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

Proceeding	92044697
Party	Plaintiff ACM ENTERPRISES, INC.
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Submission	Motion to Compel Discovery
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**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

**PETITIONER'S 2nd MOTIONS TO COMPEL FURTHER RESPONSES
(TBMP 523) AND TO TEST SUFFICIENCY OF RESPONSE TO ADMISSION
REQUEST (TBMP 524)**

Petitioner ACM Enterprises, Inc. respectfully requests for an order compelling Respondent Jeannette Martello to further respond to Petitioner's **Second Set of Interrogatories** and to test the sufficiency of the Respondent's **Response to the Third Set of Requests for Admissions**, per FRCP 26 and 37, 37 CFR 2.120 and TMBP 523-524. See also Declaration of David Hong and Exhibits A-N for this motion.

Such an order is appropriate because Respondent has failed to adequately respond to Petitioner's Interrogatories served on Feb. 22, 2006 and Petitioner's Third Set of Requests for Admissions served on Jan. 5, 2007. Counsel for Petitioner has made repeated good faith efforts to resolve the issues with Respondent including giving Respondent adequate time (over 1.9 years) to provide supplemental responses but, such efforts have been unsuccessful.

I. Background:

This case has a long history due to Petitioner's repeated attempts at settling this case, but Respondent has shown a history of being uncooperative in responding to discovery, which is in violation to the Duty to Cooperate (TBMP 408.01).

On July 1, 2005, Petitioner filed a Petition for Cancellation against Respondent's U.S. Registration No. 2932593 (Serial No. **76581387**, filed March 15, 2004 and registered on March 15, 2005), for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services; Respondent has claimed first use in commerce on Feb. 28, 2004 and first use anywhere on April 20, 2002 in her application.

Petitioner alleges priority of use and likelihood of confusion; in addition, Petitioner also alleges that Respondent did not use the mark "Skin Deep" in commerce as listed on its '387 application; (2) Respondent did not use the mark "Skin Deep" prior to Application or Registration; (3) Respondent's registration for "Skin Deep" was obtained fraudulently in that the Respondent failed to use the mark in commerce as applied in her applications. (See 7-1-2005 Petition for Cancellation. ¶¶5-13).

The first discovery period ran from July 26, 2005 to Jan. 22, 2006. The parties agreed to extend the discovery period to Feb. 22, 2006. On Feb. 22, 2006, Petitioner served the Respondent with Petitioner's Second Set of Interrogatories. (**Exhibit A**)

Responses to Petitioner's discovery requests were due in 30 days or by March 24, 2006; Petitioner granted three weeks of extension but declined to grant another extension. Respondent's April 14, 2006 response to the Feb. 22, 2006 interrogatories were incomplete and did not provide any documents. (**Exhibit B**)

Petitioner filed a first Motion to Compel Further Responses and Documents on April 21, 2006, which TTAB denied on Nov. 28, 2006. TTAB commented that Petitioner demonstrated a history of cooperation with the Respondent, but Petitioner should have agreed to Respondent's request for further time to respond and to perhaps obviate the need for the first motion to compel. Discovery was extended to Jan. 5, 2007.

Following the resetting of the discovery period, Petitioner sent out a third set of Request for Admissions (3rd RFA) on Jan. 5, 2007 in light of Respondent produced documents. (**Exhibit C**). Respondent provided unacceptable and deficient responses on Feb. 20, 2007. (**Exhibit D**).

Petitioner sent Feb. 28, 2007 and March 21, 2007 "meet and confer" letters to Respondent, which outlined why the requested information was discoverable and relevant and requested supplemental responses (**Exhibit E, pages 1-14**).

From approx. March 2007 to July 2007, the parties engaged in settlement discussions, but these talks were unsuccessful, and Petitioner was forced to file motions to amend the pleadings and for summary judgment on Aug. 3, 2007. TTAB denied both motions on Nov. 29, 2007, and from Dec. 2007 to Feb. 2008, the parties agreed to extend the start of the trial dates for more settlement talks. TTAB noticed the parties' attempt to settle and suspended the case on April 14, 2008 for three months.

The parties' attorneys (Mr. David Hong, Esq. and Mr. Brandon Tesser, Esq.) attempted to set up a mediation, but Respondent never agreed to a mediation even after Petitioner's attorney's attempt at selecting a mediator.

On Aug. 5, 2008, Respondent filed a change of correspondence address, and it appeared that the Respondent would be representing her self in pro per. In a Sept. 9, 2008 letter, Petitioner again asked to discuss settlement. (**Exhibit E**, page 35)

At that point, the Petitioner's trial testimony period was to begin on Sept. 12, 2008. On Sept. 11, 2008, Petitioner's attorney sent a letter to Respondent to again address the outstanding discovery issues, which were never answered since TTAB's first ruling on the first motion to compel further discovery responses in Nov. 2006. (Exhibit E, pages 36-37). Petitioner reminded Respondent several times regarding the outstanding discovery issues, including its Feb. 28, 2007 and March 21, 2007 meet and confer discovery letters, which detailed the reasons for further discovery responses, and which were repeatedly provided to Respondent – see Sept. 11, 2008 and Feb. 9, 2009 letters. (Exhibit E, pages 35 and 54).

At the last minute on Sept. 11, 2008, Respondent finally agreed to a 2-month extension of all trial dates. (Exhibit E, page 38). However, in response to the parties' motion to extend trial dates by 2 months, TTAB suspended the case for three months and listed new trial dates, including the Petitioner's trial period to end March 17, 2009; the Order noted: "this proceeding has entered its third year. By the end of the suspension granted herein, the parties will have had substantial time to engage in settlement. Accordingly, no further extensions for such purposes will be granted absent a showing of good cause therefore." **See Sept. 17, 2008 TTAB Order, pages 1-2.**

From Sept. 2008 to Feb. 2009, Petitioner has attempted in good faith to arrange a face to face meeting so that the parties could promptly settle this case. (**Exhibit E**, pages

38-60). Finally, the Respondent agreed to a Feb. 13, 2009 conference at 4:30 pm at Petitioner's office. (Exhibit E, pages 53-54).

This Feb. 13, 2009 settlement conference date was a mere two days prior to the start of the Petitioner's trial testimony period (Feb. 15, 2009 to March 17, 2009). Petitioner's attorney reminded Respondent for the time sensitive nature of this case, and of TTAB's warning that no further extensions would be granted. (Exhibit E, page 53).

Petitioner's Office (425 S. Fair Oaks Ave, Pasadena, CA 91105) is approximately 1.64 miles away from Respondent's address (701 Fremont Ave., So. Pasadena, CA 91030). (Exhibit F).

Unfortunately, on the afternoon of the 4:30 pm conference, Respondent's assistant George e-mailed Petitioner's attorney on or about 1:48 pm that Respondent Dr. Martello, who is plastic surgeon, was called away to an emergency surgery and may miss the settlement conference. In response, Mr. Hong e-mailed that the Petitioner would wait for the Respondent to finish her emergency surgery. (Exhibit E, pages 56-60).

Later in the afternoon of Feb. 13, 2009, Mr. Hong received a call from Respondent's assistant Nadine to advise him that Dr. Martello would not be able to attend the settlement conference and would need to reschedule. Mr. Hong told Dr. Martello's assistant that due to the pending start of the trial testimony period, we were pressed for time and that Dr. Martello could call Mr. Hong's mobile phone at any time prior to noon on Sat. Feb. 14, 2009 to try to settle this case. (Exhibit E, pages 56-60).

Further, Mr. Hong e-mailed Respondent some proposed settlement terms and also a request for a Saturday morning settlement conference, but Dr. Martello did not respond

until almost noon on Sat., and Dr. Martello did not respond to Petitioner's requests for a settlement conference. (Exhibit E, pages 56-60).

Petitioner does not wish to waste the Board's time and efforts with this discovery motion nor to further delay this long case. However, the pending discovery issues are important and relevant, and Respondent must provide further responses to Petitioner's discovery requests to comply with the FRCP 26(b)(1) regarding cooperating in discovery.

II. Law on Relevancy:

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). Relevant information may be discoverable if it "appears reasonably calculated to lead to the discovery of admissible evidence." FRCP 26(b)(1). 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).

III. Motion to Compel Further Responses for Interrogatories

A. Petitioner Has Made Good Faith Efforts to Resolve Discovery Issues, but Respondent has Completely Failed to Respond to Petitioner's Further Requests

Petitioner has made good faith efforts to resolve the outstanding issues regarding supplemental responses to the Feb. 22, 2006 interrogatories (No. 20-22). Petitioner's Feb. 28, 2007 and March 21, 2007 meet and confer letters clearly explained why

additional responses were necessary. Since the March 21, 2007 letter, Respondent has had almost 1.9 years to provide supplemental responses but has failed to comply. This time period of almost 1.9 years is more than reasonable for any party obtain the requested information.

Instead, Respondent has ignored her obligation to participate in the discovery process in good faith. If parties are allowed to simply not respond to questions or hide information, the whole discovery system fails. This motion asks for Dr. Martello to provide relevant information regarding prior use, which she is asserting as a defense.

For Interrogatories No. 20, 21, and 22, Respondent's April 14, 2006 responses only listed objections, and Petitioner formally requests a further response.

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.

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.

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).

Note that a copy of the Respondent's Dec. 9, 2005 Interrogatory Responses have been attached as EXHIBIT G.

B. Sara Herrick Info is Relevant and Material to Respondent's Defense

Petitioner is challenging Respondent's claim to a March 2001 date of first use in interstate commerce. During discovery, Respondent produced a Dec. 14, 2005 Assignment from Ms. Sara Herrick to Dr. Jeannette Martello for the mark SKIN DEEP SKIN CARE, INC. This assignment claims that Ms. Herrick is the owner of the common law rights to SKIN DEEP as used in connection with her medical, spa and skin care business entitled SKIN DEEP Skin Care, Inc. (**EXHIBIT H**).

It was apparent that Respondent was attempting to use Ms. Herrick's prior use of the SKIN DEEP SKIN CARE mark to gain an earlier priority date of use in this cancellation proceeding. Naturally, Petitioner would like to know how Ms. Herrick used the mark SKIN DEEP, including dates of first use anywhere, first use in commerce, and types of products/services. The Feb. 22, 2006 interrogatories specifically question this Dec. 2005 Assignment for the mark "SKIN DEEP SKIN CARE."

Petitioner will assert that the Respondent 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. Ms. Herrick's assignment to Dr. Martello is dated Dec. 14, 2005, which is after the Respondent's '387 application March 15, 2004 filing date. See TMEP 1201.02(b), 803.01, 803.06, and 37 C.F.R. §2.71(d); TMEP §1201.02(b). Huang v. Tzu Wei Chen Food Co. Ltd., 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988)).

However, even in light of this obvious problem with this assignment, Respondent only provided objections for Interrog. No. 20, 21, and 22, and Petitioner respectfully requests an order for Respondent to provide supplemental responses to Petitioner's Interrogatories No. 20-22.

III. Motion to Test Sufficiency of Response to Admission Request

A. Petitioner Has Made a Good Faith Effort to Work with Respondent

Petitioner submits that it has made a good faith effort to resolve with Respondent the issues presented in the motion. Specifically, Petitioner has given Respondent ample time (over 1.9 years) to provide supplemental responses the Requests. The March 21, 2007 meet and confer letter to Respondent described why further responses were necessary for these requests for admission; this March 21, 2007 letter has been again provided to Respondent on Sept. 11, 2008 and Feb. 4, 2009.

B. Requests for Admissions (RFA):

For RFA No. 21-23:

RFA 21-23 ask for admissions regarding types of healthspa services (microdermabrasion; treatment for acne; and cleansing and exfoliation of the skin). Respondent Dr. Martello has listed the following services on her 76581387 application for the mark “SKIN DEEP” in class 044 for medical services; **healthspa services**, namely cosmetic body care services; cosmetician services; physician services. **See Exhibit I.**

Since Respondent has listed “healthspa services” in her own trademark application, it is relevant and specific to ask whether the listed items are healthspa services. These RFA questions are not asking for expert opinions and conclusions. Rather, it is reasonable to ask whether the applicant herself 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.” (**Exhibit J**, 1-18-06 Martello Depo., Page 8, lines 12-21). Further, Dr. Martello’s website: (skindeepworld.com) has a section on Dermatology. (**Exhibit K**). It is more than reasonable to ask Dr. Martello, who is a plastic surgeon, as to whether the items (microdermabrasion, treatment for acne, and cleansing and exfoliation of the skin) are “healthspa services.” (**Exhibit J**, 1-18-06 Martello Depo., Page 7, line 4).

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

Since Respondent 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. (**Exhibit J, Jan. 18, 2006 Martello Depo., 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. Also, this RFA is relevant to a possible defense of analogous trademark use of the mark SKIN DEEP via Respondent’s radio show.

For RFA 51-56 and 65:

These requests are relevant and material because Respondent Dr. Martello has listed **medical services**; healthspa services, namely cosmetic body care services; cosmetician services; physician services for her ‘387 trademark application.

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. (**Exhibit M**).

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 (**Exhibit J, 1-18-06 Martello Depo., Page 36, lines 7-19**) and including physically doing consultations on air ((**Exhibit J, 1-18-06 Martello Depo., Page 47, lines 2-24**)).

Since Dr. Martello discussed doing medical consultations on the air, asking questions regarding medical services and consultations is relevant, not overbroad and not seeking an expert opinion or conclusion.

Looking to potential defenses, if Dr. Martello plans to assert her radio show as analogous 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.

For RFA 55, 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. (**Exhibit G**, page 6, responses to Interrog. 12 and 13).

Also, RFA 56 is not an incomplete or improper hypothetical. For RFA 65, 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. (**Exhibit G**, page 6, responses to Interrog. 12 and 13).

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

This RFA 71 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”. (**Exhibit J**, 1-18-06 Martello Depo., Page 36, lines 7-19). This is further relevant if Dr. Martello attempts to associate her radio show as analogous trademark use of her services listed on the ‘387 application. 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. 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.

For 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 72 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. (Exhibit N). Also,

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

IV. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Board grant Petitioner's motion to compel: order Respondent to further respond to Petitioner's Interrogatories 20-22 and grant Petitioner's motion to test the sufficiency of the Respondent's Response to the Third Set of Requests for Admissions and order additional responses as soon as the Rules allow after the Board's ruling on the motion.

DATED: Feb. 14, 2009

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

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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):

1. PETITIONER'S 2nd MOTION TO COMPEL FURTHER RESPONSES (TBMP 523) AND TO TEST SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST (TBMP 524) (including Exhibits A-N);
2. DECLARATION OF DAVID HONG IN SUPPORT OF PETITIONER'S 2nd MOTION TO COMPEL FURTHER RESPONSES;

were sent by electronic mail and first class U.S. Mail on Feb. 14, 2009, in an envelope addressed to:

Dr. Jeannette Martello, M.D.
701 Fremont Avenue
South Pasadena, CA 91030

E-Mail: drmartello@hotmail.com, Martello@skindeepworld.com

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

**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

**DECLARATION OF DAVID HONG IN SUPPORT OF PETITIONER'S 2nd
MOTION TO COMPEL FURTHER RESPONSES**

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. For Petitioner, I sent Feb. 28, 2007 and March 21, 2007 "meet and confer" letters to Respondent's counsel, which outlined why the requested information was discoverable and relevant and requested supplemental responses. (**Exhibit E, pages 1-14**).

3. From approximately March 2007 to July 2007, I contacted Respondent's counsel Mr. Brandon Tesser, Esq. for settlement discussions, but these talks were unsuccessful. After TTAB's denial of the Aug. 3, 2007 motions to amend the pleadings and for summary judgment, both Petitioner and Respondent agreed to extend the trial

dates to continue settlement talks. Respondent's attorney Mr. Tesser and I attempted to set up a mediation between our clients, but the Respondent never agreed to a mediation even after I suggested some mediators through the local U.S. District Court's panel.

4. On Aug. 5, 2008, Respondent filed a change of correspondence address, and the Respondent listed her business address for the correspondence address. In a Sept. 9, 2008 letter, I again asked to discuss settlement. (**Exhibit E**, page 35)

5. On Sept. 11, 2008, I sent a letter to Respondent to again address the outstanding discovery issues, which were never answered since TTAB's first ruling on the first motion to compel further discovery responses in Nov. 2006. (**Exhibit E**, page 36). I reminded Respondent several times regarding the outstanding discovery issues, including our Feb. 28, 2007 and March 21, 2007 meet and confer discovery letters, which detailed the reasons for further discovery responses, and which were repeatedly provided to Respondent – see Sept. 11, 2008 and Feb. 9, 2009 letters. (**Exhibit E**, pages 35, 54).

6. At the last minute on Sept. 11, 2008, Respondent finally agreed to a 2-month extension of all trial dates. (**Exhibit E**, page 38).

7. From Sept. 2008 to Feb. 2009, Petitioner has attempted in good faith to arrange a face to face meeting so that the parties could promptly settle this case. (**Exhibit E**, pages 38-50). Finally, the Respondent agreed to a Feb. 13, 2009 conference at 4:30 pm at Petitioner's office. (**Exhibit E**, pages 53-54).

8. This Feb. 13, 2009 settlement conference date was a mere two days prior to the start of the Petitioner's trial testimony period (Feb. 15, 2009 to March 17, 2009). I reminded Respondent for the time sensitive nature of this case, and of TTAB's warning that no further extensions would be granted. (**Exhibit E**, page 53).

9. Using Yahoo.com Maps function, on Feb. 14, 2009, I printed out directions to Petitioner's Office (425 S. Fair Oaks Ave, Pasadena, CA 91105) from Respondent's address (701 Fremont Ave., So. Pasadena, CA 91030), which listed the approximate distance of 1.64 miles. (Exhibit F).

10. On Feb. 13, 2009, I received an e-mail from Respondent's assistant George, which stated that Respondent Dr. Martello was called away to an emergency surgery and may miss the settlement conference. In response, I e-mailed George that we would wait for Dr. Martello to finish her emergency surgery. (Exhibit E, pages 56-60).

11. Later in the afternoon of Feb. 13, 2009, I received a call from Respondent's assistant Nadine, who stated that Dr. Martello would not be able to attend the settlement conference and would need to reschedule. I told Dr. Martello's assistant that due to the pending start of the trial testimony period, we were pressed for time and that Dr. Martello could call my mobile phone at any time prior to noon on Sat. Feb. 14, 2009 to try to settle this case. (Exhibit E, pages 56-60).

