

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KRIST OIL CO., INC.,

Plaintiff,

v.

BERNICK'S PEPSI-COLA
OF DULUTH,

Defendant.

ORDER

04-C-0187-C

Presently before the court are three motions: (1) plaintiff Krist Oil's second motion for summary judgment; (2) defendant Bernick's Pepsi-Cola's motion to strike plaintiff's second motion for summary judgment; and (3) defendant's motion for an extension of the time for filing motions for summary judgment.

Plaintiff Krist Oil's motion for summary judgment will be denied. The only two claims remaining in this suit are plaintiff's assertions that defendant failed to notify it that lower prices were available before April 2003 and that defendant violated Wis. Admin. Code § ATCP 131.02 by failing to enter into a written agreement with plaintiff over defendant's institution of a bottle cap coupon program. Nothing in plaintiff's proposed findings of fact

relates to either of these two claims.

If plaintiff is thinking of filing a third motion for summary judgment, its counsel should read this court's Procedures for Filing Summary Judgment Motions carefully. (Although the magistrate judge sent each party a copy of the Procedures as an attachment to the preliminary pretrial conference order, plaintiff's submissions suggest that its counsel may have lost his copy of the Procedures. Therefore, I am attaching to this order a copy of the Procedures for counsel's reference.) Plaintiff is directed to pay close attention to two of the directives in particular: I.B.1, which requires that *each* fact be proposed in a separate, numbered paragraph, and I.C.1, which requires the movant to cite admissible evidence for each proposed finding. Thus, if plaintiff wishes to propose as fact that it has two convenience stores, it must cite admissible evidence for this proposal. The admissible evidence could be the affidavit of an officer of plaintiff or of anyone who has firsthand knowledge of the stores operated by plaintiff. If plaintiff wishes to propose as fact that plaintiff did not purchase any wholesale products from defendant during a certain time period, it should propose it as a separate fact in a separate paragraph and should cite the specific evidence that supports that fact. Again, this might be an officer of plaintiff who has firsthand knowledge of plaintiff's purchases during this time period.

Because I am denying plaintiff's motion for summary judgment on its merits (or lack of them), defendant's motion to strike the motion for summary judgment is unnecessary and

will be denied as moot.

Defendant has asked for a period of 45 days following entry of the court's decision on defendant's motion to dismiss in which to file motions for summary judgment. A 45-day continuance would not allow the court time to decide any such motions before trial begins on May 23. However, I will give the parties a 28-day extension from the time set by the magistrate judge. All dispositive motions must be served and filed no later than February 18, 2005. The parties should not seek any additional extensions of time; the schedule cannot accommodate them.

ORDER

IT IS ORDERED that plaintiff Krist Oil's motion for summary judgment is DENIED on its merits; defendant Bernick's Pepsi-Cola's motion to strike plaintiff's motion for summary judgment is DENIED as moot; and defendant's motion for an extension of time is GRANTED in part; the parties may have until February 18, 2005, in which to file and serve dispositive motions and supporting materials; responsive briefs are to be served and filed no later than March 11, 2005 and reply briefs are to be served and filed no later than

March 21, 2005.

Entered this 31st day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge