

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

BRANDEIS UNIVERSITY and	)	
GFA BRANDS, INC.,	)	
	)	Nos. 1:12-cv-01508
<i>Plaintiffs,</i>	)	1:12-cv-01509
v.	)	1:12-cv-01510
	)	1:12-cv-01511
EAST SIDE OVENS INC.;	)	1:12-cv-01512
KEEBLER CO.;	)	1:12-cv-01513
FAMOUS AMOS CHOCOLATE CHIP	)	
COOKIE COMPANY, LLC;	)	
MURRAY BISCUIT CO. LLC;	)	Judge Richard A. Posner.
VOORTMAN COOKIES LTD.;	)	
BREMNER FOOD GROUP, INC.;	)	
COOKIE SPECIALTIES INC.;	)	
TOPCO ASSOCIATES LLC;	)	
THE PILLSBURY COMPANY, LLC;	)	
UNILEVER UNITED STATES, INC.;	)	
CONOPCO, INC.; and	)	
NESTLÉ USA, INC.,	)	
	)	
<i>Defendants.</i>	)	

**ORDER OF MARCH 16, 2012**

Following up our preliminary conference of Wednesday, March 14, 2012, I order:

1. Motions practice in this litigation shall proceed as follows: Any motions filed during a week shall be filed by the close of business on Friday; responses are due the following Monday. Motions and responses shall not exceed 1500 words without my authorization in advance.
2. The parties shall jointly submit a proposed schedule by March 23.
3. These six cases are hereby consolidated under 1:12-cv-01508, pursuant to Fed. R. Civ. P. 42(a). The parties agree that they involve a number of common issues of law, and I believe that judicial efficiency will be maximized by consolidation. I will consider in due course the defendants' request for separate trials of issues, particularly damages, that vary significantly across the six cases.

4. The parties shall have their experts jointly nominate two experts in the relevant field, preferably academics, who are agreeable to all parties and could serve as court-appointed experts on liability, pursuant to Fed. R. Evid. 706. The nominations are due by March 26.

5. I propose to appoint Greg Sidak of Criterion Economics as a court-appointed expert on damages. Mr. Sidak's c.v. is attached to this order's cover email. Any party objecting to Mr. Sidak's appointment must submit its objection with supporting grounds by March 26.

6. The parties may file their protective order from the Western District of Wisconsin in this court.

7. The plaintiffs' motion to compel is granted: defendants Bremner and Topco are ordered to identify the products asked about in plaintiffs' Interrogatory No. 9, subject to the limitations offered by the plaintiffs during the meet and confer process and outlined in the plaintiffs' response to the memorandum in opposition to the motion to compel. The defendants are also ordered to produce the documents called for in the plaintiffs' Document Requests Nos. 3-4, 11, 16-18, 20, 43, 44, 47, and 50-52.

8. I am concerned whether the plaintiffs if successful in establishing liability will be entitled to nontrivial damages awards. Suppose the defendants infringed the asserted patents but that none of the defendants marketed its products as low in bad cholesterol (LDL) or high in HDL, or as having a high ratio of HDL to LDL; and suppose further that the defendants obtained no cost savings by infringing the patents rather than using some non-infringing recipe and that neither Brandeis nor its licensee GFA Brands lost any business as a result of the infringement. On those assumptions, would the plaintiffs have any claim for damages, whether compensatory or punitive, or restitution? I would like the parties to address this question in briefs filed simultaneously by close of business on April 2.



United States Circuit Judge

March 16, 2012