ESTTA Tracking number: **ESTTA449279**

Filing date: **01/03/2012**

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

Proceeding	91192175
Party	Plaintiff Luster Products, Inc.
Correspondence Address	BURTON S EHRLICH LADAS PARRY LLP 224 2 MICHIGAN AVENUE, SUITE 1600 CHICAGO, IL 60604 UNITED STATES CHIUSTM@LADAS.NET
Submission	Reply in Support of Motion
Filer's Name	Burton S. Ehrlich
Filer's e-mail	CHIUSTM@LADAS.NET, burte@ladas.net
Signature	/bsehrlich/
Date	01/03/2012
Attachments	reply brief.pdf (39 pages)(1668311 bytes)

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

IN THE MATTER OF APPLICATION SERIAL NO. 77/461,092
PUBLISHED IN THE OFFICIAL GAZETTE ON MARCH 31, 2009

LUSTER PRODUCTS, INC.	)	Opposition No.: 91192175
	)	
Opposer,	)	
v.	)	
	)	
HENKEL AG & CO. KGAA	)	
	)	
Applicant.	)	

OPPOSER'S REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Opposer, Luster Products, Inc., through its attorneys, hereby replies to the objections raised by Applicant to Opposer's Motion to Suspend under Rule 510.02(a), based upon the filing of a Federal District Court Action.

Opposer will demonstrate based upon objective facts that factual assertions within the Applicant's response brief are patently false and misleading. Opposer will also demonstrate internal inconsistencies within Applicant's own response paper, as well as noting arguments wholly not supported by any factual basis and lacking supporting authority. Finally, and unfortunately Applicant's response brief resorts to insulting behavior by asserting arguments based upon unsupported innuendos, where those arguments have nothing to do with the proceedings at issue.

To begin with, the Opposer wishes to note that the response brief filed by Applicant is technically improper. The response brief does not show any Certificate of Filing or Transmission. On December 19, 2011 the Opposer received the response brief by mail with it supposedly having been mailed on December 12 under a Certificate of Mailing, without any certificate of filing. Opposer had no prior knowledge of the paper prior to its receipt by mail, but later found from examining USPTO TTABVUE that it was filed electronically on December 12, 2011, apparently without any Certificate of Filing and certainly without any copy being electronically submitted to Opposer, with Opposer learning of the paper

when received a full week later.

After initially noting on page 1 of Applicant's response that delays have occurred in these proceedings, Applicant at the bottom of page 1 asserts that no Federal litigation really exists or somehow is even seriously contemplated. In the second paragraph, Applicant asserts "contrary to the position claimed in Opposer's current Motion, the parties are not currently engaged in federal litigation" (underlined in Applicant's response). However, the next sentence in Applicant's brief admits that a lawsuit is known to be on file in the U.S. District Court naming the Opposer and Applicant. The only basis for asserting that this matter should not be suspended for the Federal litigation is that the Summons was not served upon the Defendant, coupled with innuendos that somehow Opposer is not serious about serving or going forward with the District Court case. No case law is asserted for the proposition that Federal litigation does not exist or that service of a Summons is a necessary precondition for suspension, and in fact TTAB Rules provide for the Board to be promptly notified about the existence of other controlling related proceedings. Such notice is not set forth in the Rule to await service of process to be confirmed. However, as Opposer will show, a Summons had already been served about two weeks prior to the Applicant's counsel's assertions that "The federal complaint referred to in Opposer's motion was apparently filed on November 9, 2011 yet, as of the date of this response – more than a full month later – there has been no service made."

As with many fallacious or factually inaccurate or distorted arguments in the response the Applicant in its first paragraph on page 2 asserts: "Applicant notes, in this regard, that Opposer's Motion is entirely silent on the subject of service. It is not unreasonable to infer that it is silent precisely because little effort has been made to actually serve Applicant in the matter, or indeed, to do much more than simply file a complaint." Applicant argues that Suspension is premature and that until the litigation is "engaged" there should be no suspension, implying that the District Court case is essentially inconsequential by arguing factually unsupported assertions that Plaintiff is not serious about attempting to serve the Complaint. However, even the Applicant's response is again internally inconsistent on this

factual assertion because on page 2 Applicant admits knowledge of attempted service of process, but it is Applicant that even refused process on what it admits is a "related" company: "Applicant has learned that service was attempted – once – on one of Applicant's related US companies. As that company is not authorized by Applicant to accept service on Applicant's behalf, service was properly refused in that instance." Applicant on the one hand argues (incorrectly) no service or no seriousness in serving, but on the other hand admits attempted service already occurred and that the attempt in the Applicant's own words was "on one of Applicant's related US companies." Applicant admits it avoided service of process upon a "related company" by refusing the service of process. The service of process was attempted on Henkel of America, Inc. at the address shown by the person signing the paper on behalf of the Applicant in the response brief (with that entity being where Applicant's counsel is located as shown by the address on Applicant's response brief by her signature line) and this same entity refused service of process. (See Exhibits 1 and 3) Moreover, the Applicant in its designation of a U.S. representative, as required within the application at issue, has identified Henkel of America, Inc. under the designation for a domestic representative, so Opposer was attempting to serve a proper party on the very entity identified under the domestic representation designation for receiving papers relating to Applicant's application. The Applicant's response was signed on December 12, 2011, and on page 2, it is asserted that no service of process was further attempted or completed. However, that statement is factually inaccurate for as shown by Exhibit 2, the process server under oath asserts that service of process was completed on the entity corporation identified in the application at issue of the Applicant for domestic service, with the service of process occurring **on November 29, 2011, a full two weeks prior to the signing of the dated response paper by the Applicant**. How could Applicant's counsel have not recognized such further service attempts and that service of process had been made, even on the location where counsel for the Applicant is supposedly located, with the service of process having occurred two weeks earlier from when the Applicant's counsel signed the response brief? Applicant even asserted on page 2 of the response brief that "Opposer has, to Applicant's knowledge, made no further effort to effect service". Further the brief

