

ENTERED

August 23, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TRU KIDS INC,	§	CIVIL ACTION No.
Plaintiff,	§	4:21-cv-03336
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
ALI AFZAL	§	
ENTERPRISES INC,	§	
Defendant.	§	

ORDER

Three matters are currently pending.

First, the motion by Plaintiff Tru Kids d/b/a Toys R Us for leave to amend its complaint is DENIED. Dkt 48. Tru Kids hasn't shown good cause to amend the scheduling order, and the deadline to seek leave to amend pleadings and to add parties expired long ago. See Dkt 30. Indeed, rather than meeting the pertinent standard, the motion itself evinces undue delay and dilatory motive. See Dkt 48 at 13–14. The motion could also be considered abusive, given the Court's prior order on this topic. See Dkt 45.

Second, the motion by non-parties Farida Afzal, Muhammad Fareed Afzal, and Afzal Elite LLC to quash Tru Kids' amended notice of subpoena to HRSS LLP and the amended notice of subpoena and notice of deposition to Syed Fowad Zaidi is GRANTED. Dkt 50. Rule 15 of this Court's procedures doesn't require third parties such as these to bring an initiating letter to seek relief from discovery requests. And the subpoenas and notice of deposition are here found to be harassing and not brought for legitimate purposes.

Third, the request by Tru Kids to compel Defendant Ali Afzal Enterprises Inc d/b/a TOYZ to produce further responsive documents and to make available a corporate representative for a second deposition, as well as for additional time to prepare an expert damages report should Tru Kids choose to engage an expert, is DENIED. Dkt 51. The response letter by TOYZ makes clear that it has “honestly and diligently looked for and produced all responsive documents to Plaintiff’s discovery requests.” Dkt 52 at 1; see also Dkts 51 at 2 & 51-2 at 2. And Tru Kids chose to go forward with its deposition even though document production was ongoing at the time, thus making it known that all documents hadn’t been produced.

Several other matters require attention.

First, the response letter by TOYZ suggests that Tru Kids hasn’t provided all evidence of “actual confusion” in this dispute, contrary to valid and pending discovery requests. See Dkt 52 at 1. If it hasn’t already done so, Tru Kids is ORDERED to provide by August 30, 2022, all responsive documents on the issue of “actual confusion.” No objection will be entertained in that regard. Any assertion of privilege may be made by way of appropriate log, which assertion TOYZ may dispute or argue is waived.

Second, the underlying correspondence between counsel is attached to the submissions and suggests that Tru Kids has stated boilerplate objection to every interrogatory and request for production by TOYZ. See Dkt 51-2 at 1. TOYZ may bring an appropriate motion to strike all objections and require complete answers without exception.

Third, substantial question exists regarding whether Tru Kids has initiated this action primarily for the purpose of harassing or maliciously injuring a competitor, and whether it is using the law’s procedures only for legitimate purposes. To help inform that question, Tru Kids is ORDERED to provide by September 13, 2022, an iteration of all actions it has initiated against any defendant worldwide since acquiring its interest in the Toys R Us brand in January 2019, wherein it has alleged claims, as here, of

trademark and trade-dress infringement, trademark dilution, unfair competition, or unjust enrichment relating to Toys R Us intellectual property. See Dkt 1 at ¶¶ 72–135. Specify the court and judge. Specify also all items on those dockets wherein the defendant has in any way asserted abusive litigation tactics, along with any order or entry by the court regarding the same. File on the docket a copy of all such documents.

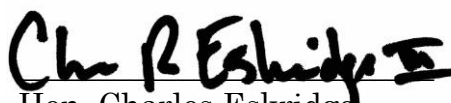
Fourth, this matter is now STAYED and all deadlines CANCELED, apart from items directed for response or motion practice above or hereafter.

Fifth, under present consideration is whether to entertain a motion by TOYZ for sanctions and/or for summary judgment. TOYZ may seek by initiating letter leave to bring such motion or motions if it believes such can be done in a well-supported manner in compliance with obligations of good faith under Rule 11.

Sixth, it's noted that the parties have recently attempted to resolve this matter amicably in mediation. See Dkt 52 at 1. The parties are commended for that effort with further suggestion that they try again at the earliest opportunity.

SO ORDERED.

Signed on August 23, 2022, at Houston, Texas.


Hon. Charles Eskridge
United States District Judge