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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington
corporation,

Plaintiff,

v.

KNITTING FEVER, INC., a New York
corporation, et al.,,

Defendant.

CASE NO. C10-861RSM

ORDER

This matter is before the Court for consideration of a motion by defendant Knitting Fever, Inc., (“KFI”) for relief from a filing deadline. Dkt. # 67. KFI seeks leave to file a supplemental declaration in opposition to the pending motion for a preliminary injunction, now set for oral argument on Wednesday, September 29, 2010. The supplemental declaration will present the results of tests conducted on yarns sold by plaintiff Cascade Yarns, Inc. (“Cascade”), which defendant seeks to introduce in support of an “unclean hands” defense in opposition to the preliminary injunction motion.

Cascade has opposed the motion for relief from the deadline on the basis that KFI is “playing fast and loose” with the facts regarding timing, as KFI had notice of at least some of the test results as early as July 13, 2010, and could have presented them earlier. Cascade also argues that the proposed declaration is inadmissible lay witness testimony and should be stricken.

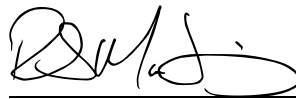
1 Cascade's Opposition, Dkt. # 72, p. 4. Finally, Cascade asserts that it does not have unclean
2 hands and even if it did, that is no defense to the preliminary injunction regarding KFI's yarn
3 products.

4 While KFI may have received some test results by July 13, there are others dated
5 September 8, 2010, so KFI's statement that the results were not complete until after briefing on
6 the preliminary injunction motion was closed does not misrepresent the facts regarding timing.
7 As to the admissibility of the test results, Mr. Elalouf's declaration does not contain
8 impermissible opinion testimony; he simply states facts within his knowledge regarding the
9 testing that was done, and presents copies of the results. This is no different than what plaintiff
10 has done in presenting copies of test results as an attachment to the amended complaint (Dkt. #
11 4), or as copies of documents filed in the Pennsylvania action (Dkt. # 12).

12 The Court finds that it is in the interest of a full and fair hearing of the issues to allow
13 KFI to file the proposed supplemental declaration. Cascade has had an opportunity to address it
14 and has done so in an opposition declaration. Declaration of Robert Dunbabin, Jr., Dkt. # 74.
15 The parties will have the opportunity to argue further on the merits of the unclean hands defense
16 and its relevance to the preliminary injunction at the hearing on the motion.

17 The motion for relief from deadline (Dkt. # 67) is accordingly GRANTED. Defendant
18 KFI shall promptly file the proposed declaration of Sion Elalouf in the docket of this case.

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20 Dated September 27, 2010.

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23 RICARDO S. MARTINEZ
24 UNITED STATES DISTRICT JUDGE