on page 2 argues without citation or any supporting authority that "As a result, as of the filing of this response, *no federal litigation has been commenced between the parties*, and Opposer's motion for suspension is – at best – premature." The Rule provides for a party or parties to provide notice of a civil action "which may have a bearing", so it contemplates notice by either party upon becoming aware of such an action and "notes" relating to the Rule, specifically provide that "joinder" of the parties is not required, unless the Board is unable to ascertain if the case will have a bearing on issues before the Board until an answer is filed. Applicant has no basis to pretend the existence of "no federal litigation" commenced between the parties that will have a bearing on this case.

Exhibits 1 through 6 show some of the communications to and from Opposer's counsel and the process server. They show that Opposer immediately after filing the Complaint attempted service of process to be made upon the entity identified in the Applicant's application as the domestic party for service and followed-up in continuing to attempt service of process even after Applicant attempted to evade service of process at the location which Applicant's counsel designated as her location. If Applicant was not in fact attempting to evade service of process then Applicant would have simply stated in the filed response brief that it will accept service of process upon counsel of record in this case. Certainly Applicant should have accepted service of process upon the very entity identified in the Applicant's application for service of process and on the signature line of Applicant's counsel in the response brief. At the very least, Applicant's counsel is attempting to make much of mere technical arguments having no import in these proceedings, without even addressing substantively whether the District Court proceedings have the opportunity to fully resolve matters in these proceedings, beyond even those which the TTAB could address.

Applicant's counsel argues that there were non-returned calls, but on page 3 specifically claims two unreturned calls. What Applicant does not mention is that the first of these calls was to apologize for her not returning a telephone call earlier from Opposer's counsel and a copy of that telephone message (made by the secretary at the time) is attached as Exhibit 7 showing that Applicant was calling on 11-11-

11 to return Opposer's counsel's call, and the message reads as follows: "Returning your call you can reach me on my cell I did not get your message right away so apologize for late call." In fact, Opposer's counsel did call Applicant's counsel immediately after filing the Complaint on 11-9-11 as shown above by Applicant's counsel returning the call on 11-11-11. The only other message received from Applicant's counsel was one from 11-16-11 (Exhibit 8) taken by the secretary at the time which shows Applicant's counsel's again returning Opposer's counsel's call, but saying Opposer did not yet apparently serve the Complaint and that her client would be away for about two weeks, and demonstrating Applicant's counsel's awareness that Opposer's counsel was now out of the country in Korea, clearly all showing that Opposer did call. Applicant's counsel brief admits early awareness of the filed Complaint from knowledge derived from other sources, so Applicant could easily have simply sent a communication offering to accept service of process.

Applicant's counsel then attempts to disparage Opposer's lead counsel with a series of wide-ranging allegations having no relevancy to the underlying proceedings by arguing that Opposer's counsel is purportedly generally dilatory and should somehow be denied the requested suspension on these irrelevant grounds. Opposer's counsel could make similar assertions against others associated with the other side, or even that the delays in these proceedings were Applicant's fault, but to what significance would that be and such insulting behavior would advance nothing.

Applicant's counsel notes Opposer's lead counsel being in over 580 oppositions or cancellations. However, by way of background information, Opposer's lead counsel has nearly 35 years of extensive trademark attorney practice and in prior Trademark Office surveys has been considered one of the highest yearly filers of applications. Applicant's brief then gives different numbers about pending oppositions involving Opposer's lead counsel, at one point referring to 29 (page 6) and at another point 22 (page 7). Applicant's counsel actually has no real knowledge of just how many such proceedings Opposer's counsel has been involved over nearly 35 years of practice, but all of these cited numbers are believed too low.

Applicant's counsel seems to assert that such proceedings are relevant because some proceedings involved suspensions or extensions over significant time periods, but such dilatory assertions against counsel are not only insulting, but absurdly fallacious. As the Board knows suspensions for settlement or even multiple extensions to be allowed will almost uniformly require consent of both parties. If both parties do not believe that settlement opportunities exist or that an extension is appropriate, then multiple extensions or virtually any extensions may not be granted in an opposition/cancellation matter. The matters cited by opposing counsel show extensions or suspensions being filed by attorneys by both sides, or even involve situations where referenced counsel was only tangentially involved as an attorney with a major law firm. Of the supposed over 580 TTAB matters located by Applicant where Opposer's counsel has been involved, there are only a total of 12 total matters (with three being only applications) referenced by applicant where delays were noted by Applicant's counsel, obviously a tiny fraction of the supposed total of the over 580 TTAB proceedings located by Applicant. Applicant further argues that in very few matters involving Opposer's lead counsel was it ever found that substantive papers were filed which required the Board's ruling on issues, meaning that disputes were systematically avoided and that eventually nearly in all matters, settlements were successfully achieved. If anything this shows, as expected by the Board, that real settlement progress was achieved in nearly all cases, and in most situations disputes resolved or avoided, without taking the Board's time or efforts. The very few of the total number of matters noted by Applicant's counsel as involving supposed delays, does not mean delays were by Opposer's counsel, with nearly all extensions by either side in such proceedings filed by agreement.

Applicant's counsel cites three applications involving under the old Trademark Rules extensions for filing potential oppositions, as examples of delays by Opposer, specifically Serial Nos. 78/103,238, 76/267,062 and 76/264,411. All of these application extensions for potentially opposing or for resolving the matters were under old Trademark Rules long since replaced, but which required any extensions beyond 120 days from publication to be with the consent of counsel for the other side and the Board's

approval. In all, the three oppositions were successfully concluded without the Board's involvement and thus show nothing other than an amicable working with counsel for the other side for achieving resolution.

