

Capelli International Day Spa Salon
Nurture Your Body & Soul
(714) 528-7695 [More Info](#)

18264 Imperial Hwy
Yorba Linda, CA [Map](#)

Zahira European Skin Care
New Location In South Orange County-Free
(323) 957-1765 [Web Site](#) [More Info](#)

321 N Larchmont Blvd
Los Angeles, CA [Map](#)

Sort by: Name Distance

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Business Name:

Address:

Skin Deep The Body Spa
(714) 841-3313 [Write a Review](#)

7862 Warner Ave # J
Huntington Beach, CA [Map](#)

Sort by: Name Distance

Showing 1-1 of 1

[Beyond Huntington Beach 92647](#)

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www.offthehook-ringtones.com

Skin Deep Order Now and Save. Low Prices with Fast Free Shipping on First Order.
www.hotmoviesale.com

Deep Skin Looking for deep skin? Find exactly what you want today.
www.ebay.com

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 (by name or category)

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 (Address, Intersection or Airport Code)

Address:
 (Optional)

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Country: 

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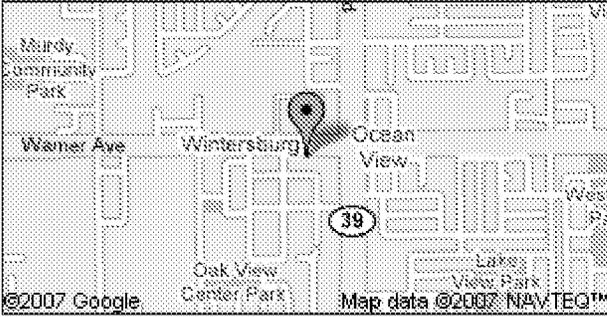
"skin deep" "huntington beach"

Search

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Web

Results 1 - 10 of about 957 for "skin deep" "huntington beach". (0.13 seconds)



Skin Deep the Body Spa

www.e-skindeep.com

7862 Warner Ave # J
Huntington Beach, CA 92647
(714) 841-3313
★★★★☆ 5 reviews

[Get directions](#) - [More information](#)

Sponsored Links

HB Skin Spa

Check Out the Hottest New Skin Care Spa in **Huntington Beach, CA**
www.HBSkinSpa.com

Yahoo! Travel - Deals

Compare Prices and Save up to 70%
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travel.yahoo.com

Skin Deep - The Body Spa

Skin Deep - The Body Spa 7862 Warner Avenue Suite J 714-841-3313 Surf City Grocer Hyatt Regency **Huntington Beach** Resort & Spa 21500 Pacific Coast Highway ...
surfcityusa.com/.../xsl-store.xsl/start_id-oekmpcjdgkfgkfciffccpchnmbmrmckejndibilkkn/search-all/ - 22k - Cached - Similar pages

Skin Deep, The Body Spa - Overview - Huntington Beach California ...

Located in a shopping complex, this feng shui-influenced spa, laid out in a circle and including a tearoom, is designed to encourage a meditative frame of ...
www.spafinder.com/Spa/496-Skin_Deep_The_Body_Spa-Huntington_Beach-California-United_States;jsessionid=aFj... - 36k - Cached - Similar pages

Skin Deep The Body Spa - Huntington Beach, CA 92647 - Reviews ...

Read 5 Reviews of **Skin Deep** The Body Spa in **Huntington Beach, CA**. I thoroughly enjoyed the quietness and and mood of the facility. Very tranquil too.
www.insiderpages.com/b/3710643202 - Similar pages

Skin Deep, Huntington Beach, CA : Reviews of Skin Deep - Yahoo! Travel

Skin Deep, Huntington Beach, CA: Find photos, descriptions, maps, and expert advice on things to do in **Huntington Beach, CA** on Yahoo! Travel.
travel.yahoo.com/p-travelguide-2975082-skin_deep_huntington_beach-i - 111k - Cached - Similar pages

Skin Deep , Huntington Beach , United States

Skin Deep Full contact information - address, email, website and telephone details, plus an informative guide.
www.3.oag.com/Cities/Detail?city=3682139&cat=26&item=40552353 - 36k - Cached - Similar pages

Skin Deep The Body Spa - Huntington Beach, CA, 92647 - Citysearch

Come to Citysearch to get information, directions, and reviews on **Skin Deep** The Body Spa and other Beauty & Fitnesses, Yellow Pages in **Huntington Beach**.
orangecounty.citysearch.com/profile/597677/huntington_beach_ca/skin_deep_the_body_spa.html - 34k - Cached - Similar pages

Skin Deep Rx - Skin Deep - The Body Spa - Huntington Beach - best ...

Skin Deep welcomes you to experience the finest skin care available today. The **Skin Deep** Rx line of products will beautify and nourish your skin. ...
store.eskindeep.dermteam.qicnet.net/skindeeprx/index.html - 32k - Cached - Similar pages

Oily - Skin Deep 92044697y Spa - Huntington Beach - best in body ...

Skin Deep Rx Vitamin A.2 Pads. Skin Deep Rx Vitamin A.2 Pads ... Skin Deep Rx AHA Daily Pads. Combination of alpha (glycolic and lactic) and beta ...
store.eskindeep.dermteam.qicnet.net/skintype/oily/index.html - 32k -

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Skin Deep - The Body Spa - Wedding Spa Manicures Health Wellness ...

Wedding Services In Southern California: **Skin Deep** - The Body Spa - Wedding Spa Manicures Health Wellness Spas Resort Well Resorts in **Huntington Beach, ...**
www.weddingcompass.com/ServiceDetails.cfm?id=1320 - 137k - Cached - Similar pages

Spa Emergency! - Huntington Beach Spas

Please enable scripting in your browser, and then refresh this page. Thanks! **Huntington Beach, CA. Skin Deep** the Body Spa. **Skin Deep** the Body Spa ...
www.spaemergency.com/ca-huntington-beach-spa - 166k - Cached - Similar pages

Result Page: 1 2 3 4 5 6 7 8 9 10 **Next**

"skin deep" "huntington beach" Search

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Searched for <http://www.e-skindeep.com>

80 Results

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Search Results for Jan 01, 1996 - Feb 27, 2007

| 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---------|---------|---------|---------|---------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---------|
| 0 pages | 5 pages | 10 pages | 23 pages | 19 pages | 17 pages | 4 pages | 0 pages |
| | | | | | Mar 02, 2001 * | Feb 13, 2002 | Feb 02, 2003 * | Jan 23, 2004 * | Feb 03, 2005 * | Feb 03, 2006 * | |
| | | | | | Mar 06, 2001 | Jun 08, 2002 | Feb 10, 2003 | Mar 17, 2004 * | Feb 08, 2005 | Feb 16, 2006 * | |
| | | | | | Mar 08, 2001 | Jul 19, 2002 * | Feb 15, 2003 | Apr 03, 2004 * | Feb 11, 2005 | Mar 04, 2006 * | |
| | | | | | Apr 01, 2001 * | Aug 02, 2002 * | Mar 19, 2003 * | May 19, 2004 | Feb 14, 2005 | May 16, 2006 * | |
| | | | | | Nov 27, 2001 | Aug 11, 2002 | Mar 29, 2003 | May 25, 2004 | Feb 19, 2005 | | |
| | | | | | | Sep 24, 2002 * | Apr 07, 2003 | Jun 09, 2004 * | Mar 03, 2005 * | | |
| | | | | | | Sep 27, 2002 | Apr 19, 2003 | Jun 13, 2004 | Mar 10, 2005 | | |
| | | | | | | Oct 03, 2002 | May 01, 2003 * | Jun 21, 2004 | Mar 13, 2005 | | |
| | | | | | | Nov 25, 2002 * | May 24, 2003 * | Jul 25, 2004 | Mar 14, 2005 | | |
| | | | | | | Nov 28, 2002 | May 31, 2003 * | Aug 28, 2004 * | Apr 02, 2005 * | | |
| | | | | | | | Jun 01, 2003 | Aug 31, 2004 * | Apr 09, 2005 | | |
| | | | | | | | Jul 18, 2003 * | Sep 01, 2004 | Apr 20, 2005 | | |
| | | | | | | | Jul 31, 2003 * | Sep 06, 2004 | Aug 30, 2005 * | | |
| | | | | | | | Aug 03, 2003 | Sep 24, 2004 * | Sep 04, 2005 | | |
| | | | | | | | Sep 22, 2003 * | Sep 26, 2004 | Nov 24, 2005 | | |
| | | | | | | | Oct 09, 2003 * | Nov 11, 2004 * | Dec 05, 2005 | | |
| | | | | | | | Oct 27, 2003 | Nov 27, 2004 | Dec 17, 2005 | | |
| | | | | | | | Nov 19, 2003 * | Dec 04, 2004 * | | | |
| | | | | | | | Nov 22, 2003 | Dec 23, 2004 | | | |
| | | | | | | | Nov 23, 2003 | | | | |
| | | | | | | | Nov 24, 2003 | | | | |
| | | | | | | | Nov 25, 2003 | | | | |
| | | | | | | | Dec 16, 2003 * | | | | |

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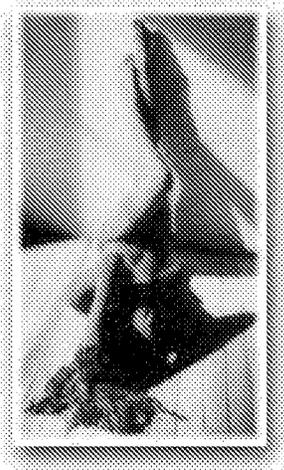
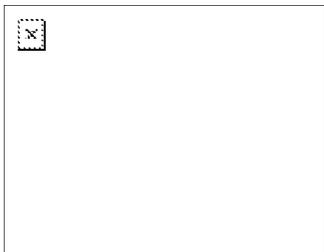
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Skin Deep ... the ultimate spa experience.

