

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNIVERSITY OF MASSACHUSETTS and)	
CARMEL LABORATORIES LLC,)	
)	
Plaintiffs,)	
)	C.A. No. 17-868-CFC-SRF
v.)	REDACTED VERSION
)	
L'ORÉAL USA, INC.,)	
)	
Defendant.)	

**EXHIBIT C TO THE APRIL 21, 2020 LETTER BRIEF
TO THE HONORABLE SHERRY R. FALLON**

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Dated: April 21, 2020

EXHIBIT “C”

Medina, Kristy

From: Polatoglu, Serli
Sent: Tuesday, April 07, 2020 7:40 PM
To: Tamar Luszti; 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., [REDACTED]

[REDACTED] 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>

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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

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