

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and  
ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

**AFFIDAVIT OF ADAM B. ZIEGLER**

I, Adam B. Ziegler, state and declare the following:

1. I am an attorney at Donnelly, Conroy & Gelhaar LLP and a member in good standing of the Massachusetts bar. I am counsel to Defendant Long Bow Group, Inc. ("Long Bow") in this action. I make this affidavit on personal knowledge, in support of Long Bow's Opposition to Plaintiff's Emergency Motion for Protective Order, and also in support of Long Bow's Emergency Motion for Relief Pursuant to Rule 37(d).

2. On April 7, 2009, Long Bow served on plaintiffs' document requests, interrogatories, and deposition notices for each of the three named plaintiffs. True and correct copies of the deposition notices are attached as **Exhibit A**.

3. On April 29, 2009, at plaintiffs' request, Long Bow agreed to the filing of a joint motion to extend the tracking order, which the Court granted. Long Bow also

agreed to reschedule the depositions of the three named plaintiffs. Plaintiffs did not seek or propose any confidentiality order in connection with these discussions.

4. On May 7, 2009, plaintiffs served their written responses and objections to Long Bow's document requests. A true and correct copy of the responses served by Jenzabar is attached as **Exhibit B**.

5. On May 7, 2009, plaintiffs proposed a "Joint Motion for Protective Order" which called for two-tier confidentiality protection and impoundment and filing-under-seal of all documents designed confidentiality. A true and correct copy of this proposed "Joint Motion for Protective Order" is attached to Plaintiff's Emergency Motion.

6. On May 14, 2009, during a Rule 9C conference, I informed plaintiffs' counsel that Long Bow would not agree to the proposed protective order. I noted that the case did not involve any trade secrets or other information potentially entitled to confidentiality. I requested plaintiffs' counsel to identify discrete categories of documents or information that posed specific confidentiality concerns, so that those could be addressed appropriately with a narrowly tailored confidentiality order. In subsequent conversations, Jenzabar's counsel identified only two categories of information that Jenzabar believed qualified for confidentiality protections under Mass. R. Civ. P. 26(c): (1) the identities of Jenzabar customers not previously disclosed, such as through the many press releases on Jenzabar's own website and (2) Jenzabar's financial statements.

7. On May 19, 2009, because plaintiffs' counsel had repeatedly refused to provide any dates for depositions of the named plaintiffs, I served amended notices of deposition for all three plaintiffs. True and correct copies of these amended notices of deposition are attached as **Exhibit C**. In selecting the dates for these depositions – all

during the first week of June – I specifically avoided scheduling these depositions during the last week of May, because plaintiffs’ counsel represented that this week would be inconvenient to the witnesses due to an out-of-state conference.

8. On May 20, 2009, plaintiffs produced 268 pages of documents in response to Long Bow’s document requests. During a 9C conference regarding the adequacy of this document production, plaintiffs’ counsel represented to me that this was plaintiffs’ complete production with respect to numerous, critical categories of documents. I confirmed this in a letter dated May 27, 2009, a true and correct copy of which is attached as **Exhibit D**.

9. Plaintiffs’ document production consisted almost entirely of public records, including copies of Long Bow’s website and Long Bow’s own corporate filings. The only non-public documents plaintiffs produced were pre-suit communications between Long Bow and Jenzabar. Despite these being non-confidential, party-to-party communications, and despite the fact that no confidentiality order is in place, Jenzabar nevertheless marked all of these communications as “Confidential.”

10. On May 21, 2009, in response to plaintiffs’ deficient document production, I served a second amended notice of taking Jenzabar’s deposition pursuant to Rule 30(b)(6). The second amended notice added a topic relating to Jenzabar’s document retention, collection, and production efforts. A true and correct copy of this second amended deposition notice is attached as **Exhibit E**.

11. On May 22, 2009, the date its interrogatory answers were due, Jenzabar’s counsel transmitted to me – by email – a Word document with the filename: “Long Bow – Jenzabar response to 1<sup>st</sup> Ints (objections only version).” Counsel’s email stated: “I am

available to discuss tuesday (and anticipate supplementation).” A true and correct copy of this email is attached as **Exhibit F**.

12. On Tuesday, May 26, 2009, Jenzabar properly served an executed version of the identical, “objections only” interrogatory responses. A true and correct copy of Jenzabar’s response to interrogatories is attached as **Exhibit G**.

13. On May 27, 2009, I informed Jenzabar’s counsel by letter that Long Bow objected to Jenzabar’s failure to answer interrogatories. A true and correct copy of my May 27, 2009 letter is attached as **Exhibit H**.

14. In my May 27, 2009 letter, I also stated that Long Bow would not agree to a broad protective order that Jenzabar was certain to abuse, as demonstrated by (a) Jenzabar’s position that all evidence relating to this case was confidential and (b) Jenzabar’s designation of pre-suit communications between the parties as “Confidential.” I reiterated that this litigation does not involve trade secrets, and that Jenzabar’s counsel had only identified two discrete categories of information that Jenzabar claimed was truly confidential. In addition, in an effort to avoid unnecessary motions, however, I stated that Long Bow would agreed to entry of a narrowly drawn protective order that would encompass two categories of information about which Jenzabar had expressed particularized concerns: (1) the identities of any customers Jenzabar was contractually bound to keep confidential and (2) Jenzabar’s financial statements.

15. On May 29, 2009, during another Rule 9C conference, plaintiffs’ counsel informed me that plaintiffs (a) would produce no additional documents, (b) would not answer any interrogatories, and (c) would not appear for their depositions, which were noticed for the following week on June 1 (Jenzabar), June 5 (Chai), and June 6 (Maginn).

Plaintiffs' counsel confirmed this position by letter dated May 29, 2009. A true and correct copy of this letter is attached as **Exhibit I**. The only excuse offered for this refusal was the fear that discovery materials would become known to the public.

16. On May 29, 2009, the last business day before Jenzabar's Rule 30(b)(6) deposition, Jenzabar filed its Emergency Motion for Protective Order.

17. On June 1, 2009, I attempted to conduct the duly noticed Rule 30(b)(6) deposition of plaintiff Jenzabar. Neither Jenzabar nor its counsel appeared.

18. On June 5, 2009, barring an intervening order by this Court, Long Bow will proceed with the duly noticed deposition of plaintiff Ling Chai.

19. On June 6, 2009, barring an intervening order by this Court, Long Bow will proceed with the duly noticed deposition of plaintiff Robert Maginn.

20. On its website, Long Bow has posted PDF copies of important documents from the Court file: plaintiffs' Complaint; Long Bow's Answer; the briefing by both parties on the motion to dismiss; and this Court's Memorandum of Decision and Order on the motion to dismiss. Long Bow also has posted a narrative summary of the lawsuit.

21. Long Bow's website also includes an "Appeal" for support, which summarizes Long Bow's view of the important issues and principles affected by this case and asks readers to do the following: "[V]isit our website ([www.tsquare.tv](http://www.tsquare.tv)) to read the materials that have prompted this lawsuit and the legal filings from the case. We ask you to draw your own conclusions about the issues and freedoms at stake." A true and correct copy of Long Bow's "Appeal" is attached as **Exhibit J**.

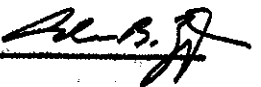
22. Long Bow's website also includes Jenzabar's two-page "Response to the Appeal," which Long Bow agreed to post at Jenzabar's explicit request. A true and correct copy of Jenzabar's "Response to the Appeal" is attached as **Exhibit K**.

Signed under penalties of perjury this 1<sup>st</sup> day of June, 2009.

  
Adam B. Ziegler

**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: June 1, 2009 

**EXHIBIT A**

**EXHIBIT A**

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SUPERIOR COURT DEPARTMENT  
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ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

NOTICE OF TAKING RULE  
30(B)(6) DEPOSITION

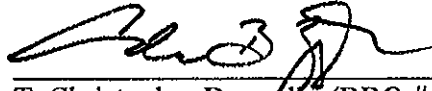
To: Lawrence M. Kraus, Esq.  
FOLEY & LARDNER LLP  
111 Huntington Avenue  
Boston, MA 02199  
(617) 342-4000

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30(b)(6), defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of **Jenzabar, Inc.**, by the person(s) most knowledgeable with respect to the subject areas set forth in the attached Schedule A. The deposition will take place on **April 29, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108**. The deposition will continue from day to day until completed. You are invited to attend and cross-examine.



LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108

617-720-2880 (tel)

617-720-3554 (fax)

Dated: April 7, 2009

**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/hand

Date:

April 7, 2009



## **SCHEDULE A**

### **DEFINITIONS**

- A. The "Complaint" refers to the complaint filed in this lawsuit.
- B. The "Film" refers to the film titled "The Gates of Heavenly Peace," which is referenced in Paragraph 15 of the Complaint.
- C. The "Site" refers to <http://www.tsquare.tv/film/jenzabar.html>, which is referenced in Paragraph 19 of the Complaint.
- D. The "Marks" refers to "Jenzabar" and "Jenzabar.com," which are alleged in the Complaint to be federally registered trademarks owned by Jenzabar, Inc. ("Jenzabar").

### **SUBJECT AREAS**

- 1. Jenzabar's history, corporate structure, and employee hierarchy.
- 2. Jenzabar's business, including its products and services, market, customers, investors, and competitors.
- 3. Jenzabar's use of the Marks and efforts to prevent others from using the Marks.
- 4. Jenzabar's reputation and goodwill, including the numerous negative, critical news reports that have been published about Jenzabar and its senior officers.
- 5. Jenzabar's use of Ling Chai's involvement in the 1989 Tiananmen Square student protests in its marketing, publicity, promotions, and advertisements.
- 6. Communications with Jenzabar's actual or potential customers and investors concerning Long Bow Group, Inc. ("Long Bow"), the Site, and the Film.
- 7. The basis for the allegation in the Complaint that Long Bow's use of the Marks has caused confusion.

8. The basis for the allegation in the Complaint that Long Bow's use of the Marks has caused dilution.

9. The basis for the allegation in the Complaint that Jenzabar has received numerous inquiries from customers as a result of Long Bow's use of the Marks.

10. The basis for the allegation in the Complaint that Jenzabar has lost business opportunities and suffered economic harm as a result of Long Bow's use of the Marks.

11. The basis for the allegation in the Complaint that Long Bow is motivated by sympathy for officials in the Communist government of China.

12. The basis for the allegation in the Complaint that Long Bow is motivated by malice toward Ling Chai and a desire to discredit Ling Chai and advance Long Bow's divergent political agenda.

COMMONWEALTH OF MASSACHUSETTS

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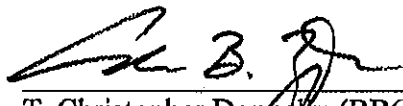
**NOTICE OF TAKING  
DEPOSITION OF LING CHAI**

To: Lawrence M. Kraus, Esq.  
FOLEY & LARDNER LLP  
111 Huntington Avenue  
Boston, MA 02199  
(617) 342-4000

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30, defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of **Ling Chai**. The deposition will take place on **April 30, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108**. The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108

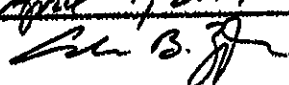
617-720-2880 (tel)

617-720-3554 (fax)

Dated: April 7, 2009

**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: April 7, 2009  


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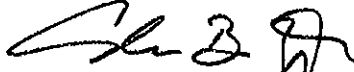
**NOTICE OF TAKING  
DEPOSITION OF ROBERT  
MAGINN**

To: Lawrence M. Kraus, Esq.  
FOLEY & LARDNER LLP  
111 Huntington Avenue  
Boston, MA 02199  
(617) 342-4000

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30, defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of **Robert Maginn**. The deposition will take place on **May 1, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108**. The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108

617-720-2880 (tel)

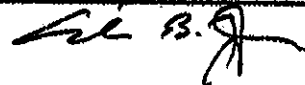
617-720-3554 (fax)

Dated: April 7, 2009

**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: April 7, 2009



**EXHIBIT B**

**EXHIBIT B**

**EXHIBIT B**

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**PLAINTIFF JENZABAR, INC.'S RESPONSE TO DEFENDANT  
LONG BOW INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

In accordance with Mass. R. Civ. P. 34, Plaintiff Jenzabar, Inc. ("*Jenzabar*") submits its objections and responses to Defendant's First Request for Production of Documents (the "Requests") propounded by Long Bow Group, Inc. ("*Long Bow*").

**GENERAL OBJECTIONS**

1. Jenzabar objects generally to the Requests to the extent that they seek the production of documents that are: (a) protected by the attorney-client privilege, work product doctrine or any similar privilege or doctrine; (b) immune from discovery under the work product doctrine; (c) confidential business records or proprietary business information absent an appropriate protective order; (d) personnel records or other similarly private and confidential materials absent an appropriate protective order; or (e) otherwise not discoverable within the meaning of Mass. R. Civ. P. 26.

2. Jenzabar objects to the Requests to the extent that they call for the production of documents in the hands of third parties and not in Jenzabar's possession, custody, or control.

3. Jenzabar objects generally to the "Instructions" section of the Requests to the extent that they seek to impose obligations greater than those under the Massachusetts Rules of Civil Procedure, pertinent statutes or interpretative decisions.

4. Jenzabar objects to the Requests to the extent that they fail to identify a relevant time period covered by the Requests.

5. Jenzabar notes that its agreement to produce non-privileged responsive documents in its possession, custody, or control does not constitute a representation that Jenzabar affirmatively has any such non-privileged responsive documents in its possession, custody, or control.

6. Jenzabar incorporates these General Objections, to the extent applicable, into each and every response below.

7. Jenzabar reserves the right to amend, modify and/or supplement its responses, if necessary or appropriate.

8. Subject to and without waiving its objections, Jenzabar states that, where it has indicated in an individual response that it will produce responsive documents, it will make available for inspection and copying non-privileged documents within its possession, custody or control that are responsive to Defendant's requests at the offices of Jenzabar, Inc., Prudential Tower, 800 Boylston Street, Floor 35, Boston MA 02199-7610 or Eckert Seamans Cherin & Mellott, LLC, One International Place, 18th Floor, Boston, MA 02110-2602 at a mutually convenient time.

## **SPECIFIC RESPONSES AND OBJECTIONS**

Subject to and without waiving its General Objections, Jenzabar hereby makes the following specific responses and objections.

### **DOCUMENT REQUEST NO. 1**

All documents concerning Long Bow.

### **RESPONSE TO REQUEST NO. 1**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

### **DOCUMENT REQUEST NO. 2**

All documents concerning the Site.

### **RESPONSE TO REQUEST NO. 2**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

### **DOCUMENT REQUEST NO. 3**

All documents concerning the Film.

### **RESPONSE TO REQUEST NO. 3**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

### **DOCUMENT REQUEST NO. 4**

All documents concerning Long Bow's use of the Marks.

**RESPONSE TO REQUEST NO. 4**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

**DOCUMENT REQUEST NO. 5**

All documents concerning the allegedly "numerous inquiries from and misunderstandings with Jenzabar's clients" that have resulted from the Site.

**RESPONSE TO REQUEST NO. 5**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

**DOCUMENT REQUEST NO. 6**

All documents concerning all instances of confusion allegedly caused by Long Bow's use of the Marks.

**RESPONSE TO REQUEST NO. 6**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

**DOCUMENT REQUEST NO. 7**

All documents concerning all business opportunities allegedly lost as a result of Long Bow's use of the Marks.

#### **RESPONSE TO REQUEST NO. 7**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

#### **DOCUMENT REQUEST NO. 8**

All documents concerning any harm allegedly suffered by Jenzabar as a result of Long Bow's use of the Marks.

#### **RESPONSE TO REQUEST NO. 8**

Subject to and without waiving its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control responsive to this request.

#### **DOCUMENT REQUEST NO. 9**

Documents sufficient to identify all of Jenzabar's actual customers and, to the extent known, potential customers.

#### **RESPONSE TO REQUEST NO. 9**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request is overbroad and unduly burdensome, seeks confidential information, and with respect to the phrase "potential customers," vague and ambiguous.

**DOCUMENT REQUEST NO. 10**

Documents sufficient to identify all of Jenzabar's actual investors and, to the extent known, potential investors.

**RESPONSE TO REQUEST NO. 10**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request is overbroad and unduly burdensome, seeks confidential information, and with respect to the phrase "potential investors," vague and ambiguous.

**DOCUMENT REQUEST NO. 11**

Documents sufficient to identify all of Jenzabar's products and services.

**RESPONSE TO REQUEST NO. 11**

Jenzabar objects to this request because it does not specify a time period. Subject to and without waiving this or its General Objections, Jenzabar agrees to produce non-privileged, responsive documents in its possession, custody, or control sufficient to identify Jenzabar's products and services as of the filing of its complaint.

**DOCUMENT REQUEST NO. 12**

The current resume or curriculum vitae of any person you intend to call as an expert witness.

#### **RESPONSE TO REQUEST NO. 12**

Jenzabar objects to this request to the extent that it exceeds the scope of discovery as established by Mass. R. Civ. P. 26(b)(4). Jenzabar further objects to this request to the extent that it seeks information covered by the work product protection. Subject to and without waiving this or its General Objections, Jenzabar states that it has not yet determined whether it will call any person as an expert witness in this case, and therefore there are no documents responsive to this request.

#### **DOCUMENT REQUEST NO. 13**

All documents provided to or reviewed by any person you intend to call as an expert witness.

#### **RESPONSE TO REQUEST NO. 13**

Jenzabar objects to this request to the extent that it exceeds the scope of discovery as established by the Massachusetts Rules of Civil Procedure, including Mass. R. Civ. P. 26(b)(4). Jenzabar further objects to this request to the extent that it seeks information covered by the attorney-client and work product protections. Subject to and without waiving this or its General Objections, Jenzabar states that it has not yet determined whether it will call any person as an expert witness in this case, and therefore there are no documents responsive to this request.

#### **DOCUMENT REQUEST NO. 14**

All documents concerning the use of the Marks by any person not party to this litigation, including use of the Marks by Forbes.com and CNN.com.

#### **RESPONSE TO REQUEST NO. 14**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request is overbroad and unduly burdensome, and seeks documents outside Jenzabar's possession, custody, or control.

#### **DOCUMENT REQUEST NO. 15**

All documents concerning efforts by you, Maginn, or Chai to prevent or to stop persons other than Long Bow from using the Marks.

#### **RESPONSE TO REQUEST NO. 15**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this or its General Objections, Jenzabar states that it will produce demands made to any third party other than Long Bow from using the Marks.

#### **DOCUMENT REQUEST NO. 16**

Jenzabar's periodic (annual, quarterly, and monthly) financial statements from founding to present.

#### **RESPONSE TO REQUEST NO. 16**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of



admissible evidence. Jenzabar further objects that this request seeks information for time periods that have no bearing on the period at issue in this lawsuit. Jenzabar further objects that the term “financial statements” is vague. Subject to and without waiving this or its General Objections, Jenzabar directs Long Bow to its responses to Requests 7 and 8 for information pertinent to Jenzabar’s damages claims.

**DOCUMENT REQUEST NO. 17**

Documents sufficient to show the volume of internet traffic to the Jenzabar.com and Jenzabar.net websites on a month-by-month basis from founding of Jenzabar to present.