Applicant, also in an attempt to besmirch the Opposer, refers as supposed examples to nine oppositions, (a small fraction of the over 580 total matters involving Opposer's counsel in TTAB proceedings) where agreed suspension/extensions occurred. Without any real knowledge by Applicant's counsel of the facts of the proceedings or why counsel for both sides in the proceedings consented to each other's respective motions, Applicant blames Opposer for delaying the matters. Of the supposed nine examples, Applicant references three proceedings lasting 2 ½ years, one lasting 3 years, two lasting 4 years, two lasting 5 years, and one 6 ½ years. However, to find these few examples (of the multitude of proceedings involving Opposer's counsel) the Applicant's counsel reaches back to find proceedings, such as Opposition No. 9108073, which was instituted nearly 23 years ago in March 1989 and was terminated 17 years ago. Applicant does not even attempt to cite any of the proceedings as finding anything adverse to Opposer's counsel and nearly all extensions or suspensions in the underlying proceedings were with the consent of both parties.

On page 7, Applicant argues that, "Occasionally, the Board has recognized counsel's tactics for the abuse it is, and refused further extensions - (for example, Opposition No. 91190859)." This is the one example supposedly cited for such abuse. However, the Motion denied in that proceeding was filed by the other side, as shown by Motion and Order attached as Exhibit 9 where the extension Motion in that instance was denied without prejudice. At most, this is an example of the other side filing a motion with Opposer's consent, where the Motion as filed by the other side did not completely comport with usual procedures for reporting a detailed update to establish good cause for an extension, but, as shown, this was not a Motion prepared or filed by Opposer's counsel.

Applicant uses related Opposition Nos. 91185452 and 91190106 as two of the nine examples of delayed oppositions, but attached as Exhibit 10 is a recent communication from counsel for the other side

in both oppositions where he is complimenting Opposer's counsel on prompt attention and on "cooperation and professional courtesy throughout".

Applicant blames the Opposer for having been dilatory in these proceedings when the underlying opposition was filed on October 1, 2010, and all suspensions/extensions until Applicant filed its later unsuccessful Motion to Compel on July 8, 2011, were filed with Consent. At the point when Applicant filed that Motion, the proceedings were about 1½ years old, and with all prior suspensions/extensions filed with consent. Applicant even was the party that filed a 90-day suspension (on 1-15-2010) and a further extension on May 6, 2011. In fact, Applicant's unsuccessful Motion to Compel filed on 7-8-2011 led to several months of further delays. Applicant argues about prior misunderstandings among counsel in these proceedings, but that topic was already argued in lengthy detail and were found unpersuasive for Applicant when the Board denied Applicant's prior request for relief on its Motion to Compel (as resolved in the Board's order of October 26, 2011) which noted good cause for Opposer's Motion and requested relief. If Applicant did not believe extensions/suspensions were appropriate in these proceedings, then it should not have repeatedly consented to their filing, much less have itself participated in filing such documents. Blaming them as delaying proceedings when Applicant consented to or filed them is tantamount to blaming itself, and each agreed extension/suspension repeatedly required such consent. Furthermore, the argument about blame for delays was already discussed at length in papers relating to the Motion to Compel where in the paper docketed 7-14-11, Opposer noted the delays caused by Applicant in repeatedly changing settlement positions or in repeatedly needing to confirm information, or with such information or documentation not being substantiated or earlier available. The fact that Applicant causes delays or plays ostrich in ignoring facts, is clearly demonstrated by Applicant's efforts in attempting to avoid service of process, while simultaneously claiming no service of process efforts even occurred. Worse yet is Applicant arguing to the Board and to Opposer's counsel that Applicant's counsel's rationale for its own filed consent suspension or extension Motions cannot be relied upon, or was such consent for filings by Opposer to be some ruse for later arguments blaming delay.

Applicant cites only one case in the entire brief for why suspension should not be granted, but even Applicant readily distinguishes that case, unlike this case, as involving non-suspension because of the pendency of a dispositive motion. In fact, no Motions are pending before the Board other then this Suspension Motion, much less any dispositive Motions, and the parties are only still involved with discovery. Essentially, Applicant recognizes the existing case law, as set forth in the cited case, that the Board will not suspend proceedings where a dispositive motion is pending. No such circumstances exist in the present matter, and instead, Applicant relies on other spurious arguments unsupported by any authority and which also are factually unsupported or do not even relate to the underlying proceedings. Such arguments include that the District Court proceedings are supposedly not really pending until service of process has occurred; (or similarly would that argument also require Motions to Dismiss to be resolved, etc.); or that counsel for the Opposer has been dilatory in these now 2 year old opposition proceedings involving an intent to use trademark application (where use of the mark has now occurred giving rise to the District Court case); or where Applicant filed or consented to all but one recent prior extension or suspension during all of the pendency of these proceedings; or where Applicant itself caused further delays; or because Opposer's counsel is summarily blamed for supposed extensions in other unrelated proceedings where both sides had almost universally consented in all supposed delays with each other concerning the extensions (and where Applicant does not really have any knowledge of anything pertaining to those other unrelated proceedings). Applicant's response brief is actually very simple in that it raises nothing substantive to really be considered, but instead raises complex irrelevant obfuscation. Applicant would not be objecting to the granted extensions which Applicant itself filed or consented to in these proceedings (now asserted as delays), except for the sour grapes that it now raises, because settlement was not achieved or that Applicant itself sought to not further pursue settlement by instead unsuccessfully pursuing a Motion to Compel and to further in ambush seek to require Requests For Admissions to be deemed admitted.

