

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., Fuji Seal International, Inc.,

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF BROOK + WHITTLE LTD'S
FIRST NOTICE OF DEPOSITION OF DEFENDANT
FUJI SEAL INTERNATIONAL, INC. PURSUANT TO DKT. 28**

Pursuant to Paragraph 7 of the E-Discovery Order (Dkt. 28) and Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Brook + Whittle LTD (“B+W”) by and through its undersigned counsel, will take the deposition of Defendant Fuji Seal International, Inc. (“Fuji” or “Defendant”) through one or more of its officers, directors, managing agents, or other designated persons who consent to testify on its behalf for the purpose of “identify[ing] the proper custodians, proper search terms, and proper time frame for e-mail production requests.” Dkt. 28, ¶ 7. The deposition will take place at 9:00 a.m. on February 17, 2025, at Miller Fair Henry PLLC, 1507 Bill Owens Parkway, Longview, TX 75604, or another mutually agreeable date(s) and location(s).

The deposition will be taken upon oral examination before an official authorized by law to administer oaths, and will be recorded by audio means, audiovisual means such as videographic means, and/or stenographic means, including stenographic means with real-time display of testimony. The deposition will continue from day to day until completed. Testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

Pursuant to Rule 30(b)(6) and paragraph 7 of the E-Discovery Order (Dkt. 28), Fuji shall designate one or more officers, directors, managing agents, or other designated persons who consent to testify on its behalf, to “identify the proper custodians, proper search terms, and proper time frame for e-mail production requests,” the scope of which is defined by the topics identified in Attachment A of this Notice. Dkt. 28, ¶ 7. No later than ten (10) business days before the deposition, please provide a response to this deposition notice identifying, for each topic, the designated witness(es).

B+W may serve subsequent deposition notices on Defendant pursuant to Federal Rule of Civil Procedure 30(b)(6)—and take subsequent depositions of Defendant pursuant to such notices—on additional topics at a later time

Dated: January 21, 2025

Respectfully submitted,

/s/ Lindsey Y. Shi

Brandon H. Brown, P.C.
California State Bar No. 266347
KIRKLAND & ELLIS LLP
555 California Street, Suite 2700
San Francisco, CA 94104
T: (415) 439-1400
F: (415) 439-1500
bhbrown@kirkland.com

Yimeng Dou (California State Bar No. 285248)
Lindsey Y. Shi (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
T: (213) 680-8400
F: (213) 680-8500
yimeng.dou@kirkland.com
lindsey.shi@kirkland.com

Andrea Fair
Texas State Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400
Fax: (903) 757-2323
andrea@millerfairhenry.com

Attorneys for Plaintiff Brook + Whittle LTD

ATTACHMENT A

DEFINITIONS

The definitions set forth herein have the broadest possible meaning under the Federal Rules of Civil Procedure and Federal Rules of Evidence.

1. “Defendant,” “Fuji,” “You,” and “Your” means and refers to Fuji Seal International, Inc., including, without limitation, all of its corporate locations, and all predecessors, successors, subsidiaries, divisions, parents and/or affiliates thereof, past or present, and all past or present officers, directors, agents, employees, inventors, researchers, scientists, consultants, accountants, attorneys, representatives, partners, joint venturers, and any other person or entity acting on behalf of any of the foregoing.

2. The term “Related Entities” means and includes any entity affiliated with, owned and/or operated and/or controlled by Fuji.

3. “Plaintiff” and/or “B+W” means and includes the Plaintiff named in the Complaint, Plaintiff Brook + Whittle LTD.

4. “This Case” or “This Action” or “This Litigation” refers to the above-captioned action, *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP (E.D. Tex).

5. “Complaint” means the Complaint filed by Plaintiff in the District Court for the Eastern District of Texas on September 8, 2024, styled *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP, and any further or subsequent amendments or supplements thereto.

6. “Patent-In-Suit” or “Asserted Patent” means United States Patent No. 11,961,422 and any patent(s) subsequently added to this case by B+W.

7. “Asserted Claim(s)” refers to any and all claims of any of the Asserted Patents that are asserted in the Complaint or later asserted in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

8. “Practicing Product(s)” refers to any and all B+W products identified as practicing the Asserted Patent in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

9. “Related Application” shall mean any application related to the B+W Patent-in-Suit, including any provisional or non-provisional applications, continuations, continuations-in-part, divisions, interferences, reexaminations, reissues, parents, international (PCT) and foreign counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described or claimed in the B+W Patent-in-Suit, or claiming the benefit of the filing date of any application (foreign or domestic) whose benefit is claimed in the Patent-in-Suit whether or not abandoned and whether or not issued.”

10. “Related Patent” shall mean any patent that has issued from any Related Application, including any patents that may have been opposed, re-examined, re-issued or subjected to any validity or nullity proceeding.

11. “Defendant’s Accused Product(s)” or “Accused Product(s)” means each and every apparatus, product, device, process, method, act, or other instrumentality that B+W alleges infringes or has infringed any B+W Asserted Claim.

12. “Document” will have the meaning accorded by Rule 34(a) of the Federal Rules of Civil Procedure including, but not limited to, all matters defined in Rule 1001 of the Federal Rules of Evidence, electronic mail or other Communications, and any electronic, written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in which information may be embodied, translated, conveyed, or stored, regardless of form or means of storage. If a draft document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to later notation, each non-identical document is a separate document.

13. “Communication(s)” means any transmission of information, including, without limitation, oral or written communications of any kind, such as electronic communications, direct communications through social media (including without limitation direct messaging, instant messaging, chatting, or emailing within a social media platform), facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or other conversations or communications.

14. “Identify” or “Identity” as used in these interrogatories about a document will mean to set forth (a) its nature or type (e.g., letter, memorandum, report, invoice, bill of lading, etc.); (b) its date; (c) its author(s), including every person who prepared any portion of the document; (d) its addressee(s) and all recipients of a copy; (e) its title and general subject matter; (f) the present location and custodian of the original and each non-identical copy thereof, or, if unknown, the last known location and custodian of each; and (g) its Bates number wherever possible. When used in these interrogatories with respect to a natural person, “Identify” or “Identity” will mean to set forth his or her (a) full name, together with any known aliases or nicknames; (b) present address or, if unknown, the last known address and the date when such person is last known or believed to have resided at that address; (c) present known business and residence telephone number or, if unknown, the last known business and residence telephone number and date when such person is last known or believed to have had that telephone number; and (d) the present known employer, employment position or title and business address or, if unknown, the last known information in each of these respects. When used in these interrogatories about an entity, “Identify” or “Identity” will mean to set forth its (a) full name; (b) a description of the type of entity (e.g., corporation, partnership, unincorporated association, etc.); and (c) its present or last known business address and telephone number.

15. “And” and “or” are to be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. “Including” shall be construed to mean “including, but not limited to,” or “including, without limitation,” so that the request for production shall acquire the broadest possible meaning. Likewise, “includes” is to be construed to mean “includes, but is not limited to,” or “includes, without limitation.”

17. “Referred to,” “referring to,” “refer to,” “related to,” “relating to,” or “relate to,” means, without limitation, assessing, comprising, concerning, constituting, containing, describing, discussing, embodying, evidencing, identifying, pertaining to, reflecting, stating, supporting, or tending to support or refute, or referring in any other way, directly or indirectly, in whole or in part, to the subject matter specified.

18. “Person” or “Persons” means any individuals, proprietorships, partnerships, limited liability companies, firms, private corporations, public corporations, municipal corporations, associations, institutions, governments (including foreign national governments, the government of the United States, or any state or local government), all departments and agencies thereof, and any governmental agencies of any country, political subdivisions, groups, or other organizations or entities. The term includes any and all of that person’s or persons’ predecessors, successors, assigns, personal representatives, agents, attorneys, and heirs, whether by operation of law or otherwise. Finally, unless otherwise stated, the term also includes any employees, agents, or representatives of any of the foregoing and any other individuals or entities mentioned in these Definitions and Instructions.

19. “Describe” means, in addition to its usual and customary meaning, providing the Identity of all Persons with knowledge of the information sought in the interrogatory and the Identity of all Documents referring, regarding, or relating to the information sought in the interrogatory.

20. “Prior Art” means the subject matter described in 35 U.S.C. §§ 102 and 103, including without limitation all patents, patent applications, printed publications, documents, things, activities, including public uses, disclosures, sales, or offers to sell, or any other information described in 35 U.S.C. §§ 102 and 103 that could relate to the validity of the Patent-In-Suit.

21. The use of the singular form of any word includes the plural and vice versa.

22. The definition of each term defined above is to be used regardless of capitalization.

INSTRUCTIONS

1. Any term not specifically defined herein shall be defined in accordance with the Federal Rules of Civil Procedure.

2. If Fuji finds the meaning of any term in B+W’s Topics for Examination or other discovery requests unclear, then Fuji shall construe the term so as to render responsive any information, Document, or Thing that might otherwise be rendered non-responsive.

3. B+W’s Topics for Examination and other discovery requests seek all responsive information, Documents, and Things that are known or available to Fuji or within Fuji’s actual or legal possession, custody, or control.

4. B+W’s Topics for Examination and other discovery requests seek information, Documents, and Things as of the date hereof and to the full extent allowed by the Federal and Local rules, including without limitation all responsive information, Documents, and Things acquired or identified by Fuji up to and including the date(s) of testimony.

5. B+W's Topics for Examination and other discovery requests are continuing. Therefore, Fuji promptly shall produce to B+W, as supplemental responses to B+W's Topics for Examination and other discovery requests, any additional information, Documents, or Things that Fuji identifies, acquires, or becomes aware of up to and including the time of the close of discovery in this litigation.