Our mission is to ensure that each guest attains a feeling of relaxation, an awakening of the senses and a renewed enthusiasm for life. Through a philosophy of "East meets West," Skin Deep blends traditional Hawaiian healing techniques with the finest European, American, Indian, and Oriental spa therapies. We invite you to test the waters of wellness. Skin Deep awaits.....



Facials
Spa Services
Massage
Waxing
Spa Packages
Nail Care
Body Masques
Information
Calendar of Events
Seminars
Gift Shop
Newsletter
Skin Care Products

PRODUCTS

We carry three complementary lines of skin care products...

Jan Marini Skin Research

This line includes a full range of Advanced Glycolic Based Products, the revolutionary Vitamin C breakthrough C-esta, TGF Beta-1 (Transforming Growth Factor), antioxidants, proteolytic enzymes and other therapeutic agents.

KERSTIN FLORIAN is our premium line used to address specific needs for a variety of skin types. Let our Skin Care Experts prescribe the correct

 is an affordable high quality line with a Message to Live By. It is used to address the general needs for a broad range of skin types. Its unique packaging makes for great gifts!

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Information
Phone (714) 841-3313**

California Business Portal

SEARCH NUMBER: DEBRA BOWEN

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| Corporation | | |
|---------------------------------|-----------------------------|-----------------------|
| DEBORAH WOODS' SKIN DEEP, INC. | | |
| Number: C2153041 | Date Filed: 1/2/2000 | Status: active |
| Jurisdiction: California | | |
| Address | | |
| 7862 WARNER AVE #101 | | |
| HUNTINGTON BEACH, CA 92647 | | |
| Agent for Service of Process | | |
| DAVID POLLOCK | | |
| 304 ROBINHOOD LN | | |
| COSTA MESA, CA 92627 | | |

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www.blankshirtstore.com

Yahoo! Yellow Pages

YELLOWPAGES.COM

Your Search: skin deep

Search

Location: Santa Barbara, CA 93105
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Search by Category or Business Name (e.g. Hotel or Holiday Inn)

Top > Search for: skin deep

Sort by: **Sponsored Businesses** | Name | Distance

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Business Name:

Address:

J R Nikolai Beauty By Design

1021 B State St

Hair Care

Santa Barbara, CA [Map](#)

(805) 965-7051 [Web Site](#) [More Info](#)

Sort by: **Name** | Distance

Showing 1 to 1 of 1

Business Name:

Address:

Skin Deep

3405 State St

(805) 687-9497 [Web Site](#) [Write a Review](#)

Santa Barbara, CA [Map](#)

Sort by: **Name** | Distance

Showing 1-1 of 1

Beyond Santa Barbara 93105

Sponsor Results (What's this?)

Skin Deep Ringtones Download instantly **skin deep** ringtones.
[www.offthehook-ringtones.com](#)

Skin Deep Order Now and Save. Low Prices with Fast Free Shipping on First Order.
[www.hotmoviesale.com](#)

Deep Skin Looking for **deep skin**? Find exactly what you want today.
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Beyond Santa Barbara 93105

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SEARCH:

skin deep

(by name or category)

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Locations:

(Address, Intersection or [Airport Code](#))

Address:

(Optional)

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Country:

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"skin deep" "santa barbara"

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Web

Results 1 - 10 of about 23,100 for "skin deep" "santa barbara". (0.15 seconds)



Skin Deep: Beauty Supplies

www.skindeepsalon.com

3405 State St
Santa Barbara, CA 93105
(805) 687-9497

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Skin Deep World-Your ultimate resource to look and feel your best ...

Skin Deep World-Your ultimate resource to look and feel your best ... Santa Barbara, CA
93101 Phone: (805) 898-9299 Fax: (310) 205-4881 ...
www.skindeepworld.com/Default.aspx?tabid=116&mid=478&ctl=Detail&xmid=62&xmfid=1 - 19k - [Cached](#) - [Similar pages](#)

Skin Deep, Santa Barbara, CA on MacRAE's Blue Book Industrial ...

Wholesales pharmaceuticals, drug proprietaries & sundries.
www.macraesbluebook.com/search/company.cfm?company=789744 - 20k - [Cached](#) - [Similar pages](#)

The Santa Barbara Independent :: special sections :: Head to Toe

Santa Barbara Independent News Arts Entertainment Lifestyle Opinions ... "Skin Deep is women working with women, serving and supporting women of all ages ...
independent.com/special/2006/10/head_to_toe.html - 31k - [Cached](#) - [Similar pages](#)

Santa Barbara Natural Hair Care

Natural Cosmetologist and Beautician in **Santa Barbara** - Adelle. ... Adelle **Santa Barbara Skin Deep Salon & Store San Roque Plaza 3405 State St. 805-687-9497 ...**
www.sbwellnessdirectory.com/adelle.htm - 14k - [Cached](#) - [Similar pages](#)

Due Maternity - Santa Barbara

Due to popular demand the 22nd **Santa Barbara Film Festival** is offering the Apple Box ...
Sunscreen Info When Beauty Concerns Run More Than Skin Deep Having ...
santabarbara.duematernity.com/ - 105k - Feb 25, 2007 - [Cached](#) - [Similar pages](#)

Face lift, Blepharoplasty, BOTOX, Titan Skin Tightening, and More ...

The face lift procedure offered at our **Santa Barbara** practice lifts the skin and ... Beauty is not only **skin deep**. However, at Dr. Mackenzie's office, ...
www.pacificplasticsurgery.com/html/face.html - 42k - [Cached](#) - [Similar pages](#)

Skin Deep - The Body Spa - Wedding Spa Manicures Health Wellness ...

Wedding Services In Southern California: **Skin Deep - The Body Spa - Wedding ... San Diego County, Los Angeles County, Santa Barbara County and the Inland ...**
www.weddingcompass.com/ServiceDetails.cfm?id=1320 - 137k - [Cached](#) - [Similar pages](#)

Prufrock's Garden Inn by the Beach: California bed and breakfast ...

Relaxation that goes more than **skin deep - Santa Barbara, California ... Santa Barbara - Family Friendly. Family Friendly, Santa Barbara - Gourmet Food. ...**
www.lanierbb.com/deals/data/10197.html - 24k - [Cached](#) - [Similar pages](#)

Science@Berkeley Lab - Conductivity is More Than Skin Deep

Conductivity is More Than **Skin Deep** Getting Beneath the Surface Reveals a ... France, Korea, and, closer to home, **Santa Barbara** offer serious competition. ...
www.lbl.gov/Science-Articles/Archive/sabi/2006/May/01-conductivity.html - 19k -

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Skin Treatment in Santa Barbara Beauty & Fitness on Citysearch

Hasche, Tina - **Skin Deep**. Beauty & Fitness, Skin Treatment, Beauty Salons. Send to Phone, 2.63 miles 3405 State St **Santa Barbara**, CA 93105 ...
santabarbara.citysearch.com/yellowpages/directory/Santa_Barbara_CA/200/378/page2.html - 75k - Cached - Similar pages

Result Page: 1 2 3 4 5 6 7 8 9 10 **Next**

"skin deep" "santa barbara" Search

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Searched for <http://www.skindeepsalon.com>

62 Results

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* denotes when site was updated.

Search Results for Jan 01, 1996 - Feb 27, 2007

| 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|--------------------------------|--------------------------------|------------------------------|--------------------------------|------------------------------|--------------------------------|---------|
| 0 | 0 | 0 | 0 | 0 | 3 pages | 9 pages | 16 pages | 17 pages | 13 pages | 1 pages | 0 pages |
| | | | | | Jul 21, 2001 * | Apr 02, 2002 | Jan 28, 2003 | Jan 01, 2004 | Jan 28, 2005 | Feb 06, 2006 * | |
| | | | | | Oct 01, 2001 | Jun 03, 2002 | Feb 14, 2003 | Jan 02, 2004 | Feb 02, 2005 | | |
| | | | | | Dec 04, 2001 | Jul 19, 2002 | Feb 20, 2003 | Jan 23, 2004 | Feb 05, 2005 | | |
| | | | | | | Sep 25, 2002 * | Mar 29, 2003 | Feb 24, 2004 | Feb 12, 2005 | | |
| | | | | | | Sep 28, 2002 | Apr 11, 2003 | Mar 21, 2004 | Apr 05, 2005 | | |
| | | | | | | Sep 30, 2002 | Apr 21, 2003 | Mar 30, 2004 | Apr 08, 2005 | | |
| | | | | | | Nov 24, 2002 * | Apr 25, 2003 | May 23, 2004 | May 20, 2005 | | |
| | | | | | | Nov 29, 2002 | May 28, 2003 | May 25, 2004 | Sep 10, 2005 | | |
| | | | | | | Nov 30, 2002 | Jun 11, 2003 | Jun 04, 2004 | Sep 13, 2005 | | |
| | | | | | | | Jun 12, 2003 | Jun 12, 2004 | Sep 14, 2005 | | |
| | | | | | | | Jul 31, 2003 | Aug 02, 2004 | Sep 27, 2005 | | |
| | | | | | | | Sep 25, 2003 | Sep 01, 2004 | Oct 01, 2005 | | |
| | | | | | | | Oct 29, 2003 | Sep 06, 2004 | Nov 24, 2005 | | |
| | | | | | | | Nov 24, 2003 | Sep 25, 2004 | | | |
| | | | | | | | Dec 04, 2003 | Sep 26, 2004 | | | |
| | | | | | | | Dec 25, 2003 | Nov 29, 2004 | | | |
| | | | | | | | | Dec 12, 2004 * | | | |

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skin deep

Beauty Products



Your path
to a beautiful
sense of being...

California Business Portal

SEARCH INPUT: DEBRA BOWEN

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| Corporation | | |
|---------------------------------|-------------------------------|-----------------------|
| SKIN DEEP | | |
| Number: C1229976 | Date Filed: 10/26/1983 | Status: active |
| Jurisdiction: California | | |
| Address | | |
| 3405 STATE ST | | |
| SANTA BARBARA, CA 93105 | | |
| Agent for Service of Process | | |
| TINA HASCHE | | |
| 3405 STATE ST | | |
| SANTA BARBARA, CA 93105 | | |

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allergy articles
past featured articles

skindeep

spring 2004

- what's new in dermatology
- hair free & care free
- upcoming events
- tns recovery complex

spring 2003

- our new location
- hair loss, it's not just a guy thing
- sports & your skin
- belleza skin care institute

fall 2002

- rosy cheeks or rosacea?
- botox, is it right for you?
- meet dr. dina yaghamai
- introducing AFIRM
- cosmetic corner

winter 2001

- pregnancy and your skin
- cosmetic corner
- melanoma, am I at risk?
- keeping your nail strong and healthy

spring and summer 2001

- facial rejuvenation
- bringing acne under control
- people you should know
- cold weather skin care
- indoor tanning

LAW OFFICE OF DAVID HONG

David Hong, Esq.
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Patent, Trademark, Copyright, Trade Secret &
Related Causes

February 28, 2007

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025

VIA MAIL & E-MAIL: btesser@tesser-ruttenberg.com

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This letter is regarding the April 14, 2006 Respondent's discovery responses to Petitioner's Feb. 22, 2006 Discovery Requests; also see my notes regarding my Feb. 28, 2007 telephone question with the interlocutory attorney.

Interrogatories:

Even though on Nov. 28, 2006, TTAB denied Petitioner's Motion to Compel, we still request that your client provide additional responses to Interrogatories No. 20-22, which were originally served on Feb. 22, 2006 (see TBMP Sec. 408.03 (Duty to Supplement Responses)).

These interrogatories address material and important issues in this case because your client has presented a Dec. 2005 assignment of trademark rights from Ms. Sara Herrick. Naturally, my client would like to know the nature of Ms. Herrick's interstate commerce use of the mark SKIN DEEP and the type of products and services and dates of such first use in interstate commerce.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107
Feb. 28, 2007
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For Interrogatories No. 20, 21, and 22, your April 14, 2006 responses only listed objections, and we formally request a further response. I have listed these interrogatories as follows:

Interrogatory No. 20:

Regarding use of the mark "SKIN DEEP SKIN CARE" by SARA HERRICK, for each of the services identified in the trademark applications for Respondent's Marks.

(a) State the date of first use in INTERSTATE COMMERCE of SARA HERRICK of the mark "SKIN DEEP SKIN CARE:"

(b) Describe in what particular manner SARA HERRICK used the mark "SKIN DEEP SKIN CARE" (namely, first use) with each of the goods and/or services, including without limitation Internet Web Site, signs, displays, promotional materials, advertising, business stationary, business cards, labels, and brochures;

(c) Identify each person who has knowledge about such first use.

Response:

Interrogatory No. 21:

Identify and describe the services and/or goods, which SARA HERRICK has sold, distributed, provided, advertised, marketed, or offered said services and/or goods with the mark "SKIN DEEP SKIN CARE" or any variation of Respondent's Marks.

Response:

Interrogatory No. 22:

With respect to SARA HERRICK's use of the mark "SKIN DEEP SKIN CARE" and/or any mark that includes the term "SKIN DEEP" and to Respondent's Dec. 9, 2005 Response to Petitioner's Previous Interrogatory No. 4,

a. Identify the earliest date upon which Respondent intends to rely in this proceeding;

b. Identify all documents relating to such use(s); and

c. Identify all persons with knowledge of said use(s).

Response:

Mr. Brandon Tesser, Esq.
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Requests for Production of Documents

I received your supplemental document production dated Oct. 25, 2006 for documents and items labeled: MAR 0402 to MAR 0613, in response to Petitioner's Feb. 22, 2006 Second Document Request.

Please confirm that there are no further documents responsive to this Feb. 22, 2006 Document Request.

Initial Comments on Dr. Martello's Response to Petitioner's Third Set of Request for Admission:

I briefly reviewed Dr. Martello's responses to the Petitioner's Third Set of Request for Admissions, and I noted that your client only provided objections to RFA No. 21, 22, 23, 50, 51, 52, 53, 54, 55, 56, 63, 71, and 72. We request that your client provide a supplemental response. I will need to follow up on our reasons why these questions deal with discoverable topics for this instant proceeding and require a response.

Feb. 28, 2007 Telephone Conference with TTAB Attorney Linnehan

Considering the third party users of the mark SKIN DEEP, which were in Dr. Martello's Thomson search report, I intend to file a motion for summary judgment, if we do not settle this case.

Any motions need to be filed before the trial periods or by Mon., March 5, 2007. Regarding procedure, I spoke with the Trademark Board Interlocutory Attorney Ann Linnehan, and she told me that I can submit both a motion to amend the complaint and a motion for summary judgment at the same time.

Extension of Time of Trial Dates

Petitioner's trial period starts next Tues, March 6, 2007. If this case does not settle, it appears that you will some need additional time to provide supplemental responses, I suggest that we agree to extend all trial period dates by one (1) month.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
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Law Office of David Hong
Reason: I am the author of this
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March 1, 2007

Mr. Brandon Tesser, Esq.
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VIA MAIL & E-MAIL: btesser@tesser-ruttenberg.com

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Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Mr. Tesser:

This letter confirms our telephone conference today wherein both parties agreed to extend all trial dates as presently set by one (1) month. I will file the proper request to TTAB.

Both parties retain the right to ask for additional time as necessary.

After you and your client are able to fully digest the prior third party information that Petitioner uncovered during discovery and presented to Respondent in a Feb. 27, 2007 letter and attachments and our Feb. 9, 2007 and Feb. 28, 2007 teleconferences, my hope is that your client will consent to a voluntary withdrawal of the registration as the most efficient use of resources for both parties.

However, I did inform you of my intention to file a motion for summary judgment when Petitioner is satisfied with the discovery responses from Respondent and if Dr. Martello does not agree to voluntarily withdraw her registration.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
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This letter is not intended as a full statement of all of the facts in this matter, nor a waiver of any of my client's rights or remedies, whether at law or in equity, all of which are hereby expressly reserved. The content and terms of this letter are for settlement purposes only and shall be governed by the terms of California Evidence Code section 1152.

