

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THE HERSHEY COMPANY,
Plaintiff/Counterclaim Defendant,

v.

HOTTRIX LLC,
Defendant/Counterclaim Plaintiff.

v.

VERSATILE SYSTEMS INC.,
Counterclaim Defendant.

No. 1:10-cv-1178-JEJ

JUDGE JOHN E. JONES III

**JOINT MOTION OF VERSATILE SYSTEMS INC. AND HOTTRIX LLC
FOR RELIEF FROM LOCAL RULE 7.8**

Counterclaim defendant Versatile Systems Inc. (“Versatile”) and Counterclaim Plaintiff Hottrix LLC (“Hottrix”), for the convenience of the parties and of the Court, hereby jointly move for relief from Local Rule 7.8 which prevents parties from incorporating by reference one brief into another and in support hereof state as follows:

1. The Hershey Company (“Hershey”) filed this action on June 2, 2010 seeking declaratory relief regarding allegations of copyright infringement by Hottrix with respect to Hershey’s HERSHEY’S Syrup application for iPhone.

(Dkt. No. 1).

2. Hottrix filed an Answer on September 13, 2010 asserting certain counterclaims against Hershey (Dkt. No. 19) seeking affirmative relief for allegations of copyright infringement and other claims relating to the HERSHEY'S Syrup application.

3. Hottrix subsequently filed an Amended Answer on October 7, 2010 (Dkt. No. 33) naming Versatile as a third party defendant (identified in the pleading as an additional counterclaim defendant); Hottrix's Amended Answer alleges identical causes of action collectively against both Hershey and Versatile, a computer development company alleged in the Amended Answer to have been involved with the creation of the HERSHEY'S Syrup application.

4. In response to the Amended Answer, Hershey timely filed a motion to dismiss (Dkt. No. 36), along with an accompanying brief and a declaration in support of that motion (Dkt. Nos. 35, 37) on October 21, 2010. Hottrix filed a brief in opposition to that motion on November 4, 2010. (Dkt. No. 42). Hershey's reply brief is due November 18, 2010.

5. Versatile was not served until October 19, 2010 and had insufficient time to join in Hershey's motion. Versatile, represented by the same counsel as Hershey, timely filed its own Motion to Dismiss Hottrix's counterclaims on November 9, 2010. (Dkt. No. 44). In that motion, Versatile joined and relied upon

in full Hershey's Motion to Dismiss, the related brief and declaration.

6. The parties are mindful that Local Rule 7.8(a) provides that "No brief may incorporate by reference all or any portion of any other brief" and that notwithstanding Versatile joining in Hershey's Motion and brief, Versatile's own Brief in Support of its Motion would still be due on November 23, 2010 and a response by Hottrix would be due 14 days thereafter.

7. The basis for Versatile's Motion to Dismiss (Dkt. 44) deals with the same factual and legal issues already fully briefed by Hershey and Hottrix with respect to Hershey's earlier filed Motion to Dismiss (Dkt. 36). Strict compliance with Local Rule 7.8(a) would, therefore, result in Versatile and Hottrix filing what would essentially be identical briefs in support of their respective positions compared to those already filed, causing unnecessary duplication of effort by the parties and inconvenience to the Court.

8. To avoid this duplication and inconvenience, Versatile and Hottrix jointly move the Court to waive the requirements of Local Rule 7.8(a) regarding incorporation of briefs by reference, and that Versatile's motion be considered on the basis of the briefs submitted by the parties with respect to Hershey's earlier filed Motion to Dismiss (Dkt. No. 36).

9. As evidenced by the attached certificate of concurrence, counsel for Hottrix concurs in the relief requested in this joint motion.

WHEREFORE, Versatile and Hottrix jointly request the Court waive the requirements of Local Rule 7.8(a) regarding incorporation of briefs by reference and decide Versatile's Motion to Dismiss (Dkt. 44) on the basis of the briefs submitted by the parties with respect to Hershey's earlier filed Motion to Dismiss (Dkt. No. 36) as set forth on the attached proposed order.

Dated: November 18, 2010

McNEES WALLACE & NURICK LLC

/s/Harvey Freedenberg

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CERTIFICATE OF CONCURRENCE

Pursuant to Rule 7.1 of the Rules of the United States District Court for the Middle District of Pennsylvania, the undersigned counsel for Counterclaim Defendant Versatile Systems Inc. sought the concurrence of counsel for Counterclaim Plaintiff Hottrix LLC in the foregoing Joint Motion and such concurrence was given.

/s/Harvey Freedenberg

Of Counsel for Counterclaim
Defendant, Versatile Systems Inc.

Dated: November 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and that the document is being served electronically upon counsel of record through the Court's electronic transmission facilities.

/s/ Harvey Freedenberg
Harvey Freedenberg

Of Counsel for Plaintiff/Counterclaim
Defendant, The Hershey Company;
Counterclaim Defendant,
Versatile Systems Inc.

Dated: November 18, 2010