IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-CV-00520-PAB-BNB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

MDX MEDICAL, INC.'S OPPOSITION TO HEALTH GRADES MOTION TO EXCEED PAGE LIMITATIONS

Defendant and Counterclaim Plaintiff MDx Medical, Inc. ("MDx") hereby opposes Plaintiff Health Grades, Inc.'s ("Health Grades") Motion to Exceed Page Limitations (dkt. # 155), regarding Health Grades' Response in Opposition to MDx Medical, Inc.'s Motion for Reconsideration of Motion for Partial Summary Judgment of No Infringement.

Health Grades had a full and fair opportunity to oppose MDx's motion for partial summary judgment, and did so on May 20, 2011 (dkt. # 23), as well as submitting a supplement/amendment on May 27, 2011 (dkt. # 29), and a sur-reply on June 24, 2011 (dkt. # 37). The MDx motion at issue here is merely a motion for reconsideration of that fully-briefed motion, which the Court denied as premature without prejudice to MDx raising the motion again after claim construction. The Health Grades opposition, however, does not even address the motion for reconsideration, and instead reargues the summary judgment motion.

Nowhere in its alleged opposition does Health Grades even address the standards for reconsideration. The first sentence of the Health Grades' opposition makes no mention of the reconsideration motion, but instead states "MDx Medical, Inc. moves for partial summary judgment…," and proceeds to present a ***second opposition*** to the underlying summary judgment motion – a different motion, which was fully briefed months ago.

Health Grades has thus entirely missed the point of the motion for reconsideration, and does not even appear to appreciate which motion it was supposed to oppose. *Metro. Opera Ass'n v. Local 100, Hotel Emples. & Rest. Emples. Int'l Union*, 2004 U.S. Dist. LEXIS 17093, *4 (S.D.N.Y. August 27, 2004) (reconsideration motion does not give the parties a "do over" on the underlying motion); *Forsyth v. Fed'n Empl. & Guidance Serv.* No. 97 Civ. 3399, 2003 U.S. Dist. LEXIS, at *1-2 (S.D.N.Y. Mar. 6, 2003) ("The purpose of a motion to reconsider is [not] to start a new round of arguments. . . .").[1]

[1] Health Grades' only argument for needing so many pages is that it needed "to undertake [a] meticulous, detailed review and evaluation of MDx's website that is reflected within the Response and the declaration supporting the Response." Health Grades Motion, ¶3. But the time for Health Grades to review the MDx website was many months ago with its infringement contentions and opposition to the underlying summary judgment motion. Health Grades does not allege in this motion, nor could it, that the claim constructions justify any new substantive response to the underlying summary judgment motion. Indeed, the Court's claim constructions on the terms at issue in MDx's reconsideration motion were fully consistent with the interpretations used in the MDx motion for partial summary judgment. (*See* Dkt. # 164).

Health Grades did not need a single page to address the motion for reconsideration, let alone thirty. Accordingly, its request should be denied.

Dated: March 26, 2012

Respectfully submitted,

s:/Scott D. Stimpson

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that on March 26, 2012, I electronically filed the foregoing MDX MEDICAL, INC.'S OPPOSITION TO HEALTH GRADES' MOTION TO EXCEED PAGE LIMITATIONS with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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