

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3 UNIVERSITY OF MASSACHUSETTS)
4 MEDICAL SCHOOL and CARMEL)
5 LABORATORIES, LLC,)
6 Plaintiffs,) C.A. No.17-868-CFC-SRF
7 v.)
8 L'OREAL S.A. and L'OREAL)
9 USA, INC.,)
10 Defendants.)

11 Friday, April 24, 2020
12 11:00 a.m.

13 844 King Street
14 Wilmington, Delaware

15 BEFORE: THE HONORABLE SHERRY R. FALLON
16 United States District Court Judge

17 APPEARANCES:

18 FARNAN LLP
19 BY: BRIAN FARNAN, ESQ.

20 -and-

21 SUSMAN GODFREY, LLP
22 BY: JUSTIN A. NELSON, ESQ.
23 BY: TAMAR LUSZTIG, ESQ.
24 BY: BEATRICE FRANKLIN, ESQ.

Counsel for the Plaintiffs

Hawkins Reporting Service
112 Burning Tree Road - Dover, Delaware 19904
(302) 658-6697 FAX (302) 658-8418

1 THE COURT: Good morning,
2 everyone. It's Magistrate Judge Sherry Fallon.
3 I'm prepared to address the discovery dispute in
4 U Mass versus L'Oreal. Let me find out who is
5 on the call. First, do we have our court
6 stenographer, Ms. Gunning?

7 COURT REPORTER: Yes. This is
8 Stacy Ingram from Hawkins, Your Honor.

9 THE COURT: Oh, sorry, Stacy. I
10 was informed it might be Val Gunning. Thank you
11 for being available this morning. Is my law
12 clerk, Ms. Polito, on the line?

13 LAW CLERK: Yes, Judge, I'm on the
14 line.

15 THE COURT: All right. Thank you.
16 And let's start with appearances of counsel for
17 the University of Massachusetts, et al. Who is
18 on the line starting with Delaware counsel?

19 MR. FARNAN: Good morning, Your
20 Honor. Brian Farnan on behalf of the plaintiff
21 and with me is Justin Nelson, Tamar Lusztig and
22 Beatrice Franklin, all from Susman Godfrey.

23 THE COURT: All right. And who is
24 on the line for L'Oreal?

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1 APPEARANCES CONTINUED:

2 RICHARDS, LAYTON & FINGER, P.A.
3 BY: KATHERINE MOWERY, ESQ.
4 BY: FRED COTTRELL, ESQ.

5 -and-

6 PAUL HASTINGS,
7 BY: ISAAC ASHKENAZI, ESQ.

8 -and-

9 BROWNE GEORGE ROSS, LLP
10 BY: KATHERINE MURRAY, ESQ.

11 Counsel for the Defendants
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1 MS. MOWERY: Good morning, Your
2 Honor. This is Kate Mowery from Richards,
3 Layton & Finger on the line for L'Oreal USA. I
4 have Fred Cottrell on the line as well from my
5 office and then Isaac Ashkenazi from Paul
6 Hastings and Katherine Murray from Browne George
7 Ross.

8 MS. MURRAY: Good morning, Your
9 Honor.

10 THE COURT: Good morning,
11 everyone. Just making my notes here. I'll just
12 remind everyone, you're probably familiar with
13 this from the last time we did the call, but
14 please announce your name before you start
15 speaking. Since there is a slight delay since
16 we're all remotely connected, please speak
17 slowly so that the court stenographer can make
18 an accurate record of our proceedings today and
19 if you're not speaking, keep your phone on mute
20 so there aren't any outside or extraneous noises
21 interrupting or obscuring the audio on those who
22 are speaking. If you're going to cite to any
23 particular exhibits, the filings that I received
24 for this dispute were rather lengthy, just give

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1 you're still looking until it gets to the point
2 where you've done everything you can to find the
3 underlying research, the document from the
4 research conducted by Abella and you cannot find
5 anything more.