Thank you for your professional courtesy in this case.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O =
Law Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2007.03.01 13:58:10 -08'00'

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March 21, 2007

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Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Mr. Tesser:

This letter is regarding several issues:

1. Citations for Prior Use and Fraud;
2. April 14, 2006 Respondent's discovery responses to Petitioner's Feb. 22, 2006 Discovery Requests;
3. Dr. Martello's Responses to Jan. 5, 2007 Petitioner's Third Set of Request for Admissions; and
4. Dr. Martello's Feb. 27, 2007 Supplement Document Production.

Citations - Prior Use by Others

15 USC §1052(d). Trademarks registrable on principal register; concurrent registration

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No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive:

Provided, That if the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to

(1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter;

(2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or

(3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons. [EMPHASIS ADDED]

Citations - Fraud:

McCarthy on Trademarks - Sec. 31:75 and 31:77.

Money Store v. Harriscorp Finance, Inc., 689 F.2d 666, 215 U.S.P.Q.2d 1030 (7th Cir. 1982).

Responses to Feb. 22, 2006 Interrogatories:

Even though on Nov. 28, 2006, TTAB denied Petitioner's Motion to Compel, we still request that your client provide additional responses to Interrogatories No. 20-22,

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which were originally served on Feb. 22, 2006 (see TBMP Sec. 408.03 (Duty to Supplement Responses)).

These interrogatories address material and important issues in this case because your client has presented a Dec. 2005 assignment of trademark rights from Ms. Sara Herrick. Naturally, my client would like to know the nature of Ms. Herrick's interstate commerce use of the mark SKIN DEEP and the type of products and services and dates of such first use in interstate commerce. Please provide the requested supplemental responses as soon as possible.

Requests for Production of Documents

I received your Feb. 27, 2007 supplemental document production for documents labeled: MAR 0614 to MAR 1074. Please confirm that there are no further documents responsive to this Feb. 22, 2006 Petitioner's Document Request.

Response to Petitioner's Jan. 5, 2007 Third Set of Request for Admissions:

I reviewed Dr. Martello's responses to the Petitioner's Third Set of Request for Admissions, and I noted that your client only provided objections to RFA No. 21, 22, 23, 50, 51, 52, 53, 54, 55, 56, 63, 71, and 72. We request that your client provide a supplemental response to these requests for admissions.

Law on Relevancy:

- a. Each party generally has the right to discover "any matter, not privileged, that is relevant to the claim or defense of any party." FRCP 26(b)(1);
- b. Relevant information may be discoverable if it "appears reasonably calculated to lead to the discovery of admissible evidence." [FRCP 26(b)(1)];
- c. Each party has the right to discover non-privileged information "relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." [FRCP 26(b)(1) (emphasis added)];
- d. This includes information that a party may use to support its denial or rebuttal of the claims or defenses of another party, and should include the identity of any witness or document that the disclosing party may use to support such denials. See Rutter Group on Federal Civil Procedure Before Trial, Chap. 11, Sec. 610-620.

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For RFA No. 21-23:

21. Admit that "healthspa services" include microdermabrasion.
22. Admit that "healthspa services" include treatment for acne.
23. Admit that "healthspa services" include cleansing and exfoliation of the skin.

These three RFA 21-23 ask for admissions regarding types of healthspa services and ask for relevant and specific information within the scope of discovery.

Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Since your client has listed "healthspa services" in her own trademark application, it is relevant and specific to ask whether the listed items: microdermabrasion, treatment for acne, and cleansing and exfoliation of the skin. These RFA questions are not asking for expert opinions and conclusions. Rather, it is reasonable to ask whether Dr. Martello considers these three listed items to be considered "healthspa services."

Dr. Martello's Jan. 18, 2006 deposition states that she has performed "microdermabrasion...These are health and spa services." (Page 8, lines 12-21). Further, Dr. Martello's website: www.skindeepworld.com has a section on Dermatology. A printout from this website is attached for your reference. It is more than reasonable to ask Dr. Martello, a board certified plastic surgeon, as to whether the items (microdermabrasion, treatment for acne, and cleansing and exfoliation of the skin) are "healthspa services."

RFA 50: Admit that Respondent Jeannette Martello's radio program entitled "Skin Deep" is a type of entertainment service.

Dr. Martello has a trademark registration for "SKIN DEEP" (Reg. No. 2777522, Serial No. 76429408) for International Class: 041: **Entertainment services**, namely, providing a **radio program** in the fields of medicine, surgery, health, health care,

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beauty, skin care, cosmetic surgery and plastic surgery (First Use Date: 2002-04-13; First Use in Commerce Date: 2002-04-20).

Since your client has listed "entertainment services, namely providing a radio program..." in her own trademark application, it is relevant and specific to ask whether Dr. Martello's radio program entitled "SKIN DEEP" is a type of entertainment service. This RFA question is not asking for expert opinions and conclusions. Rather, it is reasonable to ask whether Dr. Martello considers her radio show entitled "SKIN DEEP" an entertainment service.

This RFA is also relevant because Dr. Martello has stated in her deposition her radio show entitled "SKIN DEEP" and has claimed to have performed medical consultations during her radio show. See Dr. Martello's Jan. 18, 2006 deposition, page 47, lines 2-24. Since this assertion is relevant to "medical services" and "SKIN DEEP," this request for admission is within the scope of discovery and permissible.

RFA 51. Admit that Respondent Jeannette Martello as a licensed California physician must perform a good faith in-person examination of a patient or of the patient's records before providing medical or physician services to that patient.

This request is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Since medical services are listed on the service listing for the "SKIN DEEP" registration for this cancellation proceeding and since Dr. Martello is a licensed California physician, asking her to admit the above statement is relevant, not overbroad, and not seeking an expert opinion.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including claiming that she had a client come into the office due to her radio show. See Page 36, lines 7-19. This is further relevant if Dr. Martello

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attempts to associate her radio show as trademark use of her services listed on the '387 application.

RFA 52. Admit during Respondent Jeannette Martello's "Skin Deep" radio program, the Respondent cannot confirm whether a caller to her program is reporting accurate or truthful information during the radio show.

This RFA is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for **medical services**; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including physically doing consultations on air. See Page 47, lines 2-24. Since Dr. Martello discussed doing medical consultations on the air, asking discovery questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

RFA 53. Admit that a good faith in-person examination of a patient enhances the opportunity for a physician to confirm if a patient needs a certain medication or treatment.

This RFA is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for **medical services**; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including physically doing consultations on air. See Page 47, lines 2-24. Since Dr. Martello discussed doing medical consultations on the air, asking discovery questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

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RFA 54. Admit that a good faith in-person examination of a patient enhances the opportunity for a physician to confirm the suspected medical conditions.

This RFA is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including physically doing consultations on air. See Page 47, lines 2-24. Since Dr. Martello discussed doing medical consultations on the air, asking discovery questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

Also, this RFA is not an incomplete or improper hypothetical. Dr. Martello has presented information in her deposition regarding giving medical advice in her radio show. If Dr. Martello plans to assert her radio show as trademark use of the mark "SKIN DEEP" with medical services, then the subject matter and the type of question as presented in this RFA is proper and specific.

RFA 55. Admit that a good faith in-person examination of a patient enhances the opportunity for a physician to advise the patient of alternative treatment options and to determine if the patient is aware of potential side effects.

This RFA is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including physically doing consultations on air. See Page 47, lines 2-24. Since Dr. Martello discussed doing medical consultations on the air,

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asking discovery questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

Also, this RFA is not an incomplete or improper hypothetical. Dr. Martello has presented information in her deposition regarding giving medical advice in her radio show. If Dr. Martello plans to assert her radio show as trademark use of the mark "SKIN DEEP" with medical services, then the subject matter and the type of question as presented in this RFA is proper and specific.

Regarding the specificity of the patient, this RFA question use of the term "patient" is a proper since the Respondent has emphasized the need to protect the privacy of her patients.

RFA 56. Admit that a good faith in-person examination of a patient enhances the opportunity to rule out other medical conditions.

This RFA is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including physically doing consultations on air. See Page 47, lines 2-24. Since Dr. Martello discussed doing medical consultations on the air, asking discovery questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

Also, this RFA is not an incomplete or improper hypothetical. Dr. Martello has presented information in her deposition regarding giving medical advice in her radio show. If Dr. Martello plans to assert her radio show as trademark use of the mark "SKIN DEEP" with medical services, then the subject matter and the type of question as presented in this RFA is proper and specific.

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RFA 63. Admit that without the listener's express waiver of confidentiality, the Respondent Jeannette Martello cannot openly discuss confidential medical information about a listener during a broadcast of the "Skin Deep" radio show.

This RFA is relevant because Dr. Martello has listed the following services on her U.S. Trademark Application No. 76581387 on March 15, 2004, for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services.