**RESPONSE TO REQUEST NO. 17**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request seeks information for time periods that have no bearing on the period at issue in this lawsuit. Jenzabar further objects that the term “volume of internet traffic” is vague and ambiguous.

**DOCUMENT REQUEST NO. 18**

All documents concerning the use of the names of Jenzabar’s customers for marketing, publicity, or advertising purposes, including without limitation all documents concerning authorization of such use, all documents concerning refusals to authorize such use, and all documents concerning objections to such use.

**RESPONSE TO REQUEST NO. 18**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request is not limited in time. Subject to and without waiving this or its General Objections, Jenzabar will produce such authorizations, if any.

#### **DOCUMENT REQUEST NO. 19**

All documents that contain information that is critical of you, Maginn, or Chai, including without limitation all negative news stories and press reports.

#### **RESPONSE TO REQUEST NO. 19**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request is not limited in time. Jenzabar further objects that “information that is critical” is subjective, ambiguous, and vague. Jenzabar further objects that this request seeks “negative news stories and press reports” that are, by definition, documents created and maintained by third parties and publically available. Subject to and without waiving this or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I and II, which have been dismissed from the case.

## DOCUMENT REQUEST NO. 20

All documents concerning communications, including without limitation communications with the general public, news organizations, actual or potential customers, and actual or potential investors, concerning the following:

- a. the dispute with Harvard Business School, or any of its affiliates, which is reported in *The Boston Globe*;
- b. the dispute with Boston College, or any of its affiliates, which is reported in *The Chronicle of Higher Education*;
- c. The provision of payments, gifts, or other items of value to representatives of the current or prospective customers of Jenzabar, which is reported in *The Chronicle of Higher Education*;
- d. The dispute with Pegasus Investors, L.P., or any of its affiliates, which is reported in *The Boston Globe*;
- e. the dispute with Joseph DiLorenzo, which is reported in *The Boston Globe* and in *Forbes*;
- f. The dispute with Dwight O. Wyse, which is reported in *Forbes*;
- g. The dispute with Alan Frishman, which is reported in *Forbes*;
- h. The dispute with John Pierce, which is reported in *Forbes*;
- i. The dispute with Mahendran Jawaharlal, which is reported in *Forbes*;
- j. Maginn's allegedly illegal expenditures for the benefit of the Mitt Romney campaign, which are reported in the *Boston Herald*;
- k. All other lawsuits, disputes, allegation, charges, and illegal, inappropriate, or unethical actions that may affect Jenzabar's reputation and goodwill.

#### **RESPONSE TO REQUEST NO. 20**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that this request is not limited in time. Jenzabar further objects that “illegal, inappropriate, or unethical actions” is vague and ambiguous. Subject to and without waiving this or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I and II, which have been dismissed from the case.

#### **DOCUMENT REQUEST NO. 21**

All documents concerning your allegation that Long Bow is motivated by sympathy for officials in the Communist government of China.

#### **RESPONSE TO REQUEST NO. 21**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I and II, which have been dismissed from the case. Further answering, Jenzabar responds that it will produce non-privileged, responsive documents in its possession, custody, or control responsive to this request, if any.

#### **DOCUMENT REQUEST NO. 22:**

All documents concerning your allegation that Long Bow is motivated by malice towards Chai and a desire to discredit Chai and advance Long Bow's divergent political agenda.

**RESPONSE TO REQUEST NO. 22:**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I and II, which have been dismissed from the case. Further answering, Jenzabar responds that it will produce non-privileged, responsive documents in its possession, custody, or control responsive to this request, if any.

**DOCUMENT REQUEST NO. 23**

All documents concerning the exploitation of Chai's involvement in the 1989 Tiananmen Square student protests for the benefit of Jenzabar, including without limitation all marketing literature, publicity, promotions, and advertisements referring to Chai's involvement in the 1989 Tiananmen Square student protests.

**RESPONSE TO REQUEST NO. 23**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that the term "exploitation" is vague and ambiguous. Subject to and without waiving these or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I

and II, which have been dismissed from the case. Further answering, Jenzabar responds that it will produce any Jenzabar marketing materials referring to Chai's involvement in the 1989 Tiananmen Square student protests, if any.

#### **DOCUMENT REQUEST NO. 24**

All documents concerning communications with the *Boston Globe*, the *Boston Herald*, *Fortune* magazine, the *Chronicle of Higher Education*, and all other organizations that have published reports that are critical of you, Chai, or Maginn, including without limitation all threats of litigation made by you, Chai, or Maginn against such organizations.

#### **RESPONSE TO REQUEST NO. 24**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that the terms "critical of you, Chai, or Maginn" and "threats of litigation" are subjective, ambiguous, and vague. Subject to and without waiving these or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I and II, which have been dismissed from the case.

#### **DOCUMENT REQUEST NO. 25**

All documents concerning efforts by you, Chai, or Maginn to suppress critical news reporting and commentary and to intimidate reporters, columnists, historians, news

organizations, film-makers, and any other persons who publish information that is critical of you, Chai, or Maginn.

#### **RESPONSE TO REQUEST NO. 25**

In addition to its General Objections, Jenzabar objects that this request seeks information that is irrelevant and neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects that the terms “suppress critical news reporting and commentary and to intimidate” and “information that is critical” are subjective, ambiguous, and vague. Subject to and without waiving these or its General Objections, Jenzabar states that this request appears to be directed at documents that could only arguably be relevant to Counts I and II, which have been dismissed from the case. Further answering, Jenzabar states that because, to the best of its knowledge, it has never attempted to suppress truthful, accurate news reporting or unbiased commentary about Jenzabar, Chai, or Maginn or to intimidate reporters, columnists, historians, news organizations, film-makers, or any other persons engaged in the same, no such documents which it is aware of exist.

#### **DOCUMENT REQUEST NO. 26**

To the extent not requested above, all documents concerning the facts and/or circumstances alleged in the Complaint.

#### **RESPONSE TO REQUEST NO. 26**

In addition to its General Objections, Jenzabar objects that this request is vague and overbroad. Subject to and without waiving these or its General Objections, Jenzabar directs Long Bow to its responses to, inter alia, Requests 1, 2, 3, 4, 5, 6, 7, 8, 11, 15, 18, 21, 22, and 23.

By their attorney,



---

Lawrence R. Kulig (BBO #544656)  
Eckert Seamans Cherin & Mellott, LLC  
One International Place, 18th Floor  
Boston, MA 02110  
(617) 342-6875

Dated: May 7, 2009



**EXHIBIT C**

**EXHIBIT C**

**EXHIBIT C**

**EXHIBIT C**

**EXHIBIT C**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and  
ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

AMENDED NOTICE OF TAKING  
RULE 30(B)(6) DEPOSITION

To: Lawrence R. Kulig, Esq.  
ECKERT SEAMANS  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110-2602  
617-342-6875

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30(b)(6), defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of **Jenzabar, Inc.**, by the person(s) most knowledgeable with respect to the subject areas set forth in the attached Schedule A. The deposition will take place on **June 1, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108.** The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108

617-720-2880 (tel)

617-720-3554 (fax)

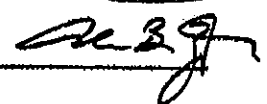
Dated: May 19, 2009

**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:

5/19/09



## **SCHEDULE A**

### **DEFINITIONS**

- A. The “Complaint” refers to the complaint filed in this lawsuit.
- B. The “Film” refers to the film titled “The Gates of Heavenly Peace,” which is referenced in Paragraph 15 of the Complaint.
- C. The “Site” refers to <http://www.tsquare.tv/film/jenzabar.html>, which is referenced in Paragraph 19 of the Complaint.
- D. The “Marks” refers to “Jenzabar” and “Jenzabar.com,” which are alleged in the Complaint to be federally registered trademarks owned by Jenzabar, Inc. (“Jenzabar”).

### **SUBJECT AREAS**

- 1. Jenzabar’s history, corporate structure, and employee hierarchy.
- 2. Jenzabar’s business, including its products and services, market, customers, investors, and competitors.
- 3. Jenzabar’s use of the Marks and efforts to prevent others from using the Marks.
- 4. Jenzabar’s reputation and goodwill, including the numerous negative, critical news reports that have been published about Jenzabar and its senior officers.
- 5. Jenzabar’s use of Ling Chai’s involvement in the 1989 Tiananmen Square student protests in its marketing, publicity, promotions, and advertisements.
- 6. Communications with Jenzabar’s actual or potential customers and investors concerning Long Bow Group, Inc. (“Long Bow”), the Site, and the Film.
- 7. The basis for the allegation in the Complaint that Long Bow’s use of the Marks has caused confusion.

8. The basis for the allegation in the Complaint that Long Bow's use of the Marks has caused dilution.

9. The basis for the allegation in the Complaint that Jenzabar has received numerous inquiries from customers as a result of Long Bow's use of the Marks.

10. The basis for the allegation in the Complaint that Jenzabar has lost business opportunities and suffered economic harm as a result of Long Bow's use of the Marks.

11. The basis for the allegation in the Complaint that Long Bow is motivated by sympathy for officials in the Communist government of China.

