

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NEW COLT HOLDING CORP., *et al.* :
Plaintiffs, :
 :
-vs- : Civ. No. 3:02cv173 (PCD)
 :
RJG HOLDINGS OF FLORIDA, INC., *et al.*:
Defendants. :
 :

RULING ON MOTION TO COMPEL

Defendants AWA International, Inc. (“AWA”) and RJG Holdings of Florida (“RJG”) move to compel production of financial documents by plaintiffs.¹ The motion is **granted in part**.

I. BACKGROUND

Familiarity with prior rulings is presumed. In their first set of requests for production, defendants sought from plaintiffs “all documents concerning, reflecting, or substantiating your claim that you have sustained any damages by virtue of the actions charged in your Complaint.” Defendants requested, but were not provided, documents pertaining to monthly handgun production, total materials purchased, payroll records supporting actual hours worked, complete copies of variance reports, general ledgers, bill of materials for the two handgun models at issue in the present case, reports documenting standard labor hours, details as to how cost calculations were performed in

¹ Defendants also move for an order precluding plaintiffs’ presentation of damages evidence. Absent evidence that such non-production violated an order of this Court, the sanction of preclusion is not available. *See Penthouse Int’l Ltd. v. Playboy Enterprises, Inc.*, 663 F.2d 371, 390 (2d Cir. 1981). Defendants also request preclusion of any evidence allegedly sustained as a result of their activities pursuant to FED. R. CIV. P. 37(c)(1) (providing for preclusion of evidence at trial not seasonably identified through discovery). Such a motion is not yet ripe as there is no indication that plaintiffs intend to offer as evidence documents allegedly not produced. *See Lohnes v. Level 3 Communications, Inc.*, 272 F.3d 49, 60 (1st Cir. 2001).

plaintiffs' expert report, audited financial statements, working papers for financial statements produced, and tax returns.

In their complaint, plaintiffs seek damages equivalent to "their actual losses" or for plaintiff's "unjust enrichment." incurred as a result of defendants' conduct violative the trademark/trade dress as to a particular model, the Peacemaker. In their counterclaim, defendants claim plaintiffs used a false designation of origin and seek "[a]n accounting for all sales and profits obtained by plaintiffs with respect to particular the models Colt Cowboy and Model P.

II. STANDARD

"[T]he scope of discovery under FED. R. CIV. P. 26(b) is very broad, 'encompass[ing] any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.'" *Maresco v. Evans Chemetics, Div. of W.R. Grace & Co.*, 964 F.2d 106, 114 (2d Cir. 1992) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 2389, 57 L. Ed. 2d 253 (1978)). "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." FED. R. CIV. P. 26(b)(1). The scope of discovery, however, is not without bounds, and limitations are imposed where the discovery is "unreasonably cumulative or duplicative," overly "burdensome . . . [or] expensive" or "the burden or expense of the proposed discovery outweighs its likely benefit." FED. R. CIV. P. 26(b)(2). An order compelling discovery is rendered after consideration of the arguments of the parties, and such order may be tailored to the circumstances of the case. *Gile v. United Airlines, Inc.*, 95 F.3d 492, 496 (7th Cir. 1996).

III. DISCUSSION

Defendants move for production of the above documents pertaining to plaintiffs' operations claiming such are relevant to the resolution of discrepancies in expert and damages reports. Plaintiffs object to such production on the grounds of relevancy.

It is without question that defendants are entitled to verify line entries in a damages report. If the three models represented plaintiffs' entire business, defendants claim to the records would be stronger. However, there appears to be no dispute that the three handgun models that are the subject of the present action do not represent plaintiffs' entire line of product. At a minimum, defendants must establish the relevance of the production sought, *see* FED. R. CIV. P. 26(b)(1), and in this regard they have fallen short. Defendants will not be given *carte blanche* to probe all aspects of plaintiffs' operations without more.

Such does not end the inquiry, as defendants are entitled to production of current information pertaining to plaintiffs' damages claims. Plaintiffs may not claim damages on two theories, the first theory equivalent to defendants' sales then an alternative theory of plaintiffs' "loss of sales," then fail to detail the basis for their alternative claim. Plaintiffs will therefore produce excerpts from any document used to establish line entries in the damages report. If the line entries are not apparent from such excerpts, plaintiffs will provide a detailed description of the method and source of data used to generate the value and provide a copy of the underlying data. As a rule of thumb, every line item should be accompanied by sufficient detail as to permit independent verification of the values provided in the

damages report. To the extent plaintiffs have provided inconsistent damages claims through their experts, they will provide a detailed explanation accounting for any discrepancies.

To the extent production is not accomplished through the above production order, plaintiffs will provide any documents pertaining to the above three models detailing production and overhead costs for the years 2000 through 2002 as well as sales for the years 2000 through 2002. If such information is not available on a per model basis, documents detailing financial data for plaintiffs' entire operation will be provided for the same time period as well as documents detailing production and sales figures for all models produced.

IV. CONCLUSION

Plaintiff's motion to compel and for costs (Doc. No. 102) is **granted in part** consistent with the foregoing opinion.

SO ORDERED.

Dated at New Haven, Connecticut, April ____, 2003.

Peter C. Dorsey
United States District Judge