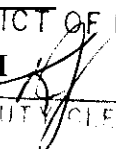


19 AUG 03 PM 5: 53

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BY:   
DEPUTY CLERK

NORTHERN DIVISION

**THE PROCTER & GAMBLE  
COMPANY and THE PROCTER &  
GAMBLE DISTRIBUTING COMPANY,**

**Plaintiffs,**

vs.

**RANDY L. HAUGEN et al.,**

**Defendants.**

**ORDER**

**Case No. 1:95CV94 DAK**

Defendants' Motion for Sanctions was heard by the Court on July 15, 2003. Plaintiffs were represented by Mr. Stan Chesley, Mr. Tracy Fowler, and Mr. Joseph Suarez. Defendants were represented by Mr. Joseph Joyce and Mr. Jim Franckowiak.

The Court has reviewed the file, considered the arguments of counsel, reviewed the memoranda supporting and opposing the motion, and has reviewed governing authority. After due consideration of the foregoing, the Court grants Defendants' Motion and dismisses this case with prejudice for each of the following three reasons (in other words, each reason standing alone would be sufficient for the Court's ruling in this matter):

1. Based on the reasons and arguments set forth by Defendants in support of their motion, the Court is convinced that Plaintiffs have failed to preserve relevant electronic data that Plaintiffs knew was critical to their case and to the defense.

The Court is also persuaded that Plaintiffs have violated four (4) separate

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discovery orders requiring production of said data.

2. Based on the reasons and arguments set forth in Defendants' motion and supporting memoranda, the Court finds that it would be basically impossible for Defendants to defend this case without the electronic data that has not been produced and apparently is no longer available. Defendants would need access to all relevant IRI data to determine whether the Satanism message produced lost sales with respect to all of the products included in said Satanism message.
3. The Court finds that damages testimony and studies based on five or fewer of the more than forty products at issue here would not be admitted in evidence under Rule 702 of the Federal Rules of Evidence and the Daubert line of cases regarding the admissibility of expert testimony. Such testimony clearly would not be based upon sufficient facts or data to be admissible in this Court. Since Plaintiffs' damages evidence would not be admissible, Plaintiffs' claims must fail.

Defendants' Motion to Dismiss this case with prejudice is granted for each of the foregoing three reasons discussed. All other outstanding motions in this case are moot. Each party shall bear its own costs.

DATED this 19<sup>th</sup> day of August, 2003.

BY THE COURT:

  
DALE A. KIMBALL  
United States District Judge

United States District Court  
for the  
District of Utah  
August 20, 2003

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:95-cv-00094

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michael A. Mohr, Esq.  
AMWAY CORPORATION  
7575 E FULTON RD  
ADA, MI 49355  
EMAIL

Mr. Joseph J. Joyce, Esq.  
STRONG & HANNI  
9 EXCHANGE PLACE STE 600  
SALT LAKE CITY, UT 84111  
EMAIL

John E. Jevicky, Esq.  
DINSMORE & SHOHL  
1900 CHEMED CTR  
255 E FIFTH ST  
CINCINNATI, OH 45202  
JFAX 8,513,9778141

Tracy Fowler, Esq.  
SNELL & WILMER LLP  
15 W SOUTH TEMPLE STE 1200  
GATEWAY TOWER W  
SALT LAKE CITY, UT 84101  
JFAX 9,2571800

Mr. Robert S. Campbell Jr., Esq.  
VAN COTT BAGLEY CORNWALL & MCCARTHY  
50 S MAIN STE 1600  
PO BOX 45340  
SALT LAKE CITY, UT 84145  
JFAX 9,5219598

Kari McCulloch, Esq.  
1447 FELTON ST  
SAN DIEGO, CA 92102-2440

Mr. Scott Daniels, Esq.  
PO BOX 521328  
SALT LAKE CITY, UT 84152-1328

JFAX 9,5830802

William J. Abraham, Esq.  
24 North High Street  
Columbus, OH 43215

Stanley M. Chesley, Esq.  
WAITE SCHNEIDER BAYLESS & CHESLEY LPA  
1513 CENTRAL TRUST TOWER  
FOURTH & VINE STREETS  
CINCINNATI, OH 45202  
JFAX 8,513,6210262

Neil Peck, Esq.  
SNELL & WILMER  
1200 SEVENTEENTH ST STE 1950  
TABOR CTR  
DENVER, CO 80202