12. The basis for the allegation in the Complaint that Long Bow is motivated by malice toward Ling Chai and a desire to discredit Ling Chai and advance Long Bow's divergent political agenda.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and  
ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

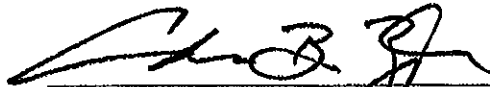
**AMENDED NOTICE OF TAKING  
DEPOSITION OF LING CHAI**

To: Lawrence R. Kulig, Esq.  
ECKERT SEAMANS  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110-2602  
617-342-6875

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30, defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of Ling Chai. The deposition will take place on **June 4, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108.** The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108


617-720-2880 (tel)

617-720-3554 (fax)

Dated: May 19, 2009

**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: 5/19/09 

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and  
ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

**AMENDED NOTICE OF TAKING  
DEPOSITION OF ROBERT  
MAGINN**

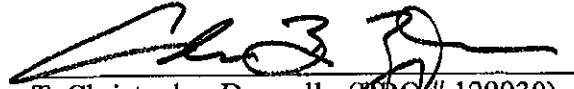
To: Lawrence R. Kulig, Esq.  
ECKERT SEAMANS  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110-2602  
617-342-6875

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30, defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of **Robert Maginn**. The deposition will take place on **June 5, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108**. The deposition will continue from day to day until completed. You are invited to attend and cross-examine.



LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108

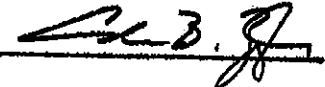
617-720-2880 (tel)

617-720-3554 (fax)

Dated: May 19, 2009

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: 5/19/09 

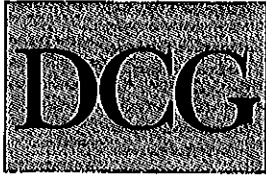
**EXHIBIT D**

**EXHIBIT D**

**EXHIBIT D**

**EXHIBIT D**

**EXHIBIT D**



Donnelly, Conroy & Gelhaar, LLP  
One Beacon Street, 33rd Floor  
Boston, MA 02108  
617.720.2880 ph.  
617.720.3554 fx.  
www.dcglaw.com

Adam B. Ziegler  
abz@dcglaw.com

May 27, 2009

**VIA EMAIL AND HAND DELIVERY**

Lawrence R. Kulig, Esq.  
Eckert Seamans  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110-2602

Re: Jenzabar, Inc., et al v. Long Bow Group, Inc.,  
Suffolk County Superior Court, C.A. No. 07-2075-H

Dear Larry:

This letter memorializes our Rule 9C conference on Friday, May 22, 2009, and responds to your clients' draft "emergency" motion to extend the tracking order by 90 days, which you served by email on May 22.

**Plaintiffs' "Emergency" Motion to Extend the Tracking Order by 90 Days**

Long Bow opposes this motion, which seeks to delay discovery by another 90 days and offers no justification for doing so.

This case has been pending for over two years, and the time has come for plaintiffs to disclose what basis exists, if any at all, for the claims and allegations they have made against Long Bow.

Plaintiffs' reference to a "worldwide media blitzkrieg attack on Jenzabar and the individual plaintiffs" is colorful but irrelevant. Media interest in this litigation does not excuse plaintiffs from complying with basic discovery obligations -- such as the obligation to appear for duly noticed depositions and to answer properly served interrogatories which seek plainly discoverable information about the basis of explicit allegations in the complaint.

**Plaintiffs' Document Production and Admissions Regarding the Lack of Documentary Support for Allegations in the Complaint**

On May 20, 2009, your clients produced 268 pages of documents. Previously, you had represented multiple times that by May 20, your clients would produce all documents they had agreed to produce in their responses to Long Bow Group, Inc.'s ("Long Bow") document requests.

During our May 22 call, you stated that your clients' document production was complete with respect to all documents they agreed to produce in their responses to Long Bow's document requests.

Your clients produced no internal notes, no internal emails, and no internal documents whatsoever. Instead, the 268-page production made by your clients consisted approximately of the following:

- 110 pages of public documents printed directly from Long Bow's website;
- 52 pages of public news reports and press releases printed directly from the web or from Westlaw (this number includes two identical copies of an article authored by Ling Chai, *Revolution Has Its Price*, and approximately 17 blank pages);
- 40 pages of public corporate records of Long Bow, which were printed directly from the website for the Massachusetts Secretary of State;
- 66 pages of correspondence between Long Bow and Jenzabar's general counsel, Jamison Barr. None of this correspondence is confidential. Virtually all of it is already public. Yet your clients marked this correspondence "Confidential."

Because these publicly available documents are not responsive as to several categories of documents that plaintiffs agreed to produce, I asked you in our May 22 conference to confirm the following points regarding plaintiffs' document production, and you did so:

- Plaintiffs have no documents concerning Long Bow's alleged use of the Marks (Doc. Request No. 4).
- Plaintiffs have no documents concerning the allegation in the complaint that "numerous inquiries from and misunderstandings with Jenzabar's clients" resulted from the Site (Doc. Request No. 5).

- Plaintiffs have no documents concerning any instances of alleged confusion caused by Long Bow's use of the Marks (Doc Request No. 6).
- Plaintiffs have no documents concerning any business opportunities allegedly lost as a result of Long Bow's use of the Marks (Doc Request No. 7).
- Plaintiffs have no documents concerning any harm allegedly suffered by them as a result of Long Bow's use of the Marks (Doc. Request No. 8).
- Plaintiffs have no documents concerning any efforts by them to stop or prevent persons other than Long Bow from using the Marks (Doc. Request. No. 15). You further represented that plaintiffs have never sought to enforce the Jenzabar Marks against anyone other than Long Bow.
- Plaintiffs have no documents concerning their use of customer names for marketing and related purposes, including documents authorizing such use (Doc. Request No. 18). You stated that you wanted to double-check with your clients on the accuracy of this representation. Please confirm that this representation is accurate.
- Plaintiffs have no documents concerning their allegation that Long Bow is motivated by sympathy for officials in the Communist government of China (Doc. Request No. 21).
- Plaintiffs have no documents concerning their allegation that Long Bow is motivated by malice toward Chai Ling and a desire to discredit Chai Ling and advance Long Bow's divergent political agenda (Doc. Request No. 22).

**Plaintiffs' Promised Supplemental Document Production**

With respect to certain other categories of documents, you informed me that your clients were withdrawing their objections and would produce all additional documents no later than June 1, 2009. These include the following:

- Documents sufficient to identify Jenzabar's publicly disclosed customers (Doc. Request No. 9).
- Documents sufficient to identify Jenzabar's products and services for the entire period covered by plaintiffs' claims (Doc. Request No. 11).

- Documents concerning use of the Marks by persons other than Long Bow (Doc. Request No. 14). Although you reported that Long Bow was withdrawing its objection and would produce any responsive documents, you stated that you did not believe any responsive documents exist.
- Documents concerning internet traffic to the Jenzabar websites (Doc. Request No. 17). You stated that plaintiffs would produce the same type of web-traffic data produced by Long Bow.
- Documents concerning the exploitation of Chai Ling's involvement in the 1989 Tiananmen Square student protests for the benefit of Jenzabar (Doc. Request. No. 23).

**Plaintiffs' Continuing Refusal To Produce Documents Relating To Explicit Allegations In Their Complaint**

Your clients alleged explicitly that Jenzabar possesses valuable goodwill and a valuable reputation, that Long Bow intended to trade on Jenzabar's reputation, and that Long Bow's use of the Marks damaged Jenzabar's goodwill and reputation. Compl. ¶¶ 13, 58, 59, 65, 70, 71, 75, 76, 80. Despite these allegations, your clients continue to refuse to produce any requested documents concerning their reputations.

I asked you on May 22 if your clients were withdrawing and disclaiming all allegations concerning their goodwill and reputations, given their refusal to comply with discovery requests on these topics. Please confirm that your client is withdrawing and disclaiming all such allegations.

\* \* \* \*

Please call me if you would like to discuss these issues further.

Sincerely,



Adam B. Ziegler

ABZ/kh

cc: T. Christopher Donnelly, Esq.

**EXHIBIT E**

**EXHIBIT E**

**EXHIBIT E**

**EXHIBIT E**

**EXHIBIT E**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and  
ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

**SECOND AMENDED NOTICE OF  
TAKING RULE 30(B)(6)  
DEPOSITION**

To: Lawrence R. Kulig, Esq.  
ECKERT SEAMANS  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110-2602  
617-342-6875

PLEASE TAKE NOTICE that pursuant to Mass. R. Civ. P. 30(b)(6), defendant Long Bow Group, Inc., by its attorneys, will take the deposition upon oral examination of **Jenzabar, Inc.**, by the person(s) most knowledgeable with respect to the subject areas set forth in the attached Schedule A. The deposition will take place on **June 1, 2009, at 9:00 am at the offices of Donnelly, Conroy & Gelhaar, LLP at One Beacon Street, 33<sup>rd</sup> Floor, Boston, MA 02108.** The deposition will continue from day to day until completed. You are invited to attend and cross-examine.



LONG BOW GROUP, INC.

By its attorneys,



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33<sup>rd</sup> Floor

Boston, MA 02108

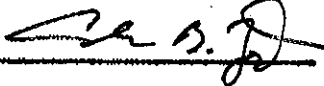
617-720-2880 (tel)

617-720-3554 (fax)

Dated: May 21, 2009

**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: 5/21/09 

## **SCHEDULE A**

### **DEFINITIONS**

- A. The “Complaint” refers to the complaint filed in this lawsuit.
- B. The “Film” refers to the film titled “The Gates of Heavenly Peace,” which is referenced in Paragraph 15 of the Complaint.
- C. The “Site” refers to <http://www.tsquare.tv/film/jenzabar.html>, which is referenced in Paragraph 19 of the Complaint.
- D. The “Marks” refers to “Jenzabar” and “Jenzabar.com,” which are alleged in the Complaint to be federally registered trademarks owned by Jenzabar, Inc. (“Jenzabar”).

