

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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BREATHABLEBABY, LLC,

Case No. 12-CV-0094 (PJS/TNL)

Plaintiff,

v.

ORDER

CROWN CRAFTS, INC., a Delaware  
corporation; and CROWN CRAFTS INFANT  
PRODUCTS, INC., a Delaware corporation,

Defendants.

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Erik G. Swenson, George Washington Jordan, III, and Laura J. Borst, FULBRIGHT & JAWORSKI LLP, for plaintiff.

Joshua P. Gunnemann and Phillip S. McKinney, ROGERS & HARDIN LLP; Ruth A. Rivard and Katherine A. Moerke, LEONARD, STREET AND DEINARD, P.A., for defendants.

This matter is before the Court on the objection of defendants Crown Crafts, Inc. and Crown Crafts Infant Products, Inc. to the May 31, 2013 order of Magistrate Judge Tony N. Leung. ECF No. 90. In that order [ECF No. 89], Judge Leung granted in part and denied in part the motion to compel [ECF No. 56] of plaintiff BreathableBaby, LLC (“BreathableBaby”). The Court has reviewed Judge Leung’s order and finds nothing in it to be “clearly erroneous or . . . contrary to law.” Fed. R. Civ. P. 72(a). The order is therefore adopted.

That said, the Court is concerned that there may be a “mismatch” between the discovery pursued in this case (particularly by BreathableBaby) and the amount at stake in this case. This case is, of course, of great importance to the parties. But, as patent cases go, this is a modest case. The record is not entirely clear, but it appears that the parties’ legal expenses could end up dwarfing the amount that is at stake.

This Court cannot micro-manage discovery from a distance. Judge Leung is much closer to the situation, which is why his discovery orders are reviewed under a highly deferential standard. The Court nevertheless notes that, under Rule 26(b)(2)(C)(iii), Judge Leung has the authority, on his own motion, to “limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if [he] determines that . . . the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.”

Judge Leung may wish to consider whether it would be prudent to temporarily stay the discovery permitted by his May 31, 2013 order and meet with the parties and counsel to review the specific legal costs that have been incurred to date and the specific legal costs that the parties will likely incur in the future. Based on that review, Judge Leung may (or may not) wish to use his authority under Rule 26(b)(2)(C)(iii) to more closely manage the additional discovery sought by BreathableBaby. The Court leaves that question to Judge Leung’s good judgment.

#### ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendants’ objection to Magistrate Judge Tony N. Leung’s order on the motion to compel of plaintiff BreathableBaby, LLC [ECF No. 90] is OVERRULED.
2. The May 31, 2013 order of Judge Leung [ECF No. 89] is ADOPTED.

3. BreathableBaby's motion to compel [ECF No. 56] is GRANTED IN PART and DENIED IN PART, as set forth in Judge Leung's order.

Dated: July 1, 2013

s/Patrick J. Schiltz  
Patrick J. Schiltz  
United States District Judge