

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM V. AGUIAR, III)
)
)
 v.) C.A. NO. 07-11673-MLW
)
 FLOYD WEBB)

ORDER

May 9, 2008

For the reasons stated in court on May 9, 2008, it is hereby ORDERED that:

1. Defendant Floyd Webb's Motion for Default Judgment is ALLOWED to the extent that it seeks judgment on counterclaims 5 and 6, dealing with trademarks. See Fed. R. Civ. P. 16(f) and 37(b)(2)(A)(vi).

a. Declaratory judgment is ALLOWED in Webb's favor, without prejudice to the possibility of plaintiff William Aguiar's including one or more trademark claims in his next amended complaint.

b. Prior to the assertion of any trademark claims against Webb, counsel for Aguiar shall confer with counsel for Webb to determine if Webb opposes the assertion of such claims.

c. If, without Webb's consent, Aguiar asserts one or more trademark claims against Webb in his Second Amended Complaint, he shall accompany the complaint with a memorandum addressing why such claims have merit and why they should be permitted to be reintroduced despite Aguiar's repeated failures to obey court orders.

2. Pursuant to Federal Rule of Civil Procedure 16(f)(2), unless he demonstrates that it would be unjust to do so under the circumstances, Aguiar shall pay the reasonable expenses, including attorney's fees, incurred because of Aguiar's failures to comply with the March 6, 2008 Scheduling Order.

a. By May 16, 2008, counsel for Webb shall confer with Aguiar's counsel to determine whether an agreed amount of fees and costs can be established. On that date, Webb shall file a request for fees and costs, supported by an affidavit and memorandum.

b. By May 23, 2008, Aguiar shall respond to Webb's request for fees and costs.

c. Any reply to Aguiar's response shall be made by May 30, 2008.

3. Webb's Motion for Default Judgment is otherwise DENIED.

4. By May 23, 2008, Aguiar shall file a Second Amended Complaint and an Amended Answer to Webb's counterclaims.

5. By June 6, 2008, Webb shall file an Answer to Aguiar's Second Amended Complaint.

6. By June 6, 2008, the parties shall file, jointly if possible but individually if necessary, a proposed schedule for the case.

7. A scheduling conference shall be held at 3:00 p.m., on June 12, 2008.

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE