

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

CONAIR CORPORATION, )  
)  
Opposer, )  
)  
v. )  
)  
BEAUTY HOLDING COMPANY, INC. )  
)  
Applicant. )



05-17-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

Opp. No. 91160362

APPLICANT'S MOTION FOR AN ORDER TO  
COMPEL AND MEMORANDUM IN SUPPORT

In accordance with Rule 2.120(e) of the Trademark Rules of Practice, applicant, Beauty Holding Company, Inc. ("Beauty Holding"), hereby moves this Honorable Board for an order compelling opposer, Conair Corporation ("Conair"), to respond, without objection, to Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Document Requests to Opposer. Beauty Holding has attempted in good faith to obtain responses to its discovery requests with Conair through discussion and correspondence. To date, Beauty Holding has not received a response to its discovery requests.

This motion is supported by the Declaration of Diane G. Elder, submitted herewith.

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on May 13, 2005

Neeta C. Repababidi

## I. FACTS

The proceeding before the Board is Conair's opposition to Beauty Holding's application to register the mark RADICAL BODY, App. No. 78/163,203 for hair care preparations and electric hair styling appliances, namely, electric hair rollers, based on Conair's alleged rights in the mark RADICAL for hair care preparations.

On October 8, 2004 Conair Corporation was served with Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Document Requests to Opposer. Elder Decl. ¶ 2, Exh. A. On November 3, 2004, Debra Duguid, counsel for Conair, sent correspondence to Craig S. Fochler, counsel for Beauty Holding, acknowledging receipt of applicant's interrogatories and document requests and requesting a sixty (60) day extension of time to respond. Elder Decl. ¶ 3, Exh. B. On November 9, 2004, Mr. Fochler agreed to extend the time for Conair to respond to Beauty Holding's discovery requests for sixty (60) days, in exchange for Conair's agreement, in part, to serve any written discovery on Beauty Holding by December 7, 2004. Elder Decl. ¶ 4. On November 10, 2004, the parties filed a motion for extension of discovery. Elder Decl. ¶ 5. The close of discovery was reset for February 16, 2005. Elder Decl. ¶ 5

On February 11, 2005, Diane G. Elder, counsel for Beauty Holding, telephoned Ms. Duguid to, *inter alia*, request a ninety (90) day extension of time for discovery. Elder Decl. ¶ 6. Ms. Duguid agreed to the request. During that conversation, Ms. Elder requested Conair to respond to Beauty Holding's discovery requests. Elder Decl. ¶ 6. Ms. Duguid indicated that she did not remember that the responses were due and requested an extension to respond to discovery. Elder Decl. ¶ 6. Ms. Elder stated that she would consider the request and get back to Ms. Duguid. Elder Decl. ¶ 6. In a telephone conference on February 14, 2005 between Ms. Elder and Ms. Duguid, Ms. Elder advised that Beauty Holding would not agree to the

requested extension of time to respond to discovery. Elder Decl. ¶ 7. Ms. Duguid stated that Conair would serve Beauty Holding with its responses to discovery. Elder Decl. ¶ 7. To date, Conair has not provided responses to applicant's discovery requests. Beauty Holding respectfully submits that the above facts demonstrate that its counsel has made a good faith effort, by conference and correspondence, to resolve with Conair the issues presented in this motion to compel discovery.

## II. ARGUMENT

Rules 33 and 34 of the Federal Rules of Civil Procedure ("F.R.C.P.") provide, *inter alia*, that (1) any party may serve upon any other party interrogatories and requests to produce documents and (2) the party served must respond within a set time period. Failure to timely respond entitles the party serving discovery to move for an order compelling discovery. Rules 33, 34, 37, F.R.C.P. Beauty Holding is entitled to responses to its discovery requests to prepare its case in defense of Conair's opposition, and will be greatly prejudiced if the requested materials and information are not provided. Conair's responses are well overdue. Conair has offered no legitimate grounds for its failure to respond to Beauty Holding's discovery requests. In fact, Conair has stated that it would respond. It has simply failed to do so. Beauty Holding, having made a good faith effort to resolve this matter with Conair, is entitled to an order compelling Conair to respond to the outstanding discovery.

In addition, Beauty Holding asserts that by failing to timely respond, Conair has waived its right to object to the propounded discovery requests. It is well settled that a party that fails to timely respond to interrogatories or requests to produce, and is unable to show that such failure was the result of excusable neglect, may be found to have forfeited its right to object to the discovery on its merits. *No Fear, Inc. v. Ruede D. Rule*, 54 U.S.P.Q. 2d 1551, 1554 (T.T.A.B. 2000); *Crane Co. v. Shimano Industrial Co., Ltd.*, 184 U.S.P.Q. 691, 691 (T.T.A.B. 1975).

Accordingly, Beauty Holding requests that the Board order Conair to respond to its outstanding discovery requests, without objection.


**III. CONCLUSION**

For the reasons stated above, Beauty Holding requests that the Board grant its motion to compel and enter an order compelling Conair to respond to Beauty Holding's outstanding discovery requests, without objection.

Date: May 13, 2005

Respectfully submitted,

WILDMAN, HARROLD, ALLEN & DIXON



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Craig S. Fochler  
Diane G. Elder  
Bryan P. Sugar  
225 West Wacker Drive  
Chicago, Illinois 60606-1229  
Telephone: (312) 201-2000

Counsel for Applicant, Beauty Holding  
Company, Inc.

**CERTIFICATE OF SERVICE**

I, Diane G. Elder, hereby certify that a copy of the Applicant's Motion for an Order to Compel and Memorandum in Support was served on Debra Duguid, Conair Corporation, One Cummings Point Road, Stamford, CT 06902 by first class mail, postage prepaid, on May 13, 2005.

Date: May 13, 2005

Diane G. Elder  
Diane G. Elder

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

CONAIR CORPORATION, )  
)  
Opposer, )  
)  
v. ) Opp. No. 91160362  
)  
BEAUTY HOLDING COMPANY, INC. )  
)  
Applicant. )

**DECLARATION OF DIANE G. ELDER**

I, Diane G. Elder, hereby declare as follows:

1. I am a partner with the firm Wildman, Harrold, Allen & Dixon in Chicago, Illinois, attorneys for applicant Beauty Holding Company, Inc.
2. On October 8, 2004 Conair Corporation was served with Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Document Requests to Opposer via First Class Mail. True and correct copies of the aforesaid discovery requests are attached hereto as Exhibit A.
3. On November 3, 2004, Debra Duguid, counsel for Conair Corporation, sent correspondence to Craig Fochler, counsel for Applicant, acknowledging receipt of Applicant's Interrogatories and Document Requests and requesting a sixty (60) day extension of time to respond. A true and correct copy of the aforesaid correspondence is attached hereto as Exhibit B.
4. On November 9, 2004, Mr. Fochler agreed to extend the time for Conair Corporation to respond to applicant's interrogatories and document requests for 60-

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on May 13, 2005  
Heather C. Regalado

days, in exchange for agreeing, in part, to serve any written discovery on applicant by December 7, 2004.

5. On November 10, 2004, the parties filed An Agreed Motion to Reschedule Discovery Period and Subsequent Periods Pursuant to Trademark Rule 2.121(a)(1), rescheduling the closing of discovery and testimony period. The close of discovery was reset for February 16, 2005.

6. On February 11, 2005, Diane G. Elder, counsel for applicant, initiated a telephone conference with Debra Duguid to request a ninety (90) day extension of time for discovery or trial periods. During that conversation, Ms. Elder requested responses to applicant's discovery requests. Ms. Duguid indicated that she did not remember that the responses were due and requested an extension to respond to discovery. Ms. Elder advised that she would review the matter and get back to Ms. Duguid.

