

EXHIBIT “C”

Medina, Kristy

From: Polatoglu, Serli
Sent: Tuesday, April 07, 2020 7:40 PM
To: Tamar Lusztig; Ellis, Dennis S.; PH-UMASS v. L'Oreal USDC; Dittmann, Eric W.; Frederick Cottrell; Ashkenazi, Isaac S.; Jason Rawnsley; Jeffrey Moyer; Palys, Joseph E.; Katharine Mowery; Murray, Katherine F.; Modi, Naveen; Tymoczko, Nicholas
Cc: Bill Carmody; Justin A. Nelson; Beatrice Franklin; Rodney Polanco
Subject: RE: [EXT] UMass v. L'Oreal: L'Oreal's Document Productions

Counsel,

As a preliminary matter, the Court ruled on many of the issues addressed in your email below. It did not invite Plaintiffs to open all of these issues again. While we agree that the Court suggested the parties continue to be guided by the charts attached to their submissions (e.g., D.I. 105, Ex. A) – and we have addressed those specific issues below – we do not believe it is productive to rehash issues that were already raised before and addressed by the Court.

With respect to marketing materials and your requests for production seeking the same, we disagree with your characterization of the parties' agreement covering marketing materials, which the Court has already ruled on. The requests for production cited in your email sought the production of all marketing materials, and were squarely covered by the parties' months-old agreement, wherein you acknowledged that L'Oréal USA would produce a sampling of marketing materials to Plaintiffs. We have now done so, with the exception of one Giorgio Armani product for which materials cannot be located.

This should inform your complaint regarding L'Oréal USA's production prompted by the document retention policies we produced. Moreover, the Court was clear that Plaintiffs cannot undertake a fishing expedition. Plaintiffs have not explained why any of these materials would be relevant to their claims, proportionate to the needs of the case, or why these documents would not be cumulative of what already has been produced. Accordingly, the Court denied Plaintiffs' request for additional testing, marketing and financial documents. In any event, documents from many of the categories in your email have been produced (e.g., sales and financial reports, education materials, communications with sales representatives, product testing, packaging, advertisements, analytical studies, presentations, press releases, correspondence with patent offices, excerpts from lab notebooks, safety review and approval documents, customer consumer research, etc.) while others make absolutely no sense in the context of this litigation (e.g., "Reports valuing the acquired business and supporting documentation," "Consultants' reports" related to "DISTRIBUTION," "Permanent Scientific / Historic Records," etc.). L'Oréal USA also has produced non-privileged documents relating to L'Oréal patents identified by Plaintiffs. We are under no obligation to map L'Oréal USA's entire 30,000 page production to each of these categories, as this task is certainly not proportional to the needs of this case. And as Judge Fallon correctly observed at the beginning of the discovery conference, it appears yet again that Plaintiffs have simply failed to review what they have received and are seeking to have L'Oréal USA do this work for them, which is improper.

With respect to your complaints regarding our production of R&D materials, as you acknowledge, we have produced R&D materials that are responsive to Plaintiffs' RFPs. Much of the adenosine-related R&D documents that we have produced comprises official research reports with clearly laid out methodologies. We are unsure of the basis of your complaint that we have not produced such documents, as Plaintiffs have cited several of them in their own interrogatory responses (e.g., LOUSA0004468). Regarding product development documents related to the accused products, your document requests do not call for such materials, and it is improper for you to do so for the first time now. Regardless, such documents are irrelevant and disproportionate to the needs of this case, especially where Plaintiffs are seeking such information for over 150 products. We have provided formulation and testing documents for the accused products sufficient for you to understand the composition and operation of the accused products.

Regarding testing documents for the products identified in your email, thank you for providing a corrected list from the list you provided to the Court, which misrepresented that testing documents had not been produced. As we indicated during the discovery conference, testing documents were searched with respect to every properly accused product. If your list is accurate, then either we were unable to locate testing documents for those products, or testing for those products was waived. *See, e.g.*, LOUSA0030203-06, LOUSA0030209-11, LOUSA0030294 (re: Lancome Teint Visionnaire, Lancome Absolué Premium BX Day Cream SPF 15, Lancome Absolué Premium BX Lotion SPF 15, Lancome High Resolution Eye Refill 3X). We do have concerns about your list, however, as testing documents were previously produced for at least Kiehl's Precision Lifting and Pore Tightening Concentrate (LOUSA0015249-15279; LOUSA0015281-288) and Lancome Absolué Premium BX Eye (LOUSA0020355-20474), and more recently for Garnier Ultra-Lift Anti-Wrinkle Night Cream (LOUSA0030535-37) and Kiehl's Super Multi-Corrective Eye Opening Serum (LOUSA0030414-17, LOUSA0030440).

We are looking into your concerns regarding the officialization document for Lancome Renergie Eclat Multi-Lift. If you have another formula number for that product, please provide it, as this will assist us in identifying any other officialization document, to the extent the previously produced document does not match the product you have accused. We have re-produced the carton artwork for L'Oréal Paris True MatchLumi Cushion Foundation to reveal the hidden text. We have inquired into whether other versions of the carton artwork for Visionnaire Advanced Skin Corrector exist. Regarding Giorgio Armani Crema Nera Extrema High Recovery Elixir, that is the same product as Giorgio Armani Crema Nera Extrema Supreme Recovery Oil (similar to the issues you had regarding Visionnaire Serum and Visionnaire Advanced Skin Corrector).

Finally, regarding RFP No. 65, you raised this issue with the Court and the Court denied your request. Your attempt to limit the request to communications regarding over 150 products is not a limitation at all. As we explained during the discovery conference, the marketing materials for these products have been produced. As such, communications with the FTC regarding these materials would be cumulative and not proportionate to the needs of the case, nor relevant to the infringement claims asserted here. Plaintiffs have not articulated a basis for obtaining these documents, and the Court has indicated as much.

Best,
Serli

From: Tamar Lusztig <TLusztig@susmangodfrey.com>

Sent: Tuesday, March 31, 2020 5:49 PM

To: Ellis, Dennis S. <DennisEllis@paulhastings.com>; PH-UMASS v. L'Oreal USDC <PH-UMass-LOreal-USDC@paulhastings.com>; Dittmann, Eric W. <ericdittmann@paulhastings.com>; Frederick Cottrell <cottrell@rlf.com>; Ashkenazi, Isaac S. <isaacashkenazi@paulhastings.com>; Jason Rawnsley <rawnsley@rlf.com>; Jeffrey Moyer <moyer@rlf.com>; Palys, Joseph E. <josephpalys@paulhastings.com>; Katharine Mowery <mowery@rlf.com>; Murray, Katherine F. <katherinemurray@paulhastings.com>; Modi, Naveen <naveenmodi@paulhastings.com>; Tymoczko, Nicholas <nicholastymoczko@paulhastings.com>; Polatoglu, Serli <serlipolatoglu@paulhastings.com>

Cc: Bill Carmody <bcarmody@SusmanGodfrey.com>; Justin A. Nelson <jnelson@SusmanGodfrey.com>; Beatrice Franklin <BFranklin@susmangodfrey.com>; Rodney Polanco <RPolanco@susmangodfrey.com>

Subject: [EXT] UMass v. L'Oreal: L'Oreal's Document Productions

Counsel,

I'm writing to follow up on the Court's instruction that the parties continue meeting and conferring about document production issues.

As a threshold matter, we have reviewed the email correspondence regarding the agreement you claim that the parties made under which L'Oreal would not search for or produce any further marketing documents beyond the materials L'Oreal has already produced. We disagree strongly with L'Oreal's characterization of the parties' agreement. In an email dated October 16, 2019, L'Oreal represented that it would be making a "targeted" production of marketing materials in

response to Plaintiffs' RFP No. 31, which requested "All documents referring or relating to your efforts to market and/or sell products containing adenosine." Plaintiffs agreed that a reasonable search would likely not net literally "all" such documents in existence, and that the "targeted" search L'Oreal would do would "include" (but not be limited to) "product packaging and launch materials." At no point did we agree that documents responsive to RFP No. 31 would be limited to product packaging, launch materials, nor did we agree to limit our request to marketing documents L'Oreal unilaterally decides to search for and produce. Moreover, any such agreement was explicitly limited to RFP No. 31, and does not cover Plaintiffs' other requests that call for the production of marketing materials, such as, for example, Nos. 40, 41, 42, 44, 45, 51, and 66.

We have reviewed the document retention policies produced by L'Oreal, which specify many categories of documents that L'Oreal creates and maintains in the ordinary course of its business, and which are responsive to Plaintiffs' requests. But, based on our review of L'Oreal's productions, we do not believe we have received many such documents from L'Oreal. So as to create a clear record for the Court, please let us know which of these documents you have searched for and produced, identifying them by bates number, and which of these documents you are refusing to search for and produce.

Your document retention policies state that L'Oreal creates the following categories of documents, but your productions do not appear to contain them:

