

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DYSON, INC.

CIVIL ACTION

VERSUS

NO: 07-9633

ORECK CORPORATION, *ET AL.*

SECTION: R(4)

ORDER AND REASONS

Before the Court is Oreck's Motion for Leave to File Reply Memorandum in Support of its Motion for Partial Summary Judgment. Oreck's proposed reply memorandum asserts that Dyson's breach of settlement agreement claims based on the XL 21 commercials are barred by *res judicata*. Oreck's proposed reply memorandum thus seeks to raise a new defense that could have been (but was not) raised on at least four prior occasions: (a) in support of Oreck's first motion for partial summary judgment; (b) in opposition to Dyson's motion for partial summary judgment; (c) in supplemental briefing following oral argument on July 8, 2009; and (d) in support of Oreck's motion for clarification, or in the alternative, reconsideration of the Court's order dated August 14, 2009. Each of these motions concerned the XL 21 commercials, and each has now been decided. (See R. Doc. 89, 189, 230.) Independently, Oreck's proposed reply inappropriately seeks to make new substantive arguments that could have been (but were not) raised in its opening memorandum in support of its second motion for partial summary judgment. See, e.g., *Haywood v.*

Tribeca Lending Corp., 307 F. App'x 869, 871 n.2 (5th Cir. 2009);
Linbrugger v. Abercia, 363 F.3d 537, 541 (5th Cir. 2004).

Lastly, Oreck's new arguments were sufficiently addressed and rejected by the Court in its opinion of March 4, 2009. (See R. Doc. 89 at 6 ("Because Dyson's current claims could not have been brought in the previous lawsuit, *res judicata* is not implicated.")) Accordingly, Oreck's Motion is DENIED for the reasons stated, and Oreck's reply memorandum (see R. Doc. 257) is stricken from the record.

New Orleans, Louisiana, this 9th day of October, 2009.

A handwritten signature in cursive script that reads "Sarah S. Vance". The signature is written in black ink and is positioned above a horizontal line.

SARAH S. VANCE

UNITED STATES DISTRICT JUDGE