

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

|                                  |   |                     |
|----------------------------------|---|---------------------|
| _____ )                          |   |                     |
| EMINENCE ORGANIC SKIN CARE, INC. | ) |                     |
|                                  | ) |                     |
| Plaintiff,                       | ) |                     |
| v.                               | ) | Civil Action No.    |
|                                  | ) | 1:06-CV-119-SEB-VSS |
| SZEP ELET, LLC                   | ) |                     |
|                                  | ) |                     |
| Defendant.                       | ) |                     |
| _____ )                          |   |                     |

**STIPULATION**

The undersigned counsel for the parties hereby stipulate and agree that the parties have reached a settlement agreement. In addition to the other matters addressed in the parties' settlement agreement, the settlement agreement between the parties requires as a condition to settlement the entry of the following Agreed Injunction.

STIPULATED TO this 13<sup>th</sup> day of October, 2006.

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**AGREED INJUNCTION**

THIS MATTER having been brought before the Court by way of Complaint filed by plaintiff ("Eminence") against defendant ("Szep Elet"), and it appearing that the parties hereto have entered into a Settlement Agreement, and that both Szep Elet and Eminence have stipulated and consented to the terms and conditions of this Order. According, and pursuant to the consent and stipulation of the parties, now THEREFORE:

The parties, (whether acting in an individual, corporate, or other capacity, or in any combination thereof), their agents, representatives, independent contractors, heirs, and assigns, and all those who act in concert or participation with them are hereby ORDERED and ENJOINED as follows:

1. **Product Names.** Eminence consents to Szep Elet's use of the "**Authorized Szep Elet Marks**" as set-forth in Exhibit A (to identify its products). To the extent that Szep Elet's current name for a product differs from the Authorized Szep Elet Mark described in Exhibit A, Szep Elet will, as of the Effective Date, cease using the current name and shall instead rename its products to conform to the Authorized Szep Elet Mark. Notwithstanding this provision, however, Szep Elet may continue to use any written materials, including leaflets, postcards, mailers, brochures, product lists or price lists, or catalogues ("**Marketing Materials**") or product packaging (*e.g.*, labels, boxes, jars and other containers) ("**Packaging**") that may contain or refer to Szep Elet's current name for a product if Szep Elet acquired or printed the Marketing Materials or Packaging before the Effective Date. As such, Szep Elet shall have no duty to recall or withdraw from commerce any products using the current product name that were sold or produced before the Effective Date of this Agreement.

Both Parties may use the words “whipped” as part of a product’s name, and Eminence may use the word “whip” as well.

2. **Advertising and Marketing Issues.**

A) Except as provided for in Paragraph 9, as of the Effective date Szep Elet will cease using the phrase “since 1958”, or the date “1958.”

B) Each Party agrees that the other Party may use the word “original” to describe its products or its company. The Parties acknowledge, however, that any false or deceptive use of the word “original” may be actionable by a third party (other than those parties enumerated in Paragraph 15), and each Party agrees that it shall have no liability to the other Party based on any third party objection to a Party’s use of the word “original.”

C) Szep Elet will modify its skin care chart by removing color graduation as part of that chart. Except as provided for in Paragraph 9, “Existing Stock,” all depictions or use of the skin care chart will conform to the requirements of this Agreement as of the Effective Date.

D) As of the Effective Date, Szep Elet will no longer use or display as part of its trade show exhibit any isolated photographs or other depictions of a pepper.

3. **Regulatory Compliance.** Both Parties agree that their product labels, ingredients, and country of origin notation shall comply with FDA regulations and requirements and, to the extent applicable, INCI standards.

4. **Public Statement.** Should any Party issue any press release or other similar public statement about this Litigation or this Agreement, then such press release or public statement shall be limited to the following: “Szep Elet and Eminence have

resolved their mutual litigation in favor of pursuing their business goals and better serving their customers. Both parties have accepted specific obligations pursuant to the settlement. Neither party is permitted to communicate any term of the settlement.”

5. **Third Party Inquiries.** Should any third party inquire of any Party about the Litigation or why a Party has performed or ceased to perform anything required under this Agreement, then the Party’s response shall be limited to the following statement: “Both parties have agreed to specific settlement obligations in order to distinguish themselves and to better serve their customers.”

6. **Confidential Information.** Neither party will utilize confidential information of the other party including, but not limited to, confidential customer lists, and each party will destroy any confidential information of the other party in its possession, if any.

7. **Nonsolicitation of Other Party’s Employees.** Each party agrees that it will not knowingly solicit or hire any of the other Party’s current or former employees or sales representatives that have entered into a written covenant against competition during the period covered by the noncompetition covenant.

8. **Package Color.** In conformity with Paragraph 9, Szep Elet shall alter the color of the paper used to cover boxes of its products from the paper currently used to the paper color, a sample of which is attached as Exhibit B to the Parties' Settlement Agreement (“**New Szep Elet Color**”). For two years, Eminence agrees not to use any color as the principal color of its boxes that is confusingly similar to the New Szep Elet Color. Exhibit B has been disclosed electronically to Eminence simultaneously with the presentation of the Parties' Settlement Agreement for execution by Eminence.