- "Marketing decisions." See LOUSA0029846; see also LOUSA0029827.
- "Sale reports." See LOUSA0029847.
- "Database of communication with sales representatives and retailers." See LOUSA0029847.
- "Consultants' reports" related to "DISTRIBUTION." See LOUSA0029849.
- "Speeches and presentations." See LOUSA0029850.
- "Final business plans, budgets, projections and trend reports (including budget and planning data bases)." See LOUSA0029855.
- "Documents generated during budget and planning process." See LOUSA0029855.
- "Financial reports on OGWIN (including profit and loss reports, profit planning, balance sheets and other routine reports)." See LOUSA0029855.
- "Special reports." See LOUSA0029855.
- "Reports valuing the acquired business and supporting documentation." See LOUSA0029865.
- "Policy and procedure manuals." See LOUSA002866
- "Business models and projections for acquired businesses." See LOUSA0029865.
- "Synopsis of history, structure and ownership of L'Oreal USA entities." See LOUSA0029872.
- "Permanent Scientific / Historic Records." See LOUSA0029889.
- "Product Development Records." See LOUSA0029889.
- "Aid to Formulation Records." See LOUSA0029889.
- "Patent Support Records." See LOUSA0029889.
- "Divisional business plans." See LOUSA0029890.
- "Consultants' reports" related to "R&D." See LOUSA0029890.
- "Laboratory notebooks." See LOUSA0029890.
- "Interim safety review and approval documents (including those on e-mail)." See LOUSA0029891.
- "Innovative and exploratory research reports." See LOUSA0029891.
- "Research methodologies, SOPs, and method validation, including changes issued via e-mail." See LOUSA0029891.
- "Project Tracking and Communication: The project 'chron' file, including e-mail, project tracking spreadsheets, notes, and copies of Official Records." See LOUSA0029891.
- "Requests to study rights to market search queries (if any) and closing documents (incl. Opinions of patent counsel)." See LOUSA0029891.
- "Supporting documentation including search reports, notes, correspondence." See LOUSA0029891.
- "Demi-Grand batch reports." See LOUSA0029891.
- "Correspondence with U.S. or foreign patent offices." See LOUSA0029892.

- “Invention disclosure forms submitted to patent counsel, and documents related to disclosure of the invention to third parties before filing for a patent application.” See LOUSA0029892.
- “Patent Licenses and amendments [sic].” See LOUSA0029893.
- “Know-how and trade secret licenses.” See LOUSA0029893.
- “Claims substantiation studies summary reports.” See LOUSA0029894.
- “All other materials and communications generated during claims substantiations.” See LOUSA0029894.
- “Documentation of claims methodologies.” See LOUSA0029895.
- “Raw data (digital images, questionnaires, journals, etc). Analysis of such data is retained in summary reports.” See LOUSA0029894.
- “Competitor surveillance and intelligence reports.” See LOUSA0029895.
- “Customer Consumer Research such as Product Tests, Advertising Tests, Market Studies, Tracking Studies, Package Studies, Name Studies, Call Backs, Miscellaneous Qualitative Studies and Focus Groups.” See LOUSA0029826.
- “Competitive/Consumer Syndicated Data including Neilson, IRI.” See LOUSA0029826.
- “Background material such as field and coding materials useful as reference materials.” See LOUSA00298826.
- “Education/Training.” See LOUSA0029827.
- “Final marketing decision (“MD”) and final launch time line for major launches. See LOUSA0029828.
- “Forecast evolution.” See LOUSA0029828.
- “Research portion such as technical alternatives, performance data, correspondence to vendor with technical information.” See LOUSA0029829.
- “Other materials such as general correspondence, notes, memos, meeting minutes, time lines.” See LOUSA0029829.
- “Press releases.” See LOUSA0029831.
- “Internal Newsletters.” See LOUSA0029831.
- “Consultants’ reports” related to “MARKETING/SALES.” See LOUSA0029834.

In addition, your document retention policies state that L’Oreal creates the following categories of documents, but your productions are missing such documents for many of the Accused Products:

- “Product development records including development testing (other than laboratory notebooks, officializations and studies or other documents referenced in officializations).” See LOUSA0029890.
- “Product studies, analyses, and test performed during life of product which are not related to product development.” See LOUSA0029891.
- “Analytical studies not related to specific product.” See LOUSA0029891.
- “Final consumer advertisements.” See LOUSA0029825.
- “[A]ds, packaging, POP materials, posters, graphic panels, etc.” See LOUSA0029827.

Your production of marketing materials appears to be limited to product packaging, launch materials and marketing books, and a limited number of advertisements and website printouts for only a fraction of the accused products. Although L’Oreal’s documents indicate it creates substantial other materials related to its efforts to market the accused products, which are responsive to Plaintiffs’ RFPs, we do not appear to have received the above categories of documents. For example, we have not received documents related to marketing decisions for the Accused Products; sales reports for the Accused Products; communications with sales representatives and retailers, or anyone, about the Accused Products; business plans, budgets, projects, and trend reports related to the Accused Products; “special reports” related to the Accused Products; consultants’ reports related to the Accused Products; performance data regarding the Accused Products; “POP materials, posters, graphic panels” for the Accused Products; “Competitive/Consumer Syndicated Data” relating to the Accused Products; or “Consumer Research” related to the Accused Products. We have also received only a limited number of “[f]inal consumer advertisements” and time lines, including “launch time line[s]” for “major launches” regarding the Accused Products, for certain Accused Products.

Likewise, your production of product R&D materials appears to be lacking, given the documents you apparently create and maintain, but which we have not seen. For example, although we received certain testing results from L’Oreal, we

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