

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

HEARTBRAND BEEF, INC.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 6:08-cv-00062
	§	
LOBEL'S OF NEW YORK, LLC,	§	
WORLDWIDE MEDIA, INC. THOUGHT	§	
CONVERGENCE, INC. and YAHOO! INC.	§	
Defendants.	§	

MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff, Heartbrand Beef, Inc., (“Heartbrand”) hereby files this “Motion for Leave to File Second Amended Complaint”. Heartbrand is within the time to amend the Complaint.

In “Motion by Defendant Lobel’s of New York, LLC to Dismiss Under F.R.C.P. Rule 12(B) for Lack of Personal Jurisdiction, Improper Venue and/or Failure to Join a Required Party”, Defendant, Lobel’s of New York, LLC (“Lobel’s”) moved to dismiss the Amended Complaint for, *inter alia*, failure to join a required party under Federal Rule of Civil Procedure 19(a)(1).¹ Specifically, Lobel’s contends that it is not the owner or operator of the Lobel’s website www.lobels.com, which is part of the subject matter of which Heartbrand complains in the Amended Complaint. Instead, Lobel’s has argued that the New York Company is only a holding company, and that the website is owned by one of Lobel’s subsidiaries, a Delaware

¹ Docket No. 31 at pg. 8.

resident with the name Lobel's of New York, LLC (the identical name of the party in the Amended Complaint).²

Beef products are sold through the website www.lobels.com. While the Delaware Company may own and operate the website, Heartbrand believes that the products that are actually sold thereon and shipped to customers are the New York Company's products. Thus, both entities are actively involved in the selling of products through www.lobels.com. Therefore, Heartbrand believes that both entities are necessary and proper parties to this litigation.

Accordingly, Heartbrand moves this Court for leave to file its "Second Amended Complaint," which is attached hereto as Exhibit 1. The Second Amended Complaint adds Lobel's of New York, LLC, the Delaware Limited Liability Company, as a Defendant in this case. If, upon conducting discovery, it is discovered that the New York Company is not a proper party, Heartbrand will dismiss the New York Company upon such discovery.

CERTIFICATE OF CONFERENCE

Prior to filing this "Motion to File Second Amended Complaint", the undersigned contacted Counsel for Defendant Lobel's of New York, LLC (the New York company), Gregg Baker, who indicated that he opposes this Motion.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff, Heartbrand Beef, Inc. prays that this Court allow Plaintiff to file the Second Amended Complaint and grant any further relief, at law or in equity, as the Court deems just and proper.

² *Id.*

Respectfully submitted,

GUNN & LEE, P.C.
700 North St. Mary's St., Suite 1500
San Antonio, Texas 78205
(210) 886-9500 Telephone
(210) 886-9883 Facsimile

By: /s/
Ted D. Lee
State Bar No. 12137700

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

C. David Kinder
Cox Smith Matthews Incorporated
112 E. Pecan Street, Suite 1800
San Antonio, TX 78205
Defendant Worldwide Media, Inc.

Gregg S. Baker
Corrigan & Baker LLC
1311 Mamaroneck Ave. Suite 215
White Plains, NY 10605
Defendant Lobel's of New York, LLC

George A. Yuhas
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Defendant Thought Convergence, Inc.

Annalyn G. Smith
Bracewell & Giuliani, LLP
106 S. St. Mary's Street, Suite 800
San Antonio, TX 78205
Defendant Yahoo! Inc.

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

David S. Fleming
Howard S. Michael
Brinks Hofer Gilson & Lione
455 N. City Front Plz. Dr.
Chicago, IL 60611
Defendant Yahoo! Inc.

By: _____/s/_____
Ted D. Lee