12. On the evening of Feb. 13, 2009, I e-mailed Dr. Martello some proposed settlement terms and also a request for a Saturday morning settlement conference, but Dr. Martello did not respond until almost noon on Sat., Feb. 14, 2009, and Dr. Martello did not respond to my requests for a settlement conference with my client, even via telephone. (Exhibit E, pages 56-60).

13. I declare under penalty of perjury (28 U.S.C. 1746) that the foregoing is true and correct.

Dated: Feb. 14, 2009

/david hong, reg #45704/

David Hong, Esq., Attorney for Petitioner

**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

**PETITIONER'S SECOND SET OF INTERROGATORIES
TO RESPONDENT JEANNETTE MARTELLO**

Pursuant to the provisions of 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Petitioner, ACM Enterprises, Inc., hereby serves the following interrogatories upon Respondent, Jeannette Martello, M.D. to be answered under oath by Respondent within thirty (30) days of service of this request.

INSTRUCTIONS AND DEFINITION OF TERMS

A. As used herein, the term "Petitioner" refers to ACM Enterprises, Inc., DBA Skin Deep Laser Med Spa, a California Corporation, and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner.

B. The terms "Petitioner's Marks" refers to any designation and/or trademark used or intended to be used by Petitioner to identify Petitioner or the goods or services offered or

promoted by Petitioner in connection with that term, and collectively refers to the "SKIN DEEP LASER MED SPA" mark(s) owned by Petitioner, including without limitation, United States Trademark Application No. 78569772 and cited by Petitioner in its Notice of Opposition.

C. The term "Respondent" refers to JEANNETTE MARTELLO and/or her licensee(s), and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Respondent, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Respondent.

D. The terms "Respondent's Marks" refers to the designation and/or trademarks:

- 1. "SKIN DEEP," Reg. 2932593; Serial No. 76581387;**
- 2. "SKIN DEEP LASER MEDSPA," Serial No. 76579565; and**
- 3. "SKIN DEEP LASER" Serial No. 76581391.**

Petitioner requests that each interrogatory be answered with respect to each of the Respondent's Marks. (See TBMP Sec. 405.03(c) Application of Limit: Multiple Marks, Etc.: "Trademark Rule 2.120(d)(1) does not provide for extra interrogatories in cases where more than one mark is pleaded and/or attacked by the plaintiff (whether in a single proceeding, or in consolidated proceedings), because in such cases, the propounding party may simply request that each interrogatory be answered with respect to each involved mark of the responding party, and the interrogatories will be counted the same as if they pertained to only one mark.")

E. Wherever in the following interrogatories Respondent is asked to identify documents, it is requested that the documents be identified by stating:

1. General type of document, i.e., letter, memorandum, report, miscellaneous, notes, etc.;

2. Date;

3. Author;

4. Organization, if any, with which author was connected;

5. Addressee or recipient;

6. Other distributees;

7. Organization, if any, with which addressee or recipient, or distributees were connected;

8. General nature of the subject matter to extent that Respondent can do so without divulging matter considered by it to be privileged;

9. Present location of such document and each copy thereof known to Respondent, including the title, index number and location, if any, of the file in which the document is kept or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

F. Wherever in the following interrogatories Respondent is asked to identify persons, it is requested that the persons be identified by stating:

1. Their full name, home and business addresses, if known;

2. Their employment, job title or description; and

3. If employed by Respondent, their dates and regular places of employment and general duties.

G. Wherever in the following interrogatories Respondent is asked to identify companies or the response to an interrogatory would require the identification of a company, it is requested that the company be identified by stating:

1. Its full corporate name;
2. A brief description of the general nature of its business;
3. Its state of incorporation;
4. The address and principal place of business; and
5. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

H. Wherever in the following interrogatories Respondent is asked to identify goods, products or services, or the marking used in combination with the goods or services, it is requested that the same be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, design element, or stylized appearance of the mark, and any other designation customarily used by the party concerned to designate such goods, products or services, or the like, and to distinguish it from others made by the same or a different producer.

I. Should Respondent deem to be privileged any document concerning information which is requested by any of the following interrogatories, Respondent shall list such documents and supply information as requested in Paragraph E above concerning such documents, and additionally shall indicate that they claim privilege therefor, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date,

the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Respondent associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document

J. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Respondent and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Respondent, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

K. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date hereof and these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Opposition herein which Respondent acquires or which becomes known to Respondent up to and including the close of the rebuttal testimony period shall be furnished to Respondent within a reasonable time after such information is acquired or becomes known.

INTERROGATORIES

Interrogatory No. 19:

State the full name, address, state and/or country of incorporation, and form of business conducted by SARA HERRICK using the mark "SKIN DEEP SKIN CARE" in connection with such business or enterprise from Jan. 2001 to Jan. 2006 in California.

Response:

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:

Interrogatory No. 23:

Identify each different promotional material, including without limitation, signs, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, and the like, which is known to Respondent, contains or bears the mark "SKIN DEEP SKIN CARE," Respondent's Marks or any variation thereof, and has been used or

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

Response:

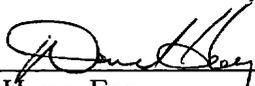
Interrogatory No. 24:

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:

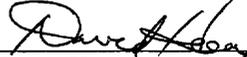
DATED: Feb. 22, 2006

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



1 Brandon M. Tesser, Esq. (SBN 168476)
Michelle E. DeCasas (SBN 228840)
2 TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
3 Los Angeles, CA 90025
Tel: (310) 207-4022
4 Fax: (310) 207-4033

5 Attorneys for Respondent
Jeannette Martello, M.D.

6
7
8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
9 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

10
11 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
12) Reg. No. 2932593
Petitioner,)
13 vs.) **RESPONDENT'S RESPONSES TO**
14) **PETITIONER'S SECOND SET OF**
JEANNETTE MARTELLO, M.D.,) **INTERROGATORIES**
15)
16)
Respondent.)

17 **Interrogatory No. 19:**

18 State the full name, address, state and/or country of incorporation, and form of business
19 conducted by SARA HERRICK using the mark "SKIN DEEP SKIN CARE" in connection with
20 such business or enterprise from Jan. 2001 to Jan. 2006 in California.

21 **Response:**

22 Skin Deep Skin Care, Inc., 266 N. Grand Avenue, Monrovia, CA 91016, 626-301-9996.

23 **Interrogatory No. 20:**

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

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

28 ///

- 1 (b) Describe in what particular manner SARA HERRICK used the mark "SKIN
2 DEEP SKIN CARE" (namely, first use) with each of the goods and/or services,
3 including without limitation Internet Web Site, signs, displays, promotional
4 materials, advertising, business stationary, business cards, labels, and brochures;
- 5 (c) Identify each person who has knowledge about such first use.

6 **Response:**

7 Objection, the interrogatory is vague, ambiguous, and overbroad.

8 **Interrogatory No. 21:**

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

12 **Response:**

13 Objection, the interrogatory is vague, ambiguous, and overbroad.

14 **Interrogatory No. 22:**

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

- 18 a. Identify the earliest date upon which Respondent intends to rely in this
19 proceeding;
- 20 b. Identify all documents relating to such use(s); and
- 21 c. Identify all persons with knowledge of said use(s).

22 **Response:**

23 Objection, the interrogatory is vague, ambiguous, and overbroad.

24 **Interrogatory No. 23:**

25 Identify each different promotional material, including without limitation, signs, display,
26 point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, and
27 the like, which is known to Respondent, contains or bears the mark "SKIN DEEP SKIN CARE,"
28 Respondent's Marks or any variation thereof, and has been used or disseminated at any time by

1 SARA HERRICK, and the location of said promotional materials or signs.

2 **Response:**

3 Objection, the interrogatory is vague, ambiguous, and overbroad. Subject to, and without
4 waiving the foregoing objections, pursuant to FRCP 33(d) Petitioner elects to comply with this
5 interrogatory by producing the business records and documents which contains the requested
6 information.

7 **Interrogatory No. 24:**

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

11 (a) If there are differing Headings or Identifying Names, please describe how the
12 Respondent used each Heading or Identifying Name on the invoices.

13 (b) If there are differing Headings or Identifying Names, please describe the particular
14 dates of use of each Heading or Identifying Name on the invoices.

15 **Response:**

16 Objection, the interrogatory is vague, ambiguous and incomprehensible such that
17 Petitioner is unable to provide a response.

18

19

20 Dated: April 14, 2006

TESSER & RUTTENBERG

21

22

By:



23

Brandon M. Tesser
Attorneys for Respondent
Jeannette Martello, M.D.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

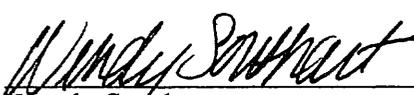
I am employed in the COUNTY of LOS ANGELES, STATE of CALIFORNIA. I am over the age of 18 and not a party to the within action; my business address is 12100 Wilshire Boulevard, Suite 220, Los Angeles, California 90025.

On April 14, 2006, I served the foregoing document(s) described as **RESPONDENT'S RESPONSES TO PETITIONER'S SECOND SET OF INTERROGATORIES** in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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

- BY MAIL:** I am readily familiar with my firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the 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.
- BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressee(s) as marked with an ***.
- BY FEDERAL EXPRESS:** I caused said envelope(s) to be sent by Federal Express to the addressee(s) on the attached service list.
- BY TELECOPIER:** In addition to the above service by mail, hand delivery, or 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.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 14, 2006, at Los Angeles, California.


Wendy Southart

**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

**PETITIONER'S THIRD REQUEST FOR ADMISSIONS
TO RESPONDENT JEANNETTE MARTELLO**

Pursuant to the provisions of 37 CFR §2.120 and Rule 36 of the Federal Rules of Civil Procedure, Petitioner, ACM Enterprises, Inc., hereby serves the following request for admissions upon Respondent, Jeannette Martello, M.D. to be answered under oath by Respondent within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

A. For these requests, unless otherwise indicated or unless the context otherwise requires:

1. The term "any" shall be construed to include the word "all" and "all" shall be construed to include the word "any" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

2. The term "between" shall be construed to include the word "among" and "among" shall be construed to include the word "between" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

PETITIONER'S THIRD REQ. FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697

Page 1

3. The terms "you" or "your" or "RESPONDENT" shall refer to JEANNETTE MARTELLO, and any affiliated corporations or other business entities under its control, any predecessors or successors in interest with respect to the "SKIN DEEP" mark, any licensees or other entities that have or are intended to use the "SKIN DEEP" mark with the consent of, and any of its directors, officers, employees, agents or representatives.

4. **The terms "Respondent's Mark" refers to the designation and/or trademark:**

1. "SKIN DEEP," Reg. 2932593; Serial No. 76581387;

2. "SKIN DEEP LASER MEDSPA," Serial No. 76579565; and

3. "SKIN DEEP LASER" Serial No. 76581391.

5. The term "document" shall mean the original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) or draft of each writing of every kind and description (together with all worksheets, supporting documents, and other relevant material), whether inscribed by hand or mechanical, electronic, microfilm, photographic or other means (such as recording, film, tape, videotape, disc, diskette, CD-ROM disc, laser disc, or other means including data processing files and other computer readable records or programs and all other data compilations from which information can be obtained, transcribed and translated), and including, but not limited to, correspondence, letters, telegrams, telefaxes, telexes, E-Mail, messages, TWX's, telephone logs, diaries, teletype messages, memoranda, notes, reports, printouts, records of meetings, conferences or telephone or other conversations or communications, appointment calendars, surveys, studies, statistical analyses, technical analyses, test reports, search reports, tabulations, drawings, plans, blueprints, specifications, graphs, books, magazines, newspapers, publications, articles, booklets, pamphlets, circulars, bulletins, brochures,

PETITIONER'S THIRD REQ. FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697

Page 2

advertising copy, contract bids, contracts, contract addenda, amendments, changes and modifications.

6. The term "Petitioner" shall refer to ACM ENTERPRISES, INC. and, where appropriate in the context, its predecessors in interest, parents, subsidiaries and/or affiliated corporations.

7. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

8. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

9. Definitions provided herein apply to any grammatical variant of the term or phrase definition.

10. Unless otherwise indicated, the geographical scope of these requests is limited to the United States of America.

REQUESTS FOR ADMISSION

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.

24. Admit that Respondent Jeannette Martello has registered California Corporation No. C2131384 entitled: "Jeannette Martello, M.D., a Professional Corporation."

25. Respondent JEANNETTE MARTELLO never filed a Telephone Book "Yellow Pages" Advertisement Listing for the name "SKIN DEEP" prior to March 15, 2004.

26. Respondent JEANNETTE MARTELLO never filed a Telephone Book "Yellow Pages" Advertisement Listing for the name "SKIN DEEP" prior to January 1, 2004.

27. Admit Respondent JEANNETTE MARTELLO was aware of Sara Herrick's business "SKIN DEEP SKIN CARE, INC." prior to March 15, 2004.

28. Admit Respondent JEANNETTE MARTELLO was aware of the medical, spa, and skin care services that Sara Herrick provided in the business "SKIN DEEP SKIN CARE, INC." prior to March 15, 2004.

29. Admit that Sara Herrick through the business "SKIN DEEP SKIN CARE, INC." did not provide medical, spa or skin care services, outside the state of California prior to March 15, 2004.

30. Admit that Sara Herrick through the business "SKIN DEEP SKIN CARE, INC." did not advertise medical, spa or skin care services, outside the state of California prior to March 15, 2004 through the Internet.

31. Admit that Sara Herrick through the business “SKIN DEEP SKIN CARE, INC.” did not advertise medical, spa or skin care services, outside the state of California prior to March 15, 2004 through print advertisement.

32. Admit that Sara Herrick through the business “SKIN DEEP SKIN CARE, INC.” did not advertise medical, spa or skin care services, outside the state of California prior to March 15, 2004 through radio or television advertisement.

33. Viewing **Petitioner’s RFA-3 Exhibit Page 1-5**, admit that the Dec. 14, 2005 Assignment from Sara Herrick to Jeannette Martello identifies Sara Herrick, R.N. as the “assignor” and the Jeannette Martello, M.D. as the “assignee.”

34. Viewing **Petitioner’s RFA-3 Exhibit Pages 1-5**, admit that the Dec. 14, 2005 Assignment from Sara Herrick to Jeannette Martello identifies Sara Herrick, R.N. as the “assignor” and the owner of all common law rights to the trademark SKIN DEEP as used in connection with medical, spa and skin care business entitled SKIN DEEP SKIN CARE, INC.

35. Admit Respondent Jeannette Martello did not directly control or operate any Internet Web Site using the terms “SKIN DEEP” prior to Jan. 1, 2004.

36. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or operate any Internet Web Site, which described medical services as listed in the U.S. Serial No. 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without limitation the source code or domain name.

37. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or operate any Internet Web Site, which described physician services as listed in the U.S. Serial No. 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without limitation the source code or domain name.

38. Admit prior to Jan. 1, 2004. Respondent Jeannette Martello did not directly control or operate any Internet Web Site, which described healthspa and cosmetic body care services as listed in the U.S. Serial No. 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without limitation the source code or domain name.

39. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or operate any Internet Web Site, which described cosmetician services as listed in the U.S. Serial No. 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without limitation the source code or domain name.

40. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided medical services as listed in the U.S. Serial No. 76581387 with the mark "SKIN DEEP" only within the state of California.

41. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided physician services as listed in the U.S. Serial No. 76581387 with the mark “SKIN DEEP” only within the state of California.

42. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided healthspa and cosmetic body care services as listed in the U.S. Serial No. 76581387 with the mark “SKIN DEEP” only within the state of California.

43. Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided cosmetician services as listed in the U.S. Serial No. 76581387 with the mark “SKIN DEEP” only within the state of California.

44. Admit that Respondent JEANNETTE MARTELLO was aware of Petitioner ACM Enterprises, Inc.’s business entitled “SKIN DEEP LASER MED SPA,” which is located at 425 South Fair Oaks Ave., Pasadena, CA 91105, prior to March 15, 2004.

45. Admit that Respondent JEANNETTE MARTELLO was aware of the cosmetic medical treatment services provided at Petitioner’s business entitled “SKIN DEEP LASER MED SPA,” which is located at 425 South Fair Oaks Ave., Pasadena, CA 91105, prior to March 15, 2004.

46. Admit that prior to March 15, 2004, Respondent JEANNETTE MARTELLO was aware that Dr. Saul Berger was the staff physician and surgeon for the Petitioner's business "SKIN DEEP LASER MED SPA," which is located at 425 South Fair Oaks Ave., Pasadena, CA 91105.

47. Admit that prior to March 15, 2004 Respondent Jeannette Martello was aware of Petitioner's Internet Web Site at www.skindeeplaser.com.

48. Admit that Respondent Jeannette Martello filed U.S. Trademark Application No. 76429408 in Class 41 for "entertainment services, namely, providing a radio program in the fields of medicine, surgery, health, health care, beauty, skin care, cosmetic surgery and plastic surgery" with a first use in interstate commerce of April 20, 2002.

49. Admit that since April 20, 2002, Respondent Jeannette Martello uses the terms "SKIN DEEP" to identify her radio program regarding the fields of medicine, surgery, health, health care, beauty, skin care, cosmetic surgery and plastic surgery.

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

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.

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.

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.

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

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.

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

57. Admit that the Respondent's radio program entitled SKIN DEEP provides general information and education to listeners in the fields of medicine, surgery, health, health care, beauty, skin care, cosmetic surgery and plastic surgery.

58. Admit that from April 20, 2002 to March 15, 2004, other than providing general and non-confidential information, Respondent JEANNETTE MARTELLO did not provide medical services to a particular radio program listener, who was not physically present in front of the Respondent, during her "Skin Deep" radio programs.

59. Admit that from April 20, 2002 to March 15, 2004, other than providing general and non-confidential information, Respondent JEANNETTE MARTELLO did not provide physician services to a particular radio program listener, who was not physically present in front of the Respondent, during her "Skin Deep" radio programs.

60. Admit that from April 20, 2002 to March 15, 2004, other than providing general and non-confidential information about cosmetician services, Respondent JEANNETTE MARTELLO did not provide cosmetician services to a particular radio program listener, who was not physically present in front of the Respondent, during her "Skin Deep" radio programs.

61. Admit that from April 20, 2002 to March 15, 2004, other than providing general and non-confidential information about healthspa services, Respondent JEANNETTE MARTELLO did not provide healthspa services to a particular radio program listener, who was not physically present in front of the Respondent, during her "Skin Deep" radio programs.

62. Admit that from April 20, 2002 to March 15, 2004, other than providing general and non-confidential information about cosmetic body care services, Respondent JEANNETTE MARTELLO did not provide cosmetic body care services to a particular radio program listener, who was not physically present in front of the Respondent, during her “Skin Deep” radio programs.

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.

64. Admit that viewing **Petitioner’s RFA-3 Exhibit Page 6** the second page of the “Skin Deep Magazine” Issue 1/2004 identifies the Managing Editor as Tammy Colter.

65. Admit that viewing **Petitioner’s RFA-3 Exhibit Page 6**, the second page of the “Skin Deep Magazine” Issue 1/2004 identifies the Advertising and Sales as Tammy Colter.

66. Admit that viewing **Petitioner’s RFA-3 Exhibit Page 7**, the second page of the “Skin Deep Magazine” Issue 1/2005 identifies the Assistant Editor as Annette Palazuelos.

67. Admit that viewing **Petitioner’s RFA-3 Exhibit Page 7**, the second page of the “Skin Deep Magazine” Issue 1/2005 identifies the Marketing and Media Development Director as Annette Palazuelos.

68. Admit that Petitioner's **RFA-3 Exhibit Page 8** shows a copy of a 2-22-2004 receipt for Celia Williams, which also shows a credit card receipt for a phone order with a title "Jeannette Martello, M.D."

69. Admit that viewing **Petitioner's RFA-3 Exhibit Page 8** shows a copy of a 2-22-2004 receipt for Celia Williams, nowhere on this credit card receipt is the notation "Skin Deep".

70. Admit that viewing **Petitioner's RFA-3 Exhibit Page 9** on the fax number identifier lists: "Dr. Martello."

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

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**.

73. Admit from the Respondent's www.skindeepworld.com Internet Web Site, the TERMS OF USE page lists the following: ADVICE RECEIVED VIA THE "Skin Deep World-Your ultimate resource to look and feel your best" WEB SITE SHOULD NOT BE RELIED UPON FOR PERSONAL, MEDICAL, LEGAL OR FINANCIAL DECISIONS

PETITIONER'S THIRD REQ. FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO
Cancellation No. 92044697

Page 12

AND YOU SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO YOUR SITUATION. See **Petitioner's RFA-3 Exhibit Page 14-15.**

74. Admit Respondent Jeannette Martello ordered a Search Report (Search No. 94660311) with the Thomson & Thomson company on or about Aug. 13, 2002 for the terms: "SKIN DEEP". See MAR 0028.

75. Admit Respondent Jeannette Martello received a Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP". See MAR 0028.

76. Admit the Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" included a Common Law Name Report. See MAR 0263.

77. Admit the Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" included a Domain Name Search Report. See MAR 0340-0341.

78. Admit the Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" included a Business Name Report. See MAR 0263.

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.

80. 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, SN LUIS OBISP, CA 93401, 805-781-8662; Sales Vol: N/A; Record # Source: 046261843-D&B; '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.

81. 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 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.

82. 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, San Diego, CA 92103, 619-299-3337; Year Entered: 2002; Record # Source: 587184060-ABI; 'SKIN TREATMENTS,'" on Page 206 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0317 of Respondent's provided documents.

83. 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 THE BODY SPA, 7862 Warner Ave., #J&K, Huntington Beach, CA 92647, 714-841-3313; Year Entered 1992; Record # Source: 463300467-ABI; 'Skin Treatments, Beauty Salons, Manicuring,'" on Page 210 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0321 of Respondent's provided documents.

84. 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 CLINIC, 518 E. Mulberry Street, Angleton, TX 77515, 979-848-1515; Record # Source: 558035234-ABI; 'Beauty Salons, Cancer Information,'" on Page 210 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0321 of Respondent's provided documents.

85. 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 CLINIC, Benicia, CA 94510-3324; Sales Vol: \$90,000 Actual; Record # Source: 858682420-D&B; 'Dermatologist,'" on Page 213 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0324 of Respondent's provided documents.

86. 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 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.

87. Admit the Respondent's Feb. 21, 2003 Domain Name Summary Page from the Thomson & Thomson company for the terms: "SKIN DEEP" listed: "SKINDEEP.COM" on Page 227, Search No. 94660311; Analyst: SEBASTIEN BRUNG. See MAR 0340 of Respondent's provided documents.

88. Admit the Respondent's Feb. 21, 2003 Domain Name Summary Page from the Thomson & Thomson company for the terms: "SKIN DEEP" listed: "SKINDEEP.COM" and Freeman-Cockerell Derm. Laboratories, Dallas, TX, on Page 233, Search No.

94660311; Analyst: SEBASTIEN BRUNG. See MAR 0346 of Respondent's provided documents.

89. Admit the Respondent's Feb. 21, 2003 Domain Name Summary Page from the Thomson & Thomson company for the terms: "SKIN DEEP" listed: "SKINDEEPCARE.COM" on Page 257. Search No. 94660311; Analyst: SEBASTIEN BRUNG. See MAR 0370-372 of Respondent's provided documents.

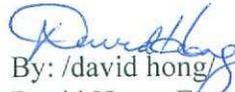
90. Admit the genuineness of the documents marked MAR 0028 to MAR 0388, which were provided by the Respondent in response to Petitioner's Oct. 31, 2005 First Request for Documents.

91. Admit the genuineness of the documents marked MAR 0001 to MAR 0027, which were provided by the Respondent in response to Petitioner's Oct. 31, 2005 First Request for Documents.

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

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

DATED: Jan. 5, 2007


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

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Attorney File No. 2005-02-0107

Certificate of Service

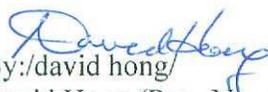
I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):

**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)

1 Brandon M. Tesser, Esq. (SBN 168476)
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5 Attorneys for Respondent
Jeannette Martello, M.D.

7
8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
9 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

10
11 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
12) Reg. No. 2932593
Petitioner,)
13 vs.) **RESPONDENT'S RESPONSES TO**
14 JEANNETTE MARTELLO, M.D.,) **PETITIONER'S THIRD REQUEST FOR**
15) **ADMISSIONS**
Respondent.)
16 _____)

17
18 **Request for Admission No. 21:**

19 Admit that "healthspa services" include microdermabrasion.

20 **Response:**

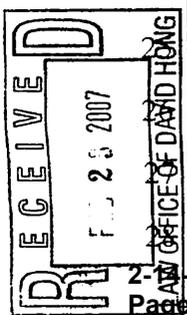
21 Objection, the Request: a) is not relevant nor reasonably calculated to lead to the
22 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
23 conclusions; d) constitutes an incomplete and/or improper hypothetical question; and e) calls for
24 speculation to the extent it seeks information outside Martello's personal knowledge.

Request for Admission No. 22:

Admit that "healthspa services" include treatment for acne.

Response:

Objection, the Request: a) is not relevant nor reasonably calculated to lead to the



1 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
2 conclusions; d) constitutes an incomplete and/or improper hypothetical question; and e) calls for
3 speculation to the extent it seeks information outside Martello's personal knowledge.

4 **Request for Admission No. 23:**

5 Admit that "healthspa services" include cleansing and exfoliation of the skin.

6 **Response:**

7 Objection, the Request: a) is not relevant nor reasonably calculated to lead to the
8 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
9 conclusions; d) constitutes an incomplete and/or improper hypothetical question; and e) calls for
10 speculation to the extent it seeks information outside Martello's personal knowledge.

11 **Request for Admission No. 24:**

12 Admit that Respondent Jeannette Martello has registered California Corporation No.
13 C2131384 entitled: "Jeannette Martello, M.D., a Professional Corporation."

14 **Response:**

15 Admit that this is the initial and past registration for this corporation. Denied as to the
16 remainder.

17 **Request for Admission No. 25:**

18 Respondent JEANNETTE MARTELLO never filed a Telephone Book "Yellow Pages"
19 Advertisement Listing for the name "SKIN DEEP" prior to March 15, 2004.

20 **Response:**

21 Admit.

22 **Request for Admission No. 26:**

23 Respondent JEANNETTE MARTELLO never filed a Telephone Book "Yellow Pages"
24 Advertisement Listing for the name "SKIN DEEP" prior to January 1, 2004.

25 **Response:**

26 Admit.

27 **Request for Admission No. 27:**

28 Admit Respondent JEANNETTE MARTELLO was aware of Sara Herrick's business

1 "SKIN DEEP SKIN CARE, INC." prior to March 15, 2004.

2 **Response:**

3 Admit.

4 **Request for Admission No. 28:**

5 Admit Respondent JEANNETTE MARTELLO was aware of the medical, spa, and skin
6 care services that Sara Herrick provided in the business "SKIN DEEP SKIN CARE, INC." prior
7 to March 15, 2004.

8 **Response:**

9 Admit that Martello had a general understanding of the type of business and services
10 Herrick provided prior to March 15, 2004. Denied as to the remainder.

11 **Request for Admission No. 29:**

12 Admit that Sara Herrick through the business "SKIN DEEP SKIN CARE, INC." did not
13 provide medical, spa or skin care services, outside the state of California prior to March 15,
14 2004.

15 **Response:**

16 Deny.

17 **Request for Admission No. 30:**

18 Admit that Sara Herrick through the business "SKIN DEEP SKIN CARE, INC." did not
19 advertise medical, spa or skin care services, outside the state of California prior to March 15,
20 2004 through the Internet.

21 **Response:**

22 Deny.

23 **Request for Admission No. 31:**

24 Admit that Sara Herrick through the business "SKIN DEEP SKIN CARE, INC." did not
25 advertise medical, spa or skin care services, outside the state of California prior to March 15,
26 2004 through print advertisement.

27 **Response:**

28 Deny.

1 **Request for Admission No. 32:**

2 Admit that Sara Herrick through the business "SKIN DEEP SKIN CARE, INC." did not
3 advertise medical, spa or skin care services, outside the state of California prior to March 15,
4 2004 through radio or television advertisement.

5 **Response:**

6 Deny.

7 **Request for Admission No. 33:**

8 Viewing Petitioner's RFA-3 Exhibit Page 1-5, admit that the Dec. 14, 2005 Assignment
9 from Sara Herrick to Jeannette Martello identifies Sara Herrick, R.N. as the "assignor" and the
10 Jeannette Martello, M.D. as the "assignee."

11 **Response:**

12 Admit.

13 **Request for Admission No. 34:**

14 Viewing Petitioner's RFA-3 Exhibit Pages 1-5, admit that the Dec. 14, 2005 Assignment
15 from Sara Herrick to Jeannette Martello identifies Sara Herrick, R.N. as the "assignor" and the
16 owner of all common law rights to the trademark SKIN DEEP as used in connection with
17 medical, spa and skin care business entitled SKIN DEEP SKIN CARE, INC.

18 **Response:**

19 Admit.

20 **Request for Admission No. 35:**

21 Admit Respondent Jeannette Martello did not directly control or operate any Internet Web
22 Site using the terms "SKIN DEEP" prior to Jan. 1, 2004.

23 **Response:**

24 Deny.

25 **Request for Admission No. 36:**

26 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or
27 operate any Internet Web Site, which described medical services as listed in the U.S. Serial No.
28 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without

1 limitation the source code or domain name.

2 **Response:**

3 Deny.

4 **Request for Admission No. 37:**

5 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or
6 operate any Internet Web Site, which described physician services as listed in the U.S. Serial No.
7 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without
8 limitation the source code or domain name.

9 **Response:**

10 Deny.

11 **Request for Admission No. 38:**

12 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or
13 operate any Internet Web Site, which described healthspa and cosmetic body care services as
14 listed in the U.S. Serial No. 76581387 and used the terms "SKIN DEEP" anywhere on the Web
15 Site including without limitation the source code or domain name.

16 **Response:**

17 Deny.

18 **Request for Admission No. 39:**

19 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello did not directly control or
20 operate any Internet Web Site, which described cosmetician services as listed in the U.S. Serial
21 No. 76581387 and used the terms "SKIN DEEP" anywhere on the Web Site including without
22 limitation the source code or domain name.

23 **Response:**

24 Deny.

25 **Request for Admission No. 40:**

26 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided medical services as
27 listed in the U.S. Serial No. 76581387 with the mark "SKIN DEEP" only within the state of
28 California.

1 **Response:**

2 Deny

3 **Request for Admission No. 41:**

4 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided physician services
5 as listed in the U.S. Serial No. 76581387 with the mark "SKIN DEEP" only within the state of
6 California.

7 **Response:**

8 Deny.

9 **Request for Admission No. 42:**

10 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided healthspa and
11 cosmetic body care services as listed in the U.S. Serial No. 76581387 with the mark "SKIN
12 DEEP" only within the state of California.

13 **Response:**

14 Deny.

15 **Request for Admission No. 43:**

16 Admit prior to Jan. 1, 2004, Respondent Jeannette Martello provided cosmetician
17 services as listed in the U.S. Serial No. 76581387 with the mark "SKIN DEEP" only within the
18 state of California.

19 **Response:**

20 Deny.

21 **Request for Admission No. 44:**

22 Admit that Respondent JEANNETTE MARTELLO was aware of Petitioner ACM
23 Enterprises, Inc.'s business entitled "SKIN DEEP LASER MED SPA," which is located at 425
24 South Fair Oaks Ave., Pasadena, CA 91105, prior to March 15, 2004.

25 **Response:**

26 Deny.

27 **Request for Admission No. 45:**

28 Admit that Respondent JEANNETTE MARTELLO was aware of the cosmetic medical

1 treatment services provided at Petitioner's business entitled "SKIN DEEP LASER MED SPA,"
2 which is located at 425 South Fair Oaks Ave., Pasadena, CA 91105, prior to March 15, 2004.

3 **Response:**

4 Deny.

5 **Request for Admission No. 46:**

6 Admit that prior to March 15, 2004, Respondent JEANNETTE MARTELLO was aware
7 that Dr. Saul Berger was the staff physician and surgeon for the Petitioner's business "SKIN
8 DEEP LASER MED SPA," which is located at 425 South Fair Oaks Ave., Pasadena, CA 91105.

9 **Response:**

10 Deny.

11 **Request for Admission No. 47:**

12 Admit that prior to March 15, 2004 Respondent Jeannette Martello was aware of
13 Petitioner's Internet Web Site at www.skindeeplaser.com.

14 **Response:**

15 Deny.

16 **Request for Admission No. 48:**

17 Admit that Respondent Jeannette Martello filed U.S. Trademark Application No.
18 76429408 in Class 41 for "entertainment services, namely, providing a radio program in the
19 fields of medicine, surgery, health, health care, beauty, skin care, cosmetic surgery and plastic
20 surgery" with a first use in interstate commerce of April 20, 2002.

21 **Response:**

22 Admit.

23 **Request for Admission No. 49:**

24 Admit that since April 20, 2002, Respondent Jeannette Martello uses the terms "SKIN
25 DEEP" to identify her radio program regarding the fields of medicine, surgery, health, health
26 care, beauty, skin care, cosmetic surgery and plastic surgery.

27 **Response:**

28 Denied. Martello uses the Mark "SKIN DEEP" to identify her radio program, her

1 medical practice, and other goods and services.

2 **Request for Admission No. 50:**

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

5 **Response:**

6 Objection, the Request is vague and ambiguous as to the phrase "type of entertainment
7 service".

8 **Request for Admission No. 51:**

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

12 **Response:**

13 Objection, the Request is: a) not relevant nor reasonably calculated to lead to the
14 discovery of admissible evidence; b) overbroad; and c) improperly seeks expert opinions and
15 conclusions.

16 **Request for Admission No. 52:**

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

20 **Response:**

21 Objection, the Request: a) is not relevant nor reasonably calculated to lead to the
22 discovery of admissible evidence; and b) is overbroad; and c) constitutes an incomplete and/or
23 improper hypothetical question.

24 **Request for Admission No. 53:**

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

27 **Response:**

28 Objection, the Request a) is not relevant nor reasonably calculated to lead to the

1 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
2 conclusions; d) constitutes an incomplete and/or improper hypothetical question; and e) is vague,
3 ambiguous and non-specific as to which “patient” is being referred to.

4 **Request for Admission No. 54:**

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

7 **Response:**

8 Objection, the Request a) is not relevant nor reasonably calculated to lead to the
9 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
10 conclusions; d) constitutes an incomplete and/or improper hypothetical question; and e) is vague,
11 ambiguous and non-specific as to which “patient” is being referred to.

12 **Request for Admission No. 55:**

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

16 **Response:**

17 Objection, the Request a) is not relevant nor reasonably calculated to lead to the
18 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
19 conclusions; d) constitutes an incomplete and/or improper hypothetical question; e) is vague,
20 ambiguous and non-specific as to which “patient” is being referred to.

21 **Request for Admission No. 56:**

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

24 **Response:**

25 Objection, the Request a) is not relevant nor reasonably calculated to lead to the
26 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
27 conclusions; d) constitutes an incomplete and/or improper hypothetical question; e) is vague,
28 ambiguous and non-specific as to which “patient” is being referred to.

1 **Request for Admission No. 57:**

2 Admit that the Respondent's radio program entitled SKIN DEEP provides general
3 information and education to listeners in the fields of medicine, surgery, health, health care,
4 beauty, skin care, cosmetic surgery and plastic surgery.

5 **Response:**

6 Deny.

7 **Request for Admission No. 58:**

8 Admit that from April 20, 2002 to March 15, 2004, other than providing general and
9 non-confidential information, Respondent JEANNETTE MARTELLO did not provide medical
10 services to a particular radio program listener, who was not physically present in front of the
11 Respondent, during her "Skin Deep" radio programs.

12 **Response:**

13 Deny.

14 **Request for Admission No. 59:**

15 Admit that from April 20, 2002 to March 15, 2004, other than providing general and
16 non-confidential information, Respondent JEANNETTE MARTELLO did not provide physician
17 services to a particular radio program listener, who was not physically present in front of the
18 Respondent, during her "Skin Deep" radio programs.