6. If Fuji objects to any part of a Topic for Examination and refuses to answer it, then Fuji shall state its complete objection and all bases therefor, and also shall provide a complete answer to the remaining portion of that Topic for Examination during the deposition.

7. If Fuji objects to a Topic for Examination or other discovery request as vague or ambiguous in language, then Fuji shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as interpreted in accordance with these Instructions. Fuji shall include in its response a specific statement identifying the particular words, terms, or phrases that it asserts render the request objectionable and specifying the meaning actually attributed by Fuji to such words, terms, or phrases for the purpose of responding thereto.

8. If Fuji objects to a Topic for Examination as overly broad or unduly burdensome in scope, in time period, or for any other reason, then Fuji shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as narrowed to the least extent necessary to render it not objectionable in Fuji's opinion.

9. If the answer to any Topic for Examination is "none," or if a section of a Topic for Examination or other discovery request is not applicable to Fuji's business, then Fuji shall so indicate.

10. If, after exercising due diligence to make inquiries and secure necessary information, Fuji cannot answer a Topic for Examination fully and completely, then Fuji shall so

state. Additionally, Fuji shall be prepared to provide the following in response to each such Topic for Examination: (a) an answer to the Topic for Examination or request to the fullest extent possible; (b) an explanation specifying the portion of the Topic for Examination or request that Fuji claims it is unable to answer fully and completely; (c) a statement of the facts upon which Fuji relies to support its contention that it is unable to answer fully and completely; and (d) a statement specifying what knowledge, information, and belief Fuji has concerning the unanswered portion of the Topic for Examination or request.

11. If Fuji's response to any Topic for Examination is qualified in any respect, Fuji shall be prepared to explain the details of and reasons for each such qualification.

TOPICS FOR EXAMINATION

1. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the creation and development of the Accused Products, including but not limited to, the time(s) when research and/or development began and ended, the creation, development and testing process, the Identity of the individuals involved in the creation and development and their responsibilities (including employees, ex-employees, agents, outside contractors, and other third-parties), and any code names or internal designation for any of the Accused Products.

2. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the manufacturing of any and all portions of the Accused Products, including but not limited to, when manufacturing began, the specific factual details of any processes used to manufacture the Accused Products, the division of labor between You and any third-party in terms of manufacturing the Accused Products, the details and nature of that process, the Identity of the individuals involved in the manufacturing of the Accused Products and their responsibilities (including employees, ex-employees, agents, outside contractors, and

other third-parties), and any code names or internal designation for the manufacturing of any of the Accused Products.

3. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any and all efforts to monetize the Accused Products, including but not limited to, the marketing, pricing, negotiating, selling, and economics of the Accused Products, the identity of the primary intended customer(s) for the Accused Products by name and/or industry, pricing strategies for the Accused Products, and the Identity of the individuals involved in the same.

4. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any intellectual property that Fuji contends covers any of the Accused Products or the processes or steps used to make or manufacture any of the Accused Products, and the Identity of the individuals involved in procuring and maintaining any such intellectual property.

5. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the '422 Patent, Your knowledge of it, and when You first became aware of it, Your efforts to design around it, and the Identity of the individuals involved in the foregoing.

6. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into American Fuji Seal, Inc. ("AFS"), including Your control over the same, the nature of Your relationship with AFS, the Identity of all individuals who correspond with AFS, the Identity of all individuals who manage AFS, the role AFS plays in Your business, and the role AFS plays with respect to the Accused Products.

7. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any of your subsidiaries (whether wholly or partially owned) who were involved in any aspect of the designing, making, manufacturing, distributing, marketing, and selling of the Accused Products, including Your control over the same, the nature of Your relationship with each such subsidiary, the Identity of all individuals who correspond with each such subsidiary, the Identity of all individuals who manage each such subsidiary, the role each such subsidiary plays in Your business, and the role each such subsidiary plays with respect to the Accused Products.

8. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any third party with whom you coordinated or otherwise collaborated to design, make, manufacture, distribute, market, and/or sell any aspect of the Accused Products, including Your control over the same, the nature of Your relationship with each such third party, the Identity of all individuals who correspond with each such third party, the Identity of all individuals who manage each such third party, the role each such third party plays in Your business, and the role each such third party plays with respect to the Accused Products.

9. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into B+W, including your interactions and discussions with B+W, the Identity of the individuals involved in the foregoing, and any code names or internal designations for B+W.

10. Any and all systems You use to store emails and other electronic documents, including the Identity of such system(s), the Identity of the manufacturer(s) of such system(s), the Identity of those involved in maintaining such system(s), any document retention policies, an

Identification of the server(s) that emails are stored on and how that determination is made, and an

Identification of the server(s) that document(s) are stored on and how that determination is made.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via email on January 21, 2025 to all counsel of record.

/s/ Eleanor Ross

Eleanor Ross

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., Fuji Seal International, Inc.,

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF BROOK + WHITTLE LTD'S
FIRST NOTICE OF DEPOSITION OF DEFENDANT NESTLÉ USA, INC.
PURSUANT TO DKT. 28**

Pursuant to Paragraph 7 of the E-Discovery Order (Dkt. 28) and Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Brook + Whittle LTD (“B+W”) by and through its undersigned counsel, will take the deposition of Defendant Nestlé USA, Inc. (“Nestlé” or “Defendant”) through one or more of its officers, directors, managing agents, or other designated persons who consent to testify on its behalf for the purpose of “identify[ing] the proper custodians, proper search terms, and proper time frame for e-mail production requests.” Dkt. 28, ¶ 7. The deposition will take place at 9:00 a.m. on February 18, 2025, at Miller Fair Henry PLLC, 1507 Bill Owens Parkway, Longview, TX 75604, or another mutually agreeable date(s) and location(s).

The deposition will be taken upon oral examination before an official authorized by law to administer oaths, and will be recorded by audio means, audiovisual means such as videographic means, and/or stenographic means, including stenographic means with real-time display of testimony. The deposition will continue from day to day until completed. Testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

Pursuant to Rule 30(b)(6) and paragraph 7 of the E-Discovery Order (Dkt. 28), Nestlé shall designate one or more officers, directors, managing agents, or other designated persons who consent to testify on its behalf, to “identify the proper custodians, proper search terms, and proper time frame for e-mail production requests,” the scope of which is defined by the topics identified in Attachment A of this Notice. Dkt. 28, ¶ 7. No later than ten (10) business days before the deposition, please provide a response to this deposition notice identifying, for each topic, the designated witness(es).

B+W may serve subsequent deposition notices on Defendant pursuant to Federal Rule of Civil Procedure 30(b)(6)—and take subsequent depositions of Defendant pursuant to such notices—on additional topics at a later time

Dated: January 21, 2025

Respectfully submitted,

/s/ Lindsey Y. Shi

Brandon H. Brown, P.C.
California State Bar No. 266347
KIRKLAND & ELLIS LLP
555 California Street, Suite 2700
San Francisco, CA 94104
T: (415) 439-1400
F: (415) 439-1500
bhbrown@kirkland.com

Yimeng Dou (California State Bar No. 285248)
Lindsey Y. Shi (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
T: (213) 680-8400
F: (213) 680-8500
yimeng.dou@kirkland.com
lindsey.shi@kirkland.com

Andrea Fair
Texas State Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400
Fax: (903) 757-2323
andrea@millerfairhenry.com

Attorneys for Plaintiff Brook + Whittle LTD

ATTACHMENT A

DEFINITIONS

The definitions set forth herein have the broadest possible meaning under the Federal Rules of Civil Procedure and Federal Rules of Evidence.

1. “Defendant” “You,” and “Your” means and refers to Nestlé USA, Inc., including, without limitation, all of its corporate locations, and all predecessors, successors, subsidiaries, divisions, parents and/or affiliates thereof, past or present, and all past or present officers, directors, agents, employees, inventors, researchers, scientists, consultants, accountants, attorneys, representatives, partners, joint venturers, and any other person or entity acting on behalf of any of the foregoing.

2. The term “Related Entities” means and includes any entity affiliated with, owned and/or operated and/or controlled by Nestlé USA, Inc.

3. “Plaintiff” and/or “B+W” means and includes the Plaintiff named in the Complaint, Brook + Whittle LTD.

4. “This Case” or “This Action” or “This Litigation” refers to the above-captioned action, *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP (E.D. Tex).

5. “Complaint” means the Complaint filed by Plaintiff in the District Court for the Eastern District of Texas on September 8, 2024, styled *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP, and any further or subsequent amendments or supplements thereto.

6. “Patent-In-Suit” or “Asserted Patent” means United States Patent No. 11,961,422 and any patent(s) subsequently added to this case by B+W.

7. “Asserted Claim(s)” refers to any and all claims of any of the Asserted Patents that are asserted in the Complaint or later asserted in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

8. “Practicing Product(s)” refers to any and all B+W products identified as practicing the Asserted Patent in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

9. “Related Application” shall mean any application related to the B+W Patent-in-Suit, including any provisional or non-provisional applications, continuations, continuations-in-part, divisions, interferences, reexaminations, reissues, parents, international (PCT) and foreign counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described or claimed in the B+W Patent-in-Suit, or claiming the benefit of the filing date of any application (foreign or domestic) whose benefit is claimed in the Patent-in-Suit whether or not abandoned and whether or not issued.”

10. “Related Patent” shall mean any patent that has issued from any Related Application, including any patents that may have been opposed, re-examined, re-issued or subjected to any validity or nullity proceeding.