Applicant also argues at length about the fault of settlement not herein being concluded, another

non-issue to the present motion. This topic was already repeatedly discussed in prior papers filed in association with the Applicant's Motion to Compel. The Board's Order of 10-26-11 noted that with settlement not coming to conclusion that Applicant wanted to move forward and Applicant unsuccessfully in that prior Motion even sought unsuccessfully for relief asserting that Requests For Admissions supposedly past due should be deemed now admitted. Applicant even argued in its paper docketed 7-22-11 beginning at the bottom of page 1 that "Applicant wishes the matter moved forward in order to be able to have some certainty, after this nearly 2-year delay, in its use of the mark." Applicant turned its back on settlement and instead sought to ambush Opposer into having the Board deem Requests For Admissions as being admitted and to seek other unilateral compelled discovery. This may not be surprising, given that factors relating to Applicant's use of the mark did not comport to representations, nor did Applicant's proposed settlement exhibits comport to compliance with settlement aspects. Two facts should be apparent. Applicant was the moving party demanding other relief while supposedly not withdrawing from settlement, which would be dubious given the attempted discovery ambush. Secondly, Applicant admits in moving ahead without settlement, it wants to resolve issues relating to "use" of the mark. Obviously, only a Court Action could resolve "use" issues, but which issue Applicant has in fact tried to avoid by evading service. Applicant filed an intent to use application and so no District Court case could have been filed until use of the mark occurred. However, Applicant by its own words or admissions is seeking to resolve "use" of the mark and should thereby be consenting to the Suspension Motion where only the District Court could fully resolve such "use" issues. For the rationale provided previously and herein, it is respectfully submitted that suspension should be granted pending the disposition of the District Court case which should resolve all issues, including those trademark registrability issues herein involved.

Respectfully submitted,

Burton S. Ehrlich
Ladas & Parry LLP
224 S. Michigan Avenue, Suite 1600
Chicago, IL 60604

By: _____
One of Opposer's attorneys

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being electronically filed with the United States Patent and Trademark Office on this 3rd day of January, 2012.

Burton S. Ehrlich

CERTIFICATE OF SERVICE

The undersigned, one of Opposer's attorneys, hereby certifies that on January 3, 2012, he caused a true and correct copies of the foregoing OPPOSER'S REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE to be served upon Applicant by First Class mail, postage pre-paid, at the following address:

Susan F. Evans
Legal Department
Henkel of America, Inc.
19001 N. Scottsdale Road
Scottsdale, AZ 85255

Burton S. Ehrlich

Luster Products, Inc. **Opp. No. 91192175**

v.

Henkel Ag & Co. KGAA

EXHIBIT 1

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Bailye, Jessica

From: status@azpi.com
Sent: Tuesday, November 15, 2011 12:19 PM
To: Ehrlich, Burton
Subject: RE: Status of Process Service for Luster Products Inc. v. Henkel

service notes:

11/15/2011	08:33	NO	email client status. ON HOLD waiting authorization for new address.	NO	YES	skye
11/14/2011	10:51	NO	Spoke with Kris at the front desk. She stated that all documents are to be served at Capital Document @ 815 N 1st Ave Ste 4, Phoenix...	YES	YES	skye

Let us know if you want us to attempt at the 1st ave address in phx, cost would run $60 for routine service at the 2nd address or $85 for rush

Jeff

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 2

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Bailye, Jessica

From: status@azpi.com
Sent: Thursday, December 01, 2011 1:39 PM
To: Ehrlich, Burton
Subject: Requested Information
Attachments: 20111201112937014.pdf

Hello,
Here is the information per your request.
Thanks
Craig

AO 440 (Rev. 05/00) Summons in a Civil Action

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

LUSTER PRODUCTS, INC.

V.

HENKEL AG & CO. KGAA

CASE NUMBER: 1:11-cv-07981

ASSIGNED JUDGE: Zagel

DESIGNATED MAGISTRATE JUDGE: Cole

TO: (Name and address of Defendant)

Henkel AG & CO. KGAA
c/o Henkel of America Inc.
19001 North Scottsdale Road
Scottsdale, Arizona 85255

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Burton S. Ehrlich
Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, Illinois 60604

an answer to the complaint which is herewith served upon you, within twenty-one (21) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MICHAEL W. DOBBINS, CLERK

(By) DEPUTY CLERK

DATE

MICHAEL W. DOBBINS, CLERK

(By) DEPUTY CLERK

November 9, 2011

DATE

AO 440 (Rev. 05/00) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and complaint was made by me(1)	DATE 11-29-11 @ 949 am
NAME OF SERVER (PRINT) China Fe Young	TITLE Process Server

Check one box below to indicate appropriate method of service

G Served personally upon the defendant. Place where served: 19001 N. Scottsdale Rd Scottsdale AZ 85255

G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: Kris Muff - Front Desk, Apparently in charge

G Returned unexecuted:

G Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
$0.00	$145.00	$145.00

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 11-29-11 (Date) C Young (Signature of Server)

Arizona Quick Serve
9393 N. 90th St. Ste. 121
Scottsdale, AZ 85258-5042
(Address of Server)

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 3

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

LADAS & PARRY LLP
INTELLECTUAL PROPERTY LAW

Burton S. Ehrlich burte@ladas.net

LAW OFFICES ■ LADAS & PARRY LLP ■ 224 South Michigan Avenue ■ Suite 1600 ■ Chicago, Illinois 60604
P 312.427.1300 ext. 211 ■ F 312.427.6663 ■ F 312.427.6668 ■ www.ladas.com

November 9, 2011

VIA OVERNIGHT COURIER
SERVICE DELIVERY

Arizona Quick-Serve
Process Service
7150 E. Camelback Rd.
Suite 444
Scottsdale, AZ 85251

Re: Luster Products, Inc. v. Henkel AG & CO. KGAA
United States District Court
Northern District of Illinois
Case No.: 11-cv-07981
Our File No.: CTG05696

Dear Sir or Madam:

In accordance with your website instructions for serving a Complaint, please find enclosed for the above referenced matter one (1) original Summons (the Court sealed Summons is considered the original) and two (2) copies of the Summons, together with two (2) sets of the Complaints. The Court stamped Summons and one of the Complaints should be served upon the Defendant corporation.

