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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington
corporation,

Plaintiff,

v.

KNITTING FEVER, INC., a New York
corporation, et al.,

Defendant.

CASE NO. C10-861RSM

ORDER ON MOTIONS TO STRIKE

This matter is before the Court for consideration of two motions to strike filed by the parties in relation to the pending motion for a preliminary injunction. Oral argument on the motion is scheduled for Wednesday, September 29, 2010, and the Court issues this Order on the motion to strike at this time so the parties may prepare for the hearing. The parties' motions shall be addressed separately.

I. Plaintiff's Motion to Strike Declarations (Dkt. # 42)

Plaintiff has moved to strike two declarations filed in support of defendants' opposition to the motion for a preliminary injunction, the Declaration of Joshua Slavitt (Dkt. # 39), and the

1 Declaration of Sion Elalouf (Dkt. #40). Plaintiff contends that the declarations should be
2 stricken both because they are unsworn and not in compliance with 28 U.S.C. § 1746, and
3 because they purport to present expert testimony by witnesses who are not qualified as experts.
4 Defendants have responded to the first objection by submitting substitute declarations which are
5 made “under penalty of perjury” as required. Dkt. # 49. However, these substitute declarations
6 still represent improper expert testimony by witnesses who have not been designated nor
7 qualified as experts. Nowhere does Mr. Elalouf state his qualification for his “understandings”
8 regarding fiber analysis set forth in his declaration. Further, the declaration is limited to yarns
9 sold by KFI to The Knit With, which appears to be only a small portion of the allegations in the
10 Amended Complaint, specifically addressed to allegations of wire fraud. *See*, Amended
11 Complaint, Dkt. # 4, ¶ 118(b)(4). As to the Declaration of Joshua Slavitt, counsel may state that
12 the copies of trade journals and webpages which he presents are true and correct copies, but he
13 cannot testify to the truthfulness or accuracy of the opinions expressed therein. In the absence
14 of a supporting expert declaration, these documents represent unauthenticated hearsay.

15 Plaintiff’s motion to strike the Declarations of Sion Elalouf and Joshua Slavitt is
16 accordingly GRANTED as to both the original and substitute declarations, and these declarations
17 (Dkt. ## 39, 40, 49) are accordingly STRICKEN.

18 II. Defendant KFI’s Motion to Strike (Dkt. # 50)

19 Defendant has moved to strike new arguments raised in the reply brief, together with
20 “over 100 pages of new evidence.” Defendant’s Surreply, Dkt. # 50. Defendant has not clearly
21 identified the “new argument” nor segregated out which of the one hundred pages of exhibits are
22 objectionable. The Court therefore declines to strike the material, but will allow defendant to file
23 a supplemental response so that the Court has the benefit of a complete presentation of the
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1 issues. Defendant KFI's motion to strike is accordingly DENIED as to striking the argument but
2 GRANTED as to the request for leave to file a supplemental response. Such response, limited to
3 six pages, shall be filed on or before Monday, September 27, 2010.

4 Dated September 21, 2010.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
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