11. “Defendant’s Accused Product(s)” or “Accused Product(s)” means each and every apparatus, product, device, process, method, act, or other instrumentality that B+W alleges infringes or has infringed any B+W Asserted Claim.

12. “Document” will have the meaning accorded by Rule 34(a) of the Federal Rules of Civil Procedure including, but not limited to, all matters defined in Rule 1001 of the Federal Rules of Evidence, electronic mail or other Communications, and any electronic, written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in which information may be embodied, translated, conveyed, or stored, regardless of form or means of storage. If a draft document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to later notation, each non-identical document is a separate document.

13. “Communication(s)” means any transmission of information, including, without limitation, oral or written communications of any kind, such as electronic communications, direct communications through social media (including without limitation direct messaging, instant messaging, chatting, or emailing within a social media platform), facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or other conversations or communications.

14. “Identify” or “Identity” as used in these interrogatories about a document will mean to set forth (a) its nature or type (e.g., letter, memorandum, report, invoice, bill of lading, etc.); (b) its date; (c) its author(s), including every person who prepared any portion of the document; (d) its addressee(s) and all recipients of a copy; (e) its title and general subject matter; (f) the present location and custodian of the original and each non-identical copy thereof, or, if unknown, the last known location and custodian of each; and (g) its Bates number wherever possible. When used in these interrogatories with respect to a natural person, “Identify” or “Identity” will mean to set forth his or her (a) full name, together with any known aliases or nicknames; (b) present address or, if unknown, the last known address and the date when such person is last known or believed to have resided at that address; (c) present known business and residence telephone number or, if unknown, the last known business and residence telephone number and date when such person is last known or believed to have had that telephone number; and (d) the present known employer, employment position or title and business address or, if unknown, the last known information in each of these respects. When used in these interrogatories about an entity, “Identify” or “Identity” will mean to set forth its (a) full name; (b) a description of the type of entity (e.g., corporation, partnership, unincorporated association, etc.); and (c) its present or last known business address and telephone number.

15. “And” and “or” are to be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. “Including” shall be construed to mean “including, but not limited to,” or “including, without limitation,” so that the request for production shall acquire the broadest possible meaning. Likewise, “includes” is to be construed to mean “includes, but is not limited to,” or “includes, without limitation.”

17. “Referred to,” “referring to,” “refer to,” “related to,” “relating to,” or “relate to,” means, without limitation, assessing, comprising, concerning, constituting, containing, describing, discussing, embodying, evidencing, identifying, pertaining to, reflecting, stating, supporting, or tending to support or refute, or referring in any other way, directly or indirectly, in whole or in part, to the subject matter specified.

18. “Person” or “Persons” means any individuals, proprietorships, partnerships, limited liability companies, firms, private corporations, public corporations, municipal corporations, associations, institutions, governments (including foreign national governments, the government of the United States, or any state or local government), all departments and agencies thereof, and any governmental agencies of any country, political subdivisions, groups, or other organizations or entities. The term includes any and all of that person’s or persons’ predecessors, successors, assigns, personal representatives, agents, attorneys, and heirs, whether by operation of law or otherwise. Finally, unless otherwise stated, the term also includes any employees, agents, or representatives of any of the foregoing and any other individuals or entities mentioned in these Definitions and Instructions.

19. “Describe” means, in addition to its usual and customary meaning, providing the Identity of all Persons with knowledge of the information sought in the interrogatory and the Identity of all Documents referring, regarding, or relating to the information sought in the interrogatory.

20. “Prior Art” means the subject matter described in 35 U.S.C. §§ 102 and 103, including without limitation all patents, patent applications, printed publications, documents, things, activities, including public uses, disclosures, sales, or offers to sell, or any other information described in 35 U.S.C. §§ 102 and 103 that could relate to the validity of the Patent-In-Suit.

21. The use of the singular form of any word includes the plural and vice versa.

22. The definition of each term defined above is to be used regardless of capitalization.

INSTRUCTIONS

1. Any term not specifically defined herein shall be defined in accordance with the Federal Rules of Civil Procedure.

2. If Nestlé finds the meaning of any term in B+W’s Topics for Examination or other discovery requests unclear, then Nestlé shall construe the term so as to render responsive any information, Document, or Thing that might otherwise be rendered non-responsive.

3. B+W’s Topics for Examination and other discovery requests seek all responsive information, Documents, and Things that are known or available to Nestlé or within Nestlé’s actual or legal possession, custody, or control.

4. B+W’s Topics for Examination and other discovery requests seek information, Documents, and Things as of the date hereof and to the full extent allowed by the Federal and Local rules, including without limitation all responsive information, Documents, and Things acquired or identified by Nestlé up to and including the date(s) of testimony.

5. B+W's Topics for Examination and other discovery requests are continuing. Therefore, Nestlé promptly shall produce to B+W, as supplemental responses to B+W's Topics for Examination and other discovery requests, any additional information, Documents, or Things that Nestlé identifies, acquires, or becomes aware of up to and including the time of the close of discovery in this litigation.

6. If Nestlé objects to any part of a Topic for Examination and refuses to answer it, then Nestlé shall state its complete objection and all bases therefor, and also shall provide a complete answer to the remaining portion of that Topic for Examination during the deposition.

7. If Nestlé objects to a Topic for Examination or other discovery request as vague or ambiguous in language, then Nestlé shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as interpreted in accordance with these Instructions. Nestlé shall include in its response a specific statement identifying the particular words, terms, or phrases that it asserts render the request objectionable and specifying the meaning actually attributed by Nestlé to such words, terms, or phrases for the purpose of responding thereto.

8. If Nestlé objects to a Topic for Examination as overly broad or unduly burdensome in scope, in time period, or for any other reason, then Nestlé shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as narrowed to the least extent necessary to render it not objectionable in Nestlé's opinion.

9. If the answer to any Topic for Examination is "none," or if a section of a Topic for Examination or other discovery request is not applicable to Nestlé's business, then Nestlé shall so indicate.

10. If, after exercising due diligence to make inquiries and secure necessary information, Nestlé cannot answer a Topic for Examination fully and completely, then Nestlé shall

so state. Additionally, Nestlé shall be prepared to provide the following in response to each such Topic for Examination: (a) an answer to the Topic for Examination or request to the fullest extent possible; (b) an explanation specifying the portion of the Topic for Examination or request that Nestlé claims it is unable to answer fully and completely; (c) a statement of the facts upon which Nestlé relies to support its contention that it is unable to answer fully and completely; and (d) a statement specifying what knowledge, information, and belief Nestlé has concerning the unanswered portion of the Topic for Examination or request.

11. If Nestlé's response to any Topic for Examination is qualified in any respect, Nestlé shall be prepared to explain the details of and reasons for each such qualification.

TOPICS FOR EXAMINATION

1. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the creation and development of the Accused Products, including but not limited to, the time(s) when research and/or development began and ended, the creation, development and testing process, the Identity of the individuals involved in the creation and development and their responsibilities (including employees, ex-employees, agents, outside contractors, and other third-parties), and any code names or internal designation for any of the Accused Products.

2. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the manufacturing of any and all portions of the Accused Products, including but not limited to, when manufacturing began, the specific factual details of any processes used to manufacture the Accused Products, the division of labor between You and any third-party in terms of manufacturing the Accused Products, the details and nature of that process, the Identity of the individuals involved in the manufacturing of the Accused Products and their responsibilities (including employees, ex-employees, agents, outside

contractors, and other third-parties), and any code names or internal designation for the manufacturing of any of the Accused Products.

3. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any and all efforts to monetize the Accused Products, including but not limited to, the marketing, pricing, negotiating, selling, and economics of the Accused Products, and the Identity of the individuals involved in the same.

4. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any intellectual property that Nestlé contends covers any of the Accused Products or the processes or steps used to make or manufacture any of the Accused Products, and the Identity of the individuals involved in procuring and maintaining any such intellectual property.

5. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the '422 Patent, Your knowledge of it, and when You first became aware of it, Your efforts to design around it, and the Identity of the individuals involved in the foregoing.

6. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into B+W, including your interactions and discussions with B+W, the Identity of the individuals involved in the foregoing, and any code names or internal designations for B+W.

7. Any and all systems You use to store emails and other electronic documents, including the Identity of such system(s), the Identity of the manufacturer(s) of such system(s), the Identity of those involved in maintaining such system(s), any document retention policies, an

Identification of the server(s) that emails are stored on and how that determination is made, and an

Identification of the server(s) that document(s) are stored on and how that determination is made.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via email on January 21, 2025 to all counsel of record.

/s/ Eleanor Ross

Eleanor Ross

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., Fuji Seal International, Inc.,

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF BROOK + WHITTLE LTD'S
AMENDED NOTICE OF DEPOSITION OF DEFENDANT
FUJI SEAL INTERNATIONAL, INC. PURSUANT TO DKT. 28**

Pursuant to Paragraph 7 of the E-Discovery Order (Dkt. 28) and Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Brook + Whittle LTD (“B+W”) by and through its undersigned counsel, will take the deposition of Defendant Fuji Seal International, Inc. (“Fuji” or “Defendant”) through one or more of its officers, directors, managing agents, or other designated persons who consent to testify on its behalf for the purpose of “identify[ing] the proper custodians, proper search terms, and proper time frame for e-mail production requests.” Dkt. 28, ¶ 7. The deposition will take place at 9:00 a.m. on March 4, 2025, at Miller Fair Henry PLLC, 1507 Bill Owens Parkway, Longview, TX 75604, or another mutually agreeable date(s) and location(s).