7. In a telephone conference on February 14, 2005 between Ms. Elder and Ms. Duguid, Ms. Elder advised Ms. Duguid that applicant would not agree to the requested extension to respond to discovery. Ms. Duguid responded that Conair Corporation would serve applicant with its responses to discovery.

8. Also on February 14, 2005, counsel for applicant filed a motion with consent for extension of discovery, requesting that close of discovery be extended to May 18, 2005, which was granted by the Trademark Trial and Appeal Board.

9. Applicant's attorneys have made a good faith effort, through telephonic conferences and correspondence, to resolve with the Conair Corporation the issues presented in this motion to compel discovery and have not yet been provided responses to applicant's discovery requests.

10. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any registration resulting therefrom.

Date: May 13, 2005

*Diane G. Elder*  
Diane G. Elder

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

CONAIR CORPORATION,	)	
	)	
Opposer,	)	
	)	
v.	)	Opp. No. 91160362
	)	
BEAUTY HOLDING COMPANY, INC.	)	
	)	
Applicant.	)	

**APPLICANT'S FIRST SET OF  
INTERROGATORIES TO OPPOSER**

In accordance with Rule 33 of the Federal Rules Civil Procedure and Rule 2.120 of the Trademark Rules of Practice and Procedure, applicant, Beauty Holding Company, Inc., requests that opposer, Conair Corporation, answer each of the interrogatories set forth below, subject to the following definitions:

**DEFINITIONS**

A. As used herein, the term "applicant" means Beauty Holding Company, Inc., including its divisions and subsidiaries, and the officers, directors, employees, agents, and representatives thereof.

B. As used herein, the term "opposer" includes Conair Corporation, its predecessors-in-interest, its divisions, its parent and subsidiary companies and other related organizations, licensees, and the officers, directors, employees, agents, and representatives thereof.

C. As used herein, the terms "person" or "party" include any corporation, division, agency, or other entity, as well as an individual.

D. Whenever an interrogatory inquires about the name or identity of a person and that person is an individual, the information requested includes:

1. The person's full name;
2. The person's present employer;
3. The person's present position or title; and
4. The person's last known address and telephone number.

E. Whenever an interrogatory inquires about the name or identity of a person and the person is a corporation, division, agency, or other entity, the information requested includes the full name and current address of said corporation, division, agency or other entity.

F. As used herein, the terms "relate to" or "relating to" shall mean comprising, directly, or indirectly mentioning or describing, pertaining or referring to, being connected with, reflecting upon or resulting from the stated subject matter.

G. As used herein, the term "and" as well as the term "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the interrogatory all information which might otherwise be construed to be outside its scope.

H. As used herein, the singular shall always include the plural, and the present tense shall always include the past tense, and vice versa as necessary in order to bring within the scope of the interrogatory all information which might otherwise be construed to be outside its scope.

I. As used herein, the term "RADICAL Mark" means a name or mark consisting, in whole or in part, of the phrase "RADICAL".

J. As used herein, the term "RADICAL Goods/Services" means the products and services in connection with which opposer has used or uses a name or mark consisting, in whole or in part, of the phrase "RADICAL".

K. As used herein, the term "documents" has its broadest possible meaning under Federal Rule of Civil Procedure 34, and includes but is not limited to any writing, graphic matter or other tangible thing, whether printed, recorded, produced by any process, or written or produced by hand, including but not limited to, correspondence, memoranda, reports, notes, summaries, electronic mail messages whether or not printed in hard copy, diaries, calendars, labels, packaging, trade dress, signs, stationery, pamphlets, brochures, containers, sketches, illustrations, catalogues, circulars, price lists, advertisements, recorded tapes, photographs, models, computer files, microfilms and other storage means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten, recorded or reproduced by mechanical process, or copies thereof whether identical or not by reason of any notations made on such copies or otherwise, minutes or records of meetings and conferences, agendas, archive records, and any other thing within the definition of Rule 34 of the Federal Rules of Civil Procedure.

L. If you decline to answer any interrogatory or portion of an interrogatory on the basis of a privilege or immunity:

1. describe the nature of the privilege or immunity;
2. describe what it is you are declining to produce on the basis of such privilege;
3. identify the date and general subject matter of each such document;
4. identify each person who participated in the preparation of the document;  
and
5. identify each person to whom the contents of the document were communicated.

M. You are to seasonably supplement all interrogatory answers.

### INTERROGATORIES

1. (a) Describe by position the organizational structure, for that portion of the business of opposer which is or has been involved in the marketing, advertising, distribution and sale of products or services sold under the Radical Mark.
  - (b) Identify the general areas of responsibility for each position to be identified in the answer to Interrogatory No. 1(a).
  - (c) With respect to each position to be identified in the answer to Interrogatory No. 1(a), identify those persons presently occupying the position and each additional person who has occupied it at any time, specifying the time period during which each such person held the position.
2. Identify each mark consisting in whole or in part of the term "RADICAL" or any variant thereof, including any design, that opposer has used and identify by ordinary commercial name the goods and services with which each such name or mark was used.
3. For each of the RADICAL Goods/Services, describe opposer's consideration, selection, adoption and first use of each RADICAL Mark used in connection with each such product and service and identify each person with knowledge relating thereto.
4. Describe by time period, geographic area, channels of trade, class of consumer, advertising and promotional media and materials, opposer's use of each of its RADICAL Marks and the goods and services in connection with which it was used, and identify each person with knowledge relating thereto.
5. For each of the RADICAL Goods/Services, identify each person who participated in the creation or design of any package, label, tag, wrapper or other form of marking to be used

in connection with each such product or service, and each person who participated in the creation or design of any promotional or advertising materials used in connection with each such product or service.

6. Describe each type of advertising and promotional material and medium (e.g., radio, television, print, point of sale) opposer uses or has used to advertise or promote RADICAL Goods/Services and, for each material and medium, identify the dates of use and geographic locations where used and identify each person with knowledge of such sales thereof.

7. For each of the RADICAL Goods/Services, state the annual advertising and promotional expenditures opposer has expended to advertise and promote the product and service since its introduction and identify each person with knowledge of such sales and expenditures.

8. For each of the RADICAL Goods/Services, state the annual volume of sales in units and dollars since its introduction and identify each person with knowledge of such sales.

9. Identify, by date conducted, each trademark search conducted by or on behalf of opposer in connection with a RADICAL Mark and identify each person with knowledge of each such trademark search.

10. Identify each survey or other study undertaken by or on behalf of opposer relating to a RADICAL Mark and identify each person with knowledge of each such survey or study.

11. For each RADICAL Mark used by applicant of which opposer is aware, identify the date and describe the circumstances under which opposer first obtained any knowledge or information about applicant's consideration, adoption, or actual or proposed use of the RADICAL Mark and identify each person who has knowledge or information and each document respecting any such circumstances or information.

12. Identify each registration, and each application for registration, of a mark consisting in whole or in part of the term "RADICAL" filed by opposer in the United States Patent and Trademark Office or any state or governmental agency.

13. Identify by date and circumstances all communications between opposer and applicant regarding a RADICAL Mark, and identify each person who has knowledge or information and all documents which refer or relate to such circumstances or communications.

14. Specifying the RADICAL Mark and product or services on which it is used, identify the date and describe the circumstances under which opposer contemplated discontinuing use of a RADICAL Mark or actually discontinued use of the RADICAL Mark for any period of time in connection with any of opposer's goods or services and identify each person who has knowledge or information respecting such circumstances.

15. Identify each instance, of which opposer is aware, of actual confusion, mistake or deception, or any occurrence involving a third party which opposer contends indicates likelihood of confusion, mistake or deception between opposer or opposer's RADICAL Goods/Services and applicant or applicant's RADICAL products, or as to the relationship or possible association between opposer and applicant, and identify each person with knowledge relating thereto.

16. Identify any rights in any term consisting, in whole or in part, of the phrase "RADICAL" or any variant thereof, which opposer has granted to any third party or acquired from any third party and each person with knowledge relating thereto.

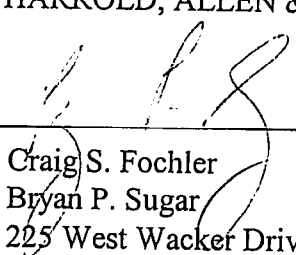
17. Describe by entity, location, and parties involved, each request or demand by opposer that any person or entity abandon, change, or discontinue use of a RADICAL Mark and identify all documents referring or relating thereto, and all persons with knowledge thereof.

18. Identify each use of a RADICAL Mark for a personal care product by a third party of which opposer is aware, and with regard to each such use, all documents referring or relating thereto and all persons having knowledge thereof.

19. Identify each person opposer intends to call as an expert in this proceeding, and as to each such expert state the subject matter on which he or she is expected to testify; the substance of the facts and opinions to which he or she is expected to testify; and a summary of the grounds for each opinion, including the identification and description of each document the expert used or relied upon in forming each opinion.

20. With regard to each interrogatory or document request made by applicant in this proceeding, identify each person who supplied information used in preparing opposer's response thereto.

WILDMAN, HARROLD, ALLEN & DIXON

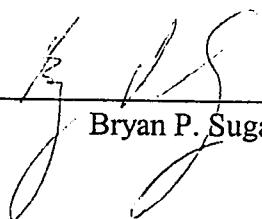


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Craig S. Fochler  
Bryan P. Sugar  
225 West Wacker Drive  
Chicago, Illinois 60606-1229  
Telephone (312) 201-2000  
Attorneys for Applicant,  
Beauty Holding Company, Inc.

**CERTIFICATE OF SERVICE**

I, Bryan P. Sugar, counsel for applicant, hereby certifies that a copy of APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER served on this 8th day of October, 2004 on Richard A. Margulies, Vice President and General Counsel, Conair Corporation, One Cummings Point Road, Stamford, CT 06902, by first class mail, postage prepaid.

  
\_\_\_\_\_  
Bryan P. Sugar

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

<b>CONAIR CORPORATION,</b>	)	
	)	
Opposer,	)	
	)	
v.	)	Opp. No. 91160362
	)	
<b>BEAUTY HOLDING COMPANY, INC.</b>	)	
	)	
Applicant.	)	

**APPLICANT'S FIRST SET OF  
DOCUMENT REQUESTS TO OPPOSER**

In accordance with Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, applicant, Beauty Holding Company, Inc., requests that opposer, Conair Corporation, produce within thirty (30) days, the following documents, subject to the definitions below:

**DEFINITIONS**

A. As used herein, the term "applicant" means Beauty Holding Company, Inc., including its divisions and subsidiaries, and the officers, directors, employees, agents, and representatives thereof.

B. As used herein, the term "opposer" includes Conair Corporation, its predecessors-in-interest, its divisions, its parent and subsidiary companies and other related organizations, licensees, and the officers, directors, employees, agents, and representatives thereof.

C. As used herein, the term "person" includes any corporation, division, agency or other entity, as well as any individual.

D. As used herein, “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses which might otherwise be construed to be outside its scope.

E. As used herein, the single shall always include the plural and the present tense shall always include the past tense and vice-versa.

F. As used herein, “relate to” or “relating to” means comprising, directly or indirectly mentioning or describing, pertaining to, referring to or connected with the stated subject matter.

G. As used herein, the term “RADICAL Goods/Services” means the products and services in connection with which opposer has used or uses a name or mark consisting, in whole or in part, of the phrase “RADICAL”.

