**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| DNA GENOTEK INC., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | C.A. No. 15-355-SLR |
| v. | ) | |
| | ) | **JURY TRIAL DEMANDED** |
| ANCESTRY.COM DNA, LLC, | ) | |
| | ) | |
| Defendant. | ) | |

**DEFENDANT'S RENEWED MOTION TO DISMISS GENOTEK'S WILLFUL INFRINGEMENT, CONVERSION, TRESPASS TO CHATTEL, AND ACTION TO QUIET TITLE CLAIMS**

WHEREAS, the Complaint in this action filed by DNA Genotek Inc. ("Plaintiff") on May 4, 2015 contained counts of: (1) infringement of U.S. Patent No. 8,221,381 ("the '381 patent"), including willful infringement of the '381 patent; (2) breach of contract; (3) conversion; (4) trespass to chattel; and (5) action to quiet title (D.I. 1); and

WHEREAS, a First Amended Complaint was filed on July 24, 2015 (D.I. 7); and

WHEREAS, in lieu of an answer, Defendant Ancestry.com DNA, LLC ("Ancestry") moved to dismiss Plaintiff's willful infringement, conversion, trespass to chattel and action to quiet title claims (D.I. 10); and

WHEREAS, Ancestry's motion has been fully briefed (D.I. 11, 14, 15, 19, 20), but has not yet been decided by the Court; and

WHEREAS, after some negotiation, Ancestry agreed to a stipulation allowing Plaintiff to file a Second Amended Complaint (D.I. 24); and

WHEREAS, that stipulation provided that "[t]he Second Amended Complaint shall add claims for false advertising and false designation of origin under the Lanham Act and shall add

related allegations and requests for relief, but *shall not otherwise amend the First Amended Complaint*" (*Id.*) (emphasis added); and

WHEREAS, consistent with the stipulation, the Second Amended Complaint (D.I. 25) does not amend the causes of action or supporting allegations for Plaintiff's willful infringement, conversion, trespass to chattel, or action to quiet title claims which are the subject of Ancestry's motion to dismiss; and

WHEREAS, Ancestry maintains the same objections to the willful infringement, conversion, trespass to chattel, and action to quiet title claims that were reiterated in the Second Amended Complaint; and

WHEREAS, Ancestry's motion to dismiss (D.I. 10) remains ripe for decision, as it was not rendered moot by the Second Amended Complaint;[1]

IT IS HEREBY RESPECTFULLY REQUESTED THAT the Court dismiss Plaintiff's willful infringement, conversion, trespass to chattel, and action to quiet title claims in the Second Amended Complaint (D.I. 25); and

IT IS FURTHER HEREBY REQUESTED THAT Ancestry's opening brief in support of its motion to dismiss (D.I. 11) serve as its opening brief in support of the present motion.[2]

[1] *See, e.g., Shoukry v. Parsons Corp.*, No. 07-3094-WJM, 2008 U.S. Dist. LEXIS 48034, at *2 (D.N.J. June 23, 2008) (concluding that an intervening amended complaint did not render the pending motion to dismiss moot and dismissing the breach of contract claim).

[2] Pursuant to Federal Rule of Civil Procedure 12(a)(4)(A), Ancestry's motion to dismiss suspends the time for Ancestry to file an answer, including an answer to those claims that are not subject to the motion to dismiss. *See, e.g., Talbot v. Sentinel Ins. Co.*, No. 2:11-cv-01766-KJD-CWH, 2012 WL 1068763, at *4 (D. Nev. Mar. 29, 2012); *Circuit City Stores, Inc. v. Citgo Petroleum Corp.*, No. 92-cv-7394, 1994 WL 483463, at *4 (E.D. Pa. Sept. 7, 1994).

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

By: */s/ Stephanie E. O'Byrne*

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyrne@potteranderson.com

*Attorneys for Defendant Ancestry.com DNA, LLC*

OF COUNSEL:

Michael Sacksteder
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Tel: (415) 875-2300

Melanie L. Mayer
FENWICK & WEST LLP
1191 Second Avenue, 10th Floor
Seattle, WA 98101
Tel: (206) 389-4510

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