The deposition will be taken upon oral examination before an official authorized by law to administer oaths, and will be recorded by audio means, audiovisual means such as videographic means, and/or stenographic means, including stenographic means with real-time display of testimony. The deposition will continue from day to day until completed. Testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

Pursuant to Rule 30(b)(6) and paragraph 7 of the E-Discovery Order (Dkt. 28), Fuji shall designate one or more officers, directors, managing agents, or other designated persons who consent to testify on its behalf, to “identify the proper custodians, proper search terms, and proper time frame for e-mail production requests,” the scope of which is defined by the topics identified in Attachment A of this Notice. Dkt. 28, ¶ 7. No later than ten (10) business days before the deposition, please provide a response to this deposition notice identifying, for each topic, the designated witness(es).

B+W may serve subsequent deposition notices on Defendant pursuant to Federal Rule of Civil Procedure 30(b)(6)—and take subsequent depositions of Defendant pursuant to such notices—on additional topics at a later time.

Dated: February 14, 2025

Respectfully submitted,

/s/ Lindsey Y. Shi

Brandon H. Brown, P.C.
California State Bar No. 266347
KIRKLAND & ELLIS LLP
555 California Street, Suite 2700
San Francisco, CA 94104
T: (415) 439-1400
F: (415) 439-1500
bhbrown@kirkland.com

Yimeng Dou (California State Bar No. 285248)
Lindsey Y. Shi (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
T: (213) 680-8400
F: (213) 680-8500
yimeng.dou@kirkland.com
lindsey.shi@kirkland.com

Andrea Fair
Texas State Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400
Fax: (903) 757-2323
andrea@millerfairhenry.com

Attorneys for Plaintiff Brook + Whittle LTD

ATTACHMENT A

DEFINITIONS

The definitions set forth herein have the broadest possible meaning under the Federal Rules of Civil Procedure and Federal Rules of Evidence.

1. “Defendant,” “Fuji,” “You,” and “Your” means and refers to Fuji Seal International, Inc., including, without limitation, all of its corporate locations, and all predecessors, successors, subsidiaries, divisions, parents and/or affiliates thereof, past or present, and all past or present officers, directors, agents, employees, inventors, researchers, scientists, consultants, accountants, attorneys, representatives, partners, joint venturers, and any other person or entity acting on behalf of any of the foregoing.

2. The term “Related Entities” means and includes any entity affiliated with, owned and/or operated and/or controlled by Fuji.

3. “Plaintiff” and/or “B+W” means and includes the Plaintiff named in the Complaint, Plaintiff Brook + Whittle LTD.

4. “This Case” or “This Action” or “This Litigation” refers to the above-captioned action, *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP (E.D. Tex).

5. “Complaint” means the Complaint filed by Plaintiff in the District Court for the Eastern District of Texas on September 8, 2024, styled *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP, and any further or subsequent amendments or supplements thereto.

6. “Patent-In-Suit” or “Asserted Patent” means United States Patent No. 11,961,422 and any patent(s) subsequently added to this case by B+W.

7. “Asserted Claim(s)” refers to any and all claims of any of the Asserted Patents that are asserted in the Complaint or later asserted in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

8. “Practicing Product(s)” refers to any and all B+W products identified as practicing the Asserted Patent in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

9. “Related Application” shall mean any application related to the B+W Patent-in-Suit, including any provisional or non-provisional applications, continuations, continuations-in-part, divisions, interferences, reexaminations, reissues, parents, international (PCT) and foreign counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described or claimed in the B+W Patent-in-Suit, or claiming the benefit of the filing date of any application (foreign or domestic) whose benefit is claimed in the Patent-in-Suit whether or not abandoned and whether or not issued.”

10. “Related Patent” shall mean any patent that has issued from any Related Application, including any patents that may have been opposed, re-examined, re-issued or subjected to any validity or nullity proceeding.

11. “Defendant’s Accused Product(s)” or “Accused Product(s)” means each and every apparatus, product, device, process, method, act, or other instrumentality that B+W alleges infringes or has infringed any B+W Asserted Claim.

12. “Document” will have the meaning accorded by Rule 34(a) of the Federal Rules of Civil Procedure including, but not limited to, all matters defined in Rule 1001 of the Federal Rules of Evidence, electronic mail or other Communications, and any electronic, written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in which information may be embodied, translated, conveyed, or stored, regardless of form or means of storage. If a draft document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to later notation, each non-identical document is a separate document.

13. “Communication(s)” means any transmission of information, including, without limitation, oral or written communications of any kind, such as electronic communications, direct communications through social media (including without limitation direct messaging, instant messaging, chatting, or emailing within a social media platform), facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or other conversations or communications.

14. “Identify” or “Identity” as used in these interrogatories about a document will mean to set forth (a) its nature or type (e.g., letter, memorandum, report, invoice, bill of lading, etc.); (b) its date; (c) its author(s), including every person who prepared any portion of the document; (d) its addressee(s) and all recipients of a copy; (e) its title and general subject matter; (f) the present location and custodian of the original and each non-identical copy thereof, or, if unknown, the last known location and custodian of each; and (g) its Bates number wherever possible. When used in these interrogatories with respect to a natural person, “Identify” or “Identity” will mean to set forth his or her (a) full name, together with any known aliases or nicknames; (b) present address or, if unknown, the last known address and the date when such person is last known or believed to have resided at that address; (c) present known business and residence telephone number or, if unknown, the last known business and residence telephone number and date when such person is last known or believed to have had that telephone number; and (d) the present known employer, employment position or title and business address or, if unknown, the last known information in each of these respects. When used in these interrogatories about an entity, “Identify” or “Identity” will mean to set forth its (a) full name; (b) a description of the type of entity (e.g., corporation, partnership, unincorporated association, etc.); and (c) its present or last known business address and telephone number.

15. “And” and “or” are to be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. “Including” shall be construed to mean “including, but not limited to,” or “including, without limitation,” so that the request for production shall acquire the broadest possible meaning. Likewise, “includes” is to be construed to mean “includes, but is not limited to,” or “includes, without limitation.”

17. “Referred to,” “referring to,” “refer to,” “related to,” “relating to,” or “relate to,” means, without limitation, assessing, comprising, concerning, constituting, containing, describing, discussing, embodying, evidencing, identifying, pertaining to, reflecting, stating, supporting, or tending to support or refute, or referring in any other way, directly or indirectly, in whole or in part, to the subject matter specified.

18. “Person” or “Persons” means any individuals, proprietorships, partnerships, limited liability companies, firms, private corporations, public corporations, municipal corporations, associations, institutions, governments (including foreign national governments, the government of the United States, or any state or local government), all departments and agencies thereof, and any governmental agencies of any country, political subdivisions, groups, or other organizations or entities. The term includes any and all of that person’s or persons’ predecessors, successors, assigns, personal representatives, agents, attorneys, and heirs, whether by operation of law or otherwise. Finally, unless otherwise stated, the term also includes any employees, agents, or representatives of any of the foregoing and any other individuals or entities mentioned in these Definitions and Instructions.

19. “Describe” means, in addition to its usual and customary meaning, providing the Identity of all Persons with knowledge of the information sought in the interrogatory and the Identity of all Documents referring, regarding, or relating to the information sought in the interrogatory.

20. “Prior Art” means the subject matter described in 35 U.S.C. §§ 102 and 103, including without limitation all patents, patent applications, printed publications, documents, things, activities, including public uses, disclosures, sales, or offers to sell, or any other information described in 35 U.S.C. §§ 102 and 103 that could relate to the validity of the Patent-In-Suit.

21. The use of the singular form of any word includes the plural and vice versa.

22. The definition of each term defined above is to be used regardless of capitalization.

INSTRUCTIONS

1. Any term not specifically defined herein shall be defined in accordance with the Federal Rules of Civil Procedure.

2. If Fuji finds the meaning of any term in B+W’s Topics for Examination or other discovery requests unclear, then Fuji shall construe the term so as to render responsive any information, Document, or Thing that might otherwise be rendered non-responsive.

3. B+W’s Topics for Examination and other discovery requests seek all responsive information, Documents, and Things that are known or available to Fuji or within Fuji’s actual or legal possession, custody, or control.

4. B+W’s Topics for Examination and other discovery requests seek information, Documents, and Things as of the date hereof and to the full extent allowed by the Federal and Local rules, including without limitation all responsive information, Documents, and Things acquired or identified by Fuji up to and including the date(s) of testimony.

5. B+W's Topics for Examination and other discovery requests are continuing. Therefore, Fuji promptly shall produce to B+W, as supplemental responses to B+W's Topics for Examination and other discovery requests, any additional information, Documents, or Things that Fuji identifies, acquires, or becomes aware of up to and including the time of the close of discovery in this litigation.

6. If Fuji objects to any part of a Topic for Examination and refuses to answer it, then Fuji shall state its complete objection and all bases therefor, and also shall provide a complete answer to the remaining portion of that Topic for Examination during the deposition.

7. If Fuji objects to a Topic for Examination or other discovery request as vague or ambiguous in language, then Fuji shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as interpreted in accordance with these Instructions. Fuji shall include in its response a specific statement identifying the particular words, terms, or phrases that it asserts render the request objectionable and specifying the meaning actually attributed by Fuji to such words, terms, or phrases for the purpose of responding thereto.

8. If Fuji objects to a Topic for Examination as overly broad or unduly burdensome in scope, in time period, or for any other reason, then Fuji shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as narrowed to the least extent necessary to render it not objectionable in Fuji's opinion.

9. If the answer to any Topic for Examination is "none," or if a section of a Topic for Examination or other discovery request is not applicable to Fuji's business, then Fuji shall so indicate.