6 MR. ASHKENAZI: Your Honor, I
7 think that does make sense. I just want to
8 point out that, you know, it's not as if we
9 haven't given -- produced any document on
10 Abella. If there's a document that they said
11 we've included in our website, I believe one of
12 the exhibits we were discussing earlier today
13 referenced the study that was to do with Abella.
14 It's not as if we haven't produced anything,
15 they're just asking for more. We will do that.
16 I believe, Your, Honor a status report that we
17 could provide to them in two weeks and we will
18 endeavor to do as much as we can and get it done
19 as fast as we can to get them the information.

20 THE COURT: All right. Then in
21 that respect, the request is granted and I'll
22 instruct L'Oreal to proceed as we've done.

23 MR. ASHKENAZI: Your Honor, if I
24 can, just on that point, the request that -- the
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1 governmental investigations to one particular
2 FTC investigation that included alleged
3 misstatements on the L'Oreal Paris line and the
4 Lancome Gentifique line that related to these
5 anti-aging claims. And as part of the
6 settlement agreement for any now statement that
7 they make publicly they have to have a
8 scientific basis for that. And obviously we
9 want to explore whether in telling the FTC or in
10 their internal communications about this
11 investigation or about their claims for it,
12 whether they're relying on adenosine to support
13 anti-aging properties of their lotions. And so
14 that is what we have specifically narrowed it
15 down to. We don't think it's cumulative.
16 Obviously it's relevant to the importance of the
17 invention, the importance of the products. And
18 they've not done anything with that and said
19 they're not going to do it and said it's
20 cumulative. I think it's actually well
21 proffered.

22 THE COURT: L'Oreal, response?
23 MS. MURRAY: This is Kathy Murray,
24 Your Honor. So based on our meet and confers
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1 order, just so we're clear on the request, it's
2 to find additional documents that may be
3 relevant to the study regarding the Abella
4 study?

5 THE COURT: The study or the
6 actual research conducted by Abella.

7 MR. ASHKENAZI: Okay. Thank you
8 very much.

9 THE COURT: All right. Did I get
10 that right, Ms. Lusztig?

11 MS. LUSZTIG: Yes, Your Honor.

12 THE COURT: All right. The next
13 issue is this FTC investigation. Again, I was
14 concerned about it being overbroad with respect
15 to agency investigations that were requested by
16 plaintiffs at the last hearing. I understand
17 that now plaintiff has made an effort to correct
18 the concern that the Court had previously. Let
19 me hear from plaintiffs on what has been done in
20 that respect and then I'll hear from L'Oreal.

21 MR. NELSON: Yes, Your Honor.
22 This is Justin Nelson. We, as Your Honor
23 instructed, went back and took guidance from
24 Your Honor and narrowed the request from all
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1 what they're looking for is what L'Oreal said
2 about these products. And that is what we've
3 given them. We've given them the marketing for
4 these products, we've given them the underlying
5 testing that supported those claims. So it's a
6 burden to L'Oreal to have to go look for a six
7 year old investigation relating to claims made
8 about the products and **representations made**
9 **about the products and the underlying science**
10 **behind the products** when all those underlying
11 products have already been produced in the case.

12 MR. NELSON: Response, Your Honor?

13 THE COURT: Go ahead.

14 MR. NELSON: Obviously that goes
15 to some of the other underlying issue -- what
16 they say specifically about the FTC
17 investigation and the misleading claim that's
18 alleged by the FTC and what supports those
19 claims is not cumulative of what would be
20 produced except for what's in that investigation
21 or communications about that investigation.