H. As used herein, the term “RADICAL Mark” means a name or mark consisting, in whole or in part, of the phrase “RADICAL”.

I. If you are aware of existing documents responsive to the following requests that were formerly but are not presently in your possession, custody or control, identify each such document and the person(s) with possession, custody, or control of each such document.

If you are aware of documents that would be responsive to the following requests and were one time in your possession, custody or control but that no longer exist, identify each such documents, state what disposition was made of each such document, by whom, the date or dates on which each such disposition was made, and why each such disposition was made.

J. As used herein, the term “documents” has its broadest possible meaning under Federal Rule of Civil Procedure 34, and includes but is not limited to any writing, graphic matter or other tangible thing, whether printed, recorded, produced by any process, or written or

produced by hand, including but not limited to, correspondence, memoranda, reports, notes, summaries, electronic mail messages whether or not printed in hard copy, diaries, calendars, labels, packaging, trade dress, signs, stationery, pamphlets, brochures, containers, sketches, illustrations, catalogues, circulars, price lists, advertisements, recorded tapes, photographs, models, computer files, microfilms and other storage means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten, recorded or reproduced by mechanical process, or copies thereof whether identical or not by reason of any notations made on such copies or otherwise, minutes or records of meetings and conferences, agendas, archive records, and any other thing within the definition of Rule 34 of the Federal Rules of Civil Procedure.

K. The documents and things to be produced are those which are in the opposer's possession, custody or control, and include, but are not limited to, those in the possession, custody or control of any of the opposer's agents, sub-agents, distributors, sub-distributors, licensees, licensors, sub-licensees, sub-licensors, employees and independent contractors.

L. If you decline to produce any document or any portion of a document on the basis of a privilege or immunity:

1. describe the nature of the privilege or immunity;
  2. describe what it is you are declining to produce on the basis of such privilege;
  3. identify the date and general subject matter of each such document;
  4. identify each person who participated in the preparation of the document;
- and

5. identify each person to whom the contents of the document were communicated.

M. You are to seasonably supplement all Requests to Produce.

### **DOCUMENT REQUESTS**

1. All documents requested to be identified in Applicant's First Set Of Interrogatories To Opposer.

2. Representative samples of each product sold by opposer in connection with use of a RADICAL Mark.

3. For each RADICAL Goods/Services, representative specimens of all packaging, wrapping, labels, product inserts and product information sheets used or intended for use by opposer in connection therewith.

4. For each RADICAL Goods/Services, representative specimens of all advertising, marketing or other promotional material used or intended for use in connection therewith.

5. For each RADICAL Goods/Services, all documents which refer or relate to the creation or authorship of all packaging, wrapping, labels, product inserts, product information sheets, advertising, marketing or other promotional material used or intended for use in connection therewith.

6. For each RADICAL mark used by opposer, all documents which refer or relate to opposer's consideration, selection, adoption or first use of the RADICAL Mark and the manner and circumstances of each such use.

7. For each RADICAL mark used by opposer, all documents which refer or relate to any trademark searches undertaken by or on behalf of opposer relating to the RADICAL Mark.

8. For each RADICAL mark used by opposer, all documents which refer or relate to any survey or other study undertaken by or on behalf of opposer relating to the RADICAL Mark.

9. For each of the RADICAL Goods/Services, documents sufficient to establish the geographic territories through which each such product and service has been marketed, distributed and sold, and the time periods in which each such use was made.

10. For each of the RADICAL Goods/Services, documents sufficient to establish the channels of trade through which each product or service has been marketed, distributed and sold, and the time periods in which each such use was made.

11. For each of the RADICAL Goods/Services, documents sufficient to evidence opposer's annual sales of each such product and service, in units and dollars, since its introduction.

12. For each of the RADICAL Goods/Services, documents sufficient to evidence opposer's annual expenditures for advertising and promotion of each such product and service, since its introduction.

