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Page 1
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               UNITED STATES DISTRICT COURT
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                                                                         APPEARANCES OF COUNSEL:
                                                                    2
                                                                           FOR PLAINTIFF:
              CENTRAL DISTRICT OF CALIFORNIA
                                                                              LEWIS ROCA ROTHGERBER CHRISTIE LLP
                                                                    3
                                                                              BY: KRIS J. KOSTOLANSKY, ESQ.
       BRAGEL INTERNATIONAL, INC.,
                                                                    4
                                                                              1200 Seventeenth Street, Suite 3000
                                                                              Denver, Colorado 80202
              Plaintiff.
                                                                    5
                                                                              kkostolansky@lrrc.com
                                                                              (303) 628-9515
         VS.
                            Case No. 2:14:cv-7691
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                                                                    7
                                                                           FOR DEFENDANT:
       CHARLOTTE RUSSE, INC,
                                                                    8
                                                                              KROUB, SILBERSHER & KOLMYKOV PLLC
                                                                              BY: GASTON KROUB, ESQ.
                                                                   9
              Defendants.
                                                                              305 Broadway, 7th Floor
                                                                              New York, New York 10007
                                                                   10
                                                                              gkroub@kskiplaw.com
                                                                              (212) 323-7442
                                                                   11
            VIDEOTAPED DEPOSITION OF FRANCES HARDER
                                                                   12
                                                                              BUCHALTER NEMER
                 GLENDALE, CALIFORNIA
                                                                              BY: MATTHEW L. SEROR, ESQ.
              WEDNESDAY, SEPTEMBER 21, 2016
                                                                  13
                                                                              1000 Wilshire Boulevard, Suite 1500
                   9:15 A.M.
                                                                              Los Angeles, California 90017
                                                                              mseror@buchalter.com
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       Reported by:
                                                                  16
                                                                           Also Present:
       KAYLA LOTSTEIN
                                                                  17
                                                                  18
                                                                              Manni Sidhu, Videographer
       CSR No. 13916
                                                                  19
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                                                                           FRANCES HARDER
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                                                                                 By Mr. Kroub
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            Plaintiff,
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                                                                                 By Mr. Seror
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                       ) Case No. 2:14:cv-7691
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                                                                                 By Mr. Kostolansky
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      CHARLOTTE RUSSE, INC,
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                                                                                       EXHIBITS
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                                                                                               DESCRIPTION
                                                                           NUMBER
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           Defendants.
                                                                   11
                                                                                  Confidential Expert Report of Frances 107
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                                                                                 Harder on Infringement of U.S. Patent
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                                                                                 No. 7,144,296 (Confidential), 34 pgs
           VIDEOTAPED DEPOSITION OF FRANCES HARDER, taken on
11
                                                                   14
                                                                                  Confidential Expert Report of Frances 108
12
      behalf of Plaintiff, at 9:15 a.m., Wednesday, September 21,
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                                                                                 Harder on Infringement of U.S. Patent
13
      2016, at 655 North Central Avenue, Suite 400, Suite 2300,
                                                                                 No. 7,144,296 (Confidential), 34 pgs
      Glendale, California, before Kayla Lotstein, Certified
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      Shorthand Reporter No. 13916 of the State of California,
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      pursuant to Notice.
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1 (Pages 1 to 4)

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1	Q. So for purposes of my question now, I'd like	1	Q. Okay.
2	you to open the expert report that you entered in the	2	A at the time.
3	Charlotte Russe case on infringement. So that would be,	3	Q. Okay. And is there anything in the
4	I believe, Exhibit 1.	4	description of the connector in Claim 1 of the '296
5	A. For Charlotte Russe?	5	patent that has anything to do with heat or how the
6	Q. Yes.	6	connector is actually manufactured on these products?
7	A. Yeah.	7	A. No.
8	Q. And in particular I'd like to refer you to	8	Q. So, in fact, in your opinion, any connector
9	page 7, which talks about the asserted claims. Do you	9	between that's adapted to adjoin the breast forms
10	see that?	10	together would infringe the patent; correct?
11	A. Yes.	11	A. I don't know. I mean, I know that to make
12	Q. Okay.	12	this particular piece it would have to be heat rather
13	A. B?	13	than stitched.
14	Q. Yes. Now, we were we were talking about	14	Q. Okay. But would a stitched connector that
15	the connector on the patented product; correct?	15	would be adapted to adjoin the breast forms together
16	A. Correct.	16	infringe Claim 1?
17	Q. And you said it was I don't want to put	17	A. It may do.
18	words in your mouth but complex engineering went in	18	•
19	to making the product, in terms of molding the connector	19	Q. In fact, Claim 1 is not limited to heat-placed connectors; correct?