10. If, after exercising due diligence to make inquiries and secure necessary information, Fuji cannot answer a Topic for Examination fully and completely, then Fuji shall so

state. Additionally, Fuji shall be prepared to provide the following in response to each such Topic for Examination: (a) an answer to the Topic for Examination or request to the fullest extent possible; (b) an explanation specifying the portion of the Topic for Examination or request that Fuji claims it is unable to answer fully and completely; (c) a statement of the facts upon which Fuji relies to support its contention that it is unable to answer fully and completely; and (d) a statement specifying what knowledge, information, and belief Fuji has concerning the unanswered portion of the Topic for Examination or request.

11. If Fuji's response to any Topic for Examination is qualified in any respect, Fuji shall be prepared to explain the details of and reasons for each such qualification.

TOPICS FOR EXAMINATION

1. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the creation and development of the Accused Products, including but not limited to, the time(s) when research and/or development began and ended, the creation, development and testing process, the Identity of the individuals involved in the creation and development and their responsibilities (including employees, ex-employees, agents, outside contractors, and other third-parties), and any code names or internal designation for any of the Accused Products.

2. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the manufacturing of any and all portions of the Accused Products, including but not limited to, when manufacturing began, the specific factual details of any processes used to manufacture the Accused Products, the division of labor between You and any third-party in terms of manufacturing the Accused Products, the details and nature of that process, the Identity of the individuals involved in the manufacturing of the Accused Products and their responsibilities (including employees, ex-employees, agents, outside contractors, and

other third-parties), and any code names or internal designation for the manufacturing of any of the Accused Products.

3. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any and all efforts to monetize the Accused Products, including but not limited to, the marketing, pricing, negotiating, selling, and economics of the Accused Products, the identity of the primary intended customer(s) for the Accused Products by name and/or industry, pricing strategies for the Accused Products, and the Identity of the individuals involved in the same.

4. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any intellectual property that Fuji contends covers any of the Accused Products or the processes or steps used to make or manufacture any of the Accused Products, and the Identity of the individuals involved in procuring and maintaining any such intellectual property.

5. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the '422 Patent, Your knowledge of it, and when You first became aware of it, Your efforts to design around it, and the Identity of the individuals involved in the foregoing.

6. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into American Fuji Seal, Inc. ("AFS"), including Your control over the same, the nature of Your relationship with AFS, the Identity of all individuals who correspond with AFS, the Identity of all individuals who manage AFS, the role AFS plays in Your business, and the role AFS plays with respect to the Accused Products.

7. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any of your subsidiaries (whether wholly or partially owned) who were involved in any aspect of the designing, making, manufacturing, distributing, marketing, and selling of the Accused Products, including Your control over the same, the nature of Your relationship with each such subsidiary, the Identity of all individuals who correspond with each such subsidiary, the Identity of all individuals who manage each such subsidiary, the role each such subsidiary plays in Your business, and the role each such subsidiary plays with respect to the Accused Products.

8. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any third party with whom you coordinated or otherwise collaborated to design, make, manufacture, distribute, market, and/or sell any aspect of the Accused Products, including Your control over the same, the nature of Your relationship with each such third party, the Identity of all individuals who correspond with each such third party, the Identity of all individuals who manage each such third party, the role each such third party plays in Your business, and the role each such third party plays with respect to the Accused Products.

9. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into B+W, including your interactions and discussions with B+W, the Identity of the individuals involved in the foregoing, and any code names or internal designations for B+W.

10. Any and all systems You use to store emails and other electronic documents, including the Identity of such system(s), the Identity of the manufacturer(s) of such system(s), the Identity of those involved in maintaining such system(s), any document retention policies, an

Identification of the server(s) that emails are stored on and how that determination is made, and an

Identification of the server(s) that document(s) are stored on and how that determination is made.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via email on February 14, 2025 to all counsel of record.

/s/ Eleanor Ross

Eleanor Ross

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., Fuji Seal International, Inc.,

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF BROOK + WHITTLE LTD'S
AMENDED NOTICE OF DEPOSITION OF DEFENDANT NESTLÉ USA, INC.
PURSUANT TO DKT. 28**

Pursuant to Paragraph 7 of the E-Discovery Order (Dkt. 28) and Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Brook + Whittle LTD (“B+W”) by and through its undersigned counsel, will take the deposition of Defendant Nestlé USA, Inc. (“Nestlé” or “Defendant”) through one or more of its officers, directors, managing agents, or other designated persons who consent to testify on its behalf for the purpose of “identify[ing] the proper custodians, proper search terms, and proper time frame for e-mail production requests.” Dkt. 28, ¶ 7. The deposition will take place at 9:00 a.m. on March 5, 2025, at Miller Fair Henry PLLC, 1507 Bill Owens Parkway, Longview, TX 75604, or another mutually agreeable date(s) and location(s).

The deposition will be taken upon oral examination before an official authorized by law to administer oaths, and will be recorded by audio means, audiovisual means such as videographic means, and/or stenographic means, including stenographic means with real-time display of testimony. The deposition will continue from day to day until completed. Testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

Pursuant to Rule 30(b)(6) and paragraph 7 of the E-Discovery Order (Dkt. 28), Nestlé shall designate one or more officers, directors, managing agents, or other designated persons who consent to testify on its behalf, to “identify the proper custodians, proper search terms, and proper time frame for e-mail production requests,” the scope of which is defined by the topics identified in Attachment A of this Notice. Dkt. 28, ¶ 7. No later than ten (10) business days before the deposition, please provide a response to this deposition notice identifying, for each topic, the designated witness(es).

B+W may serve subsequent deposition notices on Defendant pursuant to Federal Rule of Civil Procedure 30(b)(6)—and take subsequent depositions of Defendant pursuant to such notices—on additional topics at a later time.

Dated: February 14, 2025

Respectfully submitted,

/s/ Lindsey Y. Shi

Brandon H. Brown, P.C.
California State Bar No. 266347
KIRKLAND & ELLIS LLP
555 California Street, Suite 2700
San Francisco, CA 94104
T: (415) 439-1400
F: (415) 439-1500
bhbrown@kirkland.com

Yimeng Dou (California State Bar No. 285248)
Lindsey Y. Shi (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
T: (213) 680-8400
F: (213) 680-8500
yimeng.dou@kirkland.com
lindsey.shi@kirkland.com

Andrea Fair
Texas State Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400
Fax: (903) 757-2323
andrea@millerfairhenry.com

Attorneys for Plaintiff Brook + Whittle LTD

ATTACHMENT A

DEFINITIONS

The definitions set forth herein have the broadest possible meaning under the Federal Rules of Civil Procedure and Federal Rules of Evidence.

1. “Defendant” “You,” and “Your” means and refers to Nestlé USA, Inc., including, without limitation, all of its corporate locations, and all predecessors, successors, subsidiaries, divisions, parents and/or affiliates thereof, past or present, and all past or present officers, directors, agents, employees, inventors, researchers, scientists, consultants, accountants, attorneys, representatives, partners, joint venturers, and any other person or entity acting on behalf of any of the foregoing.

2. The term “Related Entities” means and includes any entity affiliated with, owned and/or operated and/or controlled by Nestlé USA, Inc.

3. “Plaintiff” and/or “B+W” means and includes the Plaintiff named in the Complaint, Brook + Whittle LTD.

4. “This Case” or “This Action” or “This Litigation” refers to the above-captioned action, *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP (E.D. Tex).

5. “Complaint” means the Complaint filed by Plaintiff in the District Court for the Eastern District of Texas on September 8, 2024, styled *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP, and any further or subsequent amendments or supplements thereto.

6. “Patent-In-Suit” or “Asserted Patent” means United States Patent No. 11,961,422 and any patent(s) subsequently added to this case by B+W.

7. “Asserted Claim(s)” refers to any and all claims of any of the Asserted Patents that are asserted in the Complaint or later asserted in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

8. “Practicing Product(s)” refers to any and all B+W products identified as practicing the Asserted Patent in B+W’s infringement contentions pursuant to Local Patent Rule 3-1.

9. “Related Application” shall mean any application related to the B+W Patent-in-Suit, including any provisional or non-provisional applications, continuations, continuations-in-part, divisions, interferences, reexaminations, reissues, parents, international (PCT) and foreign counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described or claimed in the B+W Patent-in-Suit, or claiming the benefit of the filing date of any application (foreign or domestic) whose benefit is claimed in the Patent-in-Suit whether or not abandoned and whether or not issued.”

10. “Related Patent” shall mean any patent that has issued from any Related Application, including any patents that may have been opposed, re-examined, re-issued or subjected to any validity or nullity proceeding.

11. “Defendant’s Accused Product(s)” or “Accused Product(s)” means each and every apparatus, product, device, process, method, act, or other instrumentality that B+W alleges infringes or has infringed any B+W Asserted Claim.

12. “Document” will have the meaning accorded by Rule 34(a) of the Federal Rules of Civil Procedure including, but not limited to, all matters defined in Rule 1001 of the Federal Rules of Evidence, electronic mail or other Communications, and any electronic, written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in which information may be embodied, translated, conveyed, or stored, regardless of form or means of storage. If a draft document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to later notation, each non-identical document is a separate document.

13. “Communication(s)” means any transmission of information, including, without limitation, oral or written communications of any kind, such as electronic communications, direct communications through social media (including without limitation direct messaging, instant messaging, chatting, or emailing within a social media platform), facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or other conversations or communications.

