



**Issue Date: 19 December 2006**

**CASE NO.: 2006-SOX-00017**

**In the Matter of:**

**MICHAEL DAVIS,  
Complainant,**

**v.**

**THE HOME DEPOT INC.,  
Respondent.**

**ORDER ADDRESSING PENDING MOTIONS**

This matter is before the undersigned as a result of a myriad of motions filed by the parties. On December 12, 2006, Complainant, by and through counsel, filed a motion renewing several previously made motions and raising several new ones. Complainant has also moved to disqualify Respondent's counsel from the instant litigation. In addition, Respondent has moved to dismiss this matter based upon an alleged obstruction of justice. With the exception of what is set forth below, all pending motions are hereby **DENIED**.

In seeking to reopen the record, Complainant's counsel has submitted to this court a booklet, which Complainant says was delivered to him by an anonymous source, demonstrating information regarding Respondent's return to vendor policies. Respondent argues this was already produced to Complainant, albeit in photocopied form; Complainant counters that since the photocopies do not show evidence of binder rings, Respondent should be sanctioned. I have subsequently reviewed the submitted document *in camera*. Given that Complainant never made a specific request for this information in non-photocopied form and that it was indeed provided earlier, and this is really just a matter of formatting, I do not find it appropriate to sanction Respondent. However, Complainant's failure to appreciate the significance or nature of the document due to the format in which it was produced is understandable. I will therefore allow the record to be reopened for the purpose of admitting the booklet as submitted by Complainant, and therefore make it part of the record as Complainant's Exhibit 135 (CX 135). Complainant's Exhibit 135 is hereby admitted into evidence and the record is once again closed. **SO ORDERED.**

Complainant also correctly asserts that Respondent has yet to specify what, if any, steps counsel for Respondent has taken with respect to obtaining information from Respondent's headquarters in Atlanta. Indeed, Respondent's submissions appear to suggest that the Respondent's corporate headquarters were not contacted for the purpose of responding to

discovery in this matter. Therefore, I will require Respondent to outline what steps were taken with respect to searching its corporate headquarters within thirty days of the date of this Order. If Respondent has not yet conducted such a search, its counsel shall now do so and submit any relevant requested documents to Complainant, at which point the record may again be reopened on motion, if appropriate. **SO ORDERED.**

Although I intimated to the parties that I planned to deny Complainant's motion to disqualify Respondent's counsel as meritless, I never formally ruled upon the motion; I do so now. Accordingly, Complainant's motion to disqualify Respondent's counsel is hereby **DENIED. SO ORDERED.**

Finally, as part of his most recent motion(s), Complainant has submitted a zip drive full of documents and 83 pages of documents given to him by his anonymous source. Complainant has submitted what he characterizes as a "veritable trawler's hold of fish" to this tribunal in an attempt to show Respondent has frustrated the discovery process. Having "caught" Complainant's "fish," I now "release" it back to him. Complainant, through counsel, has stated that he has not been able to make more than a cursory glance through the many, many, many submitted pages of documents. Nevertheless, he argues the documentation clearly demonstrates new and relevant information which has not yet been discovered. Evidently, Complainant believes it is the duty of this tribunal to sort through the documents for him and ascertain their relevance. However, the record is now closed and it is Complainant's burden to establish that there is cause for reopening the record. I will therefore return the zip drive and documents (with the exception of the aforementioned booklet) to him, and these items will not become part of the record unless and until Complainant makes the required showing.

In addition to the above motions, Respondent filed a Motion to Dismiss arguing that Complainant obstructed justice by offering perjured testimony and falsified documents. I find Respondent's motion to be without merit; it is hereby **DENIED.**

Having decided the above motions, I now find it necessary to address the manner in which this litigation has been handled by both parties. Given that almost any dispute between the parties is virtually guaranteed to result in the filing of a motion and several counter-motions, I now order the parties to adhere to the following guidelines with respect to filing motions and/or pleadings:

If either party encounters a dispute with opposing counsel that the party's counsel believes would require the filing of a motion, counsel for that party must first contact opposing counsel and attempt to reach a resolution without this tribunal's involvement. This attempt **must** be made in good faith. If, and only if, the parties are unable to reach a good-faith resolution, then either party may file a motion addressing the controversy with this tribunal and requesting a resolution. However, the motion and/or pleading **shall** explicitly lay out all the steps taken by the party in an attempt to resolve the matter. Furthermore, the submitting party shall certify that all good-faith measures were taken in an attempt to avoid the filing of the motion.

Failure to comply with these steps will result in the motion and/or pleading being stricken or automatically denied.

In conclusion, “[t]he parties are advised to chill.” *Mattel, Inc. v. MCA Records*, 296 F.3d 894, 908 (9th Cir. 2002). I also wish the parties an enjoyable holiday season.

**ORDER**

**IT IS HEREBY ORDERED** that all pending motions in this matter are hereby denied, except set forth above; and

**IT IS FURTHER ORDERED** that the record is reopened for the limited purpose of admitting Complainant’s Exhibit 135, a booklet on return to vendor practices, into evidence; and

**IT IS FURTHER ORDERED** that within thirty (30) days of the date of this Order, Respondent shall advise the undersigned as to what steps were taken with respect to searching its corporate headquarters, provided, that if Respondent has not yet conducted such a search, its counsel shall do so expeditiously and provide any newly discovered, relevant requested documents to Complainant; and

**IT IS FURTHER ORDERED** that the parties shall follow the above guidelines with respect to the filing of motions and/or pleadings in this matter.

**A**  
PAMELA LAKES WOOD  
Administrative Law Judge

Washington, D.C.