

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

**1-800 CONTACTS, INC. d/b/a
GLASSES.COM, a Delaware corporation
and Utah d/b/a,**

Plaintiff,

v.

**DITTO Technologies, Inc., a California
corporation,**

Defendant.

**MEMORANDUM DECISION
& ORDER**

Case No. 2:13-cv-00145

District Court Judge David Nuffer

Magistrate Judge Dustin Pead

This matter is before Magistrate Judge Dustin Pead pursuant to a referral from District Court Judge David Nuffer. 42 U.S.C. § 636(b)(1)(A) (Dkt. No. 25). Currently pending are Ditto Technologies Incorporated's (Defendant) Motion To Strike (Dkt. No. 18), and Plaintiff 1-800 Contacts Incorporated's (Plaintiff) Motion To Compel Rule 26(f) Conference and Initial Disclosures (Dkt. No. 21).

Motion To Strike

On May 24, 2013, Plaintiff sent an email to Judge Nuffer describing a dispute that had arisen between the parties regarding conflicting interpretations of the Federal Rules of Civil Procedure and the proposed Local Patent Rules (LPR) (Dkt. No. 18-4). In response, Defendant filed a motion to strike arguing that the email is an improper attempt by Plaintiff to circumvent formal civil motion practice (Dkt. No. 18).

In response to the motion to strike, Plaintiff asserts that its email was merely a request for clarification from the Court and was sent in accordance with the procedures set forth on Judge

Nuffer's web page (Dkt. No. 20).¹ Plaintiff indicates, however, that because Defendant "demands formal motion practice on this issue, [Plaintiff] will file a motion seeking relief from the Court to satisfy [Defendant's] procedural objections." *Id.* at 3. Consistent therewith, on May 29, 2013, Plaintiff filed its pending Motion To Compel Rule 26(f) Conference and Initial Disclosures in which it formally raises the parties' dispute over their conflicting interpretations of the rules (Dkt. No. 21).

Accordingly, because Plaintiff's Motion To Compel has been filed the Court finds Defendant's Motion To Strike is **MOOT**.

Motion To Compel Rule 26(f) Conference and Initial Disclosures

In response to Plaintiff's Complaint (Dkt. No. 2), Defendant filed a Motion To Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dkt No. 16). Under the new LPR, as adopted by Judge Nuffer in this case on May 21, 2013 (Dkt. No. 17), Plaintiff sought to schedule a Rule 26(f) case management conference. Defendant objected to the scheduling, arguing that under its interpretation of the LPR discovery, scheduling and initial disclosures should not take place until the Court resolves the Motion To Dismiss and Defendant files an Answer (Dkt. No. 18-1). Based upon the parties' conflicting interpretations of the LPR's, Plaintiff filed a Motion To Compel seeking an Order from the Court requiring Defendant to engage in a case management conference.

On June 10, 2013, after Plaintiff filed its Motion To Compel, Judge Nuffer issued a Docket Text Order, requiring Defendant to file an Answer within fourteen (14) days (Dkt. No. 22). On June 11, the Court further directed the parties to file their Attorney Planning Meeting

¹Judge Nuffer's website page states: "Please email inquiries to dj.nuffer@utd.uscourts.gov. If your question is on a specific case, please put the case name and number in the Subject line. Your e-mail should show a copy sent to all counsel."

Report and proposed Scheduling Orders by June 27, 2013 (Dkt. No. 24). Based upon the Court's Orders, the parties indicate that they have agreed to hold their Rule 26(f) Conference on June 25, 2013, and for initial disclosures to be due on or before July 8, 2013 (Dkt. No. 27).

Accordingly, Plaintiff's Motion to Compel Rule 26(f) Conference and Initial Disclosures is **MOOT**.

ORDER

1. Based upon the filing of Plaintiff's Motion to Compel, Defendant's Motion To Strike is moot (Dkt. No. 18).
2. Based upon the Court's June 10, 2013 Docket Text Order and June 11, 2013 Notice of Initial Pre-trial Conference, Plaintiff's Motion to Compel is moot (Dkt. No 21).

DATED this 20th day of June, 2013.



Dustin Pead
U.S. Federal Magistrate Judge