

Document Filed Electronically

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

WADDINGTON NORTH AMERICA, INC.,	:	
	:	Civil Action No. 09-4883-GEB-MCA
Plaintiff,	:	
v.	:	Chief Judge Garrett E. Brown, Jr.
	:	Magistrate Judge Madeline Cox Arleo
SABERT CORPORATION,	:	
	:	
Defendant.	:	
	:	x

**THIRD DISCOVERY ORDER**

An application having been made by plaintiff Waddington North America, Inc. ("WNA"), by way of a letter to Chief Judge Garrett E. Brown, Jr. (Dkt.104) and a letter to Magistrate Judge Madeline Cox Arleo (Dkt.111), to compel discovery by and/or for discovery sanctions against defendant Sabert Corporation ("Sabert"); and

The Court having considered the written submissions of the parties and having conducted a hearing on October 26, 2010; and

The Court having found that Sabert failed to comply with the First Discovery Order of June 23, 2010 (Dkt.73) and the Second Discovery Order of August 19, 2010 (Dkt.91-2) without substantial justification;

It is hereby ORDERED as follows:

- Pursuant to Fed. R. Civ. P. 37(b)(2)(C), Sabert and its counsel, are ordered to pay all attorney fees and expenses associated with WNA's submissions to and appearances before Chief Judge Brown on October 19, 2010, and Magistrate Judge Arleo on October 26, 2010. WNA shall promptly serve and file a declaration documenting the fees and

*dated October 19, 2010 +  
October 22, 2010  
(Dkt.# 107 +  
111)*

expenses to which it believes it is entitled. Sabert shall have seven (7) calendar days from said filing in which to file any objections to WNA's request.

2. With respect to Sabert's claim for tortious interference, Sabert is ordered to produce, by **November 2, 2010**, all documents responsive to WNA's document requests nos. 60, 65, 70, and 71 and to provide a complete and verified response to WNA's interrogatory no. 15. Sabert's response must include all facts and underlying documents relating to these discovery requests, and Sabert will be precluded from relying on any facts or documents in its possession that relate to these discovery requests if such facts and documents are not provided to WNA by **November 2, 2010**. Failure to provide complete responses to these discovery requests will result in preclusion of Sabert's Seventh Counterclaim as a whole or as to specific customers cited in Sabert's counterclaim, as set forth in its Amended Answer, for tortious interference.

3. With respect to Sabert's defense and counterclaim of absolute intervening rights, Sabert is ordered to produce, by **November 2, 2010**, all documents responsive to WNA's document requests no. 51 and to provide a complete and verified response to WNA's interrogatory no. 13. Sabert's response must include a breakdown of the inventory for each product covered by these discovery requests. Sabert's response must also include all facts and underlying documents relating to these discovery requests, and Sabert will be precluded from relying on any facts or documents in its possession that relate to these discovery requests, if such documents are not produced to WNA by **November 2, 2010**. Failure to provide complete responses to these discovery requests will result in preclusion of Sabert's defense and Fifth Counterclaim, as set forth in its Amended Answer, alleging absolute intervening rights.


4. With respect to Sabert's defense and counterclaim of equitable intervening rights, Sabert is ordered to produce, by **November 5, 2010**, all documents responsive to WNA's

document requests nos. 57, 58, and 59 and to provide a complete and verified response to WNA's interrogatory no. 14. Sabert's response must include all facts and underlying documents relating to these discovery requests, and Sabert will be precluded from relying on any documents in its possession that relate to these discovery requests, if such documents are not produced to WNA by November 5, 2010. Failure to provide responses to these discovery requests will result in preclusion of Sabert's defense and Sixth Counterclaim, as set forth in its Amended Answer, alleging equitable intervening rights.

5. Sabert is ordered to perform a search of the electronic communications, including e-mail and hard copy files, of Albert Salama, Gary Ziznewski, Darryl Nazareth, and Donald Rifkin for all communications occurring on or after May 1, 2009, regarding WNA's patent-in-suit. Sabert is ordered to produce the results of this search to WNA by November 9, 2010, along with sworn certifications from the individuals cited above (or, if such individuals are no longer employed by Sabert, from another person having access to such individual's files), stating how the search of such individual's files was performed and what communications were located.

**SO ORDERED:**

Dated: October 28 2010  
Newark, New Jersey

  
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Madeline Cox Arleo  
United States Magistrate Judge