

EXHIBIT 18

Gretchen Curran

From: Matuschak, Mark [Mark.Matuschak@wilmerhale.com]
Sent: Tuesday, August 23, 2011 7:33 PM
To: Gretchen Curran; MRichardson@brsfirm.com; Hutchins, Kate; Hardt, Jonathan; Ewenstein, Richard I
Cc: Eolas
Subject: RE: Eolas v. Staples - Outstanding Requests
Attachments: Document1.doc

Gretchen -

We thought the original draft of damages-type discovery for staples-link and away were too broad and essentially covered almost every conceivable document about those products. In the spirit of cooperation, however, we've made some edits to your list and, if those are acceptable to you, Staples will not oppose your motion to add accused features on staples-link and away.

Regards,
Mark

From: Gretchen Curran [mailto:gcurran@mckoolsmith.com]
Sent: Tuesday, August 23, 2011 5:53 PM
To: Matuschak, Mark; MRichardson@brsfirm.com; Hutchins, Kate; Hardt, Jonathan; Ewenstein, Richard I
Cc: Eolas
Subject: RE: Eolas v. Staples - Outstanding Requests

Thank you, Mark. That timetable works for Eolas. With respect to Eolas' motion for leave, which we would like to get on file ASAP, have you arrived at a conclusion as to whether Staples will oppose?

I appreciate it.

Gretchen

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From: Matuschak, Mark [mailto:Mark.Matuschak@wilmerhale.com]
Sent: Tuesday, August 23, 2011 4:50 PM
To: Gretchen Curran; MRichardson@brsfirm.com; Hutchins, Kate; Hardt, Jonathan; Ewenstein, Richard I
Cc: Eolas

9/3/2011

Subject: RE: Eolas v. Staples - Outstanding Requests

Gretchen -

Thanks for compiling this list. We're working on reviewing it now, but as our main client contact is out for most of this week, we believe we'll need until a week from Friday to have either produced the requested documents, determined that they don't exist, or determined that we've already produced them.

Regards,
Mark

From: Gretchen Curran [mailto:gcurran@mckoolsmith.com]
Sent: Monday, August 22, 2011 7:18 PM
To: Matuschak, Mark; MRichardson@brsfirm.com; Hutchins, Kate; Hardt, Jonathan; Ewenstein, Richard I
Cc: Eolas
Subject: Eolas v. Staples - Outstanding Requests

Dear Counsel,

On our LR7 this afternoon, I promised (in the spirit of cooperation, in an effort to ease the burden of you having to go back through the emails that have been sent, and in an effort to expedite the identification of responsive documents/production of responsive documents) to provide to you an email compiling the document requests made after depositions of Staples' witnesses. Below is a compilation of those emails. I have put them in chronological order with each email being separated by the bolded/underlined/blue date on which the email was sent. You indicated that you would respond tomorrow as to when you would be able to provide a response to the emails.

Once you have reviewed the requests below, please provide a response to the requests that (1) Staples has produced documents responsive to the request AND IF NOT; (2) Staples will produce documents responsive to the request by [PLEASE PROVIDE A DATE CERTAIN]; AND (3) If Staples has produced documents responsive to the request, in your response, please identify by Bates number/range those documents that are responsive to the request.

6/18/11

Kate and Rich

Based on the testimony of Messrs. Candela and Vareschi and the first day of Ms. King's testimony this week, we request the depositions of the following individuals (formal notices will be served on Monday):

Kevin Wood, Director of Planning Analysis

Carrie Bourke, Director of Marketing Analytics

Steve Bussberg, Business Unit Leader

Ken Moore, VP of staples.com IT Dept.

In addition, please produce the following documents:

9/3/2011

Annual Budgets (2003-2011)
Epiphany Database Customer Model Reports relevant to the Accused Websites and Features
OMS Transaction Database Reports relevant to the Accused Websites and Features
Long Range Plans (2003-2011) (Described by Mr. Vareschi)

Warm regards,
Tom

[6/23/11](#)

Jonathan

It was a pleasure meeting a fellow Texan out in Framingham, Mass. I hope you had a safe flight back to D.C. on Tuesday night.

