

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,

Plaintiff,

v.

REED ELSEVIER INCORPORATED,
d/b/a LexisNexis, Lexis Nexis Risk & Information
Analytics Group, Inc.,

Defendant.

C.A. No. 06 CA 11370 MLW

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SANCTIONS

Defendant Reed Elsevier Inc. ("Reed") hereby opposes plaintiff Christine Varad's ("Plaintiff" or "Varad") Motion for Sanctions Against the Defendant for Failure to Comply with Court Order to Respond to Plaintiff's Interrogatories ("Motion"). Varad's Motion is baseless and should be denied because Reed has complied fully with this Court's August 1, 2007 order ("Order").

Varad miscasts the Order as an evaluation of each interrogatory and a directive mandating Reed's substantive response to each of them. In fact, the Court's Order addressed only Reed's objection that the Interrogatories were untimely. No substantive evaluation was made by the Court, nor could it have been, as Reed had not responded to any of the interrogatories at that time.¹ Contrary to Varad's present argument, the Court's Order specifically contemplated that Reed might object on other grounds, as the Order states, in part, "[d]efendant shall file responses to the discovery requests, *including any other objections*, within 14 days of the date of this order." See 8/1/07 Order (emphasis added). Reed fully complied with this Court's Order and substantively responded to the interrogatories, including any objections, and served and filed its responses with the Court within the timeframe ordered.

¹ Reed's responses to the interrogatories were not due until August 3, 2007.

If Varad has an issue with any of the specific objections or substantive responses, she is required by the rules, including Local Rules 7.1 and 37.1(A) and Fed. R. Civ. P. 37(d), to confer with Reed. No request for a conference has been made, nor has one taken place. In fact, Varad's Motion fails to contain the required discovery conference certification, and fails to address any specific interrogatory responses which she contends are deficient. These reasons alone dictate denial of Varad's Motion.²

Rather than point to any specific responses, Varad broadly contends that Reed's response(s) are inadequate (and thus sanctionable) because Reed "fails to make complete response [sic] as to all of the other databases [other than Accurint] owned and operated by the Defendant." Motion, p. 2. This exact issue, however, has already been addressed by the parties and the Court, and resulted in denial of Varad's previous motion to compel. See Electronic Order dated 6/21/07. As this Court previously concluded, the information Varad seeks regarding "other databases" is not relevant or likely to lead to the discovery of admissible evidence.

In May, 2007, Varad filed a motion to compel Reed to produce information and documents concerning "any and all LexisNexis databases such as LexisNexis, 'Peoplefinder,'" arguing that such information was relevant to her defamation claim and that Reed's production should not be limited to the Accurint database. [Docket Entry 46, p. 2]. Reed had already produced documents from Seisint and LexisNexis Risk, which documents revealed that only three searches were requested on Varad – and only in the Accurint database – from 2001 through present. Thus, whether Reed owns any other databases is irrelevant to this lawsuit. Reed's

² This is not the first time that Varad has failed to comply with the applicable discovery rules. On at least two other occasions, Varad filed motions without conferring with counsel for Reed [docket entries 40 & 56]. It is disingenuous for Varad to continually seek relief based upon the Rules of Civil Procedure, but ignore those rules to suit her convenience. For example, see Reed's Opposition to Plaintiff's Motion to Join (Plaintiff failed to comply with Local Rule 15.1) [docket entry 57]; the Maine Board of Bar Examiner's Motion to Quash (Plaintiff failed to comply with Rule 45) [docket entry 54]; Reed's Motion to Quash (Plaintiff failed to comply with Rules 33 and 45) [docket entry 58]; and Reed's Response to Plaintiff's First Motion to Compel (Plaintiff failed to serve initial disclosures) [docket entry 40].

position is consistent with Varad's complaint, which cites only information allegedly provided by LexisNexis Risk and Information Analytics Group, Inc. (Reed's purported d/b/a) to Gall & Gall Company, Inc. ("Gall & Gall") and possibly others. The twice amended complaint contains no other allegations regarding any other databases or information, and therefore information concerning other databases is simply not relevant. The Court agreed when it denied Varad's motion to compel. See Electronic Order dated 6/21/07.

In light of these facts, Varad's instant motion does nothing more than seek reconsideration of an issue already decided by this Court. At this juncture, her Motion is inappropriate and is therefore properly denied. See e.g., Davis v. Lehane, 89 F. Supp. 2d 142, 147 (D. Mass. 2000) (noting that a "motion for reconsideration is not an opportunity for a party to improve upon his arguments or try out new arguments; nor is it properly a forum for a party to vent his dissatisfaction with the Court's reasoning") (internal citation omitted).

WHEREFORE, for the reasons stated herein, Reed respectfully requests that this Court (i) deny Varad's Motion, (ii) award Reed, pursuant to Fed. R. Civ. P. 37(B), its reasonable expenses incurred in opposing this Motion, including attorney's fees, and (iii) grant such further relief as this Court deems just and proper. Under the circumstances set forth above, Varad's Motion was not substantially justified, and an award of fees is therefore proper.

Respectfully submitted,
 REED ELSEVIER INC.
 By its attorneys,

/s/ Kristin M. Cataldo
 T. Christopher Donnelly (BBO #129930)
 Kristin M. Cataldo (BBO #654033)
 Donnelly, Conroy & Gelhaar, LLP
 One Beacon Street, 33rd Floor
 Boston, Massachusetts 02108
 (617) 720-2880

Dated: September 10, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2007, I caused a copy of the foregoing to be served on Christine M. Varad, P.O. Box 583, Milton, MA 02186 via first class mail.

/s/ Kristin M. Cataldo
Kristin M. Cataldo