

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT

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

CIVIL ACTION NO. 07-2075-H

v.)

LONG BOW GROUP, INC.,)
)
Defendant.)

**DEFENDANT LONG BOW GROUP INC.’S RENEWED EMERGENCY MOTION
FOR RELIEF DUE TO PLAINTIFFS’ FAILURE TO PROVIDE DISCOVERY**

Defendant Long Bow Group, Inc. (“Long Bow”) respectfully renews – on an emergency basis – the request it made on June 1, 2009, that the Court enter, pursuant to Mass. R. Civ. P. 37 and its inherent supervisory authority, an Order dismissing this case with prejudice and with costs and attorney’s fees, as sanctions for plaintiffs’ discovery misconduct. If the Court declines dismissal, Long Bow requests the alternative relief described below.

Plaintiffs have exhibited utter contempt for this Court’s fundamental discovery rules and this Court’s June 2, 2009 Order, resulting in overwhelming substantive prejudice to Long Bow. Beyond plaintiffs’ extraordinary disrespect, it is now clear that their lawsuit is nothing more than a vengeful effort to retaliate against Long Bow and an abusive ploy rooted in plaintiffs’ disapproval of Long Bow’s 1995 documentary film, *The Gate of Heavenly Peace* (the “Film”).

In support of this Renewed Motion, Long Bow's submits the attached memorandum and affidavit of counsel, with exhibits.

NATURE OF EMERGENCY AND REQUEST FOR EMERGENCY HEARING

An emergency exists requiring prompt Court attention because plaintiffs' multifarious discovery misconduct violates this Court's June 2, 2009 Order, as well as the rules of discovery. Both the original discovery deadline and the deadlines set by this Court in its June 2 Order have passed, and the July 17 deadline for service of summary judgment motions – which was agreed on by the parties and set by this Court – rapidly approaches. In addition, because plaintiffs refuse to provide discovery and to disclose what basis exists for their claims, Long Bow should not be forced to spend a single additional day or dollar defending itself in this case. Lastly, an emergency exists because it is now apparent that the true ulterior purpose of this lawsuit is to retaliate against Long Bow for the Film, not to enforce commercial trademarks. Long Bow therefore requests the Court to set this Renewed Motion for hearing on the earliest date that is convenient for the Court.

REQUESTED RELIEF

Long Bow respectfully submits that the only appropriate relief, at this stage of this litigation, is for this Court to dismiss this action with prejudice and to award Long Bow all costs and attorney's fees incurred in having to defend this case. Plaintiffs filed this suit against Long Bow. Because plaintiffs refuse to submit to discovery and comply with their discovery obligations, this case should end. At a minimum, plaintiffs should bear the financial and evidentiary consequences of their misconduct.

WHEREFORE, defendant Long Bow respectfully requests the Court to enter an Order granting the following relief, pursuant to Mass. R. Civ. P. 37 and 41(b)(2) and this Court's inherent authority:

(a) order (i) that this action be dismissed, in its entirety and with prejudice, and (ii) that plaintiffs must pay all costs and attorney's fees incurred by Long Bow in connection with this action;

(b) in the alternative, order (i) establishment of the following facts, and (ii) payment of all costs and attorney's fees incurred by Long Bow in connection with efforts to get discovery from plaintiffs in this action;

- Jenzabar's trademarks – "Jenzabar" and "Jenzabar.com" – are not distinctive;
- Jenzabar's trademarks – "Jenzabar" and "Jenzabar.com" – are not famous;
- Jenzabar has abandoned its trademarks – "Jenzabar" and "Jenzabar.com";
- Jenzabar has not ever attempted to enforce its trademarks – "Jenzabar" and "Jenzabar.com" – against anyone other than Long Bow;
- Jenzabar and Long Bow do not compete with each other in any respect;
- Jenzabar and Long Bow have no similarities that are relevant to plaintiffs' trademark claims;
- Jenzabar has never received an inquiry from anyone, including actual or potential customers, concerning Long Bow's website;
- Long Bow's alleged use of Jenzabar's trademarks is not trademark use;
- Long Bow's alleged use of Jenzabar's trademarks is not use in connection with a good or service;
- Long Bow's alleged use of Jenzabar's trademarks – "Jenzabar" and "Jenzabar.com" – has not caused confusion;
- Long Bow's alleged use of Jenzabar's trademarks – "Jenzabar" and "Jenzabar.com" – is not likely to cause confusion;
- No reasonable person could be confused about whether there is any

connection or affiliation between Jenzabar and Long Bow;

- No reasonable person could be confused about whether Jenzabar is responsible for the content on Long Bow's website;
- No person seeking the Jenzabar website has ever been diverted or misdirected to Long Bow's website;
- Long Bow's alleged use of Jenzabar's trademarks – "Jenzabar" and "Jenzabar.com" – has not caused dilution;
- Long Bow's alleged use of Jenzabar's trademarks -- "Jenzabar" and "Jenzabar.com" – is not likely to cause dilution;
- Jenzabar has closely associated itself with the reputation and biography of Ling Chai, its founder, COO, and President, and is itself responsible for any negative consequences that arise from that association;
- Jenzabar's negative reputation is due to the many stories that have been published by persons other than Long Bow;
- Jenzabar has not lost any business opportunities as a result of Long Bow's website;
- Jenzabar has not suffered any harm as a result of Long Bow's website;
- Jenzabar has no basis for the allegation that Long Bow is motivated by sympathy for officials in the communist government of China;
- Jenzabar has no basis for the allegation 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;
- Jenzabar has violated its obligation to preserve, collect, and produce documents and other information relevant to this litigation.

(c) in the second alternative, order (i) that plaintiffs are precluded from offering any and all evidence based on information or documents that were not disclosed by June 12, 2009, all testimony from Robert Maginn, all testimony from Ling Chai, all testimony from Eric Russo, and, to the extent of the topics in the Rule 30(b)(6) deposition notice, all testimony from any witness on behalf of Jenzabar, and (ii) that plaintiffs must pay all costs and attorney's fees incurred by Long Bow in connection with this

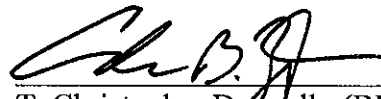
Renewed Motion, the discovery motions heard by the Court on June 2, 2009, and the depositions of Robert Maginn and Ling Chai;

- (d) in the third alternative, order (i) that plaintiffs are precluded from offering any and all evidence based on information or documents that were not disclosed by June 12, 2009, (ii) that Jenzabar, Robert Maginn, Ling Chai, and Eric Russo must submit to further depositions at Long Bow's convenience and at plaintiffs' expense, and (iii) that any failure to appear for such depositions or further misconduct during those depositions by plaintiffs or their counsel, will be treated as a contempt of court and will be considered grounds for dismissal of this action.

WHEREFORE, in addition, defendant Long Bow respectfully requests the Court to order plaintiffs to pay the costs and reasonable attorney's fees incurred by Long Bow in connection with this Renewed Motion.

Respectfully submitted,

LONG BOW GROUP, INC.



T. Christopher Donnelly (BBO # 129930)

Adam B. Ziegler (BBO # 654244)

DONNELLY, CONROY & GELHAAR LLP

One Beacon Street, 33rd Floor

Boston, MA 02108

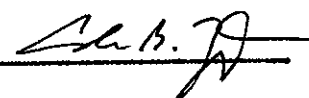
617-720-2880 (tel)

617-720-3554 (fax)

Dated: July 9, 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: July 9, 2009 

CERTIFICATE OF COMPLIANCE WITH SUPERIOR COURT RULE 9C

I hereby certify that on July 7, 2009, at approximately 9:00 am, I attempted to confer by telephone with plaintiffs' counsel Larry Kulig in a good faith attempt to resolve or narrow the issues addressed by this Renewed Motion. I left a voicemail message for Mr. Kulig. Following a deposition of Richard Gordon on July 7, Mr. Kulig and I discussed the issues presented by this Motion and were unable to resolve or narrow the issues presented. In addition, I have initiated multiple Rule 9C conferences with Mr. Kulig concerning plaintiffs' document production and interrogatory responses, and the deposition-related issues addressed by this motion were raised numerous times during the depositions of Chai and Maginn. All those efforts to resolve the issues addressed by this Renewed Motion have failed.



Adam B. Ziegler, BBO #654244
Donnelly, Conroy & Gefhaar, LLP
One Beacon Street, 33rd Floor
Boston, MA 02108
(617) 720-2880

Dated: July 9, 2009