You will be serving the following Corporation located at:

Henkel AG & CO. KGAA
c/o Henkel of America Inc.
19001 North Scottsdale Road
Scottsdale, Arizona 85255

For your convenience, we have labeled each set of materials for service of process.

We understand that service upon any corporate officer of the corporation or even upon the receptionist for the

corporation will be permissible under the U.S. Rules applicable to Federal Court cases or the laws of the State of Illinois for proper service of process. Should a corporate officer not accept service and the receptionist is served at the corporate offices, then you should also send another copy of the Summons and Complaint by mail to the Defendant corporation. Please proceed in serving the Defendant within two business days as shown on your website.

After service of process, please return the completed original (Court sealed) Summons for the Defendant to us for our filing with the U.S. District Court. Also, if the enclosed extra Complaint is unnecessary for mailing to the Defendant corporation, then please return that set of materials to us.

After serving the papers, we would appreciate if you could call us or e-mail us at burte@ladas.net to notify us that the Service of Process has been completed. We do not expect any difficulty in serving the Defendant, but please call us immediately if there is any difficulty or delay encountered in serving the papers. Based upon your website, we understand that you will attempt to serve the Summons and Complaint within the near future and within two business days or less, or by the end of the next business day after receipt of this letter or sooner.

We understand that the usual charge for serving these papers will be $65.00 and we are attaching the proof of our having paid said fee over the internet on your website.

Please do not hesitate to contact us with any questions or comments.

Sincerely,

Burton S. Ehrlich

BSE:jlb
enc.

Ref: HENKEL
Dep:

Date: 09Nov11
Wgt: 1.55 LBS

DV:

SHIPPING: 35.07
SPECIAL: 5.09
HANDLING: 0.00
0.00 TOTAL: 40.16

Svcs: STANDARD OVERNIGHT
TRCK: 4703 8168 4877

ORIGIN ID: CHIA (312) 427-1300
LADAS & PARRY
LADAS & PARRY
224 S MICHIGAN AVE
SUITE 1600
CHICAGO, IL 60604
UNITED STATES US

SHIP DATE: 09NOV11
ACTWGT: 1.6 LB
CAD: 743668/CAFE2509

BILL SENDER

TO

ARIZONA QUICK-SERVE PROCESS SERVICE
7150 E. CAMELBACK RD.
SUITE 444
SCOTTSDALE AZ 85251
(312) 427-1300
REF: HENKEL

FedEx Express

J11311060601 26

TRK# 0201 **4703 8168 4877**

THU - 10 NOV A1
STANDARD OVERNIGHT

XH SCFA

85251
AZ-US **PHX**

Part # 154254-354 RIT2 03/11

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 4

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Bailye, Jessica

From: Ehrlich, Burton
Sent: Monday, November 14, 2011 6:20 PM
To: 'status@azpi.com'
Subject: Status of Process Service for Luster Products Inc. v. Henkel

Re: Luster Products, Inc. v. Henkel AG & CO. KGAA
United States District Court
Northern District of Illinois
Case No.: 11-cv-07981
Our File No.: CTG05696

Dear Sir or Madam:

On the above case we sent you documents via FedEx which were received in your office and signed by a S.Robhsen on Thursday, November 10, 2011. We are inquiring on the status of process and please let us know if service has been completed and when we will receive the completed original summons. Thank you and best regards.

Burton S. Ehrlich
Ladas & Parry
224 S. Michigan Ave
Chicago, IL 60604
Phone: 312-427-1300 ext. 211
Fax: 312-427-6663
E-Mail: burte@ladas.net

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 5

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Bailye, Jessica

From: status@azpi.com
Sent: Tuesday, November 15, 2011 12:19 PM
To: Ehrlich, Burton
Subject: RE: Status of Process Service for Luster Products Inc. v. Henkel

service notes:

11/15/2011	08:33	NO	email client status. ON HOLD waiting authorization for new address.	NO	YES	skye
11/14/2011	10:51	NO	Spoke with Kris at the front desk. She stated that all documents are to be served at Capital Document @ 815 N 1st Ave Ste 4, Phoenix...	YES	YES	skye

Let us know if you want us to attempt at the 1st ave address in phx, cost would run $60 for routine service at the 2nd address or $85 for rush

Jeff

-------- Original Message --------
Subject: Status of Process Service for Luster Products Inc. v. Henkel
From: "Ehrlich, Burton" <BurtonE@ladas.net>
Date: Mon, November 14, 2011 5:20 pm
To: <status@azpi.com>

Re: Luster Products, Inc. v. Henkel AG & CO. KGAA
United States District Court
Northern District of Illinois
Case No.: 11-cv-07981
Our File No.: CTG05696

Dear Sir or Madam:

On the above case we sent you documents via FedEx which were received in your office and signed by a S.Robhsen on Thursday, November 10, 2011. We are inquiring on the status of process and please let us know if service has been completed and when we will receive the completed original summons. Thank you and best regards.

