

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DWS INTERNATIONAL, INC.,
dba Marble Dimensions Worldwide, Inc.,

Plaintiff,

:

Case No. 3:09-cv-458

-vs-

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

:

MEIXIA ARTS AND HANDICRAFTS
CO., LTD, et al.,

Defendants.

**ORDER TO FILE EXHIBIT UNDER SEAL AND GRANTING MOTION FOR
RECONSIDERATION**

The Court has received and filed Defendant Sudyk's Motion for Reconsideration, including Exhibits A, B, and C (Doc. No. 145). Exhibit D thereto was tendered on December 7, 2010, for filing under seal. Having examined the document, the Court finds that it, at least prima facie, comes within the Protective Order in this case and it is ordered to be filed by the Clerk under seal as an attachment to Doc. No. 145. The Clerk shall deliver a copy thereof to Plaintiff's counsel who shall promptly advise the Court (by filing an electronic notice) whether it is in fact a copy of Defendant Sudyk's Response to Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction & Failure to State a Claim Upon Which Relief Can Be Granted. (The Court notes that Exhibit D bears a certificate of service by Mr. Sudyk indicating this document was mailed to counsel on October 21, 2010.)

Although Mr. Sudyk has provided proof of mailing a document to the Clerk on October 21, 2010, and that the same document was delivered on October 22, 2010, the Clerk has no record of

receiving this document, nor can the document itself be found. This led to the Magistrate Judge's comment in the Report and Recommendations that Mr. Sudyk had not filed a reply memorandum in support of the Motion to Dismiss. However, some document bearing the same title as Exhibit D was obviously received by Plaintiff because Plaintiff sought and received, over Defendant Sudyk's objection, permission to file a sur-reply.¹

Mr. Sudyk's Motion for Reconsideration is granted. Once Plaintiff's counsel has confirmed that the document they received under the same title as Exhibit D is in fact the same, the Magistrate Judge will prepare a substituted report and recommendations on the Motion to Dismiss.

December 10, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge

¹Note that Plaintiff believed Sudyk's reply was filed under seal and did not receive a docket number (Motion for Leave to File Sur-Reply, Doc. No. 134, PageID 1789, n.1.)