13. For each type of advertising and promotional material and medium expected to be identified in response to Interrogatory No. 6, served concurrently herewith, documents sufficient to evidence the dates of use and geographic locations where used.

14. All documents which refer or relate to opposer's knowledge of applicant's consideration, adoption, or use of a RADICAL Mark.

15. All documents which refer or relate to any instance, of which opposer is aware, of actual confusion, mistake or deception, or any occurrence involving a third party which opposer contends indicates a likelihood of confusion, mistake or deception between opposer or opposer's

RADICAL Goods/Services and applicant or applicant's RADICAL products, or as to the relationship or possible association between opposer and applicant.

16. All documents which refer or relate to any right to use any mark consisting in whole or in part of "RADICAL", or any variant thereof, which opposer has granted to any third party or acquired from any third party.

17. All documents relating to any registration or application for registration of any name or mark by opposer consisting in whole or in part of the term "RADICIAL" or any variant thereof.

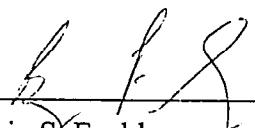
18. All documents which refer or relate in any way to any correspondence between opposer and applicant regarding applicant's adoption, proposed or actual use or application to register a RADICAL Mark.

19. All documents which refer or relate in any way to each instance, of which opposer is aware, where opposer contemplated discontinuing use of the RADICAL Mark or actually discontinued use of the RADICAL mark for any period of time in connection with any of opposer's goods or services.

20. All documents which refer or relate in any way to each instance, in which opposer is aware, where opposer requested or demanded that any person or entity abandon, change, or discontinue use of a RADICAL Mark.

21. All documents which refer or relate in any way to any use by a third party of a mark consisting, in whole or in part, of the term "RADICAL" or any variant thereof, in connection with a personal care product.

WILDMAN, HARROLD, ALLEN & DIXON

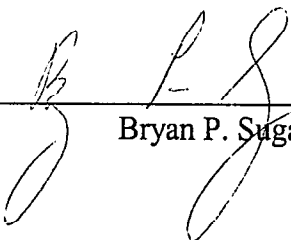


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Craig S. Fochler  
Bryan P. Sugar  
225 West Wacker Drive  
Chicago, Illinois 60606-1229  
Telephone (312) 201-2000  
Attorneys for Applicant,  
Beauty Holding Company, Inc.

**CERTIFICATE OF SERVICE**

I, Bryan P. Sugar, counsel for opposer, hereby certifies that a copy of APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER served on this 8th day of October, 2004 on Richard A. Margulies, Vice President and General Counsel, Conair Corporation, One Cummings Point Road, Stamford, CT 06902, by first class mail, postage prepaid.

  
\_\_\_\_\_  
Bryan P. Sugar

**Fochler, Craig**

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**From:** Debra Duguid [Debra\_Duguid@conair.com]  
**Sent:** Wednesday, November 03, 2004 2:31 PM  
**To:** Fochler, Craig  
**Cc:** Sugar, Bryan  
**Subject:** Extension of time to Respond to Discovery Requests

**Re: Opposition Proceeding No.: 91160362  
Conair Corporation v. Beauty Holding Company, Inc.**

Dear Mr. Fochler:

I contacted your colleague, Bryan Sugar, with reference to the above captioned matter. He indicated that I should be addressing my correspondence directly to your attention.

We are in receipt of your Interrogatories and Document Requests in the above captioned matter. The date to respond to the requests is set to expire on November 12, 2004. I would like to request an extension of time to respond to the outstanding requests. Thus, I was wondering if your client would consent to a 60 day extension of time.

Please feel free to contact me to discuss.

Best regards,

**Debra M. Duguid**

Debra M. Duguid  
Conair Corporation  
One Cummings Point Road  
Stamford, CT 06904

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Facsimile: (203) 975-4658  
Email: debra\_duguid@conair.com