

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-60654-CIV-ZLOCH

UTOPIA PROVIDER SYSTEMS, INC.,
a/k/a UTOPIA PROVIDRS SYSTEMS,
INC.,

Plaintiff,

vs.

O R D E RPRO-MED CLINICAL SYSTEMS,
L.L.C., and THOMAS L.
GROSSJUNG,Defendants.

THIS MATTER is before the Court upon Plaintiff Utopia Provider Systems, Inc.'s Motion To Compel (DE 119). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

Plaintiff initiated the above-styled cause alleging that Defendants violated its federally protected copyright in certain materials useful to emergency room physicians and personnel. Presently controlling this action is Plaintiff's Third-Amended Complaint (DE 86). By prior Order (DE 146), the Court declined to exercise jurisdiction over the state law claims asserted in Counts II and III of said Amended Complaint and dismissed the same because they tended to predominate over the federal copyright claim involved herein.

During the course of discovery in this action, Defendant served voluminous documents to Plaintiff in response to its First

Request For Production. Among the thousands of documents produced were marketing materials for a product, the Pro-MED Complement, created by Defendants. At the time this newly discovered product was not at all involved in this litigation. Plaintiff then served a Second Request For Production, seeking to discover additional information about Pro-MED Complement.

Defendant objected to all discovery requests propounded relating to Pro-MED Complement, arguing that the information to be discovered was not related to any Party's claim or defense. Fed. R. Civ. P. 26(b)(2). Plaintiff filed the instant Motion (DE 119), arguing that the information to be discovered is relevant to Count II of its Third Amended Complaint (DE 86). As stated previously, Count II has been dismissed. Information regarding Pro-MED Complement and Defendants' use of the same does not in fact appear relevant to Plaintiff's claim that remains pending in Count I. Therefore, the instant Motion (DE 119) shall be denied.

Because this Motion was filed before the state law claim arguably making the discovery sought relevant, the Court finds that reasonable people could differ as to the appropriateness of the discovery requests resolved herein. Accordingly, no attorney's fees shall be awarded. Fed. R. Civ. P. 37(a)(5)(A)(ii).

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Plaintiff Utopia Provider Systems,

Inc.'s Motion To Compel (DE 119) be and the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 10th day of September, 2008.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record