14. “Identify” or “Identity” as used in these interrogatories about a document will mean to set forth (a) its nature or type (e.g., letter, memorandum, report, invoice, bill of lading, etc.); (b) its date; (c) its author(s), including every person who prepared any portion of the document; (d) its addressee(s) and all recipients of a copy; (e) its title and general subject matter; (f) the present location and custodian of the original and each non-identical copy thereof, or, if unknown, the last known location and custodian of each; and (g) its Bates number wherever possible. When used in these interrogatories with respect to a natural person, “Identify” or “Identity” will mean to set forth his or her (a) full name, together with any known aliases or nicknames; (b) present address or, if unknown, the last known address and the date when such person is last known or believed to have resided at that address; (c) present known business and residence telephone number or, if unknown, the last known business and residence telephone number and date when such person is last known or believed to have had that telephone number; and (d) the present known employer, employment position or title and business address or, if unknown, the last known information in each of these respects. When used in these interrogatories about an entity, “Identify” or “Identity” will mean to set forth its (a) full name; (b) a description of the type of entity (e.g., corporation, partnership, unincorporated association, etc.); and (c) its present or last known business address and telephone number.

15. “And” and “or” are to be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. “Including” shall be construed to mean “including, but not limited to,” or “including, without limitation,” so that the request for production shall acquire the broadest possible meaning. Likewise, “includes” is to be construed to mean “includes, but is not limited to,” or “includes, without limitation.”

17. “Referred to,” “referring to,” “refer to,” “related to,” “relating to,” or “relate to,” means, without limitation, assessing, comprising, concerning, constituting, containing, describing, discussing, embodying, evidencing, identifying, pertaining to, reflecting, stating, supporting, or tending to support or refute, or referring in any other way, directly or indirectly, in whole or in part, to the subject matter specified.

18. “Person” or “Persons” means any individuals, proprietorships, partnerships, limited liability companies, firms, private corporations, public corporations, municipal corporations, associations, institutions, governments (including foreign national governments, the government of the United States, or any state or local government), all departments and agencies thereof, and any governmental agencies of any country, political subdivisions, groups, or other organizations or entities. The term includes any and all of that person’s or persons’ predecessors, successors, assigns, personal representatives, agents, attorneys, and heirs, whether by operation of law or otherwise. Finally, unless otherwise stated, the term also includes any employees, agents, or representatives of any of the foregoing and any other individuals or entities mentioned in these Definitions and Instructions.

19. “Describe” means, in addition to its usual and customary meaning, providing the Identity of all Persons with knowledge of the information sought in the interrogatory and the Identity of all Documents referring, regarding, or relating to the information sought in the interrogatory.

20. “Prior Art” means the subject matter described in 35 U.S.C. §§ 102 and 103, including without limitation all patents, patent applications, printed publications, documents, things, activities, including public uses, disclosures, sales, or offers to sell, or any other information described in 35 U.S.C. §§ 102 and 103 that could relate to the validity of the Patent-In-Suit.

21. The use of the singular form of any word includes the plural and vice versa.

22. The definition of each term defined above is to be used regardless of capitalization.

INSTRUCTIONS

1. Any term not specifically defined herein shall be defined in accordance with the Federal Rules of Civil Procedure.

2. If Nestlé finds the meaning of any term in B+W’s Topics for Examination or other discovery requests unclear, then Nestlé shall construe the term so as to render responsive any information, Document, or Thing that might otherwise be rendered non-responsive.

3. B+W’s Topics for Examination and other discovery requests seek all responsive information, Documents, and Things that are known or available to Nestlé or within Nestlé’s actual or legal possession, custody, or control.

4. B+W’s Topics for Examination and other discovery requests seek information, Documents, and Things as of the date hereof and to the full extent allowed by the Federal and Local rules, including without limitation all responsive information, Documents, and Things acquired or identified by Nestlé up to and including the date(s) of testimony.

5. B+W's Topics for Examination and other discovery requests are continuing. Therefore, Nestlé promptly shall produce to B+W, as supplemental responses to B+W's Topics for Examination and other discovery requests, any additional information, Documents, or Things that Nestlé identifies, acquires, or becomes aware of up to and including the time of the close of discovery in this litigation.

6. If Nestlé objects to any part of a Topic for Examination and refuses to answer it, then Nestlé shall state its complete objection and all bases therefor, and also shall provide a complete answer to the remaining portion of that Topic for Examination during the deposition.

7. If Nestlé objects to a Topic for Examination or other discovery request as vague or ambiguous in language, then Nestlé shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as interpreted in accordance with these Instructions. Nestlé shall include in its response a specific statement identifying the particular words, terms, or phrases that it asserts render the request objectionable and specifying the meaning actually attributed by Nestlé to such words, terms, or phrases for the purpose of responding thereto.

8. If Nestlé objects to a Topic for Examination as overly broad or unduly burdensome in scope, in time period, or for any other reason, then Nestlé shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as narrowed to the least extent necessary to render it not objectionable in Nestlé's opinion.

9. If the answer to any Topic for Examination is "none," or if a section of a Topic for Examination or other discovery request is not applicable to Nestlé's business, then Nestlé shall so indicate.

10. If, after exercising due diligence to make inquiries and secure necessary information, Nestlé cannot answer a Topic for Examination fully and completely, then Nestlé shall

so state. Additionally, Nestlé shall be prepared to provide the following in response to each such Topic for Examination: (a) an answer to the Topic for Examination or request to the fullest extent possible; (b) an explanation specifying the portion of the Topic for Examination or request that Nestlé claims it is unable to answer fully and completely; (c) a statement of the facts upon which Nestlé relies to support its contention that it is unable to answer fully and completely; and (d) a statement specifying what knowledge, information, and belief Nestlé has concerning the unanswered portion of the Topic for Examination or request.

11. If Nestlé's response to any Topic for Examination is qualified in any respect, Nestlé shall be prepared to explain the details of and reasons for each such qualification.

TOPICS FOR EXAMINATION

1. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the creation and development of the Accused Products, including but not limited to, the time(s) when research and/or development began and ended, the creation, development and testing process, the Identity of the individuals involved in the creation and development and their responsibilities (including employees, ex-employees, agents, outside contractors, and other third-parties), and any code names or internal designation for any of the Accused Products.

2. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the manufacturing of any and all portions of the Accused Products, including but not limited to, when manufacturing began, the specific factual details of any processes used to manufacture the Accused Products, the division of labor between You and any third-party in terms of manufacturing the Accused Products, the details and nature of that process, the Identity of the individuals involved in the manufacturing of the Accused Products and their responsibilities (including employees, ex-employees, agents, outside

contractors, and other third-parties), and any code names or internal designation for the manufacturing of any of the Accused Products.

3. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any and all efforts to monetize the Accused Products, including but not limited to, the marketing, pricing, negotiating, selling, and economics of the Accused Products, and the Identity of the individuals involved in the same.

4. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any intellectual property that Nestlé contends covers any of the Accused Products or the processes or steps used to make or manufacture any of the Accused Products, and the Identity of the individuals involved in procuring and maintaining any such intellectual property.

5. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the '422 Patent, Your knowledge of it, and when You first became aware of it, Your efforts to design around it, and the Identity of the individuals involved in the foregoing.

6. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into B+W, including your interactions and discussions with B+W, the Identity of the individuals involved in the foregoing, and any code names or internal designations for B+W.

7. Any and all systems You use to store emails and other electronic documents, including the Identity of such system(s), the Identity of the manufacturer(s) of such system(s), the Identity of those involved in maintaining such system(s), any document retention policies, an

Identification of the server(s) that emails are stored on and how that determination is made, and an

Identification of the server(s) that document(s) are stored on and how that determination is made.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via email on February 14, 2025 to all counsel of record.

/s/ Eleanor Ross

Eleanor Ross

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., and
Fuji Seal International, Inc.,

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

**DEFENDANTS NESTLÉ USA, INC.'S AND FUJI SEAL INTERNATIONAL, INC.'S
NOTICE OF DEPOSITION OF PLAINTIFF BROOK + WHITTLE LTD
PURSUANT TO DKT. 28**

Pursuant to Paragraph 7 of the E-Discovery Order (Dkt. 28) and Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Defendants Nestlé USA, Inc. and Fuji Seal International, Inc., by and through their undersigned counsel, will take the deposition of Plaintiff Brook + Whittle LTD ("B+W" or "Plaintiff") through one or more of its officers, directors, managing agents, or other designated persons who consent to testify on its behalf for the purpose of "identify[ing] the proper custodians, proper search terms, and proper time frame for e-mail production requests." Dkt. 28, ¶ 7. The deposition(s) will take place at 9:00 a.m. EDT on July 30, 2025, via remote video conference, or another mutually agreeable date(s) and location(s).

The deposition will be taken upon oral examination before an official authorized by law to administer oaths, and will be recorded by audio means, audiovisual means such as videographic means, and/or stenographic means, including stenographic means with real-time display of testimony. The deposition will continue day to day until completed. Testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

B+W shall designate one or more officers, directors, managing agents, or other designated persons who consent to testify on its behalf for the Topics for Examination identified in Attachment A. Dkt. 28, ¶ 7. Please identify the designated witness(es) for each topic in Attachment A no later than five business days before the deposition. Defendants may serve subsequent deposition notices on B+W pursuant to Federal Rule of Civil Procedure 30(b)(6)—and take subsequent depositions of B+W pursuant to such notices—on additional topics at a later time.

