THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting of herself and all other persons similarly situated,

Plaintiffs, and as to Ms. Kim, counterclaim defendant,

v.

COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a Maryland corporation,

Defendants, and, as to Coach, Inc., counterclaim plaintiff.

NO. 2:11-cv-00214-RSM

COACH, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL RULE 26(f) INITIAL DISCOVERY CONFERENCE

NOTED FOR CONSIDERATION: APRIL 1, 2011

Coach, Inc. ("Coach") hereby submits its opposition to the motion to compel a Rule 26(f) initial discovery conference filed by plaintiff Gina Kim. As is further explained in this brief and the accompanying Declaration of Patrick Eagan in Support of Defendant Coach, Inc.'s Opposition to Motion to Compel ("Eagan Dec."), the motion to compel has been mooted by the scheduling of a Rule 26(f) conference. Counsel for Coach requested that counsel for Ms. Kim withdraw this motion, in light of the parties' having agreed on a time for their initial discovery conference. Counsel for Ms. Kim refused. Counsel for Coach then requested that counsel for Ms. Kim agree to a one-week continuance of this motion so that the Rule 26(f)

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conference could take place. But counsel for Ms. Kim would only agree in exchange for money. Out of an abundance of caution, Coach submits this unnecessary brief in response to a mooted motion.

I. INTRODUCTION

Ms. Kim's motion to compel a Rule 26(f) conference must be denied for several reasons. First, the motion is moot because the parties have agreed to hold a Rule 26(f) conference on March 31, 2011. Counsel for Ms. Kim should have withdrawn the motion. Second, counsel for Ms. Kim failed to satisfy their meet and confer requirement under Fed.R.Civ.P. 37(a)(1), as the "conference" cited in the motion to compel took place on February 28, 2011, and the motion was filed on March 16, 2011. In the intervening seventeen days, the parties filed *three* additional pleadings and agreed to a confidentiality order, yet, in all that time, counsel for Ms. Kim did not even attempt to confer by telephone or in person before filing this motion to compel. Third, although Coach has agreed to a Rule 26(f) conference, counsel for Ms. Kim have not articulated a reason why a Rule 26(f) conference is necessary right now and why discovery must commence immediately. This is especially perplexing because counsel for Coach have repeatedly informed counsel for Ms. Kim that only 18 cease-and-desist letters were sent to Washington residents in connection with online sales of purported Coach products. Counsel for Ms. Kim refuses to acknowledge that these representations may be right, and are no doubt eager to deluge Coach with burdensome discovery requests. Fourth, this case involves the temporary removal from eBay of a bag with a list price of $8.50. Counsel for Ms. Kim have given no consideration to the expense incurred in litigating frivolous motions, considering the *de minimis* amount at issue in this case. If counsel for Ms. Kim had done so, they would not have filed a motion to compel, they would not have left that motion on the Court's docket after the scheduling of a Rule 26(f) conference, and they would not have demanded a $750.00 payment in exchange for their agreement to continue the hearing on the motion to compel by one week. The motion to compel must

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therefore be denied.

II. THE MOTION TO COMPEL MUST BE DENIED

A. The Motion To Compel Is Moot

There is no reason for the Court even to entertain the motion to compel. The parties have already scheduled a Rule 26(f) conference for March 31, 2011. Eagan Dec. ¶ 32. Counsel for Coach first indicated that Coach was prepared to hold a Rule 26(f) conference on March 24, 2011, but, despite their earlier eagerness to hold such a conference, Counsel for Ms. Kim did not agree to a conference until March 28, 2011. *Id.* at ¶¶ 25-32. Coincidentally, this was also the date that Coach's opposition to the motion to compel was due. When counsel for Coach requested that counsel for Ms. Kim withdraw their motion to compel, counsel for Ms. Kim refused. *Id.* at ¶ 31-32. When counsel for Coach requested that counsel for Ms. Kim agree to continue the hearing on their motion by one week, counsel for Ms. Kim indicated that they would not agree to a continuance unless Coach would agree to pay $750.00. *Id.* at ¶ 33-34. This demonstrates, conclusively, that counsel for Ms. Kim have no principled or strategic basis for refusing to continue the hearing. The only reason is that, by refusing to continue the hearing, counsel for Ms. Kim have succeeding in forcing Coach to file this opposition brief and driving up the cost of litigating this case for Coach and this Court.

B. Counsel For Ms. Kim Failed To Confer

Counsel for Ms. Kim failed to satisfy their obligation to meet and confer before filing the motion to compel. The conference cited by counsel for Ms. Kim in support of their motion to compel took place on February 28, 2011. *See* Declaration of Jay Carlson in Support of Plaintiff's Motion to Compel Rule 26(f) Initial Discovery Conference ("Carlson Dec.") at ¶ 4. Subsequent to that conference, the following occurred: (1) counsel for Ms. Kim filed an amended complaint (Dkt. No. 4) adding new parties and a new cause of action unrelated to Ms. Kim's claims; (2) counsel for Coach filed their notice of appearance (Dkt. No. 5); (3) Coach filed its answer and counterclaims (Dkt. No. 6); (4) counsel for Ms. Kim filed their answer to

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Coach's counterclaims (Dkt. No 7); (5) counsel for Ms. Kim filed a motion to strike Coach's counterclaims under the Washington anti-SLAPP statute (Dkt. No. 9); and (6) counsel for Coach filed a motion for a protective order (Dkt. No. 10). The motion for a protective order was later resolved by agreement of the parties. (Dkt. No. 17.)

Despite the occurrence of significant intervening events – which added claims, defenses, and parties, resolved disputes regarding confidentiality that were critical to Coach, and generally expanded the scope of the litigation – counsel for Ms. Kim never requested another conference to discuss the propriety of a Rule 26(f) conference before filing their motion to compel. Eagan Dec. ¶ 20. Counsel will undoubtedly argue that such a conference would have been futile, but it is only because of counsel's failure even to attempt to confer in a good faith attempt to resolve this matter without Court intervention that we will never know.

C. Counsel For Ms. Kim Have Not Demonstrated Why An Immediate Rule 26(f) Conference Is Necessary

Coach has agreed to hold a Rule 26(f) conference in part because of counsel for Ms. Kim's frivolous motion, but counsel for Ms. Kim have not articulated a reason why a conference is necessary at this time and why discovery must commence immediately. Indeed, the pleadings are still not closed, as counsel for Ms. Kim have not filed an answer to Coach's amended counterclaim. (Dkt. No. 21.) One of two defendants still has not been served. Eagan Dec. ¶ 6. In addition, counsel for Ms. Kim recently attempted to file a second amended complaint, expanding the class definition to include former employees of Coach. (Dkt. No. 20.) This second amended complaint has not yet been entered. In short, the pleadings are in considerable flux.

Rule 26(f) requires the parties to discuss the nature of their claims and defenses, explore possible settlement, arrange for initial disclosures, and create a discovery plan. Fed.R.Civ.P. 26(f). The purposes of the conference are best served when the parties have had an opportunity to conduct a full investigation of the claims and defenses. Crucial to that investigation is that the claims, defenses, and *parties* have been identified in the applicable pleadings. Counsel for

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Ms. Kim have not even attempted to state a reason why a Rule 26(f) conference before the close of the pleadings is necessary.

Even though counsel for Coach has agreed to a Rule 26(f) initial discovery conference, such conference is premature in light of plaintiff naming, but never serving (or even attempting to serve) the other defendant, Coach Services, Inc. Nor will plaintiff's counsel answer the simple question: is plaintiff dropping Coach Services, Inc. from the lawsuit?

Even though counsel for Coach has agreed to a Rule 26(f) initial discovery conference, such conference is premature in light of the pleadings being in considerable flux. For example, only on March 21, 2011 did plaintiff file a purported amended complaint that, for the first time, would allow plaintiff Ms. Kim to be a member of the "class" she purports to represent. Rule 26(f) conferences are not generally productive (and are not generally conducted) when the pleadings are in such a state of flux.

Even though counsel for Coach has agreed to a Rule 26(f) initial discovery conference, such conference is premature in light of the serious obligations triggered by the initial Rule 26(f) conference. Pursuant to Rule 26(a)(1)(C), initial disclosures are due two weeks from the time of the Rule 26(f) conference. And Rule 26(g)(1)(A) mandates that initial disclosures be complete and correct. It may be easy for counsel for an individual to be prepared instantaneously to serve initial disclosures. Not so for a corporate entity such as Coach. With the pleadings still in flux, even now is too early a time for a Rule 26(f) conference. Even more clearly, plaintiff's counsel's effort to conduct a Rule 26(f) conference just *six days* after filing the initial complaint was grossly premature. Similarly, as of the date plaintiff's counsel purported to conduct a pre-motion meet-and-confer, a Rule 26(f) conference would plainly have been premature.

D. The Court Should Consider The Minimal Amount At Issue

This case involves the brief removal of a listing from eBay, followed by complete reinstatement of the listing. Eagan Dec. ¶ 35. The list price of the bag was $8.50. *Id.* The

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brief interruption of Ms. Kim's eBay listing – which was undertaken in good faith and with reason – simply cannot form the basis of a federal claim. And it is the obligation of the Court under Fed.R.Civ.P. 1, and the parties under General Rule 3(d) of the General Rules of the United States District Court for the Western District of Washington to ensure that Court business is discharged efficiently and inexpensively, and that unnecessary, unreasonable, and vexatious proceedings are avoided. It is hard to imagine a more unnecessary motion than a motion to compel a Rule 26(f) conference that was not the subject of a proper, good faith conference, that has been mooted by agreement of the other party to hold a conference, that seeks without support to compel an unusually early Rule 26(f) conference before even the close of pleadings, and that has already cost both parties hundreds of times the maximum damages in the case. If the immediate resolution of this matter was so vital to counsel for Ms. Kim's case that they are entitled to an immediate order compelling a Rule 26(f) conference, then they would not have offered to agree to a continuance for only $750.00. Eagan Dec. ¶ 34-37. The conduct of counsel for Ms. Kim merely confirms what was already widely known – that this is a case in which procedural manipulation is far more valuable to counsel for Ms. Kim than the underlying merits ever could be. For this reason alone, the motion to compel should be denied.

III. CONCLUSION

For all of the foregoing reasons, the motion to compel must be denied.

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Respectfully submitted this 28th day of March, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Dated this 28th day of March, 2011.

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