### **SUBJECT AREAS**

- 1. Jenzabar’s history, corporate structure, and employee hierarchy.
- 2. Jenzabar’s business, including its products and services, market, customers, investors, and competitors.
- 3. Jenzabar’s use of the Marks and efforts to prevent others from using the Marks.
- 4. Jenzabar’s reputation and goodwill, including the numerous negative, critical news reports that have been published about Jenzabar and its senior officers.
- 5. Jenzabar’s use of Ling Chai’s involvement in the 1989 Tiananmen Square student protests in its marketing, publicity, promotions, and advertisements.
- 6. Communications with Jenzabar’s actual or potential customers and investors concerning Long Bow Group, Inc. (“Long Bow”), the Site, and the Film.
- 7. The basis for the allegation in the Complaint that Long Bow’s use of the Marks has caused confusion.

8. The basis for the allegation in the Complaint that Long Bow's use of the Marks has caused dilution.

9. The basis for the allegation in the Complaint that Jenzabar has received numerous inquiries from customers as a result of Long Bow's use of the Marks.

10. The basis for the allegation in the Complaint that Jenzabar has lost business opportunities and suffered economic harm as a result of Long Bow's use of the Marks.

11. The basis for the allegation in the Complaint that Long Bow is motivated by sympathy for officials in the Communist government of China.

12. The basis for the allegation in the Complaint that Long Bow is motivated by malice toward Ling Chai and a desire to discredit Ling Chai and advance Long Bow's divergent political agenda.

13. Jenzabar's document retention policies, practices, and procedures, and all actions taken by Jenzabar to preserve, retain, locate, gather, collect, and produce documents and other information relevant to this litigation, including without limitation the documents and other information sought by Long Bow through the interrogatories and document requests it has served on Jenzabar.

**EXHIBIT F**

**EXHIBIT F**

**EXHIBIT F**

**EXHIBIT F**

**EXHIBIT F**

## Adam B Ziegler

---

**From:** LKulig@eckertseamans.com  
**Sent:** Friday, May 22, 2009 5:33 PM  
**To:** Adam B Ziegler  
**Subject:** Fw: Long Bow -- response to interrogatories  
**Attachments:** Long Bow - Jenzabar response to 1st Ints (objection only version).doc

Adam: I am available to discuss tuesday (and anticipate supplementation).

Larry

Lawrence R. Kulig

Member- Litigation

Eckert Seamans

One International Place

18th Floor

Boston, MA 02110

Tel: (617) 342-6875

Fax: (617) 342-6899

[lkulig@eckertseamans.com](mailto:lkulig@eckertseamans.com)

-----Forwarded by Lawrence R Kulig/ESCM on 05/22/2009 05:30PM -----

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**EXHIBIT G**

**EXHIBIT G**

**EXHIBIT G**

**EXHIBIT G**

**EXHIBIT G**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.;

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and  
ROBERT A MAGINN, JR.,

Plaintiffs,

v.

LONG BOW GROUP, INC.,

Defendant.

CIVIL ACTION NO. 07-2075-H

**PLAINTIFF JENZABAR, INC.'S RESPONSE TO  
DEFENDANT LONG BOW INC.'S FIRST SET OF INTERROGATORIES**

In accordance with Mass. R. Civ. P. 26 and 33, Plaintiff Jenzabar, Inc. ("Jenzabar") submits its objections and responses to Defendant's First Set of Interrogatories To Jenzabar, Inc. (the "Interrogatories") propounded by Long Bow Group, Inc. ("Long Bow").

**GENERAL OBJECTIONS**

1. Jenzabar objects to the Interrogatories because they call for confidential information. Jenzabar has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide supplemental substantive responses to these interrogatories upon entry of an appropriate protective order in this case.

2. Jenzabar objects generally to the Interrogatories to the extent that they seek the production of documents or information that is: (a) protected by the attorney-client privilege, work products doctrine or any similar privilege or doctrine; (b) immune from discovery under

the work product doctrine; or (c) otherwise not discoverable within the meaning of Mass. R. Civ. P. 26 or Superior Court Standing Order 1-09.

3. Jenzabar objects to the Interrogatories to the extent that they call for the production of documents in the hands of third parties and not in Jenzabar's possession, custody, or control.

4. Jenzabar objects generally to the "Instructions" section of the Interrogatories to the extent that they seek to impose obligations greater than those under the Massachusetts Rules of Civil Procedure, pertinent statutes or interpretative decisions.

5. Jenzabar objects to the Interrogatories to the extent that they fail to identify a relevant time period covered by the Interrogatories.

6. Jenzabar objects to the Interrogatories to the extent that they seek information concerning claims that have been dismissed.

7. Jenzabar objects to Section J of the Definitions and Instructions section of the Interrogatories as it purports to place on Jenzabar a duty to respond with respect to documents that have been, but may or may not still be, in the possession of Long Bow.

8. Jenzabar incorporates these General Objections, to the extent applicable, into each and every response below.

9. Jenzabar reserves the right to amend, modify and/or supplement its responses, if necessary or appropriate.

#### **SPECIFIC RESPONSES AND OBJECTIONS**

Subject to and without waiving its General Objections, Jenzabar hereby makes the following specific responses and objections.



### **INTERROGATORY NO. 1**

Identify all communications concerning the Site, the Film, or Long Bow, including without limitation all inquiries from and responses to actual or prospective customers and investors.

### **RESPONSE TO INTERROGATORY NO. 1**

Jenzabar objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, irrelevant, and unduly burdensome to the extent it asks Jenzabar to identify communications of which it is not aware and to provide information that persons other than Jenzabar and its employees, including Long Bow, may have. Jenzabar further objects to the Interrogatory to the extent it seeks inadmissible information concerning communications that occurred in connection with settlement discussions. Jenzabar objects to this Interrogatory on the grounds that "prospective customers and investors" is vague and ambiguous. Jenzabar further objects to the Interrogatory in that it seeks information covered by the attorney-client privilege or attorney work product.

Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

### **INTERROGATORY NO. 2**

Identify all persons who have been mistaken, confused, or deceived as to the source or origin of any products or services offered by Long Bow.

## **RESPONSE TO INTERROGATORY NO. 2**

Jenzabar objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, irrelevant, and unduly burdensome to the extent it asks Jenzabar to identify the state of knowledge of persons of which it is not aware and to provide information that persons other than Jenzabar and its employees, including Long Bow, may have. Jenzabar further objects to the Interrogatory in that it seeks information covered by the attorney-client privilege or attorney work product. Jenzabar further objects to the interrogatory to the extent that it implies that actual mistake, confusion, or deception is required for Jenzabar to prevail on any of the remaining counts of its Complaint.

Jenzabar objects that its investigation into the identity of any persons who have been actually mistaken, confused, or deceived as to the source or origin of any products or services offered by Long Bow is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, information regarding the identity of individuals who have visited Long Bow's Site as a result of Long Bow's use of Jenzabar's Marks as metatags. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

## **INTERROGATORY NO. 3**

Identify all persons who have been mistaken, confused, or deceived as to whether there is any affiliation, connection, or association between Jenzabar and Long Bow.

### **RESPONSE TO INTERROGATORY NO. 3**

Jenzabar objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, irrelevant, and unduly burdensome to the extent it asks Jenzabar to identify the state of knowledge of persons of which it is not aware and to provide information that persons other than Jenzabar and its employees, including Long Bow, may have. Jenzabar further objects to the Interrogatory in that it seeks information covered by the attorney-client privilege. Jenzabar further objects to the interrogatory to the extent that it implies that actual mistake, confusion, or deception as to whether there is any affiliation, connection, or association between Jenzabar and Long Bow is required for Jenzabar to prevail on any of the remaining counts of its Complaint.

Jenzabar objects that its investigation into the identity of any persons who have been actually mistaken, confused, or deceived as to whether there is any affiliation, connection, or association between Jenzabar and Long Bow is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, information regarding the identity of individuals who have visited Long Bow's Site as a result of Long Bow's use of Jenzabar's Marks as metatags. Further responding, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

### **INTERROGATORY NO. 4**

Identify each and every use of the Marks by Long Bow that you contend to be unlawful.

#### **RESPONSE TO INTERROGATORY NO. 4**

Jenzabar objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, irrelevant, and unduly burdensome to the extent it asks Jenzabar to identify uses of its Marks by Long Bow of which it is not aware and to provide information that persons other than Jenzabar and its employees, including Long Bow, may have. Jenzabar further objects to the Interrogatory in that it seeks information covered by the attorney-client privilege or attorney work product.

Jenzabar objects that its investigation into each and every one of the use of the Marks by Long Bow is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, complete information regarding the various iterations of Long Bow's Site. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 5**

State the basis for your allegation that the Marks are famous.

#### **RESPONSE TO INTERROGATORY NO. 5**

Jenzabar objects to the Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon

entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 6**

State the basis for your allegation that Long Bow's use of the Marks is likely to cause confusion.

#### **RESPONSE TO INTERROGATORY NO. 6**

Jenzabar objects to the Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Jenzabar objects that its investigation into the likelihood of consumer confusion is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, complete information regarding the various iterations of Long Bow's Site and visitors to Long Bow's Site. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 7**

State the basis for your allegation that Long Bow's use of the Marks causes dilution.

#### **RESPONSE TO INTERROGATORY NO. 7**

Jenzabar objects to the Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Jenzabar objects that its

investigation into dilution is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, complete information regarding the various iterations of Long Bow's Site and visitors to Long Bow's Site. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 8**

Describe in detail all efforts to prevent or stop unauthorized use of the Marks by persons other than parties to this litigation, including without limitation the use of the Marks by Forbes.com and CNN.com.

#### **RESPONSE TO INTERROGATORY NO. 8**

Jenzabar objects to this Interrogatory as it seeks information that is neither relevant, admissible, nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects to the Interrogatory to the extent that it implies that Long Bow's unauthorized use of the Marks parallels use of the Marks by Forbes.com and CNN.com, when such is not the case. Jenzabar objects to the Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

**INTERROGATORY NO. 9**

State the basis for your allegation that Long Bow is motivated by sympathy for officials in the Communist government of China.

**RESPONSE TO INTERROGATORY NO. 9**

Jenzabar objects to this Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Jenzabar objects that its investigation into Long Bow's motivations is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce complete information regarding Long Bow's decisions with respect to the content of the Site and Long Bow's attempts to publicize the lawsuit. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

**INTERROGATORY NO. 10**

State the basis for your allegation that Long Bow is motivated by malice toward Chai and a desire to discredit Chai and advance Long Bow's divergent political agenda.

**RESPONSE TO INTERROGATORY NO. 10**

Jenzabar objects to this Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Jenzabar objects that its investigation into Long Bow's motivations is ongoing. Jenzabar further objects that its ability to

complete that investigation has been hampered by Long Bow's failure to produce complete information regarding Long Bow's decisions with respect to the content of the Site and Long Bow's attempts to publicize the lawsuit. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 11**

Identify each and every witness whom you intend to call at any hearing or at trial of this matter and with respect to each such witness, please state the subject matter on which each witness is expected to testify and identify each document upon which each witness is expected to testify.

#### **RESPONSE TO INTERROGATORY NO. 11**

Jenzabar objects to this Interrogatory on the ground that it is premature because fact development and discovery continues in this case. Jenzabar further objects because this interrogatory seeks discovery beyond that to which Long Bow is entitled by the Massachusetts Rules of Civil Procedure and Superior Court Standing Order 1-09. Jenzabar further objects to this Interrogatory because it seeks information covered by the attorney-client privilege and that constitutes attorney work product, including the impressions of trial counsel. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this



interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 12**

Identify each and every expert whom you intend to call as a witness at any hearing or at a trial of this matter and with respect to each such expert, please state in full, complete, and specific detail:

- i. The name and address of each such person;
- ii. The subject matter about which each such person is expected to testify;
- iii. The substance of the facts and opinions about which each such person is expected to testify; and
- iv. A summary of the grounds for each opinion about which each such person is expected to testify; and

#### **RESPONSE TO INTERROGATORY NO. 12**

Jenzabar objects to this Interrogatory on the ground that it is premature because fact development and discovery, upon which any expert opinion would be predicated, continues in this case. Jenzabar further objects because this interrogatory seeks discovery beyond that to which Long Bow is entitled by the Massachusetts Rules of Civil Procedure and Superior Court Standing Order 1-09. Jenzabar further objects to this Interrogatory because it seeks information covered by the attorney-client privilege and that constitutes attorney work product, including the impressions of trial counsel. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective

order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 13**

With respect to any expert you intend to call as a witness at any hearing or at a trial of this matter, identify each document upon which the expert expects to rely or to which the expert expects to refer during said testimony.

#### **RESPONSE TO INTERROGATORY NO. 13**

Jenzabar objects to this Interrogatory on the ground that it is premature because fact development and discovery, upon which any expert opinion would be predicated, continues in this case. Jenzabar further objects because this interrogatory seeks discovery beyond that to which Long Bow is entitled by the Massachusetts Rules of Civil Procedure and Superior Court Standing Order 1-09. Jenzabar further objects to this Interrogatory because it seeks information covered by the attorney-client privilege and that constitutes attorney work product, including the impressions of trial counsel. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 14**

State the basis for your allegation that Long Bow's use of the Marks has caused Jenzabar to suffer great detriment to its business, goodwill, reputation, and profits.

#### **RESPONSE TO INTERROGATORY NO. 14**

Jenzabar objects to this Interrogatory as it seeks information that is neither relevant, admissible, nor reasonably calculated to lead to the discovery of admissible evidence. Jenzabar further objects to this Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Jenzabar objects that its investigation into the harm Jenzabar has suffered as a result of Long Bow's actions is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, complete information regarding the various iterations of Long Bow's Site and visitors to Long Bow's Site, Long Bow's decisions with respect to the content of the Site and Long Bow's attempts to publicize the lawsuit. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 15**

Identify all business opportunities that Jenzabar has lost as a result of Long Bow's use of the Marks.

#### **RESPONSE TO INTERROGATORY NO. 15**

Jenzabar objects to this Interrogatory to the extent that it seeks information covered by the attorney-client privilege or constitutes attorney work product. Jenzabar objects that its investigation into the harm Jenzabar has suffered as a result of Long Bow's actions is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long

Bow's failure to produce, and apparently failure to record, complete information regarding the various iterations of Long Bow's Site and visitors to Long Bow's Site. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

#### **INTERROGATORY NO. 16**

With respect to any and all damages that you claim to have suffered as a result of Long Bow's alleged actions, please:

- i. State each specific item of damages that you claim to have suffered as a result of Long Bow's alleged actions;
- ii. State the dollar value of each such specific item of damages, if you know it, or your best approximation if you do not know the exact amount; and
- iii. Describe and explain the calculations and methodologies that went into the specification or approximation of each such item of damages.

#### **RESPONSE TO INTERROGATORY NO. 16**

Jenzabar objects to this Interrogatory on the ground that it is premature because fact development and discovery continues in this case. Jenzabar further objects because this interrogatory seeks discovery beyond that to which Long Bow is entitled by the Massachusetts Rules of Civil Procedure and Superior Court Standing Order 1-09. Jenzabar further objects to this Interrogatory because it seeks information covered by the attorney-client privilege and that

constitutes attorney work product, including the impressions of trial counsel. Jenzabar objects that its investigation into the harm Jenzabar has suffered as a result of Long Bow's actions is ongoing. Jenzabar further objects that its ability to complete that investigation has been hampered by Long Bow's failure to produce, and apparently failure to record, complete information regarding the various iterations of Long Bow's Site and visitors to Long Bow's Site, Long Bow's decisions with respect to the content of the Site and Long Bow's attempts to publicize the lawsuit. Subject to and without waiving its objections, Jenzabar states that it has proposed a protective order in this case, to which Long Bow has objected. Jenzabar will provide a supplemental response to this interrogatory upon entry of an appropriate protective order in this case, and objects to the provision of a substantive response prior to the entry of such an order.

AS TO OBJECTIONS



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Lawrence R. Kulig (BBO #544656)  
Eckert Seamans Cherin & Mellott, LLC  
One International Place, 18th Floor  
Boston, MA 02110  
(617) 342-6875

Dated: May 22, 2009

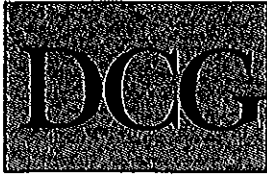
**EXHIBIT H**

**EXHIBIT H**

**EXHIBIT H**

**EXHIBIT H**

**EXHIBIT H**



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Adam B. Ziegler  
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May 27, 2009

**VIA EMAIL AND HAND DELIVERY**

Lawrence R. Kulig, Esq.  
Eckert Seamans  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110-2602

Re: Jenzabar, Inc., et al v. Long Bow Group, Inc.,  
Suffolk County Superior Court, C.A. No. 07-2075-H

Dear Larry:

Long Bow will not agree to the two-tier protective order proposed by Jenzabar. The proposed protective order is unnecessary given the nature of this case and is certain to be misused by your client as part of its effort to shroud this public legal proceeding in secrecy.

As you and I have discussed, this case does not involve trade secrets. The discovery requests posed by Longbow do not seek any trade secrets or similar proprietary information concerning Jenzabar. All Long Bow seeks is the basis for the claims and allegations made by Jenzabar, if any basis exists.

Long Bow is not seeking any information concerning Jenzabar's computer software or programming code, the financial terms of its customer agreements, the compensation it pays to essential employees, or any similar information. I have asked you specifically to explain what relevant information Jenzabar would seek to shield from disclosure. You have identified only two categories of such information: (1) the names of customers Jenzabar has not already disclosed to the public, such as through the many press releases on its website and (2) information contained in Jenzabar's financial statements. I have serious doubts that even these two categories of information would qualify for protection under Mass. R. Civ. P. 26(c)(7). Nevertheless, to avoid burdening the Court with unnecessary litigation over a protective order, Long Bow will agree to a narrowly tailored protective order that covers the names of customers Jenzabar is contractually bound to keep confidential and Jenzabar's financial statements.

Long Bow, however, will not agree to a protective order that gives Jenzabar unfettered discretion to designate anything it wishes as confidential. Jenzabar already has proven that it will abuse any discretion given to it under any protective order that is not narrowly tailored to

Lawrence R. Kulig, Esq.  
May 27, 2009  
Page 2

address discrete concerns about confidentiality. Specifically, Jenzabar already has refused - on grounds of purported confidentiality:

- To divulge the basis for Jenzabar's allegations of consumer confusion and trademark dilution;
- To identify the consumers allegedly misled, deceived, or confused by Long Bow's use of the Marks
- To identify what specific uses of the Marks by Long Bow are alleged to be unlawful;
- To disclose the lost business opportunities and economic harm Jenzabar claims to have suffered;
- To state the basis for Jenzabar's damages claims;
- To reveal the basis for Jenzabar's allegation that the Marks are famous;
- To disclose the basis for Jenzabar's allegation that Long Bow is motivated by sympathy for officials in the Communist government of China;
- To disclose the basis for Jenzabar's allegation that Long Bow is motivated by malice toward Chai Ling and a desire to discredit Chai Ling and advance Long Bow's divergent political agenda; and
- To identify the fact witnesses Jenzabar may call at trial;

In addition, even without a protective order, Jenzabar already has marked as "confidential" communications between Long Bow and Jenzabar, which obviously are not confidential.

None of these claims to secrecy has any legal or factual basis whatsoever. Jenzabar's overreaching only proves that it will misuse any protective order agreed to by the parties and entered by the Court. Long Bow will not permit these abusive tactics and therefore will not agree to Jenzabar's proposed protective order.

If you wish to discuss further the possibility of a narrowly tailored protective order that cannot be abused by Jenzabar, please contact me.

Sincerely,



Adam B. Ziegler

ABZ/kh

cc: T. Christopher Donnelly, Esq.



**EXHIBIT I**

**EXHIBIT I**

**EXHIBIT I**

**EXHIBIT I**

**EXHIBIT I**



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May 29, 2009

Adam B. Ziegler, Esquire  
Donnelly, Conroy & Gelhaar, LLP  
One Beacon Street, 33<sup>rd</sup> Flr.  
Boston, Massachusetts 02108

Re: Jenzabar, Inc., et al. v. Long Bow Group, Inc.  
Suffolk Superior Court, Civil Action No. 07-2075-H

Dear Adam:

This follows up on our recent conversations and is in response to your letters of May 27, 2009 regarding outstanding discovery and depositions (including the rule 30b6 deposition which you have noticed for Monday, June 1), the scope of a confidentiality order and extension of the tracking order.

As I've stated during our conversations, my client's concern is that the Long Bow Group ("LB") intends to publicize and slant on its website every aspect of this case (for its benefit), including disclosing confidential and private information regarding my clients obtained through discovery, and thereby further tarnish and injure Jenzabar's business reputation. More specifically:

- LB's website contains multiple pages regarding the subjects "About Chai Ling and Jenzabar, Inc.". The website publicizes this lawsuit (with regular "updates"), including now containing the following:

Update, Spring 2009

Twenty years after the events of 1989, Chai Ling and her company, Jenzabar, are attempting to censor this website. Click the following links to read a summary of their lawsuit against the Long Bow Group, and to read an online appeal for support.

In addition to falsely stating that the plaintiffs are attempting "to censor this website", LB in its online appeal states that Jenzabar has no interest in settling the case (which is both false- LB has refused to meet with Chai Ling, and it publicizes confidential negotiations).

- Each of LB's web pages continues to use the Jenzabar registered marks as "metatags" within the site to attract traffic to LB's website. (Upon a recent attempt, typing "Jenzabar" into the Google search engine results in LB's site as the third "hit" on the list.) Therefore, numerous persons interested in Jenzabar and its products and services,

Adam B. Ziegler, Esquire

May 29, 2009

Page 2

including existing and potential business customers of Jenzabar, are instead diverted to LB's site.

- Jenzabar firmly believes that it is entitled to both a protective order to prevent LB's misuse of testimony and other evidence and information obtained through discovery (especially where it refuses to sign such a confidentiality order) and, moreover, injunctive relief under both statutory law and general equitable principles, since LB's website is illegally making use of Jenzabar's marks and contains false and misleading statements (including regarding confidential settlement negotiations), all intended to harm and damage Jenzabar's reputation.

(a) Massachusetts General Laws, chapter 110H, §13 provides:

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this chapter, or a mark valid at common law, or a trade name valid at common law, shall be a ground for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

Id. (emphasis added). Therefore, Jenzabar is entitled to injunctive relief since it can demonstrate likelihood of injury to its business reputation, resulting from LB's misuse of the marks.

(b) Similarly, LB's conduct, in disseminating and publicizing the lawsuit, through false and misleading statements (including disclosure of confidential settlement discussions), violates both the plaintiffs' rights and the authority of the court to maintain and insure a fair adjudicative process. See Rule 3.6 (S.J.Ct.) (prohibiting extrajudicial statements which are likely to be disseminated by means of public communication and would reasonably be expected to prejudice an adjudicative proceeding). See also Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 546 (1977) (affirming authority and discretion of courts to impose impoundment of files, cloture, when found necessary to insure fair trial); NCR Credit Corp. v. Underground Camera, Inc., 581 F.Supp. 609, 613-14 (D.Mass. 1984) (while court may order parties to refrain from making extra judicial statements regarding case, such remedy not appropriate where no suggestion "that any individuals affiliated with the case contributed in any manner to the writing of the...article"). In contrast, here it is your clients who are making the extra judicial statements, and doing so in such a slanted way as to both injure my clients and prevent a fair adjudication of the matter.

# ECKERT SEAMANS

Adam B. Ziegler, Esquire  
May 29, 2009  
Page 3

Based on past history, and corroborated by the most recent postings on LB's site, we simply do not trust your client to not misuse information discovered in this case and, therefore, do not believe that discovery can continue until the court resolves these issues.

We shall therefore be filing with the court this afternoon an emergency motion for protective order and are prepared to have it heard by the court at the earliest opportunity. While you have stated that you intend to proceed Monday with the deposition, we are hereby advising you of our concerns and the reason for Jenzabar's non-attendance and seeking a protective order.

Very truly yours,



Lawrence R. Kulig

LRK/kac

**EXHIBIT J**

**EXHIBIT J**

**EXHIBIT J**

**EXHIBIT J**

**EXHIBIT J**



*These web pages are the sole responsibility of the Long Bow Group, and are in no way affiliated with or sponsored by Jenzabar, Inc.*

Related Pages: [Summary of Lawsuit](#) | [About Chai Ling and Jenzabar, Inc.](#)



For nearly two years the Long Bow Group tried to negotiate a settlement with Chai Ling and Jenzabar's lawyers. During this time, we were careful not to publicize the lawsuit. In April 2009, Jenzabar's lawyers declared that they had no interest in settling the case; given our limited resources, Long Bow has decided to appeal to the public for help.

The following open letter asks for your support of the principles of free speech and academic freedom which we feel are being threatened by this lawsuit. Please know that signing this appeal letter carries no legal obligations, responsibilities, or commitments of any kind, nor does it mean that you necessarily agree with opinions expressed in either the Long Bow Group's films or its websites.

Please note that Jenzabar's formal response to our appeal can be accessed at the bottom of this page.

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### **An Appeal**

*In Memoriam-  
Tiananmen 1989, Free Speech & its Advocates  
The Long Bow Group, Boston  
(15 April 2009)*

We commemorate the twentieth anniversary of the 1989 Protest Movement in China and recall with heavy hearts its brutal suppression. During that movement millions of people in China demonstrated in support of freedom of expression and media openness.

In making the documentary film *The Gate of Heavenly Peace* (天安门, 1995), and with the creation of its archival website ([www.tsquare.tv](http://www.tsquare.tv)), the Long Bow Group attempted to reflect the complex motives and stories behind the events of 1989 in an accessible format, and to provide specialists and the public with an ongoing research resource.

The film was attacked sight unseen both by the Chinese government and by several former student activists prior to its premiere at the New York Film Festival in October 1995. Subsequently, the Chinese authorities demanded it be banned from international film festivals, claiming that showing it would 'mislead the audience and hurt the feelings of 1.2 billion Chinese people.' Meanwhile, the student activists who opposed the film accused us

of working for the Chinese government and denounced us as 'a pack of flies, a true disease of our era.' (他们是一群苍蝇, 是我们这个时代真正的疾病.)

Despite controversy *The Gate of Heavenly Peace* went on to win numerous prestigious film and academic awards in the United States and overseas. The film has continued to draw attention in the mass media, among researchers and educators and, together with the related website, it forms part of the international discussion of China's modern history. We believe that the kind of independent research and cinematic work we produce has only been possible through the support of academic colleagues, public funding agencies, private donations, and under the protective umbrella of free speech.

We are now deeply concerned because our very existence as an independent film and archive group is being threatened by a lawsuit launched by one of the people who, during the 1989 Protest Movement in Beijing, professed support for freedom of speech and democracy.

Chai Ling (Ling Chai), President of Jenzabar, Inc., and in 1989 Commander-in-Chief of the Defend Tiananmen Square Headquarters, and her husband, Robert Maginn, CEO of Jenzabar and a former Senior Partner and Director at Bain & Company, sued the Long Bow Group in 2007 in Boston, Massachusetts, for defamation and trademark infringement. [[Click here to read a summary of the lawsuit.](#)]

The lawsuit accused us of defamation because our website links to mainstream media news articles that reported critical information about Jenzabar, Chai Ling, and Robert Maginn. [[Click here to visit the relevant pages on this site.](#)] The trademark allegations are based on our use of the name 'Jenzabar' in the website. In the early stages of the litigation, the court threw out the defamation claims but not the trademark claims. The court recognized that 'Jenzabar seems unlikely to prevail on [the trademark claims],' but nevertheless decided to give Jenzabar a chance to try to prove its claims.

As a result, we are facing the accusation that Long Bow -- a non-profit documentary film producer -- is violating the commercial trademark of Jenzabar, a company that sells administrative and management software systems to large educational institutions. Although we clearly have no connection to Jenzabar and do not compete in any respect with Jenzabar, the lawsuit claims that our site diverts and confuses Jenzabar's potential customers. In fact, not one person has ever contacted the Long Bow Group about software or Jenzabar.

Over the years, mainstream US media publications (in particular, *The Boston Globe*, *Forbes* and *The Chronicle of Higher Education*) have produced and archived materials related to Jenzabar and its President, Chai Ling. The Long Bow website merely quotes from these materials, yet we are not aware of any action against these larger publications. In our opinion, this lawsuit is clearly intended to intimidate us into removing these news accounts and other information about Chai Ling and Jenzabar from our website. Indeed, Chai Ling's lawyers have demanded that we remove any reference to the company from our website. We believe that this material is of public interest and it is already in the public domain through other sources. Despite long months of discussion and conciliatory action on our part, undertaken in the hope of bringing an end to what we believe is malicious litigation, the case continues at great expense and risk to us.

The following excerpts from the Complaint filed against Long Bow in May 2007

demonstrate the seriousness of this lawsuit, as a threat to Long Bow and to the principles of political and expressive freedom that we hold so dearly:

--'Motivated by ill-will, their sympathy for officials in the Communist government of China, and a desire to discredit Chai, a former student leader in the pro-democracy movement in China's Tiananmen Square, Long Bow Group, Inc. ("Long Bow") has published false content concerning the Plaintiffs on the website it maintains (the "Site") and has collected a misleading sample of statements from outdated articles to circulate half-truths and falsehoods, and to create false impressions about Jenzabar, Chai, and Maginn. To ensure that this content is widely viewed and as damaging as possible, Long Bow makes unauthorized use of Jenzabar's protected trademarks to direct traffic to the Site. As a consequence, Jenzabar's clients and prospective clients are diverted to the Site and its defamatory content, causing reputational injury and loss of business opportunities.'

--'Upon information and belief, Long Bow's defamatory statements are motivated by malice toward Chai, as well as Long Bow's desire to discredit Chai and advance Long Bow's divergent political agenda.'

The Complaint also makes a demand:

--'For an accounting of the gains and profits realized by Long Bow from its aforesaid wrongful acts, and restitution and/or disgorgement to Jenzabar of Long Bow's ill-gotten gains.'

We believe this is a concerted attempt to undermine a nonprofit film and research organization that has for nearly thirty years presented audiences and educators throughout the world with work on Chinese life and history. Chai and Jenzabar appear determined to drain the limited resources of the Long Bow Group for not complying with their demands that we remove historical materials and data, as well as all references to Jenzabar, from our website. We are of the view that such demands and tactics have dire implications not only for us, but more widely for free speech and independent scholarship. We believe that in commemorating the events of 1989 twenty years on, it is important to reflect also on the value of independent thought, unfettered historical research, the collection and protection of archival materials and the freedom of speech in our own environment.

It is for this reason that we appeal to you--fellow researchers, colleagues in the media, educators and members of the interested public--to visit our website ([www.tsquare.tv](http://www.tsquare.tv)) to read the materials that have prompted this lawsuit and the legal filings from the case. We ask you to draw your own conclusions about the issues and freedoms at stake.

Please do not take this appeal as an attack on Jenzabar's business or the products and services it provides to its customers. We have no interest in prompting or participating in a boycott and no interest whatsoever in causing harm to Jenzabar's business or its employees. We seek only to preserve our rights, to stand up for the principle of free speech, and to defend ourselves and our work from this unjustified challenge.

If you would like to help, please sign this appeal as a modest gesture of your support for our stand. Please know that your signature carries no legal obligations, responsibilities, or commitments of any kind, nor does it mean that you necessarily agree with opinions expressed in either the Long Bow Group's films or its websites. Rather, it indicates that any instance of a corporation using its money and its power to stifle debate and suppress the



historical record is cause for concern, in the academic community and beyond. If you are interested in lending your support, you may add yourself to the list below by emailing your name, title, and affiliation (if any) to: [info@longbow.org](mailto:info@longbow.org).

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### **Jenzabar's Formal Response to Long Bow's Appeal**

On May 29, 2009, one of Jenzabar's lawyers asked us to post the company's formal response to this appeal on our website. In the interests of free speech and an open discussion of the issues involved in the lawsuit, we have agreed to do so. Below is a link to the PDF of the original document as it was sent to us. Obviously Long Bow disagrees with and disputes many of the claims made in Jenzabar's response.

[Jenzabar's Response to the Appeal](#)

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**EXHIBIT K**

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## Jenzabar's Response to the Appeal

Jenzabar commenced suit because of Long Bow<sup>1</sup>'s violation of basic tenets required for a free speech society – *Namely*, your statements cannot be false, cannot be with malice, and cannot infringe on the rights of others. These basic tenets are fundamental to a free society and are protected by the rule of law. It was our view that the statements on the Long Bow website were false, and Long Bow was unlawfully using our intellectually property and the intellectual property of others to further its own interests and aims. We are not challenging what Long Bow says in terms of message or expression – we are asking it to make truthful statements and to verify the statements that it makes.

The issues raised by this lawsuit raise fundamental questions regarding the scope of legal protection of persons injured by defamatory, infringing and potentially harmful communications in the internet age. *Ex nihilo* -- these issues have been created by humanity and now affect us all. What someone posts on the internet is now an issue of importance for historical figures, governments, corporations, individuals and even children – not only because of the ease of access, but also because these statements, pictures and blogs will last forever and will outlive those who knew whether these statements were true, false, malicious or benevolent. How this “internet” generation (the first internet generation) addresses these issues will be studied for internet generations to come.

The protection of individuals and their intellectual property on the internet requires the answering of questions perhaps never raised before and potentially the creation of a whole new set of protections because of the harm and injury that can result from *at best* -- innocent pictures, statements, blogs, and articles -- *to at worst* -- irresponsible speech and electronic publications, including falsehoods and half-truths. This is especially true in light of technological advances, which allow for instant transmission of ideas world-wide, but at the same time give rise to new abuses such as internet identity theft, cyber-bullying, posting questionable and unverified facts to one site but then referring to it in a blog and not to mention old abuses via this new medium, such as defamation, copyright infringement and trademark infringement.

The issues in our case against Long Bow although not as broad raise two important issues: 1) whether an internet site, which becomes aware that it has published and contains false information has any obligation to correct such, and 2) whether Long Bow's use of Jenzabar's federally registered marks as “metatags” within Long Bow's website constitutes a violation of trademark laws. Neither of these claims in any way hinders “free speech,” insofar as both common law and statutory law have long provided causes of action for speech or other communications, which were either defamatory or violations of intellectual property laws.

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<sup>1</sup> The Long Bow Group, Inc. is referred to as Long Bow.

More specifically, and as the Massachusetts Superior Court noted in its Memorandum and Order, Long Bow continued to post excerpts on its website of articles which had been proven to be inaccurate. The Court stated “the question becomes whether Long Bow had any kind of continuing duty to investigate the accuracy of the [article]” and held “There is no such duty.” In footnotes, the Court noted that while “the media may do a disservice to vindicated individuals (such as the Duke lacrosse players) . . . there is no duty to do so”, and the Court cited the limited obligation of a newspaper to provide fair and balanced reporting to “ongoing coverage of proceedings such as trials.”

Jenzabar, while respecting the Court’s ruling, believes that it fails to appreciate how defamatory statements cause harm and injury in the modern internet age. Reliance on comparisons to newspapers is no longer relevant (especially where newspapers and circulation are everywhere in a state of decline). Blogs and websites, such as Long Bow’s, potentially reach the entire world population and every time that a reader “clicks” on a story - - it is “republished”. Such “clicking” can go for infinity. The internet, therefore, allows defamatory and false statements to be spread with amazing speed and to an unlimited audience (far beyond the scope of the local newspaper). In many ways, bloggers and websites are potentially more dangerous to a democratic society which respects free speech since they are effectively unregulated, exist in “cyber-space”, and can be operated for little or no cost outside the jurisdiction of our justice system.

Jenzabar, therefore, believes that the appellate courts need to reexamine the law of defamation in today’s internet world, including whether there should be a duty to correct inaccurate information (rather than allowing it to continuously be “re-published”). This would be a logical and reasonable extension of the law into the internet and protect the countless innocent victims and their reputations from being tarnished by false accusations and harmful postings.

Similarly, Jenzabar’s trademarks claims are supported by recent federal court rulings. The National Law Journal, in an article dated June 9, 2008 entitled “Courts show confusion over uses of ‘metatags’”, begins:

The use of a trademark in computer code words, called “metatags”, by a competitor to boost its position in Internet searches infringes under the Lanham Trademark Act, according to the 11<sup>th</sup> U.S. Circuit Court of Appeals [in *North American Medical Corp. v. Axion Worldwide, Inc.*, 522 F.3d 1211 (2008)].

While the use and potential misuse of “metatags” is a new area of law, there is no dispute that Long Bow’s website uses Jenzabar’s protected marks in its metatags. Therefore, the argument by Long Bow that Jenzabar’s lawsuit attempts to limit free speech is without merit and distorts the nature and substance of Jenzabar’s claim (as well as the existing case law supporting such claim).

The issues we are pursuing, and the rights, which we are seeking to protect, are universal to all of us. They are rights and protections that belong to academic institutions (which generate intellectual property) and students (who often are the victims of cyber-bullying, malicious postings, false statements and indiscriminate postings) in the United States.

Because many times those injured by those now eternal statements, pictures, blogs have little or no recourse (or lack the resources to protect their rights through a long and protracted judicial process), Jenzabar believes it is its obligation to pursue its lawsuit for the purpose of both protecting its rights, as well as establishing thoughtful and well-reasoned legal precedent regarding the scope of freedom of the speech in the 21<sup>st</sup> century which benefits all of us in a democratic society. It is also a call that the rule of law must now focus itself on addressing these issues in the internet world.

Note on the Long Bow's Refusal to Meet With Ling Chai.

It should not be lost on the reader of this website that Ms. Chai herself requested a meeting with Long Bow to discuss a resolution of this dispute. Long Bow simply would not meet with Ms. Chai to discuss a resolution of this case. The very young inspiring woman that Long Bow allegedly studied carefully free of any political agenda was now refused a meeting. On the one hand, Longbow chides her for not accepting an interview but, on the other, Longbow will not meet with her to resolve the differences. One person who sued the Company, but later came to her aid, wrote in his statement:

Ms. Chai does not deserve to have been vilified in the media or on the internet the way she has and continues to be. Although I provided a statement to Ms. Chai regarding the allegations that were made on my behalf to report that these allegations were withdrawn when no evidence supporting them was found, Ms. Chai has told me that these allegations made in the complaint were picked up by the media and used by those who want to push a particular political agenda to tarnish her reputation as a person who championed the cause of freedom and democracy. She doesn't deserve to be treated this way.