19 **Response:**

20 Deny.

21 **Request for Admission No. 60:**

22 Admit that from April 20, 2002 to March 15, 2004, other than providing general and
23 non-confidential information about cosmetician services, Respondent JEANNETTE
24 MARTELLO did not provide cosmetician services to a particular radio program listener, who
25 was not physically present in front of the Respondent, during her "Skin Deep" radio programs.

26 **Response:**

27 Deny.

28 ///

1 **Request for Admission No. 61:**

2 Admit that from April 20, 2002 to March 15, 2004, other than providing general and
3 non-confidential information about healthspa services, Respondent JEANNETTE MARTELLO
4 did not provide healthspa services to a particular radio program listener, who was not physically
5 present in front of the Respondent, during her "Skin Deep" radio programs.

6 **Response:**

7 Deny.

8 **Request for Admission No. 62:**

9 Admit that from April 20, 2002 to March 15, 2004, other than providing general and
10 non-confidential information about cosmetic body care services, Respondent JEANNETTE
11 MARTELLO did not provide cosmetic body care services to a particular radio program listener,
12 who was not physically present in front of the Respondent, during her "Skin Deep" radio
13 programs.

14 **Response:**

15 Deny.

16 **Request for Admission No. 63:**

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

20 **Response:**

21 Objection, the Request: a) is not relevant nor reasonably calculated to lead to the
22 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
23 conclusions; d) constitutes an incomplete and/or improper hypothetical question; e) is vague,
24 ambiguous and non-specific as to which "listener" is being referred to.

25 **Request for Admission No. 64:**

26 Admit that viewing Petitioner's RFA-3 Exhibit Page 6 the second page of the "Skin Deep
27 Magazine" Issue 1/2004 identifies the Managing Editor as Tammy Colter.

28 ///

1 **Response:**

2 Admit.

3 **Request for Admission No. 65:**

4 Admit that viewing Petitioner's RFA-3 Exhibit Page 6, the second page of the "Skin Deep
5 Magazine" Issue 1/2004 identifies the Advertising and Sales as Tammy Colter.

6 **Response:**

7 Admit.

8 **Request for Admission No. 66:**

9 Admit that viewing Petitioner's RFA-3 Exhibit Page 7, the second page of the "Skin Deep
10 Magazine" Issue 1/2005 identifies the Assistant Editor as Annette Palazuelos.

11 **Response:**

12 Admit.

13 **Request for Admission No. 67:**

14 Admit that viewing Petitioner's RFA-3 Exhibit Page 7, the second page of the "Skin Deep
15 Magazine" Issue 1/2005 identifies the Marketing and Media Development Director as Annette
16 Palazuelos.

17 **Response:**

18 Admit.

19 **Request for Admission No. 68:**

20 Admit that Petitioner's RFA-3 Exhibit Page 8 shows a copy of a 2-22-2004 receipt for
21 Celia Williams, which also shows a credit card receipt for a phone order with a title "Jeannette
22 Martello, M.D.".

23 **Response:**

24 Admit.

25 **Request for Admission No. 69:**

26 Admit that viewing Petitioner's RFA-3 Exhibit Page 8 shows a copy of a 2-22-2004
27 receipt for Celia Williams, nowhere on this credit card receipt is the notation "Skin Deep".

28 ///

1 **Response:**

2 Admit.

3 **Request for Admission No. 70:**

4 Admit that viewing Petitioner's RFA-3 Exhibit Page 9 on the fax number identifier lists:
5 "Dr. Martello."

6 **Response:**

7 Admit.

8 **Request for Admission No. 71:**

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

11 **Response:**

12 Objection, the Request: a) is not relevant nor reasonably calculated to lead to the
13 discovery of admissible evidence; b) is overbroad; c) improperly seeks expert opinions and
14 conclusions; d) constitutes an incomplete and/or improper hypothetical question; e) is vague,
15 ambiguous and non-specific as to which "listeners" are being referred to; f) is vague and
16 ambiguous as to the phrase "look for"; g) calls for speculation in that it seeks matters outside
17 Martello's personal knowledge.

18 **Request for Admission No. 72:**

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

22 **Response:**

23 Objection, the Request: a) is not relevant nor reasonably calculated to lead to the
24 discovery of admissible evidence; b) is overbroad; c) calls for speculation in that it seeks matters
25 outside Martello's personal knowledge.

26 **Request for Admission No. 73:**

27 Admit from the Respondent's www.skindeepworld.com Internet Web Site, the TERMS
28 OF USE page lists the following: ADVICE RECEIVED VIA THE "Skin Deep World-Your

1 ultimate resource to look and feel your best" WEB SITE SHOULD NOT BE RELIED UPON
2 FOR PERSONAL, MEDICAL, LEGAL OR FINANCIAL DECISIONS AND YOU SHOULD
3 CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO
4 YOUR SITUATION. See Petitioner's RFA-3 Exhibit Page 14-15.

5 **Response:**

6 Admit that the terms of use state this and many other things.

7 **Request for Admission No. 74:**

8 Admit Respondent Jeannette Martello ordered a Search Report (Search No. 94660311)
9 with the Thomson & Thomson company on or about Aug. 13, 2002 for the terms: "SKIN DEEP".
10 See MAR 0028.

11 **Response:**

12 Admit.

13 **Request for Admission No. 75:**

14 Admit Respondent Jeannette Martello received a Feb. 21, 2003 Search Report (Search
15 No. 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP". See
16 MAR 0028.

17 **Response:**

18 Admit.

19 **Request for Admission No. 76:**

20 Admit the Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson &
21 Thomson company for the terms: "SKIN DEEP" included a Common Law Name Report. See
22 MAR 0263.

23 **Response:**

24 Admit.

25 **Request for Admission No. 77:**

26 Admit the Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson &
27 Thomson company for the terms: "SKIN DEEP" included a Domain Name Search Report. See
28 MAR 0340-0341.

1 **Response:**

2 Admit.

3 **Request for Admission No. 78:**

4 Admit the Feb. 21, 2003 Search Report (Search No. 94660311) from the Thomson &
5 Thomson company for the terms: "SKIN DEEP" included a Business Name Report. See MAR
6 0263.

7 **Response:**

8 Admit.

9 **Request for Admission No. 79:**

10 "Company Name: SKIN DEEP, Santa Barbara, CA 93105-2625, 805-687-9497; Sales
11 Vol: \$1,200,000 Actual; Record # Source: 103055927 D&B; 'Toiletries, Cosmetics, and
12 Perfumes'; 'Cosmetology and Personal Hygiene Salons'" on Page 204 of the Common
13 Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR
14 0315 of Respondent's provided documents.

15 **Response:**

16 Admit.

17 **Request for Admission No. 80:**

18 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.
19 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:
20 "Company Name: SKIN DEEP, SN LUIS OBISP, CA 93401, 805-781-8662; Sales Vol: N/A;
21 Record # Source: 046261843-D&B; 'Cosmetology and Personal Hygiene Salons,'" on Page 204
22 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN
23 BRUNG). See MAR 0315 of Respondent's provided documents.

24 **Response:**

25 Admit.

26 **Request for Admission No. 81:**

27 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.
28 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:

1 "Company Name: SKIN DEEP THE BODY SPA, Huntington Beach, CA 92647-7318,
2 714-841-3313; Sales Vol: 300,000 ESTIMATE; Record # Source: 798262531-D&B; 'Facial
3 Salons; Electrolysis and Epilatory Services; Massage Parlor,'" on Page 204 of the Common
4 Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR
5 0315 of Respondent's provided documents.

6 **Response:**

7 Admit.

8 **Request for Admission No. 82:**

9 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.
10 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:
11 "Company Name: SKIN DEEP, San Diego, CA 92103, 619-299-3337; Year Entered: 2002;
12 Record # Source: 587184060-ABI; 'SKIN TREATMENTS,'" on Page 206 of the Common
13 Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR
14 0317 of Respondent's provided documents.

15 **Response:**

16 Admit.

17 **Request for Admission No. 83:**

18 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.
19 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:
20 "Company Name: SKIN DEEP THE BODY SPA, 7862 Warner Ave., #J&K, Huntington Beach,
21 CA 92647, 714-841-3313; Year Entered 1992; Record # Source: 463300467-ABI; 'Skin
22 Treatments, Beauty Salons, Manicuring,'" on Page 210 of the Common Law/Business Name
23 Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0321 of
24 Respondent's provided documents.

25 **Response:**

26 Admit.

27 **Request for Admission No. 84:**

28 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.

1 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:
2 "Company Name: SKIN DEEP CLINIC, 518 E. Mulberry Street, Angleton, TX 77515,
3 979-848-1515; Record # Source: 558035234-ABI; 'Beauty Salons, Cancer Information,'" on Page
4 210 of the Common Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN
5 BRUNG). See MAR 0321 of Respondent's provided documents.

6 **Response:**

7 Admit.

8 **Request for Admission No. 85:**

9 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.
10 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:
11 "Company Name: SKIN DEEP CLINIC, Benicia, CA 94510-3324; Sales Vol: \$90,000 Actual;
12 Record # Source: 858682420-D&B; 'Dermatologist,'" on Page 213 of the Common Law/Business
13 Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR 0324 of
14 Respondent's provided documents.

15 **Response:**

16 Admit.

17 **Request for Admission No. 86:**

18 Admit the Respondent's Feb. 21, 2003 Common Law/Business Name Report (Search No.
19 94660311) from the Thomson & Thomson company for the terms: "SKIN DEEP" listed:
20 "Company Name: SKIN DEEP INC., Bloomfield, MI 48301-1775; Sales Vol: \$1,400,000
21 Estimate; Record # Source: 162243963-D&B; 'Plastic Surgeon,'" on Page 213 of the Common
22 Law/Business Name Report (Search No. 94660311; Analyst: SEBASTIEN BRUNG). See MAR
23 0324 of Respondent's provided documents.

24 **Response:**

25 Admit.

26 **Request for Admission No. 87:**

27 Admit the Respondent's Feb. 21, 2003 Domain Name Summary Page from the Thomson
28 & Thomson company for the terms: "SKIN DEEP" listed: "SKINDEEP.COM" on Page 227,

1 Search No. 94660311; Analyst: SEBASTIEN BRUNG. See MAR 0340 of Respondent's
2 provided documents.

3 **Response:**

4 Admit.

5 **Request for Admission No. 88:**

6 Admit the Respondent's Feb. 21, 2003 Domain Name Summary Page from the Thomson
7 & Thomson company for the terms: "SKIN DEEP" listed: "SKINDEEP.COM" and
8 Freeman-Cockerell Derm. Laboratories, Dallas, TX, on Page 233, Search No. 94660311;
9 Analyst: SEBASTIEN BRUNG. See MAR 0346 of Respondent's provided documents.

10 **Response:**

11 Admit.

12 **Request for Admission No. 89:**

13 Admit the Respondent's Feb. 21, 2003 Domain Name Summary Page from the Thomson
14 & Thomson company for the terms: "SKIN DEEP" listed: "SKINDEEPCARE.COM" on Page
15 257, Search No. 94660311; Analyst: SEBASTIEN BRUNG. See MAR 0370-372 of
16 Respondent's provided documents.

17 **Response:**

18 Admit.

19 **Request for Admission No. 90:**

20 Admit the genuineness of the documents marked MAR 0028 to MAR 0388, which were
21 provided by the Respondent in response to Petitioner's Oct. 31, 2005 First Request for
22 Documents.

23 **Response:**

24 Martello admits the documents marked MAR 0028 to MAR 0388 are true and correct
25 copies of materials which were produced to ACM's counsel in this proceeding. Denied as to the
26 remainder.

27 **Request for Admission No. 91:**

28 Admit the genuineness of the documents marked MAR 0001 to MAR 0027, which were

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:



Brandon M. Tesser
Attorneys for Respondent
Jeannette Martello, M.D.

VERIFICATION

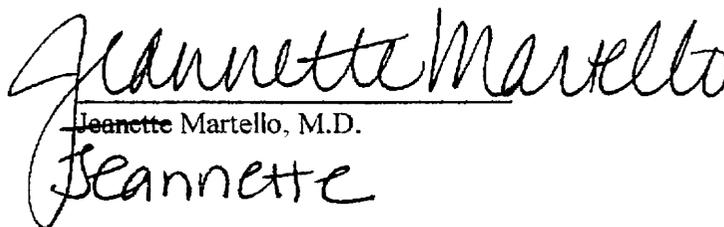
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

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
10 P.O. Box 2111
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
16 the offices of the addressee(s) as marked with an ***.

17 **BY FEDERAL EXPRESS:** I caused said envelope(s) to be sent by Federal
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 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
Page 2

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.
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
Page 3

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
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: 2007.02.28 13:35:22 -08'00'

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

March 21, 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 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

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
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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,

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
March 21, 2007
Page 3

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.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
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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 you 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,

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
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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

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
March 21, 2007
Page 6

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.

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
March 21, 2007
Page 7

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,

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
March 21, 2007
Page 8

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.

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
March 21, 2007
Page 9

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.

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
March 21, 2007
Page 10

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.

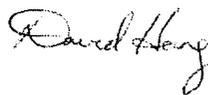
RFA 72. Admit that looking up the terms "Skin Deep" on the Yahoo.com Yellow Pages for the Pasadena, CA location, the search results list "Skin Deep Lazor [id] Med Spa," 425 South Fair Oaks Avenue, Pasadena, CA 91105. See Petitioner's RFA-3 Exhibit Page 11-13.

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

LEARN & DISCOVER

ASK THE EDITOR

ASK THE EXPERTS

PHOTOS & STORIES

BUY SKIN DEEP NOW

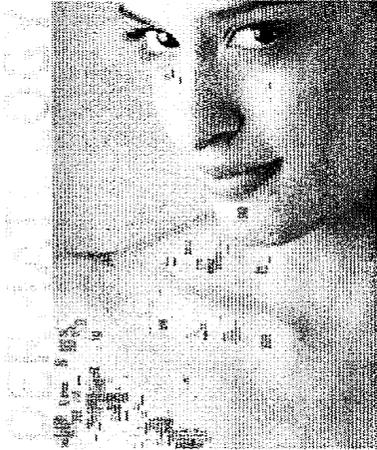
FIND A SPECIALIST

SKIN DEEP AUTHORS

PRESS

Login

Register



more info coming soon ...

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

LAW OFFICE OF DAVID HONG

David Hong, Esq.
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Santa Clarita, CA 91386-2111

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

Patent, Trademark, Copyright, Trade Secret &
Related Causes

June 19, 2007

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

VIA MAIL & E-MAIL PDF LETTER: 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 is a follow up to my June 11, 2007 e-mail letter regarding settlement. Please advise whether you had a chance to speak again to Dr. Martello about our latest settlement offer and any counter offers from Dr. Martello.

Options 1 and 2 notes are below from our April 23, 2007 telephone conference:

Redacted.

Please note that this communication is part of ongoing settlement discussions and 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.

Very truly yours,

David Hong, Esq.

**DAVID
HONG**

Digitally signed by DAVID HONG
DN: cn=DAVID HONG, email=david.hong@dhpattentlaw.com, o=Law Office of David Hong, c=US
Date: 2007.06.19 11:59:57 -07'00'

LAW OFFICE OF DAVID HONG

David Hong, Esq.
P.O. Box 2111
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Facsimile: (866) 824-8680
david.hong@dhpattentlaw.com

Patent, Trademark, Copyright, Trade Secret &
Related Causes

Dec. 3, 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:

In light of the Nov. 29, 2007 Trademark Board's decision on the Aug. 3, 2007 Motions for Amending the Complaint and for Summary Judgment and the very short notice of the restart of the trial dates, I am proposing extending out the trial dates by at least one month.

1. Time for Dr. Martello to provide supplemental discovery responses to Petitioner's interrogatories and request for admissions. See my Meet and Confer letters, which detail reasons why the original responses are not adequate and why the questions are relevant and material to discovery.

April 20, 2006 (Interrog. 20, 21 and 22);
Feb. 28, 2007 (Interrog. 20, 21 and 22);
March 21, 2007 (RFA No. 21, 22, 23, 50, 51, 52, 53, 54, 55, 56, 63, 71, and 72).
I attached PDF copies to the e-mail version of this letter.

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
Dec. 3, 2007
Page 2

Note that TBMP 523 & 524 and 37 CFR 2.120(e) requires any motions to compel need to be filed prior to the testimony period. Based on the reset trial dates from the Nov. 29, 2007 Decision, the Petitioner's testimony period starts Monday, Dec. 10, 2007.

Petitioner still has the opportunity to demand additional discovery responses and file motions to compel. I must file any Motions to Compel by Sunday, Dec. 9, 2007. I would like to give you additional time to respond so that I will not have to file a second motion to compel in order to preserve my client's rights (see TBMP 523.04 and 524.04).

Adequate supplemental responses to the above identified discovery questions are requested as soon as possible. **Note that even with one month extension for trial dates, this does not give us much time to resolve discovery disputes. If you need more time to get information from your client, please let me know, and we can agree on a longer extension of trial dates.**

2. Plaintiff's 30 day trial testimony period begins next Monday, Dec. 10, 2007.

I also need time to consult with my client and to prepare for trial. We will also need to coordinate calendars for both attorneys, Mr. Hurren and Dr. Martello. In consideration of the holiday period, my previous granting of extensions to your client for your schedule and the very short notice by TTAB of trial dates (i.e. 11 days from start of my testimony period), I would appreciate your client agreeing to the 1-month extension.

If acceptable, please send me written or e-mail confirmation so that I can file a stipulated extension request with TTAB.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
DN: cn=DAVID HONG,
email=david.
hong@dhpattentlaw.com, o=Law
Office of David Hong, c=US
Date: 2007.12.03 14:16:48 -08'00'



RE: Martello adv. ACM

Thursday, January 31, 2008 10:19 AM

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

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

Bcc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Jan. 31, 2008

Mr. Brandon Tesser, Esq.
Attorney for Respondent, Dr. Jeannette Martello

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

Based on our short call today, you informed me that Dr. Martello rejected ACM's Jan. 3, 2008 settlement offers, but she has not provided any counter offer terms.

You said that when I first presented the Jan. 3, 2008 settlement terms, your client immediately rejected the offer, and that you asked her for counter offer terms. However, many weeks have passed, and after your requests to your own client, Dr. Martello did not provide any counter offer terms to you.

You told me that you will attempt to obtain some counter offer terms from your client.

We briefly discussed that if this case does not settle that ACM will require supplemental and additional discovery responses in the two main areas: (1) Ms. Herrick's use of the mark and (2) the requests for admissions regarding Dr. Martello's alleged medical services provided during her radio show. There may be other issues, which are detailed in my past discovery/meet-confer letters to you.

I will call you on Monday, Feb. 4, 2008 so that you have an opportunity to look at my discovery letters and to determine whether your client will provide additional information to ACM.

Please look at my past letters, which explain why your client should provide additional responses, dated:

April 20, 2006 (Interrog. 20, 21 and 22);

Feb. 28, 2007 (Interrog. 20, 21 and 22);

March 21, 2007 (RFA No. 21, 22, 23, 50, 51, 52, 53, 54, 55, 56, 63, 71, and 72); and

Dec. 3, 2007.

Regarding scheduling dates: currently, Petitioner's trial begins Friday, Feb. 8, 2008. Any discovery or other motions will need to be filed prior to Feb. 8, 2008.

Very truly yours.

2-14-09 - ACM EXHIBIT E
Page 18 of 60

David Hong

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

Dr. Martello has rejected ACM's proposal. I am trying to get her to come up with a counter. I will keep you posted on that. Also, in the meantime, I have no authority to continue or suspend the current proceedings. So, I just want to be up-front with you about that. I will let you know if anything changes.

Regards,

Brandon Tesser

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

Sent: Tuesday, January 29, 2008 10:37 AM

To: Brandon Tesser

Subject: RE: Martello adv. ACM

Jan. 29, 2008

Re: SKIN DEEP TM Opp Settlement

Dear Brandon:

Have you heard back from Dr. Martello about ACM's settlement offer?

Very truly yours.

David Hong

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

Left messages for my client. Haven't heard back.

-B

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

Sent: Thursday, January 24, 2008 12:02 PM

To: Brandon Tesser

Subject: Re: Martello adv. ACM

Jan. 24, 2008

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

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

2-14-09 - ACM EXHIBIT E
Page 19 of 60

Dear Brandon:

I wanted to know if you had a chance to discuss our settlement terms with Dr. Martello.

Thanks,

David Hong

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

Los Angeles , CA 90025
Tel: (310) 207-4022
Fax: (310) 207-4033
E-Mail: btesser@tesser-ruttenberg.com

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

2-14-09 - ACM EXHIBIT E
Page 20 of 60

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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TESSER & RUTTENBERG
12100 Wilshire Boulevard, Suite 220
Los Angeles, California 90025
TEL: (310) 207-4022
FAX: (310) 207-4033

FACSIMILE TRANSMITTAL COVER SHEET

Date: March 3, 2008

TO	David Hong, Esq.
FAX NUMBER	(866) 824-8680
RE	ACM Enterprises v. Jeanette Martello
FROM	Brandon M. Tesser
DOCUMENT SENT	Letter dated March 3, 2008

This Transmission, Including Cover Sheet, Consists of 2 Pages

COMMENTS:

THIS FACSIMILE IS CONFIDENTIAL AND PRIVILEGED AND INTENDED FOR THE ADDRESSEE ONLY. IF YOU ARE NOT THE ADDRESSEE, PLEASE NOTIFY THE SENDER AND DESTROY THIS FACSIMILE AND ALL COPIES. THANK YOU.

TESSER & RUTTENBERG

ATTORNEYS AT LAW

12100 WILSHIRE BOULEVARD, SUITE 220

LOS ANGELES, CALIFORNIA 90025

TELEPHONE (310) 207-4022

FACSIMILE (310) 207-4033

March 3, 2008

Via Fax Only (866) 824.8680

David Hong, Esq.

Law Office of David Hong

P.O. Box 2111

Santa Clarita, California 91386-2111

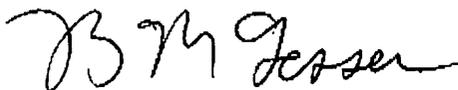
Re: *ACM Enterprises, Inc. v. Jeannette Martello*
Cancellation No. 92044697
Reg. No. 2932593

Dear David:

I just recently noticed that the Facilities and Management Services Agreement ("Agreement") produced by Petitioner in January 2006 is incomplete (see pages 117 and 118 of Petitioner's 1-24-06 production). You only produced the first and last pages of what appears to be a 14 page document. Please send me a complete copy of the Agreement at your earliest convenience.

However, be advised that if we do not receive a complete copy of the Agreement within the next seven days, we will be forced to compel its production *via* a motion before the TTAB. I trust this will not be necessary under the circumstances, and thank you in advance for your anticipated courtesy and cooperation.

Very truly yours,



Brandon M. Tesser

BMT:ws



Date: Mon, 3 Mar 2008 18:18:51 -0800 (PST)
From: "David Hong" <david_hong@sbcglobal.net>
Subject: ACM v Martello
To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>

Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
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 confirms that you have granted my office until **Wed., March 12, 2008** to respond to your discovery fax letter dated March 3, 2008. I appreciate the extension since I have jury duty starting March 10, 2008.

Note that your letter states that a complete copy of the Facilities and Mgt Services Agreement from Petitioner's 1-24-2006 document production would need to be produced by seven days of the March 3, 2008 letter or March 10, 2008.

If this is not correct, please advise.

In response to my inquiry of the reason for further production of the entire document, you stated relevance to the issue of standing (i.e. whether ACM Enterprises had the proper standing for this TTAB proceeding).

I will review your March 3, 2008 letter and the applicable discovery rules to respond. You stated that a redacted version of the Facilities and Management Services Agreement may be acceptable to keep confidential the financial terms between Dr. Berger and ACM.

I also noted that Dr. Martello still has not yet responded to our repeated requests for discovery, and since this case is in suspension for settlement talks, **it is puzzling that your client is pursuing avenues for continuing litigation.**

Nonetheless, I will respond to your March 3, 2008 letter by March 12, 2008.

I am glad to hear that your wife delivered safely.

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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2-14-09 - ACM EXHIBIT E
Page 24 of 60

LAW OFFICE OF DAVID HONG

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Patent, Trademark, Copyright, Trade Secret &
Related Causes

March 12, 2008

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

VIA MAIL & E-MAIL PDF LETTER: 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 follows my March 3, 2008 e-mail letter in response to your March 3, 2008 facsimile letter regarding your supplemental request for the production of the complete copy of the Feb. 1, 2004 Facilities and Management Services Agreement between Berger Medical Corporation and Skin Deep Laser Med Spa, Inc. ("Agreement").

ACM did not produce the entire Agreement in view of the confidential nature of its contents; however, to comply with good faith efforts to participate in discovery, the first and last pages of this Agreement were produced (see Pet. Doc. Prod. 1-24-2006, pages 117 and 118) to identify the existence of this Agreement and to not waive any confidentiality of its contents.

Your March 3, 2008 facsimile letter failed to give any reasons for a further production. I remind you of your duty to make a good faith effort, by conference or correspondence, to resolve with the other party or attorney the issues presented in a motion to compel a further production of documents. See **37 CFR § 2.120(e)** and **TBMP 523.02**.

After receiving your March 3, 2008 facsimile letter, I called you to ask why you needed the full Agreement. In response, you stated that this document was relevant to the issue of standing (i.e. whether ACM Enterprises had the proper standing for this TTAB proceeding) and other reasons, but you did not provide any other reasons.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
March 12, 2008
Page 2

Response to Respondent's March 3, 2008 Request for Supplemental Document Production:

In response, my client reasserts its objections to the Dec. 20, 2005 First Set of Request for Production of Documents propounded by the Respondent, which were properly presented in Petitioner's Jan. 24, 2006 response. Petitioner will not be providing a complete version of its Feb. 1, 2004 Agreement.

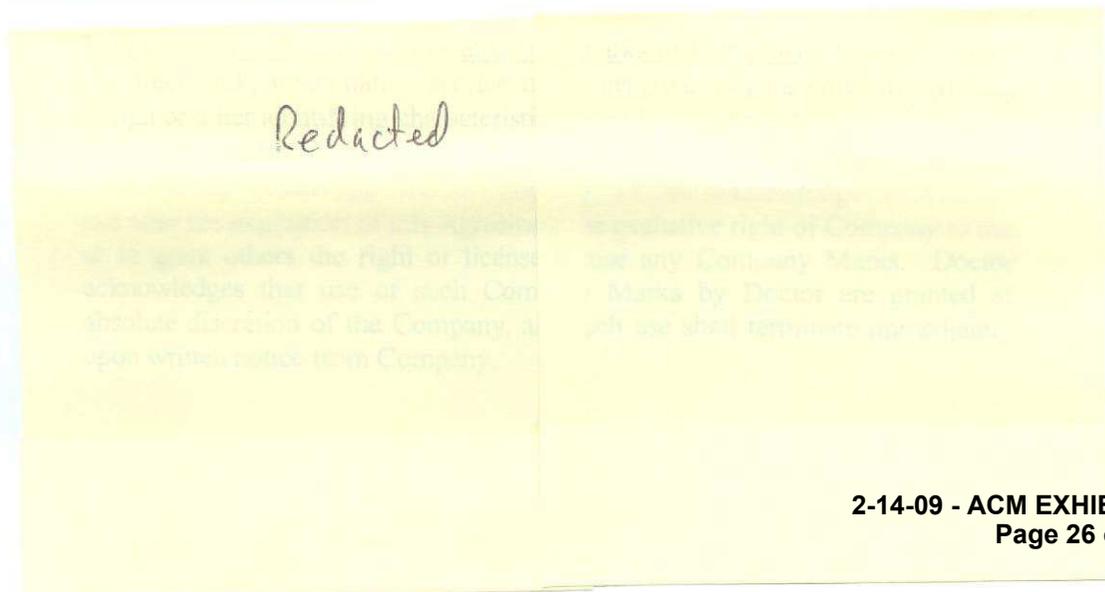
TBMP 402.02 Limitations on Right to Discovery

The right to discovery is not unlimited. Even if the discovery sought by a party is relevant, it will be limited, or not permitted, where, inter alia, it is unreasonably cumulative or duplicative; or is unduly burdensome or obtainable from some other source that is more convenient, less burdensome, or less expensive; or "where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information."

For example, in those cases where complete compliance with a particular request for discovery would be unduly burdensome, the **Board may permit the responding party to comply by providing a representative sampling of the information sought, or some other reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs.** (emphasis added).

However, without waiving the above objections or waiving the right to confidentiality of this Agreement, I am providing a redacted page 4 and the following selection from the Feb. 2004 Agreement to show that ACM has proper standing in this Trademark Cancellation Proceeding:

From Page 4 of the Agreement:



Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
March 12, 2008
Page 3

See the attached three pages of supplemental document production dated March 12, 2008. The e-mail copy of this letter has an attached PDF file. Note the **CONFIDENTIAL designation as required by the TTAB Confidentiality Order**, dated Nov. 28, 2006, Sec. 1: Classes of Protected Information.

To further clarify, please see Petitioner's Jan. 24, 2006 Response to Respondent's Special Interrogatory No. 4, which has been reproduced in part:

For the Pasadena, CA Location:

The medical practice is Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation, which is a California Corporation and was incorporated on Jan. 7, 2004 with a registered office of 425 S. Fair Oaks Avenue, Suite B, Pasadena, CA 91105.

Dr. Saul Berger, M.D. is the 100% shareholder of Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation; Dr. Saul Berger, MD serves as Director and Chief Executive Officer, and Mr. Colin Hurren serves as Director, Secretary, and Chief Financial Officer.

ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc. is a California Corporation, incorporated in Nov. 19, 1991 as "Once in a Lifetime Entertainment, Inc." and was subsequently renamed "ACM Enterprises, Inc."

ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc. is the facilities and management service company to Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation.

This information properly answers your inquiry regarding relevance and standing of ACM in this proceeding against Dr. Martello and fulfills my client's duty of making a good faith effort

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
March 12, 2008
Page 4

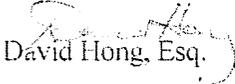
in responding to a discovery request. If you have other discovery issues, please do not hesitate to contact me.

Regarding Settlement:

We are currently in suspension for settlement purposes. In our March 3, 2008 telephone conference, you stated you wanted the complete Facilities and Services Agreement to determine all issues for your client; however, you did not identify any other issues other than standing. With the standing issue settled, I again suggest that we schedule mediation for this case.

In my last patent and trademark case, I had a good experience with retired Fed. Judge John L. Wagner of Judicate West to mediate, and Judge Wagner was very effective in getting both sides to come to a reasonable business resolution of disputes. If Dr. Martello has a bone fide intention to use this suspension period to settle, I suggest that we coordinate calendars to select an appropriate date with Judge Wagner or another skilled mediator.

Very truly yours,


David Hong, Esq.

Encl: 3 page Supplemental Doc. Prod, dated March 12, 2008.



RE: ACM v Martello

Thursday, April 3, 2008 11:25 AM

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

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

Bcc: "Michelle Katz" <mkatzlaw@yahoo.com>, "Colin D. Hurren" <colin@skindeeplaser.com>

Re: ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Attorney File No. 2005-02-0107

Dear Brandon:

We're coming to the end of the 2-month suspension period for settlement purposes, and the Plaintiff's trial period begins on April 16, 2008.

To have enough time to do a mediation, I propose that we agree to another suspension period for settlement (2-3 months).

Please advise.

Very truly yours,

David Hong

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

Hi David, I have been out of the office in depositions and mediations the past week or so. I will discuss with my client your suggestion that we participate in mediation and get back to you.

- Brandon

From: David Hong [mailto:david_hong@sbcglobal.net]
Sent: Wednesday, March 12, 2008 4:07 PM
To: Brandon Tesser
Subject: ACM v Martello

March 12, 2008

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

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

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

2-14-09 - ACM EXHIBIT E
Page 29 of 60

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:

The attached PDF and mailed letter follows my March 3, 2008 e-mail letter in response to your March 3, 2008 facsimile letter regarding your supplemental request for the production of the complete copy of the Feb. 1, 2004 Facilities and Management Services Agreement between Berger Medical Corporation and Skin Deep Laser Med Spa, Inc. ("Agreement").

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
805.807.0515 Mobile & Int'l Tel

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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
366.824.8680 Tel & Fax
305.807.0515 Mobile & Int'l Tel

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ACM v Martello

Friday, April 11, 2008 11:10 AM

From: "David Hong" <david_hong@sbcglobal.net>
To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>
Bcc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>
2008-04-11 motion 3mo suspension 92044697.doc (37KB)

Re: ACM v Martello
Proposed additional 3-month suspension period

Dear Brandon:

If you are able to obtain Dr. M's consent to a three month suspension of this case for settlement and to conduct a mediation, I went ahead and made changes to the last stipulation motion that we filed in Feb. 2008.

See the attached Word Doc and check the dates if they are good for your calendar.

DH

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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ACM v Martello

Friday, April 11, 2008 6:25 PM

From: "David Hong" <david_hong@sbcglobal.net>
To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>
Bcc: "Michelle Katz" <michelle@mkatzlaw.com>, "Colin D. Hurren" <colin@skindeeplaser.com>

Dear Brandon,

I left a voicemail at your office around 6:20 pm regarding whether we can agree to suspension period to conduct a mediation. I have not received an e-mail or call from you.

Note that the Plaintiff's trial testimony period begins on Wed., April 16, 2008.

Please get back to me as early as possible on Monday, April 14.

Thank you,

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
866.824.8680 Tel & Fax
805.807.0515 Mobile & Int'l Tel

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mediator for ACM v Martello

Tuesday, April 15, 2008 12:54 PM

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

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

CC: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>
adr.doc (26KB)

Re: ACM v. Martello - selecting a mediator.

Dear Brandon:

As we discussed today, I attached a Word doc from TTAB as to alternative dispute resolution. They do not appear to have a list of mediators, but they provide info to contact INTA, AIPLA, AAA, etc.

I'll contact the USDC to see if we can pick a mediator from the IP/trademark list for Central District of CA. I believe that Judge Wagner of Judicate West is on the mediation list.

Re: calendar trial dates

Based on the April 14, 2008 suspension order from TTAB, the Plaintiff's trial period ends Oct. 12, 2008. I'm calendaring Sept. 12, 2008 as the beginning of ACM's trial period, and Sept. 11, 2008 as the last day to file any motions.

DH

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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usdc mediator list

Tuesday, April 15, 2008 1:03 PM

From: "David Hong" <david_hong@sbcglobal.net>
To: "Brandon Tesser" <btesser@tesser-ruttenberg.com>
Bcc: "Michelle Katz" <michelle@mkatzlaw.com>, "Colin D. Hurren" <colin@skindeeplaser.com>
printout_usdc_copyright_tm_mediator_list.pdf (20KB)

<http://www.cacd.uscourts.gov/cacd/AttySetPan.nsf/2737df6410b708f58825705200688b5a?OpenView>

Re: ACM v Martello

I went onto the U.S. District Court's website, and I printed out a PDF of the copyright/trademark mediator list.

Judge Wagner was only on the patent list, and not the copyright trademark list.

I'm going to ask a few of my colleagues if they have had good experiences with any particular mediators.

I know of one of the mediators - Les Weinstein. I believe that he is "of counsel" at Squire Sanders, and he mediated a patent case when I was an associate at my old firm about 7 years ago. Les is a very experienced IP attorney and a good guy - from what I remember, and one of other patent attorneys with whom I work also speaks highly of Les.

DH

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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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

Sept. 9, 2008

Dr. Jeannette Martello, M.D.
701 Fremont Avenue
South Pasadena, CA 91030

VIA MAIL & E-MAIL: drmartello@hotmail.com, martello@skindeepworld.com

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

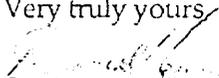
Dear Dr. Martello:

I am in receipt of the Aug. 5, 2008 Change of Correspondence Address. I will be sending correspondence directly to you.

We are fast approaching the start of the Petitioner's trial testimony period on Friday, Sept. 12, 2008.

During the last suspension period, both parties never engaged in any mediation or substantive settlement talks. Before the trial period begins on Friday, I would like to discuss settlement again.

Please call my mobile phone 805-807-0515.