Also, the subject matter as to the medical services is relevant because in Dr. Martello's Jan. 18, 2006 deposition, she has discussed in detail about her radio show entitled "SKIN DEEP", including physically doing consultations on air. See Page 47, lines 2-24. Since Dr. Martello discussed doing medical consultations on the air, asking discovery questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

Also, this RFA is not an incomplete or improper hypothetical. Dr. Martello has presented information in her deposition regarding giving medical advice in her radio show. If Dr. Martello plans to assert her radio show as trademark use of the mark "SKIN DEEP" with medical services, then the subject matter and the type of question as presented in this RFA is proper and specific.

Further, Dr. Martello has asserted protecting a patient's confidential information in response to many discovery questions from the Petitioner. This RFA directly discusses protection of confidentiality of a patient.

RFA 71. Admit that listeners of the radio show SKIN DEEP look for Dr. Jeannette Martello, M.D. in So. Pasadena, CA.

This RFA is relevant because Dr. Martello has stated in her Jan. 18, 2006 deposition that she had a client come into the office due to her radio show entitled "SKIN DEEP". See Page 36, lines 7-19. This is further relevant if Dr. Martello attempts to associate her radio show as trademark use of her services listed on the '387 application.

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Since Dr. Martello has stated in her deposition testimony that she knows personally that patients have come to her office due to her radio show, then RFA does not call for simply speculation, but rather knowledge within Dr. Martello's possession.

This RFA is specific and very clear regarding: (1) group of people: listeners to her radio show; (2) what to look for: Dr. Jeannette Martello, M.D., and (3) the location: So. Pasadena, CA.

Also, this RFA is not an incomplete or improper hypothetical. Dr. Martello has presented information in her deposition regarding giving medical advice in her radio show. If Dr. Martello plans to assert her radio show as trademark use of the mark "SKIN DEEP" with medical services, then the subject matter and the type of question as presented in this RFA is proper and specific.

RFA 72. Admit that looking up the terms "Skin Deep" on the Yahoo.com Yellow Pages for the Pasadena, CA location, the search results list "Skin Deep Lazor [id] Med Spa," 425 South Fair Oaks Avenue, Pasadena, CA 91105. See Petitioner's RFA-3 Exhibit Page 11-13.

This RFA is relevant and within the permissible scope of discovery because an advertising listing for services in a Yellow Pages directory is a proper question to ask of any business. This RFA is not overbroad and does not call for mere speculation outside Dr. Martello's personal knowledge because Petitioner provided a printout of this Yahoo.com Yellow Pages search in Petitioner's RFA-3 Exhibit Page 11-13. With a copy of the Yellow Pages search, Dr. Martello can answer this RFA within her personal knowledge.

Based on the above, Petitioner asks for supplemental responses to RFA No. 21, 22, 23, 50, 51, 52, 53, 54, 55, 56, 63, 71, and 72.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O = Law
Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2007.03.21 11:03:32 -07'00'

Encl: copy of 2007-03-21 printout from www.skindeepworld.com (1 page).

MAGAZINE

RADIO SHOWS

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PHOTOS & STORIES

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- BOTOX INJECTIONS
- CELLULITE TREATMENT
- CHEMICAL PEEL
- LASER HAIR REDUCTION/REMOVAL
- LASER TREATMENTS
- MOLE REMOVAL
- PERMANENT MAKEUP
- SCAR REVISION
- VEIN TREATMENT



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From: "Brandon Tesser" <btesser@tesser-ruttenberg.com>
To: "David Hong" <david_hong@sbcglobal.net>
Subject: Martello adv. ACM
Date: Mon, 2 Apr 2007 15:07:25 -0700

This will confirm that the parties have agreed to extend all deadlines in the above-referenced case by a period of one-month for the purpose of discussing settlement without pending deadlines to address. As discussed, your office has agreed to prepare the motion to the TTAB regarding this.

Thank you for your continued courtesy and cooperation

Brandon M. Tesser
Tesser & Ruttenberg
12100 Wilshire Blvd, Suite 220
Los Angeles, CA 90025
Tel: (310) 207-4022
Fax: (310) 207-4033
E-Mail: btesser@tesser-ruttenberg.com



Print - Close Window

Date: Mon, 23 Apr 2007 19:52:39 -0700 (PDT)
From: "David Hong" <david_hong@sbcglobal.net>
Subject: ACM v Martello extension
To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697

ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This e-mail letter confirms our April 23, 2007 telephone conference today where both parties agreed to extend all dates by an additional 30 days in order to allow continuation of settlement talks and to allow Respondent to provide supplemental discovery responses.

I will be preparing the short stipulated extension motion as soon as we receive approval of our current April 4, 2007 stipulation motion to extend from TTAB.

Very truly yours,

David Hong

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
E-Mail: david.hong@dhpatentlaw.com or david_hong@sbcglobal.net
866.824.8680 Tel & Fax
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Sept. 24, 2007 PET. REPLY EXHIBITS

Cancel #92044697

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Print - Close Window

Date: Thu, 31 May 2007 12:15:00 -0700 (PDT)
 From: "David Hong" <david_hong@sbcglobal.net>
 Subject: RE: ACM v Martello settlement status
 To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>

Thanks. I will file the motion today, and here are the new trial dates:

Proposed New Trial Dates:

Plaintiff's 30-day testimony period to close: 8/4/2007
 Defendant's 30-day testimony period to close: 10/3/2007
 Plaintiff's 15-day rebuttal testimony period to close: 11/17/2007

DH

Brandon Tesser <btesser@tesser-ruttenberg.com> wrote:

Yes, we will agree to another 30 day extension.

-Brandon Tesser

From: David Hong [mailto:david_hong@sbcglobal.net]
 Sent: Thursday, May 31, 2007 11:25 AM
 To: Brandon Tesser
 Subject: RE: ACM v Martello settlement status

Hi, Brandon,

Can we agree to another 30-day extension of all trial dates for ACM v. Martello?

DH

Brandon Tesser <btesser@tesser-ruttenberg.com > wrote:

Thanks for your email. I hope to respond by close of business. My time has been consumed on some very time-critical issues over the past ten days, so I apologize for not being as prompt as I would like to be.

-B

From: David Hong [mailto:david_hong@sbcglobal.net]
 Sent: Wednesday, May 30, 2007 9:55 AM
 To: Brandon Tesser
 Subject: RE: ACM v Martello settlement status

Re: ACM v Martello Settlement Discussions

Dear Brandon:

Has Dr. Martello given you a counter offer proposal to our April 23, 2007 discussions?

Next Monday is the deadline for filing any motions before the start of P's trial testimony period on Tues, June 5.

Sept. 24, 2007 PET. REPLY EXHIBITS
 Cancel #92044697

Page 85 of 88

Very truly yours,

David Hong

Brandon Tesser <btesser@tesser-ruttenberg.com> wrote:

Hi David, sorry for the delay in responding to your emails. For some reason they were getting stuck in our spam filter. I finally spoke with Mr. Martello and she did not appear receptive to either proposal. I asked her to work on a counter and I hope to have something for you by the end of the week or beginning of next at the latest.

- Brandon

From: David Hong [mailto:david_hong@sbcglobal.net]
Sent: Wednesday, May 09, 2007 11:46 AM
To: Brandon Tesser
Subject: ACM v Martello settlement status

May 9, 2007

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

Have you had a chance to speak to Dr. Martello about our latest settlement offer (Options 1 and 2)?

I filed and received the 1-month extension of all trial periods last week.

Very truly yours,

David Hong

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property
Mailing Address: P.O. Box 2111 , Santa Clarita , CA 91386-2111
E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net
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David Hong, Esq.,
LAW OFFICE OF DAVID HONG

Sept. 24, 2007 PET. REPLY EXHIBITS
Cancel #92044697

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Date: Fri, 29 Jun 2007 16:11:38 -0700 (PDT)

From: "David Hong" <david_hong@sbcglobal.net>

Subject: ACM v Martello

To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>

June 29, 2007

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
 CANCELLATION NO. 92044697
 ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
 Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
 Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
 Attorney File No. 2005-02-0107

Dear Brandon:

This e-mail is to confirm our telephone conference today where we agreed to have a telephone conference on July 19, 2007 at 3 pm after both attorneys speak to their clients about settlement.

Both parties further agree to extend out all trial dates by 30-days in the following schedule:

Proposed New Trial Dates:

| | |
|--------------------------------------------------------|------------|
| Plaintiff's 30-day testimony period to close: | 9/3/2007 |
| Defendant's 30-day testimony period to close: | 11/2/2007 |
| Plaintiff's 15-day rebuttal testimony period to close: | 12/17/2007 |

Please confirm with a return e-mail so that I can file a Motion for Extending the Trial Periods with Consent.