During Mr. Peck's deposition he identified a category of documents referred to as PowerReviews Customer Surveys. Eolas asks that these documents be produced for the relevant time period for the accused websites/features.

Please contact me should you care to discuss. I may be reached at 214-978-4927.

Warm regards,

Tom

[6/26/11](#)

Jonathan

Please let us know whether Staples is going to cooperate by providing these surveys to Eolas. Based on the testimony of Mr. Peck they are clearly relevant to several issues in this case and should have been produced long ago.

Eolas asks that Staples provide its position on the production of these surveys by no later than the close of business on Monday, June 27. Given the rapidly approaching fact discovery deadline in this case, Eolas needs to know whether it will be necessary to raise this matter with the Court in short order.

I am available to discuss the production of these surveys with you via teleconference anytime on Monday, June 27, should you care to do so.

We look forward to receiving Staples' response.

Best,

Tom

[6/29/11](#)

Jonathan

I hope all is well.

9/3/2011

I am following up on our June 23 and June 26 requests for your client's position on the production of the documents referenced below.

We would very much appreciate the courtesy of a response without further delay.

Best,

Tom

[6/30/11](#)

Tom,

Thank you for following up. We have been working on this request since we first received it. We hope to have a response in the near future.

Best regards,

Jonathan

[6/30/11](#)

Jonathan

Thank you very much for your email.

Your response, however, appears somewhat vague as it is unclear whether (1) Staples is agreeing to produce the requested documents and is working to do so or (2) Staples is still determining whether it will in fact agree to produce the requested documents.

Based on the testimony of Mr. Peck, a current Staples employee, these documents/data are generated at Staples.

Please clarify.

Best,

Tom

[7/5/11](#)

Jonathan

Eolas would very much appreciate the courtesy of a response to its June

23 request for production, set forth below.

Given the rapidly approaching fact discovery deadline in this case, Eolas needs to know -- without further delay -- Staples' position so that Eolas may proceed accordingly.

Tom

[7/6/11](#)

9/3/2011

Tom,

I'm providing an update on a few depositions and your request for PowerReviews surveys.

* Thomas Tobin is available in Framingham on July 12, 2011.

* Dave Mastovsky will be Staples' 30(b)(6) designee for the March

15 notice, subject to Staples' objections (which you should receive in the near future). As you'll recall, Mastovsky is no longer a Staples employee and the most convenient location for his deposition is the Hilton/Dedham, which is about 5 miles from Canton, MA.

Concerning PowerReviews, we continue to work to identify any relevant information Staples has related to the PowerReview reviews. Keep in mind, Mr. Peck told you he is not aware of any PowerReview "surveys."

Instead, it appears PowerReviews is used for the publicly available customer reviews at the bottom of many staples.com sku pages. As soon as we finalize this understanding we will provide you with further details.

Regards,

Jonathan

[7/7/11](#)

Jonathan

I write in response to your email of yesterday wherein you contend that PowerReviews does not include/collect "customer survey" information. Following are excerpts from Mr. Peck's deposition concerning Staples' use of and access to PowerReviews data that appear to indicate otherwise:

36:

15 MR. FASONE: I'm going to mark the

16 second exhibit to your deposition.

17 (Exhibit 2, defendant Staples, Inc.'s

18 supplemental responses to plaintiff's first

19 set of interrogatories, marked.)

20 MR. FASONE: And, for the record, the

21 Exhibit 2 is a copy of defendant Staples,

22 Inc.'s supplemental responses to

23 plaintiff's first set of interrogatories to

24 all defendants. And the service date is

9/3/2011

25 the 29th of October 2010.

52:

17 Q. Okay. If you'll look at that answer there in the
18 second paragraph, and -- well, let me see -- the fourth
19 sentence starting, "As to AJAX," do you see that?

20 A. Yes.

21 Q. "As to AJAX, Staples has an agreement with a
22 company called PowerReviews, which conducts customer
23 surveys, and as part of that agreement, Staples received
24 the right to use PowerReviews' AJAX implementations for the
25 purpose of retrieving customer survey data."