Very truly yours,

David Hong, Esq.

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

Sept. 11, 2008

Dr. Jeannette Martello, M.D.
701 Fremont Avenue
South Pasadena, CA 91030

VIA MAIL, FAX (626) 403-1784 (2 pages) & E-MAIL: drmartello@hotmail.com,
martello@skindeepworld.com

Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
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 Dr. Martello:

We are fast approaching the start of the Petitioner's trial testimony period on Friday, Sept. 12, 2008.

1. Discovery Responses:

Based on my numerous letters to your previous attorney Mr. Tesser regarding insufficient responses to ACM's discovery requests, you still have not provided any supplemental responses. See my letters dated 2-28-2007 and 3-21-2007, among others. I have attached PDF copies of these two letters to the e-mail copy of this letter.

Since TTAB rules require any motions to compel further discovery responses must be filed before the start of the first trial testimony period, in order to preserve my client's rights, I need to file a motion to compel further discovery responses by today, Sept. 11, 2008.

I would prefer if we could agree to extend out the trial dates by another month so that you can send supplemental discovery responses to me.

If I do not hear from you by 4 pm today, Sept. 11, 2008, I will be filing the motion to compel further responses to interrogatories and request for admissions.

2. Answer is incomplete and defective.

I reviewed your Aug. 29, 2005 Answer (5 pages), but it appears that pages are missing. There does not appear to be any response to the Complaint's paragraph no. 2-4 and 11-13. I attached a PDF copy of this answer as downloaded from TTABVUE server, in the e-mail copy of this letter.

Dr. Jeannette Martello
Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
Sept. 11, 2008
Page 2

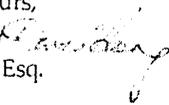
We will need to discuss the proper TTAB procedure for you to remedy this defect and whether any additional discovery needs to be done.

Please call my mobile phone 805-807-0515.

Very truly yours,

/David Hong

David Hong, Esq.

A handwritten signature in black ink, appearing to read "David Hong", is written over the typed name. The signature is cursive and somewhat stylized.

Encl via E-Mail only: PDF copies of 2-28-2007 and 3-21-2007 letters from D. Hong to B. Tesser; PDF copy of 8-29-2005 Answer.



RE: confirmation of 2-mo extension of all trial dates for ACM v Martello

Thursday, September 11, 2008 4:26 PM

From: "Jeannette Martello" <drmartello@hotmail.com>

To: david_hong@sbcglobal.net

Thank you. I agree with the two month extension. Sincerely, Jeannette Martello, M.D., J.D.

Date: Thu, 11 Sep 2008 16:13:31 -0700

From: david_hong@sbcglobal.net

Subject: confirmation of 2-mo extension of all trial dates for ACM v Martello

To: drmartello@hotmail.com; martello@skindeepworld.com

CC: colin@skindeeplaser.com; michelle@mkatzlaw.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 Dr. Martello:

Thank you for calling me back. This e-mail letter confirms our agreement of a 2-month extension of all trial dates.

With this grant of the extension of 2-months, I will not be filing a motion to compel additional discovery responses today.

Please take a look at the TBMP manual for a summary of what goes on during a cancellation trial proceeding. This manual is downloadable off the USPTO.gov website.

I will be e-filing this extension request.

Settlement Conference:

Also, as we discussed, I will call you on Sept. 26, 2008 to set up a time for a possible settlement conference with both you and Mr. Hurren and the attorneys.

Mr. Tesser should have given you the entire file, but if you are missing documents, please let me know. Most filing except discovery matters should be available on the TTABVUE database at the www.uspto.gov website.

Very truly yours,

David Hong

David Hong, Esq.,
LAW OFFICE OF DAVID HONG

2-14-09 - ACM EXHIBIT E
Page 38 of 60

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)
Mobile & International Tel: 805.807.0515
E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net.

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See how Windows connects the people, information, and fun that are part of your life. See Now

**ACM v Martello meeting & schedule request**

Friday, September 26, 2008 12:39 PM

From: "David Hong" <david_hong@sbcglobal.net>**To:** "Jeannette Martello" <drmartello@hotmail.com>, "Jeannette Martello" <martello@skindeepworld.com>**Cc:** "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

ttabvue-92044697-CAN-39[1].pdf (24KB)

Sept. 26, 2008

Re: ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Attorney File No. 2005-02-0107

Dear Dr. Martello:

It has been about 2-weeks since we last spoke. I wanted to see whether we can schedule a meeting of the parties for potential settlement of this case.

Note that TTAB has issued a final 3-month suspension of this case on 9-17-2008 . I attached a copy of the order from our assigned TTAB attorney. Since TTAB says this case has been going on for three years, we should try to settle during this 3-month period.

Please let me know your schedule for a meeting. My guess is that late afternoon or early evening would best accommodate both your and Mr. Hurren's schedule.

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
U.S. and Canada Tel & Fax: 866.824.8680 (toll-free)
Mobile & International Tel: 805.807.0515
E-Mail: david.hong@dhpatentlaw.com or david_hong@sbcglobal.net.

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RE: ACM v Martello meeting & schedule request

Tuesday, November 11, 2008 4:11 PM

From: "David Hong" <david_hong@sbcglobal.net>
To: "Jeannette Martello" <drmartello@hotmail.com>
Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Re: SKIN DEEP TM - settlement conference

Dear Dr. Martello:

Let me speak to Colin Hurren, but next week is better for me.

I am free the following two weeks except Monday, Nov. 17.

Very truly yours,
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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--- On Tue, 11/11/08, Jeannette Martello <drmartello@hotmail.com> wrote:

From: Jeannette Martello <drmartello@hotmail.com>
Subject: RE: ACM v Martello meeting & schedule request
To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>
Date: Tuesday, November 11, 2008, 2:16 PM

When can we meet with your client? Jeannette Martello

Date: Fri, 26 Sep 2008 13:30:01 -0700
From: david_hong@sbcglobal.net
Subject: RE: ACM v Martello meeting & schedule request
To: drmartello@hotmail.com

Thank you. DH

--- On Fri, 9/26/08, Jeannette Martello <drmartello@hotmail.com> wrote:

From: Jeannette Martello <drmartello@hotmail.com>
Subject: RE: ACM v Martello meeting & schedule request
To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>
Date: Friday, September 26, 2008, 1:28 PM

thank you for your email. I will have to look at the schedule when I get back into town from out of town business. martello.

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

From: David Hong <david_hong@sbcglobal.net>
Sent: 9/26/2008 7:39:21 PM

To: Jeannette Martello <drmartello@hotmail.com>, Jeannette Martello

2-14-09 - ACM EXHIBIT E
Page 41 of 60

<martello@skindeepworld.com>
Cc: Colin D. Hurren <colin@skindeeplaser.com>, Michelle Katz
<michelle@mkatzlaw.com>
Subject: ACM v Martello meeting & schedule request

Sept. 26, 2008

Re: ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Attorney File No. 2005-02-0107

Dear Dr. Martello:

It has been about 2-weeks since we last spoke. I wanted to see whether we can schedule a meeting of the parties for potential settlement of this case.

Note that TTAB has issued a final 3-month suspension of this case on 9-17-2008. I attached a copy of the order from our assigned TTAB attorney. Since TTAB says this case has been going on for three years, we should try to settle during this 3-month period.

Please let me know your schedule for a meeting. My guess is that late afternoon or early evening would best accommodate both your and Mr. Hurren's schedule.

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
U.S. and Canada Tel & Fax: 866.824.8680 (toll-free)
Mobile & International Tel: 805.807.0515
E-Mail: david.hong@dhpattentlaw.com or david_hong@sbcglobal.net.

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2-14-09 - ACM EXHIBIT E
Page 42 of 60



RE: ACM v Martello meeting & schedule request

Wednesday, November 12, 2008 11:18 PM

From: "David Hong" <david_hong@sbcglobal.net>
To: "Jeannette Martello" <drmartello@hotmail.com>
Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>
ttabvue-92044697-CAN-39[1].pdf (24KB)

Re: SKIN DEEP TM cancellation - settlement discussions

Dear Dr. Martello:

The last order from TTAB was on Sept. 17, 2008, which suspended this case until Dec. 17, 2008. I attached a copy of this order.

Our assigned TTAB attorney has stated that no more extensions of time will be granted, and Petitioner's trial period will start on Feb. 15, 2009.

I realize that all parties are very busy, esp. with the upcoming holiday, but we should try to schedule a block of time for both you and Mr. Hurren to meet with counsel and to see if we can reach a settlement.

So, short answer, we should try to have a substantive settlement meeting before Dec. 17.

Colin Hurren has not gotten back to me on his schedule. I am assuming that late afternoon is best for everyone.

Very truly yours,

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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--- On Wed, 11/12/08, Jeannette Martello <drmartello@hotmail.com> wrote:

From: Jeannette Martello <drmartello@hotmail.com>
Subject: RE: ACM v Martello meeting & schedule request
To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>
Date: Wednesday, November 12, 2008, 6:55 PM

When do we have until? I am pretty booked up right now.

Date: Tue, 11 Nov 2008 16:11:26 -0800
From: david_hong@sbcglobal.net
Subject: RE: ACM v Martello meeting & schedule request
To: drmartello@hotmail.com
CC: colin@skindeeplaser.com; michelle@mkatzlaw.com

Re: SKIN DEEP TM - settlement conference

Dear Dr. Martello:

Let me speak to Colin Hurren, but next week is better for me.

I am free the following two weeks except Monday, Nov. 17.

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

2-14-09 - ACM EXHIBIT E
Page 43 of 60

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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Subject: RE: ACM v Martello meeting & schedule request
To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>
Date: Tuesday, November 11, 2008, 2:16 PM

When can we meet with your client? Jeannette Martello

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From: david_hong@sbcglobal.net
Subject: RE: ACM v Martello meeting & schedule request
To: drmartello@hotmail.com

Thank you. DH

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Subject: RE: ACM v Martello meeting & schedule request
To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>
Date: Friday, September 26, 2008, 1:28 PM

thank you for your email. I will have to look at the schedule when I get back into town from out of town business. martello.

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

From: David Hong <david_hong@sbcglobal.net>
Sent: 9/26/2008 7:39:21 PM
To: Jeannette Martello <drmartello@hotmail.com>, Jeannette Martello <martello@skindeepworld.com>
Cc: Colin D. Hurren <colin@skindeeplaser.com>, Michelle Katz <michelle@mkatclaw.com>
Subject: ACM v Martello meeting & schedule request

Sept. 26, 2008

Re: ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Attorney File No. 2005-02-0107

Dear Dr. Martello:

It has been about 2-weeks since we last spoke. I wanted to see whether we can schedule a meeting of the parties for potential settlement of this case.

Note that TTAB has issued a final 3-month suspension of this case on 9-17-2008. I attached a copy of the order from our assigned TTAB attorney. Since TTAB says this case has been going on for three years, we should try to settle during this 3-month period.

2-14-09 - ACM EXHIBIT E
Page 44 of 60

Please let me know your schedule for a meeting. My guess is that late afternoon or early evening would best accommodate both your and Mr. Hurren's schedule.

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David Hong

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
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RE: ACM v Martello meeting & schedule request

Thursday, November 13, 2008 12:40 PM

From: "David Hong" <david_hong@sbcglobal.net>
To: "Jeannette Martello" <drmartello@hotmail.com>
Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Re: schedule meeting for settlement for SKIN DEEP CASE

Dear Dr. Martello:

Colin Hurren and I are available:

Nov. 18 and 21: all day

Nov. 19 and 20: mornings only

Nov. 24: all day

Nov. 25 and 26: mornings only.

We can meet either at your office or ACM's office in Pasadena.

Let me know what works for you.

Very truly yours.

David Hong, Esq.,
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To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>
Date: Wednesday, November 12, 2008, 6:55 PM

When do we have until? I am pretty booked up right now.

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From: david_hong@sbcglobal.net
Subject: RE: ACM v Martello meeting & schedule request
To: drmartello@hotmail.com
CC: colin@skindeeplaser.com; michelle@mkatzlaw.com

Re: SKIN DEEP TM - settlement conference

Dear Dr. Martello:

Let me speak to Colin Hurren, but next week is better for me.

I am free the following two weeks except Monday, Nov. 17.

Very truly yours,
David Hong, Esq.,

2-14-09 - ACM EXHIBIT E
Page 46 of 60

LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
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Date: Friday, September 26, 2008, 1:28 PM

thank you for your email. I will have to look at the schedule when I get back into town from out of town business. martello.

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

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Sent: 9/26/2008 7:39:21 PM
To: Jeannette Martello <drmartello@hotmail.com>, Jeannette Martello <martello@skindeepworld.com>
Cc: Colin D. Hurren <colin@skindeeplaser.com>, Michelle Katz <michelle@mkatzlaw.com>
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Sept. 26, 2008

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Since TTAB says this case has been going on for three years, we should try **Page 47 of 60**

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Please let me know your schedule for a meeting. My guess is that late afternoon or early evening would best accommodate both your and Mr. Hurren's schedule.

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RE: ACM v Martello meeting & schedule request

Thursday, November 13, 2008 1:02 PM

From: "Jeannette Martello" <drmartello@hotmail.com>
To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>

Will review with my operative schedule.

Date: Thu, 13 Nov 2008 12:40:39 -0800
From: david_hong@sbcglobal.net
Subject: RE: ACM v Martello meeting & schedule request
To: drmartello@hotmail.com
CC: colin@skindeeplaser.com; michelle@mkatzlaw.com

Re: schedule meeting for settlement for SKIN DEEP CASE

Dear Dr. Martello:

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CC: colin@skindeeplaser.com; michelle@mkatzlaw.com

Re: SKIN DEEP TM - settlement conference

2-14-09 - ACM EXHIBIT E
Page 49 of 60

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David Hong, Esq.,
LAW OFFICE OF DAVID HONG
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2-14-09 - ACM EXHIBIT E
Page 50 of 60

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Windows Live Hotmail now works up to 70% faster. [Sign up today.](#)



status on meeting scheduling

Monday, December 29, 2008 10:15 AM

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

To: "Jeannette Martello" <drmartello@hotmail.com>, "Jeannette Martello" <martello@skindeepworld.com>

Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Re: Skin Deep Trademark

Dear Dr. Martello:

Happy New Years.

You have not gotten back to us on a meeting time and date for settlement talks. Since we are unable to extend the dates any further per TTAB order, I would like to do the talk as soon as possible in the new year.

Please let me know your schedule again.

Also Mr. Hurren informed me that Dr. John Gross has joined as my client's new medical director and that Dr. Gross is a colleague of yours. I hope that we can reach a suitable resolution to this case.

Very truly yours,

David Hong

David Hong, Esq.,
LAW OFFICE OF DAVID HONG
Patent, Trademark, and Intellectual Property
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Telephone: (866) 824-8680
Facsimile: (866) 824-8680
david.hong@dhpattentlaw.com

Patent, Trademark, Copyright, Trade Secret &
Related Causes

Jan. 8, 2008

Dr. Jeannette Martello, M.D.
701 Fremont Avenue
South Pasadena, CA 91030

VIA MAIL & E-MAIL: drmartello@hotmail.com, martello@skindeepworld.com

Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
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 Dr. Martello:

Our trademark case is back on calendar as of Dec. 17, 2008, and unfortunately, TTAB will not extend anymore dates. My client's Plaintiff's trial testimony period will start on Feb. 15, 2009 and end on March 17, 2009.

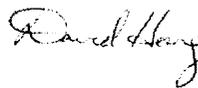
I would like to see if we can try to settle this case. I spoke with George at your office, and due to your travel schedule, you will only be able to meet on Feb. 9, 10, 12 and 13 of 2009. I will check with Mr. Hurren on his schedule, but I would like to see if we can at least try to set up a teleconference prior to these Feb. 2009 dates.

I am very concerned with time because the Feb. 9-13, 2009 dates are just a few days before the start of the Plaintiff's trial testimony period (begins on March 17, 2009). If we cannot settle, we need to coordinate calendars for the Feb. 15 to March 17, 2009 period. I attached a copy of the last order from TTAB that gives the scheduling dates.

Please call my mobile phone 805-807-0515.

Very truly yours,

David Hong, Esq.



Digitally signed by David Hong, Esq.
DN: cn=David Hong, Esq., o=Law
Office of David Hong, ou,
email=david.hong@dhpattentlaw.
com, c=US
Date: 2009.01.08 13:55:59 -08'00'

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

Feb. 4, 2009

Dr. Jeannette Martello, M.D.
701 Fremont Avenue
South Pasadena, CA 91030

VIA MAIL & E-MAIL: drmartello@hotmail.com, martello@skindeepworld.com

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

Dear Dr. Martello:

I am looking forward to a productive settlement conference. Here is the date and location information.

Date: Friday, Feb. 13, 2009
Time: 4:30 pm
Location: 425 S. Fair Oaks Ave., Pasadena, CA 91105

Please set aside enough time so that we discuss all issues and draft a simple settlement agreement.

We do hope for the best and feel that this case is good for settlement. However, in the unlikely event that we cannot settle and due to ACM's trial testimony period beginning on Feb. 15, 2009, we do need to schedule Colin Hurren's trial testimony deposition and discuss your further responses to discovery.

A. Trial Testimony Deposition for Colin Hurren on Wed., Feb. 25, 2009 at 9 am.

In these Trademark Trial and Appeal Board proceedings, there is not a traditional courtroom trial. Instead, each party has a 30-day period to conduct trial testimony depositions of their witnesses in order to place information into evidence for the trial judges' review.

Our petitioner's trial testimony period runs from Feb. 15, 2009 to March 17, 2009.

Tentatively, I have reserved a Wed., Feb. 25, 2009 date with my court reporter, and I am trying to secure a conference room in Pasadena for the convenience of all parties. Please let me know if Feb. 25, 2009 at 9 am is good for your schedule. I will always try to accommodate all parties' schedule.

Dr. Jeannette Martello
Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
Feb. 3, 2009
Page 2

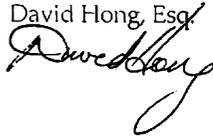
B. Further Discovery Responses

If we cannot settle our case on Feb. 13, 2009, I will also need additional or supplemental responses to Petitioner's discovery requests. Please see my discovery meet and confer letters dated Feb. 28, 2007 and March 21, 2007 and Sept. 11, 2008, among others. I have attached PDF copies of these letters to the e-mail copy of this letter.

