

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CARSON OPTICAL, INC., *et al.*,

Plaintiffs,

**ORDER**

CV 11-3677 (ARL)

-against-

PRYM CONSUMER USA, INC., *et al.*,

Defendants.  
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**LINDSAY, Magistrate Judge:**

Before the court is plaintiffs' letter motion dated December 19, 2012 for leave to amend its complaints pursuant to Fed. R. Civ. P. 15(a) to (1) consolidate the two complaints against defendants Prym Consumer USA, Inc. ("Pym") and Jo-Ann Stores, Inc. ("Jo-Ann Stores") (collectively "defendants"); (2) drop all counts of patent infringement for U.S. Patent No. D613,437 S ("the '437 Patent") against defendants; and (3) drop the count of tortious interference with prospective business relations against defendant Jo-Ann Stores. In addition, plaintiffs move by letter application to dismiss defendant Prym's Fifth and Sixth Counterclaims with respect to the '437 Patent for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and 12(h)(3). Defendants oppose the application by letter responses dated December 21, 2012.

Plaintiffs' motion to amend its complaint is denied as moot. By Memorandum and Order dated March 25, 2013, this Court granted defendants' motions for partial judgment on the pleadings pursuant to Fed. R. Civ. P. 12 (c) and granted plaintiffs leave to replead within ten days of the date of the Order. On April 16, 2013, plaintiffs timely filed a Second Amended Consolidated Complaint against defendants which consolidated the two complaints against defendants; dropped the counts of patent infringement for the '437 Patent against defendants; and dropped the count of tortious interference with prospective business relations against defendant Jo-Ann Stores.

Plaintiffs' motion to dismiss defendant Prym's Fifth and Sixth Counterclaims is denied, with leave to renew. In moving to dismiss these counterclaims, plaintiffs moved by letter application pursuant to Local Civil Rule 37.3, which provides parties with a mode of raising discovery and other non-dispositive pretrial disputes with the Court via a three-page letter application. Local Civil Rule 37.3 (c) provides in relevant part:

[w]here the attorneys for the affected parties or non-party witness cannot agree on a resolution of any other discovery dispute or non-dispositive pretrial dispute . . . they shall notify the Court by letter not exceeding three pages in length outlining the nature of the dispute and attaching relevant materials.

Local Civil Rule 37(c). Given that plaintiffs' application to dismiss the counterclaims was neither a discovery dispute nor a non-dispositive pretrial dispute, plaintiffs' application was improper. Defendant Prym's request for sanctions is denied.

Dated: Central Islip, New York  
May 2, 2013

**SO ORDERED:**

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ARLENE R. LINDSAY  
United States Magistrate Judge