54:

11 Q. Do you know where the results of these surveys are
12 kept?

13 A. I believe it's on PowerReviews' servers.

14 Q. And does Staples have access to those servers?

15 A. I believe so.

Moreover, Mr. Peck was questioned about Staples' Supplemental Responses to Eolas' First Set of Interrogatories which identified PowerReviews as a means of retrieving "customer survey data". Is it your contention that Staples' interrogatory response is inaccurate in this regard?

We look forward to receiving Staples' response to Eolas' request for this data, as it has been outstanding for two (2) weeks now.

Best,

Tom

7/8/11

Tom,

This e-mail responds to your recent e-mails regarding PowerReviews information, web analytics review, and dates for the other depositions. As you know from the other correspondence this morning, we continue to work on these requests. Concerning the PowerReviews information, I want to point out that you omitted key portions

9/3/2011

of Mr. Peck's testimony in your e-mail. For example, he clarified his understanding that PowerReviews allows customers to write reviews (see Tr. at 53:8-10) and he corrected you at least once when you referred to the "surveys" ("I'm not familiar with using PowerReviews as far as surveys. I've used the PowerReviews review functionality." Tr. at 54:3-4). But that's neither here nor there, the point is that we are working on responding to your request. We are confirming the extent to which Staples uses PowerReviews and seeking the related documents, if any, Staples' possesses. We continue those efforts even though our client has been out of the office this week.

Further to that point, we are unable confirm any further deposition dates or provide you details relating to the web analytics review until our client returns. Notwithstanding, we continue to work on each of these issues and will provide you an update as soon as possible. It's unclear what substantive update, if any, we'll have by the time of our call this afternoon.

Regards,

Jonathan

[7/8/11](#)

Jonathan

Thank you for the update.

With respect to PowerReviews, obviously someone on your team prepared the interrogatory response which stated that PowerReviews includes customer surveys. So that is certainly of serious concern to Eolas in light of the equivocal nature of Mr. Peck's testimony in this regard.

We look forward to speaking with you at 2:30 p.m. CT today.

Best,

Tom

[7/12/11](#)

Jonathan

Eolas believes that it has given Staples more than ample time to respond to its request for discovery of Staples' PowerReviews documents. Given the rapidly approaching fact discovery and expert submission deadlines and the October trial date in this matter, Eolas should not be prejudiced by any further delay.

Please advise by no later than the close of business tomorrow, Wednesday, July 13, whether Staples will agree to provide this information and provide a date certain by which it will do so. Should it be Staples' position that it will not produce these materials to Eolas, then provide the availability of Staples' lead and local counsel for a LR7 conference to take place within the next few days.

Best,

Tom

[7/15/11](#)

Kate and Jonathan

9/3/2011

During Tom Tobin's deposition on Tuesday, July 12, he testified concerning an "associate website" developed for Staples in connection with its acquisition of Corporate Express, which was the subject of Exhibit 15 to his deposition. Excerpts of the rough transcript are set forth below for your consideration.

Based on Mr. Tobin's testimony, and the contents of Exhibit 15, it would appear that the "associate website" was a means for Staples' employees (and perhaps other users) to share ideas, post comments, participate in discussion boards, capture "innovative ideas", vote, rank, and otherwise participate in an open forum to discuss Staples' business and future business plans on both a macro and micro level. To the extent that the "associate website" included information relevant to the accused websites and/or accused features that are at issue in Eolas' case against Staples, any such information should have been produced to Eolas at the outset of this litigation. Please produce this information without further delay.

Should you care to discuss this matter, please do not hesitate to call me at 214-978-4927.

Best,

Tom

EXCERPTS OF ROUGH TRANSCRIPT OF TOM TOBIN (6/12/2011):

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MR. FASONE: Mark the next exhibit to your deposition. Exhibit 15.

(Exhibit 15, Identify Exhibits, marked for identification.)

Q. (By Mr. Fasone) Exhibit 15 is an e-mail with an attachment e-mail from an Anne-Marie, that's A-n-n-e - Marie, Keane, K E A N E, dated August 13, 2008 and the subject matter is associate website-content strategy. You're listed there Mr. Tobin as one of the recipients.

A. Yes.

Q. Do you recognize the e-mail and the attachments?

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MS. HUTCHINS: Objection; form.

THE WITNESS: With respect to being a recipient, yes.