Burton S. Ehrlich
Ladas & Parry
224 S. Michigan Ave
Chicago, IL 60604
Phone: 312-427-1300 ext. 211
Fax: 312-427-6663
E-Mail: burte@ladas.net

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 6

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Bailye, Jessica

From: status@azpi.com
Sent: Tuesday, November 15, 2011 5:35 PM
To: Ehrlich, Burton
Subject: RE: Status of Process Service for Luster Products Inc. v. Henkel

we will be there tomorrow.

Jeff

-------- Original Message --------
Subject: RE: Status of Process Service for Luster Products Inc. v. Henkel
From: "Ehrlich, Burton" <BurtonE@ladas.net>
Date: Tue, November 15, 2011 4:22 pm
To: <status@azpi.com>

Please find attached receipt for our having paid the $85 as mentioned in our below e-mail. Thank you and best regards.

Burton S. Ehrlich
Ladas & Parry
224 S. Michigan Ave
Chicago, IL 60604
Phone: 312-427-1300 ext. 211
Fax: 312-427-6663
E-Mail: burte@ladas.net

From: Ehrlich, Burton
Sent: Tuesday, November 15, 2011 5:21 PM
To: 'status@azpi.com'
Subject: RE: Status of Process Service for Luster Products Inc. v. Henkel

Re: Luster Products, Inc. v. Henkel AG & CO. KGAA
United States District Court
Northern District of Illinois
Case No.: 11-cv-07981
Our File No.: CTG05696

Dear Jeff:

Please attempt **rush service** at the 815 N 1st Ave address. Please find attached the proof of our having paid the rush fee of $85 over the internet on your website. Once service has been completed please send us the completed original summons. Thank you and best regards.

Burton S. Ehrlich
Ladas & Parry
224 S. Michigan Ave
Chicago, IL 60604
Phone: 312-427-1300 ext. 211
Fax: 312-427-6663
E-Mail: burte@ladas.net

From: status@azpi.com [mailto:status@azpi.com]
Sent: Tuesday, November 15, 2011 12:19 PM
To: Ehrlich, Burton
Subject: RE: Status of Process Service for Luster Products Inc. v. Henkel

service notes:

11/15/2011	08:33	NO	email client status. ON HOLD waiting authorization for new address.	NO	YES	sky
11/14/2011	10:51	NO	Spoke with Kris at the front desk. She stated that all documents are to be served at Capital Document @ 815 N 1st Ave Ste 4, Phoenix...	YES	YES	sky

Let us know if you want us to attempt at the 1st ave address in phx, cost would run $60 for routine service at the 2nd address or $85 for rush

Jeff

-------- Original Message --------
Subject: Status of Process Service for Luster Products Inc. v. Henkel
From: "Ehrlich, Burton" <BurtonE@ladas.net>
Date: Mon, November 14, 2011 5:20 pm
To: <status@azpi.com>

Re: Luster Products, Inc. v. Henkel AG & CO. KGAA
United States District Court
Northern District of Illinois
Case No.: 11-cv-07981
Our File No.: CTG05696

Dear Sir or Madam:

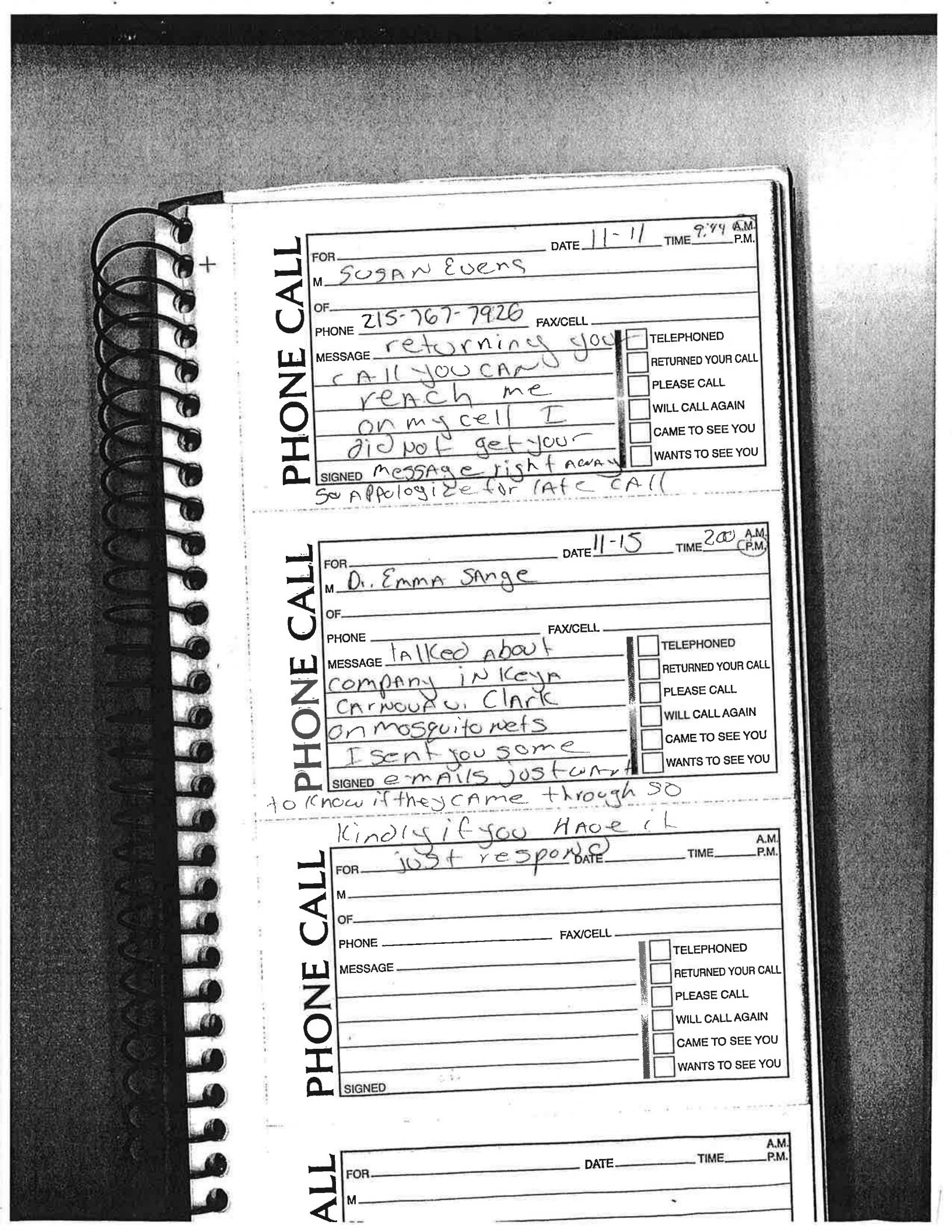
On the above case we sent you documents via FedEx which were received in your office and signed by a S.Robhsen on Thursday, November 10, 2011. We are inquiring on the status of process and please let us know if service has been completed and when we will receive the completed original summons. Thank you and best regards.

Burton S. Ehrlich
Ladas & Parry
224 S. Michigan Ave
Chicago, IL 60604
Phone: 312-427-1300 ext. 211
Fax: 312-427-6663
E-Mail: burte@ladas.net

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 7

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE



PHONE CALL

FOR
DATE 11-11 TIME 9:44 A.M. P.M.
M Susan Evens
OF
PHONE 215-767-7926 FAX/CELL
MESSAGE returning your call you can reach me on my cell I did not get your message right away So Apologize for late call

- [ ] TELEPHONED
- [ ] RETURNED YOUR CALL
- [ ] PLEASE CALL
- [ ] WILL CALL AGAIN
- [ ] CAME TO SEE YOU
- [ ] WANTS TO SEE YOU

SIGNED

PHONE CALL

FOR
DATE 11-15 TIME 2:00 A.M. P.M.
M Dr. Emma Sange
OF
PHONE FAX/CELL
MESSAGE talked about company in Kenya Carnovan v. Clark on mosquito nets I sent you some e-mails just want to know if they came through so kindly if you have just response

- [ ] TELEPHONED
- [ ] RETURNED YOUR CALL
- [ ] PLEASE CALL
- [ ] WILL CALL AGAIN
- [ ] CAME TO SEE YOU
- [ ] WANTS TO SEE YOU

SIGNED

PHONE CALL

FOR
DATE TIME A.M. P.M.
M
OF
PHONE FAX/CELL
MESSAGE

- [ ] TELEPHONED
- [ ] RETURNED YOUR CALL
- [ ] PLEASE CALL
- [ ] WILL CALL AGAIN
- [ ] CAME TO SEE YOU
- [ ] WANTS TO SEE YOU

