

1 District Court for the Eastern District of Pennsylvania. Given the serious issues raised in that
 2 motion, the Court should, at a minimum, defer Mr. Slavitt's admission until the district court in
 3 Pennsylvania rules.

4 Furthermore, Mr. Slavitt appears to have violated RCW 2.48.180(2)(a) of the Washington
 5 State Bar Act, with his July 2 correspondence wherein he asserted that "Pepper Hamilton
 6 represents the defendants in the above-referenced matter" — despite the fact that no attorney in
 7 that firm is admitted to practice before this Court. Notably, Warren Rheume of Davis Wright
 8 Tremaine has already appeared for the defendants (*see* Dkt. No. 7) and, accordingly, there is no
 9 basis not to defer consideration of the requests to appear *pro hac vice* pending a decision on the
 10 motion to disqualify.

11 **II. FACTUAL BACKGROUND**

12 This action is a civil action arising under: (a) the United States Trademark Act of 1946, as
 13 amended, 15 U.S.C. § 1051, *et seq.* ("Lanham Act"); (b) the Racketeer Influenced And Corrupt
 14 Organization Act, 28 U.S.C. § 1964 *et seq.* ("RICO"); and (c) RCW 19.86, for unfair competition
 15 and false advertising. *See* Amended Complaint (Dkt. No. 4). Defendants are presently subject to
 16 suit in another matter pending in the Eastern District of Pennsylvania where, as here, their
 17 manufacture, importation, distribution and sale of misbranded hand knitting yarns is alleged.
 18 Declaration of Robert J. Guite ("Guite Decl."), Ex. A. Mr. Slavitt and his firm represent the
 19 Defendants in that action. The undersigned is associated as counsel for plaintiff in that action.
 20 *Id.* On July 9, plaintiff in that matter filed a motion to disqualify Mr. Slavitt and his firm based
 21 on a conflict of interest among the numerous parties he purports to represent.¹ *Id.*, Ex. B.

22 By email of July 2, 2010, Mr. Slavitt wrote to the undersigned stating that "Pepper
 23 Hamilton represents the defendants in the above-referenced matter." The matter referenced above

24 ¹ Mr. Slavitt had defended Knitting Fever in that action, alleging that "it was a victim too" [of the
 25 foreign suppliers]. Only after defaults were entered against the foreign suppliers did Mr. Slavitt
 26 modify his appearance before the court so that it was also on the foreign suppliers' behalf. Guite
 Decl., Ex. B.

1 was identified as “Cascade Yarns v. Knitting Fever, Inc. et al.; W.D. Wash. Civil Action No.
 2 2:10-cv-00861-RSM.” Guite Decl., Ex. C. Mr. Slavitt did not indicate that defendants would be
 3 retaining local counsel or that any attorneys in his firm were admitted in Washington. Given that
 4 Mr. Slavitt is not admitted to practice in Washington or before this Court, he could not properly
 5 represent defendants in this matter. Following receipt of Mr. Slavitt’s correspondence, Cascade
 6 confirmed (via review of the Pepper Hamilton website and the WSBA website) that no one with
 7 the law firm of Pepper Hamilton was admitted to practice before this Court. *Id.* Further, Mr.
 8 Slavitt made no representation in his correspondence that Defendants were seeking to retain local
 9 counsel. *Id.* Not only was no lawyer at Pepper Hamilton licensed as a member of the WSBA,
 10 none of the APR 8 exceptions to unauthorized practice of law existed. *See* RCW 2.48 *et seq.*, and
 11 APR 8. Understandably, Cascade’s counsel did not want to encourage or acquiesce to the
 12 unauthorized practice of law in Washington. *Id.*; RCW 2.48.180(2)(a). Such conduct would be
 13 inconsistent with the rules of this Court.

