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## LATHAM & WATKINS<sup>LLP</sup>

July 18, 2008

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave, N.W.  
Washington, DC 20580

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Re: Petition by Mohawk and DuPont to Establish a New Generic Subclass  
Matter No. P074201

Dear Secretary Clark:

Our firm represents INVISTA S.a.r.l. I am submitting a supplementary comment by INVISTA in response to a statement filed by Mohawk and DuPont on May 2, 2008. This statement contains extensive new analysis regarding testing methodology and results. The Commission and the public would benefit from further comment. Although the statement is dated May 2, 2008, it was not placed on the public record until several weeks later. Thus, INVISTA's comments is still timely and we respectfully request that the Commission consider it.

Sincerely,



Edward Correia  
of LATHAM & WATKINS LLP



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**Re: 16 CFR Part 303 – Textile Rule 8  
Mohawk, DuPont and PTT Petition, Matter No. P074201**

Dear Sirs:

INVISTA S.à r.l. (“INVISTA”) is writing in reply to the Petitioners’ Response filed on May 2, 2008. There are a number of clarifications which are required in light of the Response filed by Petitioners.

1. The Petitioners claim that 48 comments are filed in support of the Petition from entities “who have no business reason to favor PTT over PET.” Response at pp. 1, 9. INVISTA does not agree with the contention that retail carpet dealers have no financial interest in the outcome of the Petition. Retail carpet dealers have the most basic of business reasons to support the Petition. If the PTT carpet labels do not identify the underlying fiber as what it is, namely polyester, those carpet dealers can more successfully price the carpets to retail consumers at price points which are higher than the price points for polyester carpet by claiming that the performance of PTT versus PET warrants this premium. In addition, certain supporters claim that they and their customers have had positive experiences with PTT carpets. However, a main point of INVISTA’s Opposition is that the PTT carpets will experience the same long-term wear problems as standard PET carpets, but these wear problems often take 3-5 years to manifest. Carpets made with PTT have not been installed in commercially meaningful quantities long enough for these dealers to have had relevant feedback on the long-term durability of PTT carpets.<sup>1</sup>

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<sup>1</sup> INVISTA notes that there are over 40,000 retail carpet outlets in North America such that .1% of them have filed in support of the Petition. In addition, the one “independent testing laboratory” is a Georgia entity with commercial ties to one of the Petitioners, and that entity offers the Commission not testing data, but only their “opinion.”

2. The Petitioners have identified a chart buried in the STAINMASTER® carpet website which tends to suggest dissimilar durability performance between carpets constructed with PTT and PET fibers. INVISTA notes that this lone document was not a prominent feature of the website, and indeed required in-depth links to locate. Upon review of the chart, INVISTA also notes that the cells relied upon by the Petitioner were last updated two and half years ago when the early PTT carpets were constructed and styled for best performance. However, since that time, the construction and styling of PTT carpets has been made commercially available in a very broad range of styles, such that the average performance of the current broad PTT offerings will be poorer than the average performance of the fewer product styles that were available a couple of years ago. In addition, INVISTA notes that in the past two and half years, the PET BCF carpets which have become commercially available are of better quality and construction, which again suggests that in today's current commercial environment, PET and PTT carpets perform in a converging, rather than diverging, manner. In any event, INVISTA found the information on the chart to be currently unreliable and has removed it from the STAINMASTER® carpet website.

3. The Petitioners suggest that they used the "heavy" ball in their Hexapod Wear testing, which is the method "advocated by Invista." Response at p. 12. This is not the case. INVISTA advocates use of the Vettermann Drum test, which is different than the Hexapod Wear test and which is a more rugged test than the Hexapod Wear test. While the Hexapod Wear test has recently moved to a lighter ball and while INVISTA will accept Petitioners' contention that their Hexapod Wear testing was done with the heavier ball, the fact remains that the Vettermann Drum testing uses a different apparatus and a ball which better duplicates the damage produced in carpets by foot traffic than does either of the Hexapod Wear balls. Petitioners do not claim that the Hexapod Wear test is as rigorous as the Vettermann Drum test. Thus, the Commission should rely upon the results of the Vettermann Drum test submitted by INVISTA, which show results that PTT carpets do not provide significantly greater durability than PET carpets of the same weight and construction. In addition, as INVISTA established in its Opposition, even using the less rigorous Hexapod Wear test apparatus, the Petitioners' results were insufficiently conclusive to establish that consumers would be able to tell the difference between the wear of a PTT carpet from a PET carpet after actual in-home use. And, when subjected to more rigorous durability testing, PTT carpets showed results which tended to converge with PET carpets rather than with carpets containing nylon fibers, which consistently tend to show greater durability in heavy-duty wear testing.

4. The Petitioners continue to assert that the deflection of strands of PTT and PET fibers constitute a meaningful test of softness in a carpet. As noted in INVISTA's Opposition, softness of a carpet involves what the Petitioners refuse to acknowledge—how the carpet feels to the hand. The Response includes no survey data suggesting that carpets made from PTT fibers feel softer to carpet consumers, nor does the Response explain why a PET fiber could not be constructed to feel as soft in a carpet application as a PTT fiber would feel in a carpet. In fact, soft-feeling PET BCF carpets are now in the carpet market. The Petitioners' assertion at p. 13 of their Response that they did not include

hand testing data because of this Commission's "requirements" lacks credibility. Fiber construction is simply one example of the way that a fiber might be distinguished from other generic fiber categories. But certainly, how a fiber feels to the hands of actual consumers in a final product can be surveyed in statistically and scientifically acceptable ways. Petitioners chose not to submit survey data which would suggest that PTT fibers can be constructed to make carpets which feel softer than can PET fibers which are designed with that same characteristic goal.

5. Finally, the Petitioners' stretch and recovery arguments continue to lack consumer context. The Petitioners fail to establish that the amount of stretch required to deform a PET fabric, but which would not deform a PTT fabric, has any bearing to either the amount of force or the amount of stretch which a consumer would place upon a garment at a natural deflection point. In addition, fabric properties are determined by a large number of factors, not simply filament properties. The Petitioners fail to eliminate the reasonable probability that a fabric could not be constructed with PET fibers in a manner to achieve acceptable stretch/recovery properties expected in a hard fiber garment. It is INVISTA's contention that a fabric with similar stretch and recovery properties can be constructed out of PET and PTT fibers. Again, the differences at the consumer level are not experienced because of any unique physical properties of the fiber, but because of the way that the fibers have been constructed into fabrics and garments—in that case, PET and PTT are not meaningfully differentiated.

The Petition should be denied. If granted, the Petitioners, in their Response, have withdrawn their request to use the proposed generic names "resisoft" or "durares" and so neither of those generic terms should remain under consideration.

Respectfully submitted,



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