SIGNED

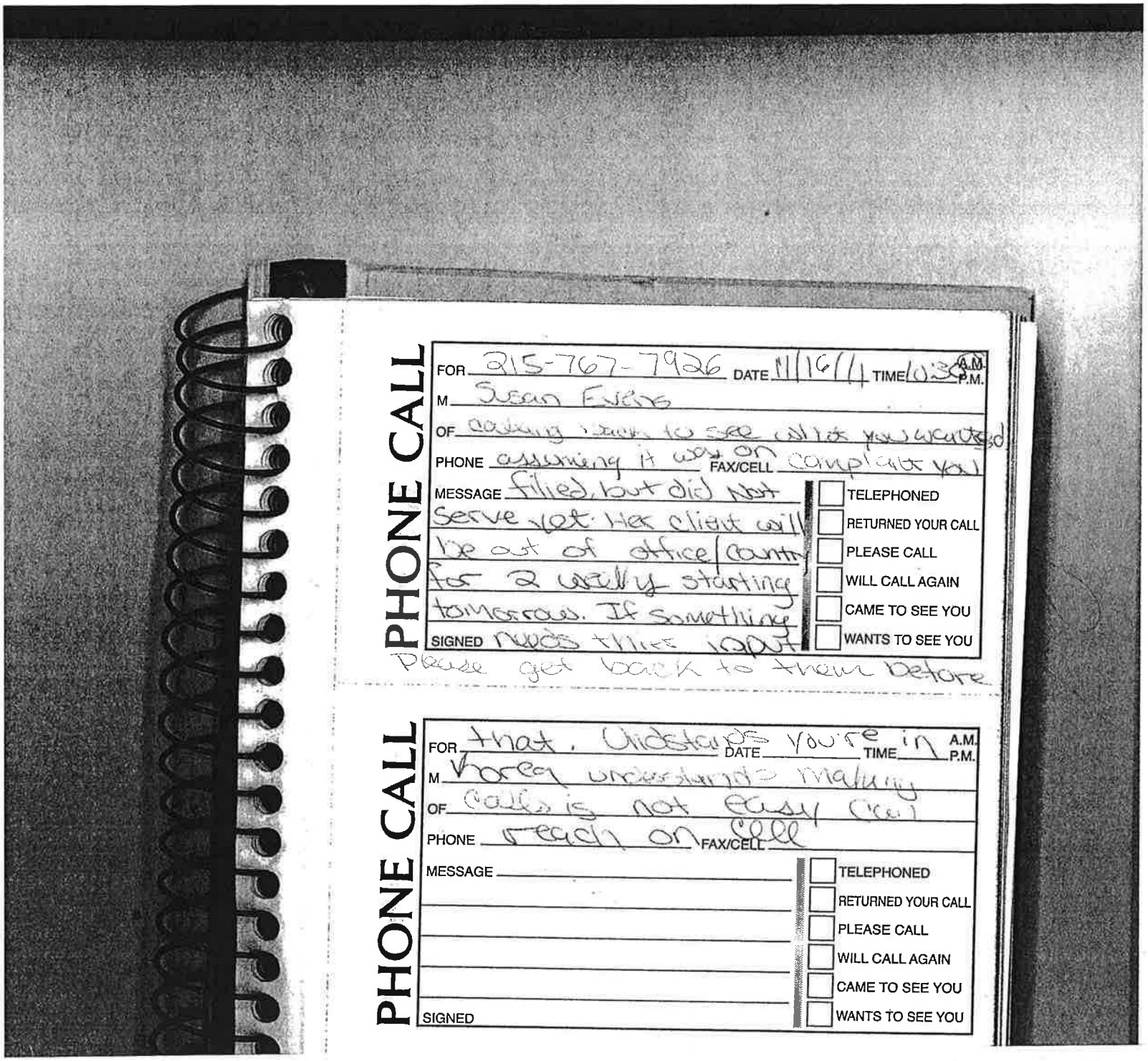
ALL

FOR
DATE TIME A.M. P.M.
M

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 8

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE



PHONE CALL

FOR 915-767-7926 DATE 11/16/11 TIME 10:35 A.M. P.M.

M Susan Evans

OF calling back to see what you wanted

PHONE assuming it was on FAX/CELL complaint you

MESSAGE filed, but did not serve yet. Her client will be out of office/country for 2 weeks starting tomorrow. If something needs time input

SIGNED

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

Please get back to them before that. Understands you're in agreement, understands making calls is not easy (Lee)

PHONE CALL

FOR DATE TIME A.M. P.M.

M

OF

PHONE FAX/CELL

MESSAGE

SIGNED

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 9

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Docket No. 27963.007 TRADEMARK

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

BLISTEX, INC.,	:	
Opposer,	:	Opposition No. 91190859
v.	:	
FUSION BRANDS INTERNATIONAL SRL,	:	
Applicant.	:	

MOTION ON CONSENT TO EXTEND DEADLINES IN OPPOSITION PROCEEDING

Applicant, by and through counsel, hereby moves for an order extending all deadlines in the above-captioned proceeding for a period of ninety (90) days, as follows:

Discovery Period to Close:	11/29/2011
Plaintiff Pretrial Disclosures:	1/13/2012
Plaintiff's 30-day Trial Period Ends:	2/27/2011
Defendant's Pretrial Disclosures:	3/03/2012
Defendant's 30-day Trial Period ends:	4/27/2012
Plaintiff's Rebuttal Disclosures:	5/12/2012
Plaintiff's 15-day Rebuttal Period Ends:	6/11/2012

Opposer's counsel consented to this motion, which is requested to allow the parties to finalize settlement of this matter.

In the Board's September 12, 2010 order, the Board noted that the parties must submit good cause for any further suspensions or extensions of the proceeding, which should include a recitation of issues that have been resolved, a recitation of issues that remain to be resolved and a firm timetable on resolution. Since the last suspension, the parties exchanged additional comments on the draft settlement agreement and have, except as discussed below, finalized the language in the settlement agreement. Additionally, since the most recent suspension, Australian and Canadian counsel provided requested advice to Applicant's counsel regarding acceptability in each jurisdiction of the language in the draft consents. Opposer's counsel has now requested additional time to have its own Australian and Canadian counsel approve the draft consents contemplated by the settlement agreement, so additional time is requested to allow Opposer's counsel to correspond with and receive said advice from foreign counsel. Once the approvals from foreign counsel are received, the consent exhibits to the agreement can be finalized and the parties can move forward on executing the finalized settlement agreement together with said exhibits.

Dated: New York, New York
August 31, 2011

Respectfully submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Applicant

By /Elise Kasell/
Arlana S. Cohen
Sujata Chaudhri
Elise Kasell
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion on Consent to Extend was sent via first class, postage paid mail to Opposer's attorney, Burton S. Ehrlich, Esq., Ladas & Parry LLP, 224 S. Michigan Avenue, Suite 1600, Chicago, IL 60604 on August 31, 2011.

/Elise Kasell/
Elise Kasell

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

MBA/vb

Mailed: September 8, 2011

Opposition No. 91190859

Blistex, Inc.

v.

Fusion Brands International SRL

Michael B. Adlin, Interlocutory Attorney:

Applicant's consented motion for yet another extension of time in this over two year old case, filed August 31, 2011, is hereby **DENIED, WITHOUT PREJUDICE**. The "report" submitted with the motion does not establish good cause. In the event either party seeks any further extensions or suspensions, it must first contact the interlocutory attorney responsible for this proceeding by telephone, with its adversary on the line. Dates remain as previously set.

* * *

Luster Products, Inc. **Opp. No. 91192175**
v.
Henkel Ag & Co. KGAA

EXHIBIT 10

TO OPPOSER, LUSTER PRODUCTS, INC.'S, REPLY IN SUPPORT OF SUSPENSION BASED ON FILED DISTRICT COURT CASE

Bailye, Jessica

From: Michael Cerrati [MCerrati@fingerlaw.com]
Sent: Thursday, December 29, 2011 1:49 PM
To: Ehrlich, Burton
Subject: RE: Luster Products, Inc. v. Seung Sang Lee And Dunkin Traders Inc.

Thanks for your prompt attention to this, and for your cooperation and professional courtesy throughout these proceedings. It was a pleasure working with you and I look forward to catching up for a drink sometime at an INTA meeting or in lovely Chicago.

Happy new year to you and yours,
Mike