Q. (By Mr. Fasone) Do you know what the associate website is that's being referred to here?

A. Yes.

Q. What is it?

A. It was a website that was created after the acquisition of corporate express.

Q. Do you know what its purpose was?

A. It was to inform associates around -- around the acquisition.

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9/3/2011

Q. But it was created for Staples correct?

A. Yes.

Q. Look at page 10, there's a box there that says solution components. Do you see that?

A. Yes.

Q. Future phase options, then there's a reference there to a web 2.0 collaboration?

A. Yes.

Q. Do you know what that stands for?

A. It looks like it's community based.

Q. What do you mean by that, community based?

A. Web 2.0 is a general term. I'm just looking at some of the topics underneath that that would allow people to join discussion boards and participate within that dialogue. I mean that's probably the biggest thing.

Q. And you mean community-based internal to Staples correct?

A. For this particular effort, yes.

Q. Do you see the first section under web 2.0 collaboration where it says question and answer boards expanded enhance the posts and readability for associates to include commoning options on all

Page 149

questions posted to create a more collaborative user experience. Do you see that?

A. Yes.

Q. And then it says discussion boards after that. You skip down?

A. Yes.

Q. It says, "Enable community members to interactby posting, reading, and responding to each other on key topics." And then if you look at the next column where it says, idea share?

A. Yes.

Q. "Capture innovative ideas and encourage members to weigh in via voting, ranking, and comment features." What did that mean?

A. This particular idea share?

Q. Yeah.

A. The ability for users of the website to looks like you know multiple forms contribute to the content.

Q. And the content being related to Staples business, correct?

A. For this particular website, it would be, yes.

8/10/11

Jonathan

It does not appear that Staples has produced the attachments referenced in the following documents which were produced for Carrie Bourke:

SI246513 - SI246515 (Period 2 - 2011)

SI254389 - SI254390 (Period 12 - 2010)

SI251022 - SI251023 (Period 9 - 2010)

All three e-mails indicate that monthly search reports should be attached yet we have not been able to locate the referenced reports in Staples' production.

Please produce the requested attachments or, if you believe that they already have been produced, please provide the Bates numbers so that we have complete and accurate records on our end.

Many thanks,

Tom

8/10/11

Counsel

We have yet to receive the documents requested back on June 18 (see email below). Based on the testimony of Staples' corporate reps, the requested documents are relevant and should have been produced long ago.

If we don't hear from you by COB on Monday as to this production request, please know that we plan to raise this matter with the Court via motion practice. As you are well aware, fact discovery closes next Friday. Staples' continued delay in providing relevant documents in this case is a hinderance to Eolas' ability to complete fact discovery, finalize its expert submissions, and prepare for an October trial date.

Please give this matter your immediate attention.

Tom

8/11/11

Counsel

During Mr. Moore's recent deposition, he identified the following documents, some of which were in his custodial files. However, it does not appear that Staples has made a complete production of each of these categories of documents for all periods in which they were generated:

- "Board of Directors Decks"

9/3/2011

- "Staples.com Year Over Year Stats"
- "Staples Business Delivery Consolidated Daily Sales and Margin Flash" reports
- "Executive Summary: E-commerce Benchmark Usability Testing" report
- "Staples.com Site Tours"

Please produce all copies of the foregoing documents for the periods in which they were generated (weekly, monthly, quarterly, annually, etc.) without further delay.

Many thanks,

Tom

8/17/11

Counsel

I write to follow up on Staples' efforts to produce the relevant documents identified during Mr. Moore's deposition.

Eolas asks that the production of these materials be made without further delay. If you believe that these documents already have been produced, then provide the date(s) of production and Bates numbers. If Staples is unwilling to produce these relevant documents, then advise by the COB today (6 p.m. CT) so that we can work to schedule a LR7 Conference.

Regards,

Tom

8/17/11

Kate

During our conference on Monday, August 15, you suggested that Staples may have already responded to Eolas' June 18 request for the documents identified during Staples' 30b6 depositions (Candela, King, and Vareschi). Please know that we have searched our correspondence file and did not locate any evidence that Staples ever addressed this communication.

If you are in possession of the correspondence you believe was sent to Eolas on this matter, then please forward it to us today. If not, then advise whether Staples is planning to produce these documents and, if so, provide a date certain by which it will do so. Should Staples be unwilling to produce these relevant documents, then let us know so that we may work to schedule a LR7 Conference.