Since TTAB rules require any motions to compel further discovery responses must be filed before the start of the first trial testimony period, in order to preserve my client's rights, if we cannot resolve our case or the discovery issues on Feb. 13, 2009, I will need to file a motion to compel further discovery responses before the start of my client's trial testimony period or by Sat., Feb. 14, 2009.

Please note that this letter is merely to give you the proper notice to comply with Trademark Office rules, and I do hope that we can amicably settle during our Feb. 13, 2009 meeting. If you need to speak to me, please call my mobile phone 805-807-0515.

Very truly yours,
/s/ - David Hong, Esq.
David Hong, Esq.





Re: Today's Meeting

Friday, February 13, 2009 1:48 PM

From: "George Garcia" <george@skindeepworld.com>

To: david_hong@sbcglobal.net

Mr. Hong,

Dr. Martello got called away for patient emergency surgery. Before she left, she told me she should be finished in time to make it to the meeting today at 4:30 p.m. She will call me with an update, how do I get in touch with you just in case she gets delayed?

-George



Re: Today's Meeting

Friday, February 13, 2009 2:11 PM

From: "David Hong" <david_hong@sbcglobal.net>
To: "George Garcia" <george@skindeepworld.com>
Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Hi, George,

My mobile number is 805-807-0515.

Colin Hurren's office is 626-449-8873

Let Dr. M know that we will wait for her. It is really important that all the parties try to settle today.

DH

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

The information contained in this e-mail is intended only for the individual or entity to whom it is addressed. The contents are confidential and may contain privileged information. If you are not an intended recipient, you 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.

--- On Fri, 2/13/09, George Garcia <george@skindeepworld.com> wrote:

From: George Garcia <george@skindeepworld.com>
Subject: Re: Today's Meeting
To: david_hong@sbcglobal.net
Date: Friday, February 13, 2009, 1:48 PM

Mr. Hong,
Dr. Martello got called away for patient emergency surgery. Before she left, she told me she should be finished in time to make it to the meeting today at 4:30 p.m. She will call me with an update, how do I get in touch with you just in case she gets delayed?

-George



Friday, February 13, 2009 6:24 PM

settlement conference

From: "David Hong" <david_hong@sbcglobal.net>
To: "Jeannette Martello" <drmartello@hotmail.com>
Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Re: Skin Deep case - for **settlement purposes only - no prejudice.**

Dear Dr. Martello:

Your office called and e-mailed me to inform of the emergency surgery that you had to attend.

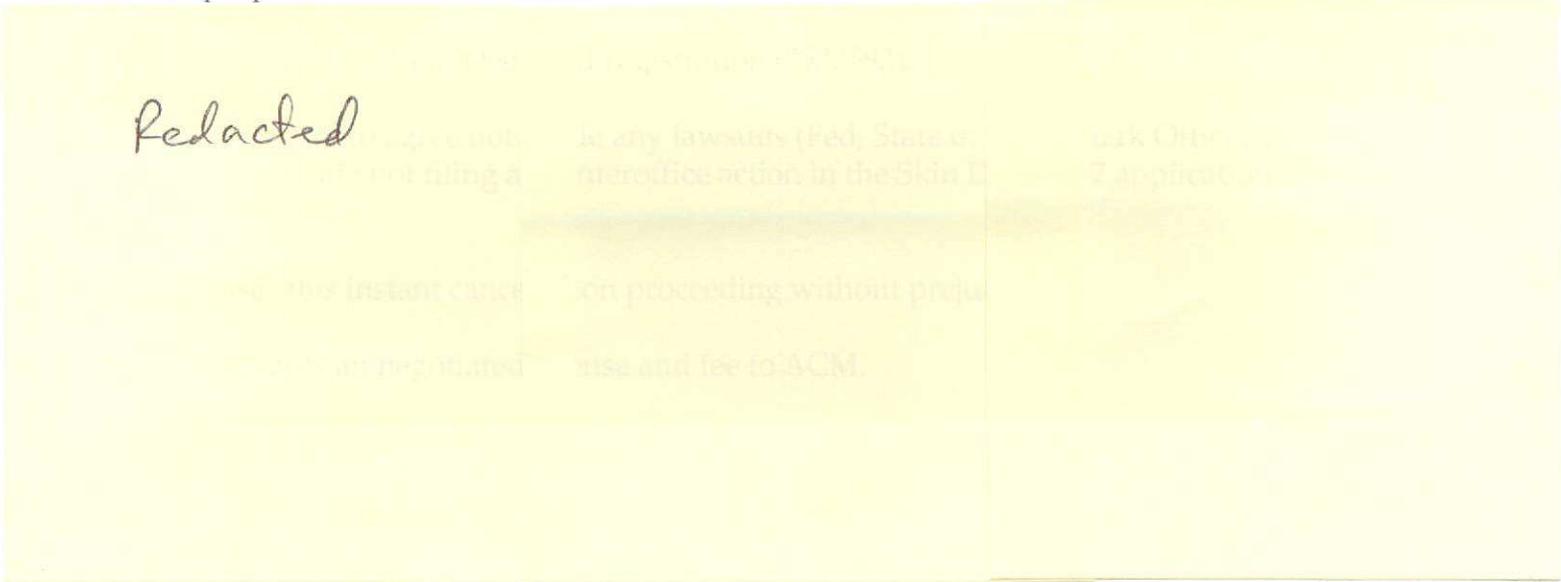
We would still like to discuss settlement, and please call my mobile phone 805-807-0515.

Please call me anytime Friday night or Sat. morning (2-14) before noon.

Please note that I need to proceed with my case, but if we can try to settle on Sat. morning, let's plan on having a meeting at Colin Hurren's office on Sat. morning.

Here is rough points for settlement for discussion:

Here are the proposed settlement terms:



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

The information contained in this e-mail is intended only for the individual or entity to whom it is addressed. The contents are confidential and may contain privileged information. If you are not an intended recipient, you 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.



Re: settlement conference

Saturday, February 14, 2009 8:38 AM

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

To: "Jeannette Martello" <drmartello@hotmail.com>, "Jeannette Martello" <martello@skindeepworld.com>

Cc: "Colin D. Hurren" <colin@skindeeplaser.com>, "Michelle Katz" <michelle@mkatzlaw.com>

Feb. 14, 2009

Dr. Jeannette Martello, M.D.

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

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 Dr. Martello:

It is almost 8:30 am on Sat. Feb. 14, 2009, and I have not heard back from you. I hope the emergency surgery on Friday afternoon that prevented you from attending the Friday, Feb. 13, 2009 settlement conference was successful.

Colin Hurren, Dr. Gross and I were all eager to meet with you to see if we could reach a reasonable business settlement for this trademark case.

I still would like to try to see if we can settle this case. **Please call my mobile phone 805-807-0515 to set up a meeting for today, Sat., Feb. 14, 2009.**

If I do not hear from you by 12 pm today (Feb. 14), I am planning on filing a motion to compel further discovery responses since my client's trial testimony period begins tomorrow Sunday, Feb. 15, 2009.

I would prefer not to file such a motion to compel discovery, but if do not,

TBMP 524.04 Failure to File Motion

If a party that served a request for admission 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.³²⁷

Of course, if we do settle this case, I can withdraw or take this motion to compel further discovery responses off the court's calendar.

Also to clarify the proposed settlement term 3 below,

Very truly yours,

David Hong

David Hong, Esq.,

2-14-09 - ACM EXHIBIT E
Page 59 of 60



RE: settlement conference

Saturday, February 14, 2009 11:38 AM

From: "Jeannette Martello" <drmartello@hotmail.com>

To: "david_hong@sbcglobal.net" <david_hong@sbcglobal.net>

According to the TTAB, the 30 day trial testimony for the plaintiff (which I assume is your side) begins on 2/17/2009 and ends on 3/17/2009. I am confused.

Date: Sat, 14 Feb 2009 08:38:50 -0800
From: david_hong@sbcglobal.net
Subject: Re: settlement conference
To: drmartello@hotmail.com; martello@skindeepworld.com
CC: colin@skindeeplaser.com; michelle@mkatzlaw.com

Feb. 14, 2009

Dr. Jeannette Martello, M.D.

Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
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 Dr. Martello:

It is almost 8:30 am on Sat. Feb. 14, 2009, and I have not heard back from you. I hope the emergency surgery on Friday afternoon that prevented you from attending the Friday, Feb. 13, 2009 settlement conference was successful.

Colin Hurren, Dr. Gross and I were all eager to meet with you to see if we could reach a reasonable business settlement for this trademark case.

I still would like to try to see if we can settle this case. **Please call my mobile phone 805-807-0515 to set up a meeting for today, Sat., Feb. 14, 2009.**

If I do not hear from you by 12 pm today (Feb. 14), I am planning on filing a motion to compel further discovery responses since my client's trial testimony period begins tomorrow Sunday, Feb. 15, 2009.

I would prefer not to file such a motion to compel discovery, but if do not,

TBMP 524.04 Failure to File Motion

If a party that served a request for admission 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.³²⁷

Of course, if we do settle this case, I can withdraw or take this motion to compel further discovery responses off the court's calendar.

Also to clarify the proposed settlement term 3 below,

2-14-09 - ACM EXHIBIT E
Page 60 of 60

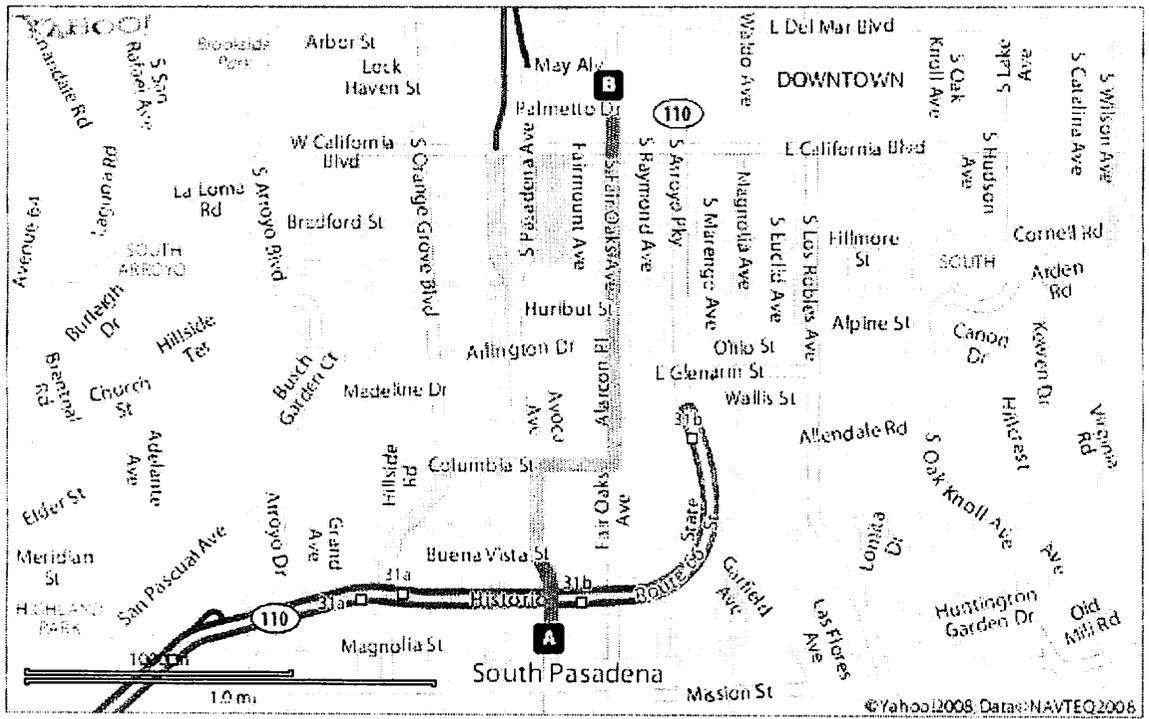
Directions to 425 S Fair Oaks Ave, Pasadena, CA 91105-2632



Total Time: 6 mins, Total Distance: 1.64 miles

	Distance
A 1. Start at 701 FREMONT AVE, SOUTH PASADENA going toward MAGNOLIA ST	go 0.45 mi
2. Turn R on COLUMBIA ST	go 0.2 mi
3. Turn L on S FAIR OAKS AVE	go 0.98 mi
B 4. Arrive at 425 S FAIR OAKS AVE, PASADENA, on the L	

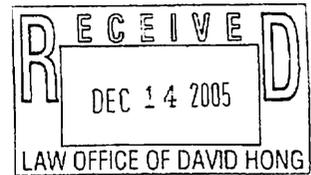
Time: 6 mins, Distance: 1.64 miles



When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

1 Brandon M. Tesser, Esq. (SBN 168476)
Michelle E. DeCasas (SBN 228840)
2 TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
3 Los Angeles, CA 90025
Tel: (310) 207-4022
4 Fax: (310) 207-4033

5 Attorneys for Respondent
Jeannette Martello, M.D.



6
7 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
8 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
9

10
11 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
12) Reg. No. 2932593
Petitioner,)
13 vs.) **RESPONDENT'S RESPONSES TO**
14) **PETITIONER'S FIRST SET OF**
JEANNETTE MARTELLO, M.D.,) **INTERROGATORIES**
15)
Respondent.)
16

17
18 **Interrogatory No. 1:**

19 State the full name, address, state and/or country of incorporation, and form of business
20 conducted by Respondent JEANNETTE MARTELLO using Respondent's Marks in connection
21 with such business or enterprise.

22 **Response:**

23 Objection, the interrogatory is vague and ambiguous as to the time-frame requested.

24 Interpreting the interrogatory to ask for the most current information:

25 Jeannette Martello, MD, a Professional Corporation, 701 Fremont Avenue, Pasadena,
26 California, 91030.

27 **Interrogatory No. 2:**

28 For each of the goods and/or services identified in the trademark applications for

1 Respondent's Marks,

2 (a) State the date of first use in intrastate commerce of the Respondent's Marks;

3 (b) Describe in what particular manner Respondent's Marks was first used with each of the goods
4 and/or services, including without limitation signs, displays, promotional materials, advertising,
5 business stationary, business cards, labels, and brochures;

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

7 **Response:**

8 "SKIN DEEP" Reg. 2932593; Serial No. 76581387

9 4/20/02;

10 "SKIN DEEP LASER MEDSPA" Serial No. 76579565

11 2/18/04;

12 "SKIN DEEP LASER" Serial No. 76581391

13 2/18/04

14 **Interrogatory No. 3:**

15 Identify and describe the services and/or goods, which the Respondent has sold,
16 distributed, provided, advertised, marketed, or offered with Respondent's Marks or any variation
17 of Respondent's Marks.

18 **Response:**

19 Medical services, plastic surgery, spa services, medi-surgical consultation services, med-
20 spa services, skin care products (lotions, creams, sunscreens, body-washes, astringents,
21 moisturizers, etc. – both prescription and over the counter), laser hair removal services, botox
22 injections, collagen injections, etc.

23 **Interrogatory No. 4:**

24 With respect to Respondent's use of Respondent's Marks and/or any mark that includes
25 the term "SKIN DEEP",

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

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

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

1 **Response:**

- 2 a. March 2001
- 3 b. Assignment Agreement between Sara Herrick, R.N. and Jeannette Martello, M.D.
- 4 c. Respondent, Sara Herrick.

5 **Interrogatory No. 5:**

6 Identify each different promotional material, including without limitation, signs, display,
7 point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, and
8 the like, which is known to Respondent, contains or bears Respondent's Marks or any variation
9 thereof, and has been used or disseminated at any time by Respondent, and the location of said
10 promotional materials or signs.

11 **Response:**

12 Signs, letterhead, labels, decals, stamps, advertisements, magazines, brochures, etc. All
13 are in Respondent's possession.

14 **Interrogatory No. 6:**

15 Identify each person, including without limitation, employees or outside agency or agent
16 retained by Respondent, who has been or now is responsible for the following activity with
17 respect to any of the goods or services actually offered or rendered under Respondent's Marks:

- 18 a. Marketing;
- 19 b. Advertising and promotion; and
- 20 c. Bookkeeping and accounting.

21 **Response:**

22 a.-b. Melinda Manos, Amber Perry, Fred Bankston, Rebecca Fuller, Marianne Guarena,
23 Marc Pfannenstein, Tracy Lima, Glen Lipton, Elaine Sense, Cinamour
24 Entertainment, Peter Kempson, Igor Kantor, Liberty Int'l Interactive, Inc., Colin
25 Macdonald, James Shafer, Lis Rubin, Jonathan Berry, Angel Parker, Linda
26 Caldera, Stacey Castor, Nicole Smith, Nadia Perez, Marissa Buck, Alexandra
27 Schinko, Shawn Blair, David Verdefo, Kellian Allen, Linda Oparnica, Irv
28 Holender, Leslie Bohm, John Street, John Martello, Alan Awar, Lingo Wang,

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Core Media Group, Mountain News, LA Times, San Gabriel Valley, Todd Ruhalter, Precision Commerce Corporation, KLSX, Shawn Blair, Bonnie Manaseky.

c. David Ray, CPA; David Fung, CPA; Mary Louise Owens.

Interrogatory No. 7:

Identify all promoters of services, bearing Respondent's Marks.

Response:

Objection, the interrogatory is vague and ambiguous as to the term "promoters." Interpreting this term in accordance to the Webster's Dictionary definition: "one that promotes; especially : one who assumes the financial responsibilities of a sporting event (as a boxing match) including contracting with the principals, renting the site, and collecting gate receipts." Responding party states that there were no promoters who assumed financial risk in connection with promotional activity. To the extent this interrogatory seeks promoters in the sense of advertising and promotional activities, it is duplicative of Interrogatory No. 6.

Interrogatory No. 8:

For each of the goods or services identified in response to Interrogatory No. 5, please identify and describe:

- a. The number of units and dollar amount of the annual sales of such goods or services;
- b. The dollar amount of annual advertising expenditure on such goods or services;
- c. The individual media through which such advertising took place;
- d. The dollar amount of advertising through each such media;
- e. Identify documents sufficient to support your response to this interrogatory.

