

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:07-cv-00347-D

LULU ENTERPRISES, INC.,

Plaintiff,

vs.

HULU, LLC, *et al.*,

Defendants.

**DEFENDANT HULU, LLC'S MOTION IN
LIMINE TO EXCLUDE PLAINTIFF'S
SURVEY AND FOCUS GROUP
DECLARATIONS AND REPORTS**

Defendant, Hulu, LLC ("Hulu") hereby moves the Court, pursuant to Rules 6(d) and 16(f) of the Federal Rules of Civil Procedure, and the Scheduling Order of the Court, for an order prohibiting Plaintiff Lulu Enterprises, Inc. from offering purported expert evidence related to surveys and focus groups in support of its Motion for Preliminary Injunction. In particular, on October 12, 2007, Plaintiff filed and served survey evidence in the form of the Declaration of Hal L. Poret, and has orally given notice that it intends to submit an additional but different expert report in the near future.

This last minute evidence should be excluded. Plaintiff failed to submit these declarations with its Motion for Preliminary Injunction, as required by Rule 6(d). Plaintiff failed to timely produce any survey or focus group report in support of its Motion for Preliminary Injunction during the expedited discovery period, or even before the close of briefing. As set forth in its memorandum of law, filed contemporaneously herewith, Plaintiff's belated presentation of this evidence significantly prejudices Hulu.

Wherefore, Defendant Hulu, LLC respectfully moves the Court for an order *in limine* excluding Plaintiff from presenting and relying on the Declaration of Hal L. Poret and any other such purported expert evidence in support of its Motion for Preliminary Injunction.

This the 12th day of October, 2007.

/s/ Hayden J. Silver, III

Hayden J. Silver, III
NC State Bar No. 10037
jaysilver@kilpatrickstockton.com
Betsy Cooke
NC State Bar No. 25353
bcooke@kilpatrickstockton.com
KILPATRICK STOCKTON LLP
3737 Glenwood Avenue, Suite 400
Raleigh, NC 27612
(919) 420-1700
(919) 420-1800 (facsimile)

William H. Brewster
GA State Bar No. 080422
bbrewster@kilpatrickstockton.com
Sara Maurer
GA State Bar No. 159056
smaurer@kilpatrickstockton.com
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309
(404) 815-6500
(404) 815-6555 facsimile

Attorneys for Defendant Hulu, LLC

CERTIFICATE OF SERVICE

This is to certify that on this date the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System which will send notice to the following CM/ECF participants:

Leslie C. O'Toole
leslie.otoole@elliswinters.com
Thomas Hamilton Segars
tom.segars@elliswinters.com

This the 12th day of October, 2007.

/s/ Hayden J. Silver, III

KILPATRICK STOCKTON LLP
3737 Glenwood Avenue, Suite 400
Raleigh, North Carolina 27612
Telephone: (919) 420-1700