

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-005 (MMS)
)	
vs.)	
)	
DENTSPLY INTERNATIONAL, INC.,)	
)	
Defendant.)	

PLAINTIFF’S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Fed. R. Civ. P. 34, the Plaintiff requests Defendant to produce and permit inspection and copying of the documents listed in this request. The inspection and performance of related acts shall be made at a site agreed upon by the parties, within 30 days of service of this request.

I.

DEFINITIONS

1. “Agreement” means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.
2. “Any” means one or more.
3. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.
4. “Dealer” means any person that distributes any products of any other person or purchases or acquires any such product for resale to any other person, such as a dental laboratory,

dentist, dental school or government entity.

5. “Dental laboratory” means any person that prepares, constructs, assembles or otherwise fills an order or prescription from a dentist for dentures or any other removable or fixed dental prosthetic device, and includes any group, chain or organization of dental laboratories.

6. “Dentsply” means Dentsply International, Inc., each of its predecessors (including Gendex Corporation), successors, divisions, subsidiaries, and affiliates, located both in the United States and in any other country, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each joint venture to which any of them is a party, and all present and former directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

7. “Denture” means artificial teeth fixed in a base material used to replace some or all of a patient’s natural teeth.

8. “Document” means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone

conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs.

The term “document” also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term “document” includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term “control” as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

9. “Exclusive arrangement with a dealer” means any proposed or actual agreement, arrangement, policy, program, practice, term or condition of your company that:

a. requires any dealer to limit the scope or intensity of effort, or refrain from service, as a dealer for the products of any other person; or

b. has the purpose or effect of encouraging any dealer to limit the scope or intensity of effort, or refrain from service, as a dealer for the products of any other person.

10. “Exclusive arrangement with a dental laboratory or dentist” means any proposed or actual agreement, arrangement, policy, program, practice, term or condition of your company that:

a. requires any dental laboratory or dentist to limit the use of, or refrain from using, the products of any other person; or

b. has the purpose or effect of encouraging any dental laboratory or dentist to limit the use of, or refrain from using, the products of any other person.

11. “Identify” or “identity” means to state or a statement of:

a. in the case of a person other than a natural person, its name, the address of its principal place of business (including zipcode), its telephone number, and the name of its chief executive officer, as well as, if it has a person other than a natural person that ultimately controls it, that other person’s name, the address of that person’s principal place of business (including zipcode), that other person’s telephone number, and the name of that other person’s chief executive officer;

b. in the case of a natural person, his or her name, business address and telephone number, employer, and title or position;

c. in the case of a communication, its date, type (e.g., telephone conversation or discussion), the place where it occurred, the identity of the person who made the communication, the identity of the person who received the communication, the identity of each other person when it was made, and the subject matter discussed;

d. in the case of a document, the title of the document, the author, the title or position of the author, the addressee, each recipient, the type of document, the subject matter, the date of preparation, and its number of pages; and

e. in the case of an agreement, its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has

knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.

12. “Including” means including, but not limited to.

13. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

14. “Prefabricated artificial teeth” or “teeth” means any prefabricated (as opposed to dental laboratory or dentist constructed) product used in a denture or as an implant to replace one or more natural teeth.

15. “Relating to” means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

16. “Salesperson or regional manager listed on Defendant Dentsply International Inc.’s Preliminary Witness Designations, dated March 22, 1999, as likely to be, very likely to be, or will be called as a witness for Dentsply” means: Brad Prasse, Bill Yacola, Bob Francoeur, Steve Kircheimer, Billy Hollier, Rob Nugent, and Mark Gosney.

17. “You,” “your” or “your company” means Dentsply.

18. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted. The term “or” shall mean “and” and vice-versa, as necessary to bring within the scope of the following document requests all information or documents that would be excluded absent this definition.

II.

INSTRUCTIONS

1. Unless otherwise specified, the documents called for by these document requests are documents in your possession, custody or control that were applicable, effective, prepared, written, generated, sent, dated, or received at any time since January 1, 1985. Documents that have been produced previously by Dentsply in response to Civil Investigative Demand (“CID”) Nos. 13009 or 16446 or in response to Plaintiff’s First Request for Production of Documents need not be produced again.

2. Unless otherwise specified, the documents called for by these document requests are limited in scope to those responsive documents relating to supplying, manufacturing, distributing, selling, or advertising or promoting products in the United States. For any paragraph that requests documents relating to supplying, manufacturing, distributing, selling, or advertising or promoting products in any country other than the United States, the documents called for include all documents in your possession, custody or control maintained in both the United States or in any other country.