Response:

Objection, the interrogatory is overbroad, burdensome and oppressive. The information sought is also sensitive, confidential, proprietary and/or a trade secret. Accordingly, Responding party will only provide responsive information pursuant to a stipulated confidentiality order. Moreover, inasmuch as the burden of deriving or ascertaining the information is substantially the same for Propounding party, Responding party will only supply business records from which

1 propounding party can ascertain the information for itself.

2 **Interrogatory No. 9:**

3 State in detail the channels of trade in which Respondent's Marks is used and/or in which
4 goods or services bearing Respondent's Marks are provided, including the geographic area by
5 state, territory or possession in which Respondent's Marks is used and/or sold, the manner in
6 which the goods or services reach the ultimate consumer, the geographical reach of each such
7 channel, and the approximate percentage of total sales of goods and/or services through each
8 such channel, and identify documents sufficient to support your response to this interrogatory.

9 **Response:**

10 Objection, the interrogatory is overbroad, burdensome and oppressive. The information
11 sought is also sensitive, confidential, proprietary and/or a trade secret. The interrogatory also
12 seeks information which is not relevant nor reasonably calculated to lead to the discovery of
13 admissible evidence.

14 **Interrogatory No. 10:**

15 Identify with specificity the marketing methods used in the advertising and/or sale of
16 goods and/or services by or for Respondent under Respondent's Marks, including, without
17 limitation, the names of television stations, radio stations, Internet web sites, newspapers,
18 magazines, trade journals or periodicals, and/or retail establishments in which Respondent has
19 advertised and intends to advertise its goods and/or services under Respondent's Marks, and
20 identify documents sufficient to support your response to this interrogatory.

21 **Response:**

22 Objection, the interrogatory is overbroad, burdensome and oppressive. The information
23 sought is also sensitive, confidential, proprietary and/or a trade secret. The interrogatory also
24 seeks information which is not relevant nor reasonably calculated to lead to the discovery of
25 admissible evidence.

26 **Interrogatory No. 11:**

27 Has Respondent ever licensed or permitted or had negotiations to license or permit, or
28 otherwise granted rights to third parties to use Respondent's Marks or any mark including the

1 term "SKIN DEEP" as a component? If yes:

2 a. Identify the party or parties who have received or sought such license or permission or other
3 right;

4 b. State the nature and extent of any such license or permitted use or right, given or negotiated;

5 c. Identify and describe all documents comprising or containing any such license, permission, or
6 other right, or any agreement in respect to such mark.

7 **Response:**

8 No.

9 **Interrogatory No. 12:**

10 For each non-expert witness that Respondent expects to testify, please provide:

11 a. Non-expert witness identity and mailing address and telephone number;

12 b. The subject matter on which the witness is expected to testify, including each fact and/or
13 opinion to which the witness is expected to testify and the bases for each opinion; and

14 c. Identify all documents that relate in any way to the subject matter, facts, and/or circumstances
15 as to which the witness is expected to testify.

16 **Response:**

17 Objection, the identities of of Respondent's patients are protected from disclosure under
18 the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Responding party
19 further objects that the interrogatory is burdensome and oppressive.

20 **Interrogatory No. 13:**

21 Provide the current telephone number and mailing address for each person listed in a
22 specimen submitted in the U.S. Trademark Applications for the Respondent's Marks, including
23 but not limited to Serial Nos. 76581387 ("Skin Deep"), 76581391 ("Skin Deep Laser"), and
24 76579565 ("Skin Deep Laser Medspa").

25 **Response:**

26 Objection, the identities of Respondent's patients are protected from disclosure under the
27 Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

28 **Interrogatory No. 14:**

1 For U.S. Trademark Application Serial No. 76581387 ("Skin Deep"), define in detail the
2 meaning of each of the services ("healthspa services, namely cosmetic body care services;
3 cosmetician services;"), which are listed in the above trademark application.

4 **Response:**

5 Objection, the interrogatory seeks information which is not relevant nor reasonably
6 calculated to lead to the discovery of admissible evidence.

7 **Interrogatory No. 15:**

8 Explain in detail the basis for Respondent's denial of the allegations in Paragraph 6 of the
9 July 1, 2005 Petition for Cancellation and as stated in Paragraph 6 of the Respondent's Aug. 29,
10 2005 Answer to Petition for Cancellation, namely the Respondent's Feb. 18, 2004 Specimen of
11 Use.

12 **Response:**

13 Objection: vague and ambiguous, attorney-client privilege, work product privilege.

14 **Interrogatory No. 16:**

15 Explain in detail the Respondent's denial of the allegations in Paragraph 7 of the July 1,
16 2005 Petition for Cancellation and as stated in Paragraph 7 of the Respondent's Aug. 29, 2005
17 Answer to Petition for Cancellation, namely the two Respondent's Feb. 28, 2004 and Feb. 29,
18 2004 Specimens of Use.

19 **Response:**

20 Objection: vague and ambiguous, attorney-client privilege, work product privilege.

21 **Interrogatory No. 17:**

22 Explain in detail the Respondent's denial of the allegations in Paragraph 8 of the July 1,
23 2005 Petition for Cancellation and as stated in Paragraph 8 of the Respondent's Aug. 29, 2005
24 Answer to Petition for Cancellation, namely the Respondent's Feb. 28, 2004 Specimen of Use.

25 **Response:**

26 Objection: vague and ambiguous, attorney-client privilege, work product privilege.

27 **Interrogatory No. 18:**

28 Explain in detail the Respondent's denial of the allegations in Paragraph 9 of the July 1,

1 2005 Petition for Cancellation and as stated in Paragraph 9 of the Respondent's Aug. 29, 2005
2 Answer to Petition for Cancellation.

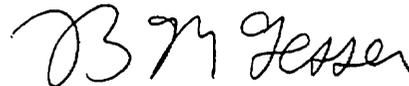
3 **Response:**

4 Objection: vague and ambiguous, attorney-client privilege, work product privilege.
5

6 Dated: December 9, 2005

TESSER & RUTTENBERG

7
8 By:



Brandon M. Tesser
Attorneys for Respondent
Jeannette Martello, M.D.

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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 December 9, 2005, I served the foregoing document(s) described as
6 **RESPONDENT'S RESPONSES TO PETITIONER'S FIRST SET OF**
7 **INTERROGATORIES** 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
10 P.O. Box 2111
Santa Clarita, California 91386-2111
Tel/Fax: (866) 824-8680
Attorney for Petitioner ACM Enterprises, Inc.

- 11 [x] **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 [x] (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 December 9, 2005, at Los Angeles, California.

23 
24 Wendy Southart

TRADEMARK ASSIGNMENT AND LICENSING AGREEMENT

This Trademark Assignment and Licensing Agreement ("Agreement") is made as of 12/14/09 (date) by and between Sara Herrick, R.N. on the one hand ("Assignor") and Jeannette Martello, M.D. ("Assignee") (hereinafter collectively referred to as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, Assignor is the owner of all common law rights to the trademark SKIN DEEP as used in connection with her medical, spa and skin care business entitled SKIN DEEP Skin Care, Inc. ("Mark") together with the goodwill of the business connected with and symbolized with this Trademark.

WHEREAS, Assignor desires and agrees to sell, assign, and transfer to Assignee all rights, title and interest in and to the Mark, together with the goodwill of the business in connection with which the Mark is used.

WHEREAS, Assignee desires to acquire all right, title and interest in and to the Mark.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree as follows:

1. **Assignment.** Assignor hereby irrevocably assigns, conveys, sells, grant and transfers to Assignee all of its rights, title and interest of every kind and character throughout the world, including moral rights, in and to the Mark to the full extent of its ownership or interest therein; including without limitation, all federal, state, foreign, statutory and common law and other rights; all domestic and foreign trademark applications and registration therefore (and all extensions and renewals of such applications and registrations, and the right to

apply for any of the foregoing); all goodwill associated therewith symbolized by the Marks and the portion of the business of the Assignor to which the Mark pertains; all rights to causes of action and remedies related thereto (including the right to sue for past, present or future infringement, misappropriation or violation of rights related to the foregoing); any priority right that may arise from the Mark; and any and all other rights and interests arising out of, in connection with or in relation to the Mark ("Rights").

2. License. Assignee shall grant Assignor a non-exclusive license to use the Mark for a period of two years for the sum of one dollar. Assignee may renew the license for an additional two year term ("First Extension") for \$100, provided that notice is given to, and payment is received by, Assignee prior to the expiration of the term of the license. Assignee and Assignor agree to discuss in good faith any additional extensions of the license period beyond the First Extension. All rights will revert back to Assignor following the expiration of the initial term or any extensions thereto.

3. **Consideration.** Assignee will pay Assignor the total sum of \$250 in three installments: i) \$100 within ten days of its receipt of a fully executed copy of this Agreement; ii) \$100 within 60 days of its receipt of a fully executed copy of this Agreement; and iii) \$50 within 90 days of its receipt of a fully executed copy of this Agreement.

4. **Representations and Warranties.**

- 4.1 Assignor has the full legal right, power and authority required to enter into this Agreement and to perform fully its obligations hereunder.
- 4.2 Assignor is the sole legal and beneficial owner of the Mark free and clear of any third party interests, claims, liens or other encumbrances or other rights or restrictions whatsoever.

- 4.3 No license, assignment or legal or equitable charge has been granted or made with respect to the Mark or any interest therein.
- 4.4 There are no notices, actions, suits, proceedings, claims, complaints, disputes, arbitrations or investigations (collectively "Claims") pending, or to Assignor's knowledge, threatened, at law or in equity related to the Mark.

5. **General.**

- 5.1 Assignor agrees to take all actions and to sign and execute any documents which may be reasonably required to facilitate the transfer of the Rights granted herein.
- 5.2 Notices or other communications required to be given pursuant to this Agreement shall be delivered by email, fax and U.S. mail as set forth below. Any such notice shall be deemed to be effective within five days after the date of deposit in the U.S. mail.

Assignor: Sara N. Herrick
Skin Deep Skin Care, Inc.
266 N. Grand Avenue
Monrovia, California 01016
Fax: (626) 301-9986
Email: sara@skindeepskincare.com

Assignee: Brandon M. Tesser
Tesser & Ruttenberg
12100 Wilshire Blvd., Ste. 220
Los Angeles, CA 90025
Fax: 310/207-4033
Email: btesser@tesser-ruttenberg.com

- 5.3 This Agreement may be executed in counterparts, which counterparts, when taken together, shall constitute a valid and binding agreement.
- 5.4 This Agreement shall be governed by the laws of the State of California.
- 5.5 Any disputes regarding this Agreement shall be submitted to binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. Judgment, upon the award rendered by the arbitrator, may be entered in any court having jurisdiction thereof. The Parties agree to arbitrate any dispute with a retired judge affiliated with Action Dispute Resolution Services ("ADRS"), 1900 Avenue of the Stars, Suite 250, Los Angeles, California 90067. If the Parties cannot agree upon an arbitrator, ADRS is hereby empowered to choose the arbitrator.
- 5.6 Assignor hereby agrees to defend, indemnify and hold harmless Assignee and will pay to Assignee the amount of any loss, liability, damage expense (including reasonably attorney's fees, litigation costs, and expert witness fees) arising from or in connection with any breach of Assignor's obligations, representations, and warranties under this Agreement.

In Witness Whereof, the Parties hereto have executed this Agreement as of the Effective Date.

FOR ASSIGNOR:

By: Sara N. Herrick 14.2005
Sara N. Herrick, R.N.

FOR ASSIGNEE:

By: Jeannette Martello
Jeannette Martello, M.D. M.D.
12/14/05



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"Skin Deep"

Word Mark "SKIN DEEP"
 Goods and Services IC 044. US 100 101. G & S: medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services. FIRST USE: 20020420. FIRST USE IN COMMERCE: 20040228
 Standard Characters Claimed
 Mark Drawing Code (4) STANDARD CHARACTER MARK
 Serial Number 76581387
 Filing Date March 15, 2004
 Current Filing Basis 1A
 Original Filing Basis 1A
 Published for Opposition December 21, 2004
 Registration Number 2932593
 Registration Date March 15, 2005
 Owner (REGISTRANT) Martello, Jeannette INDIVIDUAL UNITED STATES 501 Floral Park Terrace South Pasadena CALIFORNIA 91030
 Attorney of Record Brandon Tesser
 Type of Mark SERVICE MARK
 Register PRINCIPAL
 Live/Dead Indicator LIVE

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**DISK
ENCLOSURE**

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

**CERTIFIED
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ACM ENTERPRISES, INC.,)
Petitioner,)
vs.) CANCELLATION NO.
JEANETTE MARTELLO, M.D.,) 92044697
Respondent.)

Deposition of JEANNETTE MARTELLO, M.D.,
at 18226 Ventura Boulevard,
Tarzana, California, commencing at
10:13 a.m., Wednesday, January 18, 2006,
before Colleen Ellfeldt, CSR No. 10766.

JEANNETTE MARTELLO, M.D.

1 A. My business address is 701 Fremont
2 Avenue, South Pasadena, California, 91030.

3 Q. And what do you do for a living?

4 A. I am a plastic surgeon, and I do medical,
5 health and spa services.

6 Q. And in your practice, your medical
7 practice, you know, what kind of services do you do as
8 a physician?

9 MR. TESSER: Just object as to form. Question
10 is vague and ambiguous as to time.

11 BY MR. HONG:

12 Q. Okay. From the time period of when you
13 first started practicing medicine in California to
14 January 2004 what kind of medical services do you
15 provide as a physician?

16 A. I have been a physician since 1988, so we
17 are dating back to then.

18 Q. All right. 1988 to January 2004?

19 A. Uh-huh. I perform surgeries. I have
20 seen patients in consultation for surgical and
21 nonsurgical treatments, which have included invasive
22 and noninvasive treatments, including treatment of the
23 skin, which is the largest organ in the body, the
24 hair, including laser hair removal, peels, collagen
25 injections, Botox injections to name a few.

BEN HYATT

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JEANNETTE MARTELLO, M.D.

1 Q. Regarding the skin treatments --

2 A. Yes.

3 Q. -- could you repeat again or state what
4 particular skin treatments do you do?

5 A. I will tell you. Since 1988 through 2004
6 at any given point in time I have performed the
7 following in my offices, and we're not including just
8 the 701 Fremont office, because I have been at other
9 facilities, other locations, too.

10 Are you ready?

11 Q. Please.

12 A. Micro-dermabrasion; spider vein
13 injection, which is sclero therapy, spider vein
14 treatment with a laser; CO2 laser treatments; IPL
15 laser treatments; laser hair removal treatments; alpha
16 hydroxy peels; glycolic acid peels; chemical peels,
17 specifically with a TCA chemical; Botox injections;
18 collagen injections; fat injections; Endermologie. I
19 am just thinking of the otherwise-not-thought-of
20 plastic-surgery-type things. These are health and spa
21 services.

22 Additionally I have performed breast
23 augmentations, tummy tuck, liposuction, fat
24 injections, fat cells and other surgical facelifts,
25 neck lifts, endoscopic browlifts, open browlifts,

BEN HYATT

8

JEANNETTE MARTELLO, M.D.

1 Like I said, there have been many reiterations, and I
2 haven't had a chance to review it.

3 Q. All right. My next question is regarding
4 Skin Deep for healthspa services. How have you used
5 the mark "Skin Deep" with non-print advertisement,
6 namely radio?

7 A. Okay. That gets to the point of the
8 following: I have had my radio show since April 20,
9 2002. I have been branded as Skin Deep since that
10 very first day. Every single show that I did gave out
11 my phone number for my medical, health, physician and
12 healthspa services.

13 From that very first week after that very
14 first radio show I had my very first client who came
15 into the office and said they heard about me from the
16 radio show, so every single tie-in or brand has been
17 related to that radio show and me. I am "Skin Deep."

18 Q. What was the phone number you used during
19 the radio show?

20 A. Well, I gave actually three different
21 phone numbers out for the radio show. There are --
22 two of them I forget -- 520-9710, so they can call and
23 ask questions, but every single show I also gave out
24 my office phone number, (866) WOMANDR.

25 Q. How do you spell that?

BEN HYATT

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JEANNETTE MARTELLO, M.D.

'KLSX besides radio shows and commercials?

A. I actually physically did consultations on air. We are not just talking answering photo questions and answers. One radio show, for example -- I believe you have a copy of that -- was with Sheena something Easton. I don't know her name. She was a radio show host, and she came in physically into the studio. We did the studio together, massive weight loss. She asked me to look at her breasts -- which I was embarrassed to do that consult -- figure out whether she needed an arm tuck. Physically I touched her arm.

On another show with Conway and Steckler -- K-O-N-W-A-Y; Steckler, S-T-E-C-K-L-E-R -- I physically did consults on them. They all wanted evaluation for their love handles, another one for their stomach.

I did another show, Frank's Girls, same thing. One wanted to find out if she needed some sort of procedure done, so these are all instances physically in the actual studio I was rendering my services on air as Skin Deep and Dr. Martello. I believe you have a copy of at least one of those shows.

Q. Is there anything else regarding your

BEN HYATT

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Typed Drawing

Word Mark	SKIN DEEP
Goods and Services	IC 041. US 100 101 107. G & S: Entertainment services, namely, providing a radio program in the fields of medicine, surgery, health, health care, beauty, skin care, cosmetic surgery and plastic surgery. FIRST USE: 20020413. FIRST USE IN COMMERCE: 20020420
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76429408
Filing Date	July 1, 2002
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 5, 2003
Registration Number	2777522
Registration Date	October 28, 2003
Owner	(REGISTRANT) Martello, Jeannette INDIVIDUAL UNITED STATES 501 Floral Park Terrace South Pasadena CALIFORNIA 91030
Attorney of Record	Mark E. Brown
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Education**Medical School:** UNIVERSITY OF CALIFORNIA LOS ANGELES SCHOOL OF MEDICINE**Year Graduated:** 1988

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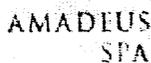
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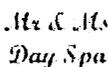
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Capelli International Day Spa Salon
Nurture Your Body & Soul
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Yorba Linda, CA [Map](#)

Spa Loft The
"Treatments From Head To Toe"
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Woodland Hills, CA [Map](#)

Zahira European Skin Care
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Studio City, CA [Map](#)

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Upscale Full-Service Salon With European Flair
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"Treatments From Head To Toe"
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Liskanich, Ronald M.D.
Why Trust Your Skin To Anyone Else?
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