## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT
JENZABAR, INC., LING CHAI, and ROBERT A MAGINN, JR.,	) )
Plaintiffs,	ĺ
	) CIVIL ACTION NO. 07-2075-H
v.	) )
LONG BOW GROUP, INC.,	)
Defendant.	<b>)</b>
NOTICE OF I	MOTION TO DISMISS
Pursuant to Superior Court Rule 9E,	defendant Long Bow Group, Inc. (Long Bow)
hereby provides notice that it served the Pla	intiffs with: (1) Defendant Long Bow Group, Inc.'s
Motion to Dismiss; and (2) Defendant Long	Bow Group, Inc.'s Memorandum in Support of its
Motion to Dismiss. The foregoing motion	and accompanying memorandum of law were served
on October 2, 2007.	
Dated: October 2, 2007	LONG BOW GROUP, INC.
	By its attorneys,
CERTIFICATE OF SERVICE  Thereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail/by hand  Date: 10/2/67 Www W 6	T. Christopher Donnelly (BBO #129930) Matthew N. Kane (BBO # 636801) Adam B. Ziegler (BBO #654244) Donnelly, Conroy & Gelhaar, LLP One Beacon Street, 33 <sup>rd</sup> Floor Boston, MA 02108 (617) 720-2880

## COMMONWEALTH OF MASSACHUSETTS

CLIPPOLIZ

SUFFOLK, SS.	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT
JENZABAR, INC., LING CHAI, and ROBERT A MAGINN, JR.,	) )
Plaintiffs,	)
	) CIVIL ACTION NO. 07-2075-H
v.	)
	) )
LONG BOW GROUP, INC.,	)
Defendant.	)

## **DEFENDANT LONG BOW GROUP, INC.'S MOTION TO DISMISS**

Pursuant to Mass. R. Civ. P. 12(b)(6), defendant Long Bow Group, Inc. ("Long Bow") hereby moves to dismiss all of the claims asserted against it in Plaintiffs' Complaint. By the present suit, Plaintiffs seek to suppress statements on the Defendant's website under the guise of claims for defamation and alleged trademark violations. Plaintiffs have failed to state a claim under either theory. As grounds for the present motion, Long Bow states as follows:

1. Plaintiffs have failed to state a claim for defamation or business defamation. The defamation claims are not based on any specific statement made by Long Bow. Instead, the only specific alleged defamatory statement was made by Jenzabar's former chief financial officer during a lawsuit against the company. The *Boston Globe* truthfully reported that these allegations had been made by the former CFO and denied by Plaintiffs. Long Bow, in turn, quoted the *Globe* article, including Plaintiffs' denial of the allegations.

2. Under these circumstances, Long Bow's republication of the statements at issue was protected by the reputable news source privilege and the fair report privilege. These privileges foreclose Plaintiffs' defamation claims.

3. Even apart from these privileges, Plaintiffs have failed to alleged facts sufficient

to allege falsity, defamatory meaning, or fault as required to state a claim for defamation.

4. Plaintiffs have similarly failed to state any trademark claim. As a preliminary

matter, Plaintiff has failed to alleged trademark "use" within the meaning of the Lanham Act. In

addition, Long Bow's references to Jenzabar on its website constitute protected fair use. Finally,

there is no likelihood of confusion because no reasonable viewer of these allegedly disparaging

comments would believe that they emanated from, or were endorsed by, Plaintiffs. As a result,

Plaintiffs have failed to state any trademark claim under federal or state law.

5. The grounds for the present motion are set forth more fully in the accompanying

memorandum of law served and filed concurrently herewith.

WHEREFORE, Defendant Long Bow Group, Inc. respectfully requests that the Court

dismiss all counts of the Complaint and grant such further relief as is meet and just.

Dated: October 2, 2007

Respectfully submitted,

LONG BOW GROUP, INC.

By its attorneys,

CERTIFICATE, OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail/by hand

Date: 10/2 107 Mellem N 6-

T. Christopher Donnelly (BBO #129930)

Matthew N. Kane (BBO # 636801) Adam

B. Ziegler (BBO #654244)

Yeldan N 6

Donnelly, Conroy & Gelhaar, LLP

One Beacon Street, 33rd Floor

Boston, MA 02108

(617) 720-2880