Very truly yours,

David Hong

David Hong, Esq.,
 LAW OFFICE OF DAVID HONG
 Patent, Trademark, and Intellectual Property
 Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
 E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net
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Sept. 24, 2007 PET. REPLY EXHIBITS
 Cancel #92044697

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From: "Brandon Tesser" <btesser@tesser-ruttenberg.com>
To: "David Hong" <david_hong@sbcglobal.net>
Subject: RE: 7/19 Telecon
Date: Wed, 18 Jul 2007 17:12:07 -0700

That should work.

-Brandon

From: David Hong [mailto:david_hong@sbcglobal.net]
Sent: Tuesday, July 17, 2007 7:38 PM
To: Brandon Tesser
Subject: Re: 7/19 Telecon

Hi, Brandon.

How about Wed., July 25 at 3 pm?

DH

Brandon Tesser <btesser@tesser-ruttenberg.com> wrote:

Hi David, I was called for jury duty this week and assigned to a panel. I had to cancel my meeting with Dr. Martello which was scheduled for this afternoon. Is there any chance we can reschedule our telephone conference to early next week? Let me know your availability.

Sorry for the inconvenience.

Brandon M. Tesser
Tesser & Ruttenberg
12100 Wilshire Blvd, Suite 220
Los Angeles, CA 90025
Tel: (310) 207-4022
Fax: (310) 207-4033
E-Mail: btesser@tesser-ruttenberg.com

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Sept. 24, 2007 PET. REPLY EXHIBITS

Cancel #92044697

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

ACM Enterprises, Inc.,
Petitioner,
v.
Martello, Jeannette, M.D.
Respondent.

Cancellation No.: 92044697
Filed: July 1, 2005

DECLARATION OF DAVID HONG IN SUPPORT OF PETITIONER'S
REPLY BRIEF

1. My name is David Hong, Esq., and I am the Attorney for the Petitioner ACM ENTERPRISES, INC. My business address is P.O. Box 2111, Santa Clarita, CA 91386-2111. I am fully competent to make this declaration, and I have personal knowledge of the facts stated in this declaration. To my knowledge, all of the facts stated in this declaration are true and correct.
2. On Sept. 19, 2007, I printed out the case history listing for this instant TTAB proceeding at: <http://ttabvue.uspto.gov/ttabvue/v?pno=92044697&pty=CAN>. (Reply Exhibit Pages 1-2).
3. On Oct. 31, 2005, Petitioner sent out its first set of discovery (Interrogatories, Request for Admissions, and Document Requests) to Respondent. See the last page and the Proof of Service, dated Oct. 31, 2005 for these discovery requests (Reply Exhibits Pages 3-8).
4. On Dec. 22, 2005, the parties filed a Stipulation to Extend the Discovery Period to from Jan. 22, 2006 to Feb. 22, 2006 (Reply Exhibits Pages 9-11); see a printout of Dec. 22, 2005 e-mail letters between myself and Respondent's counsel re: reasons for extending the discovery period to Feb. 22, 2006 (Reply Exh. Pages 12-14).

5. On Jan. 6, 2006, Petitioner's counsel received a second document production from Respondent in response to ACM's Oct. 31, 2005 request, which included a copy of the Respondent's Feb. 21, 2003 Thomson & Thomson Business Name and Common Law search report. Jan. 6, 2006 is over 9 weeks after Oct. 31, 2005 service date. (*See the Aug. 3, 2007 Exhibits to Declaration of David Hong in Support of the Motions for Summary Judgment and Amendment of the Pleadings*, Pages 14-144).
6. On Jan. 18, 2006, Petitioner deposed Respondent Jeannette Martello. (*See the Aug. 3, 2007 Exhibits to Declaration of David Hong in Support of the Motions for Summary Judgment and Amendment of the Pleadings*, Page 7, which shows the cover page of the Jan. 18, 2006 Deposition Transcript of Dr. Jeannette Martello).
7. On Feb. 22, 2006, Petitioner issued a second set of discovery requests (interrogatories, request for admissions, and document requests). (Reply Exhibit Pages 15-17 shows the proof of service pages for these requests). Please note that the 30 day response period date would be March 24, 2006.
8. On April 14, 2006, after granting three weeks of extensions for responding to the Feb. 22, 2006 Petitioner's Second Set of Discovery, Petitioner refused to grant a third extension to Respondent as shown in Petitioner's letter dated April 20, 2006 (Reply Exhibit Pages 18-20).
9. On April 21, 2006, Petitioner filed its Motion to Compel Additional Responses from Respondent. (Reply Exhibit Page 21 shows the ESTTA Receipt for Filing the April 21, 2006 Motion to Compel). On April 26, 2007, TTAB issued a suspension notice. (Reply Exhibit Page 22).

10. On Nov. 28, 2006, TTAB issued its decision on the April 21, 2006 Motion to Compel, which denied Petitioner' motion and reset the discovery and trial dates. The new discovery deadline was set to Jan. 5, 2007. (Reply Exhibit Pages 23-27 shows pages 1-5 of the Nov. 28, 2006 Order).

11. On January 5, 2007, Petitioner served a third set of request for admissions to Respondent. (Reply Exhibit Page 28 shows the proof of service page for this Jan. 5, 2007 RFA request.)

12. On Feb. 9, 2007, Petitioner granted a two-week extension to Respondent for the responses to the Jan. 5, 2007 RFA. (Reply Exhibit Page 29-31).

13. On Feb. 20, 2007, Respondent served responses to Petitioner's Jan. 5, 2007 discovery. (Reply Exhibit Pages 32-34 shows the attorney signature page, verification page and proof of service page of Respondent's Feb. 20, 2007 RFA Responses).

14. On Feb. 27, 2007, I sent a letter to Respondent's counsel re: settlement in light of prior third party users found in the Feb. 21, 2003 Respondent's Thomson search report. This letter also included 28 pages of Internet Printouts from the search that I conducted based on the information disclosed in Respondent's Feb. 21, 2003 Thomson search report. (Reply Exhibit Pages 35-66 shows a copy of this Feb. 27, 2007 letter).

15. On Feb. 28, 2007, I telephoned TTAB attorney Ann Linnehan to ask and to confirm that Petitioner could file both the Motion for Summary Judgment and Motion to Amend the Pleadings at the same time. On Feb. 28, 2007, Petitioner sent a letter to Respondent's attorney disclosing the Feb. 28, 2007 call to TTAB attorney Linnehan, and also reasons for requesting supplemental responses to Petitioner's discovery requests. (Reply Exhibit Pages 67-69 shows a copy of this Feb. 28, 2007 letter).

16. On March 1, 2007, Petitioner sent a letter to Respondent's attorney about giving Respondent additional time to review the disclosed information and settlement. (Reply Exhibit Pages 70-71 shows a copy of this March 1, 2007 letter).
17. On March 21, 2007, Petitioner sent to Respondent's counsel a letter, which disclosed the law sections for the prior third party users and fraud causes of action (15 US 1052(d) and Fraud citations to McCarthys and Money Store case). Petitioner also included reasons for additional responses from Respondent for Petitioner's discovery requests. (Reply Exhibit Pages 72-82 shows a copy of this March 21, 2007 letter).
18. On April 2, 2007, I continued settlement talks with Respondent's counsel and received an e-mail letter from Respondent's attorney to confirm a 1-month extension of time for all trial dates to allow the parties to continue settlement talks. (Reply Exhibit Page 83 shows a printout of an e-mail letter between counsel).
19. On April 23, 2007, Petitioner had a telephone conference with Respondent's attorney Mr. Tesser regarding settlement; and both parties' attorneys agreed to extend all trial dates by 30 days to continue settlement talks. (Reply Exhibit Page 84 shows a printout of an e-mail letter from Mr. Hong to Mr. Tesser).
20. During May 2007, Petitioner had a series of e-mail communications with Respondent's attorney Mr. Tesser re: settlement and agreement to extend all trial dates by 30 days to continue settlement talks (Reply Exhibit Pages 85-87 show printouts of e-mail communication between counsel for May 2007).
21. On June 29, 2007, since Petitioner's attorney had been trying to settle this case for the last four months and during the telephone conference with Respondent's counsel, both attorneys agreed to set up a specific date (July 19, 2007 at 3 pm) after each attorney had a

chance to speak in depth with each of their clients, esp. Respondent's counsel with Dr. Martello. I wanted to give Mr. Tesser every opportunity to explain the seriousness of the evidence that Petitioner had uncovered during discovery. Both attorneys also agreed to another 30-day extension of all trial dates. Due to Mr. Tesser's jury service, we had to reschedule the teleconference to July 25, 2007 (Reply Exhibit Pages 88-89 show printouts of e-mail communications for June 29, 2007 and July 18, 2007).