Dated: July 16, 2025

Respectfully submitted,

/s/ John F. Bennett

John F. Bennett – Lead Attorney
Ohio Bar No. 00074506
FROST BROWN TODD LLP
3300 Great American Tower
301 East Fourth Street
Cincinnati, OH 45202
T: (513) 651-6423
F: (513) 651-6981
jbennett@fbtlaw.com

Amy E. LaValle
Texas State Bar No. 24040529
FROST BROWN TODD LLP
2101 Cedar Springs Road, Suite 900
Dallas, TX 75201
T: (214) 545-3472
F: (214) 545-3473
alavalle@fbtlaw.com

Melissa R. Smith
Texas State Bar No. 24001351
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
T: (903) 934-8450
F: (903) 934-9257
melissa@gillamsmithlaw.com

*Attorneys for Defendants
Fuji Seal International, Inc. and Nestlé USA, Inc.*

ATTACHMENT A

DEFINITIONS

The definitions set forth herein have the broadest possible meaning under the Federal Rules of Civil Procedure and Federal Rules of Evidence.

1. "Plaintiff," "B+W," "You," and "Your" means and refers to Brook + Whittle LTD, including, without limitation, all of its corporate locations, and all predecessors, successors, subsidiaries, divisions, parents and/or affiliates thereof, past or present, and all past or present officers, directors, agents, employees, inventors, researchers, scientists, consultants, accountants, attorneys, representatives, partners, joint venturers, and any other person or entity acting on behalf of any of the foregoing.

2. The term "Related Entities" means and includes any entity affiliated with, owned and/or operated and/or controlled by B+W.

3. "Defendants" means and includes the Defendants named in the Complaint, Nestlé USA, Inc., and Fuji Seal International, Inc.

4. "This Case" or "This Action" or "This Litigation" refers to the above-captioned action, *Brook + Whittle LTD v. Nestlé USA, Inc., et al.*, No. 2:24-cv-00735-JRG-RSP (E.D. Tex).

5. "Complaint" means the Complaint filed by Plaintiff in the District Court for the Eastern District of Texas on September 8, 2024, styled *Brook + Whittle LTD v. Nestlé USA, Inc.*, No. 2:24-cv-00735-JRG-RSP, and any further or subsequent amendments or supplements thereto.

6. "Patent-In-Suit" or "Asserted Patent" means United States Patent No. 11,961,422 and any patent(s) subsequently added to this case by B+W.

7. "Asserted Claim(s)" refers to any and all claims of the Asserted Patent that are asserted in the Complaint or later asserted in B+W's infringement contentions pursuant to Local

Patent Rule 3-1, and any further or subsequent amendments or supplements thereto.

8. "Covered Product(s)" means any and all products or processes, whether made, used, sold, or offered for sale by B+W or by any third party, that B+W contends, believes, or has ever asserted (formally or informally) practice one or more claims of the Asserted Patent. This includes, without limitation, any and all B+W products identified as practicing the Asserted Patent in B+W's infringement contentions pursuant to Local Patent Rule 3-1, and all products that B+W has licensed to practice one or more claims of the Asserted Patent.

9. "Related Application(s)" shall mean any application(s) related to the Patent-in-Suit, including any provisional or non-provisional applications, continuations, continuations-in-part, divisions, interferences, reexaminations, reissues, parents, international (PCT) and foreign counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described or claimed in the Patent-in-Suit, or claiming the benefit of the filing date of any application (foreign or domestic) whose benefit is claimed in the Patent-in-Suit whether or not abandoned and whether or not issued.

10. "Related Patent" shall mean any patent that has issued from any Related Application, including any patents that may have been opposed, reexamined, reissued or subjected to any validity or nullity proceeding.

11. "Accused Product(s)" means each and every apparatus, product, device, process, method, act, or other instrumentality that B+W alleges infringes or has infringed any B+W Asserted Claim.

12. "Document" will have the meaning accorded by Rule 34(a) of the Federal Rules of Civil Procedure including, but not limited to, all matters defined in Rule 1001 of the Federal Rules of Evidence, electronic mail or other Communications, and any electronic, written, printed, typed,

recorded, magnetic, punched, copied, graphic, or other tangible thing in which information may be embodied, translated, conveyed, or stored, regardless of form or means of storage. If a draft document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to later notation, each non-identical document is a separate document.

13. "Communication(s)" means any transmission of information, including, without limitation, oral or written communications of any kind, such as electronic communications, direct communications through social media (including without limitation direct messaging, instant messaging, chatting, or emailing within a social media platform), facsimiles, telephone communications, correspondence, exchange of written or recorded information, face-to-face meetings, or other conversations or communications.

14. "Identify" or "Identity" as used in these deposition topics about a document will mean to set forth (a) its nature or type (e.g., letter, memorandum, report, invoice, bill of lading, etc.); (b) its date; (c) its author(s), including every person who prepared any portion of the document; (d) its addressee(s) and all recipients of a copy; (e) its title and general subject matter; (f) the present location and custodian of the original and each non-identical copy thereof, or, if unknown, the last known location and custodian of each; and (g) its Bates number wherever possible. When used in these deposition topics with respect to a natural person, "Identify" or "Identity" will mean to set forth his or her (a) full name, together with any known aliases or nicknames; (b) present address or, if unknown, the last known address and the date when such person is last known or believed to have resided at that address; (c) present known business and residence telephone number or, if unknown, the last known business and residence telephone number and date when such person is last known or believed to have had that telephone number; and (d) the present known employer, employment position or title and business address or, if unknown, the last known information in each of these respects. When used

in these deposition topics about an entity, "Identify" or "Identity" will mean to set forth its (a) full name; (b) a description of the type of entity (e.g., corporation, partnership, unincorporated association, etc.); and (c) its present or last known business address and telephone number.

15. "And" and "or" are to be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. "Including" shall be construed to mean "including, but not limited to," or "including, without limitation," so that the request for production shall acquire the broadest possible meaning. Likewise, "includes" is to be construed to mean "includes, but is not limited to," or "includes, without limitation."

17. "Referred to," "referring to," "refer to," "related to," "relating to," or "relate to," means, without limitation, assessing, comprising, concerning, constituting, containing, describing, discussing, embodying, evidencing, identifying, pertaining to, reflecting, stating, supporting, or tending to support or refute, or referring in any other way, directly or indirectly, in whole or in part, to the subject matter specified.

18. "Person" or "Persons" means any individuals, proprietorships, partnerships, limited liability companies, firms, private corporations, public corporations, municipal corporations, associations, institutions, governments (including foreign national governments, the government of the United States, or any state or local government), all departments and agencies thereof, and any governmental agencies of any country, political subdivisions, groups, or other organizations or entities. The term includes any and all of that person's or persons' predecessors, successors, assigns, personal representatives, agents, attorneys, and heirs, whether by operation of law or otherwise. Finally, unless otherwise stated, the term also includes any employees, agents, or representatives of

any of the foregoing and any other individuals or entities mentioned in these Definitions and Instructions.

19. "Describe" means, in addition to its usual and customary meaning, providing the Identity of all Persons with knowledge of the information sought in the topic and the Identity of all Documents referring, regarding, or relating to the information sought in the topic.

20. "Prior Art" means the subject matter described in 35 U.S.C. §§ 102 and 103, including without limitation all patents, patent applications, printed publications, documents, things, activities, including public uses, disclosures, sales, or offers to sell, or any other information described in 35 U.S.C. §§ 102 and 103 that could relate to the validity of the Patent-In-Suit.

21. The use of the singular form of any word includes the plural and vice versa.

22. The definition of each term defined above is to be used regardless of capitalization.

INSTRUCTIONS

1. Any term not specifically defined herein shall be defined in accordance with the Federal Rules of Civil Procedure.

2. If B+W finds the meaning of any term in Defendants' Topics for Examination or other discovery requests unclear, then B+W shall construe the term so as to render responsive any information that might otherwise be rendered non-responsive.

3. Defendants' Topics for Examination and other discovery requests seek all responsive information that is known or available to B+W or within B+W's actual or legal possession, custody, or control.

4. Defendants' Topics for Examination and other discovery requests seek information, Documents, and Things as of the date hereof and to the full extent allowed by the Federal and

Local rules, including without limitation all responsive information, Documents, and Things acquired or identified by B+W up to and including the date(s) of testimony.

5. Defendants' Topics for Examination are continuing. Therefore, B+W promptly shall produce to Defendants, as supplemental responses to B+W's Topics for Examination and other discovery requests, any additional information, Documents, or Things that B+W identifies, acquires, or becomes aware of up to and including the time of the close of discovery in this litigation.

6. If B+W objects to any part of a Topic for Examination and refuses to answer it, then B+W shall state its complete objection and all bases therefor and also shall provide a complete answer to the remaining portion of that Topic for Examination during the deposition.

7. If B+W objects to a Topic for Examination or other discovery request as vague or ambiguous in language, then B+W shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as interpreted in accordance with these Instructions. B+W shall include in its response a specific statement identifying the particular words, terms, or phrases that it asserts render the request objectionable and specifying the meaning actually attributed by B+W to such words, terms, or phrases for the purpose of responding thereto.

8. If B+W objects to a Topic for Examination as overly broad or unduly burdensome in scope, in time period, or for any other reason, then B+W shall state its complete objection and all bases therefor, and also shall respond to the Topic for Examination as narrowed to the least extent necessary to render it not objectionable in B+W's opinion.

9. If the answer to any Topic for Examination is "none," or if a section of a Topic for Examination or other discovery request is not applicable to B+W's business, then B+W shall so indicate.