8/20/11

Kate,

If you recall, during the August 3 deposition of Thomas Tobin, I entered as Exhibits 4-A and 8-A, the two attached documents, each containing an e-mail highlights summary of a Monthly Onsite Search Report and a monthly report. Each e-mail summary clearly states that attached to the e-mail

should be a Monthly Onsite Search Report ("Attached is the Onsite Search report for Period..."), yet, as of the eve of the Tobin deposition, the monthly reports corresponding to the two e-mails had not been produced with the actual e-mail highlights summaries, either as attachments to those e-mails or elsewhere in the Staples productions.

On the morning of August 2, I e-mailed Staples requesting that the Monthly Onsite Search Reports corresponding to the afore-mentioned e-mail highlights summaries be sent to us that day, as we needed them for the following day's deposition. And Jonathan was courteous enough to e-mail the monthly reports to us that evening. For use as deposition exhibits, we had to then attach to the e-mail highlights summaries, these copies of the monthly reports, produced to us the evening before the deposition. As the excerpt below from pages 229 and 230 of the transcript to the deposition of Tobin appears to make clear, the two e-mails and two attachments were not paired correctly, at the time they were entered as exhibits, and I requested to you that Staples provide to us e-mail confirmation that the e-mails and the reports had indeed been paired incorrectly in order that we may repair the issue:

229

12	MR. FASONE: Here's Exhibit 8-A.	10:30:06
13	(Exhibit 8-A, E-mail with Attachment,	10:30:06
14	marked for identification.)	10:30:47
15	Q. (By Mr. Fasone) And 8-A bears Bates SI 246513	10:30:47
16	through 515 and then the attachment I understand is SI	10:30:59
17	250819. And I'll represent on the record this was the	10:31:09
18	requested attachment that Jonathan e-mailed to us last	10:31:15
19	night. And so we've synced it up with the cover	10:31:19
20	e-mail.	10:31:26
21	MR. FASONE: And if -- Kate, if for	10:31:26
22	some reason this appears to be incorrect,	10:31:30
23	please let me know.	10:31:32
24	MS. HUTCHINS: I don't know for	10:31:33
25	certain but if you compare the attachment	

230

1	THOMAS F. TOBIN, JR. - CONFIDENTIAL/ATTORNEYS' EYES ONLY	
2	to Exhibit 4-A, the e-mail in Exhibit 4-A,	10:31:40
3	it looks like that one goes with 4-A --	10:31:45
4	sorry. Looks like what you have attached	10:31:49
5	to Exhibit 8-A actually belongs with the	10:31:51
6	e-mail in Exhibit 4-A.	10:31:54
7	MR. FASONE: Okay. So we need to	10:31:56
8	switch those out then.	10:31:59
9	MS. HUTCHINS: I believe so. I would	10:32:00
10	need to confirm but that's what it appears	10:32:01
11	from the face of the documents.	10:32:03
12	MR. FASONE: Well, let's not do that	10:32:08
13	at this moment. If you don't mind, if we	10:32:11

14 can just get an e-mail clarifying that and 10:32:14
15 then we'll switch them up. 10:32:17
16 MS. HUTCHINS: Sure.

It appears that the attachment to Exhibit 8-A (Period 12 - 2010 report) merely needs to be paired with the e-mail to Exhibit 4-A (Period 12 - 2010 summary) and the attachment to Exhibit 4-A (Period 2 - 2011 report) merely needs to be paired with the e-mail to Exhibit 8-A (Period 2 - 2011 summary). Please confirm that this is indeed the case. If one or both of the monthly reports should not be attached to either of the e-mail summaries, please indicate that such is the case, and immediately provide to us the correct monthly reports that correspond to the two e-mail summaries.

Now, one more issue exists with Exhibit 4-A. Mistakenly, only the first page of the two page e-mail summary (SI246639 - SI246640) was entered as part of the exhibit. We would appreciate it, if you could also confirm that the e-mail in Exhibit 4-A should contain a second page (SI246640).

In addition, we request that Staples produce to us the two e-mail summaries in Exhibits 4-A and 8-A to the August 3 Tobin deposition and the correct corresponding Monthly Onsite Search Reports to those e-mails, as actual attachments to the e-mails. Thus far, Staples has not produced to us either e-mail summary/monthly report pairing, as a family of documents, which is the way they should be produced. In fact, while Staples has produced to us e-mail highlights summaries of the Monthly Onsite Search Reports for each month from Period 9 - 2010 through Period 5 - 2011, in not a single instance has a monthly report been attached to it. And for only Period 12 - 2010 and Period 2 - 2011 were any of the corresponding monthly reports produced anywhere in Staples' productions. For Period 6 - 2011, Staples produced a monthly report but no e-mail highlights summary. We request that Staples produce e-mail highlight summaries of the Monthly Onsite Search Reports for each month from Period 9 - 2010 through Period 6 - 2011 and the correct corresponding Monthly Onsite Search Reports to each of those e-mail summaries, as actual attachments to the e-mails.

Regards,

Tom

8/20/11

Rich

As you know, during Mr. Mastovsky's deposition yesterday he testified that Scott Zakrajsek prepared reports showing metrics on the browsers used by customers to access the staples.com website. Please see pages 68-69 of his rough transcript. This information is also the subject of Eolas' Common Rog. No. 3.

These reports should be part of Mr. Zakrajsek's custodial documents and/or available on one of the corporate archives that Mr. Mastovsky identified. Please produce all such reports well in advance of Mr. Zakrajsek's deposition, which is scheduled to take place on Friday, August 26. If you believe that these documents were already produced, then identify them by Bates range and production date(s).

Thank you,

Tom

9/3/2011

8/20/11

Hello Jonathan,

I hope you are having a good weekend. I wanted to send this email to request the production of the "search program report" that I requested Ms. Baball work with Ms. Kota to create for the period that autocomplete has been tracked that breaks out figures for autocomplete. See exchange below.

Please let me know when we can expect such production.

I appreciate it!

Gretchen

20 Q. Okay. So if you could check with Ms. Kota to --

21 and obviously the date range will be much -- will be

22 smaller because it will only include the date range for

23 which the auto complete was actually tracked, if you could

24 let your counsel know, first, if there's a report that

25 would, you know, break out the auto complete search report, Page 65

1 - ROUGH DRAFT -

2 how long that would take to run such a report, and for the

3 date range where auto complete was actually tracked, we

4 would like a copy of such report if she could run that

5 report and provide a copy to your counsel, okay?

6 MR. HARDT: Objection. Form.

7 If you're making a discovery request,

8 you can make it to -- to us lawyers, and

9 we'll deal with it.

10 MS. CURRAN: Okay.

11 Q. If you could check with, because obviously your

12 lawyers don't know what Ms. Kota knows, if you could check

13 on those things and -- and let your counsel know, I will be

9/3/2011

14 making a request to them for that information, okay?

15 A. Okay.

8/22/11

Rich

I hope you had an enjoyable weekend.

During Mr. Mastovsky's deposition on Friday, he testified regarding the existence of various documents relevant to this litigation. Eolas requests that Staples produce each of these documents for the time period in question. To the extent that there is more than one version of a document, then Eolas asks that all versions be produced for the time period in question. To the extent that these documents were generated and distributed on a periodic basis, Eolas asks that Staples produce copies of each document for each period in which it was generated (daily, weekly, monthly, quarterly, etc.) for the time period in question.

Based on Mr. Mastovsky's August 19 deposition, Eolas seeks production of the following documents:

- Traffic reports
- Abode Scene 7 surveys
- Certona reports re: Carousel product recommendations
- Usability testing re: format and/or features of staples.com
- CARS (Capital Appropriation Requests)
- SEO (Search Engine Optimization) reports
- Foresee reports re: customer experience ratings
- Green Friday Hits Comparison reports
- Omniture test and target reports

Given that the parties are still completing fact discovery and are also in the process of preparing trial submissions, including trial exhibits, it is imperative that Staples produce these materials on an expedited basis.

Please do not hesitate to contact me via telephone at 214-978-4927 should you care to discuss the production of the requested documents.

Regards,

Tom

END OF EMAILS

Warm regards,

Gretchen

9/3/2011

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