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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	Anne E. Thompson, U.S.D.J.
	Plaintiff,	Criminal Number 06-
	vs.	18 U.S.C. § § 1341 and 2;
		21 U.S.C. § § 331(k); 333(a)(2); and
		352(i)(3)
ALBERT POET,		
	Defendant.	SUPPLEMENTAL CERTIFICATION OF WILLIAM J. HUGHES, JR. ESQ.

William J. Hughes, of due age and sound mind, certifies as follows pursuant to 28 U.S.C. § 1746:

1. I am "Of Counsel" to the law firm of Cooper Levenson April Neidelman Wagenheim & Levenson, P.A., which represents defendant Dr. Albert Poet in this matter. In this capacity, I have personal knowledge of the matters set forth in this certification.

2. In the course of my legal research in the above-captioned case, I learned that there was a case pending before the U.S. District Court for the District of Utah which pertained to whether Allergan, Inc.'s trademark on the term BOTOX® is invalid for genericness. This case is Klein-Becker, Inc. v. Allergan, Inc., 2:03-cv-00514-DB-PMW (filed June 2, 2003).

3. As part of my research, I learned that Professor Marita Sturken of New York University and Professor Michael Kamin of the University of Southern California both prepared expert reports on behalf of the plaintiff, Klein Becker, Inc., concerning the genericness of the term Botox.

4. Specifically, it is my understanding that Professor Sturken prepared a report analyzing the current use of the term "Botox" in the American lexicon. Additionally, Professor Michael Kamin prepared a report analyzing the results of a consumer survey regarding the American consumer's understanding of the term "Botox." The subject matters of these reports are factors courts are required to examine in determining whether a term has become generic after it has been registered for trademark.

5. It is my further understanding that these two expert reports, along with the underlying information upon which these reports were based, are part of the record in the Klein case in that they were produced to Allergan, Inc.

6. I have spoken to both Professors Sturken and Kamin. Both have acknowledged that they have prepared reports in this case, but they declined to provide copies or to discuss their contents. In each case, I was informed that there was a confidentiality agreement in the litigation which prevented each of these individuals from discussing their reports.

7. This information is crucial to the defense in this case, and the information contained in these reports cannot easily be obtained by any other practical means, including Fed. R. Crim. P. 16. For this reason, the Defense respectfully requests that the Court permit the Defense to issue subpoenas to Klein Becker under Fed. R. Crim. P. 17.

8. In addition, this law firm retained the services of a private investigator, Kenneth Blankenbuehler, a retired FBI agent with 34 years of service, to assist in the preparation of the defense. One of the duties assigned to Mr. Blankenbuehler was interviewing patient-witnesses. I have been informed that when Defense attempted to contact several of Dr. Albert Poet's patients who had previously submitted to interviews with FDA S/A Hess (according to S/A Hess' own reports), there were several individuals who either refused to be interviewed or failed to return the call.

9. Finally, I have reviewed Dr. Poet's entire legal file and have spoke to his former counsel, Patrick Collins, Esquire, who represented him until in or about June 2006, when this Law Firm assumed representation. Based upon my review and discussions, I have determined that at no time was Dr. Poet afforded an "Opportunity to Present Views" as mandated by 21 U.S.C. § 335 and the accompanying regulations, 21 C.F.R. 7.84, et seq.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: January 16, 2007

/s William J. Hughes, Jr. (WH-1924)
WILLIAM J. HUGHES, JR.

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