



I, Cindy Cheung, declare as follows:

1. I am the Vice President of Marketing for L'Oréal USA Paris, a brand of L'Oréal USA, Inc. ("L'Oréal USA"), whose products have been accused of infringement in this case and have firsthand, personal knowledge of the facts set forth below.

2. I understand that Plaintiffs have requested that L'Oréal USA provide non-U.S. sales data for products containing the same formulas as the accused products sold in the United States.

3. It would very difficult, extremely time consuming (if even possible), and unduly burdensome to identify and provide financial data for products sold abroad with the same formulas as the accused products, for several reasons. First, the financial databases track products by product name and material number, not formula numbers. Material numbers are assigned to products by the respective marketing departments within each brand. There is no way to input a formula number into the financial databases to identify where that formula may have been sold.

4. While the financial databases can be searched by material number, the material number is not matched to a formula. Products containing the same name or material number may use different formulas, depending on where the product is sold. For example, the officialization document for formula 782208 56, which relates to L'Oréal Paris Revitalift Daily Volumizing Moisturizer sold in the U.S., identifies this formula as officialized for the United States and Canada, and refers to this formula number as the "US version." Several other formulas for L'Oréal Paris products sold in the U.S. contain similar officializations for only the U.S. and Canada. This includes formulas for: L'Oréal Paris Age Perfect Cell Renewal Day SPF 15; L'Oréal Paris Revitalift Anti-Wrinkle + Firming SPF 30 Day Lotion; L'Oréal Paris Collagen

Moisture Filler Day Lotion; L'Oréal Paris Wrinkle Expert 55+ Anti- Wrinkle Eye Treatment; and L'Oréal Paris Youth Code Texture Perfector Serum Concentrate. Attached hereto as Exhibit A are the first pages of the officialization documents for these formulas. Formulas for other L'Oréal Paris products sold in the U.S. were officialized for different regions. For example, formula no. 917133 3, which relates to L'Oréal Paris Age Perfect Rosy Tone SPF 30 Moisturizer sold in the U.S., was officialized for North America and the Dominican Republic. Formula no. 782011 83, which relates to the Youth Code Texture Perfector Day/Night Cream sold in the U.S., was officialized for all regions except Asia. Attached hereto as Exhibit B are the first pages of the officialization documents for these two formulas.

5. Due to the fact that formulas for products may vary depending on the country in which they are meant to be sold, the only way to determine if a particular formula was included in a product sold in another country is to review the foreign product packaging, or carton artwork for that product. While I cannot speak for other U.S. brands or for regions outside the U.S., I know that for L'Oréal Paris products sold in the United States, the formula numbers can typically be found on the product packaging near the ingredient list. If the product packaging used in other countries also includes formula numbers, then we would need to review the packaging for each product from each country to determine whether the formula number for the foreign-sold product matches a formula number of an accused product sold in the United States. Therefore, we could not simply review the carton artwork for just the 130 products in this case, assuming we could even find them. Rather, we would need to review all skincare products sold in other countries to see if the carton artwork for those products refers to a formula number for a product in this case.

6. Indeed, L'Oréal USA does not prepare or maintain artwork for products sold outside the United States. Thus, to undertake this review, we would need to request the product artwork from the marketing departments for each brand, from each country where skincare products are sold. I do not know how many countries would be implicated by this request, nor do I know how one would go about identifying those countries. I also do not know how receptive each contact will be to providing the requested information. As I testified during my deposition, coordination with L'Oréal Paris marketing departments in other countries is hit or miss, depending on the person who is involved. It would be a serious disruption to my business to have to contact and follow up with L'Oréal Paris marketing departments all over the world to obtain carton artwork for skincare products that may or may no longer be sold in that market. I cannot even estimate how long it would take to acquire all of this packaging from every country since 2011, and then review this material, but I believe it would be more than 100 human hours.

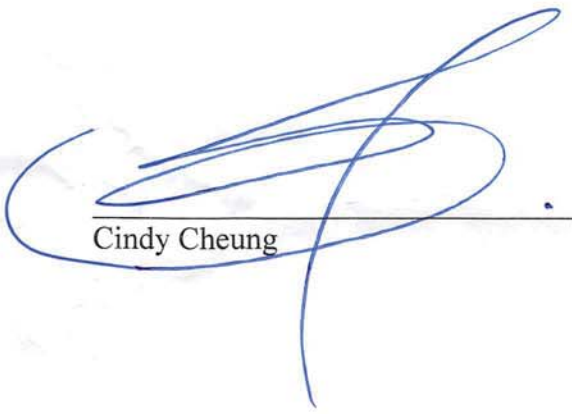
7. If the formula numbers for the accused products are able to be matched up to products sold in another country, we would then need to obtain the material codes for those products from each marketing department in each region. This information would then need to be provided to the departments that maintain foreign financial data, as I understand that the L'Oréal USA finance departments corresponding to each of the four L'Oréal USA divisions maintain sales data for products sold only in the United States. I do not know how long it would take to gather this information. However, August is the most difficult time of the year to obtain information from Europe, because most people take extended vacations during this time period. Having to act as a go-between for these departments in every country would also be extremely time-consuming.

8. I have also been asked to provide information about the location of claims substantiation testing. As I explained during my deposition, from a marketing perspective, the location of where a formula may have been tested does not matter, and may vary from product to product. The fact that a product was sold in the United States does not mean that the formula for that product was tested in the United States. From a marketing perspective, what matters is that the marketing claims are supported by testing.

9. L'Oréal USA would not know if a marketing department in another country relied on a test performed in the United States to market that product abroad. For the L'Oréal Paris products sold in the U.S., we work with the labs and the claims/legal department to ensure that our claims for each product are supported by testing. If this is the same process for other countries, then those departments in each of the countries would need to be contacted to determine what testing supports each product sold abroad. Given the number of products, brands and departments that would be implicated, this undertaking would be extremely difficult.

Executed this 11 day of August, 2020, at New York, New York.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Cindy Cheung