

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION

9
10 ZERO MOTORCYCLES, INC., a Delaware
corporation,

11 Plaintiff,

12 vs.

13 PIRELLI & C.S.P.A., an Italian società per
azoni and PIRELLI TYRE S.P.A., an Italian
14 società per azoni,

15 Defendants.

Case No: C 10-01290 SBA

**ORDER DENYING PLAINTIFF'S
MOTION TO OVERRULE
DEFENDANTS'
CONFIDENTIALITY
DESIGNATION AND GRANTING
ALTERNATIVE REQUEST TO
FILE DOCUMENTS UNDER SEAL**

Docket 42, 45

16
17 Plaintiff Zero Motorcycles, Inc., filed the instant declaratory relief action against
18 Defendants Pirelli & C.S.P.A. and Pirelli Tyre S.P.A. (collectively "Defendants") seeking a
19 declaration that its use of the mark "Zero Motorcycles" and Zero-formative marks does not
20 infringe Defendants' trademarks. Although no protective order has been entered by the
21 Court, Defendants agreed to produce certain confidential documents to Plaintiff, provided
22 that it maintained the confidentiality of such documents as "outside counsel only."
23 McCauley Decl. ¶ 3, Dkt. 52. Such documents ostensibly are germane to Plaintiff's
24 opposition to Defendants' motion to dismiss for lack of personal jurisdiction.

25 On February 2, 2011, Plaintiff filed an administrative motion for an order "which
26 either overrules Defendants['] ... confidentiality designation or, pursuant to Civ. L.R. 7-11
27 and 79-5, permits Plaintiff to file [specified documents] under seal....," Pl.'s Adm. Mot. at
28 1, Dkt. 42.

1 Plaintiff describes the documents at issue as:

2 Ex. 1 -- 2007 Pirelli "MIRS" Trademark License Agreement
3 with Pirelli Tire LLC (563-576).

4 Ex. 2 -- 2006 Model Release Form for Sophia Loren's
5 appearance in Los Angeles for "The Calendar" (577-578).

6 Ex. 3 -- 2006 Agreement between Pirelli and photographers
7 relating to shooting of Pirelli's "The Calendar" in California
8 (599-602).

9 Ex. 4 -- 2006 Agreement between Pirelli and Telecom Italia
10 regarding partnership for sponsorship of University of Berkeley
11 laboratory (623-634).

12 Ex. 5 -- 2006 Agreement between Pirelli and production
13 company in Beverly Hills regarding promotional "Pirelli Film"
14 (583-598).

15 Ex. 6 -- 2007 Trademark License Agreement between Pirelli
16 and Mattel, Inc. re use of Pirelli marks on die-cast cars (610-
17 618).

18 Ex. 7 -- 2006 Confidentiality Agreements with Emeryville
19 company and Cupertino company (636-644).

20 Ex. 8 -- Trademark Co-Existence Agreements with two
21 California companies (648-660).

22 Pl.'s Adm. Mot. at 2:6-23. Plaintiff also states that Section I.B.1 of its opposition to
23 Defendants' motion to dismiss, Dkt. 36, should be sealed, as it discusses information
24 contained in the confidential documents. Id. at 2:24-26. Defendants agree that these
25 documents should be filed under seal, but contend that Plaintiff's challenge to their
26 confidentiality designations is procedurally improper. Dkt. 51.

27 The Court agrees that Plaintiff's request to overrule Defendants' confidentiality
28 designation is not properly before the Court. The Court's Standing Orders, which are
attached to the Case Management Scheduling Order For Reassigned Civil Cases, filed July
2, 2010, Dkt. 17, explicitly states that: "**All parties are required to meet and confer
before filing any motion with this court, and to certify that they have complied with
this requirement.**" Yet, Plaintiff never met and conferred with Defendants regarding the
proposed removal of their confidentiality designation *prior to* filing the instant motion. See
McCauley Decl. ¶ 2. On that basis alone, Plaintiff's motion is improper.

1 Moreover, an administrative motion under Local Rule 7-11 is not the proper vehicle
2 for challenging a confidentiality designation. By its express terms, Local Rule 7-11 applies
3 to matters “not otherwise governed by a federal statute, Federal or local rule or standing
4 order of the assigned judge,” such as “motions to exceed applicable page limitations or to
5 file documents under seal, for example.” Civ. L.R. 7-11. It thus is axiomatic that a motion
6 challenging the confidentiality designation of documents disclosed in the course of
7 discovery should have been filed as a noticed discovery motion in accordance with the
8 provisions of Civil Local Rule 7-2, as opposed to an administrative motion under Local
9 Rule 7-11. Since Plaintiff’s challenge to Defendants’ confidentiality designation is not
10 properly before the Court, the Court declines to consider such request at this juncture. See
11 Grove v. Wells Fargo Fin. Cal., Inc., 606 F.3d 577, 582 (9th Cir. 2010) (upholding district
12 court’s denial of motion to tax costs which was not in compliance with the court’s local
13 rules). However, as the parties are in agreement that the documents at issue have been
14 designated as confidential, the Court grants Plaintiff’s alternative request to file said
15 documents under seal. Accordingly,

16 IT IS HEREBY ORDERED THAT:

17 1. Plaintiff’s administrative motion for an order overruling Defendants’
18 confidentiality designation is DENIED without prejudice to refileing said motion in
19 accordance with Civil Local Rule 7-2, after first meeting and conferring with Defendants.

20 2. Plaintiff’s alternative motion for leave to file the aforementioned documents
21 under seal is GRANTED. Plaintiff shall comply with General Order No. 62, which governs
22 the electronic filing of documents under seal.

23 3. This Order terminates Docket 42 and 45.

24 IT IS SO ORDERED.

25 Dated: March 17, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge