

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SKF USA INC.,)	
)	
Plaintiff,)	Case No. 08 CV 4709
)	
v.)	Consolidated with
)	
DALE H. BJERKNESS, <i>et al.</i> ,)	Case No. 09 CV 2232
)	
Defendants,)	District Judge Pallmeyer
)	
)	Magistrate Judge Denlow
)	
SKF USA INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
EQUIPMENT RELIABILITY SERVICES, INC.,)	
)	
Defendant.)	

DEFENDANT’S OBJECTIONS TO PLAINTIFF’S BILL OF COSTS

Defendants Dale H. Bjerkness, Kevin Koch, Walter Remick, Joseph Sever and Equipment Reliability Services, Inc., (hereinafter collectively referred to as (“defendants”)) object to Plaintiff SKF USA Inc. (“plaintiff”)’s Bill of Costs as follows.

INTRODUCTION

On August 9, 2010, this Court found for plaintiff on its Illinois Trade Secret Act (“ITSA”) claim. The Court held a preliminary injunction hearing in late Fall of 2008 and a merits trial in January 2010. In its August 9, 2010 decision, this Court found in favor of the plaintiff on its ITSA claim, and awarded plaintiff compensatory damages in the amount of \$41,068.40, and punitive damages in the amount of \$40,000.00.

On September 8, 2010, plaintiff filed its Bill of Costs for recovery of its costs against the defendants in the amount of \$44,852.84, including \$12,719.44 in costs for “Computer Design, Art Director and InfoDesign Consultant,” \$3,375.00 in costs for “Electronic Exhibit Archive,” and \$400.70 in costs for “Binders and Tabs.” Defendants object to these three costs, totaling \$16,495.14. The objectionable invoices are attached at Tab A.

ARGUMENT

A. Plaintiff’s “Computer Design, Art Direction and Infodesign Consulting” Are Neither Sufficiently Described, Nor Reasonable And Necessary

Recovery of fees associated with “exemplification” is allowed under 28 U.S.C. § 1920(4). Exemplification is generally understood to permit an award for the reasonable expense of preparing “maps, charts, graphs, photographs, motion pictures, photostats, and kindred materials.” *Cefalu v. Village of Elk Grove*, 211 F.3d 416, 427 (7th Cir.2000) (quoting 6 Moore’s Federal Practice ¶ 54.77[6] at 1739 (2d ed.)). A judge must consider whether an item qualifies as exemplification, as well as whether it was “necessarily obtained for use in the case.” *Id.* at 428 (quoting 28 U.S.C. § 1920(4)). Among other factors, the judge may consider whether the exemplification was “vital” to the presentation of information at trial, or whether it was “merely a convenience or, worse, an extravagance.” *Id.* at 428-29.

In Buffone v. Rosebud Restaurants, Inc., 2006 WL 3196931, *3 (N.D. Ill., Oct 31, 2006) (attached at Tab B), the Court disallowed costs for “computer design, art direction and infodesign consulting.” The Court reasoned that the plaintiff failed to sufficiently describe these services so that the Court could determine whether or not such services were “reasonable and necessary” to the litigation. *Rosebud Restaurants, Inc.*, 2006 WL 3196931 at *3. Likewise, in *Glenayre Electronics, Inc. v. Jackson*, 2003 WL 21947112, *5 (N.D. Ill., Aug 11, 2003) (attached at Tab C), the Court disallowed “computer design charges” because they were not

sufficiently descriptive enough to allow the Court to determine if they were reasonably necessary to the litigation.

Here, as in *Buffone* and *Glenayre*, defendants object to the \$12,719.44 in costs for “Computer Design, Art Director and InfoDesign Consultant.”¹ Plaintiff fails to describe exactly what exhibits or documents required such services. Further, given the straightforward nature of plaintiff’s trade secret claims, defendants are at a loss as to why such services would be reasonable and necessary. Instead, such services constituted “extravagance,” and should, therefore, be disallowed.

B. \$3,375.00 To Archive Exhibits Is Neither Necessary Nor Reasonable

Next, defendants object to the \$3,375.00 in costs claimed for the archive of key exhibits. *See* invoice at Tab A. While plaintiff claims that such costs were “prepared at the request of Judge Pallmeyer,” a cost of \$3,375.00 to do such is neither reasonable, nor necessary. Accordingly, this cost should be disallowed.

C. \$400.70 In Costs For Binders and Tabs Should Be Disallowed As Unreasonable and Unnecessary

Finally, defendants object to \$400.70 in costs for “binders and tabs.” *See* Invoice at Tab A. Again, such costs are neither reasonable, nor necessary. Indeed, this Court recently held that, “the Court does not find any support in the statute or case law for the award of ... the binding and tabbing costs ... that [defendant] requests.” *National Production Workers Union Ins. Trust v. Life Ins. Co. of North America*, 2010 WL 2900325, *4 (N.D. Ill., Jul 21, 2010) (attached at Tab D); *see also Jack-Goods v. State Farm Mutual Auto. Ins. Co.*, 2004 WL 1672864, *4 (N.D. Ill., Jul 23, 2004) (disallowing costs for tabs as not reasonably necessary) (attached at Tab E). Thus, as in *Life Ins Co.*, and *Jack-Goods*, the costs for binders and tabs should be disallowed.

¹ Apparently, Kroll Ontrack provided plaintiff with a 25% discount for such services. *See* Invoices at Tab A.

CONCLUSION

For the reasons set forth above, defendants respectfully request that plaintiff's Bill of Costs be reduced by a total of \$16,495.14 (\$12,719.44 for "Computer Design Art Director and InfoDesign Consultant," \$3,375.00 "Exhibit Archive," and \$400.70 for "Binders and Tabs.") to \$28,357.70.

Respectfully submitted,

By: s/Brian V. Alcala
One of the attorneys for Defendants

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Dated: September 22, 2010

CERTIFICATE OF SERVICE

I, Brian V. Alcala, an attorney, state that, on September 22, 2010, I caused a copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFF'S BILL OF COSTS** to be served via ECF/email on the following filing users:

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s/Brian V. Alcala
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