

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-21221-CIV-ALTONAGA-BROWN

RENEE BLASZKOWSKI, et al.,
individually and on behalf of others
similarly situated,

Plaintiffs,

vs.

MARS, Inc., et al.,

Defendants.

**DEFENDANT THE IAMS COMPANY'S REPLY MEMORANDUM
IN SUPPORT OF ITS MOTION TO SEQUENCE DOCUMENT
PRODUCTION AND TO LIMIT PLAINTIFFS' DOCUMENT REQUESTS AND IAMS'
MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE
DEFENDANT MANUFACTURERS' MOTION TO SEQUENCE DOCUMENT
PRODUCTION AND TO LIMIT DOCUMENT REQUESTS AND REQUEST FOR
ATTORNEYS FEES**

Plaintiffs' Motion to Strike¹ and Opposition² mischaracterize Defendant The Iams Company's ("Iams") Motion to Sequence,³ and disregard the fact that Plaintiffs' counsel specifically rejected Iams' proposed sequencing plan, which ended any further meet and confer obligation on Iams' counsel. Thus, Plaintiffs' Motion to Strike and Opposition fails.

¹ Motion to Strike Defendant Manufacturers' Motion to Sequence Document Production and to Limit Document Requests and Request for Attorneys Fees ("Motion to Strike") (Doc. No. 395).

² Plaintiffs' Response to Defendant Manufacturers' Motion to Sequence Document Production and to Limit Document Requests ("Opposition") (Doc. No. 398).

³ Defendant The Iams Company's ("Iams") Motion to Sequence Document Production and to Limit Plaintiffs' Document Requests (Doc. No. 382) and Memorandum in Support of Defendant The Iams Company's Motion to Sequence Document Production and to Limit Plaintiffs' Document Requests (Doc. No. 383) (collectively, "Motion to Sequence").

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DEFENDANT THE IAMS COMPANY'S REPLY MEMORANDUM IN SUPPORT OF ITS
MOTION TO SEQUENCE DOCUMENT PRODUCTION AND TO LIMIT PLAINTIFFS' DOCUMENT REQUESTS

Under Iams' remedy to Plaintiffs' grossly overbroad document requests, Iams will produce in Phase I significant documents and data relevant to both merits and class certification issues, and will defer the production of other documents until the second phase of discovery. Tailoring discovery in accordance with Iams' plan will keep the parties on track for a class certification hearing in the fall of 2008 and will ensure that the Court addresses class certification "at an early practicable time." Fed. R. Civ. P. 26(c)(1); Washington v. Brown & Williamson Tobacco Corp., 959 F.2d 1566, 1570-71 (11th Cir. 1992). Under Iams' proposed plan, Iams will defer the production of irrelevant and confidential discovery, such as documents relating to class members who are not named Plaintiffs (without a certified class, such discovery is irrelevant), to after the class certification hearing.

Contrary to Plaintiffs' argument (Opposition, pp. 3-7), Iams' proposal to sequence discovery into two distinct phases is not an attempt to draw a rigid line between merits and class certification discovery. Rather, Iams' proposal allows for significant overlap in Phase I between merits-based and class-based discovery. Indeed, Iams has agreed to begin a rolling document production on May 30, 2008 and to commence producing thousands of documents falling within the 12 categories of documents described in its Motion to Sequence (pp. 11-12). The cases cited in Plaintiffs' Opposition (pp. 3-7) -- all addressing bifurcation -- miss the point. Iams' proposal avoids the problems of bifurcated discovery discussed in those cited cases (which exist when merits and class discovery overlap) by setting forth specific types of documents and data Iams should be limited to producing during Phase I.

Further, counsel for Iams has complied with the meet and confer requirements of Fed. R. Civ. P. 26(c) and S.D. Fla. L. R. 7.1(A)(3). Through several communications, including

the May 8, 2008 letter quoted in Plaintiffs' Motion to Strike (pp. 6-7), Plaintiffs' counsel expressly rejected Iams' proposal to sequence discovery, and Plaintiffs' counsel offered no alternative plan. Once Plaintiffs' counsel rejected Iams' plan, Iams complied with its meet and confer obligations. See In re Hot Socket, Inc., No. 6:07-mp-00002-KSJ, 2007 Bankr. LEXIS 4442, at *4-6 (M.D. Fla. Oct. 1, 2007) (explaining that defendant's counsel complied with his meet and confer obligations by calling opposing counsel and faxing caselaw to her). In their Motion to Strike, Plaintiffs confuse Iams' plan to sequence discovery with Iams' specific objections to Plaintiffs' document requests. If the Court grants Iams' Motion to Sequence, then Iams and Plaintiffs will be able to determine which document requests are relevant to Phase I or Phase II. Plaintiffs are not entitled to recover their attorneys' fees or any other sanction because Iams' attempts to resolve this discovery dispute were reasonable and made in good faith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of May, 2008, I electronically filed the foregoing Defendant The Iams Company's Reply Memorandum in Support of Its Motion to Sequence Document Production and to Limit Plaintiffs' Document Requests and Iams' Memorandum in Opposition to Plaintiffs' Motion to Strike Defendant Manufacturers' Motion to Sequence Document Production and to Limit Document Requests and Request for Attorneys Fees with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants:

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