9. **Existing Stock.** The Parties may use any of their existing stock of Packaging and Marketing Materials that may otherwise violate the terms of this Agreement until those supplies are exhausted, or until August 25, 2007, whichever occurs first. As of the Effective Date, neither party shall reorder, manufacture, reprint, or republish any Packaging or Marketing Materials in violation of this Agreement.

10. **Nondisparagement Agreement.** The Parties agree and covenant not to use false, deceptive, or misleading statements that reflect poorly upon the other party or the quality of the other party's product or reputation. Thus, by way of example, the parties shall not falsely represent to any third party:

- That the other Party's products contain artificial colorings.
- That the Parties have merged or are now affiliated in some fashion.
- That one Party's goods are copies or imitations of the other Party's goods.
- That one Party's officials or representatives are liars or are untruthful.
- That one party "lost" the Lawsuit or a contract.
- That the other Party's goods cause cancer of skin disorders.
- That the other Party's products are not made in Hungary.
- That the other Party has engaged or is engaging unethical business practices.

This provision does not, however, limit the ability of a Party to express a belief that its product is superior to the product of the other party nor is this covenant intended to interfere with the Parties' ability to engage in lawful competition. The Parties shall communicate the content of this nondisparagement covenant to their employees, independent representatives, and agents.

**IT IS FURTHER ORDERED**, that notwithstanding any other provision of this Order, this Order shall not require any party to recall from distribution any products sold before the entry of this Order that do not conform to the terms of this Order. Further, to the extent that either party currently has an existing inventory of product packaging materials or paper marketing materials (such as brochures, catalogs, product lists, leaflets) that do not conform to the terms of this Order, this Order will not prevent the parties from using their existing inventory in the normal course of their business. This Order shall, however, apply to any product packaging materials or paper marketing materials that were ordered, printed, reprinted, produced, or manufactured after August 25, 2006.

**IT IS FURTHER ORDERED**, this Order shall remain in effect until modified, withdrawn, or superseded by subsequent order this court may enter, and the Court shall retain jurisdiction over this matter until such time as the Order has been dissolved. Except for the Court's continuing jurisdiction to enforce or modify this Order, all claims and counterclaims that have been asserted by the parties in this action are hereby dismissed with prejudice and without taxation of costs or fees to either party.

10/17/2006



SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

**EXHIBIT A**

| <b>Current Szep Elet Name</b>       | <b>Authorized Szep Elet Marks</b>        |
|-------------------------------------|--|
| AHA Fruit Pulp Treatment            | AHA Fruit Peel                           |
| Apricot Whip Moisturizer            | Apricot Whipped Moisturizer              |
| Cinnamon Paprika Body Lotion        | Circulation Revitalization Body Lotion   |
| Cucumber & Parsley Oxygen Treatment | Cucumber & Parsley Oxygen Treatment      |
| Herbal Cellulite Treatment          | Stimulating Cellulite Treatment          |
| Herbal Clay Treatment               | Ichthammol & Herbs Mask                  |
| Herbal Spot Serum                   | Herb Infusion Serum                      |
| Lemon Cleanser                      | Lemon Cleansing Milk                     |
| Linden Calendula Treatment          | Linden & Marigold Rejuvenating Treatment |
| Mineral Cleansing Concentrate       | Mineral Exfoliating Wash                 |
| Naseberry Treatment                 | Glycolic Medlar Rejuvenating Treatment   |
| Paprika Herbal Treatment            | Hungarian Paprika Gel Treatment          |
| Peach Masque                        | Peach Mask                               |
| Pumpkin & Orange Masque             | Pumpkin & Orange Mask                    |
| Quince Apple Masque                 | Quince Apple Gel Mask                    |
| Rosehip & Maize Exfoliating Masque  | Rosehip Exfoliator                       |
| Rosehip Tonique                     | Rosehip Toner                            |
| Rosehip Whip Moisturizer            | Rosehip Whipped Moisturizer              |
| Rowan Sorb Masque                   | Rowan Sorb Gel Mask                      |
| Seven Herb Treatment                | Seven Herb Mask                          |
| Sour Cherry Masque                  | Sour Cherry Gel Mask                     |
| Sour Cherry Whip Moisturizer        | Sour Cherry Whipped Moisturizer          |
| Stonecrop Whip Moisturizer          | Stonecrop Whipped Moisturizer            |
| Sweet Red Rose Cleanser             | Rose Petal Cleansing Milk                |
| Sweet Red Rose Masque               | Rose Petal Gel Mask                      |
| Sweet Red Rose Tonique              | Rose Petal Toner                         |
| Sweet Red Rose Whip Moisturizer     | Rose Petal Whipped Moisturizer           |
| Wild Plum Masque                    | Blackthorn Gel Mask                      |
| Wild Plum Tonique                   | Blackthorn Toner                         |
| Wild Plum Whip Moisturizer          | Blackthorn Whipped Moisturizer           |