

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MOTHER, LLC,

Plaintiff,

v.

L. L. BEAN, Inc.,

Defendant.

NO. C06-5540JKA

ORDER GRANTING IN PART

L. L. BEAN'S MOTION FOR

SANCTIONS AND TO COMPEL

Pursuant to Fed. R. Civ. P. 37 and CR 37, the defendant, L. L. Bean, Inc. ("L. L. Bean"), has moved for discovery sanctions against the plaintiff, Mother, LLC ("Mother"), based on assertions that Mother has violated the Federal Rules of Civil Procedure and this Court's September 25, 2006, Minute Order Regarding Discovery and Depositions (the "Minute Order"), and to compel additional deposition testimony from Martin Grabijas ("Grabijas"), Mother's President.

The court has considered all materials submitted in support of and in response to this motion as well as the files and records herein, and makes the following:

FINDINGS OF FACT

Plaintiff has committed the following violations of the Federal Rules of Civil Procedure and the directives of the court as follows:

1. Mother has failed to produce electronically stored information responsive to L. L. Bean's document requests numbers 14, 22, and 23 in violation of Fed. R. Civ. P. 34;
2. Mother's counsel improperly instructed Grabijas not to answer questions regarding Mother's business relationship with The Orvis Company ("Orvis") in violation of Fed. R. Civ. P. 30 and the Minute Order;
3. Mother's counsel improperly impeded and delayed the examination of Grabijas at his deposition by interposing excessive and unnecessary objections to questions posed by L. L. Bean's counsel in violation of Fed. R. Civ. P. 30 and the Minute Order; and
4. Mother's counsel improperly terminated the deposition of Grabijas before seven hours of deposition time had expired in violation of Fed. R. Civ. P. 30.

Accordingly, the court enters the following:

CONCLUSIONS OF LAW

For these violations of the Federal Rules of Civil Procedure and this Court's Minute Order, L. L. Bean is entitled to relief under Fed. R. Civ. P. 37. Further, pursuant to Fed. R. Civ. P. 37(a)(4), L. L. Bean is entitled to an award of its reasonable expenses in making its motion for discovery sanctions and to compel, including attorneys' fees.

Accordingly, the Court ORDERS as follows

1. Mother shall produce all electronically stored information regarding its finances (including sales, financial statement data, and data relating to its claimed damages) that Mother has not already produced; said production shall be completed on or before April 16, 2007;
2. Mother shall make Grabijas available for a continuation of his deposition for a period of three hours of deposition time (*i.e.*, three hours of questioning on the record), at the offices of L. L. Bean's general counsel at 184 Main Street, Lewiston, Maine 04240, at a time and date to be agreed between the parties before the close of discovery. Mother

shall bear all expenses of the continued deposition, including court reporter and transcript costs;

3. At Grabijas' continued deposition, Mother's counsel shall not make any objections to questions posed by L. L. Bean's counsel without asserting a recognized privilege, or seeking a protective order from the court;

4. Mother shall pay the reasonable expenses, including attorneys' fees, incurred by L. L. Bean in bringing its motion for discovery sanctions and to compel. To that end, L. L. Bean shall, within fourteen days of the date of this order, provide Mother a schedule of the reasonable expenses incurred in bringing that motion with appropriate supporting documentation. Mother shall, within fourteen days of receiving that information, file with the Court a declaration of counsel that Mother has paid L. L. Bean's expenses, or file an appropriate motion explaining why some or all of the expenses sought by L. L. Bean are not reasonable; in this regard it should be noted that the defendant has not prevailed on the issue of communications with attorney Darren Jones and the issue of defendant's inquiries regarding Orvis.

Dated: April 6, 2007

/s/ J. Kelley Arnold

Honorable J. Kelley Arnold
Chief United States Magistrate Judge