

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 FIRST SET OF INTERROGATORIES TO DEFENDANT

Pursuant to Fed. R. Civ. P. 33, Plaintiff hereby submits the following Interrogatories to Defendant. Plaintiff requests that Defendant serve its answers, in writing and under oath, to the undersigned counsel for Plaintiff at 325 Seventh Street, N.W., Room 400, Washington, D.C. 20530, within 30 days of service of these Interrogatories.

For the purpose of these Interrogatories only, Plaintiff has used the definitions set forth below.

I. Definitions

As used in these Interrogatories:

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. “Base materials” means acrylic or any similar substance used in connection with prefabricated artificial teeth to make dentures.

4. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.

5. “Dealer” means any person that distributes any dental products of any other person or purchases or acquires any such product for the sole purpose of reselling such products to any other person, such as a dental laboratory, dentist, dental school or government entity.

6. “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.

7. “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.

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

9. The phrase "describe in detail" as used in these interrogatories includes a request for a complete description and explanation of the facts, circumstances, analysis, opinion and other information relating to (as that phrase is defined below) the subject matter of a specific interrogatory.

10. “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.

11. “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.

12. “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.

13. “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.

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

15. “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.

16. “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.

17. “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.

18. “Relevant time period” means the time period stated in paragraph 1 of the

Instructions.

19. “Shade guide” means any device used to match the color or shade of prefabricated artificial teeth to a patient’s natural teeth for the specifications contained in a dentist’s prescription for dentures or any other removable or fixed dental prosthetic device.

20. “Year” means calendar year or the twelve-month period on which your business records are based; if the latter is used in responding to a interrogatory, specify the twelve month period used.

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

22. 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 interrogatories all information or documents that would be excluded absent this definition.

II. Instructions

1. Unless otherwise specified, these interrogatories are limited to the time period from January 1, 1995, to and including the date of service of these interrogatories.
2. Unless otherwise specified, the information called for by these interrogatories is limited in scope to information relating to supplying, manufacturing, distributing, selling, or advertising or promoting products in the United States. For any paragraph that requests information relating to supplying, manufacturing, distributing, selling, or advertising or promoting products in any country other than the United States, the information called for includes all information in your possession, custody or control maintained in both the United States or in any other country.
3. Where knowledge, information, or documents are requested, such request encompasses knowledge, information or documents in your possession, custody or control, or in the possession, custody or control of your staff, agents, employees, representatives and, unless privileged, attorneys, or any other person who has possession, custody or control of your proprietary knowledge, information or documents.
4. Pursuant to Fed. R. Civ. P. 26(e), you are under a duty seasonably to amend any answer to these interrogatories for which you learn that the answer 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.
5. For any interrogatory or part of an interrogatory which you refuse to answer under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the nature of the information withheld; specify the grounds of the

claimed privilege and the paragraph of these interrogatories to which the information is responsive; and identify each person to whom the information, or any part thereof, has been disclosed.

6. Answer each interrogatory fully. If you object to any interrogatory, state the reasons for objection and answer to the extent the interrogatory is not objectionable. If you are unable to answer an interrogatory fully, submit as much information as is available, explain why your answer is incomplete, and identify or describe all other sources of more complete or accurate information.

7. For any record or document responsive or relating to these interrogatories 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.

8. No agreement, understanding, or stipulation by the Department of Justice or any of its representatives purporting to modify, limit, or otherwise vary these interrogatories 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. Interrogatories

1. State your company's annual unit and dollar sales separately for each type or line of prefabricated artificial teeth that your company sold or manufactured for each year during the relevant time period.

2. State your company's annual unit and dollar sales, separately for each type or line of prefabricated artificial teeth your company sold or manufactured in any country other than the United States, separately for each such country, and separately for 1985 and each subsequent year.

3. Separately for 1997 and each subsequent year, describe in detail and quantify each separate cost or expense relating to training or educating dealers' personnel, dental laboratories' personnel, and dentists, and to the extent possible, allocate the costs and expenses between dealers, dental laboratories, and dentists.

4. Separately for 1997 and each subsequent year, describe in detail and quantify all fees and other income Dentsply collected from third parties relating to training or educating dealers' personnel', dental laboratories' personnel, and dentists, and to the extent possible, allocate the fees and other income between dealers, dental laboratories, and dentists.

5. Separately for 1990 and each subsequent year through 1996, describe in detail and quantify each separate cost or expense, and all fees and other income Dentsply collected from third parties, relating to training or educating dentists.

6. Describe in detail and quantify your company's costs or expenses attributable to each dealer to whom you sell prefabricated artificial teeth, separately for each year, and separately for each such dealer, including but not limited to administrative, transactional or other costs or

expenses relating to tooth returns or exchanges, drop-shipments, inventory management (including computer hardware or software provided to dealers by Dentsply), training, sales support, marketing, or advertising.

7. State the marginal cost of production of each type or line of prefabricated artificial teeth that your company sold or manufactured for each year.

8. State the average cost of production of each type or line of prefabricated artificial teeth that your company sold or manufactured for each year.

Respectfully submitted,

April 15, 1999

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Carl Schnee
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FOR THE DISTRICT OF DELAWARE

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