

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ELECTRONIC CONTROLS, INC.,

PLAINTIFF,

VS.

CIVIL ACTION NO. 4:07CV46-P-S

AMTEL SECURITY SYSTEMS, INC.,

DEFENDANT.

ORDER

This matter comes before the court upon Plaintiff Electronic Controls, Inc.'s Motion to Strike Defendant's Pretrial Exhibits [107]. After due consideration of the motion and the responses filed thereto, the court finds as follows, to-wit:

Federal Rule of Civil Procedure 37(c)(1) provides in pertinent part: "If a party fails to provide information ... as required by Rule 26(a) ..., the party is not allowed to use that information ... to supply evidence ... at trial, unless the failure was substantially justified or is harmless."

The court concludes that the defendant failed to abide by the discovery rules by (1) failing to disclose what portions of its website it intended to use at trial, especially given that the relevant website information is from the website as it was over four years ago; (2) failing to provide a hard copy to the plaintiff of the portions of the website the defendant intends to use; (3) failing to provide a hard copy of the subject warranty; and (4) failing to provide a hard copy of the catalogue. The court also concludes that the failures to disclose were not substantially justified and that they were not harmless.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Plaintiff Electronic Controls, Inc.'s Motion to Strike Defendant's Pretrial Exhibits [107] is **GRANTED**; accordingly,

(2) Pursuant to Fed. R. Civ. P. 37(c)(1), the defendant is prohibited from offering the subject information at trial.

SO ORDERED this the 28th day of September, A.D., 2009.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE