

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

UNIVERSITY OF MASSACHUSETTS and
CARMEL LABORATORIES, LLC,

Plaintiffs,

v.

L'ORÉAL USA, INC.,

Defendant.

Case No. 17-cv-868-CFC-SRF

NOTICE OF DEPOSITION PURSUANT TO RULE 30(b)(6)

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, on June 19, 2020, via remote deposition software, counsel for the University of Massachusetts and Carmel Laboratories, LLC will take the videotaped deposition of the designated representative of L'Oréal USA, Inc., best able to testify as to Topics 11, 12, 13, 14, 15, 19, 21, 22, and 23 set forth in Exhibit 1, insofar as they relate to Kiehl's. L'Oréal USA, Inc., has a duty to designate one or more officers, directors, managing agents, or other persons with sufficient knowledge to testify fully regarding topics 11, 12, 13, 14, 15, 19, 21, 22, and 23 set forth in Exhibit 1, insofar as they relate to Kiehl's.

The deposition will be taken before a Notary Public or some other officer authorized by law to administer oaths, who will appear remotely, for use at trial. The above deposition will be recorded by stenographic means, audiotaped, videotaped, and/or transcribed using realtime interactive transcription (e.g., LiveNote). Further, given the deposition will be taken remotely, it may feature instant audio and visual display of each participant, include real-time electronic

recording and capture of exhibits, and utilize paperless exhibit display. The deposition will continue from day to day until completed.

DATED: June 3, 2020

Respectfully submitted,

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EXHIBIT 1

Definitions

1. The terms “Defendant,” “You,” “Your,” or “L’Oréal” shall refer to defendant L’Oréal USA, Inc., and shall include L’Oréal S.A. as well as L’Oréal USA Inc.’s parent, subsidiaries, affiliates, divisions, successors or assignees, and their respective officers, directors, employees, consultants, representatives, and agents.
2. The term “Document” or “Documents” is used in the broadest sense permitted by the Federal Rules of Civil Procedure and means the original (or any copy when originals are not available) and any drafts or non-identical copies thereof.
3. The terms “Asserted Patents” and “Patents-in-Suit” shall mean United States Patents No. 6,423,327 and 6,645,513.
4. The term “Accused Products” refers to the products listed in Exhibit A to Plaintiffs’ Disclosure of Asserted Claims and Initial Infringement Contentions, served on October 10, 2019, subject to any subsequent supplement or amendment
5. The terms “all” and “each” shall be construed as “and,” “each,” and “and/or.”
6. The term “any” should be understood in either its most or least inclusive sense as will bring within the scope of the topic all responses that might otherwise be construed to be out of its scope.
7. The term “including” shall mean including but not limited to.
8. The terms “relate,” “relating,” or “related” mean in any way, directly or indirectly, in whole or part, relating to, concerning, referring to, discussing, mentioning, regarding, pertaining to, describing, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, modifying, amending, confirming, endorsing, representing, supporting, qualifying, terminating, revoking, refuting, undermining, canceling, contradicting or negating.
9. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of these topics all information which might otherwise be construed to be outside their scope.
10. The terms “sale,” “sales,” “sell” or “sold” shall include sales, licenses, leases, loans, consignments, distribution to resellers or others (including, but not limited to, to Your related and affiliated entities) and all other methods of product distribution whether direct or indirect, and whether the product is distributed singly or in combination with or as part of another product, and whether or not revenue was or will be received therefrom.

Topics

1. How L'Oréal realizes, recognizes, and classifies revenues from the Accused Products, including a description of L'Oréal's methodology for characterizing revenue as U.S. or international for U.S. tax purposes.
2. L'Oréal's accounting practices pertaining to the Accused Products, including L'Oréal's methods of accounting for revenues, costs, profits, methods or depreciation, allocation of expenses, inventory measurements, profit allocation, losses, and assignments of debt.
3. L'Oréal's methods for valuing the Accused Products with respect to their contributions to good will, user retention, advertising revenue, collection of user data, and/or contribution to other revenue-generating products of L'Oréal.
4. L'Oréal's revenues, assigned costs, profit margins, and total profits for the Accused Products.
5. For the financial records and/or financial summary documents produced by L'Oréal in this litigation, the circumstances under which those records were generated, the accounting methods and practices employed in generating such records, the underlying data from which such records were generated, the explanation of any terms or legends in such records, and reconciliation of those figures to those disclosed in public filings, including the definitions and amounts of any deductions and allowances necessary for reconciliation.
6. License agreements, settlement agreements, and/or royalty agreements relating to the Accused Products or to L'Oréal's damages contentions that L'Oréal, or its affiliates or assigns, has entered into from 2005 to the present or that cover that period.
7. License agreements, settlement agreements, and/or royalty agreements relating to L'Oréal's use of adenosine in its products and/or otherwise relating to the Accused Products.
8. Any patents or proprietary technology owned or licensed by L'Oréal relating to adenosine.
9. From 2008 to the present, L'Oréal's evaluation of patents or other proprietary technology relating to the Accused Products, and L'Oréal's methods or practices for determining values or royalty rates for such technology.
10. L'Oréal's policies and practices concerning patent licensing, including any standard or preferred terms for license agreements and the process or practices by which L'Oréal determines the nature, scope, and terms of license agreements in which L'Oréal or its affiliates or assigns is a licensee.
11. L'Oréal's marketing and financial plans, market studies, reports, forecasts, surveys, strategies, and projections for the sale, use, or monetization of the Accused Products, including L'Oréal's media and advertising campaigns related to the Accused Products. This topic is limited to 2010 to the present.

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