22. On July 25, 2007, I had the scheduled telephone conference with Respondent's attorney Mr. Tesser regarding settlement, but we were not able to reach a settlement. Upon asking for consent to the amendment of the pleadings, Mr. Tesser replied that he did not have the authority from his client to grant consent to amend. I informed Mr. Tesser that Petitioner would be filing the Motion for Summary Judgment and Amendment of the Pleadings, which was filed on Aug. 3, 2007.

I declare under penalty of perjury (28 U.S.C. 1746) that the foregoing is true and correct. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of my own knowledge are true; all statements made on information and belief are believed to be true.

Dated: Sept 24, 2007

/david hong #45704/
David Hong, Esq., #45704
(CA SBN 195795)
Attorney for Petitioner, ACM Enterprises, Inc.

Certificate of Transmission:

I hereby certify that this correspondence with the accompanying Exhibits (Pages 1-89), was electronically transmitted to the USPTO via the ESTTA system on 9-24-2007.

/david hong #45704/
David Hong, #45704

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

ACM Enterprises, Inc.,
Petitioner,
v.
Martello, Jeannette, M.D.
Respondent.

Cancellation No.: 92044697
Filed: July 1, 2005

PETITIONER'S REPLY BRIEF

The alleged 25-month delay from the initial Petition to Cancel to the Aug. 3, 2007 Motions are completely reasonable after carefully looking at how the seven month suspension for the Apr. 21, 2006 Motion to Compel and the Nov. 28, 2006 TTAB ruling fit within the case timeline and with the good faith attempts of Petitioner ACM Enterprises, Inc. ("ACM") to settle this case for five months before bringing its Motions.

Respondent produced its Feb. 21, 2003 Thomson trademark search report on Jan. 6, 2006 to the Petitioner. The first extended discovery period did not close until Feb. 22, 2006. The Motion to Compel was filed on April 21, 2006; this case was suspended for seven months until the Nov. 28, 2006 TTAB ruling. Discovery was then extended until Jan. 5, 2007. Petitioner raised the issues of prior third party users in its Jan. 5, 2007 Third Request for Admissions (*See Aug. 3, 2007 Decl. D. Hong, Exh. Pages 146-152*) and fully disclosed the significance of the Feb. 21, 2003 Thomson Bus. Name search report in a Feb. 27, 2007 letter to Respondent's counsel (*Reply Exh. Pages 35-66*).

Petitioner made good faith attempts at settling this case from Feb. 27, 2007 to July 25, 2007. Only after five months of settlement talks and due to Respondent's inability to accept the gravity of the prior third party users of the mark "SKIN DEEP", Petitioner

filed its Motions on Aug. 3, 2007. Please also see the attached Declaration of David Hong in Support and the attached Reply Exhibits (Pages 1-89).

Unlike Respondent's limited view, if one looks at the entire case history (*Reply Exh. Pages 1-2*) and Petitioner's good faith efforts at settlement, ACM was completely reasonable filing its Aug. 3, 2007 Motions, even 25 months after filing this lawsuit.

Respondent will not suffer prejudice in allowing the three proposed counts to be added; rather, justice will be served.

A. LAW AFFORDS ALLOWING AMENDMENT OF THE PLEADINGS

FRCP 15 states: "party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires...." Fed. R. Civ. P. 15(a) Amendments. (emphasis added).

Commodore Electronics Limited v. CBM Kabushiki Kaisha, 1993 TTAB LEXIS 6; 26 U.S.P.Q.2D (BNA) 1503 (TTAB Feb. 3, 1993) gives guidance for Rule 15(a):

In interpreting the provision of Fed. R. Civ. P. 15(a) that leave to amend a pleading "shall be freely granted when justice so requires," the Supreme Court noted in *Foman v. Davis*, 331 U.S. 178, 182 (1962), underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given".

The Board, consistent therewith, has recognized that "amendments to pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties". *American Optical Corp. v. American Olean Tile Co., Inc.*, 168 USPQ 471, 473 (TTAB 1971). [*9] Thus, in deciding opposer's motion for leave to amend, the Board must consider whether there is any undue prejudice to applicant and whether the

amendment is legally sufficient. See, e.g., *Cool-Ray, Inc. v. Eye Care, Inc.*, 183 USPQ 618, 621 (TTAB 1974). (emphasis added).

See also United States Olympic Comm. v. O-M Bread, Inc., 1993 TTAB LEXIS 31, 26 U.S.P.Q.2d (BNA) 1221 (TTAB Jan. 22, 1993)(TTAB granted motion to amend). TTAB has allowed amendment of the pleadings when there has no testimony taken by the parties. See TBMP 507.02 and Caron Corp. v. Helena Rubenstein, Inc., 193 USPQ 113 (TTAB 1976) (neither party had as yet taken testimony); Anheuser- Busch, Inc. v. Martinez, 185 USPQ 434 (TTAB 1975) (proceeding was still in the pre-trial stage); Cool-Ray, Inc. v. Eye Care, Inc., 183 USPQ 618 (TTAB 1974) (trial period had not yet commenced and no prejudice to applicant).

B. Timeline of Events Clearly Show No Undue Delay or Bad Faith by Petitioner.

During this entire proceeding, Petitioner has granted extensions to Respondent during discovery and for the filing of a response to the instant Motions. (*Reply Exh. Page 9-11, 12-14, 18-20 & 29-31*). Petitioner has provided proof of prior third party use of based on the detailed information in Respondent's own Feb. 21, 2003 Thomson report. By disclosing the gravity of this information and the law citations, Petitioner has taken the lead toward attempting to settle this case. (*Reply Exh. Pages 35-82*).

After the filing of the July 1, 2005 Petition to Cancel, ACM sent out a first set of discovery requests on Oct. 31, 2005. On Dec. 22, 2005, the parties agreed to extend the discovery period to Feb. 22, 2006 so that Respondent would have further time to provide documents. (*Reply Exh. Pages 3-8; 9-11*).

On Jan. 6, 2006, Respondent provided a second set of documents, which included the Feb. 21, 2003 Thomson Bus. Name search report with the prior third party users of

the mark SKIN DEEP. Note that these documents were produced over 9 weeks after the Oct. 31, 2005 Petitioner's request. (*See Aug. 3, 2007 Decl. D. Hong Exh. Pages 14-144*).

Petitioner conducted the deposition of Respondent Jeannette Martello on Jan. 18, 2006. (*See Aug. 3, 2007 Decl. D. Hong Exh. Page 7*). On Feb. 22, 2006, ACM sent out a second set of discovery requests (request for admission, interrogatories and document requests), which were based on produced discovery and the Martello deposition.

Responses were due on March 24, 2006. (*Reply Exh. Pages 15-17*).

ACM granted Respondent three weeks of extension to respond to its Feb. 22, 2006 discovery, but Respondent failed to provide adequate responses. Petitioner filed a motion to compel to its Feb. 22, 2006 discovery on April 21, 2006, and TTAB suspended this case on April 26, 2006 and stated: “[t]he parties should not file any paper which is not germane to the motion to compel.” (*Reply Exh. Pages 18-20; 21-22*).

TTAB did not issue a decision on the April 21, 2006 Motion to Compel until Nov. 28, 2006, which is approximately seven months after the motion to compel filing. (*Reply Exh. Pages 23-27*).

In the Nov. 28, 2006 decision, TTAB denied Petitioner's Motion to Compel, but most importantly, TTAB reset the discovery period to Jan. 5, 2007. (*Reply Exh. Pages 23-27*). Because discovery was open, Petitioner was well within its rights to review the Respondent's provided discovery and to draft Jan. 5, 2007 Request for Admissions, which focused on the third party users of the mark SKIN DEEP in the Respondent's Feb. 21, 2003 Thomson report. (*Reply Exh. Pages 28*).

After ACM granted Respondent a two week extension, ACM received Respondent's Feb. 20, 2007 responses to the Jan. 5, 2007 RFA, which included specific

admissions as to the existence of the third party prior users of the mark within this Feb. 21, 2003 Thomson report. These Jan. 5, 2007 RFA questions focused on the very detailed and specific information (including company name, city, state, zip codes, sales volume estimate, and the type of business or service provided) within the Respondent's Thomson report. (*Reply Exh. Pages 29-31;32-34*).

Within a week, Petitioner sent Respondent a Feb. 27, 2007 letter with 28 pages of attachments, which disclosed a simple Internet search conducted by ACM's attorney and was based on the prior third party users, shown in Respondent's Thomson report. (*Reply Exh. Pages 35-66*).

On Feb. 28, 2007, ACM's attorney David Hong called TTAB attorney Ann Linnehan to confirm that the Petitioner could simultaneously submit both a Motion for Summary Judgment and a Motion to Amend the Pleadings, which was fully disclosed in a Feb. 28, 2007 letter to Respondent's attorney. This letter also asked for supplemental responses and a 1-month extension of all trial dates to allow time for Respondent to provide these supplemental responses. (*Reply Exh. Pages 67-69*).