14 After having already having engaged in the unauthorized practice of law, the applications
 15 of Mr. Slavitt and Ms. McInerney were filed via the CM/ECF system on Friday, July 9, 2010.
 16 Dkt Nos. 14 and 15. The applications were granted by the clerk on the next court day, July 12, as
 17 provided in General Rule 2(d) before Cascade had the opportunity to respond. Dkt. Nos. 16 and
 18 17. Cascade promptly files this response to preclude Mr. Slavitt and Ms. McInerney from
 19 appearing in this matter and notes it for consideration on the first available hearing date pursuant
 20 to LR 7(d).

21 **III. DISCUSSION**

22 **A. Denying A Request For Counsel To Appear *Pro Hac Vice* Is Within The** 23 **Sound Discretion Of This Court**

24 General Rule 2(d) grants the court discretion in determining whether or not to allow a
 25 motion for leave to appear *pro hac vice*. The rule derives, in part, from 28 U.S.C. § 1654, which
 26 provides that “[i]n all courts of the United States the parties may plead and conduct their own

1 cases personally or by counsel as, by the rules of such courts, respectively, are permitted to
2 manage and conduct causes therein.” “Admission before the Bar traditionally has been
3 considered primarily and initially subject to control by the admitting court and this control is
4 subject to review only by reason of abuse of discretion or constitutional infirmities in the exercise
5 of the control.” *Panzardi-Alvarez v. United States*, 879 F.2d 975, 980 (1st Cir. 1989); *see also*
6 *Frazier v. Heebe*, 482 U.S. 641, 651 n.13 (1987) (noting that “the decision on whether to grant
7 *pro hac vice* status to an out-of-state attorney is purely discretionary”).

8 The discretion to deny *pro hac vice* admission has been exercised in a variety of
9 situations: conflicts of interest, *D.H. Overmyer Co. v. Robson*, 750 F.2d 31 (6th Cir. 1984),
10 appearances of impropriety, *Fred Weber, Inc. v. Shell Oil Co.*, 566 F.2d 602 (8th Cir. 1977), and
11 unlawyerlike conduct, *Thomas v. Cassidy*, 249 F.2d 91 (4th Cir. 1957). *See also United States v.*
12 *Panzardi Alvarez*, 816 F.2d 813, 817 (1st Cir. 1987) (recognizing that a court may in its
13 discretion deny *pro hac vice* application because of unethical conduct). In determining whether a
14 request to appear *pro hac vice* should be denied, the court may properly consider evidence of past
15 behavior in other matters. *See Pease v. Little Sprouts Day Care*, 679 F. Supp. 2d 161, 165 (D.
16 Mass. 2010) (citing *Kohlmayer v. National R.R. Passenger Corp.*, 124 F. Supp. 2d 877, 879-80
17 (D.N.J. 2000).

18 Here, the allegations raised in the pending motion to disqualify — which arise from Mr.
19 Slavitt’s representation of the same defendants he wishes to represent in this matter — evince the
20 potential appearance of impropriety and/or conflict of interest that properly results in the denial of
21 requests to appear *pro hac vice*. *See, e.g., D.H. Overmyer Co.*, 750 F.2d at 33; *Fred Weber, Inc.*,
22 566 F.2d at 605. Given that Defendants presently have counsel of record, there would be no
23 prejudice to Defendants to deny the instant applications or to defer them pending a decision on
24 the motion to disqualify. Simply put, this Court has discretion to regulate the admission to
25 practice before it and should do so in this circumstance.

1 **IV. CONCLUSION**

2 This Court should decline, or defer, the requests of Mr. Slavitt and Ms. McNerney to
3 appear *pro hac vice* given the facts alleged in the pending motion to disqualify. Similarly, Mr.
4 Slavitt's assertion that he represented Defendants in this matter (where neither he nor any
5 member of his firm are been admitted to practice) evinces a disregard of the rules of the
6 admission to practice before this Court and warrants denial of their requests to participate.

7 SQUIRE, SANDERS & DEMPSEY L.L.P.
8 Dated: July 15, 2010

9 By: /s/ Robert J. Guite
10 Robert J. Guite, WSBA No. 25753

11 Attorneys for Plaintiff
12 CASCADE YARNS, INC.

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