

EYELATION CONDUCT FOUND TO BE VEXATIOUS

June 28, 2016, Raleigh, North Carolina. IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION.

U.S. District Court Judge Terrence Boyle issued an Order against Eyelation on Friday finding that Eyelation's conduct has been vexatious. This term is used to describe a party who is not acting in good faith for the purpose of annoying or embarrassing an opponent or initiated malicious defenses and acting without probable causes. Vexatious litigation includes continuing a lawsuit after discovery of the facts shows it has absolutely no merit. The Court Order granted Plaintiff, Cyber Imaging Systems, motion to confirm and enforce a 2013 Arbitration Award against Eyelation.

CASE BACKGROUND

Cyber Imaging Systems, Inc. and Eyelation, LLC entered into a Software Development and Technology Licensing Agreement on October 26, 2009. Under the 10-year exclusive Agreement, CyberImaging would develop and deliver a customized version of its' CyberEYESVTO software to Eyelation. In exchange, Eyelation was to pay to CyberImaging a royalty fee on every pair of safety glasses sold by Eyelation, or third parties contracted by Eyelation. CyberImaging delivered the software and Eyelation initially made the royalty payments. However, several months later Eyelation ceased making royalty payments as required under the Software Development and Technology Licensing Agreement.

The case went to binding Arbitration in Chicago. After a year of discovery followed by a six day hearing which featured the testimony of CyberImaging's Hal Wilson against Eyelation's Brad Kirschner, the Arbitrator issued an award requiring Eyelation to pay damages to CyberImaging. The amount of the Award is the full and complete 10-year royalty stream set forth in the original Agreement. The value of the Award is estimated to have a value of \$4.5 million to \$7.0 million depending on the orders generated over the 10-year term. The Award also allows CyberImaging to hire an independent auditor to conduct a complete and thorough annual examination of Eyelation's financial documents, sales records and all other documentation to confirm the correctness of the Eyelation royalty payments.

Following the conclusion of the Arbitration, Eyelation made payments towards the Award for several months before again ceasing to pay. Eyelation also refused to allow an independent audit per the Arbitration Award to conduct the audit. This required CyberImaging to file another lawsuit against Eyelation to confirm and enforce the Award.

Eyelation responded to the lawsuit by hiring new lawyers who attempted to vacate the Arbitration Award by claiming that the lawsuit caption name did not include the word 'Systems' (Cyber Imaging *Systems*, Inc). Eyelation also claimed that the statute of limitations on Arbitration Awards is one year and therefore Eyelation is not bound by the Award. Both of these claims were denied by Judge Boyle.

Eyelation then fabricated a trademark infringement counterclaim against CyberImaging in a desperate attempt to offset the arbitration award. After Eyelation was denied an extension to produce discovery of their counterclaim, Eyelation suddenly dropped its counterclaim.

As a result of these baseless and malicious defenses, and because of Eyelation's refusal to provide the required monthly royalty reports and royalty payments, Judge Boyle ordered Eyelation to pay all of Cyber Imaging's legal fees that were incurred since late-October 2014. Judge Boyle's Order is Final. The Award is now confirmed and subject to forcible enforcement action by the Court including contempt charges and/or the seizure of assets.

About Cyber Imaging Systems, Inc

Cyber Imaging Systems, Inc. provides e-commerce technologies for online eyewear (www.eyeweb.com) and safety eyewear applications (www.eyewebsafety.com). The company also licenses its' patented digital measurement tools which enables online retailers to remotely calculate digital eyeglass measurements. The company serves corporate customers with the Eyeweb platform and provides enterprise-wide prescription safety eyewear programs across geographically dispersed locations. For more complete information about Eyeweb programs visit www.eyewebsafety.com.