IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

INTERMARK FABRIC CORPORATION, Plaintiff, v. MICROFIBRES, INC., Defendant.	Civil Action No. 3:02-CV-1267 (AVC)

PLAINTIFF'S MOTION TO STRIKE EXPERT REPORT OF DON H. PHILLIPS

On November 30, 2005, Defendant, Microfibres, Inc. filed a motion for prejudgment attachment and disclosure of assets. In doing so, Microfibres' sole evidence to establish probable cause as to the amount of damages was the affidavit of a paralegal employed by the firm that represents Microfibres in this matter, with no apparent experience in the flock or textile industry, who summed up sales records, incorrectly, then assumed, with no explanation, a royalty rate of 5%. Based solely on that calculation, Microfibres claimed to have established probable cause for multiple-millions of dollars in damages. Intermark filed its opposition to the motion on December 16 wherein Intermark raised, among other issues, Microfibres' failure to show probable cause as to damages, specifically including the complete failure to support the assumed 5% royalty rate.

A hearing is scheduled for December 22. On the day before the scheduled hearing, Intermark's counsel was served with Microfibres' Reply Memorandum filed on December 20, attached to which is an "Expert Report of Don H. Phillips." Through this alleged Expert Report, Mirofibres attempts to support its argument that a 5% royalty is a reasonable royalty. Microfibres had its chance to support its claims and failed to do so. Intermark takes issue with

the Report as a whole and, further, to allow Microfibres to use this Report at this late stage is fundamentally unfair and should not be allowed.

WHEREFORE, Plaintiff, Intermark Fabric Corporation hereby moves this Honorable Court to strike the Expert Report of Don H. Phillips.

Respectfully submitted,
For the Plaintiff

By: _____

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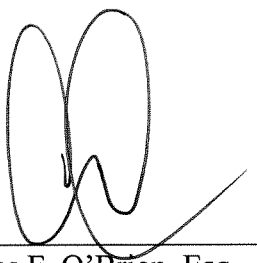
Dated: 12/21/05

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the PLAINTIFF'S MOTION TO STRIKE EXPERT REPORT OF DON H. PHILLIPS was served via facsimile and regular mail on this 21st day of December, 2005 upon:

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