22 THE COURT: All right. Anything
23 further, Ms. Murray?

24 MS. MURRAY: No, Your Honor.
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1 THE COURT: On this request, I
2 will grant plaintiffs' request to compel the
3 production of documents responsive to requests
4 for production number 65 limited to the single
5 2014 FTC investigation cited by the plaintiff in
6 their letter brief, including the internal and
7 external communications regarding the specific
8 FTC investigation. And I'll order that to be
9 produced within two weeks of the date of this
10 conference. Again, leaving it to the parties to
11 meet and confer if L'Oreal is unable to meet
12 that deadline due to global circumstances or
13 national health emergency circumstances beyond
14 its control. That is my ruling.

15 MS. MURRAY: Could I clarify?
16 THE COURT: Go ahead.
17 MS. MURRAY: It wouldn't include
18 any privileged issues, any privileged documents.
19 THE COURT: Any privileged
20 documents create a privilege log. No, I'm not
21 saying there's a waiver of privilege without
22 knowing what documents, if any, additional
23 exist. I'm not making any -- I'm not previewing
24 any waiver of privilege.

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1 MS. MURRAY: Okay.
2 MR. NELSON: Thank you, Your
3 Honor.
4 THE COURT: All right. Then that
5 leads us to, I guess, an issue back to the
6 Teresian Carmelites, which honestly I read with
7 both sides on this and I thought I had fixed
8 this at the last conference and then I guess
9 L'Oreal, and again, I'll hear from the parties
10 if I'm paraphrasing incorrectly. The way I read
11 the papers was L'Oreal never quite took up my,
12 you know, offer, I suppose you could call it
13 that, or direction, to send a more streamlined
14 request for what it was seeking to the, you
15 know, to kind of frame what the plaintiff might
16 possibly want to introduce when the plaintiffs
17 referred to just simple background information
18 at trial. And now, having plaintiffs brought
19 it -- having it be brought to the attention of
20 the Court again by the plaintiffs, defendants
21 say, well, you know, now we'll go ahead and, you
22 know, take the Court up on its directive to give
23 you another request for production. Where does
24 this stand? Because I don't think it's ripe and

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1 I'm not inclined to, you know, rule on whether
2 or not the defendant should have done it sooner
3 or if they do it now it should be precluded.
4 I'd rather, you know, if this is still an issue,
5 if the parties can't work out what narrow
6 background information, whatever that consists
7 of plaintiff is to produce about the carmelites
8 and any subsequent discovery that issues,
9 there's going to be a response to it at some
10 point and if there are deficient -- allegations
11 of deficiencies in that response, shouldn't the
12 Court take it up in that time rather than this
13 time? I mean technically discovery hasn't
14 closed, so even if the defendants didn't pursue
15 that discovery in the time frame the Court
16 originally had in mind, technically there's time
17 to do it before discovery closes or maybe not.
18 I don't know what the official deadline is in
19 May, if there's a 30-day turnaround time for the
20 discovery to be answered, but this is a
21 long-winded way of saying I don't think this
22 issue is ripe for me. And I addressed it at the
23 last conference. What is the problem still?
24 Let me hear from L'Oreal.

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1 MS. MURRAY: This is Kathy Murray.
2 I think we can just give you a quick response.
3 We put it in here because the Court wanted to
4 know what was lingering from the last to give
5 you a status check, but basically we did reach
6 out, we agreed to edit the stipulation. We sent
7 that, but they pulled back a lot on what they're
8 willing or not willing to do with the
9 stipulation. So, you know, they want to be able
10 to say talk about Teresian carmelites as trial,
11 but they don't want it to go into other issues
12 about Teresian Carmelites, so they want to be
13 able to say what's helpful to them, but prevent
14 us from taking discovery. So we're at an
15 impasse on the stipulation. And we did, because
16 we -- and we were trying to reach an agreement
17 on the stipulation. It didn't happen. As a
18 result of that, we did serve a discovery. We
19 didn't serve it immediately because we were
20 hoping to reach agreement on a stip, but it just
21 didn't happen. So we have served that
22 discovery. If they want to bring Teresian
23 Carmelites to trial, then we want to get
24 discovery on those issues. We served that

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EXHIBIT 2

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