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December 17, 2009

**VIA ECF**

The Honorable John R. Tunheim  
United States District Court  
13E U.S. Courthouse, 300 S. Fourth Street  
Minneapolis, MN 55415

Re: Insignia Systems, Inc. v. News America Marketing In-Store, Inc., et al.  
No. 04-4213 (JRT/AJB)

Dear Judge Tunheim:

This letter is in response to the letter of News America Marketing In-Store, Inc. ("News") requesting leave to file a motion to reconsider this Court's September 30, 2009 Order denying News' Motion for Summary Judgment. Local Rule 7.1(h) provides that a party may not file a motion to reconsider without leave of court, "which will be granted *only* upon a showing of *compelling circumstances*." D. Minn. Local Rule 7.1(h) (emphasis added). *See also Dale & Selby Superette & Deli v. U.S. Dep't of Agriculture*, 838 F. Supp. 1346, 1348 (D. Minn. 1993) (leave to file a motion for reconsideration should not be granted to relitigate old issues but rather to "afford an opportunity for relief in extraordinary circumstances."). News America has not articulated any circumstances, let alone compelling circumstances, that would justify reconsideration of a 62 page, carefully considered opinion issued following voluminous briefing and lengthy oral argument. In this Circuit, motions for reconsideration "serve a limited function: to correct manifest errors of law or fact, or to present newly discovered evidence." *Hagerman v. Yukon Energy Co.*, 839 F.2d 407, 414 (8th Cir. 1988). Neither circumstance is present here.

News' characterization of the declaration of Pamela Wesson as "a sham" is reckless, misleading, and shows that it will stop at virtually nothing to delay a trial of this case. News does not request reconsideration of just that part of the Court's September 30, 2009 Order denying News' motion to strike Ms. Wesson's declaration. Instead, News asks for reconsideration of the entire ruling on News' Motion for Summary Judgment, as if the Wesson declaration were the only evidence of causation/injury in the record, which it clearly is not. *See Insignia Sys., Inc. v. News Am. Marketing In-Store, Inc.*, No. 04-4213, 2009 WL 3213291 at \*9 - 10 (D. Minn. Sept. 30, 2009).

Importantly, News challenges only a few statements in Ms. Wesson's 1600 word, 5 page declaration. Yet, in an effort to create the appearance of material inconsistency, News craftily splices short quotes with paraphrasings of Ms. Wesson's deposition and declaration. News uses this technique in accusing Ms. Wesson of testifying, in contradiction, that Sara Lee did no

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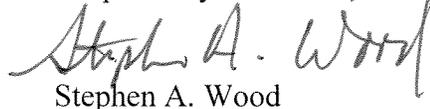
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business with Insignia before 2006. Actually, she testified that *she*, not all of Sara Lee, did no business with Insignia while *she* was at Sara Lee before 2006. *See, e.g.*, Wesson Dep at 79-81. This testimony is not inconsistent with her declaration at all. Ms. Wesson testified that when she met with News' sales rep Michele Moody, she was not aware that Insignia was doing business with Sara Lee; she did *not* say, as News claims, that Sara Lee as a whole was not using Insignia products at that time. *See, e.g.*, Wesson Dep. at 125 ("Q. Was anyone else within the Sara Lee organization purchasing any Insignia products in 2003 that you're aware of? A. That I'm aware of? No."). In fact, News knows full well that Sara Lee was doing business with Insignia in 2002 and 2003 because it has copies of Insignia's contracts with Sara Lee. Importantly, Ms. Wesson was only one Sara Lee consumer promotions professional with responsibility for only a few brands (Wesson Dep at 38-39), in a company with over one hundred brands. She is not the spokesperson for all of Sara Lee, nor does she purport to be.

News calls "irreconcilable" Ms. Wesson's testimony and the statement in her declaration that "I stopped recommending Insignia programs to Sara Lee brand teams and they consequently stopped purchasing Insignia's products." But News knows, because it was successful in poisoning the Sara Lee well for Insignia, that Insignia did *no business* with Sara Lee from late 2003 until Ms. Wesson ran a test with Insignia in January 2006. Thereafter, because Insignia demonstrated the effectiveness of its POPSigns in a controlled store test, she contracted with Insignia on behalf of Sara Lee and continued to recommend Insignia POPSigns to Sara Lee. *See* Wesson Dep at 105-06. If News believes that her testimony is inconsistent with her declaration *supra*, that is for News to try to show in cross-examination at trial.<sup>1</sup>

Finally, the other basis for seeking leave of court is that Karl Ball's declaration was based on hearsay and rank speculation. This is the very same argument News made in its original motion to exclude, which this Court rejected. News offers no new evidence or arguments that were not presented earlier. News' letter is an improper attempt to seek a second bite at the apple. Its disappointment with this Court's Order is not a compelling circumstance. *See In re Medtronic, Inc. Sprint Fidelis Leads Prods. Liab. Lit.*, No. 08-1905, 2009 WL 294353, at \*1 (D. Minn. Feb. 5, 2009) (Kyle, J.). For the foregoing reasons, News' request should be denied.

Respectfully submitted,



Stephen A. Wood

cc: Counsel of Record (via ECF)

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<sup>1</sup> Regarding the assertion of attorney-client privilege at deposition, Ms. Wesson was instructed not to answer a limited number of questions related to communications with counsel, not with respect to the facts in the declaration. Numerous questions regarding the declaration, including questions about its creation, were asked and answered by Ms. Wesson. Also, simply because she believed she had not formally retained KDW as of October 2008, does not mean there was no valid attorney-client relationship at the time.