IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

INTERMARK FABRIC CORPORATION Plaintiff	: :	
v.	:	C.A. No. 302 CV 1267 AVC
MICROFIBRES, INC. Defendant	: :	

MICROFIBRES' RESPONSE TO INTERMARK'S MOTION TO EXCLUDE TESTIMONY BETWEEN DEFENDANT AND DEFENDANT'S COUNSEL FOR PRIOR ASSERTION OF THE ATTORNEY/CLIENT PRIVILEGE

ARGUMENT

Intermark's motion is unnecessary and wasteful. A simple phone call would have revealed to Intermark's counsel that Microfibres has no intention of offering attorney/client privileged communications between it and its patent prosecution counsel, Art MacCord. Mr. MacCord will testify only on factual issues concerning his prosecution of the '021 patent on behalf of Microfibres and his complete truthfulness in that process.

Microfibres agrees with Intermark's assertion of the law. A party cannot use the attorney/client privilege as "a shield and a sword." That same legal principle applies to Intermark who has asserted attorney client privilege objections in discovery as to communications between it and its counsel concerning alleged infringement and/or invalidity opinions. Intermark's Motion in Limine should be denied as moot.

MICROFIBRES, INC.
By its Attorneys,

/s/_____
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September 25, 2006

CERTIFICATION

William Cass, Esq.
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I certify that sent a copy of the foregoing Microfibres' Response to Intermark's Motion to Exclude Testimony Between Defendant and Defendant's Counsel For Prior Assertion of the Attorney/Client Privilege to Intermark's counsel of record, as above, on September 25, 2006 by electronic filing and regular mail.

/s/Brent R. Canning

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