20	to the silicone?	20	A. Correct.
		21	
21 22	A. And getting the heat right, yes.	22	Q. Okay. And Claim 1 is completely silent about
	Q. Okay. Now, where in the claims in the case		all the effort that goes into manufacturing these
23	does it talk about how the connector is adjoined to the	23	products; correct?
24	breast form?	24	A. Correct.
25	A. As far as I'm aware, they didn't put that in	25	Q. In fact, Claim 1 is not is not directed to
	Page 114		Page 116
1	to the patent application.	1	manufacturing of the products at all; correct?
2	Q. Okay. So that's an		
_	Q. Okay. 50 that's an	2	MR. KOSTOLANSKY: Object to the form.
3	MR. KOSTOLANSKY: Could	2 3	MR. KOSTOLANSKY: Object to the form. THE WITNESS: It's a description of what the
	MR. KOSTOLANSKY: Could THE WITNESS: Yeah. Let me read it.		THE WITNESS: It's a description of what the end result is, but it doesn't explain exactly how the
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. KOSTOLANSKY: Could THE WITNESS: Yeah. Let me read it. MR. KOSTOLANSKY: Why don't you read the claims before you answer his question THE WITNESS: Okay. MR. KOSTOLANSKY: since he's asking you about the claims. THE WITNESS: Okay. MR. KOSTOLANSKY: Let's have the question read back when she's done reading. THE WITNESS: In Claim 1 it does have pressure-sensitive adhesive layer. (Reporter clarification.) THE WITNESS: It does have a pressure-sensitive adhesive layer for securing the breast forms to the breast of the wearer. Okay? And then the connector adapter to adjoin the breast forms together within the connector is positioned between inner side of each breast forms. BY MR. KROUB: Q. Okay. So what is the pressure-sensitive	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	THE WITNESS: It's a description of what the end result is, but it doesn't explain exactly how the garment is made. MR. KROUB: Right. So, in your opinion, the claim covers the end product as a whole. THE WITNESS: Correct. BY MR. KROUB: Q. Okay. How it's made is not considered by the claim. MR. KOSTOLANSKY: Object to the form. THE WITNESS: Well, I think having silicone gel I mean, we're not going into exactly what the chemical formation of the silicone is. BY MR. KROUB: Q. Right. So any silicone gel would be fall within the scope of the claim; correct? A. Well, the way the volume of the silicone gel they're not describing the weight of the silicone. Q. Right. So that means any silicone gel would infringe; correct?

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1	form and foam could infringe; correct?	1	would they have strike that.
2	A. It could.	2	Someone of skill in the art, starting with
3	Q. All right. And the then, similarly,	3	these materials, these different components, would have
4	there's no description of what the pressure-sensitive	4	been able to put them all together; correct.
5	adhesive has to be; correct? It just says any	5	A. But they didn't.
6	pressure-sensitive adhesive layer.	6	Q. Well, would someone with skill in the art been
7	MR. KOSTOLANSKY: Object to the form.	7	able to do so?
8	THE WITNESS: Correct.	8	A. I mean, things always look more obvious when
9	BY MR. KROUB:	9	they're done and invented. So it's like the wheel.
10	Q. What about in Claim 2? Does Claim 2 talk	10	Q. But I'm trying to isolate. So what in your
11	about heat or anything involved in the manufacturing of	11	mind, what's the actual invention described in the
12	the product?	12	claims?
13	A. No.	13	A. Putting all those pieces together. So coming
14	Q. Claim 2 just talks about the connector being	14	up with the idea of producing a silicone cup with
15	able to cooperatively engage with the other piece in the	15	adhesive a silicone cup. And then attaching the
16	connector?	16	connector in the center that would then hold it or you
17	A. Correct.	17	can manipulate it any way you want so you get the look
18	Q. Okay. And similar question for Claim 5.	18	and feel that you want.
19	Claim 5 doesn't talk about the manufacturing process for	19	Q. Right. Connectors were known in the bra
20	the products at all; correct?	20	industry prior to the patent; right?
21	A. Correct.	21	A. Correct.
22	Q. It just says that the connector is permanently	22	Q. And silicone breast forms were known in the
23	attached to the breast forms.	23	industry prior to the patent; right?
24	A. Correct.	24	A. Correct.
25	Q. Okay. So the actual would you say that the	25	Q. So if someone had told you the idea my idea
	Dama 110		
			D 100
	Page 118		Page 120
1	invention as claimed is a complex invention or something	1	is I'm going to take silicone breast forms and add a
2	invention as claimed is a complex invention or something simple to somebody of skilled in the art like	2	is I'm going to take silicone breast forms and add a connector, as an expert, would you have been able to
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	Page 133		Page 135
1	Q. Okay. Would the foam bra also have the same	1	look it would be harder to see.
2	benefit to a user as the silicone bra with respect to	2	Q. Okay. And could could these foam
3	the pressure-sensitive adhesive layer?	3	products have you seen them made without stitching?
4	A. Just to in regards to the pressure	4	A. I think I don't know. I don't recall. I
5	sensitive; correct.	5	know we have different examples we can bring in
6	Q. It would?	6	afterwards.
7	A. As far as I'm aware.	7	Q. Okay. If there was a foam product that didn't
8	Q. Right. And similarly, for the connector	8	have stitching, then it wouldn't have the difference
9	that's on both, those connectors would provide the same	9	with the silicone?
10	benefits?	10	A. The difference in the silicone is, of course,
11	A. As far as well, the way they advertise it,	11	it's giving you much more volume. So there's a
12	they put it on one side, and they put it on the other,	12	thickness involved in, obviously, breast enhancement,
13	and they connect it so they can bring the cleavage	13	giving it a better volume as opposed to the foam which
14	together.	14	is thinner.
15	Q. Right. But both the foam bra and the silicone	15	Q. Okay. Could the foam be made thicker?
16	bra could be used to enhance cleavage?	16	A. Could be made thicker.
17	A. Correct.	17	Q. Okay. And in your example of the models,
18	Q. And it's the connector that allows them to do	18	would it be important to maybe ask the models which one
19	so?	19	felt more natural to them?
20	A. Correct.	20	A. Why would I be asking that? Sorry.
21	Q. Okay. So the place where we have a difference	21	Q. Well, you're trying to determine which one
22	is with respect to the use of silicone as opposed to	22	provides a more natural look and feel, and you said that
23	foam for the breast form itself; correct?	23	the opinion of the wearer is important to that
24	A. For the decision of the consumer.	24	calculation; right?
25	Q. Right. And in your opinion, the silicone	25	A. Correct.
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1	provides a more natural look and feel than the foam?	1	Q. So if the models were wearing the bras, would
2	A. In my view, yes.	2	you normally ask them which one they think provides a
3	Q. Okay. And that's your view for every customer	3	more natural look and feel?
4	or some customers?	4	A. For the most part, they don't wear a bra,
5	A. I can't speak for every customer.	5	actually, on the runway. But I know from my daughter's
6	Q. Okay. Are you speaking for yourself as a	6	point of view when I made her wedding dress and we chose
7	woman who may or may not use these products when you say	7	these particular cups for it that this gave it a much
8	one looks more natural than the other?	8	more natural look than the foam ones.
9	A. No. I'm talking as an expert. So if I were	9	Q. And when you for your daughter's wedding
10	to like we do in casting for a fashion show and we	10	dress, she wore the Bragel product?
11	ask the models to walk, I think you would have a much	11	A. Yes.
12	more natural look with a model wearing a silicone cup as	12	Q. Okay. Did she wear the Walmart version or the
13	opposed to the foam one if they had a depending on	13	NuBra version?
14	what she had over it.	14 15	A. She bought it from Victoria's Secrets.
15	Q. Right.	16	Q. Okay. And is that the same as was that a Made in U.S.A. or made in China product?
16 17	A. She might have a thin fabric over it, and so	17	A. I think it was made in China.
17 18	the silicone may be more beneficial to the look of her	18	Q. You think it was. And do you remember how
	body.	19	much she paid for that?
19 20	Q. Okay. What if they were wearing the same	20	A. No. She bought it. I didn't.
	dress? A. Depends on the thickness, again, of the	21	Q. So that was her decision what bra to buy?
21 22	fabric. So if you had a thin fabric, you may find that	22	A. Correct.
23	the stitching on the bra here would show through. Or if	23	Q. Now where in the patent claim and feel free
24	it was a low-cut garment, you may see the edge of the	24	to refer back to Exhibit 1 does it talk about natural
25	sewing on the foam cup; whereas the silicone one may be	25	look and feel?
-	g		