10. If, after exercising due diligence to make inquiries and secure necessary information, B+W cannot answer a Topic for Examination fully and completely, then B+W shall so state. Additionally, B+W shall be prepared to provide the following in response to each such Topic for Examination: (a) an answer to the Topic for Examination or request to the fullest extent possible; (b) an explanation specifying the portion of the Topic for Examination or request that B+W claims it is unable to answer fully and completely; (c) a statement of the facts upon which B+W relies to support its contention that it is unable to answer fully and completely; and (d) a statement specifying what knowledge, information, and belief B+W has concerning the unanswered portion of the Topic for Examination or request.

11. If B+W's response to any Topic for Examination is qualified in any respect, B+W shall be prepared to explain the details of and reasons for each such qualification.

TOPICS FOR EXAMINATION

1. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any evaluation and analysis of the Accused Products, including but not limited to any technical testing, reverse engineering, or other methodologies used to perform such evaluation and analysis, including the Identity of all persons who participated in such evaluation and analysis, and including but not limited to comparisons of the Accused Products to the Asserted Patent, correspondence concerning the Accused Products, awareness of the Accused Products, correspondence concerning assertions of the Asserted Patent against Defendants, and how the foregoing information was determined.

2. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the research, design, manufacture, distribution, public disclosure, marketing, offers for sale and/or sale of any aspect of the Covered Product(s),

including but not limited to, the time(s) when said research, design, make, manufacture, distribution, public disclosure, marketing, offers for sale and/or sale began and ended for each Covered Product, the research, design, manufacture, distribution, public disclosure, marketing, offers for sale and/or sale for each Covered Product, the actual and intended customers of each Covered Product, the Identity of the individuals involved in the research, design, manufacture, distribution, public disclosure, marketing, offers for sale and/or sale for each Covered Product and their responsibilities (including employees, ex-employees, agents, outside contractors, and other third parties), any code names, technical terms, abbreviations and internal designations for each of the Covered Product(s), and how the foregoing information was determined.

3. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any and all efforts to monetize the Covered Products, including but not limited to, the marketing, pricing, negotiating, selling, offers for sale, sales projections, and economics of the Covered Products, the first disclosure of each Covered Product to anyone outside of the entity making the disclosure, the first offer for sale and first sale of each Covered Product, the testing of each Covered Product, technical terms, abbreviations, internal references and code names used to reference each Covered Product for these purposes, and how the foregoing information was determined.

4. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the Asserted Patent and all Related Patents, including but not limited to, for each claim of the Asserted Patent and all Related Patents the conception of the subject matter, for each claim of the Asserted Patent and all Related Patents the reduction to practice of the subject matter, the actual and potential inventorship of and all decisions, disputes, disagreements, and inquiries concerning inventorship of the Asserted Patent and any Related

Patents, the decision to claim priority for each claim of the Asserted Patent to any earlier filed patent applications and the detailed reasoning for doing so, all evaluations, opinions, submissions, determinations, analysis, inquiries or correspondence concerning enablement, enforceability, invalidity, patentability and written description of each claim of the Asserted Patent and the Related Patents, all prior art to the Asserted Patent and the Related Patents, and how the foregoing information was determined.

5. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into competitive analysis, market research, licensing and enforcement regarding the Covered Products, the Asserted Patent, and Related Patents, including but not limited to analysis of products that compete or have competed with the Covered Products, the market share of every Covered Product and every product that competes with the Covered Products, the market share of every company that sells Covered Products and products that compete with the Covered Products, agreements (formal and informal) licensing the Asserted Patent and Related Patents and terms of such licensing, offers to license the Asserted Patent and Related Patents and terms of such offers to license, inquiries regarding the licensing of the Asserted Patent and Related Patents and terms of such licensing inquiries, negotiations of the licensing of the Asserted Patent and Related Patents and terms of such licensing negotiations, efforts to license the Asserted Patent and Related Patents, efforts to enforce the Asserted Patent and Related Patents, the potential filing of a lawsuit against Defendants for alleged patent infringement, the potential filing of a lawsuit against any entity or person not party to this litigation for alleged patent infringement, consideration sent and received under any aforementioned agreements and licenses, comparisons of any product not accused in this lawsuit to the Asserted Patent and Related Patents,

formal and informal analysis concerning alleged infringement of the Asserted Patent and Related Patents and how the foregoing information was determined.

6. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any intellectual property that B+W contends covers any of the Covered Products or the processes or steps used to make or manufacture any of the Covered Products, the Identity of the individuals involved in procuring and maintaining any such intellectual property, and how the foregoing information was determined.

7. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the marking of any and all portions of the Covered Product(s) and failure to mark products practicing one or more claims of the Asserted Patent, including but not limited to, when marking began, the specific factual details of any processes used to mark the Covered Products, the division of labor between You and any third party in terms of marking the Covered Products, the details and nature of that process, the Identity of the individuals involved in the marking of the Covered Product(s) and their responsibilities (including employees, ex-employees, agents, outside contractors, and other third parties), any code names or internal designation for the marking of any of the Covered Product(s), and how the foregoing information was determined.

8. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any of your subsidiaries (whether wholly or partially owned) who were involved in any aspect of the designing, making, manufacturing, distributing, marketing, and selling of the Covered Products, and any aspect of the alleged conception, reduction to practice and prosecution of the Asserted Patent and Related Patents, including Your control over the same, the nature of Your relationship with each such subsidiary, the Identity of all individuals

who correspond with each such subsidiary, the Identity of all individuals who manage each such subsidiary, the role each such subsidiary plays in Your business, the role each such subsidiary plays with respect to the Covered Products and how the foregoing information was determined.

9. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into any third party with whom you coordinated or otherwise collaborated to research, design, make, manufacture, distribute, market, and/or sell any aspect of the Covered Products, including Your control over the same, the nature of Your relationship with each such third party, the Identity of all individuals who correspond with each such third party, the Identity of all individuals who manage each such third party, the role each such third party plays in Your business, the role each such third party plays with respect to the Covered Products and how the foregoing information was determined.

10. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into Defendants, including your interactions and discussions with Defendants and American Fuji Seal, Inc., the Identity of the individuals involved in the foregoing, and any code names or internal designations for Defendants and American Fuji Seal, Inc. and how the foregoing information was determined.

11. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into communications with third parties, including your interactions and discussions with any third party regarding the above captioned case, the Defendants, American Fuji Seal, Inc., and the Asserted Patent and how the foregoing information was determined.

12. The proper custodians, proper search terms, and proper time frame for e-mail production requests regarding discovery into the ownership of, and the right to assert, the Asserted

Patent and any Related Patents, including but not limited to documents and communications related to the chain of title, any disputes, disagreements, or changes in inventorship, and any agreements, assignments, or exclusive licensing arrangements affecting enforcement rights, and how the foregoing information was determined.

13. The Identity and operation of any and all systems You use or have used to create, modify, communicate, or store emails and other electronic documents, including but not limited to: (a) email systems (e.g., Microsoft Exchange, Google Workspace); (b) cloud storage platforms (e.g., OneDrive, Google Drive, Dropbox, Box); (c) collaboration and instant messaging platforms (e.g., Slack, Microsoft Teams, Google Chat); (d) mobile devices used for company business; (e) backup systems and archived data stores; and (f) any other third-party hosted systems or services. This topic further includes the Identity of the custodians and administrators for each system, the physical or logical location of the data stored on each system, any related document creation, modification, or retention policies, and how the foregoing information was determined.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via email on July 16, 2025, to all counsel of record.

/s/ Derek Freitas

Derek Freitas

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., Fuji Seal International, Inc.,

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF BROOK + WHITTLE LTD'S
NOTICE OF DEPOSITION OF ROBSON F. STOREY, PH.D.**

Pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, Plaintiff Brook + Whittle LTD (“B+W”) by and through its undersigned counsel, will take the deposition of Defendants’ Nestlé USA, Inc. and Fuji Seal International, Inc.’s technical expert, Robson F. Storey, Ph.D. The deposition will take place at 9:00 a.m. Pacific Time on September 16, 2025 by remote video means, or another mutually agreeable date(s) and location(s).

The deposition will be taken upon oral examination before an official authorized by law to administer oaths, and will be recorded by audio means, audiovisual means such as videographic means, and/or stenographic means, including stenographic means with real-time display of testimony. The deposition will continue from day to day until completed. Testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

B+W may serve subsequent deposition notices on Dr. Storey pursuant to Federal Rule of Civil Procedure 30—and take subsequent depositions of Dr. Storey pursuant to such notices—on additional topics at a later time.

Dated: September 3, 2025

Respectfully submitted,

/s/ Lindsey Y. Shi

Brandon H. Brown, P.C.
California State Bar No. 266347
KIRKLAND & ELLIS LLP
555 California Street, Suite 2700
San Francisco, CA 94104
T: (415) 439-1400
F: (415) 439-1500
bhbrown@kirkland.com

Yimeng Dou (admitted pro hac vice)
California State Bar No. 285248
KIRKLAND & ELLIS LLP
695 Town Center Drive, Suite 1700
Costa Mesa, CA 92626
T: (714) 982-8822
yimeng.dou@kirkland.com

Lindsey Shi (admitted pro hac vice)
California State Bar No. 305144
Kirkland & Ellis LLP
2049 Century Park East, Suite 3700
Los Angeles, CA 90067
Telephone: (310) 552-4200
lindsey.shi@kirkland.com

Jeffrey Jacobsen
California State Bar No. 345203
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
jeffrey.jacobsen@kirkland.com

Andrea Fair
Texas State Bar No. 24078488
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400
Fax: (903) 757-2323
andrea@millerfairhenry.com

Attorneys for Plaintiff Brook + Whittle LTD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via email on September 3, 2025 to all counsel of record.

/s/ Alice Pai
Alice Pai