With the Jan. 5, 2007 RFA questions and the Feb. 2007 letters from ACM's counsel, Respondent was fully aware of new causes of action for (1) Prior Third Party Users and (2) Fraud for failure to disclose these prior third party users as found in Respondent's Feb. 21, 2003 Thomson search report.

From Feb. 27, 2007 to July 25, 2007, which is almost five months, Petitioner attempted to settle this case. To further push settlement, in a March 21, 2007 letter, ACM's attorney provided the law citations for the new causes of action: (1) Prior Use by Others in 15 USC 1052(d) and (2) Fraud citations to McCarthy on Trademarks Sec. 31:75

and 31:77 and Money Store v. Harriscorp Finance, Inc., 689 F.2d 666, 215 U.S.P.Q.2d 1030 (7th Cir. 1982). This letter also listed Petitioner's reasons for supplemental responses to its Feb. 22, 2006 and Jan. 5, 2007 discovery. (*Reply Exh. Pages 72-82*). ACM gave Respondent ample time to review the material highlighted in its Feb. 27 and March 21 letters. (*Reply Exh. Pages 83-89*).

Looking at ACM's actions and efforts to settle and considering the 7-month suspension due to the Motion to Compel (which is caused by Respondent's failure to provide supplemental and adequate discovery responses, which are still to this day not sufficient), Petitioner was more than reasonable in waiting to bring the instant Motions on Aug. 3, 2007 and submit new counts. There was no undue delay, bad faith or dilatory tactics by Petitioner.

B. No prejudice to Respondent to allow Petitioner to amend its pleading to include that Respondent Failed to Provide Required 15 USC §1051 Verified Statement.

Although the Petitioner introduced this new count (defective applicant's declaration) at the filing of its Aug. 3, 2007 motions, Respondent Jeannette Martello will not be prejudiced if the first proposed cause of action (defective 15 USC §1051 declaration of applicant) is allowed entry because Dr. Martello is both applicant and respondent to the '387 application for "SKIN DEEP". If Respondent has a reasonable explanation for not submitting a proper 15 USC §1051, she can submit her own declaration as to what happened. Respondent has all the information needed to respond to this new cause of action; there is no need to conduct discovery when Respondent herself has the information.

Also, this cause of action is very simple: either the applicant did or did not provide the proper declaration as required by 15 USC §1051 and TMEP 804.02. If the Respondent and Applicant were different parties, it would be reasonable for Respondent to claim that she did not have an opportunity to discover relevant information, but Respondent/Applicant Martello herself signed the defective declaration as shown in the '387 file history. The correspondence address is listed for Jeannette Martello. At the '387 filing date, there was no other attorney or other common representative listed for this application. There are no other persons to ask or documents to obtain from other parties for this particular count. Even a new count submitted at summary judgment does not absolve the Respondent of her requirement for a proper §1051 declaration.

C. No Prejudice to Respondent for Allowing Prior Third Party Users of the Mark and Second Fraud Causes of Action.

Respondent will not be prejudiced if Petitioner is allowed to amend the pleading with these new causes of action: Prior Third Party Users of the Mark and Fraud for not disclosing these prior third party users to the '387 Trademark Examiner. These prior third party users of the mark SKIN DEEP were clearly listed within the Respondent's Feb. 21, 2003 Thomson search report. Respondent had possession of this Feb. 21, 2003 Thomson search report a full 13 months prior to filing her instant '387 trademark application on March 15, 2004.

Even if Respondent argues to not having knowledge of the prior Interstate Commerce use of these third party uses of the mark, ACM's attorney provided proof of interstate commerce use of these third party users, which he found on the simple Internet

searches based on the Respondent's Feb. 21, 2003 search report; this information was fully disclosed to Respondent in a Feb. 27, 2007 letter to Respondent's counsel.

This Internet information was freely and readily accessible to any party. There is no prejudice to the non-moving party for these causes of action because relevant information was already and clearly within the possession of the Respondent.

D. Judicial Economy and Respondent's Rule 56(f) Request for Discovery.

Before granting any additional discovery to Respondent, TTAB should carefully look at the very simple nature of the first proposed count (applicant's defective declaration): either there is a proper §1051 and TMEP 804.02 declaration or there is not a proper declaration. In its opposition brief, the Respondent demands that if the requested new causes of action are allowed, then Respondent should be granted additional time for discovery under Rule 56(f). No doubt, the allowance of Rule 56(f) limited discovery will avoid any prejudice to the non-moving party. However, TMBP 528.07 nicely lists the reason for motions for summary judgment:

The purpose of the motion is judicial economy, that is, to avoid an unnecessary trial where there is no genuine issue of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case. (emphasis added).

Also, TMBP 528.07(a) states: "[g]enerally, a party that seeks summary judgment on an unpleaded issue may move to amend its pleading to assert the matter." *See also* TMBP 528.07(a) Footnote 440 cases.

Here, there is no genuine issue of material fact left to be tried; Respondent Martello never provided the proper declaration for her '387 application. Respondent will not be prejudiced because her signature was placed on the application's defective

declaration. In the interest of judicial efficiency and the lack of any prejudice to the Respondent, the motion to amend should be allowed, and Respondent's registration should be canceled based on this count alone.

For the counts (Prior Third Party Users of the Mark and Fraud based on non-disclosure to the '387 Examiner of these third party users), Respondent wants to confirm the other third parties' continuous use and dates of first use in Interstate Commerce. However, Respondent had access to very detailed and specific information about these third party users since the Feb. 21, 2003 Thomson report date and a full 13 months before the Respondent's filing date. This information can easily be corroborated through simple and free Internet searches as conducted and disclosed by ACM's attorney.

First question: since Respondent already had this sophisticated and thorough Thomson trademark search report on Feb. 21, 2003, why did the Respondent wait until Sept. 7, 2007 to ask for leave to ask discovery about these third party users? ACM's attorney thoroughly revealed the new counts (Fraud and Prior Third Party uses) in the Feb. 27, 2007 and March 21, 2007 letters to Respondent's counsel. Second question: what is wrong with Respondent conducting the same free Internet searches as done by ACM's attorney to verify the third party prior use of the mark in Interstate Commerce? Third question: even if discovery is allowed, these third party users are competitors in the same field as Respondent and are non-parties. If these third party users do not want to cooperate, Respondent will have to obtain subpoenas at Federal Court for depositions or discovery questions on most likely very unhappy or possibly hostile witnesses. This is an extremely costly and long process to simply verify information that can be more easily obtained through the Internet.

Petitioner's counsel looked to the Internet as a good source of objective information to investigate the nature and the date of interstate commerce use by these third parties, such as www.archive.org ("Internet Wayback Machine") for website use and Yahoo.com yellow pages. (*Reply Exh. Pages 35-66*). Regarding admissibility of Internet evidence, please see TBMP 528.05(e) and Telewizja Polska USA, Inc. vs. Echostar Satellite Corp., Case No. 02 C 3293 (N.D. Ill. Oct. 15, 2004), U.S. Dist. LEXIS 20845; 65 Fed. R. Evid. Serv. (Callaghan) 673; TMEP 904.06 and 710.01(b).

This reply brief is in response to Sept. 7, 2007 Respondent's Opposition; 15-days from Sept. 7, 2007 is Sat., Sept. 22, 2007; the next business day is Mon., Sept. 24, 2007. *See* TBMP Sec. 112; 37 CFR 2.196. For the reasons stated above, Petitioner respectfully requests that the Board grant Petitioner's motion to amend the pleadings and motion for summary judgment.

DATED: Sept. 24, 2007

By: /david hong/
David Hong (CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner, ACM Enterprises, Inc.

Certificate of Transmission:

I hereby certify that this correspondence with the accompanying Declaration of David Hong with Exhibit Pages 1-89, was electronically transmitted to the USPTO via the ESTTA system on 9-24-2007.
/david hong #45704/
David Hong, #45704

Certificate of Service:

I hereby certify that I am not a party to this case and a true and complete copy of the following document(s):

1. Petitioner's Reply Brief (10 pages);
2. Declaration of David Hong in Support of Petitioner's Reply Brief (5 pages) with 89 pages of Reply Exhibits;

were served by electronic mail and first class U.S. Mail (postage prepaid) in an envelope addressed to:

Mr. Brandon Tesser, Esq., TESSER & RUTTENBERG,
12100 Wilshire Blvd., Suite 220, Los Angeles, CA 90025

E-Mail: btesser@tesser-ruttenberg.com, Attorney for Respondent, on Sept. 24, 2007.

By: /david hong, #45704/
David Hong, #45704