3. Pursuant to Fed. R. Civ. P. 26(e), you are under a duty seasonably to supplement any response to this request for production for which you learn that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to us during the discovery process or in writing.

4. All documents that respond, in whole or in part, to any part or clause of any paragraph of these document requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of documents that are responsive to more than

one paragraph or are identical except for the person to whom it is addressed if you indicate the persons or group of persons to whom such documents were distributed. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please place the documents called for by each paragraph in a separate file folder or other enclosure marked with Dentsply's name and the paragraph to which such documents respond, and if any document is responsive to more than one request, indicate each request to which it responds.

5. In producing documents consisting of electronically stored data in machine-readable form in response to any document request, provide such data in a form that does not require specialized or proprietary hardware or software. Data files should be in sequential format, also known as ASCII files or flat files, with the data fields in fixed-column positions. For each data file provided, the following information should be included: a record layout, a short narrative description of the contents of the file, translation of any coded fields, the number of records in the file, and a printout of the first 100 records in report format. A record layout must contain the following pieces of information: name of the field, starting and ending position in the record, length of the field, and characteristics of the field (e.g., packed decimal, zoned decimal, alphanumeric).

The magnetic media should be 9-track tapes or PC diskettes of 5-1/4 or 3-1/2 inch. Data can be accepted in either ASCII or EBCDIC format. Do not convert the data between ASCII and EBCDIC formats. The 9-track tapes should be unlabeled. The record length, blocksize and tape density must be provided. The tapes should be written with generic copy utilities rather than backup programs from a specific operating system. Where PC files are too large for one diskette,

DOS BACKUP disk sets will be acceptable so long as they are accompanied by backup listings. Backup listings may be hard copy or ASCII files on non-backup diskettes. A backup listing must provide the path name necessary to individually restore each file in the backup. Compression utilities are acceptable so long as the utility is provided and such provision does not violate licensing or copyright laws.

6. For any document withheld under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the document by author, addressee, date, number of pages, and subject matter; specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive; and identify each person to whom the document or its contents, or any part thereof, has been disclosed.

7. For any document responsive to these document requests which is known to have been destroyed or lost, or is otherwise unavailable, identify each such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document, including the location of such document when last in your possession, custody, or control, and the date and manner of its disposition.

8. Each document that is written in whole or in part in any language other than English or that contains any marginal notations in such a language must be accompanied by a certified verbatim English language translation, and all existing English language versions, of all such writings and notations.

9. No agreement, understanding, or stipulation by the Department of Justice or any of

its representatives purporting to modify, limit, or otherwise vary these document requests shall be valid or binding on the Department of Justice unless confirmed or acknowledged in writing (or made of record in open court) by a duly authorized representative thereof.

III.

DOCUMENTS DEMANDED

1. For each salesperson or regional manager listed on Defendant Dentsply International Inc.'s Preliminary Witness Designations, dated March 22, 1999, as likely to be, very likely to be, or will be called as a witness for Dentsply, produce all of the following documents from that person's files and the files of Trubyte Division of Dentsply:

- a. all appointment books or logs, diaries or calendars, prepared or used in the course of employment; and
- b. for all business travel and entertainment expenses incurred on or after January 1, 1998, all statements or other documents relating to such expenses.

2. For each salesperson or regional manager listed on Defendant Dentsply International Inc.'s Preliminary Witness Designations, dated March 22, 1999, as likely to be, very likely to be, or will be called as a witness for Dentsply, produce all of the following documents from that person's files:

- a. all correspondence, including electronic mail, with any individual listed on Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(A)(1) Disclosure or Plaintiff's Rule 26(a)(1) Initial Disclosures, or with any other representative of the company, organization, or entity for whom such

individual works;

- b. all documents, including activity reports or notes, that relate to any meeting, telephone conversation, or other communication with any individual listed on Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(A)(1) Disclosure or Plaintiff's Rule 26(a)(1) Initial Disclosures, or with any other representative of the company, organization, or entity for whom such individual works;
- c. all documents relating to Dentsply/York Division Dealer Criteria (see e.g., DS 040148 produced in response to CID No. 13009), and any pre-existing related policies or practices now embodied in the Dealer Criteria, without regard to the time limitation specified in Instruction No. 1; and

- d. all documents relating to any exclusive arrangement with a dealer or to any exclusive arrangement with a dental laboratory or dentist.

Respectfully submitted,

July 23, 1999

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